

PREAMBLE

NOTICE OF FINAL RULEMAKING  
TITLE 51-PUBLIC OFFICERS  
LOBBYING DISCLOSURE REGULATIONS COMMITTEE

(51 Pa. Code Part III, Lobbying Disclosure, Chapters 51 - 67)

The Lobbying Disclosure Regulations Committee (Committee) adopts Title 51 Chapters 51 through 67, of 51 Pa. Code as set forth in Annex A. The rulemaking implements the act of November 1, 2006, P.L. 1213, No. 134 (“act”), 65 Pa.C.S. § 13A01, *et seq.* (relating to lobbying disclosure).

Notice of Proposed Rulemaking was published at 38 Pa.B. 435 (January 19, 2008). Publication was followed by a 30-day public comment period. The Committee received eight comments from the following organizations: the Pennsylvania Bar Association (PBA), the Philadelphia Bar Association, O’Melveny and Myers, the Pennsylvania Association of Government Relations (PAGR), the Pennsylvania Association of Nonprofit Organizations (PANO), the Pennsylvania Association of Resources Autism (PAR), Common Cause and the Pennsylvania State Education Association (PSEA). On March 24, 2008, the Committee held a public hearing and invited all of the groups that had provided comments on the proposed regulations to testify. The Committee considered all comments received directly or indirectly in February and March of 2008. The Committee also considered the comments that were received verbally during the public comment period at the end of each committee meeting. IRRC submitted comments on the proposed rulemaking on March 20, 2008. On \_\_\_\_\_, 2008, the House Judiciary Committee submitted its comments. On \_\_\_\_\_, 2008, the Senate State Government Committee submitted its comments.

*Statutory Authority*

The final rulemaking is authorized under 65 Pa.C.S. § 13A10(d), which requires comprehensive regulations to be promulgated by a committee comprised of the Attorney General, who is designated as the chairman of the Committee, the Chairman of the Pennsylvania State Ethics Commission (Commission), the chief counsel of the Disciplinary Board of the Supreme Court of Pennsylvania (Board), the Secretary of the Commonwealth, an individual appointed by the President Pro Tempore of the Senate, an individual appointed by the minority leader of the Senate, an individual appointed by the Speaker of the House of Representatives, an individual appointed by the minority leader of the House of Representatives, or their designees, and a lobbyist appointed by the Governor.

*Summary of Comments and Responses to Proposed Rulemaking*

## CHAPTER 51. GENERAL PROVISIONS

The Committee adopted Chapter 51 to set forth 11 sections which include general provisions regarding: definitions; filing deadlines to fall on Commonwealth business days; registration periods and reporting periods; delinquency; deficiency; biennial review of exemption threshold and reporting threshold; forms, records and Department publications; amended filings; filings to be originals signed under oath or affirmation; electronic filing; parent corporations and subsidiaries.

### *Section 51.1. Definitions.*

“Administrative action” - The Pennsylvania Association of Resources (PAR) commented that subsection (ii) should be removed because information submitted for review under the Regulatory Review Act is already public and should not be included in the definition. Subsection (ii) tracks the definition in the act at section 13A03, which defines “administrative action” to include “the review, revision, approval or disapproval of a regulation under the Regulatory Review Act.” Therefore, the Committee declined to make the suggested amendment because the regulation tracks the act.

The Independent Regulatory Review Commission (IRRC), Pennsylvania Association of Nonprofit Organizations (PANO) and Pennsylvania Association for Government Relations (PAGR) commented that subsection (vi) which included “grants, the release of funds from the capital budget, loans and investment of funds” in the definition of “administrative action” should be removed because it broadens the definition. The commenters believed that subsection (vi) should be removed because the Procurement Code at 62 Pa.C.S. § 102(a) does not apply to the investment of funds, § 102(f) does not apply to grants and § 102(f.1) does not apply to loans. The Committee agreed with the comments and amended the definition of “administrative action” by removing subsection (vi) from the final regulations.

“Anything of value” – Common Cause commented that earlier drafts of the definition included items explaining the scope of the definition such as “a discount or rebate not extended to the public generally,” which provided perspective. *PAGR commented that the regulations should state whether or not the forgiveness of a loan is considered to be a “gift.” Then, at a public meeting, a representative of PAGR commented that the forgiveness of a loan would probably be considered “anything of value,” rather than a “gift.”* The definition of *“anything of value”* states that the term includes any of the following: gifts, hospitality, transportation, lodging, services, loans and money. The Committee considered the comments *and decided not to add all of the previous examples of what is included in “anything of value,” but did decide to add that “anything of value” includes the forgiveness of a loan, but decided to keep the general list of what the term includes rather than adding a detailed list in the regulations.*

*“Audit contract period” - The Committee amended this definition by changing the term to “audit period” defined as the previous calendar year. The Committee reasoned that because section 13A08(f)(2) of the act requires a drawing after the close of each fourth*

quarter reporting period, the audit subjects should only be audited for the previous calendar year.

“Direct Communication” – IRRC commented that paragraph (ii) does not appear in the act’s definition, and should be removed from the definition in the regulations. Paragraph (ii) listed items that the term “direct communication” did not include. The Committee amended the definition by moving the language in paragraph (ii) of the definition to § 55.1(g)(3)(ii) (relating to reporting) to explain what the term does not include.

“Gift” – PAGR asked whether or not the forgiving of a loan is a gift. The definition of gift at section 13A03 of the act and § 51.1 subsection (ii)(B) of the regulations states that a “gift” does not include “a commercially reasonable loan made in the ordinary course of business.” While, the forgiving of a loan without receiving compensation would probably be considered to be a gift, the definition of “gift” is set forth by statute and, while the Committee may clarify the definition in the regulations, it may not change or expand the definition. Therefore, the Committee declined to make the suggested amendment.

IRRC commented that paragraphs (ii)(C), (E), (F) and (G) significantly expand the scope of the act’s definitions and therefore should be removed from the definition in the regulations. The paragraphs explained what the term does not include. The Committee amended the definition by moving the language in paragraphs (ii)(C), (E), (F) and (G) to § 55.1(g)(3)(ii) to clarify what the term does not include.

