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LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 16, 2009

Honorable Pedro A. Cortes, Secretary
Department of State
302 North Office Building
Harrisburg, PA 17120

Re: Regulation #16-50 (IRRC #2799)
Department of State
Biennial Filing Fee

Dear Secretary Cortes:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable Charles T. McIlhinney, Jr., Majority Chairman, Senate State Government Committee

Honorable Anthony H. Williams, Minority Chairman, Senate State Government Committee

Honorable Babette Josephs, Majority Chairman, House State Government Committee

Honorable Kerry A. Benninghoff, Minority Chairman, House State Government Committee

Robert A. Mulle, Esq., Office of Attorney General

Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Department of State Regulation #16-50 (IRRC #2799)

Biennial Filing Fee

December 16, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the October 17, 2009 *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 Department of State (Department) to respond to all comments received from us or any other source.

1. Publication date and effective date. – Consistency with statute; Clarity.

The current \$100 biennial registration fee is the initial fee established by the enabling legislation, Act 134 of 2006 (65 Pa.C.S. § 13A10(a)). The Lobbying Disclosure Act (Act) provides an inflation adjustment at 65 Pa.C.S. § 13A08(j) (relating to inflation adjustment) which states, in part:

...On an annual basis commencing in January 2009, the department shall review the filing fee established under section 13A10 (relating to registration fees; fund established; system; regulations) and may by regulation adjust this amount if the department determines that a higher fee is needed to cover the costs of carrying out the provisions of this chapter. The department shall publish adjusted amounts in the *Pennsylvania Bulletin* by June 1, 2009, and by June 1 every two years thereafter as necessary.

This proposed regulation was published on October 17, 2009, and proposes to adjust the fee from \$100 to \$200. Both the Preamble and the Regulatory Analysis Form (Response 9) state the increased registration fee will go into effect on January 1, 2011. There are two concerns.

First, the Pennsylvania Association for Government Relations commented that since the Department did not publish the fee prior to June 1, 2009, a new fee cannot be published until the next opportunity, which is by June 1, 2011. Effectively, the issue raised is whether the Act directs the Department to

publish an adjusted fee 18 months prior to its effective date. The Department should explain its interpretation of how the October 17, 2009 publication of the adjusted fee to become effective January 1, 2011, is consistent with the Act.

Second, the wording of the regulation itself does not reflect the Department's intent for the new fee to become effective on January 1, 2011. As worded, the \$200 fee would apply as soon as the final regulation is published and would apply to new registrants. The wording of the regulation needs to be amended to implement the Department's intent.

2. Fees to cover costs. – Consistency with statute.

The Act directs the Department to make a determination that a higher fee is needed to cover the costs of carrying out the provisions of the Act. In the Preamble, the Department states that for fiscal years 2007-2008, the Department's costs totaled \$1,054,000 while registration fees for that same biennial totaled \$234,000. The Department states that "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 defray some of the costs."

We recognize that two commentators believe the costs of the biennial registration are significant to their operations. However, even the \$200 fee will cover less than half of the Department's costs with the balance being paid from other resources. The Department should explain why \$200 is the appropriate fee amount and how the \$200 fee is consistent with the Act.



Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Elsa Mangual
Agency: Department of State
Phone: 7-6458
Fax: 7-1734
Date: December 16, 2009
Pages: 4

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2009 DEC 16 AM 8:33
INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of State's regulation #16-50 (IRRC #2799). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

Barbara Dupler

Date:

12/16/2009

Fax5

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