

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:

Department of State, Bureau of Commissions, Elections and Legislation

(2) Agency Number: 16-50

Identification Number:

IRRC Number:

2799

(3) Short Title:

Biennial Filing Fee Regulation

(4) PA Code Cite:

51 Pa. Code § 53.1

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Shauna Graves

(717) 265-7632

210 North Office Building

Harrisburg, PA 17120

Fax: (717) 214-9899

shgraves@state.pa.us

Secondary Contact: Larry Boyle

(717) 783-1657

210 North Office Building

Harrisburg, PA 17120

Fax: (717) 214-9899

llboyle@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

RECEIVED

APR 13 2010

INDEPENDENT REGULATORY
REVIEW COMMISSION

Regulatory Analysis Form

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
- ☐ Certification by the Governor
- ☐ Certification by the Attorney General

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The rulemaking increases the biennial registration fee for individuals and entities required to be registered under the act from \$100 to \$200

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: N/A
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: May 2010
- D. The expected effective date of the final-form regulation: January 1, 2011
- E. The date by which compliance with the final-form regulation will be required: January 1, 2011
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

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

- Annually, the Department analyses revenues and expenditures of its programs as part of the preparation of its proposed budget and will propose amendments to its regulation as the need arises.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

- Section 13A08(j) of the Act of November 1, 2006, P.L. 1213, No. 134 ("act"), 65 Pa.C.S. § 1301-A, et seq. (relating to lobbying disclosure), provides that the Department of State (Department) may by regulation adjust the filing fee established under section 13A10 of the act (relating to registration fees; fund established; system; regulations) if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of the act.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation, as well as any deadlines for action.

- Section 13A08(j) of the Act of November 1, 2006, P.L. 1213, No. 134 ("act"), 65 Pa.C.S. § 1301-A, et seq. (relating to lobbying disclosure), provides that the Department of State (Department) may by regulation adjust the filing fee established under section 13A10 of the act (relating to registration fees; fund established; system; regulations) if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of the act. There are no deadlines for these regulations.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

- The regulation is needed to increase the registration fee to help defray some of the Department's costs of administering the act. The public and the 1,269 principals, 99 lobbying firms and 1,111 lobbyists will benefit from the Department having adequate funding to administer the act.

Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

- None.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

- The 1,269 principals, 99 lobbying firms and 1,111 lobbyists will bear the cost of the increased fee.

(16) 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.

- Approximately 1,269 principals, 99 lobbying firms and 1,111 lobbyists will be required to comply.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

- The Department estimates that 2,479 individuals and entities will register in 2011. Total additional cost for the regulated community for a biennial period is \$247,900. No legal, accounting or consulting procedures will be implicated in complying with the regulatory amendments.
- The dollar estimates were derived by multiplying the number of estimated registrations (2,479) times the increase in registration fees (\$100) = \$247,900 for a biennial period.

(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. Explain how the dollar estimates were derived.

- There will be no costs and/or savings to local governments associated with these regulations. However, if a local government is required to register as a principal, the local government would have the cost of the increased registration fee of \$200, and would then be considered to be part of the regulated community.

(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. Explain how the dollar estimates were derived.

- The Department will not incur an increase in administrative costs by implementing the regulation. The regulatory amendment will permit the Department to recoup some of the costs of its operations.

Regulatory Analysis Form

(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 Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	215,200	0 ¹	495,800	0	495,800	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

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

Program	FY -3	FY -2	FY -1	Current FY
Lobbying Disclosure Appropriation SAP fund 10903 (DOS)	N/A	N/A	1,350,000	837,000
Lobbying Disclosure Appropriation SAP fund 60226 from a Restricted Account (DOS)	N/A	231,063	60,000	8,692

¹ The costs are zero because registrants only pay the registration fee once every two years.

Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

- The regulation increases the registration fee so that the Department can defray some of the costs of administering the act. While the regulated community bears the burden of an increased fee, it is of utmost importance that the Department is able to continue administering the act.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

- The Department did not seek input from the public because the Department's lobbying disclosure budget is an administrative function. Additionally, it is necessary for the Department to raise the registration fee so that it may defray some of its costs of administering the act.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

- No other regulatory provisions were considered.

(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 regulations.

- Yes. Principals, lobbying firms and lobbyists do not have to pay a fee to register federally. However, there is a \$100 registration fee in the act, and the act states that the fee may be raised to help cover the costs of carrying out the act (65 Pa.C.S. § 13A08(j)). Therefore, it is necessary in Pennsylvania to have a registration fee to help cover the costs of administering the act, which may not be necessary federally.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

39 states have a registration fee. However, the fees vary greatly amongst the states. Below is a breakdown of the range of registration fees in other states.

