COMMENTS OF THE PENNSYLVANIA BAR ASSOCIATION REGARDING THE PROPOSED RULEMAKING OF THE LOBBY DISCLOSURE REGULATIONS COMMITTEE PUBLISHED IN THE PENNSYLVANIA BULLETIN, VOL. 38, NO. 3, JANUARY 19, 2008

These comments specify changes that the Pennsylvania Bar Association recommends be made to the Proposed Rulemaking of the Lobby Disclosure Regulations Committee ("Committee"). The Pennsylvania Bar Association submits these comments pursuant to a letter from the Committee Chair informing it that the Committee would, through March 19, 2008, receive and forward our comments.

1. **Including within the definition of *Effort to influence legislative action or administrative action* the language "Monitoring legislation, legislative action or administrative action" is legally impermissible as such language exceeds the authority of the enabling legislation, 65 Pa.C.S. § 13A01 *et seq.*, Act 134 of 2006.**

Discussion

Act 134 does not expressly provide for merely monitoring legislative or administrative action ("merely monitoring") to be considered an effort to influence legislative or administrative action. First, while *monitoring* appears in the statutory definition of *personnel expense*, 65 Pa.C.S. § 13A02, this appearance is dependent on and subservient to an existing effort to influence. Act 134's definitional section is clear that personnel expenses are operative through *direct communication* and *indirect communication* which in turn require an effort to influence:

> "Direct communication." An effort . . . made by a lobbyist or principal, directed to a state official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action. The term may include personnel expenses and office expenses.
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> "Indirect communication." An effort . . . to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action.
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> . . . .
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> (3) the term may include personnel expenses and office expenses.

65 Pa.C.S. § 13A02. In other words, there must be direct or indirect communication *before* personnel expenses, i.e., monitoring, is relevant.[1]

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[1] Further, should monitoring independent of any such communication be considered an effort to influence per the definition of *personnel expense*, then per that definition the expenditures for the other specified costs—e.g., *clerical and administrative support staff*—should also equate to an effort to influence even where there is no such communication. Such a reading of Act 134 is absurd and violates 1 Pa.C.S. § 1922(1) which specifies "That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable."

Second, the Statutory Construction Act (SCA), 1 Pa.C.S. § 1501 *et seq.*, states in relevant part,

> § 1903. Word and phrases
> (a) Words and phrases shall be construed according to . . . their common and approved usage; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in this part, shall be construed according to such peculiar and appropriate meaning or definition.
>
> § 1921. Legislative intent controls
> . . . .
> (b) When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

Effort and *monitoring* are not technical terms, have not acquired specific meanings, and are not defined in the SCA. Rather, the common meaning of *effort* is clear and understandable, not equivalent to *monitoring*, and free from all ambiguity. *Merriam-Webster's Dictionary On-Line*[2] defines the terms as follows:

> Effort:
> 1 : conscious exertion of power : hard work <a job requiring time and *effort*> 2 : a serious attempt : TRY <making an *effort* to reduce costs> 3 : something produced by exertion or trying <the novel was her most ambitious *effort*> 4 : effective force as distinguished from the possible resistance called into action by such a force 5 : the total work done to achieve a particular end <the war *effort*>
>
> Monitoring:
> : to watch, keep track of, or check usually for a special purpose

Nor is merely monitoring impliedly included within Act 134's definitions of *direct communication, indirect communication*, or *lobbying*. First, the Department of State (DoS) can track lobbying costs, 65 Pa.C.S. § 13A05, without requiring the disclosure of funds principals spend on merely watching legislative or administrative action, as so doing is not the same as trying to influence such action. Second, note some of the results that come from declaring merely monitoring to be an effort to influence:

- An in-house accountant monitoring legislation on taxes, investments, etc., for the sole purpose of advising his or her company on business, investment, and tax strategy would be engaged in lobbying, would be required to register as a lobbyist and his or her company would be required to register as a principal and report (as long as the accountant was paid more than $2,500 for such work or worked more than 20 hours on the project, 65 Pa.C.S. § 13A06(4) and (5))

- *Westlaw* and *Lexis* would be engaged in lobbying simply because their employees monitor legislation to inform their users of statutes that may be changed.

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[2] http://www.m-w.com/dictionary/effort, http://www.m-w.com/dictionary/monitoring.

These results make such an interpretation of effort to influence absurd, a violation of the SCA in that "That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable. 1 Pa.C.S. § 1922(1).

