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Independent Regulatory  
Review Commission

BEFORE THE STATE CIVIL SERVICE  
COMMISSION

\* \* \* \* \*

IN RE: PUBLIC HEARING,  
TYPE OF HEARING: PUBLIC HEARING ON  
PROPOSED REGULATIONS # 61-06

\* \* \* \* \*

BEFORE: Odelfa Preston, Chairman

HEARING: Tuesday, April 25, 2017  
1:16 p.m.

LOCATION: Pennsylvania State Civil  
Service Commission  
411 7th Avenue, Room 413  
Pittsburgh, PA 15219

Reporter: Jed Reifer

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INDEX TO COMMISSION EXHIBITS

IDENTIFIED & ADMITTED

NONE OFFERED

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I N D E X T O W I T N E S S E S

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FOR - APPOINTING

AUTHORITY:

NONE

FOR - APPELLANT:

NONE

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INDEX TO EXHIBITS

IDENTIFIED      ADMITTED

FOR - APPOINTING

AUTHORITY:

NONE OFFERED

FOR - APPELLANT:

NONE OFFERED

## P R O C E E D I N G S

CHAIRMAN PRESTON:

This is the public hearing on proposed regulations 61-06.

Good afternoon. And welcome to the State Civil Service Commission's public hearing scheduled pursuant to Commission Rule 93.4, to receive comments on our proposed regulations, which were recently published in Volume 47, Issue number 16 of the Pennsylvania Bulletin dated April 22nd, 2017.

As noted in our published preamble, these regulations are being proposed to bring the Commission's regulations into conformity with recent amendments to the Civil Service Act.

Specifically, current rules of the State Civil Service Commission, numbers 9133. 95.47, 97.3, 97.11, and 97.12 are being amended and a new Chapter 98, containing new rules 98.1 and 98.2, is being added to the

1 current rules to comply with changes  
2 made to the Civil Service Act by Act 69  
3 of 2016.

4 In addition, current  
5 rules of the State Civil Service  
6 Commission numbers 95.1 and 95.20 are  
7 being amended to comply with changes  
8 made to the Civil Service Act by Act  
9 167 of 2016.

10 Other current rules of  
11 the State Civil Service Commission,  
12 specifically rules number 95.71, 97.31,  
13 97.38, 97.63, 99.24, 103.11, 103.23,  
14 105.11, and 110.02, are being amended  
15 to clarify them and/or to bring them  
16 into conformity with intervening  
17 Commonwealth Court decisions and  
18 current Civil Service Commission  
19 hearing practices.

20 Some of these changes  
21 will simply clarify the existing  
22 regulations without changing the  
23 regulation itself in any substantive  
24 way.

25 Before we begin receiving

1 comments from the public, I would like  
2 to take this opportunity to address an  
3 issue that has arisen in connection  
4 with the Fiscal Note which the Budget  
5 Office provided for our proposed  
6 regulations.

7                   The Fiscal Note prepared  
8 by the Budget Office acknowledges that  
9 these proposed regulations are cost  
10 neutral and, quote, will not result in  
11 a loss of revenue or an increase in  
12 program costs to the Commonwealth or  
13 its political subdivisions, end quote.

14                   The Fiscal Note then goes  
15 on to state that there will be both  
16 added costs and lost savings to the  
17 Commonwealth because the Commission's  
18 proposed regulations, quote do not  
19 implement, end quote, sections 212(d)  
20 and 502 of Act 167 of 2016.

21                   With all due respect to  
22 the Budget Office, the assertion that  
23 sections 212(d) and 502 of Act 167 of  
24 2016 are not implemented by these  
25 regulations is simply not true.

1 I will start with section  
2 212(d). The amendment to Section  
3 212(d) in Act 167 of 2016 added the  
4 following language to section 212(d) in  
5 the Civil Service Act. The Commission  
6 shall enter into an agreement to  
7 utilize the form and the method of an  
8 employment application that is standard  
9 across departments and agencies that  
10 are under the Governor's jurisdiction  
11 for the purpose of entrance to, or  
12 promotion in, the classified service.

