

# 3167



THE ADJUTANT GENERAL OF PENNSYLVANIA  
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS  
BUILDING 0-47, FORT INDIANTOWN GAP  
ANNVILLE, PENNSYLVANIA 17003

May 12, 2017

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

2017 MAY 15 PM 1:29

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 Department of Military and Veterans Affairs (DMVA) would like to provide these comments regarding 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. These statutory amendments were enacted to modernize the Commonwealth's Civil Service hiring process – to make the application process less cumbersome; to give agencies the flexibility to determine the optimum method for evaluating candidates for each position and for determining how many candidates are required; and, most importantly, to allow the Commonwealth to move to a vacancy-based method for filling public sector Civil Service positions. Under the current system, candidates apply to take an examination and be placed on a list for a job title. Each state agency which then has a need to fill a position in that job title must contact the individuals on the list to determine their interest in the specific position the agency is filling. Candidates often stay on these lists for several years waiting to be contacted about a position and agencies often find that when contacted candidates are no longer interested in a position or are not interested in the particular position the agency is filling. In a vacancy-based system the agency advertises the specific position; candidates apply for, and are evaluated for that position; and the agency will quickly have a candidate list that is comprised of individuals who very

recently applied for that position. This is how the federal government and private sector employers fill positions. It is critical that the Commonwealth implement this type of system for public sector Civil Service positions to remain competitive and attract an adequate pool of well-qualified candidates. The proposed regulations appear to give the SCSC the ability to implement procedures that are counter to the goals and language of Acts 69 and 167.

Approximately 27 percent of the DMVA positions are covered by the SCSC. The majority are difficult to fill positions that provide direct care to aging and disabled Veterans residing in the Commonwealth's six Veterans' Homes. It is critical that we be able to fill these positions quickly with well-qualified candidates. 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 the DMVA 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).

Applying for positions with the Commonwealth is currently quite confusing for job seekers. Some positions are Civil Service and others are non-civil service and there are completely separate and distinct applications and processes for each. To make matters worse, the same job title that is Civil Service in one agency could be non-civil service in another. This is very confusing to candidates and it has always been difficult for agency staff involved in recruitment to explain the difference between the systems and the application and selection process for both. This change to the law was made to make it easier for people to apply for state jobs by having a single advertisement and application site for both non-Civil Service and Civil Service positions where job seekers could apply for both types of positions with the same application.

The proposed regulations submitted by the SCSC for Section 95.1 state that "Applications...shall be made in a format prescribed by the Director..." This regulation change would appear to give the SCSC Director the authority to determine the form of application that will be used across all departments and agencies under the Governor's jurisdiction. This is clearly contrary to what is stated in Act 167.

#### **Section 95.20. Authority to Select Method of Examination.**

The SCSC currently uses a variety of examinations to evaluate candidates for positions. In the case of a written examination, candidates schedule an exam time, take time off work, and travel to one of the SCSC's testing sites. This is obviously an inconvenience and just one obstacle that makes Civil Service employment with the Commonwealth less attractive than the private sector. Vacancy-based hiring would be optimized if applicants could be evaluated based on the experience and training they detail when they apply and immediately placed on the candidate list rather than required to take a

written 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.” Specifically, Act 167 states, **“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 SCSC proposed regulations, under Section 95.20, state, **“If 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...”** This clearly gives the SCSC Director the ability to overrule the desires of the agency, an authority not provided in Act 167. Additionally, the proposed regulations for this section further state, **“When the same classification is used by more than one appointing authority, affected appointing authorities shall reach a consensus on the method of examination that will be used for that classification as only one examination method will be used by the Commission to examine all candidates for positions in the same classification.”** Many classifications (job titles) are used by multiple agencies. In fact, many classifications are used by almost all of the agencies under the Governor’s jurisdiction. There is no language in the amended statutes that leads us to believe it was the intent to require all agencies to come to a consensus and only use one method of examination for a particular job title. This would be a major hindrance in the ability of each agency to determine the method of examination that would be most effective for that agency’s positions as is stated in Act 167. We firmly believe that the DMVA is capable of determining the method of examination that will most effectively test the relative fitness of candidates for our positions; and that other agencies should do the same.

#### **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.” The rule-of-three requires that only candidates who score within the three highest scores on the examination may be interviewed. The rule-of-three is an arbitrary number that unnecessarily restricts the number of qualified candidates who can be interviewed. There are often candidates who may be considered relatively equal to slightly higher scoring candidates who cannot be considered because they scored just below the three highest scores on the examination. A change to the rule-of-three has long been discussed and desired among the agencies.

The proposed regulations have onerous requirements that were not in the Act 69 amendment to Section 601. First, the regulation requires identification of the job classification or classification series to which the alternative rule will apply. This language would require that all positions with the same job title use the rule-of-three or the same alternative rule and ignores the concept of vacancy-based hiring. Act 69 amended Section 602 of the Act to permit vacancy-based postings and provide a right of choice in the rule applied. Even within a single agency there are advantages to applying an alternative to the rule-of-three by position rather than job classification. The candidate list for a position in Philadelphia may be quite different from the list for a position with the same job title in Erie. Different rules may provide the ideal candidate list in each case. This regulatory requirement would preclude the

DMVA from seeking an alternative to the rule-of-three for vacancy-based postings and pose a significant potential negative impact.

Second, the regulation states that a request for an alternative to the rule-of-three must be submitted prior to the date on which the Commission begins testing after announcing that a new examination will be offered for the classification or classification series. If a request is not made for an alternative rule, the rule-of-three applies and must be used for at least twelve months before an alternative rule request can be initiated; and, if an alternative rule is approved that rule must be used for all positions in the specified classification for at least twelve months. There will be uncertainty as to how effective the alternative rule will be until it is implemented. Also, as noted above, different rules may be more advantageous in different parts of the state, and the most advantageous rule may change over time based on how many candidates are seeking a position at that particular time. However, agencies will be stuck with one particular rule for every position in a classification everywhere in the state for twelve months even if the rule is not effective. The regulations for this section all serve to make altering the rule-of-three difficult and less attractive for agencies and eliminates many of the advantages of vacancy-based hiring.

**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. The advantages of vacancy-based hiring lie in treating each position vacancy individually; in customizing the advertising of each vacancy; allowing candidates to apply to specific positions of interest; and optimizing the final candidate list based on differences geographically and over time. Many of the requirements in the proposed regulations would be a discouragement and an impediment to the Civil Service hiring process improvements that are possible and were envisioned by the Civil Service Act Amendments.

The DMVA 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,



Anthony J. Carrelli  
Brigadier General, Pennsylvania  
Air National Guard  
The Adjutant General