Regulatory Analysis Form

- \$10 one time charge: Missouri
- \$10 per employer annually: Idaho
- \$25 biennially: Arizona, California, Connecticut, Ohio, Utah
- \$25 per year: Mississippi, New Mexico, Wyoming
- \$25 plus \$5 per principal annually: North Dakota
- \$25 plus \$5 for each employer represented or lobbyist employed biennially: Vermont
- \$35 per year for each employee: South Dakota
- \$50 per year: Colorado, New Hampshire, Virginia
- \$50 per each house for a lobbyist to represent 1 principal and \$10 per house for each additional principal represented: Florida
- \$60 biennially: West Virginia
- \$95 plus \$1 for each entity they represent for paid lobbyists/\$15 for unpaid lobbyists: Nevada
- \$100 per year/\$50 for non-profits: Indiana
- \$100 per year: Alabama, Alaska, Maryland, North Carolina, Oklahoma, South Carolina, Tennessee
- \$100 per principal for compensated lobbyists; \$15 per principal for non-compensated lobbyists: Nebraska
- \$110 per year: Louisiana
- \$150 biennially: Montana
- \$200 per year for lobbyists: New York
- \$200 per year, \$5 for ID card, \$10 for supplemental registration/ \$25 for tax-exempt organizations and public agencies: Georgia
- \$200 per year for joint registration of lobbyist and employer/\$100 for each lobbyist associate: Maine
- \$250 biennially: Kentucky
- \$35/\$220/\$300 per year depending on amount spent lobbying: Kansas
- \$250 for lobbyist with one principal; \$400 for two principals or more; \$125 for authorization from lobbyist's principal; \$375 for principal biennially: Wisconsin.
- \$350 per year/\$150 for non-profits: Illinois
- \$500 per year/\$100 per year for lobbyists representing non-profits: Texas
- \$1,000 per year for executive and legislative agents/\$100 per year for employers: Massachusetts

- Nothing in these regulations will put Pennsylvania at a competitive disadvantage with other states.

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

- Yes. The regulations will amend the lobbying disclosure regulations at 51 Pa. Code §51.1 *et seq*

Regulatory Analysis Form

by increasing the registration fee from \$100 biennially to \$200 biennially.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

- No legal, accounting or consulting procedures nor any additional reporting, recordkeeping or other paperwork will be required for the implementation of the rulemaking.

(28) 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.

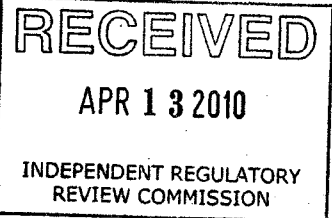
- None

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE



Copy below is hereby approved as to
form and legality. Attorney General

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated by:

Copy below is approved as
to form and legality.
Executive or Independent
Agencies.

Department of State, Bureau of
Commissions, Elections
& Legislation

BY: _____
(DEPUTY ATTORNEY GENERAL)

(AGENCY)

BY: _____

DOCUMENT/FISCAL NOTE NO. 16-50

Andrew C. Clark
APR 08 2010

DATE OF APPROVAL _____

DATE OF ADOPTION: _____

DATE OF APPROVAL _____

BY: *Pedro A. Cortés*
Pedro A. Cortés

Executive Deputy General Counsel
(Chief Counsel,
Independent Agency)

(Strike inapplicable title)

Secretary
TITLE: _____
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

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

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF COMMISSIONS, ELECTIONS & LEGISLATION
51 PA. CODE § 51.12
LOBBYING DISCLOSURE REGISTRATION FEE REGULATIONS

PREAMBLE

NOTICE OF FINAL RULEMAKING
TITLE 51- PUBLIC OFFICERS
DEPARTMENT OF STATE

(51 Pa. Code Ch. 53)

Biennial Filing Fee

The Department of State (Department) amends Title 51, Chapter 53 by amending section 53.1 (relating to biennial filing fee) to read as set forth in Annex A. The rulemaking increases the biennial registration fee for individuals and entities required to be registered under the act from \$100 to \$200.

Notice of Proposed Rulemaking was published at 39 Pa.B. 6049 (October 17, 2009). Publication was followed by a 30-day public comment period. The Department received three comments from the following organizations: Pennsylvania Association of Government Relations (PAGR), the Pennsylvania Association of Nonprofit Organizations (PANO) and the Pennsylvania Association of Resources: Autism (PAR). On December 16, 2009, the Independent Regulatory Review Commission (IRRC) as part of its review of proposed rulemaking under the Regulatory Review Act, offered comments on the proposed rulemaking. The Department received no comments from the Senate or House Committees as part of their review of the proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). Below are the comments the Department received described in detail with the Department's response.

