



# 3167

May 22, 2017

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

Re: State Civil Service Commission  
Proposed Regulation #61-6  
IRRC Identification Number 3167

2017 MAY 22 PM 3:58

RECEIVED  
IRRC

Dear Commissioners:

Please accept this letter as public commentary from the Pennsylvania Liquor Control Board ("PLCB") regarding the above-referenced proposed regulation submitted by the State Civil Service Commission ("SCSC").

Because of sections 302 and 303 of the Liquor Code,<sup>1</sup> 6,712 of the PLCB's 6,780 filled and vacant positions are subject to the Civil Service Act, 71 P.S. §§ 741.1, *et seq.* As such, any changes that are made to the SCSC's Regulations will significantly impact the PLCB.

Last year, the General Assembly passed, and Governor Wolf signed into law, Acts 69<sup>2</sup> and 167<sup>3</sup> of 2016 ("Act 69" and "Act 167," respectively), which made important changes to the Civil Service Act. In short, these statutory amendments were enacted to modernize how hiring can be accomplished under the Civil Service Act by making it easier for candidates to apply for positions, creating a larger pool of candidates from which agencies can choose, and giving agencies the ability to decide the methods of examination to be used in evaluating candidates for positions.<sup>4</sup> However, the proposed regulation, as currently drafted, seems to significantly undermine this legislative intent.

The PLCB has serious concerns regarding the divergence between the proposed regulation and the Civil Service Act, as amended by Act 69 and Act 167. Those concerns are set forth more fully below.

---

<sup>1</sup> 47 P.S. §§ 3-302-3-303.

<sup>2</sup> Formerly Senate Bill No. 1154, P.N. 1593.

<sup>3</sup> Formerly House Bill No. 192, P.N. 4120.

<sup>4</sup> Senator Randy Vulakovich sponsored Senate Bill No. 1154, which became Act 69, and explained in committee that the bill "seeks to modernize the Civil Service Act to allow for vacancy-based hiring, notification by email, and expanding the 'rule of three.' He argued the current system wastes applicants' and agencies' time." See Senate State Government Committee News, March 15, 2016, 12:30 p.m. (copy attached).

**Section 95.1. Application requirements.**

Act 167 amended section 212(d) of the Civil Service 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). However, section 95.1 of the proposed regulation retains the phrase "shall be made in a format prescribed by the Director." Retaining this phrase appears to allow the SCSC Director to retain total control over the format without acknowledging or recognizing the statutory mandate to collaborate with departments and agencies relative to the form and method of an employment application.

The PLCB respectfully suggests that the following alternative version of section 95.1 be used:

**§ 95.1. Application requirements.**

(a) *Submission of applications.* Applications required of a candidate for entrance to, or promotion in, the classified service, **[ shall be made in a format prescribed by the Director, ] shall utilize a form and method of application that is standard across departments and agencies that are under the Governor's jurisdiction, as agreed upon by the Commission and the respective departments and agencies,** and shall contain a statement made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities), verifying the truthfulness of all responses contained thereon.

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

Act 167 amended section 502 of the Civil Service Act to allow the appointing authority, rather than the SCSC, to determine the method of examination of candidates. Specifically, section 502 provides that "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." 71 P.S. § 741.502. In making this change, the General Assembly recognized that appointing authorities are generally in a better position than the SCSC to know how candidates can best be evaluated for the positions that they need to fill.

However, in section 95.20 of the proposed regulation, the following sentence is used: "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 that will be used for the individual

position or the class of positions for which the employment or promotion list is being established." This language seems to give the SCSC, rather than the appointing authority, the power to determine what examination is most appropriate, or otherwise conditions the appointing authority's right to select the method of examination. As such, section 95.20 appears to conflict with section 502 of the Civil Service Act.

The PLCB respectfully requests that the following alternative version of section 95.20 be used.

**§ 95.20. Authority.**

**[ Examinations for all classified service positions will be prepared and approved by the Director. 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 ] 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. [ When the same classification is used by more than one appointing authority, the affected appointing authorities must 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. ] Examinations for all classified service positions will be prepared and approved by the Director.** Except as otherwise authorized in this part, or as authorized in writing by the Director, appointing authorities shall not develop and administer their own examinations for employment or promotion in the classified service.

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

Act 69 amended section 601 of the Civil Service Act to allow appointing authorities to deviate from the standard "Rule-of-Three."<sup>5</sup> Specifically, section 601 authorizes "the appointing authority [to] elect[] to follow one of the alternative procedures provided for in [the Civil Service Act]." 71 P.S. § 741.601. Section 601 also provides that "[i]f operational conditions of the appointing authority so dictate and it is found

---

<sup>5</sup> With the standard Rule-of-Three, the PLCB had difficulty filling certain positions, including but not limited to: Applications Developer 2; IT Generalist 2; Senior Applications Developer; Retail Training Instructor and Retail Training Instructor Trainee; Management Analyst 1 and 2; and Alcohol Education Specialist. Candidates who were the highest on the promotion or employment list would often not have the specific skills or experience necessary for the position that needed to be filled.

to be in the interest of service to the Commonwealth, the director may authorize selective certifications based on merit-related criteria." Id.

While section 97.11 of the proposed regulation acknowledges that the appointing authority has the right to choose to use an alternative rule when making appointments and promotions, such section also imposes additional requirements that are not referenced or found in the Civil Service Act. These requirements seem to give the SCSC more control over these decisions than was contemplated by the General Assembly.

