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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

May 12, 2017

Pennsylvania Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, Pennsylvania 17101

2017 MAY 12 PM 3:59

RECEIVED  
IRRC

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 Emergency Management Agency (PEMA) 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 90 percent of PEMA 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 PEMA 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 PEMA, this change would be important because in an era when job seekers are accustomed to using "meta-sites" to search for employment opportunities, it is confusing and burdensome to have to visit two different sites to research openings with the same employer.

In addition, the system in which Civil Service and non-Civil Service positions are being consolidated has contemporary features that today's job applicants expect, such as being able to apply electronically, see the status of an application, and re-use their saved personal information when returning to apply for additional opportunities. In the past, not only have applicants had to apply separately for Civil Service and non-Civil Service positions, they also had to repeatedly input their personal information for each new position.

#### **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, PEMA is in a better position to know how candidates can best be evaluated for our specific positions.

For example, a majority of Civil Service positions at PEMA are Emergency Management Specialists (EMS) and Watch Officers (EMWO), along with Emergency Management Supervisors who may supervise either position. Employees in these positions are found across all four PEMA directorates, in the areas of Watch and Warning, Logistics, on Incident Management Teams, building out Next Generation 9-1-1, handling Public Assistance and Hazard Mitigation projects, staffing regional offices, and in Training, Planning and Exercise. With this classification supporting so many roles throughout the agency, PEMA would find it beneficial to recruit based upon education and experience instead of being limited to candidates who passed a particular test that cannot touch upon duties that ranging from deploying to active disasters, to mitigating flood risk by helping residents and businesses relocate, to executing federally evaluated nuclear power plant exercises. Experience in other governmental entities, such as counties; higher education in Emergency Management, opportunities which were not available when the classification was created; and related private sector experience, all provide excellent preparation to move into Emergency Management jobs at PEMA.

In addition, with written tests, candidates must take time off work and drive to one of the six SCSC test sites for written exams. And if the nearest test site is booked, they may have to travel a great distance to sit for the exam.

Reliance on the written examination selection method raises other problems as well, such as when (and whether) certain tests are administered. Our agency has seen temporary clerical pool employees with whom staff have formed working relationships who, when they reach their maximum assignment length would like to apply for full time employment with PEMA. If the clerical test for that specific classification is not offered when we are recruiting, an excellent candidate already familiar with our highly-specialized organization cannot be considered.

PEMA also recently encountered a situation where a test was never administered for a technical supervisory position for which we were conducting recruitment. The explanation given was that employees have only ever moved to this class via promotion. Because the role is so rare in state

government (with only about a dozen positions statewide in the next lower class), not being able to recruit from outside state government dramatically curtailed the applicant pool.

#### **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, PEMA had difficulty filling certain positions. Most notably, when recruiting for a particular EMS position, our first pool resulted in no selection. During a second recruitment, the same small group of applicants was also applying for another EMS role, and the selected candidate preferred the second position. Months later, we are posting this still-vacant position for the third time.

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 PEMA from seeking an alternative to the Rule-of Three for vacancy-based postings. For PEMA, the regulations pose a significant potential negative impact. While PEMA’s complement is not large by state agency standards, our work is extremely diverse, so the alternative rule could be an effective tool for recruiting staff in many classifications including Administrative Officer, Emergency Management, Financial Management, Information Technology, and Radio Telecommunications roles.

Second, the regulation forces us to keep the alternative to the Rule-of-Three in place for at least 12 months. This will dissuade PEMA from using an alternative to the Rule-of-Three especially regarding our EM Specialist and Watch Officer positions. 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 PEMA stuck using the alternative rule for at least one year. Therefore, PEMA will be forced to continue using the Rule-of-Three for most or all positions instead of taking a chance on 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 PEMA wants to post most of its job openings. We specifically want to use vacancy-based postings for Administrative Officer, Emergency Management, Financial Management, Information Technology, and Radio Telecommunications classifications.

In addition, PEMA believes that we, and not SCSC, are in a better position to know which jobs should be done through vacancy-based posting. For example, with non-Civil Service positions such as our bureau directorships in External Operations and Technological Hazards, we greatly appreciated the ability to recruit in as broad and flexible a manner as possible so that all qualified candidates, both inside and outside state government, could compete to fill these roles. Previously, we successfully recruited our Recovery & Mitigation and Planning, Training & Exercise bureau directors in this manner. Similarly, we want to use vacancy-based postings for Civil Service positions but believe the regulation is an impediment to do so.

PEMA 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 feel free to contact me if you need any additional information on the matters addressed in this letter.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal tail stroke.

Richard D. Flinn, Jr.  
Director, PA Emergency Management Agency