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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG, PENNSYLVANIA 17120



OFFICE OF
SECRETARY OF TRANSPORTATION

May 12, 2017

Pennsylvania Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Re: Pennsylvania State Civil Service Commission
Proposed Regulation #61-6
Implementation of Act 69 of 2016 and Act 167 of 2016
IRRC Identification Number 3167

Dear Commissioners:

On April 22, the Pennsylvania State Civil Service Commission (SCSC) had published in the Pennsylvania Bulletin, proposed regulations for Act 69 of 2016 and Act 167 of 2016. The Pennsylvania Independent Regulatory Review Commission (IRRC) 30-day comment period on the proposed regulations is open from April 22 to May 22. The Pennsylvania Department of Transportation (PennDOT) has serious concerns regarding the impact the proposed regulations will have on us and are providing comments to the proposed regulations. Please note that SCSC did not contact us to solicit our input on these proposed regulations.

Last year, the General Assembly passed and Governor Wolf signed into law Acts 69 and 167 of 2016. These laws made very significant and important changes to the Pennsylvania Civil Service Act (the Act). In short, these statutory amendments were enacted to modernize how hiring is done through the SCSC and to improve service delivery. The changes would make it easier for candidates to apply for positions, create a larger pool of candidates from which agencies could choose, and give the agencies the ability to decide the method of examinations to be used in evaluating candidates for positions. Instead of implementing the law as written, SCSC has decided to issue proposed regulations which will undermine the intended purpose of the laws and give SCSC the ability to thwart the implementation of them.

Approximately 37 percent of PennDOT's positions are covered by the SCSC. Therefore, we have a very significant and personal stake in having the laws implemented as written and intended. We are providing the below specific examples of how the legislative changes will allow PennDOT to improve services and how the proposed regulations will negatively impact our service delivery.

Section 95.1. Application requirements.

Act 167 amended Section 212 (d) of the Act was amended to provide: "The commission shall enter into an agreement to utilize the form and method of an employment application that is standard across departments and agencies that are under the Governor's jurisdiction for the purpose of entrance to, or promotion in, the classified service." 71 P.S. §741.212(d).

This change to the law was made to make it easier for people to apply for state jobs by having a single site for both non-Civil Service and Civil Service positions. For Civil Service positions at PennDOT, this change would be important because a unified application simplifies the process for applicants who are typically unfamiliar with Civil Service and non-Civil Service hiring practices. Further, some job classifications are both Civil Service and non-Civil Service, depending on the hiring entity. For example, the Diesel and Construction Equipment Mechanic (DCEM) job is non-Civil Service at PennDOT and candidates were required to apply through the Bureau of State Employment. At the Department of Conservation and Natural Resources, the DCEM job is Civil Service and candidates applied through the State Civil Service Commission. We anticipate that the new process will yield a more robust candidate pool.

Section 95.20. Authority to Select Method of Examination.

Act 167 amended Section 502 of the Act to allow the appointing authority (the agency), and not SCSC, to determine the method of the “examinations.” SCSC currently uses written tests or experience and training (“E&T”) to evaluate candidates for positions. However, PennDOT is in a better position to know how candidates can best be evaluated for our specific positions, such as Transportation Planning Specialists, Roadway Programs Technicians, Traffic Control Specialists, Engineering Technicians, Transportation Technicians, Driver License Examiners, and many others.

In addition, with written tests, candidates must take time off work and drive to one of the six SCSC test sites for written exams. PennDOT jobs are located throughout all 67 counties. Although test centers are strategically located in Erie, Harrisburg, Johnstown, Lock Haven, Philadelphia, Pittsburgh, and Scranton, applicants residing in remote locations must still travel extended distances to take a written exam. Many of the aforementioned test centers are only open 10 days per month. Hours of operation are not clearly stated on the State Civil Service Commission’s website. As an example, the Scranton Test Center contains the following information for office hours, “Test approximately 10 days each month – Tuesdays, Wednesdays, with some Wednesday evenings, and Saturdays. Specific hours of operation vary by center.”

Section 97.11. Appointment Process – Use of Alternative to Rule-of-Three.

Act 69 amended Section 601 to allow expansion of hiring eligible lists other than the standard “Rule-of-Three.” With the standard Rule-of-Three, PennDOT had difficulty filling positions within the Civil Engineering series.

In addition, the regulations have onerous requirements that were not in the Act 69 amendment to Section 601.

First, the regulation requires specification of the job classification or classification series to which the alternative rule will apply. This language ignores the concept of “vacancy-based” hiring. Act 69 amended Section 602 of the Act to permit vacancy-based postings. This regulatory requirement would preclude PennDOT from seeking an alternative to the Rule-of Three for vacancy-based postings. For PennDOT, the regulations pose a significant potential negative impact. During the construction season, PennDOT hires a large number of Transportation Construction Inspectors.

These positions are responsible for performing inspections of road and/or bridge construction projects, to include materials testing. Having the flexibility to hire eligible candidates with methods other than the standard Rule-of-Three would result in a more efficient hiring process.

Second, the regulation forces us to keep the alternative to the Rule-of-Three in place for at least 12 months. This will dissuade PennDOT from using an alternative to the Rule-of-Three, especially when an individual is blocking a list or for jobs that require a special skill or licensure that is not readily identifiable on the Civil Service lists, such as a Driver License Examiner with a Commercial Driver's License (CDL). There will be uncertainty as to how effective the alternative Rule is for these positions until it is implemented. In the event the alternative Rule is not effective, the regulation would have PennDOT confined to using the alternative Rule for at least one year. Therefore, PennDOT will be forced to continue using the Rule-of-Three for most or all positions instead of determining how the alternative Rule may work out for filling positions.

Section 98.1 and 98.2. Vacancy-Based Hiring.

Act 69 was intended to allow agencies to fill vacant positions as they occur through "vacancy-based" job postings. This is how jobs are posted in the private sector and how PennDOT wants to post most of its job openings. We specifically want to use vacancy-based postings for the majority of our Civil Service job titles (approximately 240), such as Driver License Examiners and Transportation Construction Inspectors.

In addition, PennDOT believes that we, and not SCSC, are in a better position to know which jobs should be announced through vacancy-based posting. For example, with non-Civil Service positions, vacancy-based announcements are used for positions that typically require very specific skills, technical ability, and/or education, such as Historic Preservation Specialists. Similarly, we want to use vacancy-based postings for Civil Service positions but believe the regulation is an impediment to do so.

PennDOT appreciates the Commission's review of our comments to the proposed regulations and your consideration of the many negative effects of the proposed regulations on this agency if they are adopted as written. Please contact me if you need any additional information on the matters addressed in this letter.

Sincerely,



Leslie S. Richards
Secretary of Transportation