“Effort to influence administrative action or legislative action” – IRRC, PAGR, PANO, PAR and the Philadelphia Bar Association commented that the retainer language in subsection (i) should be removed because it exceeds the act. The proposed regulations stated that an “effort to influence” included paying a lobbyist or lobbying firm a retainer or other compensation, even if that lobbyist or lobbying firm does not make direct or indirect communications or take any other action. The comments stated that there must be an action taken to constitute an effort to influence. ~~To address these concerns, In~~ considering these comments, the Committee noted that Section 13A04(a) of the Act, requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit Section 13A04(a) to require registration within ten days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. ¶The Committee removed all language referring to retainers from the regulations. The Committee then amended the definition of “effort to influence administrative action or legislative action” to use the statutory language of administrative action, legislative action and lobbying. For example, the Committee amended the definition to state that an effort to influence legislative action or administrative action includes paying an individual or entity economic consideration for lobbying services. The Committee opted to use the

term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement.

IRRC, PAGR, PANO, PAR, the Philadelphia Bar Association and the Pennsylvania State Education Association (PSEA) commented that the language on monitoring in subsection (ii) exceeded the act and should be removed. The proposed regulations stated that an effort to influence includes the monitoring of legislation, legislative action or administrative action. The comments stated that monitoring alone is not lobbying. The Committee decided to amend the definition of “effort to influence administrative action or legislative action” to clarify that monitoring alone is not lobbying. However, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying. The Committee reasoned that the second sentence of section 13A05(b)(2) requires that expense reports shall include monitoring in the total costs of personnel expenses, among other things. The definition of "personnel expense" at section 13A03 includes "research and monitoring staff." Therefore, it is reasonable that principals and their lobbyists be required to disclose the time that they and their staff spent monitoring once it occurs with activity that constitutes lobbying.

“Hospitality” – PAGR commented that the terms “recreation” and “entertainment” should be included within the proposed definition of “hospitality” as follows: “(C) Recreation and entertainment. Entertainment includes, but is not limited to, performances like concerts, theater productions, motion pictures or sporting events. Recreation includes, but is not limited to, hobbies like boating, hunting, fishing, golf, skiing and tennis.” Also, PAGR commented that the distinction between “lodging” and “hospitality” must be clarified. First, the definition of “hospitality” is set forth by statute and, while the Committee may clarify the definition by regulation, it may not change or expand the act’s definition. Therefore, the Committee declined to make the suggested amendment. Secondly, the Committee believed that the distinction between “lodging” and “hospitality” was already clear in the definition in stating that “hospitality” includes meals and beverages but does not include lodging. Therefore, the Committee declined to make the suggested amendment.

IRRC commented that paragraphs (ii)(B) and (C) significantly expand the scope of the act’s definition and therefore should be removed from the definition in the regulations. The paragraphs listed items that the term did not include. The Committee amended the definition by moving the language in paragraphs (ii)(B) and (C) to § 55.1(g)(3)(ii) to explain what the term does not include.

“Indirect Communication” – IRRC commented that paragraph (vi) does not appear in the act’s definition, and should be removed from the definition in the regulations. The paragraphs list items that the term does not include. The regulation also changes the order of the paragraphs [in the regulations to track the order of the paragraphs](#) in the act. The Committee amended the definition by moving the language in paragraph (vi) to § 55.1(g)(3)(ii) to explain what the term does not include and amended the order of the paragraphs in the definition in the regulations to track the definition in the act.

“Items” – PAGR commented that the term “items” needs to be defined as it relates to § 55.1(k)(1), which refers to hospitality “items.” The Committee considered the suggestion but decided that it was not necessary to define the term “items” in the regulations. However, if further clarification is needed, a registrant may ask for an advisory from the Ethics Commission.

“Legislation” – IRRC commented that including the phrase “including draft legislation” in subsection (i), the term “legislative” in subsection (ii) and all of subsection (iii) depart from the act’s definition of “legislation.” The Committee amended the definition by removing the phrases from within the definition to track the definition in the act. The Committee then moved the phrases in question to later in the definition of “legislation” to explain what “any other matter which may become the subject of action by either chamber of the General Assembly” includes. *The Committee considered including the language regarding the “release of funds from the capital budget” and the “investment of funds” in the definition of “legislation.” However, after receiving comments from the Philadelphia Bar Association, the Committee reconsidered and determined the placement of such language to be beyond the scope of the act. Nevertheless, as noted in the preamble for the definition of “legislative action,” lobbying for the inclusion of funds in the capital budget is an effort to influence legislative action. Therefore, any costs related to lobbying for the inclusion of funds in the capital budget must be reported.*

“Legislative action” – IRRC, PAGR and PANO commented that subsection (v), regarding the “grants, the release of funds from the capital budget, loans and investment of funds,” should be removed from the term because the Procurement Code at 62 Pa.C.S. § 102(a) does not apply to investment of funds, § 102(f) does not apply to grants and § 102(f.1) does not apply to loans. *The Committee also removed the language on the “release of funds from the capital budget” and the “investment of funds,” recognizing that the “release of funds” and the “investment of funds” are actions taken by the executive branch of government, rather than the legislative branch. However, lobbying for the inclusion of funds in the capital budget is an effort to influence legislative action because it would be considered lobbying on legislation. Therefore, any costs related to lobbying for the inclusion of funds in the capital budget must be reported. The Committee agreed that the Procurement Code does not apply to “grants” and “loans,” and the Committee amended the definition by removing those phrases. The Committee moved the language on “the release of funds from the capital budget” and the “investment of funds” to the definition of “legislation” to explain what “any other matter which may become the subject of action by either chamber of the General Assembly” includes.*

“Lobbying” – IRRC commented that the term “lobbying firm” appears in the regulation, but not in the act’s definition. The definition of “lobbying” at section 13A03 subsection (3) of the act provides: “providing any gift, hospitality, transportation or lodging to a State official or employee for the purpose of advancing the interest of the lobbyist or principal.” This language exactly tracks the language in the repealed Lobbying Disclosure Act of 1998. The new lobbying disclosure act requires lobbying firms to

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register and report, so it seems logical to add lobbying firms to the definition. Therefore, the Committee declined to amend the definition of “lobbying.”

“Lobbyist” – The Philadelphia Bar Association commented that the regulations need to clarify that volunteers are not lobbyists. The definition of “lobbyist” is set forth by statute, and while the Committee may clarify the definition by regulation, it may not change or expand the definition in the act. However, the Committee added language to §§ 55.1(a) and 55.1(g)(1), to clarify that individuals or entities that are exempt under section 13A06 of the act do not have to register and report.