If the Committee believes that lobbying should include merely monitoring legislation, the Committee should request that the General Assembly amend Act 134 to so provide. Only the General Assembly has the authority to amend a statute.

Recommended Changes

The proposed rulemaking should be amended so that there is no doubt that the merely monitoring is not an effort to influence. First, subsection (ii) in the definition of *Effort to influence legislative action or administrative action*, within § 51.1, "Definitions," should be removed. Second, within the Preamble, the last sentence of *Section 51.1. Definitions.*, "Effort to influence legislative action or administrative action," should be removed. An affirmative statement should be added in the body of the proposed rulemaking to the effect that: "Monitoring legislation, legislative action or administrative action, by itself, does not subject a person to the requirement to register and/or report as a principal or a lobbyist."

2. **Including within the definition of *Effort to influence legislative action or administrative action* the language "Paying a lobbyist or lobbying firm a retainer or other compensation, even if that lobbyist or lobbying firm does not make direct or indirect communications or take any other action" is legally impermissible as such language exceeds the authority of Act 134.**

Discussion

Note initially the Committee's comments from the Preamble to the proposed rulemaking, *Section 51.1. Definitions.*, "Effort to influence legislative action or administrative action:"

> The Committee proposes that lobbying includes paying a lobbyist a retainer, even if that lobbyist does not make direct or indirect communications. A principal hiring a lobbyist not to make any direct or indirect communications is an effort to influence legislative action or administrative action because it is furthering the principal's intent to influence legislative or administrative action or the lack thereof. By hiring a lobbyist to not make any direct or indirect communications, a principal could prevent that lobbyist from working for another principal with opposing views.

Act 134 does not expressly or impliedly provide for retaining a lobbyist to be considered an effort to influence when that lobbyist makes no direct or indirect communications and takes no other action (i.e., "merely retaining"). With respect to expressly, doing nothing simply does not equate to "effort to influence" (see definition of *effort* above).

With respect to impliedly, first, as with merely monitoring, DoS can track lobbying costs without requiring the disclosure of funds principals spend on merely retaining a lobbyist, as making no direct or indirect communications is not the same as trying to influence legislative or administrative action. Second, equating merely retaining a lobbyist with an effort to influence leads to absurd results that violate 1 Pa.C.S. § 1922:

- The comment above states clearly that a principal's intent to not influence legislative action is an effort to influence—"furthering the principal's intent to influence legislative . . .action *or*

the lack thereof." How could having no intent to influence legislative action equate to an effort to influence? By this reasoning, everything a principal does is an effort to influence.[3]

- With respect to preventing a lobbyist from working for another principal, the implied assumption must be that among the hundreds of Pennsylvania lobbyists there is only one that could work on the issue at hand.

- Section 55.1, "Quarterly expense reports," of the proposed rulemaking specifies that all lobbying expenses must "be allocated" in the "categories" of "direct communications," "indirect communications," and "gifts, hospitality," etc. How exactly does one allocate action not taken by a retained lobbyist? Direct communication? Indirect communication?

Of course, the mirror result of retaining a lobbyist, merely "accepting an engagement to lobby," is not "acting in the capacity of a lobbying firm" or "a lobbyist," proposed rulemaking §§ 53.3(a)(1) and 53.4(a)(1), for the same reason that merely retaining a lobbyist is not lobbying: lobbying requires an effort to influence. Act 134 defines *lobbying firm* as "an entity that engages in lobbying . . . . ," and *lobbying* in turn requires "an effort to influence." 65 Pa.C.S. § 13A02.

If the Committee believes that lobbying should include merely accepting a retainer, the Committee should request that the General Assembly amend Act 134 to so provide. Only the General Assembly has the authority to amend a statute.

Recommended Changes

First, two changes should be made to § 55.1, "Quarterly Expense Reports." In subsection (a), the entire last sentence should be removed, and in subsection (g)(3) the phrase "including retainers or other compensation paid by principals to lobbying firms or lobbyists, whether or not the lobbying firm or lobbyist then spends the retainer should be amended to read ". . .including compensation paid by a principal to lobbying firms or lobbyists for lobbying done by the lobby firms or lobbyists on the principal's behalf."

Second, in § 53.3, "Lobbying firm registration," subsection (a)(1) equating "accepting an engagement to lobby or accepting a retainer" with lobbying should be removed.