Subsection (b) of section 97.11 states that the request must apply to "a classification or classification series." The significance of this language is that it prohibits the use of an alternative rule for vacancy-based hiring, where the appointing authority is seeking to fill a specific position, not strictly a classification or classification series. The PLCB submits that the proposed regulation should be amended to state that the request must apply to "a position or classification." The PLCB would use vacancy-based postings with alternative rules for virtually all positions for which it recruits outside candidates, including positions in Regulatory Affairs, Supply Chain, Marketing, Information Technology, Human Resources, and Finance.

Subsection (b) is also problematic in that it requires an appointing authority to keep an approved alternative to the "Rule-of-Three" in place for at least 12 months. This creates a dilemma for appointing authorities: if they do not request to use an alternative rule, they cannot request to use an alternative rule for 12 months. If they do request and are approved to use an alternative rule, they must use that same alternative rule for 12 months before they can request to use a new alternative rule. It is unclear how the SCSC came up with this 12-month time frame. Notably, while the Civil Service Act gives the SCSC the authority to approve alternative rules, it does not appear to give the SCSC the authority to place time constraints on how long an alternative rule can or cannot be used. This type of limitation is likely to discourage appointing authorities, including the PLCB, from exploring the use of possible alternative rules out of fear of not being able to make timely changes or improvements, should they become necessary. As such, subsection (b) appears to contravene the intent of the Legislature to give appointing authorities more flexibility in hiring.

The PLCB respectfully suggests that the following alternative version of section 97.11 be used:

**§ 97.11. Appointment process.**

(a) Right of choice in making appointments and promotions when using the rule of three. **Unless approval has been granted by the Director to use an alternative rule,** the rule-of-three applies when making selections from employment and promotion lists. If the appropriate list contains fewer than three eligibles, the Director may, upon request of the appointing authority, certify candidates from other

appropriate lists to ensure the appointing authority has at least three available eligibles from which to choose.

**(b) Right of choice to make appointments and promotions using an alternative rule. If an appointing authority wants to use an alternative rule to the rule of three for its appointments to a specific POSITION OR classification [ or classification series ], it must obtain [ permission ] APPROVAL from the Director by submitting a request in writing to the Director which [ satisfies all of the following conditions ] SHALL INCLUDE THE FOLLOWING.**

**(1) The request must specify the POSITION OR classification [ or classification series ] to which the alternative rule will apply.**

**(2) The request must be submitted to the Director in writing prior to the date on which the Commission begins testing after announcing that a new examination will be offered for the POSITION OR classification [ or classification series ] which is subject to the request. [ If no request is made for an alternative rule, the rule of three shall apply and must be used for at least twelve months before a request for an alternative rule can be initiated. ]**

**[ (3) Once approved by the Director, the alternative rule must be used by the appointing authority for all selections it makes in the specified classification or classification series for at least twelve months before a new alternative rule request for the same classification can be initiated. ]**

**[ (4) ] (3) The appointing authority must have received written [ permission ] APPROVAL from the Director to use the alternative rule prior to making any selections using the alternative rule.**

**[ (5) ] (4) In cases in which an examination program is open on a continuous basis, the request for a change to an alternative rule can be initiated at any time, however no appointments using the new rule can be made before written [ permission ] APPROVAL is obtained from the Director. [ An appointing authority must continue to use the same alternative rule to make all appointments and promotions in the specified classification or classification series for at least twelve months before a new alternative rule request for the same classification can be initiated. ]**

### **Section 98.1 and 98.2. Vacancy-Based Hiring.**

Act 69 amended section 602 of the Civil Service Act to allow agencies to fill vacant positions as they occur through "vacancy-based" job postings. Section 602 now reads, in pertinent part, as follows:

[I]f a vacant position is to be filled, an appointing authority may:

- (1) request the director to issue an appropriate certification of previously tested and active eligibles; or
- (2) request the director to 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 commission, provided the director approves the use of this alternative selection procedure to fill the vacancy.

71 P.S. § 741.602(a). This is how jobs are posted in the private sector and how the PLCB wants to post most of its job openings, including but not limited to: the analyst series (management, program, budget, marketing, human resource); IT titles; accountants; administrative officer; licensing technicians/analysts; and clerks/legal assistants. The PLCB believes that it is in a better position than the SCSC to know which jobs should be filled through vacancy-based posting.

Because section 98.1 of the proposed regulation does not mirror the language found in section 602 of the Civil Service Act, the PLCB respectfully suggests that the following alternative version of section 98.1 be used.

#### **§ 98.1 Vacancy based eligible lists**

**[ When ] IF an appointing authority [ receives permission ] REQUESTS A CERTIFICATION OF ELIGIBLES from the Director to fill a vacant position pursuant to Section 602(a)(2) of the Civil Service Act, the eligible list for that vacancy shall be created using only the names of those qualified candidates who applied for the vacant position after notice of the vacancy is announced by the Commission.**

Section 98.2(a) of the proposed regulation provides that: "If the Director approves the request, the Director will provide notice of the vacancy to prospective applicants by using technology approved by the Commission." Based on this language, it appears that the SCSC, and not the hiring agency, will be responsible for providing notice of vacant positions. This seems somewhat contradictory since it is the agency, rather than the SCSC, that is attempting to fill a vacancy. Also, it seems like the reference to "using technology approved by the Commission may affect the Office of

Administration's plans to use Neogov<sup>6</sup> as an internet-based platform for filling vacancies.