“Materially Correct” – The Committee added the definition of “materially correct,” defining the term as being free from material misstatements, as it is used in section 13A08(f)(3) of the act and in § 61.2(a) of the regulations, both of which relate to audits. The Committee added the definition because auditors use the phrase “being free from material misstatements,” and the Committee wanted to clarify that “materially correct” includes the phrase “being free from material misstatements.”

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“Office Expense” – PAGR commented that the definition needs to be clarified with the following language: “An expenditure for an office, equipment or supplies reasonably allocated for lobbying.” The definition in the regulations tracks the definition in the act at section 13A03. Therefore, the Committee declined to make the suggested amendment.

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“Personnel expense” – IRRC commented that “lawyers” was added to this definition, but does not appear in the act’s definition. The definition of “personnel expenses” in the regulations provides that: “[a]n expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, *lawyers*, publications and public relations staff, technical staff, clerical and administrative support staff...” (Emphasis added). The addition of “lawyers” to the definition of “personnel expenses” merely enumerates another category of individuals whose salaries, etc. should be reported as personnel expenses when lawyers engage in lobbying. Therefore, the Committee declined to amend the definition.

#### **§ 51.2. Filing deadlines to fall on Commonwealth business days.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

#### **§ 51.3. Registration periods and reporting periods.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

#### **§ 51.4. Delinquency.**

IRRC commented that the reliability of § 51.4(a)(1) is questionable and it is not clear why filers need to be able to file hard copies of their filings after 5 p.m., when filers can file electronically after five p.m. Also, because § 51.4(a)(1) states that the Department will have a designee on the date that registration statements or reports are due, a designee would have to be available everyday because a registration statement could be filed everyday. The Committee decided to continue to allow for hard copies of only quarterly expense reports to be filed after 5 p.m. as a convenience for registrants. Then, the Committee amended § 51.4(a)(1) to state that the only time a registrant has the option of filing a hard copy between 5 p.m. and midnight with the Department's designee are on the days that the quarterly expense reports are due.

IRRC found that § 51.4(a)(1) is not clear regarding filing with a designee. Because the regulation provides that filing is required with a designee "as noted on the Department's publications or on its website," it is unclear which to consult, and these can be changed without notice. IRRC commented that the regulation should provide a definite filing location to file documents with the designee. The Committee decided to clarify the regulations and amended § 51.4(a)(1) to state that the filing location and the Department's designee will be noted on the Department's website.

IRRC also commented that § 51.2 states that the filing dates will be extended until the next business day even if the deadline falls on a weekend or a holiday. However, § 51.4(c) provides that photographs and filing fees may be received "within five Commonwealth business days." IRRC recommended using calendar days throughout the regulation to improve clarity of deadlines. The Committee agreed with the suggestion and amended § 51.4 to clarify that all deadlines shall be calculated by using calendar days.

#### **§ 51.5. Deficiency.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

#### **§ 51.6. Biennial review of exemption threshold, reporting threshold and filing fees.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

#### **§ 51.7. Forms, records and Department publications.**

IRRC commented that § 51.7(b) is not clear when it states that "additional sheets of equal size on forms prescribed by the Department may be attached to any hard copy form filed under the act, if more space is needed." IRRC questioned whether the section meant that a person can attach any 8.5 inch by 11 inch paper, or must the attachment be on a form prescribed by the Department? The Committee agreed that the section may cause confusion, so the Committee amended § 51.7(b) to clarify that paper filers may attach additional forms prescribed by the Department if more space is required.

IRRC commented that a cross-reference to [the language of](#) section 13A08 which states that “the Department shall make all registrations and reports available on a publicly accessible internet website” needs to be added to § 51.7(c). The Committee agreed and added the suggested cross-reference [to the Department’s website](#).

**§ 51.8. Amended filings.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

**§ 51.9. Signing and designation of certain filings.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

**§ 51.10. Electronic filing.**

IRRC commented that in § 51.10(a), in the sentence, “the use of an electronic signature shall have the same force and effect as a manual signature *upon acceptance by the filer*,” (emphasis added) it is not clear what the phrase “upon acceptance by the filer” means. The Committee agreed that the phrase “upon acceptance by the filer” is unclear and removed the phrase from § 51.10(a).

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**§ 51.11. Enforcement of Commission orders.**

IRRC commented that this section, which states that “[t]he Commission through its staff may take appropriate action to enforce its orders,” is vague. The Committee agreed and withdrew what was § 51.11 in the proposed regulations because it did not clarify a specific action. The Committee then renumbered the following section.

**§ 51.11 (formally § 51.12). Parent corporations and subsidiaries.**

IRRC commented that this section should include a cross-reference to the eligibility standards of the Internal Revenue Service. The Committee agreed and amended § 51.11 to add a cross-reference in this section referring to the eligibility standards of the Internal Revenue Service at 26 U.S.C.A. § 1501. In accordance with 1 Pa.C.S.A. § 1937, if the citation in the Internal Revenue Code changes, the current citation will be referring to the cite dealing with Internal Revenue Service eligibility standards for filing on a consolidated bases.

**CHAPTER 53. REGISTRATION AND TERMINATION**

**§ 53.1. Biennial filing fee.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

**§ 53.2. Principal registration.**

IRRC, the PBA and the Philadelphia Bar Association commented that in § 53.2(a)(1), accepting mere payment of a retainer is not “lobbying” and statements stating that accepting a retainer is lobbying in these sections should be deleted. IRRC also commented that the phrase “for purposes including lobbying” should be rewritten to clearly require lobbying to be the action that requires registration. ~~To address these concerns, In considering these comments, the Committee noted that Section 13A04(a) of the Act, requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit Section 13A04(a) to require registration within ten days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments.~~ The Committee removed all language referring to retainers from the regulations and removed the phrase “for purposes including lobbying.” The Committee then amended § 53.2(a)(1) to use the statutory language ~~regarding of administrative action, legislative action and~~ lobbying. For example, the Committee amended § 53.2(a)(1) to state that “engaging an individual or entity for lobbying services or paying economic consideration to an individual or entity for lobbying services constitutes acting in the capacity of a principal.” The Committee opted to use the term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement.