13 The Commission's current  
14 rule regulating Civil Service  
15 applications is rule 95.1. Our  
16 proposed rule change to 95.1 added the  
17 above language from the statute nearly  
18 verbatim to our existing rule, which  
19 now reads (a) Submission of  
20 applications. Applications required of  
21 a candidate for entrance to, or  
22 promotion in, the classified service,  
23 shall be made in a format prescribed by  
24 the Director.

25 Shall utilize a form and



1 method of application that is standard  
2 across departments and agencies that  
3 are under the Governor's jurisdiction,  
4 and shall contain a statement made  
5 subject to the penalties of 18  
6 Pennsylvania Consolidated Statute  
7 Section 4904, relating to unsworn  
8 falsification to authorities, verifying  
9 the truthfulness of all responses  
10 contained thereon.

11                   Clearly, by using  
12 language directly from Act 167, the  
13 Commission's proposed regulation  
14 implements section 212(d) of Act 167.

15                   The second assertion made  
16 by the Budget Office is this rule  
17 change does not implement Section 502  
18 of Act 167. The amendment to Section  
19 502 in Act 167 of 2016 changed Section  
20 502 of the Civil Service Act, in  
21 relevant part, to now read as follows.

22                   Examinations shall be  
23 conducted to establish employment and  
24 promotion lists. Such examinations may  
25 be written or oral, or a demonstration

1 of skill, or an evaluation of  
2 experience and education, or a  
3 combination of these, which shall  
4 fairly appraise the fitness and ability  
5 of competitors.

6 The Appointing Authority  
7 shall select the method of examination  
8 that shall be used for the individual  
9 position or the class of positions for  
10 which the employment or promotion list  
11 is being established.

12 Such examinations shall  
13 be practical in character and shall  
14 relate to the duties and  
15 responsibilities of the position for  
16 which the applicant is being examined.  
17 And shall fairly test the relative  
18 capacity and fitness of persons  
19 examined to perform the duties of the  
20 class of positions to which they seek  
21 to be appointed or promoted.

22 Our rule change to Rule  
23 95.20 adds the following language to  
24 the existing rule.

25 If the Director

1 determines that more than one method of  
2 examination will fairly test the  
3 relative capacity and fitness of  
4 persons examined to perform the duties  
5 of the class of positions to which they  
6 seek to be appointed or promoted, the  
7 Appointing Authority shall select the  
8 method of examination that will be used  
9 for the individual position or the  
10 class of positions, for which the  
11 employment or promotion list is being  
12 established.

13                   When the same  
14 classification is used by more than one  
15 Appointing Authority, the appointing  
16 authorities must reach a consensus on  
17 the method of examination that will be  
18 used for that classification, as only  
19 one examination method will be used by  
20 the Commission to examine all  
21 candidates for positions in the same  
22 classification.

23                   This rule change, once  
24 again, repeats elements from the  
25 statute verbatim in order to implement

1 Section 502 of Act 167 of 2016.

2 The Commission is  
3 recognizing with this rule change that  
4 the appointing authorities will have  
5 the final say on which examination will  
6 be used for the individual position or  
7 class of positions for which the  
8 employment or promotion list is being  
9 established.

10 However, the rule change  
11 also recognizes that it is still the  
12 Commission's obligation under Section  
13 502 to determine which method or  
14 methods of examination will fairly test  
15 the relative capacity and fitness of  
16 persons examined to perform the duties  
17 of the class of positions to which they  
18 seek to be appointed or promoted.

19 Accordingly, the rule now  
20 obligates the Commission to identify as  
21 many alternative valid examination  
22 options as possible, and then offer  
23 them all to the Appointing Authority,  
24 which will then select the method it  
25 wants to use to fill the vacancies in

1 its complement.

2 If an individual position  
3 or a class of positions is used  
4 exclusively by a single Appointing  
5 Authority, that Appointing Authority's  
6 examination choice will be final.

7 While there are many such  
8 classifications, for instance,  
9 corrections officer or corrections  
10 counselor, used exclusively by the  
11 Department of Corrections, there are  
12 many other classifications which are  
13 used by appointing authorities  
14 throughout the Commonwealth, such as  
15 clerk typist, accountant, human  
16 resource analyst, et cetera.

17 This rule change,  
18 therefore, also recognizes the reality  
19 that there are many classifications in  
20 which persons are similarly employed by  
21 multiple appointing authorities through  
22 the Commonwealth.