Third, subsection (a)(1) of § 53.4 should be removed.

Fourth, the following language within the Preamble, *Section 51.1. Definitions.*, "Effort to influence legislative action or administrative action," should be removed:

> The Committee proposes that lobbying includes paying a lobbyist a retainer, even if that lobbyist does not make direct or indirect communications. A principal hiring a lobbyist not to make any direct or indirect communications is an effort to influence legislative action or administrative action because it is furthering the principal's intent to influence legislative or administrative action or the lack thereof. By hiring a lobbyist to not make any direct or indirect communications, a principal could prevent that lobbyist from working for another principal with opposing views.

[3] In fact, by this reasoning—that not making an effort to influence is lobbying— one could argue that anything anybody does in Pennsylvania is lobbying unless specifically exempted per 65 Pa.C.S.§ 13A06.

Fifth, in the Preamble, *Section 55.1. Quarterly expense reports.*, the first paragraph should be amended by deleting the following:

> Also on August 9, the Committee decided to add the language in the second sentence of § 55.1(a) regarding retainers because once a principal pays a retainer to a lobbyist or lobbying firm to represent the principal, the principal is engaging in lobbying as that term is defined in § 51.1. The Committee proposes to add similar language on retainers in § 55.1(g)(3).

In addition, an affirmative statement should be added in the body of the proposed rulemaking to the effect that: "Paying a lobbyist or lobbying firm a retainer or other compensation, by itself, does not subject a person to the requirement to register and report as a principal. In addition, merely accepting a retainer, by itself, does not subject the individual or firm receiving the retainer to the requirement to register as a lobbyist."

3. The proposed rulemaking should be amended to clarify that volunteers need only be reported as lobbyists for the principal when their economic consideration of any sort exceeds $2,500 *and* they are lobbying on behalf of the principal and receive economic consideration for so doing.

Discussion

The proposed rulemaking specifies the following:

> § 55.1. Quarterly expense reports.
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> . . . .
>
> (g) A quarterly expense report of a principal required to be registered under the act must include at least the following information:
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> (1) The names and, when available, the registration numbers of all lobbyists or lobbying firms, by whom the lobbying is conducted on behalf of the principal. If a lobbyist is a lobbying firm, association, corporation, partnership, business trust or business entity, its name and the names of the individuals who lobby on behalf of the principal must be included.

In the context of this proposed rule, note the discussion at the August 2007 public hearing held by the Committee as documented by Lawrence J. Beaser, Esq., on page 10 of the Philadelphia Bar Association's ("PhBA") submitted Comments Regarding Proposed Lobbying Disclosure Proposed Rulemaking:

> C. . . . At the hearing, during the testimony of various witnesses, including the undersigned, Representative Maher asked about the following scenario:
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> Assume that an entity (the "Sponsor") sponsors a "Day on the Hill." The principal rents a bus and recruits supporters (members of the Sponsor and/or just ordinary citizens) ("Grassroots Supporters") to participate in the Day on the Hill. The Grassroots Supporters ride to Harrisburg on the bus, without charge. The Sponsor provides a box lunch. In Harrisburg, the Grassroots Supporters lobby their legislators for a cause supported by the Sponsor. The Grassroots Supporters then return to the place in Pennsylvania where the journey started, again traveling without charge.
>
> D. Discussion at the public hearing indicated that the Committee might intend the Draft Regulations to require that the name of each of the Grassroots Supporters be listed on the

principal's next report as a "lobbyist," even though the only "economic consideration" each of the Grassroots Supporters received was the value of the bus ride and the cost of the box lunch.

Note also page 13 of the PhBA's Comments:

During the August hearing, there was additional troubling dialogue among members of the . . . Committee and witnesses regarding whether the acceptance of educational seminars or publications constitutes compensation that results in the recipient being considered a "lobbyist."

Hence, § 55.1 as proposed could be interpreted to mandate the naming of volunteers as lobbyists by a principal, and economic consideration by the principal to the lobbyist to include the reception of indirect communications—e.g. educational seminars and books.

First, Act 134 clearly places the onus on reporting lobbying expenses, which include the names of lobbyists used, on the principal:

§ 13A05. Reporting.
(a) General rule.--A registered principal shall, under oath or affirmation, file quarterly expense reports with the department no later than 30 days after the last day of the quarter.
(b) Content. --
(1) Each expense report must list the names and registration numbers when available of all lobbyists by whom lobbying is conducted on behalf of the principal and the general subject matter or issue being lobbied.