IRRC commented that § 53.2(b) should contain a cross-reference to § 51.7(a) (relating to forms, records and Department publications) because the section requires that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

In § 53.2(c), Common Cause questioned the propriety of not requiring the filer to provide a street address. The language in the proposed regulations stated that “for each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer’s option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when service is required by law.” However, the registration form for principals, lobbying firms and the lobbyists requires the permanent business address for each address that is to be disclosed. On the registration statements, the permanent business address is a required field, and a registration cannot be completed unless a permanent business address is entered. Therefore, the Committee decided to amend § 53.2(c) to match the registration forms and require the permanent business address of each filer.

### § 53.3. Lobbying firm registration.

IRRC, the PBA and the Philadelphia Bar Association commented that in § 53.2(a)(1), accepting mere payment of a retainer is not “lobbying” and statements to the effect that accepting a retainer is lobbying in these sections should be deleted. IRRC also commented that the phrase “for purposes including lobbying” should be rewritten to clearly require lobbying to be the action that requires registration. ~~To address these concerns,~~ *In considering these comments, the Committee noted that Section 13A04(a) of the Act, requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit Section 13A04(a) to require registration within ten days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments.* ~~¶~~The Committee removed all language referring to retainers from the regulations. The Committee amended § 53.3(a)(1) to use the statutory language ~~regarding of administrative action, legislative action and~~ lobbying. For example, the Committee amended § 5.3.3(a)(1) to state that “accepting an engagement to provide lobbying services or accepting economic consideration to provide lobbying services constitutes acting in the capacity of a lobbying firm.” The Committee opted to use the term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement.

IRRC commented that § 53.3(b) should contain a cross-reference to § 51.7(a) (relating to forms, records and Department publications) because the section requires that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

In § 53.3(c), Common Cause questioned the propriety of not requiring the filer to provide a street address. The language in the proposed regulations stated that “for each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer’s option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when service is required by law.” However, the registration form for principals, lobbying firms and the lobbyists requires the permanent business address for each address that is to be disclosed. On the registration statements, the permanent business address is a required field, and a registration cannot be completed unless a permanent business address is entered. Therefore, the Committee decided to amend § 53.3(c) to match the registration forms and require the permanent business address of each filer.

### § 53.4. Lobbyist registration.

IRRC, the PBA and the Philadelphia Bar Association commented that in § 53.2(a)(1), accepting mere payment of a retainer is not “lobbying” and statements stating that

accepting a retainer is lobbying in these sections should be deleted. IRRC also commented that the phrase “for purposes including lobbying” should be rewritten to clearly require lobbying to be the action that requires registration. ~~To address these concerns,~~ *In considering these comments, the Committee noted that Section 13A04(a) of the Act, requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit Section 13A04(a) to require registration within ten days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments.* ~~¶~~The Committee removed all language referring to retainers from the regulations. The Committee amended § 53.4(a)(1) to use the statutory language ~~regarding of administrative action, legislative action and~~ lobbying. For example, the Committee amended § 53.4(a)(1) to state that “accepting an engagement to provide lobbying services or accepting economic consideration to provide lobbying services constitutes acting in the capacity of a lobbyist.” The Committee opted to use the term “economic consideration” because it is a defined term in the statute and it includes both compensation and reimbursement.

*The Philadelphia Bar Association suggested that a new subsection (5) be added to § 53.4(a), to clarify that “a lawyer rendering pro bono publico services in activities for improving law as provided in Rule 1.6 of the Pennsylvania Rules of Professional Conduct, when such activity is not undertaken for compensation, is not engaging in lobbying as defined in the act and is not required to register as a lobbyist.” The Committee considered the comment, but decided that by cross-referencing section 13A06 of the act (relating to exemption from registration and reporting) at § 53.4(a), it is unnecessary to specifically exempt lawyers who render pro bono publico services. Also, it is possible that a lawyer who renders pro bono publico services to still be compensated. For example, if a lawyer renders pro bono publico services and the lawyer’s law firm counts the time as billable hours, the lawyer has been compensated. Therefore, the Committee decided to generally reference the exemptions contained in section 13A06 of the act and declined to make the suggested amendment.*

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IRRC commented that § 53.4(b) should contain a cross-reference to § 51.7(a) (relating to forms, records and Department publications) because the section requires that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

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In § 53.4(c), Common Cause questioned the propriety of not requiring the filer to provide a street address. The language in the proposed regulations stated that “for each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer’s option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when service is required by law.” However, the registration form for principals, lobbying firms and the lobbyists requires the permanent business address for each address

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that is to be disclosed. On the registration statements, the permanent business address is a required field, and a registration cannot be completed unless a permanent business address is entered. Therefore, the Committee decided to amend § 53.4(c) to match the registration forms and require the permanent business address of each filer.

#### § 53.5. Amended registration statements.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

#### § 53.6. Termination.

IRRC commented that § 53.6(a) should contain a cross-reference to § 51.7(a) (relating to forms, records and Department publications) because the section requires that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

#### § 53.7. Public inspection and copying.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

### CHAPTER 55. REPORTING

#### § 55.1. Quarterly expense reports.

The PBA and the Philadelphia Bar Association commented that in § 55.1(a), the sentence “[t]he threshold of \$2,500 includes any retainers or other compensation paid by a principal to a lobbying firm, whether or not the lobbying firm or lobbyist then spends the retainer” should be deleted. The comments stated that the language on retainers exceeded the act. ~~To address these concerns, In considering these comments, the Committee noted that Section 13A04(a) of the Act, requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit Section 13A04(a) to require registration within ten days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments.~~ The Committee removed all language on retainers from the regulations. The Committee then amended § 55.1(a) to use the statutory language ~~regarding of administrative action, legislative action and~~ lobbying. For example, the Committee amended § 55.1(a) to state that the threshold of \$2,500 includes any economic consideration paid by a principal to a lobbying firm or lobbyist. The Committee opted to use the term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement.

In § 55.1(a), IRRC commented that due to the concerns from commentators about grassroots activities, § 55.1(a) should include a cross-reference to all of the exemptions in section 13A06 of the act. The Committee agreed with the suggestion and amended § 55.1(a) to include a cross-reference to the exemptions in section 13A06 of the act. This includes individuals who travel to Harrisburg to lobby and remain exempt under section 13A06 of the act. However, the principal must report the expenses of the individuals who are exempt from registration and reporting, as provided at § 55.1(i)(4)

In § 55.1(e)(1), Common Cause commented that the subsection should be changed to read “[i]f within 30 days of the due date, a principal amends its quarterly expense report to include the omitted lobbying expenses of its lobbyists or lobbying firm in compliance with § 51.8(c)...” The Committee considered the suggestion but decided that the language in the subsection is clear. Therefore, the Committee declined to make the suggested amendment.

