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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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Mr. Andrew H. Cline, Deputy Chief Counsel
Office of Chief Counsel
9th Floor, Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dear Mr. Cline:

As Chairman of the House Transportation Committee, I am writing today regarding the Department of Transportation's Proposed Regulation (#18-401—67 Pa. Code Chapter 491—Administrative Practice and Procedure) submitted on April 5, 2005. I have reviewed this proposed regulation and would like to submit my comments to the Independent Regulatory Commission for its consideration.

Although I do not formally object to this regulation, as I understand the intent is to codify what the department's practices have been over the past 20 years. I am deeply concerned, however, about the department NOT following the regulations as contained in Chapter 491 of the code. As you well know, Title 1 of the Pa. Code outlines the administrative practice and procedures departments must follow *if* it does not have a separate set of regulations within its own code. The Department of Transportation does have its own set of regulations in Chapter 491 of Title 67. Therefore, they must follow all the regulations pertaining to administration hearing as outlined in Chapter 491.

It has come to my attention that the department has not been consistently following the procedure as outlined in Title 67. I am deeply concerned that the department has been conducting administrative hearings—in conflict—with its own regulations for a long period of time and now has finally proposed regulations to address this practice. The very fact that these regulations are being proposed at this time is something that should have been done 20 years ago.

I would seriously suggest that the department withdraw these regulations and work with my office in advancing two pieces of legislation enacted by the House Transportation Committee during the past few months. House Bills 654 and 1285 (both sponsored by Rep. Keith McCall) have my fullest support and I am working diligently for their enactment. These bills directly deal with the way the department conducts and deals with administrative hearings.

More specifically, House Bill 1285 would establish Administrative Law Judges within the department of transportation. Under this system—which is duplicated by other Commonwealth agencies— ex parte communications would be strictly prohibited. The proposed regulation put forth by the department would remove the strict prohibition of ex parte communications and replace it with language stating that it “shall be avoided.” I would strongly urge the department to reconsider this approach. Because the department does not currently have Administrative Law Judges and uses department employees, strict prohibition of ex parte communications is essential and vital to preserving the integrity of the department’s hearing process. I would hope that the department sees fit to withdraw or revise these regulations in an effort to examine this issue as well as their entire administrative process.

I will continue to monitor these regulations as they move through the process. Should these regulations continue to move forward without a meaningful discussion by the department with me and my staff, I will reserve the right to take this regulation at a later time before the full House Transportation Committee requesting their consideration to reject these regulations.

I look forward to working with the department on this issue and if you have any questions, please do not hesitate to contact my office.

Respectfully submitted,



Rep. Richard A. Geist
Chairman, House Transportation Committee
Commonwealth of Pennsylvania

RAG/jw

cc: Mr. Stephen F. J. Martin, Regulatory Counsel
Kim Kaufman, IRRRC Executive Director
The Honorable John M. Perzel, Speaker of the House of Representatives
The Honorable Samuel H. Smith, Majority Leader
The Honorable Keith McCall, Minority Chairman, House Transportation Committee
The Honorable Allen Biehler, Secretary, Department of Transportation