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**To:** Chairman Bates; Commissioners Krey, Cummings, Schroeder and Urlacher  
**From:** Daniel Stralka  
**Date:** September 16, 2015  
**Subject:** Follow-Up Report on Section 4d(1) Exempt Positions

The initial Staff Report on Section 4d(1) exempt positions was presented to the Commission at the June 19, 2015 meeting. The report was accepted and Staff was directed to conduct additional inquiry with five agencies that Staff had concerns regarding their use of these exempt positions. This is the follow-up report with regard to that additional inquiry.

Environmental Protection Agency (EPA) – Staff’s concern was with the establishment of a Confidential Assistant position in Winnebago County. The agency noted that its previous Director worked out of an agency office in Winnebago County which was the reason for his Confidential Assistant being located there. With his departure, the incumbent was terminated in January, 2015 and the Confidential Assistant position subsequently abolished.

Department of Natural Resources (DNR) – Staff’s concern was similar to EPA in that the agency had a Confidential Assistant position established in DuPage County. The agency simply noted that the incumbent serves the Director in that geographic area, working out of the agency’s Bartlett office. As previously indicated, there is no county limitation on a Confidential Assistant so there is no Personnel Code violation.

Illinois Liquor Control Commission (ILCC) – Staff’s concern was that both Private Secretary positions as well as the Confidential Assistant position were all located in Cook County. The Personnel Code provides that while the agency is entitled to two Private Secretary positions, they are limited geographically: one in Sangamon County and one in Cook County. In addition, the agency presently has an approved Additional Identical for one of the Private Secretary positions which makes a total of four Section 4d(1) exempt positions in the agency, one over the statutory limit.

The agency conceded its use of Section 4d(1) exemptions was not in compliance with the Personnel Code. It was determined that the genesis of this situation occurred ten years ago when the ILCC was placed under the Department of Revenue. After discussion, it was agreed that the

agency and Central Management Services (CMS) would take two steps to resolve this issue going forward:

1. The agency is in the midst of relocating a program to the Illinois Department of Public Health. It is anticipated that one of the Additional Identical Private Secretaries will relocate to the Illinois Department of Public Health with the program. That would resolve the issue of having four exempt positions. The agency anticipates this will take place in the next six months.
2. The existing Section 4d(1) exempt positions will all be “frozen” so that the agency will be prohibited from hiring into them if one becomes vacant. When such a vacancy occurs, the ILCC will then relocate one of the Private Secretary positions to Sangamon County or abolish one altogether. That will resolve the issue of having two Private Secretary positions in Cook County.

Upon completion of these two actions, the agency will be in compliance with the Personnel Code. By proceeding in this manner, none of the incumbents will be forced out of their current positions. CMS has taken the necessary steps to ensure the positions are frozen. Staff will continue to monitor this particular situation.

Department of Financial and Professional Regulation (DFPR) – This is a significantly more complex situation as set forth in more detail in the June report. In sum, the present day DFPR is made up of the following divisions which at one time or another were independently entitled to a full slate of Section 4d(1) exempt positions in the past:

Banking  
Financial Institutions  
Professional Regulation  
Real Estate

The agency provided sufficient evidence in the form of statutory authority and executive orders to establish that the Directors of these divisions – as well as the Secretary of DFPR – all have their appointments subject to the advice and consent of the Senate. When DFPR was originally constituted back in 2004, it was agreed by Commission Staff and CMS that this was a compelling indicator to entitle a Director position to a full slate of Section 4d(1) exempt positions. Therefore, Staff conceded the entitlement of the Secretary of DFPR as well as each of the subordinate Directors whose appointments are subject to the advice and consent of the Senate to a full slate of Section 4d(1) exempt positions.

One of the ramifications is that this consolidated agency, albeit unique in its structure and history, is entitled to a total of 15 Section 4d(1) exempt positions. That can be contrasted with the Department of Corrections which is 25 times the size of DFPR yet only entitled to a slate of three Section 4d(1) exempt positions. While that may appear unbalanced, there is sufficient historical and legislative support to justify this disparity. In addition, it must be noted that DFPR is responsible for a wide range of regulatory activities, each with its own statutory guidelines.

Pollution Control Board (PCB) – This became an issue solely because CMS was coding all 11 PCB exempt Confidential Assistant and Private Secretary positions as Section 4d(1) exempt. In response to Staff inquiry, the PCB confirmed that all exempt Confidential Assistant and Private Secretary positions that it has are exempt not because of Section 4d(1) of the Personnel Code, but due to Section 5 of the Environmental Protection Act. The distinction between these two sections is that the Environmental Protection Act allows PCB members to have an exempt Confidential Assistant and Private Secretary while the Personnel Code limits this to the Chairman only. While the practical effect of this coding is minimal, it is important that these positions be classified correctly to ensure that State entities are not creating exempt Confidential Assistant and Private Secretary positions where not authorized by the Personnel Code.

Staff will continue to monitor the use of these exempt positions and report back to the Commission from time to time.