PANO, PBA and the Philadelphia Bar Association commented that § 55.1(g)(1) should state that principals only have to list those lobbyists or lobbying firms that are *required to register* to prevent any interpretation that grassroots participants or volunteers who accept the benefit of indirect communication are lobbyists. The Committee agreed with the suggestion and amended the section to add the suggested language and add a cross reference to all of the exemptions in section 13A06 of the act. The added language clarifies that only those individuals or entities who are required to register and who are not exempt have to be listed by principals on the principal’s quarterly expense report.

Common Cause requested that in § 55.1(g)(2), when a principal checks off one of the boxes, the principal should be required to provide a general explanation of the position taken on the general issue to provide useful information to the public. The regulations at § 55.1(g)(2) track the act at section 13A05(b)(1), which states that the expense report shall include “the general subject matter or issue being lobbied.” Because IRRC has cautioned the Committee about adding requirements to the statute, the Committee declined to make the suggested amendment.

The PBA commented that in section § 55.1(g)(3), the phrase “including retainers or other compensation paid by principals to lobbying firms or lobbyists, whether or not the lobbying firm or lobbyist then spends the retainer” should be removed because it exceeds the act. To address this concern, In considering these comments, the Committee noted that Section 13A04(a) of the Act, requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit Section 13A04(a) to require registration within ten days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. ¶The Committee removed all language referring to retainers from the regulations. The Committee then amended § 55.1(g)(3) to use the

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statutory language ~~regarding of administrative action, legislative action and~~ lobbying. For example, the Committee amended § 55.1(g)(3) by adding another subsection (iii) to address how lobbying costs include the amount of economic consideration paid by principals to lobbying firms or lobbyists. The Committee opted to use the term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement. Although a registrant is only required to report the amount of economic consideration that is attributable to lobbying in the Commonwealth, the entire amount shall be reported unless the principal, lobbying firm or lobbyist maintains records that establish the portion attributable to lobbying, as well as the portion attributable to non-lobbying services.

IRRC commented that paragraphs in § 51.1(ii)(C), (E), (F) and (G) on gifts, hospitality, direct communication and indirect communication expanded the scope of the act’s definitions and therefore should be removed from the definitions section in the regulations. The Committee removed the sections from § 51.1(ii), and added them to § 55.1(g)(3)(ii)(A) through (D), to clarify what the terms include and do not include when allocating expenses.

In considering the comments on monitoring from IRRC, PAGR, PANO, PAR, the Philadelphia Bar Association and PSEA, the Committee amended § 55.1(g)(3) by adding subsection (iv), to add language on monitoring to clarify that monitoring alone is not lobbying. However, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying. The Committee reasoned that the second sentence of section 13A05(b)(2) requires that expense reports shall include monitoring in the total costs the costs of personnel expenses, among other things. The definition of "personnel expense" at section 13A03 includes "research and monitoring staff." Therefore, it is reasonable that principals and their lobbyists be required to disclose the time that they and their staff spent monitoring once it occurs with activity that constitutes lobbying.

Common Cause commented that if § 55.1(g)(6) means that a principal does not have to track, record, and report expenses for gifts, hospitality, transportation or lodging that are under \$10, this seems contrary to the language of the act, and there appears to be no authority for such exemption. The Committee believed that it was reasonable to exempt from disclosure small gifts, hospitality, transportation and lodging valued at \$10 or less provided to State officials or employees or their immediate families. However, where the amount is over \$10 to more than one State official or employee, it must be disclosed on the principal’s quarterly expense report. Without such a reasonable threshold, principals, lobbying firms and lobbyists would be required to report such small amounts that would be of little concern to the public viewing the reports. As a relevant point of reference, the gift rules for the United States House of Representatives and Senate have a similar \$10 exemption for gifts given to members, officers or employees of the U.S. House of Representatives and U.S. Senate. Therefore, the Committee declined to make the suggested amendment.

In § 55.1(g)(6), IRRC commented that the reporting limit of \$10 needs to be clarified. Within the section, the specified limits are “a value not exceeding \$10” and “\$10 or more” making the limits overlap at \$10. The Committee amended the section to clarify that gifts, hospitality, transportation and lodging that are \$10 or less are exempt from disclosure. However, where the amount is more than \$10 to more than one State official or employee, it must be disclosed on the principal’s quarterly expense report.

In § 55.1(h), PAGR commented that the wording of the section indicates that an agency engages in the bidding of contracts, which it does not; rather, agencies award bids to contractors. PAGR commented that the section should read as follows: “A registered principal that attempts or that retains a lobbying firm or lobbyist to attempt to influence an agency’s preparing and awarding bidding and entering into or approving a contract pursuant to 62 Pa.C.S. (relating to procurement) shall ensure that the expenses are included in calculating totals references by subsection (g)(3).” The Committee agreed and amended the section to clarify that agencies award bids and approve contracts pursuant to 62 Pa.C.S.

In § 55.1(i)(4), the Committee added a sentence stating that reportable expenses shall include transportation, food and lodging paid for any individuals in furtherance of lobbying. The Committee reasoned that the amendment clarifies that a principal must report all expenses for any individuals in furtherance of lobbying, even if those individuals are exempt from registration and reporting. For example, a principal busses 30 individuals, who are volunteering and are exempt from registration and reporting under section 13A06 of the act, to come and spend a day at the Capitol promoting the principal’s legislative agenda. The costs associated with the individuals lobbying activities, including the bus trip, would have to be reported on the principal’s next quarterly expense report.

Common Cause commented that in §§ 55.1(j)(3)(ii) and (4)(ii), the “source of the gift” and “source of the payment” need clarification as to what source means. § 55.1(j) requires that a quarterly expense report must identify State officials or employees who received anything of value over the thresholds. § 55.1(j)(3) refers to reporting the costs for gifts and subsection (ii) states that a registrant is required to list the “name and the source of the gift.” § 55.1(j)(4) refers to reporting the costs for transportation, lodging and hospitality and subsection (ii) states that a registrant is required to list the “name and address of the source of the payment.” The section is merely asking where the gift or payment came from. These sections seem to be clear. Therefore, the Committee declined to make the suggested amendment.

