

# Regulatory Analysis Form

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(1) Agency

2008 NOV -3 AM 10: 41

Department of State, Bureau of Professional and Occupational Affairs, State Board of Funeral Directors

INDEPENDENT REGULATORY REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)

16A-4817

IRRC Number: 2605

(3) Short Title

Biennial Renewal Fee

(4) PA Code Cite

49 Pa. Code § 13.12

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Thomas A. Blackburn, Assistant Counsel, Department of State (717) 783-7200**  
Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200**

(6) Type of Rulemaking (check one)

Proposed Rulemaking  
 Final Order Adopting Regulation  
 Policy Statement

(7) Is a 120-Day Emergency Certification Attached?

No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

**The rulemaking amends the fee schedule for the State Board of Funeral Directors to increase the biennial renewal fee. The current fee was last increased in 2004, but prior to that it had not been increased since 1992.**

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

**The rulemaking is adopted under Section 18.1 of the Funeral Director Law (63 P.S. § 479.18.1).**

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

**Yes. If revenues generated by fees, together with civil penalties imposed and collected, are not sufficient to match expenditures of a 2-year period, Section 18.1 of the Funeral Director Law requires the Board to increase its fees by regulation such that projected revenues will meet or exceed projected expenditures.**

## Regulatory Analysis Form

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

**Section 18.1 of the Funeral Director Law requires that the Board set fees by regulation so that revenues meet or exceed expenditures over a biennial period. The Board previously revised its fees for services to recover the cost of providing those services. The balance of the operating expenses of the Board must be borne by the licensee population through biennial renewal revenue.**

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

**Nonregulation could potentially adversely impact the fiscal integrity of the Board. If the renewal fee is not revised, the Board may be financially unable to meet its statutory obligation of public protection.**

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

**The general public and licensees will benefit from the rulemaking through the assurance that the Board will remain fiscally sound and able to meet its statutory obligation of public protection.**

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

**Licensees of the Board will be adversely affected by the rulemaking by having to pay a higher biennial license renewal fee.**

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

**There are approximately 6,425 licensees, whether individual funeral director, funeral supervisor, or funeral home entity. Each licensee will be required to comply with the regulation.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

**Because this rulemaking does not place requirements on licensees concerning their conduct or compliance with state law regarding the performance of a licensing duty under licensing statutes, but only adjusts the biennial renewal fee, the Board did not seek input from the regulated community.**

## Regulatory Analysis Form

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

**The Board estimates that the aggregate additional costs for the regulated community will be approximately \$899,500 per biennial renewal period. The Board estimates that there will be no other costs or savings to the regulated community associated with compliance with this rulemaking.**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

**There are no costs or savings to local governments associated with compliance with the proposed rulemaking.**

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

**The Board will process applications for limited licenses and biennial renewals. There are no other costs or savings to state government associated with implementation of the proposed rulemaking.**

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY+1	FY+2	FY+3	FY+4	FY+5
SAVINGS:	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community		\$899,500		\$899,500		\$899,500
Local Government						
State Government						
Total Costs		\$899,500		\$899,500		\$899,500
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

## Regulatory Analysis Form

(20a) Explain how the cost estimates listed above were derived.

**The biennial renewal fee for each license increases \$140, from the current \$185 to \$325. There are approximately 6,425 licensees subject to this renewal fee.  
6,425 x \$140 (increase) = \$899,500.**

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 (FY 05-06)	FY-2 (FY 06-07)	FY-1 (FY 07-08)	Current FY (FY 08-09)
Pa. State Board of Funeral Dir.	\$740,332	\$851,657	\$986,024	\$928,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

**Because the Board is required by statute to raise its fees to meet expenditures, the need to assure fiscal integrity of the Board outweighs the increased cost to the regulated community.**

**Attached to this form is a breakdown of projected revenue and expenses through fiscal year 2010-11. Also attached are projections of the Board's financial balance, for various renewal fee increase scenarios, through fiscal year 2016-17.**

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

**Because the act requires the Board to promulgate regulations to set its fees, the Board considered no non-regulatory alternatives.**

