TO: The Honorable Members of the Senate Labor and Industry Committee

FROM: Associated Builders and Contractors
Association of Independent Colleges and Universities 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 Builders Association
Pennsylvania Chamber of Business and Industry
Pennsylvania Council of General Contractors
Pennsylvania Credit Union Association
Pennsylvania Food Merchants 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: September 26, 2016

RE: Support S.B. 1360 -- compliance with federal overtime rules

On behalf of our organizations representing a wide range of constituencies, we write to urge your support for S.B. 1360 related to Pennsylvania employers’ compliance with federal overtime rules.

The U.S. Department of Labor determines eligibility for overtime pay and has traditionally enforced a so-called “white collar exemption” based on salary and job duties. While the rules related to this exemption have been updated periodically, the USDOL announced this past May that the wage level at which the exemption is triggered would be increased by over 100 percent, effective Dec. 1, 2016.

The impact of this increase was elucidated at a joint Senate Appropriations and Labor & Industry Committee hearing on June 21st, at which employers and representatives from the nonprofit community, health services and higher education described how this rule will make it more difficult to manage operations and provide critical services. Despite these impacts, enactment of the rule appears inevitable and many employers are developing plans to comply and potentially absorb higher costs. For those who cannot simply increase wages to maintain exempt status, compliance could likely entail converting employees from salary to hourly, which often means not only payment of overtime, but more burdensome record-keeping and less flexibility, forcing employees to follow a rigid work schedule, fewer training opportunities, benefits, etc.
Also discussed at the hearing were federal guidelines that help employers in certain circumstances mitigate the impact of overtime requirements. Unfortunately, Pennsylvania law lacks guidance on many of these areas, which has forced employers to forgo utilizing these federal 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 new federal rules will be effective soon and while there is nothing state lawmakers can do with respect to the federal rule itself, Senator Baker’s bill will help in a meaningful way those nonprofits, human service agencies, educational institutions and others in your district who will be impacted. We urge you to support this legislation.