PAGR commented that § 55.1(k)(1) is silent as to whether a State official or employee can partially reimburse a registrant to drop below the \$650 threshold and guidance is needed. The Committee considered the comment but found that it is clear that an item that is returned, declined or fully reimbursed does not have to be reported. Therefore, the Committee declined to make the suggested amendment.

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Common Cause suggested that in § 55.1(k)(2), a registrant should have to report the face value of the ticket because the public official benefits in the same manner as the person who pays the full face value of the ticket. § 55.1(k)(2) in the proposed regulations stated that “the valuation of a complimentary ticket to a fundraiser must be based upon the reasonable amount of the goods or services received by the State official or employee. The valuation may not include a political contribution, which is otherwise reportable as required by law.” Section 13A06(14) of the Act provides that “[e]xpenditures and other transactions subject to reporting under Article XVI of the act of June 3, 1927..., known as the Pennsylvania Election Code” are not required by the act to be reported on quarterly expense reports. The campaign finance provisions of the Election Code are separate requirements from the reporting of lobbying activity subject to reporting by state or local candidates or political committees, including political action committees (PACs). The first sentence of this subsection refers to how a *complimentary* ticket to a fundraiser is to be reported under the lobbying law. The second sentence is referring to how a political contribution should be reported under the Election Code. ~~Because the two sentences are referring to two different reporting requirements, the Committee decided to amend § 55.1(k)(2) by removing the second sentence. To clarify, the second sentence has been amended to state that, “this provision shall not apply to expenditures and other transactions subject to reporting under section 1626 of the Election Code..”~~

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IRRC commented that in § 55.1(k)(2), there is the phrase “as required by law,” which should include a reference to the law. ~~As noted above, the Committee amended § 55.1(k)(2) by removing the sentence that included the phrase “as required by law.” referencing section 1626 of the Election Code.~~

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PAGR commented that §§ 55.1(k)(3)-(4) arbitrarily distinguished between those registrants who purchase tickets earlier in time from those registrants who purchase last-minute tickets to sporting events or concerts without a rational basis. Also, §§ 55.1(k)(3)-(5) did not provide a clear calculation for valuing the costs of luxury box tickets at a sporting event or concert. Therefore, PAGR requested that more guidance is needed in the regulations. §§ 55.1(k)(3)-(5) describe how to value gifts, transportation, lodging or hospitality in different circumstances. Subsection (3) describes how to value gifts, etc. when a registrant purchased the item in market place transactions; subsection (4) describes how to value gifts, etc. when the registrant did not actually purchase the item, but perhaps was given the item; and subsection (5) states that when neither (3) or (4) apply, use any reasonable method. The sections do not distinguish between when a ticket is purchased, as the comment suggests. Therefore, the Committee declined to make the suggested amendment. As for how to value luxury box tickets, the Committee decided against listing specific examples in the regulations. ~~However, in general, the Committee decided to consider providing additional give specific examples in the manual, which the Committee must prepare and publish to set forth guidelines on accounting and reporting in accordance with section 13A10(d)(5) of the act.~~

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IRRC commented that §§ 55.1(m), 55.1(m)(1), 55.1(n)(2) and 55.2(a)(1) require information “on a form prescribed by the Department,” and for clarity, all of the provisions should cross-reference § 51.7(a) (relating to forms, records and Department

publications. The Committee agreed and amended the sections to include a cross-reference to § 51.7(a).

IRRC commented that § 55.1(n)(6) required the lobbyist to “promptly” provide a copy to the principal and the regulation should specify a specific time period. The Committee agreed with the suggestion and amended the section to state that a lobbying firm or lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall provide it to the principal contemporaneous with filing it with the Department.

**§ 55.2. Records, maintenance, retention and availability.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

**§ 55.3. Public inspection and copying.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

**§ 55.4. Reliance on documents.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

**CHAPTER 57. EXEMPTION FROM REGISTRATION AND REPORTING**

**§ 57.1. General Rule.**

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

**§ 57.2. Qualifications for exemption.**

In § 57.2(a)(1), PAR commented that to balance the need for accountability and transparency with the need for nonprofit organizations to carry out their mission-critical activities involving education and advocacy, the following sentence should be deleted: “[t]o the extent an individual or entity, which is otherwise required to register and report under the act, engages in those activities, the individual or entity does not qualify for the exemption under this subsection.” PAR suggested that the sentence should be replaced with: “[s]ubmitting material in connection with the Regulatory Review Act and similar activities where materials are *already subject to public scrutiny*, such as comments submitted to an agency on an administrative action, shall be exempt from reporting and registration.” § 57.2(a)(1) discusses the exemption from registration and reporting at section 13A06(1) of the act, which states that if the “lobbying activities consist of

preparing testimony and testifying before the General Assembly or participating in an administrative proceeding,” the individual or entity is exempt.

The exemption is based on the type of lobbying activity in which the individual or entity participates. If the individual or entity is only testifying or participating in an administrative proceeding, then the individual or entity is exempt from registration and reporting, which would cover any costs for materials for those specific activities. However, if the individual or entity participates in other lobbying activities aside from testifying or participating in an administrative proceeding, the individual or entity must register and report the total costs for all lobbying activities, including costs for testifying or participating in an administrative proceeding. The sentence that the comment suggested should be added would make any *material* subject to public scrutiny exempt from reporting and registration. However, the act at section 13A03 defines “administrative action” to include “the review, revision, approval or disapproval of a regulation under the Regulatory Review Act.” If materials are submitted in an effort to influence “the review, revision, approval or disapproval of a regulation under the Regulatory Review Act,” and the individual or entity does not qualify for this exemption, then the total costs for the materials must be reported. Therefore, the Committee declined to make the suggested amendment.

Common Cause commented that in § 57.2(a)(1), the exemption for those who give testimony before legislative committees, must be limited to those situations in which the comments are presented to an agency at a properly sunshined public meeting. Otherwise the activity should be considered subject to registration and reporting standards unless exempt under another exemption. The language in the regulations closely tracks the exemption as stated in the act at section 13A06(1), which does not state that the meeting must be properly sunshined. Because IRRC has cautioned the Committee against adding requirements to the statute, the Committee declined to make the suggested amendment.

PAR commented that in § 57.2(a)(4), the sentence “[t]his economic consideration must be for lobbying in which an agent of the principal actually engages on behalf of the principal” should be added to this section. The section states that: “[t]he exemption in section 13A06(4) of the act is limited to an individual whose economic consideration for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.” The language appears to already state that the economic consideration is for lobbying as the comment suggests. Therefore, the Committee declined to make the suggested amendment.

