

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

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

(1) Agency

Department of State, Bureau of Professional and Occupational
Affairs, State Board of Funeral Directors

(2) Agency Number: 16A

Identification Number: 16A-4822

IRRC Number: 3000

(3) PA Code Cite: 49 Pa. Code § 13.12

(4) Short Title: Fees

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

Primary Contact: Cynthia Montgomery, Regulatory Counsel, Department of State, P.O. Box 2649,
Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251)

Secondary Contact: Wesley Rish, Board Counsel, State Board of Funeral Directors, Department of
State, P.O. Box 2649, Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251)

wrish@pa.gov.

(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)

The regulation amends § 13.12 to increase the biennial renewal fees for funeral directors, funeral supervisors and funeral establishments (including the following license categories: branch, estate, professional corporation, sole proprietor, partnership, restricted business corporation, widow and pre-1935 business corporation) from \$325 to \$400.

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

Section 18.1 of the Funeral Director Law (act) (63 P.S. § 479.18.1) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

(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.

Yes, Section 18.1 of the act mandates a fee increase when expenditures outpace 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.

At the December 7, 2011, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for fiscal years 2009-2010 and 2010-2011, and projected revenue and expenses through 2014-2015. By the beginning of fiscal year 2009-2010, the Board had accrued a deficit of over \$1 million. At the end of fiscal year 2010-2011, in spite of the implementation of a fee increase in 2010, BFO reported that the Board continued to run a deficit of \$790,540.68. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 18.1 of the act and to eliminate the existing deficit. In June of 2012, BFO returned with revised estimates and recommended a \$75 increase to the biennial renewal fees as sufficient to eliminate the existing deficit, provide for the current level of operations and return the Board to firm financial ground. As a result, the Board voted at its July 5, 2012, meeting to increase biennial renewal fees from \$325 to \$400. In deliberating the final fee, the Board again reviewed its finances at the August 7, 2013, meeting. At the current fee levels, the Board receives revenue of approximately \$ 2,152,000 over a 2-year period (consisting of a renewal year and a non-renewal year). Budgeted expenditures for the next 2 fiscal years (2013-2014 and 2014-2015) are approximately \$2,322,000. In addition, the Board has been involved in protracted litigation relating to the constitutionality of the Funeral Director Law that has resulted at the trial court level in a judgment against the Board in the amount of \$1.2 million. Although payment of the judgment has been stayed pending appeal, the Board must set the fee at a level to cover the operational needs of the Board and to pay the judgment/liability.

(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.

There are no federal licensure standards.

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

A funeral director (mortician) in Maryland pays a \$600 biennial renewal fee; while funeral establishment renewal fees range from \$700 - \$975 biennially. In Ohio, an embalmer or funeral director is required to pay a \$140 biennial renewal fee; while a funeral home pays a biennial renewal fee of \$250. In New Jersey, a funeral director pays a \$250 biennial renewal fee; while a funeral home (mortuary) pays \$500. In West Virginia, a funeral service licensee pays a biennial renewal fee of \$160; a main facility pays \$350, while a branch facility pays \$210. In Virginia, licenses renew annually at \$175 for funeral directors and embalmers and \$300 for funeral establishments (or the equivalent of \$350 for funeral directors and embalmers and \$600 for funeral establishments over a 2-year period). In New York, the biennial renewal fees for embalmers is \$62.50; for funeral directors, it is \$125 and for funeral establishments, it is \$300. The Board does not believe the increase in the biennial renewal fee, which amounts to \$37.50 per year, will affect Pennsylvania's ability to compete 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.

No.

(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.)

Because an increase in fees is mandated by section 18.1 of the act, pre-draft input was not solicited. However, the proposal was discussed at public meetings of the Board on December 7, 2011, June 6, 2012, July 5, 2012 and August 7, 2013, which are routinely attended by professional associations who represent the regulated community and other organizations who have an interest in the regulatory agenda of the Board, including the Pennsylvania Funeral Directors Association (PFDA) and the Pennsylvania Cemetery, Cremation and Funeral Association (PCCFA). In addition, the Board invited these and other interested parties to submit comments following publication of the notice of proposed rulemaking. No public comments were received.

(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?

There are approximately 1,653 licensed funeral establishments. There are approximately 3,289 licensed funeral directors, of whom approximately 1,268 are licensed funeral supervisors in Pennsylvania.

According to the Pennsylvania Department of Labor and Industry in 2008, the majority of Funeral Service Managers (83.4%) work in the area of Death Care Services, while 15.1% of the Funeral Service Managers are self employed.

