



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

May 12, 2017

2017 MAY 15 11 09 AM

RECEIVED
IRRC

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) 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 public comment period on the proposed regulations is open from April 22 to May 22, 2017. The Department of State (Department) has serious concerns regarding the impact the proposed regulations will have on our agency. We provide the following comments for your consideration. Please note that SCSC did not contact the Department 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 SCSC and to improve service delivery. These legislative changes would make it easier for candidates to apply for positions, create a larger pool of applicants 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 65% of the Department'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 specific examples of how the legislative changes will allow the Department 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 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 the Department, this change would be important because it provides a more efficient process for interested jobseekers to go to one website and apply for positions. It spares the jobseeker any confusion about applying for a position with the Commonwealth. It also saves time that analysts spend composing lengthy letters and explaining over long phone calls the process of how to apply for Civil Service positions and how the process differs from non-Civil Service positions.

Section 95.20. Authority to Select Method of Examination.

Act 167 amended Section 502 of the Act to allow the appointing agency, 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, our Department is in a better position to know how candidates can best be evaluated for specific positions. For example, the Drug & Alcohol Abuse Program Specialist and the Fiscal Management Specialist series are ideal for an E&T examination.

In addition, with written tests, candidates must take time off work and drive to one of the six SCSC test sites for written exams. Those who are interested may not have access to transportation to get to one of the test sites. The expense of child care may be another reason that a potential candidate cannot drive to sit for the written exams.

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

Act 69 amended Section 601 of the Act to allow expansion of hiring eligible lists other than the standard “Rule-of-Three.” With the standard Rule-of-Three, the Department has had difficulty filling certain positions. The Legal Assistant 1 and Clerical Supervisor 1 positions would benefit because there would be a bigger pool of candidates to interview and choose from.

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 the Department from seeking an alternative to the Rule-of-Three for vacancy-based postings. For the Department, these regulations pose

a significant potential negative impact. Recruitment for the Clerk Typist 2 and Legal Assistant 1 positions might be better if we could use a Rule of Five so there is more choice and possibly a more diverse pool of candidates.

Second, the regulation forces us to keep the alternative to the Rule-of-Three in place for at least 12 months. This will dissuade us from using an alternative to the Rule-of-Three especially regarding Regulatory Enforcement Inspectors. 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 the Department stuck using the alternative Rule for at least one year. Therefore, we 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 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 we want to post most of our job openings. We specifically want to use vacancy-based postings for Clerk Typist 2, Regulatory Enforcement Inspectors, and Legal Assistant 1 positions. These three classifications are entry level positions so we fill them quite frequently. Vacancy based postings would save time in filling these positions and make the process more efficient.

In addition, we believe that the Department, not SCSC, is in a better position to know which jobs should be done through vacancy-based posting, for example, Non-Civil Service positions such as Clerk Typist 2, Administrative Officer 2, and a Voting Systems Analyst. Similarly, we want to use vacancy-based postings for Civil Service positions but believe the regulation is an impediment to do so.

We appreciate the Commission's review of the aforementioned comments to the proposed regulations and your consideration of the many negative effects that would be imposed on the Department if they are adopted as written. Please contact me if you have any questions or require additional information on the concerns addressed in this letter.

Sincerely,



Pedro A. Cortés
Secretary of State