TO: The Honorable Members of the Pennsylvania Senate
FROM: Associated Builders and Contractors
Association of Independent Colleges and Universities of Pennsylvania
Insurance Agents & Brokers of Pennsylvania
National Association of Social Workers-PA
National Federation of Independent Business-PA
Pennsylvania Advocacy and Resources for Autism and Intellectual Disability
Pennsylvania Association of Community Health Centers
Pennsylvania Bankers Association
Pennsylvania Builders Association
Pennsylvania Chamber of Business and Industry
Pennsylvania Council of General Contractors
Pennsylvania Credit Union Association
Pennsylvania Food Merchants Association
Pennsylvania Health Care Association
Pennsylvania Homecare Association
Pennsylvania Institute of Certified Public Accountants
Pennsylvania Manufacturers' Association
Pennsylvania Restaurant & Lodging Association
Pennsylvania Retailers Association
Pennsylvania School Boards Association
Pennsylvania State Association of Township Supervisors
Rehabilitation & Community Providers Association

DATE: March 8, 2017
RE: Support legislation to bring consistency with federal overtime rules

On behalf of our organizations representing a wide range of Pennsylvanians, we urge you to cosponsor legislation Sen. Baker plans to reintroduce to bring consistency between state and federal overtime law. While there was rightfully much focus on a federal proposal to significantly alter overtime law, Sen. Baker’s legislation provides important clarity for employers and employees and ought to be considered regardless of developments at the federal level.

Last year the Senate Appropriations and Labor & Industry Committees conducted a joint hearing focusing on overtime requirements and a proposal from USDOL to increase by over 100 percent the wage level at which the so-called “white collar exemption” is triggered. Among those testifying were employers and representatives from the nonprofit community, health services and higher education who discussed difficulties in complying with overtime rules; which for employees typically means being paid hourly rather than a salary and therefore often more burdensome record-keeping and less flexibility, a rigid work schedule, fewer training opportunities and benefits and less pay if hours worked in a week dip below forty.

Also discussed at the hearing were federal guidelines that help employers and employees in certain circumstances mitigate some of these unintended negative impacts. Unfortunately, Pennsylvania law is silent on many of these areas, which has inadvertently forced employers to forgo utilizing these accommodations because a workplace policy may be found to have violated state law even though it is compliant under federal statute. By way of example, federal law:
- Provides clear guidance regarding the calculation of overtime for employees paid under various compensation arrangements (e.g., fixed salary for variable hours worked, commissions, at more than one rate);

- Utilizes a more sensible definition of "hours worked" based on the 1947 Portal-to-Portal Act, which clarified that certain "preliminary" and "postliminary" activities did not constitute compensable hours worked;

- Applies standards for qualifying as an exempt employee that differ from the standards under state law, including providing exemptions for certain computer professionals and “highly-compensated employees” that are not available under state law.

These differences between state and federal law did not arise because of a deliberate decision by Pennsylvania policymakers to deviate from federal law, but rather because Pennsylvania law was silent and/or did not evolve to keep pace with updates in federal law and guidance. This bill would eliminate such latent discrepancies between state and federal law while preserving the ability of the Pennsylvania legislature to decide when a difference is warranted.

The outcome of last year’s USDOL proposal remains uncertain as it makes its way through the courts. In the meantime, Senator Baker’s bill will help those nonprofits, human service agencies, educational institutions, other employers in your district and their employees comply with overtime laws. We urge you to cosponsor this legislation.