For the business entities listed above, small businesses are defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Specifically, size standards are provided at 13 CFR § 121.201. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where funeral directors and funeral supervisors work, a small business for "funeral homes and funeral services" is one with \$7.0 million or less in average annual receipts. The Board believes that most of the funeral establishments licensed by the State Board of Funeral Directors are considered small businesses because they would fall under this threshold amount.

Small businesses would be affected by the \$75 increase in the biennial renewal fee for funeral establishments; and would also be affected by the \$75 increase in the biennial renewal fee for funeral directors and funeral supervisors to the degree the business pays the licensure fees of its employees.

(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.

All licensees of the Board must comply with this regulation. There are approximately 1,653 licensed funeral establishments, most of which are considered small businesses. There are approximately 3,289 licensed funeral directors, of whom approximately 1,268 are licensed funeral supervisors in Pennsylvania.

(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.

All licensed funeral directors, funeral supervisors, and funeral establishments will be required to pay an additional \$75 every 2 years beginning in 2014 in order to renew a license. The Board believes that a majority of funeral establishments located in the Commonwealth qualify as "small businesses" pursuant to the federal SBA standards. Therefore, small businesses will be impacted by the \$75 increase in establishment license fees; and will also be impacted to the degree that the funeral home pays the licensure fees for its employees. However, this increase is necessary to ensure the fiscal integrity of the board and to assure that the board's mandate to protect the health, safety and welfare of the public is carried out.

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

The increase is mandated by section 18.1 of the Funeral Director Law (act) (63 P.S. § 479.18.1), which requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties imposed under the act are not sufficient to meet expenditures over a 2-year period. The regulation benefits every citizen of the Commonwealth in that it will ensure the fiscal integrity of the Board and allow the Board to carry out its mission. The costs to licensees, which equates to \$37.50 per year, is outweighed by the Board's duty to license and regulate funeral directors and funeral establishments in the public interest.

(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.

There are approximately 1,653 licensed funeral establishments. There are approximately 3,289 licensed funeral directors, of whom approximately 1,268 are licensed funeral supervisors in Pennsylvania. These licensees will be required to pay an additional \$75 every 2 years to renew their licenses. Therefore, the estimated costs to the regulated community are calculated as follows:

6,210 licensees x \$75 increase = \$465,750 biennially (beginning with the January 2014 renewal).

The Board does not anticipate any other costs associated with legal, accounting or consulting procedures.

(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.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(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 only cost to state government is the minimal cost associated with publishing new biennial renewal forms and updating the online renewal platform with the updated fee. The Board will not incur an increase in administrative costs by implementing the rulemaking. Indeed, the regulatory amendment will permit the Board to recoup the costs of its operations. There are no other costs or saving to state government associated with compliance with the proposed rulemaking.

(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.

This proposed rulemaking would not require any additional recordkeeping or other paperwork, nor will there be any legal, accounting or consulting procedures required for implementation of the regulation.

(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 FY 13-14	FY +1 FY 14-15	FY +2 FY 15-16	FY +3 FY 16-17	FY +4 FY 17-18	FY +5 FY 18-19
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community	\$465,750	\$0	\$465,750	\$0	\$465,750	\$0
Local Government						
State Government						
Total Costs	\$465,750	\$0	\$465,750	\$0	\$465,750	\$0
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

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

Program	FY -3 FY 10-11	FY -2 FY 11-12	FY -1 FY 12-13 Projected	Current FY FY 13-14 Budgeted
State Board of Funeral Directors	\$887,470.48	\$817,106.23	\$585,000.00*	\$1,147,000

(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.

- (a) Assuming that the majority of funeral establishments qualify as "small businesses" as that term is defined by the Regulatory Review Act and the SBA, there could be as many as 1,653 small businesses subject to the regulation.
- (b) There are no projected reporting, or recordkeeping costs required for compliance. There are no additional administrative costs required for compliance. (The administrative costs would be those associated with filling out the biennial renewal form or online renewal application and either writing a check or processing the payment of the fee. These costs would be the same regardless of the increase in the fee.) Also, some of these fees can be avoided by the small businesses by simply requiring employees to pay their own biennial renewal fees.
- (c) The probable effect on impacted small businesses would be a \$75 increase in the biennial renewal fee for each facility and each funeral director/funeral supervisor employed by the small business.
- (d) Originally, the Board considered a biennial fee increase of \$100 (to \$425) or \$115 (to \$440). At that time, BFO presented the possibility of changing to an annual renewal cycle, to permit licensees to spread the impact over 2 years, suggesting that the fee could then be set at either \$212.50 or \$220. However, due to the increased administrative costs associated with processing renewals every year, as opposed to every 2 years, the Board felt the increase would actually have to be larger or it would not provide adequate revenues to cover the increased costs. Ultimately, the Board elected to retain the biennial renewal fee because licensees are accustomed to it and it is consistent with a vast majority of the other professional and occupational boards. (The only exception being the Navigation Commission for the Delaware River and its Navigable Tributaries, which requires annual renewals.)

