

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, September 18, 2014
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The September 18, 2014 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Mizner at 10:12 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: John F. Mizner, Esq., Chairman
 George D. Bedwick, Vice Chairman
 W. Russell Faber

Telephone: Lawrence J. Tabas, Esq.
 Dennis A. Watson, Esq.

II. APPROVAL OF THE SEPTEMBER 4, 2014 PUBLIC MEETING MINUTES

Chairman Mizner asked for a motion for approval of the September 4, 2014 public meeting minutes, as submitted. Vice Chairman Bedwick made the motion and Commissioner Faber seconded, and the motion passed 5-0.

III. NEW BUSINESS

A. ACTION ITEMS

1. No. 3017 Environmental Quality Board #7-480: Regulated Medical and Chemotherapeutic Waste

Michelle Elliott, Regulatory Analyst, explained that the regulation aligns Pennsylvania's regulated medical and chemotherapeutic waste provisions with federal requirements and the requirements of surrounding states.

Kenneth Reisinger, Director, and Ali Tarquino Morris, Environmental Group Manager, Bureau of Waste Management, Department of Environmental Protection, were present to answer any questions.

Vice Chairman Bedwick made a motion for approval. Commissioner Faber seconded, and the motion passed 5-0.

2. No. 3003 Pennsylvania Gaming Control Board #125-168: Gaming Junket Enterprises, Accounting and Internal Controls, Compulsive and Problem Gambling, Self-Exclusion, Underage Gaming, Equipment, Blackjack

James Smith, Regulatory Analyst, explained that the regulation transitions two policy statements into regulations and updates and clarifies existing regulations.

Susan Yocum, Assistant Chief Counsel, Pennsylvania Gaming Control Board, was present to answer any questions.

Vice Chairman Bedwick said he is impressed with the efforts on problem gaming.

Commissioner Faber questioned how the self-exemption works. Ms. Yocum explained that an individual can go on the self-exclusion list for one year, three years or for life and said the self-exclusion information is transmitted to the slot machine licensee database so that the exclusion can be enforced. She noted a person on the list can be charged with criminal trespass for entering a casino. If an excluded person wins a jackpot, those funds would be remitted to the Pennsylvania Gaming Control Board and would be spent on gambling addiction initiatives. Commissioner Faber questioned if the exemption policy covers all casinos. Ms. Yocum said it does and noted that Harrah's and Isle of Capri also prohibit individuals on the self-exclusion list from entering their facilities throughout the country.

Vice Chairman Bedwick remarked on an article about the self-exclusion list, noting that a growing number of states adopted the policy.

Vice Chairman Bedwick made a motion for approval. Commissioner Faber seconded, and the motion passed 4-0, with Commissioner Tabas abstaining.

3. No. 3034 State Board of Medicine #16A-4937: Genetic Counselors

Mr. Smith explained that the regulation provides for the licensure and regulation of genetic counselors. He said the regulation was disapproved at the July 10, 2014 public meeting. Mr. Smith said that the State Board of Medicine (Board) redelivered the regulation with changes to the Commission on August 29, 2014.

Cynthia Montgomery, Regulatory Counsel, Department of State, was present to answer any questions.

Ms. Montgomery said the Board took concerns raised by the Commission back to the regulated community and crafted the term "graduate genetic counselor" to meet the needs of the regulated community and the public. She noted that the regulation also adds a requirement for disclosure to patients or clients that the graduate genetic counselors are practicing under a temporary provisional license and supervision.

Vice Chairman Bedwick thanked the Board for making the changes.

Commissioner Faber questioned if the regulation outlines how the disclosure is made to the patient or client. Ms. Montgomery said the regulation does not specify but indicated that it could be a written or oral disclosure to patient or client.

Commissioner Watson made a motion for approval. Vice Chairman Bedwick seconded, and the motion passed 5-0.

4. No. 3012 Department of State #16-56: Lobbying Disclosure Registration Fee

Mr. Smith explained that the regulation increases the biennial registration fee for individuals and entities required to be registered under the Lobbying Disclosure Act from \$200 to \$400 and noted that Stephen MacNett, Attorney, commented in support of the regulation and the Anthracite Region Independent Power Producers Association commented that it does not oppose the \$400 fee. A number of organizations including the Broadband Cable Association, Common Cause Pennsylvania, the Pennsylvania Association for Government Relations, the Pennsylvania Homecare Association, and Duane Morris Government Strategies oppose the regulation. The Commission did not receive legislative comment on the final regulation but the House and Senate Committees have deemed it approved.

Caroline Bailey, Assistant Counsel, and Stuart Keckler, Deputy Commissioner, Bureau of Commissions, Elections and Legislation, Department of State (Department), were present to answer any questions.

Ms. Bailey explained that the fee increase is necessary in order to “allow the Department to continue to administer the lobbying disclosure regulation as statutorily required but also continue to provide transparency in lobbying activities conducted in the commonwealth to the public and serve the regulated community.” She added “in balancing the public benefit of transparency and lobbying with the benefits provided to the regulated community, the Department determined that this amount more fairly splits the costs between these interests.”

