

9/21/12

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

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IRRC

(1) Agency

Revenue

(2) Agency Number:

Identification Number:

15-457

IRRC Number:

2978

(3) PA Code Cite: 61 Pa. Code §§ 5.3, 5.5 and 5.7

(4) Short Title:

Payments by Electronic Funds Transfer

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

Primary Contact: Mary Sprunk (717) 783-7524

Secondary Contact: Douglas A. Berguson: (717) 346-4633

(6) 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

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

Implement statutory change enacted under Act 87 of 2012 (P.L. ____, No. ____) (SB 1263, PN 2351), effective July 2, 2012. The act authorizes the Secretary of Revenue and the State Treasurer to jointly promulgate a regulation to lower the electronic funds transfer (EFT) mandate currently codified at 61 Pa. Code § 5.3 from "payments of \$20,000 or more" to payments of "\$10,000 or more."

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

Statutory authority for the regulation is set forth in section 9 of The Fiscal Code (72 P.S. § 9).

(9) 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.

The regulation is not mandated by federal law, court order or federal regulation.

Act 87 of 2012 (SB 1263, PN 2351), effective July 2, 2012, authorizes the promulgation of the regulation by the State Treasurer and the Secretary of Revenue.

(10) 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 amendment to the regulation expands the "Payments by Electronic Funds Transfer" (EFT) requirement that was enacted in 1992. Electronic payments offer several advantages over check payments. Payments are received faster and errors in handling and posting of tax payments are reduced. The Department of Revenue and the Treasury Department jointly promulgate this amendment to implement a statutory change made by the Pennsylvania Legislature under Act 87 of 2012.

(11) 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.

N/A

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

The regulation will not put Pennsylvania at a competitive disadvantage with other states.

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

This regulation does not affect any other existing or proposed regulations of the Department or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

A copy of the regulation was forwarded to the Pennsylvania Bar Association, the Philadelphia Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants, and the Pennsylvania Chamber of Business and Industry. The regulation is listed on the Department's Quarterly Regulatory Report posted on the Department's website and will be forwarded to interested parties upon request.

The Department continues to inform taxpayers of the lower EFT requirement in this regulation through many avenues, such as the Revenue Tax Update publication, notification in the electronic E-TIDES system, and on the Department's website (www.revenue.state.pa.us).

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

All businesses currently remitting tax payments between \$10,000 and \$20,000 by check will be impacted.

Tax Type	Business Impact	
	Number of Businesses with \$10K-\$20K checks	Number of Small Businesses Impacted 2/
SUT	597	595
Withholding	506	504
Corporation Tax 1/	4,107	4,091
Total 3/	5,210	5,189

1/ Includes Mutual Thrift Institutions Tax, Corporate Net Income Tax, Capital Stock and Franchise Taxes, Bank and Trust Company Shares Tax, Title Insurance Company Shares Tax, Insurance Premiums Tax, Public Utility Realty Tax, and Gross Receipts Tax.

2/ This estimate is derived from tax payment data and data from the U.S. Small Business Administration.

3/ The total number of businesses impacted may be overstated to the extent businesses remit checks for more than one tax type.

Data is not available for the other tax types included in this regulation. However, the number of taxpayers for those tax types is not expected to be significant.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Due to the disclosure of confidential taxpayer information, the affected entities cannot be listed. The estimated number of businesses impacted is reported in (15) above.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There is no effect on individuals remitting Article III (Personal Income Tax).

Businesses, labor communities, and public and private organizations will now need to EFT or send by certified check tax remittances that can currently be satisfied by standard checks. These entities may incur staff time or other expenses to comply with the regulation, although this is expected to be minimal.

The benefit is a \$100,000 savings in administrative cost for the Department of Revenue.

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

There is a \$100,000 savings in administrative cost to the Department of Revenue. While the cost and adverse effects on the affected businesses are unknown, it can be expected that after an initial setup expense, the cost is minimal.

(19) 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.