23 When filling these  
24 positions, in addition to satisfying  
25 the requirements of Section 502 as

1 amended, the Commission is equally  
2 obligated --- equally obliged to comply  
3 with other provisions of law,  
4 applicable to filling classified  
5 service positions.

6 Section 2 of the Civil  
7 Service Act 71, Prudent Statute,  
8 Section 741.2 states that, quote,  
9 greater efficiency and economy in the  
10 administration of the government of  
11 this Commonwealth is the primary  
12 purpose of this Act, unquote.

13 Section 501 of the Act,  
14 that's 71 Prudent Statute 741.501  
15 provides that, quote, appointments of  
16 persons entering the classified service  
17 or promoted therein shall be from  
18 eligible lists established as a result  
19 of examinations given by the director  
20 to determine the relative merit of  
21 candidates, unquote.

22 Section 507 of the Act,  
23 71 Purdon's Statute, Section 741.507  
24 provides, quote, an existing eligible  
25 list shall terminate upon the

1 establishment of an appropriate new  
2 list unless otherwise prescribed by the  
3 director, unquote.

4           The Pennsylvania Military  
5 Code provides that ten points will be  
6 added to the score of a veteran who  
7 passes a Civil Service exam. That's 51  
8 Pennsylvania Consolidated Statute,  
9 Section 7103. And that a veteran who  
10 is among the three highest scoring  
11 candidates on an eligible list will  
12 have a mandatory appointment  
13 preference, 51 Pennsylvania  
14 Consolidated Statute Section 7104.

15           The Commission currently  
16 utilizes one method of examination to  
17 create one eligibles list for a  
18 specified classification, regardless of  
19 whether the classification is exclusive  
20 to one Appointing Authority or is used  
21 by multiple appointing authorities.

22           Candidates who take that  
23 examination are applying for every  
24 vacancy of a position in that  
25 classification across appointing

1 authorities throughout the  
2 Commonwealth.

3           Every agency received a  
4 list from the same pool of ranked  
5 candidates. And every qualified  
6 veteran who earned veterans preference  
7 received the benefit of his or her  
8 preference, regardless of which  
9 Appointing Authority was filling a  
10 vacancy in that classification.

11           The economy and  
12 efficiency inherent in using one  
13 examination method and list for all  
14 positions in a classification is self-  
15 explanatory. Thus satisfying the  
16 primary purpose of the Act.

17           It is also self-evident  
18 from other provisions in the Civil  
19 Service Act that the legislature  
20 intended that there should be one list  
21 for each classification by requiring  
22 the Commission to assess the relative  
23 merit of the candidates by utilizing a  
24 competitive examination, Section 501,  
25 and requiring the Commission to, quote,



1 terminate, unquote, an existing list  
2 upon the establishment of an  
3 appropriate new list, Section 507.

4           When only one list is  
5 created for each classification, the  
6 relative merit of the candidates can be  
7 evaluated by the director based on the  
8 same examination criteria. And the  
9 candidates can be ranked accordingly,  
10 which satisfies the requirements of  
11 both Section 501 and Section 507.

12           If each Appointing  
13 Authority could select a different form  
14 of examination for positions in exactly  
15 the same Civil Service classification,  
16 then potentially the Commission would  
17 be compelled to develop and administer  
18 multiple types of examinations for the  
19 same classification.

20           Job seekers who wished to  
21 be considered for jobs throughout the  
22 Commonwealth would be compelled to take  
23 multiple examinations for the same  
24 classification, or risk being excluded  
25 from consideration by an Appointing

1 Authority that utilizes a different  
2 examination method.

3 A candidate who scores  
4 high on one test might score  
5 significantly lower, or potentially  
6 even fail, a different type of test.

7 Veterans would receive an  
8 inconsistent preference for a job in  
9 the same classification at one  
10 Commonwealth Appointing Authority  
11 versus another due to variations in  
12 their test scores.

13 CHAIRMAN:

14 Go off the record for a  
15 second so I can take a little water.

16 ---

17 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

18 ---

19 CHAIRMAN:

20 Okay. Back on the  
21 record.

22 The Commission does not  
23 believe this is the result intended by  
24 the legislature. Act 167 of 2016 was  
25 sponsored by State Representative Mark

1 Gillen. The original purpose of Act  
2 167 was to require the Commission to  
3 prominently display on its website,  
4 pamphlets, brochures, announcements,  
5 and examination material, a detailed  
6 description of veterans' preference  
7 employment benefits information.