Commissioner Faber inquired about the disclosure website and questioned if the Department plans to improve it. Ms. Bailey said the site is statutorily required and said the fee increase will allow the Department to continue to make enhancements.

Commissioner Faber asked if the Department is working on any enhancements right now. Mr. Keckler said the Department makes two upgrades to the website every year and reworked the search functionality on the site to meet the needs of the regulated community.

Commissioner Faber noted he received a number of comments about the website from users who raised concerns on a number of issues including site crashes, a lack of directional information for inputting data, and system timeouts when users use credit cards. Mr. Keckler indicated that the credit card issues have been addressed.

Commissioner Faber said the original fee of \$100 was 28 percent of operating budget and the current fee of \$200 is now 41 percent of the operating budget; \$400 would bring the total to 82 percent of the operating budget. He noted that the Department originally requested that the

fee be raised to \$700 which would amount to 144 percent of the operating budget. Mr. Keckler indicated that the figures were correct. Commissioner Faber pointed out that if the Consumer Price Index (CPI) was applied to the original fee of \$100 the current fee would be \$114 and if that 28 percent was applied to the current budget the proposed fee would be \$136. He questioned what the basis is for the \$400 request. Ms. Bailey said the \$400 fee is necessary to meet the operational costs. "This increase shifts the burden from the General Fund and the taxpayers to the regulated community," she stated.

Commissioner Faber noted that the purpose of the website is for the public and the only use for the regulated community is to file reports and register. Ms. Bailey agreed and reiterated that the website is the vehicle to provide lobbying transparency to the public.

Commissioner Faber said that had the legislature intended that the fees be a large percentage of the operating cost, it would have set a high original fee. "I'm very troubled by going to 82 percent when the original fee that they established exhibited some intent of what it should be," he stated. Commissioner Faber questioned why the legislators did not establish a much higher fee if they thought the registrants should bear the vast majority of the cost. Ms. Bailey responded "I'm not a legislator. I can't answer that." Commissioner Faber stated "exactly and my concern then is by increasing to 82 percent you are now circumventing the legislature and the entire budgeting process as to how things should be funded."

Vice Chairman Bedwick said he appreciated the reduction made in the original proposal of \$700 to \$400. "While I do not believe or suggest that this is the approach the Department is taking, if I was to accept the reduction in and of itself as a sufficient reason for me supporting this, I believe it would set a very dangerous precedent, not simply for this particular regulatory approach but all the boards and commissions that come before us for fee increases," he stated. "It sets up a scenario where you can initially request substantially more than you really want and the compromise becomes a lesser position."

Vice Chairman Bedwick questioned if there is a specific line item for the program in appropriation to the Department from General Fund. Ms. Bailey stated "it's a specific line item and it's a specific appropriation." Vice Chairman Bedwick questioned if it is correct that the department believes it does not have the statutory authority to tier the fee schedule into for-profits and nonprofits. Ms. Bailey said the statute refers to the fee as a "single fee" throughout the statute and said that after examining the intent of the statute and reading through legislative notes, "it was never discussed in any other terms besides a single flat fee." Vice Chairman Bedwick questioned if the Department discussed the concept of a tiered approach to the fees. Ms. Bailey said she was not sure if the issue was specifically discussed but indicated the Department's legislative affairs director met with staff for Representative Frank Dermody (D-Allegheny). "It was explained that the reason we couldn't do a tiered fee system was that single flat fee required by statute," she stated.

Commissioner Faber questioned how the Department came to the conclusion that the legislature's intent was that the fee would cover the entire operating cost. Ms. Bailey noted that the proposed fee was reduced from \$700 which would have covered all costs to the \$400 figure. Commissioner Faber reiterated that a \$700 fee would cover 144 percent of all operating costs.

Mr. Keckler stated “the Department’s intent is not to create 100 percent increases but rather to establish firm financial grounding for this program” and emphasized “the \$100 fee was not sufficient to do what the act intended the department to do as far as the mandated online system.” Chairman Mizner noted that a line item in the budget and the fees were intended to cover the operating expenses. “We went from \$700 and quickly pivoted to \$400 . . . if the \$700 isn’t real how do I know the \$400 is real,” he questioned. “This is different than many of the other fees imposed because it is imposed on people who are exercising their first amendment right. When we talk about the right to petition our government, it seems to me the fees ought to be as little as possible. The cost of exercising that right should be as limited as possible.” Mr. Keckler reiterated that the \$700 proposal “would fund the vast majority or the entirety of carrying out the Act.” Ms. Bailey argued that the \$700 fee would allow the department to fund the program “well into the 2020s.”

Vice Chairman Bedwick questioned if the Department has requested additional funds to the appropriation in order to maintain service. Ms. Bailey stated “we have requested additional funds and whatever the General Assembly wants to give us, they give us.” Vice Chairman Bedwick noted that every state agency took budget cuts and pointed out that the Commission is down to ten staff members from 16 people in 2007. He asked if the Department does competitive bidding for the Certified Public Accountants necessary to administer the program. Ms. Bailey responded “absolutely” but noted that 43 percent of the total lobbying disclosure budget is for the statutorily-required online registration system. Vice Chairman Bedwick noted that the Department referenced in the regulation’s preamble that the program has had a 20 percent reduction and questioned if it is accurate that the 20 percent reduction amounted to the reduction in one position. Ms. Bailey stated “that is accurate but we started with a complement of five so eliminating one position does make an impact especially with the number of calls, emails and duties required from this division.”