PSEA commented that in §§ 57.2(a)(3) and (4), the “reimbursement of expenses” should be excluded from “economic consideration” in determining whether employees of the principal who are otherwise exempt under § 57.2(a)(3) and (4), need to register as lobbyists. The act at section 13A03 defines “economic consideration” as “anything of value offered or received. The term includes compensation and reimbursement of expenses.” Therefore, the Committee declined to make the suggested amendment.

O'Melveny & Myers, LLP commented that in § 57.2(b)(2), the clause "between the vendor's and the covered agency's contracting officer" is unclear as to whether it applies to the final action ("communications concerning the procurement process") or to any or all of the proceeding actions ("submission of questions, participation in a site visit, prebid or preproposal conference"). To clarify, the Committee amended the section by adding semicolons between the clauses so that it is clear that the clause "between the vendor's and the covered agency's contracting officer" applies to "communications concerning the procurement process."

O'Melveny & Myers, LLP commented that in § 57.2(b)(4), the section does not exempt a class of vendor activities that are necessary and incidental to performing an existing contract or business arrangement and therefore should be expanded to exempt ordinary and customary communications and activities undertaken pursuant to the servicing of existing contracts with covered state agencies. The Committee intended that activities necessary and incidental to performing an existing contract be exempt. Therefore, the Committee amended the § 57.2(b)(2), which was previously subsection(b)(4), section to clarify that the following activities and communications are exempt: those that are necessary or incidental to performing an existing contract or the demonstration of products or services authorized by an existing contract to covered agencies that may order from the contract.

## CHAPTER 59. OPINIONS AND ADVICES OF COUNSEL

The Committee did not receive any comments on this chapter and did not make any changes. Therefore, the Committee adopted this chapter as proposed.

## CHAPTER 61. COMPLIANCE AUDITS

The Committee did not receive any comments on this chapter. However, the Committee amended this chapter to clarify the scope of the compliance audit. Section 13A08(f)(2) of the act addresses the random selection of 3% of all completed registrants and expense reports filed with the Department for an audit. In § 61.1(a), the Committee amended the section to state that the Department will randomly select 3% of all principals, 3% of all lobbying firms and 3% of all lobbyists who have completed registration statements and reports filed with the Department. The Committee reasoned that the audit should include registrants who are principals, lobbying firms and lobbyists.

In § 61.2(b), the Committee amended the section to clarify that the audit will be limited in time to the previous calendar year. The Committee reasoned that because section 13A08(f)(2) of the act requires a drawing after the close of each fourth quarter reporting period, the audit subjects should only be audited for the previous calendar year.

However, where the audit falls in the second year of a registration period, the audit shall include the registration statement filed in the previous year. The Committee reasoned that a registration statement filed in the previous year of the registration period should be included in the audit because the act at section 13A08(f)(3) requires an audit of each registration statement and expense report.

In §§ 61.3(a) – (c), the Committee specified which general procedures for audits will be employed by the Department and which will be employed by the independent auditor. The Committee reasoned that the sections needed to distinguish which procedures will be employed by the Department and the independent auditor.

In § 61.3(c), the Committee removed subsection (1) and subsection (d), reasoning that because the audit will be conducted in accordance with generally accepted auditing standards, the regulations should not state what the audit may include. The first sentence of § 61.3(c)(2) was amended to become the new subsection (d), stating that the registrant who is the subject of the audit shall cooperate fully in the audit. The Committee added, to what is now subsection (d), that the audit shall be conducted in accordance with generally accepted auditing standards, reasoning that the amendment clarifies how the audit will be conducted. The Committee further amended § 61.3(2), by moving the second sentence of section (2) and making it subsection (e). Subsection (e) now states that if the independent auditor believes that the audit subject is not cooperating, the independent auditor shall inform the Department in writing. This statement was amended from the proposed regulations to state that the independent auditor shall inform the Department in writing if the audit subject “is not cooperating,” rather than if the audit subject “is delaying the submission of requested records.” The Committee reasoned that the amendment clarifies that the independent auditor should make the Department aware, in writing, if the audit subject is not cooperating in any manner. The Committee also reasoned that the reorganization and renumbering clarified § 61.3(2).

## **CHAPTER 63. COMMISSION REFERRALS, INVESTIGATIVE PROCEEDINGS AND NONINVESTIGATIVE PROCEEDINGS.**

### **§ 63.1. Commission referrals.**

In § 63.1(c), regarding conflicts of interest, Common Cause commented that the section appears to misinterpret the statute and the rules for professional conduct. Common Cause commented that the Attorney Disciplinary Board and the Ethics Commission have concurrent authority under § 1307(d)(8). The section referred to matters referred to the Disciplinary Board of the Supreme Court of Pennsylvania (Board) for its exclusive review under section 13A07(d)(8) of the Act. Section 13A07(d)(8) (relating to conflicts of interest) of the Act states that: “[c]omplaints regarding violations of this subsection involving a lobbyist or principal who is an attorney at law shall be referred to the board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct.” § 63.1(c) closely tracks the act and states that

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the Commission will refer any alleged violation of section 13A07(d) to the Board. Therefore, the Committee declined to make the suggested amendment.

Common Cause commented that § 63.1(g) is errant and the phrase “[e]xcept for a matter under section 1307-A(d)(8) of the act,” should be deleted to make it accurate. § 63.1(g) states that: “[e]xcept for a matter under section 13A07(d)(8) of the act, a referral by the Commission or the Office of Attorney General to the Board will not preclude the referring agency from also conducting its own enforcement proceeding under the act.” Section 13A07(d)(8) of the act states that: “Complaints regarding violations of this subsection involving a lobbyist or principal who is an attorney at law *shall* be referred to the board to be *investigated, considered and resolved* in a manner consistent with the Rules of Professional Conduct.” (Emphasis added). Due to the language in the act at section 1307(d)(8), § 63.1(g) is not errant. Therefore, the Committee declined to make the suggested amendment.

