

2. Purpose and Principles

Occasionally mentioned during the hearings is the statute, i.e., Section 57.7 (c) (4)(C), that (paraphrasing) calls upon the Board to promulgate a procedure that will assure that LUST related reimbursements are reasonable. Although the statute makes reference to companion statutes that have since been repealed, the legislative intent seems clear. In this regard, the pursuit of reasonableness is consistent with much of the Agency's presentation in the subject rulemaking. Can it then be said that the purpose of this rulemaking, simply stated, is to promulgate a procedure that will ensure that LUST Fund reimbursements are reasonable. Secondly, the Agency, through the now abandoned "rate sheet", has in the past accepted the burden of judging the reasonableness of reimbursement requests. Can it then be stated as principle that the burden of proof in this regard belongs with the regulators? If so, the problem will have been properly framed. That said, the issue then reduces to one of process.

3.) The Record

Scattered amongst the testimony, commentary, and submissions found in the record of the instant proceedings are assorted opinions and observations that call into question the viability of the proposed regulations. While sound inquiry was made into the proposed regulations, the loose ends that continue to dangle do not foster a great deal of confidence in the regulations. They include but are not limited to:

- A fairly universal belief that two sets of nearly identical regulations are not needed when one would do.
- The finding that a data-base does not exist to describe, in any level of detail, the past use of LUST Fund expenditures (approximately \$500,000,000 to date). As such, there is no way to gauge the economic impact of the proposed regulations, or those related regulations that currently exist. This is an uncomfortable vacuum.
- Reimbursement requests currently require an inordinate length of time for processing, up to four months (120 days), the statutory maximum. This is then followed by more delay at the Office of the Comptroller. There is no evidence to indicate that the proposed regulations will cause improvement in the length of time required for reimbursement. Because time is money in commerce, there can be little doubt that reimbursement delays actually add to the cost of the program.
- The existing regulatory system for processing reimbursement packages, upon which the subject regulations are patterned, has spawned an unprecedented number of Board appeals.
- Current methods for processing reimbursements, and the regulations that are proposed, contain elements of subjectivity that open the door for actual or perceived bias. The record suggests that some individuals believe that they have received biased treatment.

- The proposal to fix costs for various tasks and materials in lieu of the free market has not been shown to have a cost-saving benefit. Some evidence indicates that abandonment of free-market practices will actually cause significant increases in LUST Fund expenditures.
- The current system for processing reimbursements is seemingly very expensive relative to costs in similar states.
- The statutory requirement that budget proposals are to be approved subject to audits is being ignored. In contradiction to the statute and legislative intent, all budget packages are being fully reviewed.
- The scope of work for which consultants would be compensated has not been presented.
- Questionable methods have been used to establish proposed cost caps. These include but are not limited to the use of quasi-random data acquisition, reliance on inadequate sample sizes, use of biased data, and failure to correct for distribution type.

Foregoing all came forth during the instant proceedings. Whether any or all are entirely true is not this author's point. These issues are on the table. The Board cannot be comfortable with the prospect of adopting the proposed regulations until these issues have been satisfactorily addressed.

4.) Criteria

Desirable elements of a process to determine reasonableness, and which offer a measure of the soundness of the process, might arguably include the following qualities:

- It should be non-controversial**
- It should be uncomplicated**
- It should be unbiased and objective**
- It should be timely and efficient**
- It should be cost effective**

The proposed regulations represent a process. But, that process is, in essence, the Agency's existing LUST reimbursement process, albeit with a codified rate sheet. As such, the proposed regulations might well be judged on how well the existing process matches against these desirable qualities. One would be hard pressed to surmise that the system fulfills any of these desired qualities. The system, as is, and as it would likely continue to function under the proposed regulations, is labor intensive with line item reviews, expensive, controversial, and requires high maintenance to continually fix costs in accordance with technology trends, inflation, and other circumstances.

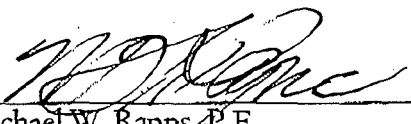
5.) Opinion

The proposed regulations are conceptually flawed, particularly in their abandonment of the free market in favor of setting cost caps. I believe that the Board should ask the Agency to withdraw the subject proposals in favor of a new approach. In this regard, the employment of a management consultant with a data processing background could be very beneficial.

The processing of reimbursement requests is essentially the review of numbers, something that is inherently objective. There should be no more need for a person to review each and every reimbursement submission than there is for the Internal Revenue Service to audit each and every tax return. The task of processing of cost reimbursements (i.e., numbers) clearly lends itself to the use of computers. The immediate benefits to computerizing the system include added efficiencies in time and expense, total objectivity, and the creation of an ongoing database that can track costs and reject "statistical outliers". Better yet, the record in this proceeding suggests that automating the system could save the LUST Fund several millions dollars each year.

I have the utmost respect for all of the parties that have participated in this rulemaking but, for all the reasons given herein, I believe that the State of Illinois would be best served if this matter were to begin anew with a fresh focus.

Respectfully submitted,



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