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

**The Board considered four alternative regulatory schemes, ranging from an increase of approximately 25% to an increase of 100% as outlined in the preamble. The Board elected to adopt an approximate 75% increase in the biennial renewal fee as the least restrictive means of eliminating the current deficit, avoiding future deficits through fiscal year 2016-17, thereby restoring the fiscal integrity of the Board.**

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

**The rulemaking does not overlap or conflict with any federal requirements.**

## Regulatory Analysis Form

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

**Each state licensing agency charges a renewal fee. Maryland charges \$500 for biennial renewal of individual mortician, funeral director, and surviving spouse licenses, and \$600 for biennial renewal of funeral establishment licenses. New Jersey charges \$250 for biennial renewal of individual practitioner, embalmer, and funeral director licenses, and \$500 for biennial renewal of mortuary registrations. New York charges \$125 for biennial renewal of funeral director licenses and \$300 for biennial renewal of funeral firm licenses. Ohio charges \$140 for biennial renewal of embalmer or funeral director licenses and \$250 for biennial renewal of funeral home licenses. West Virginia charges \$80 for annual renewal of embalmer and funeral director licenses and \$175 for annual renewal of funeral establishment licenses.**

**The new fee is consistent with fees charged by surrounding states. The rulemaking will not put Pennsylvania at a competitive disadvantage with these other states.**

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**This proposed rulemaking will have no effect on other regulations of the Board or other state agencies.**

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

**The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the first Wednesday of each month, at 2601 North Third Street in Harrisburg. More information can be found on the Board's web-site ([www.dos.state.pa.us/funeral](http://www.dos.state.pa.us/funeral)), or by calling the Board office at (717) 783-3397.**

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

**No change to reporting, recordkeeping or other paperwork is required by this rulemaking.**

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**The Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.**

## **Regulatory Analysis Form**

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

**The rulemaking will be effective upon publication in final form in the *Pennsylvania Bulletin*, and the increased biennial renewal fees will go into effect beginning with the 2008-10 biennial renewal period.**

(31) Provide the schedule for continual review of the regulation.

**The Board reviews its revenues and costs of its programs on a fiscal year and biennial basis.**

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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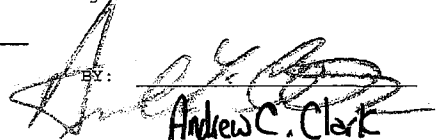
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State Board of Funeral Directors

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-4817

BY:   
Andrew C. Clark

OCT 6 2008

DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION:

(Deputy General Counsel  
(Chief Counsel,  
~~Independent Agency~~  
(Strike inapplicable title)

BY:   
Michael J. Yeosock, FD

[ ] Check if applicable  
Copy not approved.  
Objections attached.

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[ ] Check if applicable.  
No Attorney General approval  
or objection within 30 day  
after submission.

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF FUNERAL DIRECTORS

49 Pa. Code § 13.12  
RENEWAL FEE

**State Board of Funeral Directors**  
**Regulation 16A-4817: Renewal Fee**  
**Proposed Regulation**

PROPOSAL: Regulation 16A-4817 is Proposed Regulation which was delivered to the House Professional Licensure Committee on April 11, 2007. The House Professional Licensure Committee has until June 10, 2007 to submit comments on the Proposed Regulation.

Regulation 16A-4817 amends 49 Pa. Code § 13.12, regulations of the State Board of Funeral Directors relating to Fees. The amendments to § 13.12 increase the biennial renewal fee from \$185 to \$325.

PROPOSED REGULATION ANALYSIS: Section 49 Pa. Code § 13.12 of the Pa. Code, relating to fees, would be amended to increase the biennial renewal fee from \$185 to \$325.

Section 18.1(a) requires the Board to fix the biennial renewal fees. If the revenue generated by the fees, fines and civil penalties is not sufficient to match expenditures, Section 19.1(b) requires the board to increase the fees. The current fee was last increased in 2004 and prior to that had not been increased since 1992.

