

Independent Regulatory Review Commission Meeting – June 3, 2010**Remarks Made by Judith Eschberger, At-Large Member, Board of Directors
Pennsylvania Association for Government Relations**

Good morning. My name is Judy Eschberger and I am a former President and current Member of the Board of Directors of the Pennsylvania Association for Government Relations, otherwise known as PAGR. With me today are Michael L. Shields, PAGR's counsel, Tony Crisci and Ted Mowatt, also PAGR Board Members.

PAGR submitted public comments to the Commission on May 13, 2010, in response to the final-form Biennial Filing Fee Regulation submitted by the Department of State to the Commission on April 13, 2010. We understand that the Commissioners review all written comments prior to Commission meetings, and as such, we are not going to re-state our comments. We would simply like to emphasize the following two points:

1. Section 1308-A(j) of the Lobbying Disclosure Act clearly states that the Department "shall" publish the filing fee increase in the *Pennsylvania Bulletin* by June 1, 2009. Prior Pennsylvania case law clearly states that the use of the word "shall" is mandatory, not discretionary. The Department of State published the proposed regulation in the *Pennsylvania Bulletin* on October 17, 2009, 139 days after the mandatory date of June 1, 2009. Because the Department failed to publish the fee increase by June 1, 2009 as required by Section 1308-A(j) of the Lobbying Disclosure Act, the Department lacks the statutory authority to promulgate this regulation in violation of Section 5.2(a) of the Regulatory Review Act.

2. The Department of State asserts that pursuant to the plain meaning of Section 1308-A(j) of the Lobbying Disclosure Act, the deadline to publish the proposed regulation for the 2011-12 legislative session (which begins on January 1, 2011) is June 1, 2011, not June 1, 2009. The Department's interpretation of Section 1308-A(j) is both absurd and unconstitutional insofar as such an interpretation requires the provision to be applied retroactively, not prospectively, as the General Assembly intended, in violation of Section 5.2(a) of the Regulatory Review Act. It is PAGR's position that based on the plain meaning of Section 1308-A(j)'s language, the General Assembly authorized the Department to act in the following ways: (A) beginning in January 2009, to review whether the biennial filing fee should be increased for the 2011-12 legislative session, and if so, (B) to increase the biennial filing fee by publishing the adjusted amounts via proposed regulation in the *Pennsylvania Bulletin* on or before June 1, 2009. Naturally, if the Department did not publish the proposed regulation in the *Pennsylvania Bulletin* on or before June 1, 2009, then the biennial filing fee would remain unchanged for the 2011-12 legislative session and the deadline for the Department to increase the biennial filing fee for the 2013-14 legislative session would be June 1, 2011. Likewise, if the Department wanted to increase the biennial filing fee for the 2015-16 legislative session, then the deadline for the Department to publish the proposed regulation in the *Pennsylvania Bulletin* would be June 1, 2013 and so on.

Based on the foregoing interpretation, it is clear that the General Assembly intended Section 1308-A(j) to apply prospectively, not retroactively, in order to provide the regulated community 18 months notice that the biennial filing fee would be increased in the next legislative session

and to provide the Department, and indirectly the Commission, with enough time to enact the regulation prior to the commencement of the succeeding legislative session. More importantly, this interpretation of Section 1308-A(j) of the Lobbying Disclosure Act is not absurd or unreasonable, it gives effect to the Lobbying Disclosure Act in its entirety and it does not violate the U.S. or Pennsylvania Constitutions.

We understand that the Commission's credibility is tested every time it reviews regulations and likewise understand how difficult a decision it is to disapprove a regulation. Having said that, we earnestly believe that this regulation merits such a disapproval. We would also like to assure the Commissioners, that if you were to disapprove this regulation today, PAGR will work with the Department of State in amending the regulation so that it is compliant with the clear language of Section 1308-A(j) of the Lobbying Disclosure Act.

On behalf of PAGR, I would like to thank the Commission for its time and consideration and we welcome any questions the Commissioners may have at this time.