The PLCB respectfully suggests that the following alternative version of section 98.2(a) be used:

**§ 98.2 Requesting a vacancy-based examination announcement**

**(a) [ Permission ] APPROVAL of the Director. An appointing authority electing to fill a vacant position pursuant to Section 602(a)(2) of the Civil Service Act must prepare a request for the [ vacant position ] CREATION AND CERTIFICATION OF ELIGIBLES and submit it to the Commission's Executive Director for approval. If the Director approves the request, the Director OR APPOINTING AUTHORITY will provide notice of the vacancy to prospective applicants [ by using technology approved by the Commission ].**

Section 98.2(b)(1) of the proposed regulation provides that: "[T]he Director shall certify the names of as many eligibles as necessary to satisfy the employment requirements of the appointing authority." It is unclear how the Director will know how many that will be. The better approach may be to certify all those who responded by applying for the vacancy, rather than making an arbitrary determination as to how many eligibles would satisfy the needs of the appointing authority. Section 98.2(b)(2) also references section 97.11. The PLCB incorporates by reference the concerns that were previously raised regarding section 97.11.

The PLCB respectfully suggests that the following alternative version of section 98.2(b) be used:

**§ 98.2 Requesting a vacancy-based examination announcement**

**(b) Creation of an Eligible List**

**(1) After the expiration of the time period when qualified applicants must have completed the applicable civil service examination to be eligible for selection, the Director shall certify the names of [ as many eligibles as necessary to satisfy the employment requirements of the appointing authority ] THOSE WHO RESPONDED BY APPLYING FOR THE VACANCY. Each certification so created will indicate the relative ranks of the applicants as well as the last known contact information for each eligible on the list, and, if applicable, veteran's preference status, age preference status, or similar status with regard to any other preference provided by law.**

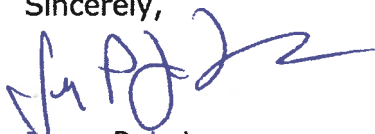
---

<sup>6</sup> See <http://www.hrm.oa.pa.gov/hire-sep/filling/Pages/NEOGOV.aspx>

**(2) The process for selecting a candidate to fill the vacancy will then follow the Selection and Appointment of Eligibles procedures as set forth in Commission Rules beginning at 97.11, et seq.**

The PLCB appreciates the Commission's review of these comments to the proposed regulation. Please contact me if you need any additional information on the matters addressed in this letter.

Sincerely,



Jason P. Lutcavage  
Director of Administration  
Pennsylvania Liquor Control Board

Attachments:

Act 69, formerly Senate Bill 1154  
Act 167, formerly House Bill 192  
Senate State Government Committee News, 3/15/16, 12:30 p.m.



THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 192 Session of 2015

INTRODUCED BY GILLEN, READSHAW, BARRAR, BAKER, JAMES, BOBACK, D. COSTA, COX, A. HARRIS, COHEN, MILLARD, METCALFE, DUSH, MURT, EVERETT, DeLUCA, GABLER, R. BROWN, KORTZ, DAVIS AND WATERS, JANUARY 23, 2015

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, OCTOBER 25, 2016

AN ACT

1 Amending the act of August 5, 1941 (P.L.752, No.286), entitled
2 "An act regulating and improving the civil service of certain
3 departments and agencies of the Commonwealth; vesting in the
4 State Civil Service Commission and a Personnel Director
5 certain powers and duties; providing for classification of
6 positions, adoption of compensation schedules and
7 certification of payrolls; imposing duties upon certain
8 officers and employes of the Commonwealth; authorizing
9 service to other State departments or agencies and political
10 subdivisions of the Commonwealth in matters relating to civil
11 service; defining certain crimes and misdemeanors; imposing
12 penalties; making certain appropriations, and repealing
13 certain acts and parts thereof," further providing IN CIVIL <--
14 SERVICE COMMISSION AND EXECUTIVE DIRECTOR AND THEIR POWERS,
15 FURTHER PROVIDING FOR CIVIL SERVICE COMMISSION, for powers
16 and duties of director- AND FOR SERVICE TO STATE DEPARTMENTS, <--
17 BOARDS AND COMMISSIONS OR AGENCIES AND POLITICAL SUBDIVISIONS
18 AND COOPERATION WITH OTHER CIVIL SERVICE AGENCIES; AND, IN
19 SELECTION OF EMPLOYEES FOR ENTRANCE TO OR PROMOTION IN THE
20 CLASSIFIED SERVICE, FURTHER PROVIDING FOR NATURE OF
21 EXAMINATIONS.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 ~~Section 1. Section 206 of the act of August 5, 1941- <--~~
25 ~~(P.L. 752, No.286), known as the Civil Service Act, is amended by-~~
26 ~~adding a paragraph to read:~~

1 SECTION 1. SECTION 201 OF THE ACT OF AUGUST 5, 1941 <--  
2 (P.L.752, NO.286), KNOWN AS THE CIVIL SERVICE ACT, AMENDED  
3 OCTOBER 5, 2011 (P.L.310, NO.76), IS AMENDED TO READ:

4 SECTION 201. STATE CIVIL SERVICE COMMISSION.--(A) THE STATE  
5 CIVIL SERVICE COMMISSION SHALL CONSIST OF THREE FULL-TIME  
6 MEMBERS, NOT MORE THAN TWO OF WHOM SHALL BE OF THE SAME  
7 POLITICAL AFFILIATION, APPOINTED BY THE GOVERNOR, WITH THE  
8 ADVICE AND CONSENT OF A MAJORITY OF THE MEMBERS ELECTED TO THE  
9 SENATE. EACH APPOINTMENT SHALL BE FOR A TERM OF SIX YEARS OR  
10 UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIED. THE MEMBERS OF THE  
11 COMMISSION SHALL HOLD NO OTHER PUBLIC POSITION TO WHICH A SALARY  
12 IS ATTACHED. THE GOVERNOR SHALL DESIGNATE ONE OF THE MEMBERS AS  
13 CHAIRMAN. NO COMMISSION MEMBER SHALL HOLD ANY OFFICE OR  
14 POSITION, THE DUTIES OF WHICH ARE INCOMPATIBLE WITH HIS OFFICIAL  
15 DUTIES. AT LEAST ONE MEMBER OF THE COMMISSION MUST BE A VETERAN.