The Act then exempts from registration and reporting "an individual whose economic consideration for lobbying, from all principals represented, does not exceed $2,500 in the aggregate during any reporting period." 65 Pa.C.S. § 13A06(4). Consequently, by Act 134's plain language, a principal may not be required to name each volunteer that lobbied on behalf of the principal who received no more than $2,500 in economic consideration—obviously this includes volunteers who receive nothing more than a free trip and lunch. This point would also exclude almost all recipients of indirect communications from being considered lobbyists, as such indirect communications would not exceed $2,500 in value.

At least in theory, however, an individual could receive indirect communications exceeding $2,500—perhaps a multi-day class including books and lunch on the problems with and needed remedies for some cohesive topic of Pennsylvania law. Nevertheless, said individuals do not become lobbyists for the principal.

First, Act 134's definition of *direct communication* states in relevant part, "An effort . . . made by a lobbyist or principal," while the Act's definition of indirect communication states in relevant part, "An effort . . . to encourage others, including the general public." A general maxim of statutory construction is *expressio unius est exclusion alterius*, "the expression of one thing is the exclusion of another." The General Assembly chose to use the term "others" in the definition of *indirect communication*, excluding the use of the term "lobbyist" found in the definition of *direct communication*, and "lobbyist" could have logically been used in the definition of *indirect communication*. Act 134 defines *lobbyist* in relevant part as "Any individual, association . . . or other entity that engages in lobbying on behalf of a principal for economic consideration." The General Assembly could have defined *indirect communication* to be "An effort . . . to encourage others, including the general public, and lobbyists, to take action .

. . ." However, the General Assembly chose not to do so and the Committee has no authority to add language or a concept to the statute.

Second, making "others" lobbyists for a principal ignores the vital issue of agency. As noted, Act 134 exempts from registration and reporting one "whose economic consideration for lobbying, from all principals *represented*, does not exceed $2,500 in the aggregate during any reporting period." 65 Pa.C.S. § 13A06(4) (italics added). Unlike a principal's non-salaried officer, the "others" participating in a class (or receiving any indirect communications) are not the principal's agents and therefore do not represent the principal when and if they express their viewpoints to the General Assembly or the executive. Their expressed viewpoints may not equate to the principal's viewpoints, and they may not be speaking on the principal's behalf. Simply, the principal has no control over what the "others" may express.

Third, revisit Act 134's definition of *lobbyist*: "Any individual, association . . . or other entity that engages in lobbying on behalf of a principal for economic consideration." Receiving the class and books (or any indirect communication) is not lobbying, however. Rather, lobbying (in the general sense) comes *later* when (and if) class attendees express their viewpoints to the legislature or the executive. The economic consideration, the value of the class and books, is not given in exchange for said expression of viewpoints. In fact, those expressing their viewpoints get absolutely nothing from the principal for doing so—the class and books were free whether or not viewpoints were subsequently expressed. Hence, receiving indirect communications does not make a recipient a lobbyist for the principal as the recipient is not receiving economic consideration from the principal.

If the Committee believes that volunteers should be considered lobbyists irrespective of whether they receive more than $2,500 in economic consideration, and that receiving indirect communications from a principal makes one a lobbyist for that principal, the Committee should request that the General Assembly amend Act 134 to so provide. Only the General Assembly has the authority to amend a statute.

Recommended Changes

To ensure that the proposed rulemaking does not exceed the authority of Act 134, § 55.1 and § 57.2 should be amended as follows, the underlined language being the additions:

§ 55.1. Quarterly expense reports.

. . . .

(g) (g) A quarterly expense report of a principal required to be registered under the act must include at least the following information:

(1) The names and, when available, the registration numbers of all lobbyists or lobbying firms <u>required to register</u>, by whom the lobbying is conducted on behalf of the principal. If a lobbyist is a lobbying firm, association, corporation, partnership, business trust or business entity, its name and the names of the individuals <u>required to register</u> who lobby on behalf of the principal must be included.

§ 57.2. Qualifications for exemption.

. . . .

(4) The exemption in section 13A06(4) of the act is limited to an individual whose economic consideration for lobbying, from all principals represented, does not exceed $2,500 in the

aggregate during any reporting period. This economic consideration must be for lobbying in which an agent of the principal actually engages on behalf of the principal.

