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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION
400 NORTH STREET
HARRISBURG, PA 17120

May 22, 2017

GLADYS M. BROWN
CHAIRMAN

Pennsylvania Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

2017 MAY 22 PM 1:06

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, 2017 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 comment period on the proposed regulations is open from April 22 to May 22, 2017. The Pennsylvania Public Utility Commission (PUC) has serious concerns regarding the impact the proposed regulations will have on our agency and is providing comments to the proposed regulations. Please note that SCSC did not contact the PUC to solicit 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 on the method of examinations to be used in evaluating candidates for available positions. Instead of implementing the statutes as written, SCSC issued proposed regulations that will undermine the intended purpose of Acts 69 and 167.

Approximately 81 percent of the PUC's positions are covered by the SCSC. Therefore, the PUC has a significant and direct interest in ensuring that the SCSC implements Acts 69 and 167 as they were written and intended. Below the PUC provides specific examples of how Acts 69 and 167 will allow the PUC to improve services and how the proposed regulations will negatively impact the PUC's 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).

The purpose of this change was 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 PUC, this change would be important because candidates are routinely confused by the process and rules for two types of Commonwealth employment, Civil Service and non-Civil Service. The confusion has been further exacerbated by the existence of two separate and distinct employment web portals. The utilization of one Commonwealth employment web portal for all Commonwealth employment opportunities will help to ease some of the candidate confusion inherent with multiple employment systems.

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, the PUC is in a better position to know how candidates can best be evaluated for our specific positions. With the exception of a couple of PUC-specific examinations (e.g. PUC Administrative Law Judge exam), the PUC would prefer to utilize E&T evaluations for most PUC-specific classifications (e.g., Fixed Utility Financial Analyst Trainee/1, Fixed Utility Valuation Engineer Trainee/1, Public Utility Auditor Trainee/1, Enforcement Officer, etc.). In addition, the PUC is composed of many Commonwealth-wide classifications and would prefer to utilize E&T evaluations for those classifications. Examples of Commonwealth-wide classifications utilized by the PUC include the Administrative Officer series, Executive Secretary, Human Resource Assistant and Analyst series, Budget Analyst series, etc. The PUC is not requesting to perform the examination function; however, to reiterate, the PUC is in a better position to determine the evaluation process that should be utilized rather than SCSC or any other Commonwealth agency utilizing the same or similar job classifications.

In addition, with written tests, candidates must take time off of work and drive to one of the six SCSC test sites for written exams. Anecdotally, countless candidates have shared difficulties with the examination process including taking time off work, reporting to a testing site and understanding that they were not taking an exam to get on a list for a specific vacancy.

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

Act 69 amended Section 601 to allow expansion of eligible hiring lists other than the standard "Rule-of-Three." With the standard Rule-of-Three, the PUC has had difficulty filling different positions at any given time; however, the PUC was able to fill the specific vacancy by others means such as considering bidding candidates (e.g. Promotion Without Examination, Lateral, Reinstatement, etc.) or by reposting a position in an attempt to expand the candidate pool. The PUC's intent when filling any given vacancy is to provide hiring managers with the most robust pool of qualified candidates possible. The Rule-of-Three sets an arbitrary limit to that pool. The PUC would like the ability to expand the Rule-of-Three to provide additional qualified candidates for consideration.

In addition to the issues described above, the PUC believes that 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 PUC from seeking an alternative to the Rule-of-Three for vacancy-based postings. For the PUC, the regulations pose a significant potential negative impact. The PUC is very much interested in utilizing vacancy-based hiring for most of PUC positions, including both Civil Service and non-Civil Service positions. The PUC intends to proceed with vacancy-based hiring and is concerned that following that process will prohibit the PUC from exploring an alternative to the Rule-of-Three. It seems that the PUC must make a choice between exploring an expansion to the Rule-of-Three and utilizing vacancy-based hiring. The PUC would prefer to utilize both options. The PUC does not believe that the amendment to Act 69 was meant to limit agencies to one method or the other, but rather to allow the appointing authority to utilize an alternative to the Rule-of-Three and vacancy-based hiring concurrently.

Second, the regulation will force agencies to keep the alternative to the Rule-of-Three in place for at least 12 months. This will dissuade the PUC from using an alternative to the Rule-of-Three for any PUC positions. There is uncertainty as to how effective the alternative Rule will be for filling positions until it has been implemented. In the event the alternative Rule is not effective, the regulation would have the PUC in the untenable position of using the alternative Rule for at least one year. Therefore, the PUC 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. The PUC would appreciate the opportunity to explore this new option on a limited basis prior to utilizing it for all PUC hiring needs. It is the PUC’s position that this approach will allow the PUC an opportunity to evaluate and review the effectiveness of the alternate to the Rule-of-Three.

Section 98.1 and 98.2. Vacancy-Based Hiring.

The intent behind Act 69 was 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 the PUC wants to post most of its job openings. It is the PUC’s desire to use vacancy-based postings for most PUC positions with a few exceptions. This includes the PUC’s Civil Service and non-Civil Service positions as well as PUC-specific and Commonwealth-wide classifications utilized at the PUC. Vacancy-based hiring is something that the PUC has been eagerly anticipating with the passage of Act 69. Of the changes to the Act in the past year, vacancy-based hiring would have the most significant positive impact on the PUC’s recruitment and placement function. The opportunity to have internal Commonwealth employees bid on PUC Civil Service positions, while at the same time giving the opportunity for non-Commonwealth candidates to take an E&T exam to get on the list for that same position, would be invaluable. At the same time, a vacancy-based hiring process would provide a more intuitive and logical process over the current system, as opposed to SCSC’s proposed but restrictive regulations.

In addition, the PUC is in a better position to know which jobs should be done through vacancy-based posting. The PUC currently employs a vacancy-based hiring approach for non-Civil Service positions with success. Similarly, the PUC wants to use vacancy-based postings for Civil Service positions, but believes the regulations are an impediment to doing so.

Cheryl Yohn

From: Roberts, Michael E <michrobert@pa.gov>
Sent: Monday, May 22, 2017 12:36 PM
To: IRRC
Cc: Roberts, Michael E
Subject: Regulation #61-6: Implementation of Acts 69 and 167 of 2016; IRRC Identification Number 3167
Attachments: 20170522122133150.pdf

Good afternoon,

The Pennsylvania Public Utility Commission is submitting the attached comments to be considered for the following proposed regulations:

**Pennsylvania State Civil Service Commission
Proposed Regulation #61-6
Implementation of Act 69 of 2016 and Act 167 of 2016
IRRC Identification Number 3167**

Please let me know if you have any questions or need any additional information from me. Thank you.

Michael E. Roberts
Human Resource Director
PA Public Utility Commission

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