(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 provisions have been developed for any affected groups or persons.

(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.

In January of 2012, BFO presented a number of regulatory alternatives to the Board, including the possibility of a \$100 or \$115 increase to the biennial renewal fee. BFO also presented the possibility of changing to an annual licensure renewal fee of \$ 212.50 (which equates to a \$100 increase over 2 years) or \$220 (which equates to a \$115 increase over 2 years), in order to allow the licensee to spread the impact of the increase out over a 2-year period. Because of the increased administrative costs associated with processing renewals annually, as opposed to biennially, and the fact that the total increase would still amount to either \$100 or \$115, the Board rejected the possibility of an annual renewal fee. At that time, the Board determined that, because any increase to the biennial renewal fee would not be implemented until 2014, it would wait until the close of the fiscal year (June 30, 2012) and reevaluate its financial condition. BFO returned to the June board meeting and presented updated figures demonstrating that the Board's financial condition had improved, although a fee increase was still necessary. Therefore, BFO recommended a \$75 fee increase. The Board took the matter under consideration and at its July board meeting, voted to adopt a \$75 increase to the biennial renewal fee to be effective with the January 31, 2014, renewals. The Board believes that given its current financial status, it has selected the least burdensome acceptable alternative.

(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.
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- a) & b) **All licenses renew biennially. The Board did not consider less stringent reporting requirements or deadlines for small businesses or for funeral directors that work for small businesses.**
 - c) **There are no compliance or reporting requirements that could be consolidated or simplified. The biennial renewal process is the same whether a particular funeral establishment is a small business or whether a particular funeral director is employed by a small business or a large business.**
 - d) **The regulations do not contain design or operational standards that need to be altered for small businesses.**
 - e) **To exclude any licensees from the requirements contained in the regulation (an increased biennial renewal fee) based on the size of the business would not be consistent with public health and welfare because it would prevent the Board from obtaining adequate revenue to meet projected expenditures and it would not be able to carry out its legislative mandate.**

(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 data, studies or references were used to justify the regulation.

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

- A. The date by which the agency must receive public comments: **May 13, 2013**
- B. The date or dates on which public meetings or hearings will be held: **Public meetings are held on the first Wednesday of each month.**
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Fall 2013. Expected implementation of the increased biennial renewal fees – by January 31, 2014.**
- D. The expected effective date of the final-form regulation: **Upon publication in the Pennsylvania Bulletin.**
- E. The date by which compliance with the final-form regulation will be required: **January 31, 2014.**
- F. The date by which required permits, licenses or other approvals must be obtained: **N/A**

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

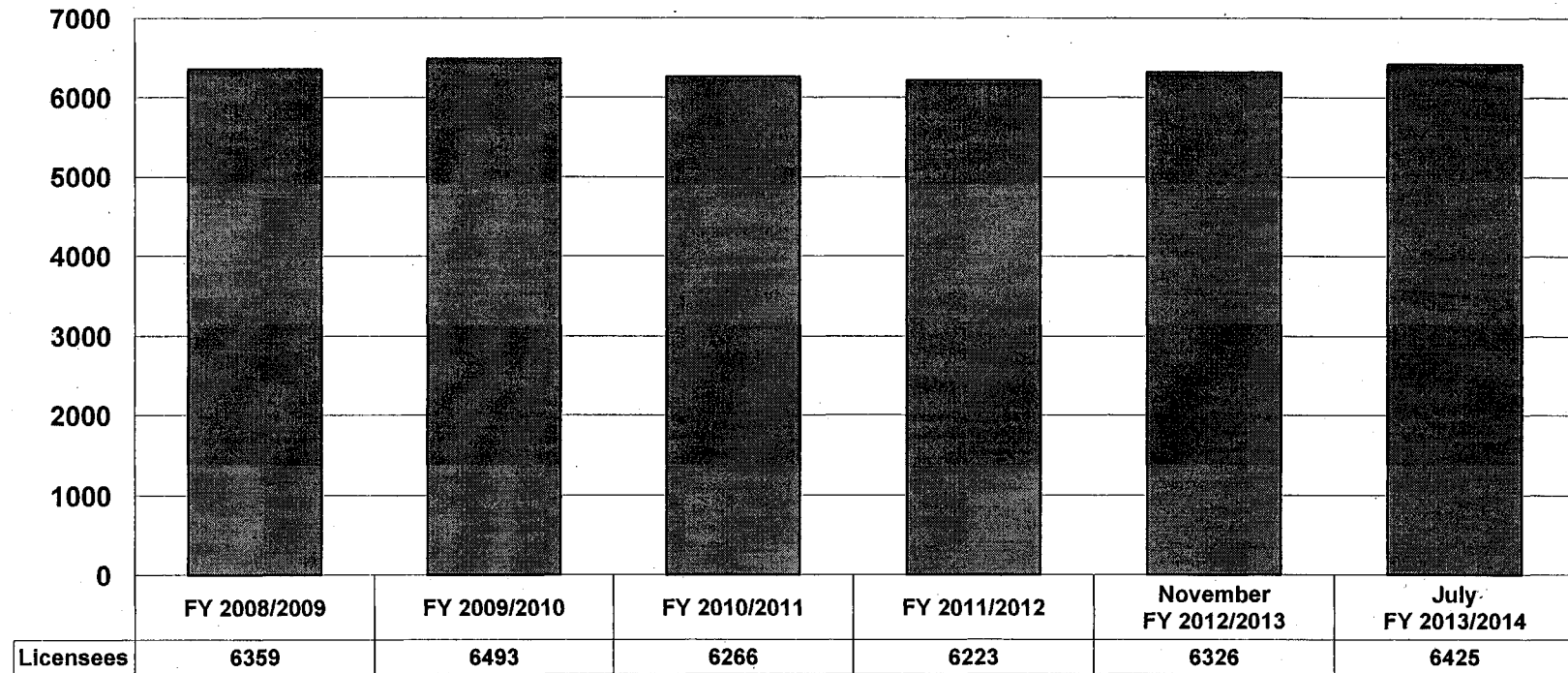
The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the first Wednesday of each month. The Board will meet on the following remaining dates in 2013: September 4, October 2, November 6, and December 4. More information can be found on the Department's website (www.dos.state.pa.us).