Statutory Authority: Section 13A08(j) of the Act of November 1, 2006, P.L. 1213, No. 134 ("act"), 65 Pa.C.S. § 13A01, et seq. (relating to lobbying disclosure), provides that the Department of State (Department) may by regulation adjust the filing fee established under section 13A10 of the act (relating to registration fees; fund established; system; regulations) if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of the act.

Purpose: The current registration fee of \$100 for individuals and entities required to be registered under the act was established by the act at section 13A10(a). Section 13A08(j) of the act states that the fees may be raised if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of the act. For the fiscal years 2007-2008, the Department's costs for administering the act totaled \$1,054,165.07. For the biennial registration period 2007-2008, the registration fees paid to the Department totaled \$234,200. For the fiscal year 2008-2009, the Department's costs were \$1,711,318. While the increase in the registration fee will not come close to covering the total costs of administering the act to the Department, it will help to defray some of the costs. In fact, the \$200 fee will cover less than half of the Department's costs with the balance being paid from other resources.

*Description of Rulemaking:**Section 53.1. Biennial Filing Fee.*

The Pennsylvania Association for Government Relations (PAGR) commented that section 1308(f) of the act requires the Department to publish the adjusted registration fee amounts in the *Pennsylvania Bulletin* by June 1, 2009, and by June 1 every two years thereafter as necessary. PAGR argues that because the Department published the proposed regulations on October 17, 2009 rather than prior to June 1, 2009, the Department is untimely. PAGR found that "the next opportunity the Department has to increase the biennial registration fee is on June 1, 2011."

First, the act only requires the Department to publish the adjusted registration fee amounts *by* June 1, 2009 and *by* June 1 every two years after, not *on* June 1. Second, the Department is not raising the fee in 2009. The regulations will not go into effect until January 1, 2011. Therefore, in accordance with the act, the Department must publish the proposed regulations adjusting the registration fee by June 1, 2011. By publishing the regulations on October 17, 2009, the Department has notified the regulated community of the proposed adjusted registration fee far in advance of June 1, 2011, in accordance with the act. Additionally, the effective date of the regulations is on January 1, 2011, because it is the beginning of another biennial registration period.

The Independent Regulatory Review Commission (IRRC) commented that the wording of the regulations needs to be amended to implement the Department's intent of the regulations being effective on January 1, 2011. To address IRRC's concern, the Department replaced the amount the registration fee of \$200 as stated in the proposed regulations with the original amount of \$100, and added a sentence stating "[a]s of January 1, 2011, the biennial filing fee will be \$200."

The Pennsylvania Association of Nonprofit Organizations (PANO) and the Pennsylvania Association of Resources: Autism (PAR) both commented that the increase in the biennial registration fee would be burdensome to their nonprofit organizations. Both groups pointed out that they have additional costs associated with registration besides the fee, such as personnel, office, operating and program expenses. In recognition that any increase in costs is not optimal for anyone, the Department only raised the fee \$100 for the biennial registration period. The additional fees are necessary so that the Department can defray some of its administration costs. While the regulated community bears the burden of an increased fee, it is of utmost importance that the Department is able to continue administering the act. Additionally, the act does not provide the Department with the authority to treat nonprofit organizations differently from for profit organizations. Therefore, the biennial registration fee increase must be the same for all organizations.

IRRC also requested that the Department explain why the \$200 is the appropriate fee amount and how the \$200 fee is consistent with the act. Section 13A08(j) of the act states that the fees may be raised if the Department determines that a higher fee is needed to cover the

April 13, 2010

costs of carrying out the provisions of the act. For the biennial registration period 2007-2008, the registration fees paid to the Department totaled \$234,200. For the fiscal year 2008-2009, the Department's costs were \$1,711,318. Clearly, the registration fees do not even cover half of the Department's administrative costs. Therefore, the Department, under the act, may raise the fee to help cover the costs of the administration of the act. While the Department could have raised the fee higher to cover its administrative costs, the Department only raised the fee \$100 because the Department did not want to overburden registrants by raising the fee any higher at this time. Another \$100 for a two-year registration period does not raise the fee too much, while helping to defray some of the administrative costs to the Department.

Fiscal Impact

Commonwealth:

By raising the registration fee to \$200, the regulations will help the Department defray some of the costs of administering the act.