The Department of State's budget office presented a summary of the Board's actual revenues and expenses at the Board's meeting on June 7, 2006. At the end of the fiscal year 2004-2005, the Board had a deficit of \$99,582. The budget office projects the without an increase in biennial renewal fees, the deficit at the end of the fiscal year 2008-09 will be \$684,119. The deficit at the end of fiscal year 2010-11 is projected to be \$1,212,119 and at the end of the fiscal year 2016-17 is projected to be \$4,037,119.

The budget office projected future deficits if the biennial renewal fees were increased to \$230 or \$280. However, with an increase to \$325, an increase of approximately 75%, the budget office projected a surplus of \$249,906 at the end of fiscal year 2008-09, a surplus of \$653,931 at the end of fiscal year 2010-11, a surplus of \$865,956 at the end of fiscal year 1012-13 and surplus of \$628,006 at the end of fiscal year 2016-17. The budget office projected higher surpluses for an increase to \$370 or an increase of 100%. The board elected to increase the biennial renewal fees to \$325 as the least restrictive means of eliminating the projected deficits. The increase in biennial renewal fees to \$325 will produce an estimated \$899,500 per biennial renewal period.

Nearby states have the following biennial renewal fees for funeral directors: Maryland's biennial renewal fee is \$500; New Jersey's biennial renewal fee is \$250; New York's biennial renewal fee is \$125; Ohio's biennial renewal fee is \$140; and West Virginia's biennial renewal fee is \$175. In addition, nearby states have the following biennial renewal fees for certain funeral establishment licenses: Maryland's biennial renewal fee for funeral establishments is \$600; New Jersey's biennial renewal fee for mortuary registrations is \$500; New York's biennial renewal fee for funeral firm licenses is \$300; Ohio's biennial renewal fees for funeral homes is \$250; and West Virginia's biennial renewal fees for funeral establishments is \$175.



**RECOMMENDATION:** It is recommended the House Professional Licensure Committee take no formal action until final regulations are promulgated and submit the following comments:

1. Regulation 16A-4817 outlined three possible scenarios for fee increases, ie., an increase from the current \$185 to \$230, \$280 or \$325. If the Board were to adopt a \$230 fee, the budget office projected continuing deficits resulting in a deficit of \$2,486,569 at the end of fiscal year 2016-2017. Adoption of an increase in biennial renewal fees to \$280 would be projected to result in a surplus of \$63,801 by the end of fiscal year 2010-2011 but a deficit of \$847,319 at the end of fiscal year 2016-2017. Increasing the biennial renewal fee to \$325 would result in a surplus for all renewal periods, with a \$628,006 surplus at the end of fiscal year 2016-2017. The Committee questions the need to build in the surplus projected in the renewal increase to \$325 and asks if a fee between \$280 and \$325 would still result in an acceptable surplus.
2. The committee notes that the greater increases in actual and projected expenses have occurred in the legal office and enforcement and investigation. The Committee would like further information as to the reasons for these increases, including the number and type of enforcement activities.
3. The Committee also asks whether the adoption of the \$325 biennial fee is planned to therefore not increase fees for a ten year period.

House of Representatives  
Professional Licensure Committee  
June 6, 2007

# Comments of the Independent Regulatory Review Commission

on

## State Board of Funeral Directors Regulation #16A-4817 (IRRC #2605)

### Renewal Fee

June 20, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the April 21, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Funeral Directors (Board) to respond to all comments received from us or any other source.

#### **Section 13.12. Fees. – Fiscal impact; Reasonableness.**

This proposed rulemaking increases the biennial renewal fee of the Board from \$185 to \$325. The fee increase will be effective for the renewal period beginning in February 2008.

The House Professional Licensure Committee (Committee) submitted comments questioning the need for the surplus amounts the fee increase would generate and if the fee increase would negate the need for further increases for a period of ten years. They also requested more information pertaining to the actual and projected expenses of the cost centers for the legal office and enforcement and investigation.

We share the concerns raised by the Committee. In particular, we question the reasonableness of a 75 % increase at this time. We note that the biennial renewal fee was increased by 40% only three years ago. The Board has provided data that shows that the proposed fee increase will allow them to operate with a surplus until the 2016-2017 fiscal year. However, the fiscal impact of fee increases of this magnitude within a three year period may impose an undue burden on the regulated community. We believe a smaller increase, for example 50%, would be less burdensome to the regulated community and would still allow the Board to operate with a surplus.