State Board of Funeral Directors

(based on current conditions)

Projected FY13-15 Biennial Revenue	\$2,152,000
Projected FY13-15 Biennial Budget/Expenses	\$2,322,000
Projected Biennial Balance	(\$170,000)

STATE BOARD OF FUNERAL DIRECTORS RENEWABLE LICENSEE COUNTS



State Board of Auctioneers
Expense and Revenue History

6/20/2011

Cost Center	Renewal Yr			Renewal Yr		Renewal Yr	
	Actual Expenses FY 06-07	Actual Expenses FY 07-08	Actual Expenses FY 08-09	Actual Expenses FY 09-10	Actual Expenses FY 10-11	Actual Expenses FY 11-12	Actual Expenses FY 12-13 as of 7/23/13
Board Administration	139,083.03	159,570.88	136,369.35	147,064.79	138,651.41	155,460.96	135,031.13
Commissioner's Office	8,990.35	10,522.92	12,607.31	8,353.43	4,605.54	4,260.18	5,739.10
Revenue Office	4,116.71	4,664.97	6,357.16	2,224.65	2,500.56	2,097.88	2,322.70
Departmental Services	21,927.62	22,312.88	21,722.63	26,028.07	21,809.43	22,518.38	20,947.03
Legal Office	173,131.65	252,994.35	171,126.64	194,002.98	156,510.30	120,882.07	153,181.46
Hearing Expenses	4,105.33	7,127.89	4,928.93	4,789.34	4,714.15	5,367.73	1,720.18
Enforcement & Investigation	453,877.28	521,510.76	425,065.23	498,495.58	508,902.18	466,034.38	207,278.14
Professional Compliance Office	23,844.05	27,988.39	16,564.48	25,018.38	27,014.31	24,168.97	23,784.00
Board Member Expenses	25,899.91	24,481.58	23,488.67	20,386.92	19,987.18	16,315.68	16,756.87
TOTAL	854,975.93	1,031,174.62	818,230.40	926,364.14	884,695.06	817,106.23	566,760.61

Revenue By Source	Actual Revenue			Actual Revenue		Actual Revenue	
	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Renewals	25,360.00	1,129,880.00	14,600.00	1,958,930.00	26,230.00	1,946,050.00	19,270.00
Applications	28,575.00	30,375.00	27,205.00	26,780.00	31,040.00	27,240.00	25,730.00
Letters of Good Standing	5,030.00	3,890.00	4,005.00	3,740.00	4,230.00	3,885.00	4,695.00
Fines	36,900.00	117,075.00	27,400.00	15,325.00	17,625.00	7,400.00	3,500.00
Act 48	23,033.72	11,950.00	4,100.00	7,200.00	5,300.00	16,350.00	2,150.00
Investigations	0.00	0.00	0.00	0.00	0.00	0.00	1,039.35
Licensee Lists	9,571.00	9,126.39	8,043.60	8,038.29	6,566.44	7,884.83	30,097.41
TOTAL REVENUE	128,469.72	1,302,296.39	85,353.60	2,020,013.29	90,991.44	2,008,809.83	86,481.76