Katherine Dotto, Manager of Government Relations, Pennsylvania Institute of CPAs (PICPA), and speaking on behalf of the Pennsylvania Association for Government Relations (PAGR), emphasized that the regulation would not increase lobbying transparency and urged the Commission to disapprove the regulation. “The Department of State has acknowledged, in its final rulemaking, that the increase from \$200 to \$400 would place a financial hardship on smaller interests, specifically small businesses and not-for-profits. The Department notes in its comments that it “is mindful of the fact that a slight decrease in registration of lobbyists may occur when this fee increase becomes effective,” she stated. “The Department calls the decrease negligible, but the fact remains that an increase in the fee will not only freeze out certain interests, which in and of itself is bad public policy, but it will also result in less transparency, which conflicts with the stated intention of the statute,” she stated. “Make no mistake, if this rulemaking goes into effect as currently written it will undoubtedly cut off access to the public policy arena for many organizations.”

Judy Eschberger, PAGR, argued that it was never intended for the regulated community to bear the full cost of administering the Act. “The Department estimates that there will be about a fifty/fifty split in the funding of lobbyist disclosure between lobbyist registration fees and the General Fund. The projected cost for the 2013-2014 registration period is \$1,661,000. Of that, \$800,000 is authorized to be paid out of a restricted account funded through lobbyist registration

fees. The remaining \$861,000 is paid for out of the General Fund,” she stated. “After reviewing comments submitted by others, it is my understanding that the sales tax on some direct lobbying services brought in approximately \$900,000, an amount that can clearly cover the amount of funding provided from the General Fund for the 2013-2014 registration period. It should also be noted that the tax is one that is paid by the community which the Lobbying Disclosure Act seeks to regulate and make more transparent.”

Mr. MacNett spoke in support of the regulation. “The Department tried and achieved a reasonable balance on the proposed fee,” he stated. “I don’t believe the General Assembly was working with real numbers or spent a lot of time on the fee when it was adopted in 2006. \$100 was a nice number and it was a number that was low, maybe deceptively low, but there was the intention that a significant portion of the cost of this registration, compliance and transparency program be paid by the regulated community. The true cost of operating a sophisticated public access program was not fully calculated. The issue before the General Assembly was who was in, who was out, what were the exemptions, and little attention was given to the registration fee.”

Mr. MacNett disputed that the increased fee would be too much of a burden and drive organizations away from lobbying. “Smaller groups, if their issues are compelling, will meet this requirement,” he stated. “Although \$400 sounds steep; you are paying it once for a two-year period. That’s not necessarily too much to make your contribution to full disclosure.”

Barry Kauffman, Common Cause PA, noted that the organization was a leading advocate in getting a lobbying disclosure act passed and spoke against the regulation. “It is pretty clear that there was never any anticipation that the regulated community would pick up 100 percent of the tab,” he stated. “Our concern is let’s not create a system where people might be challenged or might be tempted to not play the game according to the rules simply because the fees are oppressive. We want to have all the voices heard both in the regulatory and legislative process.”

Ms. Bailey provided the Commission an overview of the duties of employees that handle lobbying disclosure. “With four people in the lobbying disclosure complement in a five-month period, the division fielded over 1,000 phone calls,” she stated. “On average the division responds to over 200 emails a month. The division handles walk in customers, data entry of the paper filings which account for 20 percent of total filings, there are audit related duties and there are duties related to the online registration system.”

Commissioner Watson noted that he would vote to approve the regulation. “We can’t ignore the fact that our Commission repeatedly sees efforts by various state agencies to increase the fees imposed upon the users,” he stated. “The legislature has enacted a mandate upon on it and has neither rescinded the mandate nor increased the budget that would represent the public’s share of the agency’s expenses. At present, the share borne by the regulated community is 41 percent and that has not met objection by the legislature nor an increase in public funding by the legislature.”

Commissioner Watson opined that the issue is a “balancing test” between first amendment rights and a statute that requires transparency and suggested that a 50/50 split would be a “fair resolution of the issue.”

Vice Chairman Bedwick noted “my vote on this particular final regulation does not represent a belief on my part that there should not be a fee increase but rather something more reasonable.”

Chairman Mizner made a motion for disapproval. Commissioner Faber seconded, and the motion passed 3-1, with Commissioner Watson dissenting and Commissioner Tabas abstaining.

IV. OTHER BUSINESS

Approval of Vouchers

Vice Chairman Bedwick made motions to approve vouchers and expenses for the period July 25, 2014 through September 4, 2014. Commissioner Faber seconded, and the motions passed 5-0.

V. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Mizner announced the next public meeting is scheduled for Thursday, October 9, 2014, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VI. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Mizner announced that no executive session would be held.

VII. ADJOURNMENT

Chairman Mizner announced the meeting adjourned at 11:40 a.m.