It can be expected that the cost to the regulated community, after an initial setup expense of staff time or other resources, is minimal.

It is estimated to be cost neutral for businesses when the cost of postage, envelopes, and paper check are balanced against any cost to EFT.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

It can be expected that the cost to local government, after an initial setup expense of staff time or other resources, is minimal.

It is estimated to be cost neutral for businesses when the cost of postage, envelopes, and paper check are balanced against any cost to EFT.

(21) Provide a specific estimate of the costs and/or savings to the **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 savings to the state government are estimated to be \$100,000.

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(22) For each of the groups and entities identified in items (19)-(21) above, 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.

The amendment to the regulation, as required by Act 87 of 2012, does not change existing reporting, recordkeeping or other paperwork requirements.

(23) 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						
Local Government						
State Government	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
Total Savings	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
COSTS:						
Regulated Community	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
Local Government	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
REVENUE LOSSES:						
Regulated Community	\$0					
Local Government	\$0					
State Government	\$0					
Total Revenue Losses	\$0					

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

RESPONSES:

- (a) It is estimated a total of 5,189 small businesses will be subject to the regulation; however, this total may be overstated to the extent businesses remit checks for more than one tax type. Details of this estimate are reported in (15) above.
- (b) The effect on impacted small businesses is expected to be minimal.
- (c) The effect on impacted small businesses is expected to be minimal. Any added expense to convert to electronic payments should be offset by savings on checks, stamps, and envelopes.
- (d) There is no less intrusive or less costly alternative method to electronically remit tax payments. It is expected that the cost is minimal.

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

No special groups are affected by the regulation.

(26) 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.

There are no alternative regulatory provisions associated with the regulation.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

No regulatory flexibility analysis was conducted as regulation was promulgated due to a revision in Pennsylvania Law under Act 87 of 2012.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No scientific data, studies or references are used to justify this regulation.

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

- | | |
|---|------------------------------------|
| A. The date by which the agency must receive public comments: | <u>N/A</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>4th Quarter 2012</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon final publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Upon final publication</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

9/21/12

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DO NOT WRITE IN THIS SPACE

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

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

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

PA Department of Revenue
(AGENCY)

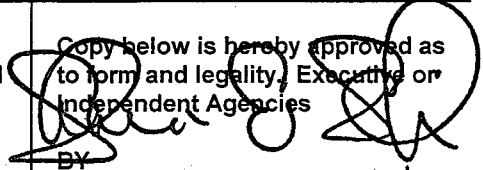
DOCUMENT/FISCAL NOTE NO. 15-457

DATE OF ADOPTION _____

BY 

Daniel Meuser
TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

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

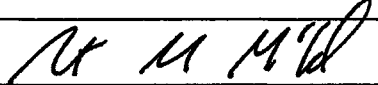
BY 
SHAWNE SMITH

OCT 10 2012

DATE OF APPROVAL

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

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

BY 

TITLE: Robert M. McCord
State Treasurer

NOTICE OF FINAL-OMITTED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code §§ 5.3, 5.5 and 5.7

Payments by Electronic
Funds Transfer

PREAMBLE

The Department of Revenue and the Treasury Department, under the authority contained in section 9 of The Fiscal Code (72 P.S. § 9), by this notice of proposed rulemaking omitted, amends Chapter 5, Payments by Electronic Funds Transfer (EFT), to read as set forth in Annex A.

Act 87 of 2012 (P.L. ____, No. ____), effective July 2, 2012, mandates the Secretary of Revenue and the State Treasurer to jointly promulgate a regulation revising EFT payments for payments equal to or greater than \$10,000. Accordingly, the Department of Revenue and the Treasury Department, under section 204 of the act of July 31, 1968 (CDL) (P.L. 769, No. 240) (45 P.S. § 1204) and the regulation thereunder, 1 Pa. Code § 7.4, find that notice of proposed rulemaking is under the circumstances impracticable and, therefore, may be omitted.