**STATE BOARD OF FUNERAL DIRECTORS
PROPOSED BIENNIAL RENEWAL FEE INCREASE
NO CHANGE**

LICENSE CLASSES	LICENSE COUNT	CURRENT RENEWAL FEE	TOTAL RENEWAL FEES	FY 14-15 PROPOSED RENEWAL FEE NO CHANGE	TOTAL REVENUE
Funeral Director	3,289	\$ 325.00	\$ 1,068,925.00	\$ 325.00	\$ 1,068,925.00
Funeral Supervisor	1,268	\$ 325.00	\$ 412,100.00	\$ 325.00	\$ 412,100.00
Funeral Director - Limited	163	\$ 35.00	\$ 5,705.00	\$ 35.00	\$ 5,705.00
Continuing Education Provider	52	\$ 50.00	\$ 2,600.00	\$ 50.00	\$ 2,600.00
Branch	281	\$ 325.00	\$ 91,325.00	\$ 325.00	\$ 91,325.00
Estate	1	\$ 325.00	\$ 325.00	\$ 325.00	\$ 325.00
Professional Corporation	109	\$ 325.00	\$ 35,425.00	\$ 325.00	\$ 35,425.00
Sole Proprietor	382	\$ 325.00	\$ 124,150.00	\$ 325.00	\$ 124,150.00
Partnership	15	\$ 325.00	\$ 4,875.00	\$ 325.00	\$ 4,875.00
Restricted Business Corporation	791	\$ 325.00	\$ 257,075.00	\$ 325.00	\$ 257,075.00
Widow	19	\$ 325.00	\$ 6,175.00	\$ 325.00	\$ 6,175.00
Pre 1935 Business Corporation	55	\$ 325.00	\$ 17,875.00	\$ 325.00	\$ 17,875.00
	6,425				

TOTAL RENEWAL REVENUE:	\$ 2,026,555.00	\$ 2,026,555.00
TOTAL NON-RENEWAL REVENUE:	\$ 128,000.00	\$ 128,000.00
TOTAL BOARD REVENUE:	\$ 2,152,555.00	\$ 2,152,555.00

LICENSE CLASS
Effective January 2014 (FY13-14)
Expiration Date: All Classes - 1/31 even-numbered year

FINANCIAL STATUS	Actual FY 11-12	Projected FY 12-13	Projected FY 13-14**	Projected FY 14-15**	Projected FY 15-16**	Projected FY 16-17**	Projected FY 17-18**	Projected FY 18-19*	Projected FY 19-20*	Projected FY 20-21*	Projected FY 21-22*	Projected FY 22-23*	Projected FY 23-24	Projected FY 24-25	Projected FY 25-26
Beginning Balance:	(787,887.96)	403,815.74	(94,702.50)	827,297.50	(264,702.50)	600,297.50	(550,702.50)	253,297.50	(760,702.50)	178,297.50	(902,702.50)	(32,702.50)	(1,184,702.50)	(377,702.50)	(1,594,702.50)
Revenue:	2,008,809.93	86,481.76	2,069,000.00	83,000.00	2,069,000.00	83,000.00	2,069,000.00	83,000.00	2,069,000.00	83,000.00	2,069,000.00	83,000.00	2,069,000.00	83,000.00	2,069,000.00
Total Available:	1,220,921.97	490,297.50	1,974,297.50	910,297.50	1,804,297.50	683,297.50	1,518,297.50	336,297.50	1,308,297.50	261,297.50	1,166,297.50	50,297.50	884,297.50	(294,702.50)	474,297.50
Expenses/Budget:	817,106.23	585,000.00	1,147,000.00	1,175,000.00	1,204,000.00	1,234,000.00	1,265,000.00	1,097,000.00	1,130,000.00	1,164,000.00	1,199,000.00	1,235,000.00	1,262,000.00	1,300,000.00	1,339,000.00
Retaining Balance:	403,815.74	(94,702.50)	827,297.50	(264,702.50)	600,297.50	(550,702.50)	253,297.50	(760,702.50)	178,297.50	(902,702.50)	(32,702.50)	(1,184,702.50)	(377,702.50)	(1,594,702.50)	(884,702.50)

*Includes settlement payment of \$200,000 annually for 5 consecutive fiscal years.

