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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, 2017, the Pennsylvania State Civil Service Commission (SCSC) published in the *Pennsylvania Bulletin* proposed regulations implementing Act 69 of 2016 and Act 167 of 2016. The 30-day public comment period on the proposed regulation is open from April 22, 2017, to May 22, 2017. The Department of Conservation and Natural Resources (DCNR) has serious concerns regarding the impact that the proposed regulation will have on it and is providing comments to the proposed regulation. Please note that the SCSC did not contact DCNR to solicit input on its proposed regulation.

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 amendments to the Act as written, the SCSC proposes regulation will undermine the intended purpose of the changes and give SCSC the ability to thwart implementation of the changes to the Act.

Approximately 97 percent of the DCNR's positions are covered by the SCSC. Therefore, we have a very significant and personal stake in having the amendments to the Act implemented as written and intended. We are providing the below specific examples of how the legislative amendments to the Act will allow the DCNR to improve services and how the proposed regulation will negatively impact our service delivery.

Section 95.1. Application requirements.

Act 167 amended Section 212(d) of the Act as follows: "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 application for both non-Civil Service and Civil Service positions.

The proposed regulation does not address the required agreement, and still requires that the director of the SCSC prescribe the format instead of having the director agree to use the format and method of application that is standard across departments and agencies that are under the Governor's jurisdiction. The proposed regulation does not comply with the statutory requirement.

Section 95.20. Authority.

Act 167 amended Section 502 of the Act to allow the appointing authority (DCNR), and not SCSC, to determine the method of the “examinations.” Specifically, Act 167 provides: “Examinations shall be conducted to establish employment and promotion lists. Such examinations may be written or oral, or a demonstration of skill, or an evaluation of experience and education, or a combination of these, which shall fairly appraise the fitness and ability of competitors. The appointing authority shall select the method of examination that shall be used for the individual position or the class of positions for which the employment or promotion list is being established.” The proposed regulation, however, provides that “[i]f the Director determines that more than one method of examination will fairly test the relative capacity and fitness of persons examined to perform the duties of the class of positions to which they seek to be appointed or promoted, the appointing authority shall select the method of examination that will be used for the individual position or the class of positions for which the employment or promotion list is being established.”

The proposed regulation limits the DCNR's authority to determine the method of examination by first requiring the Director of the SCSC to determine if more than one method is appropriate. Act 167 does not contain this limitation, and for a very good reason: the SCSC currently uses written tests or experience and training (E&T) to evaluate all candidates for positions. However, the DCNR is in a better position to select how candidates can best be evaluated for specific positions. For example, the DCNR utilizes many job titles that require prior experience to meet the E&T requirements of a particular job. Some of these titles are Forest Program Specialist, Natural Resource Program Specialist, Ecological Program Specialist, Park Manager, Park Maintenance Supervisor, and Forest Maintenance Supervisor, just to name a few. The DCNR might prefer to use an evaluation of experience and education or a demonstration of skill, or a combination of both, as the method of examination, and being able to evaluate experience and training on a resume as satisfying a test requirement would expedite the selection process. In DCNR's experience, there is no examination, written or oral, that measures the skill sets necessary to succeed for numerous DCNR positions. The DCNR does not want a candidate to go through a testing process, requiring the candidate to travel to a testing site, when an oral or written test may not meet the DCNR's needs. The statutory amendment gives the DCNR the authority to determine the best test method, and there is no statutory requirement that the director first determine that more than one test method is appropriate.

Additionally, the logic behind utilizing an exam or test to determine if someone is truly qualified and will make a good employee is somewhat faulty. There are many qualified applicants who

would make great employees who do not do well in a test environment and who, as many times as they take an exam, will never make the Rule-of-Three to be interviewed. Not allowing these applicants to be interviewed eliminates many viable candidates who have the skills or experience for the position. The DCNR recommends changing the proposed regulation to mirror the statutory amendment.

Section 97.11. Appointment Process.

Act 69 amended Section 601 and 602 of the Civil Service Act to allow for an expansion of hiring eligible lists other than the standard “Rule-of-Three.” With the standard Rule-of-Three, the DCNR has difficulty filling certain positions, especially in some of the DCNR’s more remote locations. Examples of these types of positions are Maintenance Repairman 1, Semi-Skilled Laborer, Equipment Operator A, Forester, Forest Technician and clerical positions. Prior to the statutory amendments, the DCNR would interview the Rule-of-Three candidates and, if none are selected, request the SCSC to provide it with additional lists. However, many times the same candidates are in the Rule-of-Three on these other lists. Prior to the amendments, candidates must be interviewed three times before an appointing authority can request that the candidate be removed from a list. This process is time consuming and cumbersome, and in the meantime, the positions remain unfilled. Without the ability to consider candidates not in the Rule-of-Three, some of these positions may not be filled. Act 69 allows the DCNR to consider all available persons, regardless of ranking, in making selections to fill a vacancy, by using an alternative rule.