#### **§ 63.2. Commission proceedings regarding prohibited activities under section 13A07 of the act.**

In §§ 63.2(a) and (b) regarding conflicts of interest, Common Cause commented that the section appears to misinterpret the statute and the rules for professional conduct. Common Cause commented that the Attorney Disciplinary Board and the Ethics Commission have concurrent authority under § 1307(d)(8). The section refers to matters referred to the Disciplinary Board of the Supreme Court of Pennsylvania (Board) for its exclusive review under section 13A07(d)(8) of the Act. Section 13A07(d)(8) (relating to conflicts of interest) of the Act states that: “[c]omplaints regarding violations of this subsection involving a lobbyist or principal who is an attorney at law shall be referred to the board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct.” § 63.1(c) closely tracks the act and states that the Commission will refer any alleged violation of section 13A07(d) to the Board. Therefore, the Committee declined to make the suggested amendment.

### **CHAPTER 65. PROHIBITION AGAINST LOBBYING FOR ECONOMIC CONSIDERATION AS A SANCTION.**

The Committee did not receive any comments on this chapter and did not make any changes. Therefore, the Committee adopted this chapter as proposed.

### **CHAPTER 67. PROHIBITED ACTIVITIES**

#### **§ 67.1. Prohibited Activities**

Common Cause commented that the regulations do not currently contain a section dealing directly with Section 1307 of the act on “Prohibited Activities.” Common Cause found that including a delineation of the unlawful acts in the regulations would establish

a single source reference and make it easier for lobbyists to understand and comply with their obligations. Section 13A07 of the act delineates the unlawful acts under the act.

The regulations do not necessarily need to repeat this section of the act. *However, to the extent that it informs the regulated community where prohibited activities can be found in the act, the Committee added Chapter 67 to cross-reference 13A07 of the act. Therefore, the Committee declined to make the suggested amendment.*

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## CHAPTER 697. SEVERABILITY

### § 697.1. Severability.

At 1 Pa. C.S.A. § 1925 of the Statutory Construction Act, it states that the provisions of every statute are severable. The Committee added § 697.1 to clarify that the provisions of the regulations are also severable.

### Unlawful Acts

~~Common Cause commented that the regulations do not currently contain a section dealing directly with Section 1307 of the act on "Prohibited Activities." Common Cause found that including a delineation of the unlawful acts in the regulations would establish a single source reference and make it easier for lobbyists to understand and comply with their obligations. Section 13A07 of the act delineates the unlawful acts under the act. The regulations do not necessarily need to repeat this section of the act. Therefore, the Committee declined to make the suggested amendment.~~

### *Fiscal Impact and Paperwork Requirements*

#### *Fiscal Impact*

#### *Commonwealth:*

The final rulemaking will impose an additional fiscal impact upon the Commonwealth and specifically upon the Office of Attorney General (OAG), the Department of State (Department), the Ethics Commission (Commission) and the Pennsylvania Supreme Court Disciplinary Board (Board). The OAG costs are derived from personnel, operating and program expenses (which include travel, office furnishings and real estate rental) needed for chairing the Committee and for investigating and prosecuting violations of the act. The Department costs are derived from administrative costs (which include the collection and processing of fees, registrations and reports), personnel and office expenses needed for staffing the Committee and fulfilling its obligations under the proposed rulemaking and the act. The Commission costs are derived from nonrecurring expenses which include new computer workstations and office furniture and recurring expenses such as staffing and travel expenses needed for being a member of the Committee and for conducting investigations and holding hearings related to alleged violations of the act, as well as

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performing other duties under the act. The Board's expenses are derived from potential cases and the funding will come from attorney registration fees.

*Local Government*

Local government will not have any expenses associated with these regulations. However, if a local government is required to register as a principal, the local government would have the cost of the registration fee, which is \$100, and would then be considered to be part of the regulated community. Thus, it will have administrative costs to comply with the act, as described in the next section.

*Private Sector*

The regulated community will have expenses in the form of a registration fee of \$100. There will also be costs for the regulated community for administrative staff to prepare the reports. However, the costs are too speculative to be quantified at this time. Costs for compliance with the act may include costs for: determining whether or not a person or entity is required to register; administrative staff; and time spent allocating costs for indirect communication, direct communication, hospitality, transportation and gifts. These costs will vary greatly between lobbyists, lobbying firms and principals.

*Paperwork Requirements*

*Commonwealth:*

The final rulemaking will change the previous registering and reporting requirements. Because the previous Lobbying Disclosure Act was ruled unconstitutional in 2002 by the Pennsylvania Supreme Court, there were not any requirements for registering and reporting until the act went into effect on January 1, 2007. The final rulemaking, in accordance with the act, now requires that all registrations and reports for principals, lobbying firms and lobbyists be filed with the Department.

*Local Government:*

Local government will not have any paperwork requirements associated with this final rulemaking. However, if a local government is required to register as a principal and file expense reports, the local government would have paperwork requirements but would then be considered to be part of the regulated community.

*Regulated Community:*

The final rulemaking, in accordance with the act, requires that all principals, lobbying firms and lobbyists register with and report to the Department.

*Regulatory Review Act Requirements*

**DRAFT** Lobbying Disclosure Regulations Final Preamble  
I.D. # 16-40  
September 4, 2008

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 9, 2008, the Lobbying Disclosure Regulations Committee (Committee) submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate State Government Committee and the House Judiciary Committee.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Committee also provided IRRC, the Senate State Government Committee and the House Judiciary Committee with copies of comments received as well as other documents when requested. In preparing the final-form rulemaking, the Committee considered all comments from IRRC, the Senate State Government Committee, the House Judiciary Committee and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on \_\_\_\_\_, the final-form rulemaking was approved by the Senate State Government Committee. On \_\_\_\_\_, the final-form rulemaking was approved by the House Judiciary Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, and approved the final-form rulemaking.

*Contact Person*

Additional information may be obtained by contacting Louis Lawrence Boyle, Deputy Chief Counsel, Pennsylvania Department of State, 301 North Office Building, Harrisburg, PA 17120-0029 or e-mail at [llboyle@state.pa.us](mailto:llboyle@state.pa.us).

*Findings*

The Lobbying Disclosure Committee finds that:

- (1) Public notice of the 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 under those sections at 1 Pa.Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.
- (3) That these amendments to the lobbying disclosure regulations are necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.

*Order*

The Committee therefore ORDERS:

**DRAFT** Lobbying Disclosure Regulations Final Preamble

I.D. # 16-40

September 4, 2008

- (A) That the regulations of the Committee, 51 Pa.Code Chapters 51-67, are amended to read as set forth in Annex A.
- (B) The Committee shall submit this order and Annex A to the Office of Attorney General for approval as required by law.
- (C) The Committee shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (D) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

ROBERT A. MULLE,  
*Chairperson*