**Includes ELSIP payment of \$10,000 annually for 10 consecutive fiscal years

**STATE BOARD OF FUNERAL DIRECTORS
PROPOSED BIENNIAL RENEWAL FEE INCREASE
\$75 INCREASE**

LICENSE CLASSES	LICENSE COUNT	CURRENT RENEWAL FEE	TOTAL RENEWAL FEES	FY 14-15 PROPOSED RENEWAL FEE NO CHANGE	TOTAL REVENUE
Funeral Director	3,289	\$ 325.00	\$ 1,068,925.00	\$ 400.00	\$ 1,315,600.00
Funeral Supervisor	1,268	\$ 325.00	\$ 412,100.00	\$ 400.00	\$ 507,200.00
Funeral Director - Limited	163	\$ 35.00	\$ 5,705.00	\$ 35.00	\$ 5,705.00
Continuing Education Provider	52	\$ 50.00	\$ 2,600.00	\$ 50.00	\$ 2,600.00
Branch	281	\$ 325.00	\$ 91,325.00	\$ 400.00	\$ 112,400.00
Estate	1	\$ 325.00	\$ 325.00	\$ 400.00	\$ 400.00
Professional Corporation	109	\$ 325.00	\$ 35,425.00	\$ 400.00	\$ 43,600.00
Sole Proprietor	382	\$ 325.00	\$ 124,150.00	\$ 400.00	\$ 152,800.00
Partnership	15	\$ 325.00	\$ 4,875.00	\$ 400.00	\$ 6,000.00
Restricted Business Corporation	791	\$ 325.00	\$ 257,075.00	\$ 400.00	\$ 316,400.00
Widow	19	\$ 325.00	\$ 6,175.00	\$ 400.00	\$ 7,600.00
Pre 1935 Business Corporation	55	\$ 325.00	\$ 17,875.00	\$ 400.00	\$ 22,000.00
	6,425				

TOTAL RENEWAL REVENUE:	\$ 2,026,555.00	\$ 2,492,305.00
TOTAL NON-RENEWAL REVENUE:	\$ 126,000.00	\$ 126,000.00
TOTAL BOARD REVENUE:	\$ 2,152,555.00	\$ 2,618,305.00

LICENSE CLASS
Effective January 2014 (FY13-14)
Expiration Date:
All Classes - 1/31 even-numbered year

FINANCIAL STATUS	Actual FY 11-12	Projected FY 12-13	Projected FY 13-14**	Projected FY 14-15**	Projected FY 15-16**	Projected FY 16-17**	Projected FY 17-18**	Projected FY 18-19*	Projected FY 19-20*	Projected FY 20-21*	Projected FY 21-22*	Projected FY 22-23*	Projected FY 23-24	Projected FY 24-25	Projected FY 25-26
Beginning Balance:	(787,887.96)	403,815.74	(94,702.50)	1,288,297.50	201,297.50	1,527,297.50	381,297.50	1,646,297.50	637,297.50	2,037,297.50	961,297.50	2,292,297.50	1,146,297.50	2,413,297.50	1,201,297.50
Revenue:	2,008,809.93	86,481.76	2,530,000.00	88,000.00	2,530,000.00	88,000.00	2,530,000.00	88,000.00	2,530,000.00	88,000.00	2,530,000.00	88,000.00	2,530,000.00	88,000.00	2,530,000.00
Total Available:	1,220,921.97	490,297.50	2,435,297.50	1,376,297.50	2,731,297.50	1,615,297.50	2,911,297.50	1,734,297.50	3,167,297.50	2,125,297.50	3,491,297.50	2,380,297.50	3,675,297.50	2,501,297.50	3,731,297.50
Expenses/Budget:	817,106.23	585,000.00	1,147,000.00	1,175,000.00	1,204,000.00	1,234,000.00	1,265,000.00	1,087,000.00	1,130,000.00	1,164,000.00	1,199,000.00	1,235,000.00	1,262,000.00	1,300,000.00	1,339,000.00
Remaining Balance:	403,815.74	(94,702.50)	1,288,297.50	201,297.50	1,527,297.50	381,297.50	1,646,297.50	637,297.50	2,037,297.50	961,297.50	2,292,297.50	1,145,297.50	2,413,297.50	1,201,297.50	2,392,297.50

*Includes settlement payment of \$200,000 annually for 5 consecutive fiscal years.

**Includes ELSIP payment of \$10,000 annually for 10 consecutive fiscal years

COMMENTATOR'S LIST

Reg. 16A-4822

There were no commentators for this regulation.