Local Government:

Local government will not have any expenses associated with these regulations. However, if a local government is required to register as a principal, the local government would have the cost of the increased registration fee of \$200, and would then be considered to be part of the regulated community.

Private Sector:

The rulemaking will increase the biennial registration fee for principals, lobbying firms and lobbyists from \$100 to \$200.

Regulatory Review:

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 13, 2010, the Department of State (Department) submitted a copy of this final-form rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House State Government Committees. A copy of this material is available to the public upon request.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department also provided IRRC, the Senate and House State Government Committee with copies of comments received as well as other documents when requested. In preparing the final-form rulemaking, the Department considered all comments from IRRC, the Senate and House State Government Committee, and the public.

April 13, 2010

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was approved by the Senate State Government Committee. On _____, the final-form rulemaking was approved by the House State Government Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

Contact Persons

Additional information may be obtained by contacting Shauna C. Graves, Assistant Counsel, Pennsylvania Department of State, 301 North Office Building, Harrisburg, PA 17120-0029 or e-mail at shgraves@state.pa.us.

Findings

The Department of State finds that:

- (1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated under those sections at 1 Pa.Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.
- (3) That these amendments to the biennial filing fee regulations are necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.

Order

The Department therefore ORDERS:

- (A) That the regulations of the Department, 51 Pa. Code Ch. 53.1, are amended to read as set forth in Annex A.
- (B) The Department shall submit this order and Annex A to the Office of Attorney General for approval as required by law.
- (C) The Department shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (D) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PEDRO A. CORTÉS,
Secretary of the Commonwealth of Pennsylvania

TITLE 51. PUBLIC OFFICERS

PART III. LOBBYING DISCLOSURE

CHAPTER 53. REGISTRATION AND TERMINATION

Statutory requirements: Section 13A08(j) of the Act of November 1, 2006, P.L. 1213, No. 134 ("act"), 65 Pa.C.S. § 1301-A, et seq. (relating to lobbying disclosure), provides that the Department of State (Department) may by regulation adjust the filing fee established under section 13A10 of the act (relating to registration fees; fund established; system; regulations) if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of the act.

§ 53.1. Biennial filing fee.

(a) Under section 13A10(a) of the act (relating to registration fees; fund established; system; regulations), a principal, lobbying firm or lobbyist required to be registered under the act shall pay a biennial filing fee of \$100 to the Department, made payable to the "Commonwealth of Pennsylvania." AS OF JANUARY 1, 2011, THE BIENNIAL FILING FEE WILL BE \$200.

Commentators on regulation 16-50

Pennsylvania Association for Government Relations
P. O. Box 116
Harrisburg, PA 17108

Pennsylvania Association for Nonprofit Organizations
777 East Park Drive, Suite 300
Harrisburg, PA 17111

Pennsylvania Association of Resources for Autism and Intellectual Disabilities
1007 North Front Street
Harrisburg, PA 17102



**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

April 13, 2010

The Honorable Arthur Coccodrilli
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Re: Final Rulemaking of the Department of State
Lobbying Disclosure Registration Fee Regulations (16-50)

Dear Chairman Coccodrilli:

Enclosed is a copy of the final regulation of the Department of State, Bureau of Commissions, Elections and Legislation pertaining to the lobbying disclosure registration fee.

The Department of State, as always, will be pleased to provide your committee with any assistance it may require during the course of its review of this regulation.

Sincerely,

Shauna C. Graves, Counsel
Bureau of Commissions,
Elections & Legislation

SCG/kmw
Enclosures

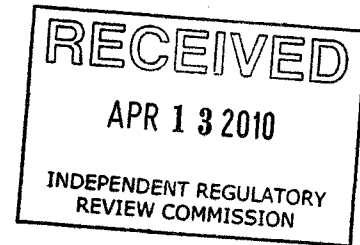
cc: Steven V. Turner, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Chet Harhut, Commissioner, Bureau of Commissions, Elections & Legislation

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

I.D. NUMBER: 16-50
SUBJECT: LOBBYING DISCLOSURE REGISTRATION FEE REGULATIONS
AGENCY: DEPARTMENT OF STATE
BUREAU OF COMMISSIONS, ELECTIONS & LEGISLATION

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



FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4-13-10		HOUSE COMMITTEE ON STATE GOVERNMENT
4/13/10		MAJORITY CHAIRMAN <u>JOSEPHS</u>
4/13/10		SENATE COMMITTEE ON STATE GOVERNMENT
4/13/10		MAJORITY CHAIRMAN <u>MCILHINNEY</u>
4/13/10		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

April 9, 2010