Act 87 of 2012 mandated these changes as part of the fiscal year 2012-2013 budget package. Article VIII, Section 12 of the *Pennsylvania Constitution* requires a balanced operating budget for the Commonwealth. The only way to timely implement this change, a necessary component of the 2012-2013 budget, is through a final-omit rulemaking. These savings form part of the 2012-2013 budget passed by the legislature. Failure to timely adopt the regulation will create a deficit in the current year's budget as enacted.

Utilizing the shorter regulatory process will enable the Department of Revenue and the Treasury Department to quickly amend the regulation and provide the public with the revised EFT requirement enacted under Act 87 of 2012. Even though time constraints make the "formal" comment period impossible, the Department has reached out to the tax community to give them the opportunity to provide "informal" comments through the "public outreach" process. A copy of the draft regulation was sent to the Pennsylvania Bar Association, the Philadelphia Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants and the Pennsylvania Chamber of Business and Industry with a 30-day comment period, as well as delivered to the Appropriations and Finance Legislative Committee Chairs. No comments or objections were received on the EFT threshold revision. The regulation is listed on the Department's Quarterly Regulatory Report posted on the Department's website. The Department continues to inform taxpayers of the lower EFT requirement through many avenues, such as the Revenue Tax Update publication, notification in the electronic E-TIDES system and on the Department's website.

As a result of the above, the Department of Revenue for good cause finds that the procedures specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201,

1202) are in these circumstances impractical, unnecessary, or impose an impossible burden on the Department.

Purpose of Regulation

To implement regulations to reflect a statutory change made by the Pennsylvania Legislature that revised payments required under § 5.3 (relating to payments required to be paid by EFT) from "\$20,000 or more" to "\$10,000 or more." Electronic payments offer several advantages over check payments. Payments are received faster and errors in handling and posting of tax payments are reduced.

Explanation of Regulatory Requirements

The Secretary of Revenue and the State Treasurer jointly adopted this regulation, Chapter 5, relating to payments by electronic funds transfer at 22 Pa.B. 1561 (April 4, 1992).

The Department of Revenue is amending § 5.3 (relating to payments required to be paid by EFT) to add new language at subsection (d) that will explain the lower EFT threshold requirement of \$10,000 beginning January 1, 2013. The remaining subsections are renumbered.

Section 5.5 (relating to taxpayer registration) is reserved. Technology advances and streamlining processes available on the Department of Revenue's website have rendered obsolete the taxpayer registration process.

Section 5.7 (relating to miscellaneous provisions) is amended to reflect a new amount of "\$10,000 or more," as well update the reference to the renumbered section.

Fiscal Impact.

The Department of Revenue has estimated that the regulations will have a fiscal impact of \$100,000 savings to the Commonwealth. It can be expected that the costs to the regulated community and small businesses, after an initial setup expense of staff time or other resources if the business is not already set up to make EFT payments, are minimal. Any added expense to convert to electronic payments should be offset by savings on checks, stamps, and envelopes.

Paperwork

The regulations will not generate substantial paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulations will become effective upon publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the regulations is Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P.O. Box 281061, Harrisburg, Pennsylvania 17128-1061.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on *October 12, 2012*, the Department of Revenue and the Treasury Department submitted a copy of the regulations with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 - 732-506). In accordance with section 5.1(j.1) of the Regulatory Review Act (71 P.S. § 745.5a(j.1)), the regulations were deemed approved by the Committees on . IRRC met on , and approved the regulations under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)).

Findings

The Department of Revenue and the Treasury Department find that the amendment is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department of Revenue and the Treasury

Department also find that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) are unnecessary because it is in the public interest to expedite this amended regulation.

Order

Acting under the authorizing statute, the Department of Revenue and the Treasury Department order that:

(a) The regulations of the Department of Revenue, 61 Pa. Code, are amended by amending Chapter 5 to read as set forth in Annex A.