16 (B) THE CHAIRMAN OF THE COMMISSION SHALL RECEIVE A SALARY OF  
17 SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00) PER ANNUM. EACH OTHER  
18 MEMBER OF THE COMMISSION SHALL RECEIVE A SALARY OF SIXTY-TWO  
19 THOUSAND FIVE HUNDRED DOLLARS (\$62,500.00) PER ANNUM.

20 (B.1) THE COMMISSIONERS SHALL RECEIVE ANNUAL COST-OF-LIVING  
21 INCREASES UNDER SECTION 3(E) OF THE ACT OF SEPTEMBER 30, 1983  
22 (P.L.160, NO.39), KNOWN AS THE "PUBLIC OFFICIAL COMPENSATION  
23 LAW." EACH COMMISSIONER SHALL BE ENTITLED TO RECEIVE ACTUAL  
24 TRAVELING EXPENSES.

25 (C) ANY PERSON APPOINTED AS A MEMBER OF THE COMMISSION SHALL  
26 BE A CITIZEN AND LEGAL RESIDENT OF THE COMMONWEALTH FOR A PERIOD  
27 OF NOT LESS THAN ONE YEAR WHO IS IN SYMPATHY WITH MODERN  
28 PERSONNEL METHODS AND THE APPLICATION OF MERIT PRINCIPLES TO  
29 PUBLIC EMPLOYMENT. NO PERSON WHO[, WITHIN ONE YEAR PRECEDING HIS  
30 APPOINTMENT, HAS BEEN AN OFFICER OF A POLITICAL PARTY] HOLDS OR

1 CAMPAIGNS FOR ANY OTHER PUBLIC OFFICE, HOLDS OFFICE IN A  
2 POLITICAL PARTY OR POLITICAL COMMITTEE, ACTIVELY PARTICIPATES IN  
3 OR CONTRIBUTES TO A POLITICAL CAMPAIGN, DIRECTLY OR INDIRECTLY  
4 ATTEMPTS TO INFLUENCE A DECISION BY A GOVERNMENTAL BODY OTHER  
5 THAN A COURT OF LAW OR AS A REPRESENTATIVE OF THE COMMISSION ON  
6 A MATTER WITHIN THE JURISDICTION OF THE COMMISSION OR IS  
7 EMPLOYED BY THE COMMONWEALTH OR A POLITICAL SUBDIVISION IN ANY  
8 OTHER CAPACITY, WHETHER OR NOT FOR COMPENSATION, SHALL BE  
9 ELIGIBLE TO SERVE AS A COMMISSIONER. THE GOVERNOR MAY REMOVE ANY  
10 MEMBER OF THE COMMISSION, BUT ONLY FOR INCOMPETENCE,  
11 INEFFICIENCY, NEGLECT OF DUTY, MALFEASANCE OR MISFEASANCE IN  
12 OFFICE BY GIVING SUCH MEMBER A STATEMENT IN WRITING OF THE  
13 CHARGES AGAINST HIM AND AFFORDING HIM, AFTER NOTICE OF NOT LESS  
14 THAN TEN DAYS, AN OPPORTUNITY OF MAKING WRITTEN ANSWER AND, UPON  
15 REQUEST, BEING PUBLICLY HEARD IN PERSON AND BY COUNSEL. A COPY  
16 OF THE CHARGES AND ANSWER OF THE GOVERNOR'S FINDINGS AND A  
17 TRANSCRIPT OF THE RECORD SHALL BE FILED WITH THE SECRETARY OF  
18 THE COMMISSION.

19 SECTION 2. SECTION 206 OF THE ACT IS AMENDED BY ADDING A  
20 PARAGRAPH TO READ:

21 Section 206. Powers and Duties of Director.--Under the  
22 direction and supervision of the commission, the director,  
23 except as otherwise provided in this act, shall direct and  
24 supervise the administrative work of the commission. The  
25 director shall have power and the duty--

26 \* \* \*

27 (11) To advertise, on the commission's publicly accessible  
28 Internet website and in all commission announcements,  
29 advertisements and examination materials, that veterans'  
30 preference is the law of this Commonwealth and that, to

1 determine standing on all certified eligibility lists, an  
2 additional ten points will be applied to the final examination  
3 score obtained by a veteran, in accordance with 51 Pa.C.S. §  
4 7103 (relating to additional points in grading civil service  
5 examinations), and by a qualified surviving spouse of a deceased <--  
6 veteran and a qualified spouse of a veteran who is disabled THE <--  
7 SAME PREFERENTIAL RATING GIVEN TO VETERANS UNDER THIS CHAPTER  
8 SHALL BE EXTENDED TO INCLUDE SPOUSES, in accordance with 51  
9 Pa.C.S. § 7108 (relating to preference of spouses).

