

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

John F. Mizner, Esq., Chairman
George D. Bedwick, Vice Chairman
W. Russell Faber
Dennis A. Watson, Esq., dissenting

Public Meeting Held September 18, 2014

Order Issued September 29, 2014
Regulation No. 16-56 (#3012)
Department of State
Lobbying Disclosure Registration Fee

On May 20, 2013, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of State (Department). This rulemaking amends 51 Pa. Code Subsection 53.1(a). The proposed regulation was published in the June 1, 2013 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on August 29, 2014.

This regulation would raise the biennial fee for lobbying registration from \$200 to \$400 effective January 1, 2015. The Department states the fee increase is needed to help defray some of its costs of administering the Lobbying Disclosure Act (Act). As explained below, we find that the regulation does not sufficiently balance all of the provisions of the Lobbying Disclosure Act.

The Act includes the following statement of intent:

The Constitution of Pennsylvania recognizes that all free governments are founded upon the authority of the people The Constitution also guarantees the people the right to petition those invested with the powers of government for redress of grievances. The ability of the people to exercise their fundamental authority and to have confidence in the integrity of the processes by which laws are made and enforced in this Commonwealth demands that the identity and scope of activity of those who are paid to influence the actions of the General Assembly and the Executive Department be publicly and regularly disclosed.

65 P.S. §§ 13A02(a).

The Act also provides for a filing fee, exemptions and inflation of the dollar amount threshold for exemptions and fees:

Inflation adjustment.--On a biennial basis commencing in January 2009, the department shall review the threshold under section 13A06 (relating to exemption from registration and reporting) for registration under section 13A04 (relating to registration) and the threshold for reporting under section 13A05(d) (relating to reporting) and shall increase these amounts to rates deemed reasonable for assuring appropriate disclosure. On a biennial 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.

65 P.S. § 13A08(j).

The Act set an original fee of \$100 for registration, comprising a small portion of the overall program cost. The Department subsequently doubled the biennial fee from \$100 to \$200, effective January 1, 2011. In this proposed regulation, the Department proposed a fee of \$700 but, upon review and consideration of comments, reduced the fee to \$400 in the final regulation.

The provisions of the Act must be balanced in order to accomplish its intent to publicly disclose “the identity and scope of activity of those who are paid to influence the actions of the General Assembly and the Executive Department.” 65 P.S. §§ 13A02(a). While accomplishing disclosure, the Department must also heed the statement in the Act that, constitutionally, Pennsylvania citizens are guaranteed “the right to petition those invested with the powers of government for redress of grievances.” Id. Included in this balance is a fee that is sufficient to achieve lobbying disclosure while remaining consistent with the goals of the Act.

The Act, in a provision captioned “[i]nflation adjustment,” provides the Department with authority to charge and adjust a fee. As stated above, this regulation would increase the current biennial fee of \$200 to \$400, a 100% increase over the current fee and in reference to the original fee established by statute of \$100, a 400% increase, both of which are profoundly beyond an inflation adjustment based on the Consumer Price Index. Public comment, including letters from non-profit organizations which will be impacted by the increase, stated that the \$400 fee would inhibit some organizations from lobbying. While the Department reduced its originally proposed fee of \$700 to \$400, we remain concerned with the impact of a flat fee of \$400 on small lobbying efforts and non-profit organizations, particularly relating to the participatory process envisioned by the Act.

The Department has the burden to establish that the fee is reasonable and will not hinder “the right to petition those invested with the powers of government for redress of grievances.” After consideration of all of the comments submitted on this regulation, the Department’s written responses and discussion during our public meeting, we find that the Department has not sufficiently established that the \$400 fee will not hinder “the right to petition those invested with the powers of government for redress of grievances.”

We are also concerned that, in attempting to adjust its registration fees, the Department has failed to adjust the registration and reporting thresholds which are similarly subject to the Act’s inflation provisions. The Act, at 65 P.S. §§ 13A06(4), 13A04(6) and 13A05(d), specifies exemptions from registration and reporting for activities that do not exceed \$2,500 in value in a reporting period. The Department included the \$2,500 thresholds in its regulation at 51 Pa. Code §§ 55.1(a), 55.1(b), 57.2(a)(4), and 57.2(a)(6).

Without adjustment for inflation, these thresholds are effectively more stringent today than the original thresholds specified in the statute. If they were to be adjusted for inflation, the Department estimates the thresholds would be \$2,849 today. Left unchanged, smaller lobbying

efforts may be burdened with costs relating to lobbying when they could potentially be exempted. Raising the threshold by even a small amount may make a big difference to these small businesses and non-profit organizations. Additionally, by not raising the threshold, the Department may be incurring unnecessary costs to regulate small lobbying efforts beyond what the Act intended for disclosure. The Department has proposed raising the fee twice, but has not yet raised the threshold amount for inflation found in the same provision of the Act. Again, we find that the Department has not provided sufficient justification for retaining the original thresholds in the Act.

We have determined this regulation is consistent with the statutory authority of the Department (65 P.S. § 13A08(j)). However, we find that this regulation does not meet the criteria of legislative intent, reasonableness and protection of the public health, safety and welfare. 71 P.S. §§ 745.5b(a), (b)(2) and (b)(3). Therefore, we find that promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

The regulation # 16-56 (IRRC # 3012) from the _____

Department of State _____

was disapproved on September 18, 2014



A handwritten signature in black ink, appearing to read "John F. Mizner".

John F. Mizner, Chairman

REGULATION #16-56 (IRRC #3012)
DEPARTMENT OF STATE
LOBBYING DISCLOSURE REGISTRATION FEE

Dissenting Statement of Commissioner Dennis A. Watson, Esq.

Through this regulation, the Department is proposing to raise the biennial fee for lobbying registration from \$200 to \$400 effective January 1, 2015. The Department is confronted with a mandate to implement the Lobbying Disclosure Act (Act). The Department explained that it has not had any significant change in its budget from the general fund to meet the increasing costs of implementing the Act. In its responses to public comments, the Department explained that it has decreased its staff and it reduced its originally proposed fee of \$700 to \$400. The Department also explained that it does not believe it has the statutory authority to charge anything but a flat fee. The Department is engaged in a balancing test and I believe it has struck an appropriate balance. Therefore, I respectfully dissent from the majority vote to disapprove this regulation.