In addition, the information provided to justify the prior increase is different than the information provided to justify this proposed increase. Of particular concern are the expenses for fiscal years 03-04, 04-05, 05-06 and 06-07. According to the documentation provided, the actual expenses greatly exceed the projected expenses for these fiscal years.

Below is a summary of those expenses:

<b>Projected Expenses FY 03-04</b>	<b>Projected Expenses FY 04-05</b>	<b>Projected Expenses FY 05-06</b>	<b>Projected Expenses FY 06-07</b>
\$541,000	\$557,000	\$575,000	\$592,000
<b>Actual Expenses FY 03-04</b>	<b>Actual Expenses FY 04-05</b>	<b>Actual Expenses FY 05-06</b>	<b>Actual Expenses FY 06-07</b>
\$650,130.55	\$698,263.47	\$713,950.56	\$842,000

A continued escalation of expenses beyond those listed in this rulemaking would require an additional fee increase and would impose additional costs on the regulated community. What will the Board do to ensure that the expenses contained in this rulemaking are not exceeded?

## PUBLIC COMMENTATORS

There were no public comments received relating to Regulation 16A-4817.

The State Board of Funeral Directors (Board) amends § 13.12 (relating to fees) to read as set forth in Annex A.

Description and Need for the Rulemaking

Section 18.1 of the Funeral Director Law (act) (63 P.S. § 479.18.1) requires the Board to fix the fees for renewal of licenses by regulation and if the revenue generated by fees, fines and civil penalties is not sufficient to match expenditures over a 2-year period, the Board is required to increase those fees by regulation. Section 18.1(b) of the act requires the Board to increase fees when revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures. In June, 2006, the Department of State's division of fiscal management projected that, without an increase in the biennial renewal fee, Board fiscal deficits will grow as follows:

<u>fiscal year</u>	<u>beginning balance</u>	<u>revenue</u>	<u>expenses</u>	<u>ending balance</u>
2006-07	\$473,880.88	\$100,000.	\$842,000.	(\$268,119.12)
2007-08	(\$268,119.12)	\$1,260,000.	\$876,000.	\$115,880.88
2008-09	\$115,880.88	\$100,000.	\$900,000.	(\$684,119.12)
2009-10	(\$684,119.12)	\$1,260,000.	\$921,000.	(\$345,119.12)
2010-11	(\$345,119.12)	\$100,000.	\$967,000.	(\$1,212,119.12)
2011-12	(\$1,212,119.12)	\$1,260,000.	\$1,015,000.	(\$967,119.12)
2012-13	(\$967,119.12)	\$100,000.	\$1,066,000.	(\$1,933,119.12)
2013-14	(\$1,933,119.12)	\$1,260,000.	\$1,119,000.	(\$1,792,119.12)
2014-15	(\$1,792,119.12)	\$100,000.	\$1,175,000.	(\$2,867,119.12)
2015-16	(\$2,867,119.12)	\$1,260,000.	\$1,234,000.	(\$2,841,119.12)
2016-17	(\$2,841,119.12)	\$100,000.	\$1,296,000.	(\$4,037,119.12)

If, however, the renewal fee is increased to \$325 beginning with the 2008-10 renewal period, the revenue and budget offices projected that the Board would recover the deficit and maintain a surplus as follows:

<u>fiscal year</u>	<u>beginning balance</u>	<u>revenue</u>	<u>expenses</u>	<u>ending balance</u>
2006-07	\$473,880.88	\$100,000.	\$842,000.	(\$268,119.12)
2007-08	(\$268,119.12)	\$2,177,025.	\$876,000.	\$1,032,905.88
2008-09	\$1,032,905.88	\$116,000.	\$900,000.	\$248,905.88
2009-10	\$248,905.88	\$2,177,025.	\$921,000.	\$1,504,930.88
2010-11	\$1,504,930.88	\$116,000.	\$967,000.	\$653,930.88
2011-12	\$653,930.88	\$2,177,025.	\$1,015,000.	\$1,815,955.88
2012-13	\$1,815,955.88	\$116,000.	\$1,066,000.	\$865,955.88
2013-14	\$865,955.88	\$2,177,025.	\$1,119,000.	\$1,923,980.88
2014-15	\$1,923,980.88	\$116,000.	\$1,175,000.	\$864,980.88
2015-16	\$864,980.88	\$2,177,025.	\$1,234,000.	\$1,808,005.88
2016-17	\$1,808,005.88	\$116,000.	\$1,296,000.	\$628,055.88

Although the Board was presented with projections for other amounts of increase in the renewal fee, the Board concluded that increasing the biennial renewal fee to \$325 would be the least restrictive means of eliminating the projected deficits and restoring the Board's fiscal integrity as required by section 18.1 of the act.

### Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 37 Pa.B. 1868 (April 21, 2007) with a 30-day public comment period. The Board received no written comments from the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12).

The HPLC first noted that an increase in the biennial renewal fee to \$280 would result in a surplus of \$63,801 at the end of fiscal year 2010-2011 and a deficit of \$847,319 at the end of fiscal year 2016-17 and that an increase in the biennial renewal fee to \$325 would result in a surplus for all renewal periods, with a surplus of \$628,006 at the end of fiscal year 2016-17. The HPLC then asked whether a renewal fee between \$280 and \$325 would result in an acceptable surplus. Based upon estimates prepared in September, 2007, the Department of State's division of fiscal management estimated that increasing the renewal fee to \$290 would result in a surplus of \$19,411 at the end of fiscal year 2008-09, a surplus of \$194,941 at the end of fiscal year 2010-11, a surplus of \$177,471 at the end of fiscal year 2012-13, a deficit of \$52,999 at the end of fiscal year 2014-15, and a deficit of \$519,469 at the end of fiscal year 2016-17. The division of fiscal management also estimated that increasing the renewal fee to \$300 would result in a surplus of \$84,981 at the end of fiscal year 2008-09, a surplus of \$326,081 at the end of fiscal year 2010-11, a surplus of \$374,181 at the end of fiscal year 2012-13, a surplus of \$209,281 at the end of fiscal year 2014-15, and a deficit of \$519,469 at the end of fiscal year 2016-17. Renewal fee increases in either amount would support the Board's projected expenses for seven to nine years so long as the projected expenses and revenues remain unchanged. Because the difference between the fee at \$290 or \$300 compared to \$325 is not that significant, adopting the higher renewal fee would provide a safety net for any unanticipated expenses or decrease in revenue collected if the licensee population would decline.

The HPLC next noted that the greater increases in actual and projected expenses have occurred in the legal office and enforcement and investigation and asked for further information as to the reasons for these increases, including the number and types of enforcement activities. The increase in the actual and projected expenses for the legal office and enforcement and investigation can be attributed to three major factors. First, in fiscal year 2004-05 a record high 490 disciplinary cases were closed for the Board. Also, 392 cases were opened, a number higher than in previous years. These increases resulted in more legal staff time being charged to the Board in that year. For comparison purposes, approximately 2,373 hours were charged to the Board in fiscal year 2003-04, and 3,329 hours were charged to the Board in 2004-05. Second, the projected expenses for fiscal year 2006-07 included approximately \$77,000 for a case that is being litigated on behalf of the Board by an outside law firm. It has now been determined that, because the outcome of this case sets a

precedent for all 27 licensing boards, this expense will be allocated among all of the licensing boards. Thus, the fiscal year 2006-07 expenses will be reduced by approximately \$75,000 to approximately \$190,000, an amount slightly lower than the previous fiscal year. Third, the increase in the investigation and enforcement expenses can be attributed to the acquisition of two new full-time mortuary inspector positions in fiscal year 2005-06. The numbers of investigations and inspections have increased, as shown on the following table.