10 SECTION 3. SECTION 212(D) OF THE ACT, AMENDED MAY 21, 1943 <--  
11 (P.L.516, NO.231), IS AMENDED TO READ:

12 SECTION 212. SERVICE TO STATE DEPARTMENTS, BOARDS AND  
13 COMMISSIONS OR AGENCIES AND POLITICAL SUBDIVISIONS; COOPERATION  
14 WITH OTHER CIVIL SERVICE AGENCIES.--\* \* \*

15 (D) THE COMMISSION SHALL HAVE POWER FROM TIME TO TIME TO  
16 ENTER INTO AGREEMENTS WITH OTHER PUBLIC PERSONNEL AGENCIES IN  
17 THIS OR ANY OTHER STATE AND WITH AGENCIES OF THE FEDERAL  
18 GOVERNMENT FOR THE PURPOSE OF USING AND EXCHANGING INFORMATION  
19 AND SERVICES. THE COMMISSION SHALL ENTER INTO AN AGREEMENT TO  
20 UTILIZE THE FORM AND METHOD OF AN EMPLOYMENT APPLICATION THAT IS  
21 STANDARD ACROSS DEPARTMENTS AND AGENCIES THAT ARE UNDER THE  
22 GOVERNOR'S JURISDICTION FOR THE PURPOSE OF ENTRANCE TO, OR  
23 PROMOTION IN, THE CLASSIFIED SERVICE. THE COMMISSION SHALL HAVE  
24 POWER TO BECOME A MEMBER OF OR SUBSCRIBE TO ANY ASSOCIATION OR  
25 SERVICE HAVING AS ITS PURPOSE THE INTERCHANGE OF INFORMATION  
26 RELATING TO THE TECHNIQUE OF PERSONNEL ADMINISTRATION.

27 SECTION 4. SECTION 502 OF THE ACT, AMENDED NOVEMBER 27, 2002  
28 (P.L.1129, NO.140), IS AMENDED TO READ:

29 SECTION 502. NATURE OF EXAMINATIONS.--[THE DIRECTOR SHALL  
30 GIVE EXAMINATIONS] EXAMINATIONS SHALL BE CONDUCTED TO ESTABLISH

1 EMPLOYMENT AND PROMOTION LISTS. SUCH EXAMINATIONS MAY BE WRITTEN  
2 OR ORAL, OR A DEMONSTRATION OF SKILL, OR AN EVALUATION OF  
3 EXPERIENCE AND EDUCATION, OR A COMBINATION OF THESE, WHICH SHALL  
4 FAIRLY APPRAISE THE FITNESS AND ABILITY OF COMPETITORS. THE  
5 APPOINTING AUTHORITY SHALL SELECT THE METHOD OF EXAMINATION THAT  
6 SHALL BE USED FOR THE INDIVIDUAL POSITION OR THE CLASS OF  
7 POSITIONS FOR WHICH THE EMPLOYMENT OR PROMOTION LIST IS BEING  
8 ESTABLISHED. SUCH EXAMINATIONS SHALL BE PRACTICAL IN CHARACTER  
9 AND SHALL RELATE TO THE DUTIES AND RESPONSIBILITIES OF THE  
10 POSITION FOR WHICH THE APPLICANT IS BEING EXAMINED AND SHALL  
11 FAIRLY TEST THE RELATIVE CAPACITY AND FITNESS OF PERSONS  
12 EXAMINED TO PERFORM THE DUTIES OF THE CLASS OF POSITIONS TO  
13 WHICH THEY SEEK TO BE APPOINTED OR PROMOTED. AN APPLICANT MAY BE  
14 REQUIRED TO POSSESS SCHOLASTIC EDUCATION QUALIFICATIONS ONLY IF  
15 THE POSITION FOR WHICH THE APPLICANT IS BEING EXAMINED REQUIRES  
16 PROFESSIONAL OR TECHNICAL KNOWLEDGES, SKILLS AND ABILITIES OR IF  
17 SUCH SCHOLASTIC QUALIFICATIONS ARE REQUIRED TO ASSURE THE  
18 CONTINUED ELIGIBILITY OF THE COMMONWEALTH FOR FEDERAL GRANTS-IN-  
19 AID. NO GREATER CREDIT FOR EXPERIENCE GAINED DURING A  
20 PROVISIONAL, EMERGENCY OR TEMPORARY APPOINTMENT UNDER THIS ACT  
21 OR ACTS REPEALED HEREBY SHALL BE GIVEN TO ANY PERSON IN ANY  
22 EXAMINATION THAN IS GIVEN IN SUCH EXAMINATION FOR EXPERIENCE IN  
23 THE SAME TYPE OF WORK PERFORMED IN A SIMILAR POSITION NOT UNDER  
24 THE PROVISIONS OF THIS ACT OR ACTS REPEALED HEREBY. IN  
25 EVALUATING EXPERIENCE IN ORDER TO COMPUTE THE FINAL RATING IN  
26 ANY EXAMINATION TO ESTABLISH EMPLOYMENT AND PROMOTION LISTS,  
27 PERSONS DISCHARGED OTHER THAN DISHONORABLY, AFTER ACTIVE SERVICE  
28 DURING ANY WAR OR ARMED CONFLICT IN WHICH THE UNITED STATES  
29 ENGAGED, FROM ANY BRANCH OF THE ARMED SERVICE OF THE UNITED  
30 STATES, OR FROM ANY WOMEN'S UNIFORMED SERVICE DIRECTLY CONNECTED

1 THEREWITH, SHALL NOT BE GIVEN LESS CREDIT FOR EXPERIENCE THAN  
2 WOULD BE GIVEN FOR CONTINUED EXPERIENCE IN THE POSITION HELD AT  
3 THE TIME OF INDUCTION IN THE SERVICE. NO QUESTION IN ANY  
4 EXAMINATION SHALL RELATE TO THE RACE, GENDER, RELIGION OR  
5 POLITICAL OR LABOR UNION AFFILIATION OF THE CANDIDATE.