4. Including within the definition of *Administrative action* the language "Grants, the release of funds from the capital budget, loans and investment of funds" is legally impermissible as such language exceeds the authority of Act 134.

Compare Act 134's definition of *Administrative action* with the proposed rulemaking's definition of administrative action:

Act 134 (65 Pa.C.S. § 13A02)	**Proposed Rulemaking (§ 51.1)**
"Administrative Action." Any of the following: (1) An agency's: (i) proposal, consideration, promulgation or rescission of a regulation; (ii) development or modification of a statement of policy; (iii) approval or rejection of a regulation; or (iv) procurement of supplies, services and construction under 62 Pa.C.S. (relating to procurement). (2) The review, revision, approval or disapproval of a regulation under the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act. (3) The Governor's approval or veto of legislation. (4) The nomination or appointment of an individual as an officer or employee of the Commonwealth. (5) The proposal, consideration, promulgation or rescission of an executive order.	*Administrative action*—The term includes one or more of the following: (i) An agency's proposal, consideration, promulgation or rescission of a regulation; development or modification of a guideline or a statement of policy; approval or rejection of a regulation; or procurement of supplies, services and construction under 62 Pa.C.S. (relating to procurement). (ii) The review, revision, approval or disapproval of a regulation under the Regulatory Review Act. (iii) The Governor's approval or veto of legislation. (iv) The nomination or appointment of an individual as an officer or employee of the Commonwealth. (v) The proposal, consideration, promulgation or rescission of an executive order. (vi) Grants, the release of funds from the capital budget, loans and investment of funds.

Every provision of the § 51.1 matches up with Act 134's definition of *Administrative action* but for "Grants, the release of funds from the capital budget, loans and investment of funds." Hence, Act 134 does not expressly provide for "Grants, the release of funds from the capital budget, loans and investment of funds" to be included within the definition of *Administrative action*.

Similarly, Act 134 does not so impliedly provide. Grants, funds from the capital budget, loans, and investment of funds are clearly not included within the development of a regulation or statement of policy, a governor's approval or veto of legislation, the development of an executive order, or the nomination or appointment of a person as an official of the Commonwealth. With respect to the Procurement Code, the Code specifically states that it does not apply to grants or loans, 62 Pa.C.S. § 102(f)-(f.1), and there are no provisions within the code applying to the release of capital budget funds or investment of funds.

Therefore, as Act 134 does not expressly or impliedly provide for the inclusion of the language "Grants, the release of funds from the capital budget, loans and investment of funds" within the definition of *Administrative action*, there simply is no statutory intent to include such language with said definition. If the Committee believes that the inclusion of such language is

needed, it should request that the General Assembly so amend Act 134. Only the General Assembly has the authority to amend a statute.

Recommended Changes

First, subsection (vi) of the definition of *Administrative action* in § 51.1 should be deleted. Second, within the Preamble, the last sentence of *Section 51.1 Definitions.*, "Administrative action," should be removed.

5. The Preamble should be changed to accurately reflect the costs to the private sector of the proposed rulemaking.

The proposed rulemaking specifies that the costs to the private sector would be $100—the registration fee. This is far from accurate.

First, just following Act 134's provisions incurs significant costs for the PBA. Tracking the time PBA staff engage in lobbying, tracking the costs incurred by PBA officers when they engage in lobbying, and reviewing the Ethics Commission rulings on the Act takes significant staff time. Then completing the multi-page *Excel* spreadsheet to calculate the PBA's total costs takes additional time. Right now the responsible PBA staffer spends roughly four to five business days gathering the information, completing and proofing the *Excel* spreadsheet, and then reporting to the DoS on-line. This time equates to labor costs in the range of $1,422 to $1,778 each quarter, or $5,688 to $8,890 annually. Let's assume that the PBA becomes as efficient as is possible, with the relevant lobbying information from staff and officers timely appearing on the responsible staffer's computer without any requesting from or work by that staffer. The responsible staffer would still have to compile the information on the Excel spreadsheet, proof that information, and then report on-line. It is hard to conceive how this work would take less than one business day, which would equate to about $356 a quarter, or $1,424 annually.[4] These costs, of course, do not include the costs of retaining an accountant to ensure that lobbying costs are accurately calculated.