Year	<u>Investigation Activities</u>				<u>Inspection Activities</u>			Total
	<u>Invest. Opened</u>	<u>Invest. Closed</u>	<u>Other Opened</u>	<u>Other Closed</u>	<u>New</u>	<u>Routine</u>	<u>Other</u>	
2001-02	64	81	25	23	74	316	8	398
2002-03	183	90	18	18	59	233	6	298
2003-04	129	170	6	3	84	56	1	141
2004-05	91	135	9	4	87	716	52	855
2005-06	113	109	24	25	66	717	70	853
2006-07	112	121	19	18	81	1103	125	1309

Lastly, the HPLC asked whether the adoption of this renewal fee is planned not to necessitate another renewal fee increase for another 10 years. Increasing the renewal fee to \$325 was planned to support the Board's expenses for a period of 10 years, so long as there are not any unanticipated expenses or decrease in the Board's licensee population that would impact the amount of revenue collected.

In addition to sharing the concerns expressed by the HPLC, IRRC noted that the expenses for fiscal years 2003-04 through 2006-07 greatly exceeded the expenses projected for those fiscal years at the time the Board increased its renewal fee from \$130 to \$185 beginning with renewals in February, 2004. In addition to the increased number of disciplinary cases and inspections discussed above, increased salaries and benefits, increased complement of mortuary inspectors, IT enhancements and upgrades, and other factors that led to the increased expenses were not known at the time those expenses were projected in March, 2002.

The Board has not revised its rulemaking in response to the comments.

The Board was not able to respond to comments, prepare the final rulemaking, and proceed through the regulatory review process to final approval in time to permit the increased renewal fee to apply to the biennial renewal period beginning February 1, 2008, as was anticipated in the proposed rulemaking. As a result, the Board missed collecting an additional approximately \$840,000 for the 2008-10 biennial renewal cycle. In August, 2008, the Department of State's division of fiscal management prepared budget estimates based upon increasing the renewal fee to \$325 beginning with the 2010-12 biennial renewal period. The division of fiscal management now estimates that Board will alternate between surplus and deficit as follows:

<u>fiscal year</u>	<u>beginning balance</u>	<u>revenue</u>	<u>expenses</u>	<u>ending balance</u>
2007-08	(\$280,021.55)	\$1,302,296.39	\$986,023.73	\$36,251.11
2008-09	\$36,251.11	\$120,000.	\$928,000.	(\$771,748.89)
2009-10	(\$771,748.89)	\$2,067,000.	\$932,000.	\$363,251.11
2010-11	\$363,251.11	\$124,000.	\$979,000.	(\$491,749.89)
2011-12	(\$491,749.89)	\$2,067,000.	\$1,028,000.	\$547,251.11
2012-13	\$547,251.11	\$124,000.	\$1,079,000.	(\$407,748.89)
2013-14	(\$407,748.89)	\$2,067,000.	\$1,133,000.	\$526,251.11
2014-15	\$526,251.11	\$124,000.	\$1,190,000.	(\$539,748.89)
2015-16	(\$539,748.89)	\$2,067,000.	\$1,250,000.	\$277,251.11
2016-17	\$277,251.11	\$124,000.	\$1,313,000.	(\$911,748.89)
2017-18	(\$911,748.89)	\$2,067,000.	\$1,379,000.	(\$223,748.89)

The Board determined that, in order to avoid expanding the scope of its proposed rulemaking and due to the length of time necessary to promulgate a new rulemaking, it should proceed with the renewal fee as previously proposed. In addition, the Board will look into later increasing renewal fees with the possibility of setting separate fees for funeral entities, funeral supervisors and funeral directors, as well as planning to phase in any future increase in renewal fees.

#### Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector. The final-form rulemaking will increase the biennial renewal fee for funeral directors and funeral entities in this Commonwealth.

#### Effective date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The increased renewal fee will first be charged for the biennial renewal period beginning February 1, 2010.

#### Statutory Authority

The final rulemaking is authorized under section 18.1 of the Funeral Director Law (63 P.S. § 479.18.1).

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 11, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1868, to IRRC and the chairpersons of the HPLC and the SCP/PLC for review and comment.



Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on \_\_\_\_\_, 20\_\_\_\_, the final-form rulemaking was approved by the HPLC. On \_\_\_\_\_, 20\_\_\_\_, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, 20\_\_\_\_, and approved the final-form rulemaking.

### Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, by mail to P.O. Box 2649, Harrisburg, PA 17105-2649, by telephone at (717) 783-3397, or by e-mail at st-funeral@state.pa.us.

### Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Funeral Director Law.

### Order

The Board, acting under its authorizing statute, orders that:

- (a) The regulations of the Board at 49 Pa. Code Chapter 13 are amended, by amending § 13.12, to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

Michael J. Yeosock, FD, Chairman  
State Board of Funeral Directors

**ANNEX A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS**

\* \* \* \* \*

**LICENSURE**

\* \* \* \* \*

**§ 13.12. Fees.**

Following is the schedule of fees charged by the Board:

\* \* \* \* \*

Biennial renewal ..... \$ [185] 325

\* \* \* \* \*

Annex A  
**TITLE 49. PROFESSIONAL AND VOCATIONAL  
 STANDARDS**  
**PART I. DEPARTMENT OF STATE**  
**Subpart A. PROFESSIONAL AND OCCUPATIONAL  
 AFFAIRS**  
**CHAPTER 13. STATE BOARD OF FUNERAL  
 DIRECTORS**  
**STANDARDS OF PRACTICE AND CONDUCT**  
 § 13.204. Written agreement.

\* \* \* \* \*

(h) The Board will not approve a form statement of funeral goods and services that does not comply with the act or this chapter, or the enforcement of any term of which would result in the violation of the act or this chapter.

**PREPAID BURIAL CONTRACTS**

§ 13.224. Funding and reporting of prepaid burial contracts.

\* \* \* \* \*

(f) [Prepaid] Form prepaid burial contracts or form preneed contracts to be used by a funeral director shall be reviewed and approved by the Board and should reflect whether or not an additional service fee or arrangement fee is charged. [Prepaid] Form prepared burial contracts or form preneed contracts used by a funeral director may not incorporate a contract for funeral merchandise entered into by a person or entity other than a funeral director. The Board will not approve a form prepaid burial contract or preneed contract that does not comply with the act or this chapter, or the enforcement of any term of which would result in the violation of the act or this chapter.

[Pa.B. Doc. No. 07-684. Filed for public inspection April 20, 2007, 9:00 a.m.]

**[49 PA. CODE CH. 13]  
 Renewal Fee**

The State Board of Funeral Directors (Board) proposes to amend § 13.12 (relating to fees) to read as set forth in Annex A. The proposed rulemaking will raise the biennial renewal fee for licensed funeral directors and funeral establishments from \$185 to \$325.

*Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The increase in the biennial renewal fee will go into effect beginning with renewal for the February 1, 2008, through January 31, 2010, biennial renewal period.

*Statutory Authority*

This proposed rulemaking is authorized by section 18.1 of the Funeral Director Law (act) (63 P. S. § 479.18.1).

*Background and Need for the Amendment*

Section 18.1(a) of the act requires the Board to fix the fees for renewal of licenses by regulation and if the revenue generated by fees, fines and civil penalties is not sufficient to match expenditures over a 2-year period, the

Board is required to increase those fees by regulation. Section 18.1(b) of the act requires the Board to increase fees when revenue raised by fees, fines and civil penalties are not sufficient to meet expenditures.

The Board's current biennial license renewal fee was established by regulation and took effect for the 2004-2006 biennial renewal period, the only increase since 1992. The Board raises virtually all its revenue through fees. The biennial license renewal fee is the most substantial revenue-generating fee of the fees charged by the Board.

At the Board's meeting on June 7, 2006, the Department of State's Revenue and Budget Offices presented a summary of the Board's actual revenues and expenses for Fiscal Year (FY) 2004-05 and projected revenues and expenses for FY 2005-06 through FY 2016-17. At the end of FY 2004-05, the Board had a deficit of \$99,582. The Budget Office projects that, without an increase in the renewal fee, deficits will continue to grow, with an anticipated deficit of \$684,119 at the end of FY 2008-09, an anticipated deficit of \$1,212,119 at the end of FY 2010-11 and an anticipated deficit of \$4,037,119 by the end of FY 2016-17.

