



**TESTIMONY OF THE PENNSYLVANIA BAR ASSOCIATION
REGARDING SENATE BILL 413, PRINTER'S NUMBER 0363**

Good morning, Chairman Folmer, Chairman Williams, and committee members. I am Sara Austin, President of the Pennsylvania Bar Association. The PBA represents numerous attorneys who practice in the area of Workers' Compensation law and in front of the Environmental Hearing Board, all of whom will be impacted by this proposed legislation. On behalf of the PBA, we oppose Senate Bill 413, unless amended to exclude Workers' Compensation Law and the Environmental Hearing Board.

Workers' Compensation has always been viewed as a highly specialized area of administrative law. Workers' Compensation Law has well-established procedures for hearings, decision requirements and evidentiary issues. Under Senate Bill 413, notice regarding the filing of a petition would change the existing procedures under the Workers' Compensation Act. Regulations would also change significantly with differing time limits and procedures.

In the 1996 amendments to the Workers' Compensation Act there were extensive provisions for the professionalization of Workers' Compensation Judges. The judges are now all required to be attorneys with a minimum of five years of experience in the field of Workers' Compensation law, and must pass a proficiency exam in Workers' Compensation law. In addition, with regard to attorneys, the Pennsylvania Supreme Court has recognized a certification for attorneys as specialist in Workers' Compensation Law. The specialized knowledge required in this field of law is evidenced in the variety of unique legal analyses that the Workers' Compensation Judges must perform on a routine basis.

The Workers' Compensation Judge must be intimately familiar with present, as well as past, versions of the Workers' Compensation statutes, in addition to the controlling case law, in order to properly parse many issues. For example, average weekly wage disputes for injuries after June 24, 1996 require the Workers' Compensation Judge's familiarity with the seven statutory calculation methodologies provided in Section 309, while injuries occurring prior to June 23, 1996 require knowledge of the ten calculation methodologies previously available. Other average weekly wage disputes require specific understanding of what types of earnings are included or excluded in the calculation; the impact of concurrent employment; the proper allocation of bonuses and vacation pay; and the earnings of volunteers in firefighting or other related volunteer occupation, just to name a few.

Questions regarding time limitations under the Act also require the Workers Compensation Judges' deep understanding of the interplay between multiple sections of the Workers' Compensation Act as well as the controlling case law. There are four classifications of time limitations under the Workers' Compensation Act which must be recognized and applied including: statutes of repose; mandatory express limitations; jurisdictional limitations; and death and disease manifestation time restrictions. These limitations, found in different sections of the Act, outline the varying time periods in which certain types of claims are even legally cognizable. An example of a thorny issue requiring the Workers' Compensation Judge to possess extensive knowledge of the Act and case law would be reconciliation of the three year statute of limitations on the filing the claim petition and the 300 week disease manifestation provision of the Act.

Subrogation is another area where general knowledge will not suffice and Workers Compensation Judges need detailed familiarity with the Bureau's methods, the Act, the regulations, and case law when addressing issues of distributing the recovery and the allocation of attorney fees.

The examples above demonstrate the high level of specialization required of Workers' Compensation Judges which sets them apart and confirms the need for them to be excluded from Senate Bill 413.

Similarly, the Pennsylvania Environmental Hearing Board has a long history as an independent quasi-judicial agency. When the Department of Environmental Resources (now known as the Department of Environmental Protection) was established in 1970, it was set up uniquely in that the Department was given its own regulatory arm (Environmental Quality Board) and its own quasi-judicial arm. The quasi-judicial arm, the Environmental Hearing Board, was given the sole power to hear and decide appeals from Department actions. Although initially the Environmental Hearing Board was given semi-independent status, in 1988 the General Assembly made the EHB completely independent of the Department of Environmental Protection. The EHB is no different from the courts in that the parties conduct discovery, file motions and present testimony and the Board issues formal opinions which are published and used as precedent in subsequent cases. Publication of opinions would either not occur, or would be diluted, if the EHB's power was transferred as contemplated by Senate Bill 413. The federal Environmental Protection Agency recognizes the EHB as providing judicial review of agency actions to protect the rights of citizens and members of the regulated community. The Environmental Hearing Board's unique expertise in environmental law is recognized by Pennsylvania appellate courts. Senate Bill 413 would transfer resources of agencies that fall under the scope of 2 Pa.C.S. Chapter 5 Subchapter A to the newly created Office of Administrative Appeals. Effectively, the Pennsylvania Environmental Hearing Board, which is an independent quasi-judicial agency with the power and duty to hold hearings and issue adjudications under 2 Pa.C.S. Ch. 5 Subch. A., would be eliminated.

Senate Bill 413 does contain language, on page 31, lines 23-29, that could be interpreted in such a manner that the Environmental Hearing Board would not be impacted by the bill. The PBA supports express language that clearly exempts the Environmental Hearing Board from the bill. We do not believe this same language could be interpreted to exclude Workers' Compensation.

I would note that the Pennsylvania Bar Association's Administrative Law Section is still reviewing Senate Bill 413. However, in 1998, relative to what was then pending as House Bill 1939, the Pennsylvania Bar Association opposed that bill unless it was amended to exclude Workers' Compensation Law. Now, for the reasons stated, the Pennsylvania Bar Association opposes Senate Bill 413, and any similar legislation, unless amended to exclude Workers' Compensation Law and the Environmental Hearing Board.

I thank you for this opportunity to testify before you today. I would be happy to answer any questions you may have.