Act 69 details the alternative rule as follows: if a vacant position is to be filled, an appointing authority may elect to have the director of the SCSC create and issue a certification of eligibles consisting only of the names of those candidates who responded by applying for the vacancy after receipt of notice of the vacancy from the SCSC, provided the director approves the use of this alternative selection procedure to fill the vacancy. Section 97.11 of the proposed regulations, however, imposes onerous requirements on using the alternative rule that are not in the Act 69 amendments.

First, the proposed regulation at § 97.11(b)(1) requires the appointing authority to specify the job classification or classification series to which the alternative rule will apply. Requiring the alternative rule to be used on a classification basis ignores the concept of “vacancy-based” hiring and defeats the intent of the statutory amendments to permit vacancy-based hirings.

Second, the proposed regulation at § 97.11(b)(2) and (3) forces appointing authorities to keep the alternative rule in place for at least 12 months when the alternative rule is supposed to apply per vacancy. If the vacancy is filled with the alternative method, there is no logical reason to maintain the alternative hiring method for another particular vacancy.

The SCSC’s proposed regulation, if adopted, will dissuade the DCNR from using an alternative rule, especially for positions filled on a statewide level (Foresters, Forest Technicians, Maintenance Repairman, Semi-Skilled Laborers, Park Managers, DCNR Ranger Trainees, etc.) 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 proposed regulation gives the DCNR a Hobson’s choice: either continue to use an ineffective alternative rule or choose to not fill the position until 12 months have passed. Rather than promote the use of the alternative rule, the proposed regulation actually inhibits it.

In summary, the intent of the alternative rule in Act 69 is to provide flexibility in certain hiring actions for specific reasons. To then say that the alternative rule has to be in place for 12 months and for all positions within a job classification or job classification series, takes away from the flexibility of the rule which defeats its original intent and purpose.

Chapter 98. Appointment and Promotion of Employees in the Classified Service by Recruiting Applicants to apply for a specific vacancy-based examination announcement.

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 DCNR wants to post **all** of its job openings. Vacancy-based hiring is necessary to compete with the private sector. As the process currently exists, it is very confusing to applicants, both for current employees of the Commonwealth and those external to the Commonwealth, to understand that when they apply to take a Civil Service exam that they are not applying for a current “job vacancy” but they are applying to be considered for a “job title” in counties that they have selected they are available to work in. There may be no job. It is also very confusing to have to explain to prospective applicants that, before they can be hired, they need to take an exam for a job title, and then they find out that the exam is not open for testing. This confusion is especially apparent when attending recruitment events and trying to explain Commonwealth hiring. Potential applicants lose interest and move on to discuss employment opportunities with private sector employers who are able to accept resumes, interview potential candidates and sometimes make a job offer on the spot. We (the Commonwealth) cannot be competitive as an employer with our current system of hiring.

In addition, moving to a vacancy-based system requires applicants to apply for jobs for *each* position they are interested in. Currently, when an applicant tests and is placed on a SCSC list for a job title, they automatically receive availability surveys for every position in a job title that is open for the counties they specified they would work in. An availability survey may not be sent out for months or even years after a test is taken, because there were no vacancies open at the time of the test. A qualified candidate may have already accepted another position by the time a vacancy can be filled. In addition, applicants make themselves available for positions they know nothing about, showing up for interviews for positions that they may not necessarily be interested in. A vacancy-based process will ensure that applicants are applying for specific positions they are truly interested in being considered for; thereby, creating a more viable candidate pool.

The DCNR emphasizes that, as drafted, Chapter 98 defeats the purpose of going to vacancy-based examinations and hiring. Nowhere in the statutory amendments is the SCSC given the authority to require the DCNR or other appointing authority to ask permission to fill a vacant position: that is beyond the purview of the SCSC’s authority. Rather, the statute provides that if the DCNR decides to fill a vacant position, it only has to request that the Director of the SCSC create and issue a certification of eligibles. The DCNR requests that the proposed regulatory requirements track the statute.

In short, Act 69 and Act 167 gave the DCNR and other appointing authorities the discretion to select the best method of testing for its vacant positions and the option to go to vacancy-based hiring, using an alternative rule to fill vacant positions where appropriate. The SCSC’s proposed regulations do not meet the statutory requirements. Compliance with the statutory amendments

will allow the SCSC to foster and preserve a greater culture of diversity, fairness and inclusion in their services.

The DCNR appreciates the Commission's review of its comments to the proposed regulation and your consideration of the many negative effects of the proposed regulation 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,

A handwritten signature in blue ink that reads "Cindy Adams Dunn". The signature is written in a cursive style with a large initial "C".

Cindy Adams Dunn
Secretary

cc: State Civil Service Commission