

June 3, 2016

The Honorable Mike Folmer  
Senate of Pennsylvania  
Room 337 Main Capitol  
Senate Box 203048  
Harrisburg, PA 17120-3048

Dear Senator Folmer:

I appreciate the opportunity to respond to your office's request to help assess the potential impact of Senate Bill 413 upon jobs covered by the Commonwealth's merit system. We estimate the proposed legislation would eliminate more than 300 positions currently within the civil service system. At present, 296 of these positions are filled. Unless alternative employment is found for these incumbents, these employees will be furloughed due to "lack of work."

The positions filled at the present time, by agency, are:

- Administrative Law Judge, Pennsylvania Liquor Control Board – 5 positions
- Parole Hearing Officer, Pennsylvania Board of Probation and Parole – 22 positions
- Hearing Examiner, Department of Corrections – 13 positions
- Workers' Compensation Judge, Labor and Industry – 83 positions
- Workers' Compensation Judge Manager, Labor and Industry – 4 positions
- Unemployment Compensation Hearing Officer, Labor and Industry – 1 position
- Appeals Referee, Labor and Industry – 74 positions
- Appeals Referee Program Manager, Labor and Industry – 4 positions
- Disability Adjudication Hearings Officer, Labor and Industry – 12 positions
- Medical Fee Review Hearing Officer, Labor and Industry – 1 position
- Welfare Hearings and Appeals Manager, Department of Human Services – 4 positions
- Welfare Hearings Officer, Department of Human Services – 54 positions
- Attorney Examiner, Department of Human Services – 11 positions
- Administrative Law Judge, Public Utility Commission – 21 positions

These positions are currently filled under the provisions of the Civil Service Act. Candidates must meet the qualifications for the position, and then are rated by their performance on a civil service examination designed to determine the relative knowledge and skills of the candidates. This is a neutral, objective testing and rating process conducted by the State Civil Service Commission—an independent agency.

Senate Bill 413 would replace this system and provide for the appointment of attorneys to these positions by a single political appointee—the Chief Administrative Law Judge. Other than the minimum qualifications listed in the legislation (be an attorney at law for at least five years, be in good standing with the Pennsylvania Supreme Court, and “have substantial experience” in administrative law), Senate Bill 413 provides no guidance or restrictions on the process for selecting administrative law judges.

Additionally, the Civil Service Act expressly prohibits political activity by civil service employees, including those functioning as administrative law judges. By removing those individuals from the classified service, Senate Bill 413 eliminates those political activity prohibitions.

Senate Bill 413 also removes the safeguards against political considerations influencing the selection and appointment process, safeguards that are currently provided by having those positions under civil service coverage.

The Commission believes that retaining civil service coverage for administrative law judges would ensure a neutral, objective selection process based upon the merit of the candidates, and would protect the independence and impartiality of administrative law judges.

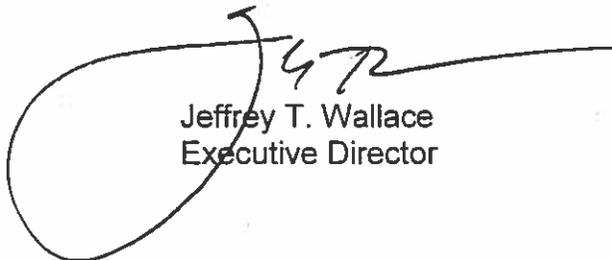
We note that prior versions of proposed bills to create a central Office of Administrative Hearings for administrative law judges in Pennsylvania provided those positions would be in the classified service. Those included Senate Bill 56 of 2013 and Senate Bill 1605 of 2012. The Commission believes that administrative law judges should not be removed from the classified service as currently proposed in Senate Bill 413.

In addition, there is some concern that the legislation as presented might affect the ability of our Civil Service Commissioners, as well as the SCSC’s other hearing officers, to preside over appeal hearings and issue adjudications. The same concern is noted for other Commonwealth Boards and Commissions who currently conduct their own hearings. It would be preferable if the legislation expressly stated that Commonwealth Boards and Commissions whose members currently preside over their own administrative hearings will be able to continue that practice.

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Thank you for the opportunity to assess and comment upon this proposed legislation. We look forward to your hearings and further discussion on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'JTW', with a large, sweeping loop on the left side and a horizontal line extending to the right.

Jeffrey T. Wallace  
Executive Director

cc: Frederick C. Smith, Jr., Esq.  
Jack T. McGettigan