6 Section 2 5. This act shall take effect ~~in 60 days~~

<--

7 IMMEDIATELY.

<--

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1154 Session of  
2015

INTRODUCED BY VULAKOVICH, FOLMER, BAKER, ARGALL, BARTOLOTTA,  
BLAKE, BOSCOLA, BREWSTER, DINNIMAN, EICHELBERGER, FARNESE,  
FONTANA, GORDNER, HUTCHINSON, KITCHEN, LEACH, MCGARRIGLE,  
MENSCH, RAFFERTY, RESCHENTHALER, SCARNATI, SCAVELLO, SCHWANK,  
TARTAGLIONE, VOGEL, WAGNER, WARD, WHITE, WOZNIAK, YAW AND  
YUDICHAK, MARCH 9, 2016

REFERRED TO STATE GOVERNMENT, MARCH 9, 2016

AN ACT

1 Amending the act of August 5, 1941 (P.L.752, No.286), entitled  
2 "An act regulating and improving the civil service of certain  
3 departments and agencies of the Commonwealth; vesting in the  
4 State Civil Service Commission and a Personnel Director  
5 certain powers and duties; providing for classification of  
6 positions, adoption of compensation schedules and  
7 certification of payrolls; imposing duties upon certain  
8 officers and employes of the Commonwealth; authorizing  
9 service to other State departments or agencies and political  
10 subdivisions of the Commonwealth in matters relating to civil  
11 service; defining certain crimes and misdemeanors; imposing  
12 penalties; making certain appropriations, and repealing  
13 certain acts and parts thereof," in selection of employees  
14 for entrance to or promotion in the classified service,  
15 further providing for ratings of competitors; and, in  
16 appointment and promotion of employees in the classified  
17 service, further providing for certification and for  
18 selection and appointment of eligibles.

19 The General Assembly of the Commonwealth of Pennsylvania  
20 hereby enacts as follows:

21 Section 1. Section 505 of the act of August 5, 1941  
22 (P.L.752, No.286), known as the Civil Service Act, amended  
23 August 27, 1963 (P.L.1257, No.520), is amended to read:

24 Section 505. Ratings of Competitors.--The final earned

1 rating of a person competing in any examination shall be  
2 attained by computing the ratings for each part or parts of the  
3 examination, the qualifying point for which is set by the  
4 director under the direction of the commission according to  
5 weights for each test established by the director. The director  
6 shall [send] provide notice by [mail] electronic mail or other  
7 communication or method if available, or alternatively, by  
8 United States mail to all competitors informing them whether  
9 they have attained a place upon the list and informing those who  
10 have attained a place upon the list of the number who took the  
11 examination, the number on the list, and of their relative  
12 standing upon the list.

13 Section 2. Sections 601 and 602 of the act, amended November  
14 27, 2002 (P.L.1129, No.140), are amended to read:

15 Section 601. Certification.--Whenever a vacancy is likely to  
16 occur or is to be filled in the classified service, the  
17 appointing authority shall submit to the director a statement  
18 indicating the position to be filled. Unless the appointing  
19 authority elects to follow one of the alternative procedures  
20 provided for in this act, or unless there is in existence a  
21 labor agreement covering promotions in the classified service,  
22 in which case the terms and procedures of such labor agreement  
23 relative to the procedures for promotions shall be controlling,  
24 the director shall certify to the appointing authority the names  
25 of the three [eligibles who are highest on the appropriate  
26 promotion list or employment list, whichever is in existence, or  
27 from the one, which under the rules of the commission, has  
28 priority.] highest ranking available persons on the  
29 certification of eligibles unless the director has specified,  
30 prior to testing the eligibles on the list, that either all



1 available persons regardless of ranking or a specified  
2 alternative number, other than three, of the highest ranking  
3 available persons will be used in making selections for this  
4 classification. If the appropriate employment or promotion  
5 certification of eligibles contains fewer than three eligibles  
6 who are willing to accept appointment or if there is no  
7 appropriate eligible list, the appointing authority may appoint  
8 an available eligible from the approved list or request the  
9 director to certify from such other list or lists as the  
10 director deems the next most nearly appropriate. If operational  
11 conditions of the appointing authority so dictate and it is  
12 found to be in the interest of the service to the Commonwealth,  
13 the [commission] director may authorize selective certifications  
14 based on [standards to be prescribed by the commission] merit-  
15 related criteria. Any person on any promotion or employment list  
16 who waives consideration for promotion or appointment need not  
17 be considered among the names from which a promotion or  
18 appointment is to be made.

19 Section 602. Selection and Appointment of Eligibles.--[If]  
20 (a) Unless a labor agreement contains promotion procedures  
21 which are inconsistent with this act, in which case the terms of  
22 the labor agreement shall be controlling, if a vacant position  
23 is to be filled, an appointing authority may:

24 (1) request the director to issue an appropriate  
25 certification of previously tested and active eligibles [unless  
26 a labor agreement contains promotion procedures which are  
27 inconsistent with this act, in which case the terms of such  
28 labor agreement shall be controlling.]; or

29 (2) request the director to create and issue a certification  
30 of eligibles consisting only of the names of those candidates

1 who responded by applying for the vacancy after receipt of  
2 notice of the vacancy from the commission, provided the director  
3 approves the use of this alternative selection procedure to fill  
4 the vacancy. The failure of a candidate to apply for the vacancy  
5 shall be considered a waiver under section 601.