RECEIVED
IRRC

2013 AUG 26 AM 10: 29

**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 GeneralCopy 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
AgenciesBY: _____
(DEPUTY ATTORNEY GENERAL)State Board of Funeral Directors
(AGENCY)DOCUMENT/FISCAL NOTE NO. 16A-4822

DATE OF ADOPTION: _____

BY: Donald J. Murphy
Donald J. MurphyTITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

AUG 19 2013

DATE OF APPROVAL

(Executive Deputy General Counsel
Strike inapplicable title)

- ☐ Check if applicable
Copy not approved.
Objections attached.
- ☐ Check if applicable. No
Attorney General approval or
objection within 30 day after
submission.

FINAL RULEMAKING

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF FUNERAL DIRECTORS
49 PA. CODE § 13.12**

FEES

The State Board of Funeral Directors (Board) hereby amends § 13.12 (relating to fees) to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin. It is anticipated that the increased biennial renewal fees will be implemented with the January 31, 2014, biennial renewal.

Statutory Authority

Section 18.1 of the Funeral Director Law (act) (63 P.S. § 479.18.1) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for Amendment

Under section 18.1 of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board shall increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from other fees, fines and civil penalties. In 2006, facing rising deficits for the foreseeable future, the Board undertook a proposed rulemaking to implement a fee increase in an attempt to avoid continued deficits and restore the Board's fiscal integrity. At the time, it was anticipated that the increase would be implemented in time for the 2008 biennial renewal. (See 37 Pa.B. 1868.) Unfortunately, due to circumstances beyond the Board's control, the final rulemaking was not published until January 24, 2009, at 39 Pa.B. 414, and was not implemented until the 2010 biennial renewal. This delay caused additional deficits to accrue. For that reason, the Board recognized that it might have to look into the possibility of another fee increase to address the lingering deficits.

At the December 7, 2011, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for fiscal years 2009-2010 and 2010-2011, and projected revenue and expenses through 2014-2015. By the beginning of fiscal year 2009-2010, the Board had accrued a deficit of over \$1 million. At the end of fiscal year 2010-2011, in spite of the implementation of the fee increase, BFO reported that the Board continued to run a deficit of \$790,540.68. At the current fee levels, the Board receives revenue of approximately \$ 2,152,000 over a 2-year period (consisting of a renewal year and a non-renewal year). Budgeted expenditures for the next 2 fiscal years (2013-2014 and 2014-2015) are approximately \$2,322,000. Therefore, the Board determined that it was necessary to raise fees to

meet or exceed projected expenditures, in compliance with section 18.1 of the act and to eliminate the existing deficit. At the time, the Board determined to wait until the close of the 2011-2012 fiscal year and review revenue and expenditure projections. In June of 2012, BFO returned with revised estimates and recommended a \$75 increase to the biennial renewal fees as sufficient to eliminate the existing deficit, provide for the current level of operations and return the Board to firm financial ground. As a result, the Board voted at its July 5, 2012, meeting to increase biennial renewal fees from \$325 to \$400, as set forth in Annex A.

Summary of Comments and the Board's Response

The Board published a notice of proposed rulemaking in the Pennsylvania Bulletin on April 13, 2013, for thirty days of public comment. See 43 Pa.B. 2044. No public comments were received by the Board. On May 24, 2013, the House Professional Licensure Committee (HPLC) sent a request for information pertaining to the major cost centers of the Board and any significant increases in its expenditures. On June 12, 2013, the Independent Regulatory Review Commission sent a letter to the Board indicating that the Commission would review the Board's response to the HPLC's comment as part of the Commission's determination of whether this regulation is in the public interest.

The three major cost centers of the Board are Board Administration, Legal Office, and Enforcement and Investigation. These three areas comprise 90% of the Board's budget. Board Administration expenses are relatively stable, averaging approximately \$146,000 each year since fiscal year 2006-2007 (higher in renewal years; and less in non-renewal years). Enforcement and Investigation is by far the largest cost center. These costs include those associated with routine inspections of funeral homes as well as investigations relating to complaints filed against licensed funeral directors and funeral entities. Enforcement and Investigation has averaged approximately \$480,000 each year since fiscal year 2006-2007 (from a low of \$425,065.23 to a high of \$521,510.76). Legal Office costs have fluctuated from a low of \$120,882.07 in fiscal year 2011-2012 to a high of \$252,994.35 in fiscal year 2007-2008), averaging about \$173,500 in most years.

Enforcement and Investigation and Legal costs are all dependent upon the number of inspections conducted, the number of complaints filed, the number of those complaints that merit investigation, and the number of inspections and investigations that result in prosecutions. They also depend to a degree on the number of matters that are resolved through consent agreements and those that require hearings to be conducted. The complexity and seriousness of the matters also affect the costs. The Board averages approximately 200 new cases opened against its licensees each year. Each complaint must be reviewed or investigated to determine if a violation of the act or regulations has occurred. The legal office must then prosecute those matters where a violation is alleged. The Board incurs hearing expenses for each matter actually prosecuted, and the Board incurs additional legal costs defending any appeals. Ultimately, the number of complaints and disciplinary actions

drive the bulk of the Board's costs, and the Board has no control over the number of complaints filed against its licensees or the number of disciplinary actions brought by the Commonwealth.