If the proposed rulemaking as drafted is adopted, these costs would significantly increase. The PBA sends hundreds of bills to its Sections and Committees by e-mail each year, asking them if they have any interest in the legislation. As drafted, the proposed regulations would include such e-mails as lobbying. Tracking and collating the time spent sending such e-mails would itself take a good deal of staff time, thereby increasing the costs incurred in reporting.

Further, including in the effective definition of lobbying merely monitoring and merely retaining a lobbyist opens the door wide for the Department of Revenue ("DoR") to amend its lobbying sales and use tax regulations to make such activities taxable, thereby increasing the sales tax owed on lobbying. The Tax Reform Code of 1971 (TRC)[5] imposes the sales and use tax on *lobbying services*, defined as "Providing the services of a lobbyist, as defined in the

[4] Of course, becoming so efficient in itself incurs costs, and the push for efficiency will end where that push exceeds the costs saved. Given that PBA officers are attorneys, it is likely that becoming as efficient as possible will require expenditures by these lawyers that exceed the savings to the PBA itself by becoming so efficient. Hence, the PBA will costs will not be as low as $356 a quarter.

[5] Per 1991 Pa. Laws 22 (P.L. 97).

definition of "lobbyist" in section 2 of the Act of September 30, 1961 . . . known as the "Lobbying Registration and Regulation Act." 72 P.S. §§ 7201, 7202. As the referenced act ("LRRA") no longer exists, per the SCA, 1 Pa.C.S. § 1937(a),[6] the definition of *lobbying services* is provided by Act 134.

The regulations governing the sales and use tax imposed on lobbying, adopted in 1993, 61 Pa.Code § 60.6, define *lobbying services* almost identically to the then-governing LRRA's definition of lobbying, excluding "[c]ommunications to a client, another lobbyist, members of an association or to a private individual" and "[r]eview of proposed legislation, amendments or tax journals;" actions that could be described, respectively, as indirect communication and monitoring, and that were not considered lobbying by the LRRA. 61 Pa.Code. § 60.6(d); 1976 Pa. Laws 212, § 2. Given that *lobbying services* in the sales and use tax is now defined per Act 134, if lobbying includes merely monitoring and merely retaining a lobbyist per that Act, why would the sales and use tax lobbying regulations not be amended to also include such activities? Skeptics need only look at the expansive interpretation the DoR has given to the sales and use taxability of lobbying services.[7]

Such an amendment of the sales and use tax lobbying regulations would incur real costs on the PBA, and other associations that lobby. Sending out the hundreds of bills to Sections and Committees, monitoring bills on which the PBA has no position, and requesting information from legislative staff about bills on which the PBA has no position easily takes at least 100 hours (but 13.33 work days) over a year's time. This equates to labor costs (based only on salary, not benefits) of about $3,500, which results in additional sales tax of $210.

Recommended Changes

The proposed rulemaking's Private Sector costs should be recalculated to include the costs incurred for gathering and reporting the required information to the DoS.

6. The PBA endorses the Philadelphia Bar Association's call in their Comments on page 16 for the addition to the proposed rulemaking of "Simplification, bright-line standards and substantial additional examples."

The PBA, consisting of 29,000 attorneys, stands ready to assist the Committee should it ask in simplifying the proposed rulemaking, creating bright-line standards, and additional examples.

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[6] "A reference in a statute to a statute or to a regulation issued by a public body or public officer includes the statute or regulation with all amendments and supplements thereto and any new statute or regulation substituted for such statute or regulation, as in force at the time of application of the provision of the statute in which such reference is made, unless the specific language or the context of the reference in the provision clearly includes only the statute or regulation as in force on the effective date of the statute in which such reference is made."

[7] Under the TRC, taxable is "[t]he obtaining by the purchaser of lobbying services," while *purchaser* by definition does "not include[e] an employer who obtains services from his employes in exchange for wages or salaries when such services are rendered in the ordinary scope of their employment." 72 P.S. § 7201(h) and (o)(9). Nevertheless, the regulations for the sales and use tax on lobbying services specify that the "tax is imposed upon the purchase price of the lobbying service," and include within the definition of *purchase price* "The dues or fees received by an organization or firm relating to the expenditure of time and expenses by an employe of the organization or firm in the performance of lobbying services for a member or purchaser." 61 Pa.Code 60.6(a) and (b). The TRC prohibits imposing the tax on lobbying by employees; the regulations impose the tax on lobbying by employees.