6 (b) The certification of eligibles created and issued under  
7 this section shall be valid for [sixty] ninety work days. If the  
8 vacant position is to be filled from an employment or promotion  
9 list, the appointing authority shall select a person who is  
10 among the three highest ranking available persons on the  
11 certification of eligibles[.], unless the director has  
12 specified, prior to testing the eligibles on the list, that  
13 either all available persons regardless of ranking or a  
14 specified alternative number other than three of the highest  
15 ranking available persons will be used in making selections for  
16 the classification. In making the second, third or any  
17 additional selection from the eligibles on an employment or  
18 promotional certification, each selection shall be from among  
19 the [three highest scoring] similarly ranked available persons  
20 remaining on such certification of eligibles. After a person has  
21 been rejected three times by an appointing authority in favor of  
22 others on the same eligible list, such person shall not again be  
23 certified to that appointing authority, except upon written  
24 request from the appointing authority. Appointing authorities  
25 shall promptly report to the director the appointment of  
26 eligibles who have been certified. If a certified eligible  
27 refuses to accept an offer of employment, such refusal shall be  
28 promptly investigated by the director and, if it be found that  
29 the refusal has been made for improper or insufficient reasons,  
30 the director shall after giving ten days' notice to such person

1 remove the eligible from the list.

2 Section 3. This act shall take effect immediately.

# PLS *Committee News*

## Senate State Government

### **Senate State Government Committee**

3/15/16, 12:30 p.m., 8E-B East Wing

By Kimberly Hess, Pennsylvania Legislative Services

Video: [\(click here\)](#)

The committee met to consider bills.

**SB 930 Stefano, Patrick (F)** - (PN 1126) Amends Title 62 (Procurement) providing for certification of woman-owned business, minority-owned business or veteran-owned business. A woman-owned business, minority-owned business or veteran-owned business in this Commonwealth may apply to the department for a certification that the business is recognized by the Commonwealth as a woman-owned business, minority-owned business or veteran-owned business. The department may promulgate regulations governing the certification. Effective in 60 days. - The bill was unanimously reported as amended.

**A05976** by Stefano, replaces the language with a new Chapter 22 that provides for a recognition by the Department of General Services of Pennsylvania diverse businesses. The amendment was unanimously adopted.

Minority Chairman Tony Williams (D-Philadelphia) noted he was going to offer an amendment, but withdrew it. He explained the bill seems to be an effort to help a large company that is trying to be recognized as woman-owned, but the program has a cap and limits the ability of this program to be of assistance. Sen. Pat Stefano (R-Fayette) confirmed this to be correct. Chairman Williams expressed concern that this would establish a precedent for large companies to compete in a space that historically is carved out for smaller ones to compete. He said the owner of the company in question is a woman, but she inherited from her father and he suggested her path is not similar to the one that many others follow. He asked if there is some understanding to protect other truly disadvantaged companies moving forward. Sen. Stefano said he is not seeking to grant special treatment, but to certify that this is a woman-owned business so it can compete in other states. Chairman Williams noted he will support the bill but pointed out there is a significant community trying to do work in Pennsylvania and more needs to be done for them to remove impediments. He asked the chairman and Sen. Stefano to work with him to that end. Sen. Stefano said he would be supportive of any movement in that direction.

**SB 1154 Vulakovich, Randy** - (PN 1593) Amends the Civil Service Act, in selection of employees for entrance to or promotion in the classified service, further providing for ratings of competitors; and, in appointment and promotion of employees in the classified service, further providing for certification and for selection and appointment of eligibles. The bill provides for notification via electronic methods. Further, in instances of a vacancy, the director shall certify to the appointing authority the names of the three highest ranking available persons on the certification of eligibles unless the director has specified, prior to testing the eligibles on the list, that either all available persons regardless of ranking or a specified alternative number, other than three, of the highest ranking available persons will be used in making selections for this classification. Additionally, a labor agreement that contains promotion procedures which are inconsistent with the act shall be controlling. If a vacant position is to be filled, an appointing authority may: (1) request the director to issue an appropriate certification of previously tested and active eligibles; or (2) request the director to 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 commission, provided the director approves the use of this alternative selection procedure to fill the vacancy. The failure of a candidate to apply for the vacancy shall be considered a waiver under section 601. Effective immediately. - The bill was unanimously **reported as committed**.

Sen. Randy Vulakovich (R-Allegheny) explained the bill seeks to modernize the Civil Service Act to allow for vacancy-based hiring, notification by email, and expanding the "rule of three." He argued the current system wastes applicants' and agencies' time. He noted the legislation does not affect the absolute veterans' preference already in law and expressed his hope that the expanded rule of three will lead to more veterans being hired.

Sen. Andy Dinniman (D-Chester) praised the bill, remarking it makes a lot of sense to post the particulars of the job.

Chairman Williams offered his support for the effort, but said he is concerned about the Civil Service process. He said workers who are not as industrious as others are protected by the system and opined aggressive steps need to be taken to ensure the greatest effort is put forth by every employee in the system. Sen. Vulakovich agreed with the point and said the best people should be working those jobs and giving taxpayers their due.

① **HB 342 Gabler, Matt** - (PN 1050) Amends the Pennsylvania Election Code, in nomination of candidates, adding that ten signers are required for nomination petitions of candidates for school director. Effective in 60 days. (Prior Printer Number: 364) - The bill was unanimously **reported as committed**.

Rep. Matt Gabler (R-Clearfield) explained the intent is to address a "gap" in the Election Code because it does not reference the office of school director. Due to this oversight, he explained, candidates in DuBois School District have to circulate for different numbers of signatures.