Because it has been a year since the Board last considered the fee increase, and in order to fully inform its deliberations relating to the final-form rulemaking, the Board asked BFO for an updated financial picture. The Board again reviewed its financial condition at its meeting on August 7, 2013, and the situation has not changed dramatically. One notable change is that the renewable license count has increased slightly from 6,248 last year to 6,425 this year, which affects the amount of revenue that will be generated from the fee increase, however, this increase is not significant enough to impact the proposed increase at this time. Still, without the increase, the Board anticipates that its deficits will continue to mount. Additionally, the Board has been engaged in protracted litigation regarding the constitutionality of the Funeral Director Law that has resulted at the trial level in a judgment (liability) in excess of \$1,000,000. While the payment of the judgment has been stayed pending appeal, the liability must be considered in calculating the fee. According to BFO, the new fee will allow the Board to recoup the remaining deficits, produce adequate revenue to pay the judgment if necessary, and help the Board return to firm financial footing. For that reason, the Board voted at its August 7, 2013, meeting to promulgate the final-form rulemaking unchanged. Specifically, the biennial renewal fee for all classes of licensee will increase from \$325 to \$400, an increase of \$75 each biennium.

Fiscal Impact

The amendment will increase the biennial renewal fees for licensees of the Board. There are currently approximately 6,425 licensees that will be required to pay more to renew their licenses when they expire in 2014, and every 2 years thereafter. The regulation should have no other fiscal impact on the private sector, the general public or political subdivisions of the Commonwealth.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees; however, the amendment will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 2, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 2044 (April 13, 2013), to the House Professional Licensure Committee (HPLC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the Independent Regulatory Review Commission (IRRC) for review and comment.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board also provided IRRC, SCP/PLC, and HPLC with copies of comments received as well as other documents when requested. In preparing the final-form regulation, the Board has considered all comments received.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form regulation was (deemed) approved by the HPLC on _____, 2013, and deemed approved by SCP/PLC on _____, 2013. Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), the final regulation was approved by IRRC on _____, 2013.

Contact Person

Further information may be obtained by contacting Heidy Weirich, Board Administrator, State Board of Funeral Directors, P.O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The State Board of Funeral Directors finds that:

(1) Public notice of 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no public comments were received.

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified this Preamble.

Order

The State Board of Funeral Directors, acting under its authorizing statutes, orders that:

(a) The regulations of the Board at 49 Pa. Code § 13.12 are amended to read as set forth

in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board 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 on publication in the *Pennsylvania Bulletin*.

Donald J. Murphy
Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS

LICENSURE

§ 13.12. Fees.

Following is the schedule of fees charged by the Board:

* * * * *

Biennial renewal..... [\$325] \$400

* * * * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF FUNERAL DIRECTORS

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3397

August 26, 2013

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Funeral Directors
16A-4822: FEES

Dear Chairman Lutkewitte:

Enclosed is a copy of a final rulemaking package of the State Board of Funeral Directors pertaining to Fees.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,


Donald J. Murphy, Esquire, Chairperson
State Board of Funeral Directors

DJM/CKM: rs

Enclosure

cc: Kathy J. Barley, Acting Commissioner
Professional and Occupational Affairs
Rebecca Oyler, Director of Policy, Department of State
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Wesley J. Rish, Counsel
State Board of Funeral Directors
State Board of Funeral Directors

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

I.D. NUMBER: 16A-4822
SUBJECT: FEES
AGENCY: DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF FUNERAL DIRECTORS

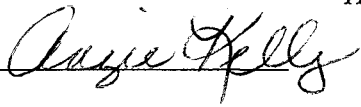
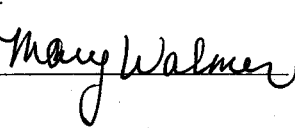
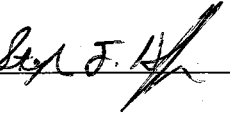
TYPE OF REGULATION

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

2013 AUG 26 AM 10:29

RECEIVED
IRRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>		
8/26/13		MAJORITY CHAIR <u>Julie Harhart</u>
		MINORITY CHAIR _____
<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>		
8/26/13		MAJORITY CHAIR <u>Robt. M. Tomlinson</u>
		MINORITY CHAIR _____
<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>		
8/26/13		
<i>ATTORNEY GENERAL (for Final Omitted only)</i>		
<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>		

August 19, 2013