(b) The Secretary of the Department of Revenue and the State Treasurer shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department of Revenue and the State Treasurer shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.

DANIEL MEUSER
SECRETARY OF REVENUE

ROBERT M. McCORD
STATE TREASURER

8/15/12 - Public Outreach Version

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart A.
General Provisions, Chapter 5. Payments by Electronic Funds
Transfer.

§ 5.3. Payments required to be paid by EFT.

* * * * *

(d) Beginning January 1, 2013, a payment in the amount of \$10,000 or more shall be remitted using a method of EFT selected by the taxpayer. The taxpayer may choose the ACH debit method or the ACH credit method.

(e) This requirement applies to payment of only the following taxes:

Sales and Use	Corporate Net Income
Employer Withholding	Capital Stock-Franchise
Liquid Fuels	Bank Shares
Fuel Use	Title Insurance and Trust
Mutual Thrift Institutions	Company Shares
Oil Company Franchise	Insurance Premiums
Malt Beverage	Public Utility Realty
Motor Carrier Road Tax	Gross Receipts

[(e)](f) A taxpayer may satisfy the obligation to remit a payment by EFT by delivering a certified or cashier's check, in person or by courier with the appropriate return or deposit statement, to the Pennsylvania Department of Revenue, Bureau of Business Trust Fund Taxes, EFT Unit, Ninth Floor, Strawberry Square, Fourth and Walnut Streets, Harrisburg, Pennsylvania 17128 on or before the due date of the obligation. Payments will not be accepted at other Department locations.

[(f)] (g) Separate transfers shall be made for each payment.

§ 5.5. Reserved.

§ 5.7. Miscellaneous provisions.

* * * * *

(i) The Treasurer, the Department and the Secretary of the Budget will provide one or more methods for tax refunds of [\$20,000] \$10,000 or more. The refunds will be available for the taxes listed in [§ 5.3(d)] § 5.3(e) (relating to payments required to be paid by EFT). The taxpayer shall file a written request for the electronic transfer of a refund.

8/15/12 - Public Outreach Version

Department of Revenue - Notice of Final-Omitted Rulemaking

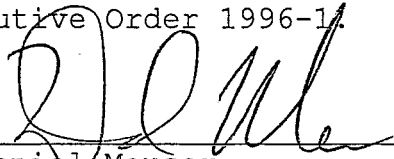
61 Pa. Code, §§ 5.3, 5.5 and 5.7

General Provisions - Payments by Electronic Funds Transfer

15-457

SECRETARY'S CERTIFICATION

I, Daniel Meuser, do hereby certify that I have reviewed this regulation and determined that the regulation is consistent with the principles outlined in Executive Order 1996-1.



Daniel Meuser
Secretary of Revenue

Department of Revenue - Notice of Final-Omitted Rulemaking

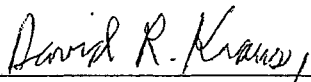
61 Pa. Code, §§ 5.3, 5.5 and 5.7

General Provisions - Payments by Electronic Funds Transfer

15-457

FORM AND LEGALITY

I certify that I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the attorneys responsible for this regulation, that I have made all appropriate revisions and that all information contained in the Preamble and Annex A is current and accurate.



David R. Kraus
Chief Counsel

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

I.D. NUMBER: 15-457
 SUBJECT: PAYMENTS BY ELECTRONIC FUNDS TRANSFER
 AGENCY: DEPARTMENT OF REVENUE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- X 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

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10-12-12	<i>Phyllis Mundy</i> (minority)	HOUSE COMMITTEE ON FINANCE
10-12-12	<i>Kerry A. Benninghoff</i>	MAJORITY CHAIRMAN
10-12-12	<i>John N. Wozniak</i> (minority)	SENATE COMMITTEE ON FINANCE
10/12/12	<i>Mike Brubaker</i>	MAJORITY CHAIRMAN
10/12/12	<i>K Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
10/17/12	<i>Jeffrey...</i>	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)