For the Board's consideration, the Budget Office presented summaries for various increases in the renewal fee beginning with the 2008-10 renewal period. If the renewal fee were increased to \$230, an increase of approximately 25%, the Budget Office projected continued deficits. Specifically, the Board would experience a deficit of \$374,009 at the end of FY 2008-09, a deficit of \$591,899 at the end of FY 2010-11 and a deficit of \$1,002,789 at the end of FY 2012-13. The deficits would continue to grow to \$2,486,569 at the end of FY 2016-17. Similarly, if the renewal fee were increased to \$280, an increase of approximately 50%, the Budget Office projected a deficit of \$46,159 at the end of FY 2008-09, a surplus of \$63,801 at the end of FY 2010-11 and a deficit of \$19,239 at the end of FY 2012-13. The deficits would continue to grow to \$847,319 at the end of FY 2016-17.

If, however, the renewal fee were increased to \$325, an increase of approximately 75%, the Budget Office projected a surplus of \$249,906 at the end of FY 2008-09, a surplus of \$653,931 at the end of FY 2010-11 and a surplus of \$865,956 at the end of FY 2012-13. The surplus would then continually decrease to \$628,006 at the end of FY 2016-17. If the renewal fee were increased to \$370, an increase of approximately 100%, the Budget Office projected a surplus of \$543,971 at the end of FY 2008-09 and a surplus of \$1,244,061 at the end of FY 2010-11. The surplus would then continually increase to \$2,103,331 at the end of FY 2016-17. After considering each of these options, the Board elected to increase the biennial renewal fee to \$325, as the least restrictive means of eliminating the projected deficits and restoring the Board's fiscal integrity as required by section 18.1 of the act.

*Description of the Proposed Amendments*

Section 13.12 (relating to fees) will be amended to increase the biennial renewal fee from \$185 to \$325.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will increase the biennial renewal fee for funeral directors and funeral establishments in this Commonwealth, but, otherwise, should have no adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The proposed

rulemaking will impose no additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

*Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 11, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Michelle T. Smey, Board Administra-

tor, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4817 (Renewal Fee) when submitting comments.

ANTHONY SCARANTINO,  
*Chairperson*

**Fiscal Note:** 16A-4817. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS LICENSURE**

**§ 13.12. Fees.**

Following is the schedule of fees charged by the Board:

	* * * * *
Biennial renewal .....	\$ [ 185 ] 325
	* * * * *

[Pa.B. Doc. No. 07-685. Filed for public inspection April 20, 2007, 9:00 a.m.]



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
**STATE BOARD OF FUNERAL DIRECTORS**  
Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-3397

November 3, 2008

The Honorable Arthur Coccodrilli, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

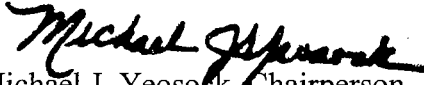
Re: Final Regulation  
State Board of Funeral Directors  
16A-4817 Renewal Fee

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Funeral Directors pertaining to Renewal Fee.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

  
Michael J. Yeosock, Chairperson  
State Board of Funeral Directors

MJY:CMcN:apm

Enclosure

cc: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Albert H. Masland, Chief Counsel  
Department of State  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge  
Department of State  
Christopher McNally, Counsel  
State Board of Funeral Directors  
State Board of Funeral Directors

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-4817  
 SUBJECT: RENEWAL FEE  
 AGENCY: DEPARTMENT OF STATE  
 STATE BOARD OF FUNERAL DIRECTORS

**TYPE OF REGULATION**

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

RECEIVED  
 2008 NOV -3 AM 10:41  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
11/3/08	<i>J. M. Lewis</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <i>Mike Sturla</i>
11-3-08	<i>Robert D. Thompson</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <i>Robert Thompson</i>
11/3/08	<i>Kathy Coops</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only) LEGISLATIVE REFERENCE BUREAU (for Proposed only)