

Comments of the Independent Regulatory Review Commission



State Board of Auctioneer Examiners Regulation #16A-6411 (IRRC #3337)

Fees

May 25, 2022

We submit for your consideration the following comments on the proposed rulemaking published in the March 26, 2022 *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 (RRA) (71 P.S. § 745.5a(a)) directs the State Board of Auctioneer Examiners (Board) to respond to all comments received from us or any other source.

1. Economic or fiscal impacts; Need for the regulation; and Reasonableness of the requirements, implementation procedures and timetables for compliance by the public and private sectors.

The Board states in the Preamble that at the end of Fiscal Year (FY) 2020-2021, the Board is projected to have a deficit of \$46,136.32. It explains that the majority of its general operating expenses are borne by the licensee population through revenues generated through the biennial renewal of licenses while a small percentage comes from application fees. Therefore, this proposed rulemaking proposes graduated increases for eleven application fees and five biennial renewal fees. The proposed fee schedule in Section 1.41 (relating to schedule of fees) is projected to produce biennial revenues that will allow the deficit balance to decrease through FY 2023-2024 and therefore, the Board to meet or exceed its projected expenditures through at least FY 2026-2027.

The application fees for auctioneer, auction company, trading assistant, and trading assistant company are increased from 20% to 383% over the current fee schedule and will be effective upon final-form publication in the *Pennsylvania Bulletin*. Subsequent increases to these application fees will be implemented on July 1, 2025 and July 1, 2027. The Board provides in the Preamble and Regulatory Analysis Form (RAF), a description of the formula that was used to determine subsequent fee increases for applications (FY-2023-2024 through FY 2026-2027). However, it did not detail how the proposed application fees, to be implemented during the first phase, were calculated.

The Board also does not explain how it calculated the fee increases for biennial renewal of licenses for auctioneer, apprentice auctioneer, auction company, trading assistant and trading assistant company which will take effect beginning with the March 1, 2023, March 1, 2025 and March 1, 2027 biennium renewal periods. Similar to the application fee increases, these

adjustments represent significant increases over the current fee schedule. Therefore, the Board should explain how it determined that the proposed fee increases to be implemented during the first phase, including those for applications and renewals for these five categories of licenses, are both appropriate and reasonable. It should also explain how the implementation schedule, particularly the first phase, is reasonable.

In a letter dated May 20, 2022, the House Professional Licensure Committee observes that the proposed fee increases contained in this regulation for initial licensure and renewal for auctioneers are significantly higher than surrounding states that license auctioneers. (RAF #12) Specifically, it is concerned about the potential impact this could have on Pennsylvania's ability to compete with other states and question the need to increase the fees to the amounts outlined in the regulation. We will review the Board's response to the Committee's concern in our determination of whether or not the regulation is in the public interest.

2. Compliance with the provisions of the RRA and the regulations of IRRC.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs IRRC to determine whether a regulation is in the public interest. When making this determination, IRRC considers criteria such as economic or fiscal impact and reasonableness. To make that determination, IRRC must analyze the text of the proposed regulation and the reasons for the new or amended language. IRRC also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the RAF (71 P.S. § 745.5(a)).

There are instances where the Board's responses to RAF questions are incomplete. We ask the Board to provide additional information as directed below.

RAF question #21 asks the agency to provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation and to explain how the dollar estimates were derived. The Board states in its response to RAF question #21 that it will incur a minimal cost to update its print and online application forms and online renewal platform to indicate the increased fees. However, the Board does not provide a dollar estimate for this cost to implement the regulation. The Board should provide an updated RAF that includes a dollar estimate or explain why it is not possible to do so.

RAF question #26 requires the promulgating agency to 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. The Board's response to RAF #26 includes a statement that it considers the regulation to be least burdensome and acceptable alternative, consistent with public health and safety, but does not elaborate on any alternative regulatory provisions which were considered and rejected. When the Board submits the final version of this rulemaking, it should provide that information.

The Board explains, in its response to RAF question #28, that it relied upon the data contained in the BFO Financial Report and fee report forms as the basis for the rulemaking. However, the fee report forms that provide a breakdown of costs for processing applications were not part of the regulatory documents submitted to this Commission. The receipt and review of this information

will assist this Commission in evaluating the fiscal impact and reasonableness of the fee schedule when determining if the regulation is in the public interest. Therefore, we ask the Board that it provide the fee report forms for each application and biennial renewal fee in Section 1.41 (relating to schedule of fees) when it submits the final rulemaking package.

3. Miscellaneous.

The Board should revise its response to RAF question #30 to remove any meeting dates have that passed.