① **HB 826 Gingrich, Mauree** - (PN 1841) Amends Titles 45 (Legal Notices) and 71 (State Government) requiring the Independent Fiscal Office to prepare fiscal notes of general and permanent Executive Orders issued by the Governor. Requires an executive order to be in the public for 60 days before it can be effective. Effective in 60 days. (Prior Printer Number: 994) - The bill was **reported as committed** with Sen. Judy Schwank (D-Berks) and Sen. Daylin Leach (D-Montgomery) voting in the negative.

Rep. Mauree Gingrich (R-Lebanon) provided an overview, stating it will bring accountability to government. She said taxpayers want and deserve to know the impact of an executive order.

Chairman Williams asked "why." Rep. Gingrich replied "for public disclosure and an independent review." Chairman Williams asked if the fiscal note will have a consequence on the order. Rep. Gingrich said the bill is silent on that.

Sen. John Gordner (R-Columbia) confirmed the bill would provide for disclosure of cost of any executive order. Rep. Gingrich agreed.

Sen. Dinniman praised the bill and commented there is one more area to go in terms of transparency and advocated for a fiscal note for regulations. He noted legislation that would require fiscal notes on regulations of the State Board of Education. He said most unfunded mandates on education come from the board, not the legislature.

Chairman Williams pointed out there is no such requirement of the Judiciary. "Clearly if there is some place that is not transparent and spends money, it is the Judiciary," he said, and advocated for a similar requirement on that branch.

Sen. Schwank read from the bill and said it provides for "pretty extensive reporting." She wondered about the requirement for projected losses and if it may hamper the executive if the information cannot be acquired in a timely manner. Rep. Gingrich said that was a consideration and it is not intended to hamper. She said the five-year projection provides for computation to a reasonable degree. Sen. Schwank said her negative vote is because she'd like more information.

Chairman Mike Folmer (R-Lebanon) called the bill very timely, considering the current budget situation.

Ⓝ **HB 1618 Fee, Mindy** - (PN 2569) Amends The Administrative Code establishing the Office of State Inspector General as a post appointed by the governor and confirmed by two-thirds of the Senate. Establishes a term of six years and limits service to no more than two terms. Provides for subpoena power. Currently the Inspector General is implemented via Executive Order. Effective in 60 days. (Prior Printer Number: 2359) - The bill was reported as committed by a vote of 7-4 with Democrats voting in the negative.

Rep. Mindy Fee (R-Lancaster) explained the bill is intended to find waste, fraud and abuse and is premised on an idea of former Gov. Casey by implementing his executive order on the inspector general into law. She argued the inspector general should always be able to look for waste, fraud and abuse without fear of losing one's job. She noted the bill will not be effective until 2019 in order to separate it from the current governor's term.

Chairman Folmer noted the committee held a joint hearing on fraud, waste and abuse in state government and said it became evident that this legislation is necessary.

Sen. Schwank questioned if it duplicates the work of the auditor general. Rep. Fee said that was answered at the hearing and that the roles are different. Sen. Ryan Aument (R-Lancaster), who has a companion bill in the Senate, clarified the bill would be effective immediately, but the new term would not be until 2019. Regarding the auditor general's role, he argued it is "quite clear" the tasks of the two offices are quite different. He said the inspector general has 230 employees and has saved more than \$90 million in welfare fraud. Sen. Schwank asked how the bill will improve the work of the inspector general. Rep. Fee argued whoever heads that office should not have to report back to the head of the agencies.

Chairman Williams remained "confused" as to why the bill is needed. He pointed out a past search for waste, fraud and abuse did not turn up any problems. He disagreed with the need to separate the inspector general from the governor's office and asked if the inspector general, Grayling Williams, supports the bill. Sen. Aument recalled a meeting he had with the current inspector general, who has expressed a belief that the office should be placed into statute and highlighted the importance of subpoena power. He emphasized the bill is not directed at concerns with the governor or current inspector general, which is why it would not go into effect until the next administration. Further, he pointed out the confirmation would require a two-thirds vote. Chairman Williams again asked about the position of the current inspector general. Sen. Aument said he is not aware if Grayling Williams has offered a specific position. Sen. Williams objected to the subpoena power and said he has spoken with Grayling Williams, and raised concerns with politics taking over. He said the role of the inspector general is to assist the governor to ensure waste, fraud and abuse do not occur during that governor's administration. To fraud that has been investigated, he said that suggests the office is working as intended. He offered to work to codify the office, but objected to changing the intent to put eyes on the governor's office. Rep. Fee opined the Office of the Inspector General is there for the taxpayer. Sen. Williams said no previous inspector general supports the bill. Sen. Aument said he has had conversations with former inspector generals who have been supportive of the concept. He argued the legislature should have a role in the process.

Sen. Dinniman motioned tabling the bill until official input can be received from former inspector generals. Chairman Folmer opposed the motion and said the process should move along. The motion to table failed by a vote of 4-7 with Republicans voting in the negative.

**Committee Member Contact Information (click or mouse over):** [Folmer, Mike \(R\)](#) / [Killion, Thomas H. \(F\) \(R\)](#) / [Alloway, Richard \(R\)](#) / [McIlhinney, Charles \(R\)](#) / [Stefano, Patrick \(F\) \(R\)](#) / [White, Donald \(R\)](#) / [Scarnati, Joseph \(R\)](#) / [Williams, Anthony \(D\)](#) / [Dinniman, Andrew \(D\)](#) / [Leach, Daylin \(D\)](#) / [Schwank, Judy \(D\)](#)

© PA Legislative Services · 240 North Third Street, 6th Floor · Harrisburg, PA  
17101 · (717) 236-6984