8 In light of these  
9 requirements, the Commission does not  
10 believe it was the intent of the  
11 legislature to weaken the current  
12 veterans' preference employment  
13 benefits provided by the Pennsylvania  
14 Military Code by permitting various  
15 appointing authorities to each select a  
16 different form of examination to fill  
17 vacant positions in the same Civil  
18 Service classification.

19 Accordingly, draft rule  
20 95.20 requires that multiple appointing  
21 authorities who employ persons in the  
22 same classification, quote, must reach  
23 a consensus on the method of  
24 examination that will be used for that  
25 classification, unquote.

1                   This requirement can be  
2 achieved under the coordination of the  
3 Commission, which will contact all  
4 affected appointing authorities  
5 whenever a request is made to change  
6 the form of examination currently being  
7 utilized.

8                   It is presumed that the  
9 Governor's Office of Administration, in  
10 which all Commonwealth human resource  
11 services are currently being  
12 centralized, will also play a key role  
13 in this process.

14                   The Commission intends to  
15 promulgate a management directive,  
16 which must also be approved by the  
17 Secretary of Administration pursuant to  
18 the requirements of the Governor's  
19 directives management system, 4  
20 Pennsylvania Code Section 1.3(a), to  
21 define how this process of building a  
22 consensus will proceed to reach an  
23 examination selection decision.

24                   For all of these reasons,  
25 the Commission believes that the Budget

1 Office assertion that these proposed  
2 regulations do not implement Section  
3 502 of Act 167 is unfounded.

4 The Commission is working  
5 closely with the Office of  
6 Administration to convert to the use of  
7 a software product known as NeoGov  
8 wherever possible.

9 It is believed that the  
10 Budget Office's negative comments  
11 appended to their Fiscal Note are  
12 rooted in a pessimistic prediction that  
13 the Commission will not cooperate in  
14 the implementation of NeoGov. And an  
15 equally pessimistic prediction that the  
16 Commission will impose a written test  
17 requirement on appointing authorities  
18 arbitrarily, even when they would  
19 prefer a different examination method.

20 The Commission does not  
21 agree that either of these negative  
22 predictions has any basis in actual  
23 fact. Indeed, the Commission has been  
24 committed in writing since 2016 to  
25 utilize NeoGov software, quote, to the

1 extent possible to deliver the  
2 Commission's services, unquote.

3 The Budget Office Fiscal  
4 Note projects a two to three million  
5 dollar cost increase, quote, for  
6 modernization of the Commission's  
7 information technology system, unquote.

8 The Commission does not  
9 know the basis for this cost projection  
10 because it was not shared with us. It  
11 is assumed that the Office of Budget is  
12 estimating the cost of future upgrades  
13 to the Commission's testing-related  
14 software if the Commission does not  
15 commit 100 percent to using only NeoGov  
16 software.

17 The Commission did  
18 include a request for additional  
19 funding to modernize its examination  
20 and certification system software in  
21 its 2016/2017 budget request. The  
22 total amount requested by the  
23 Commission was \$1.65 million, and  
24 included a personal computer  
25 replacement project as well. This

1 request was denied by the Budget  
2 Office.

3           It should be noted that  
4 the Commission's software systems have  
5 performed satisfactorily through the  
6 current fiscal year and will continue  
7 to do so. The modernization money  
8 would improve them, but is not  
9 essential to maintaining performance.  
10 They are being maintained within our  
11 current operational budget.

12           The problem the  
13 Commission is encountering with NeoGov  
14 software is that only one of the  
15 alternative test methods listed in  
16 Section 502, an evaluation of  
17 experience and education, is possible  
18 using that software. Therefore,  
19 written examinations, oral  
20 examinations, and demonstrations of  
21 skill will not be possible using only  
22 NeoGov software. In fact, the  
23 Commission has been told by the Office  
24 of Administration that all of these  
25 alternative examination methods are out

1 of scope for the NeoGov conversion  
2 project.

3 This is consistent with  
4 our research into other states that are  
5 currently using NeoGov software. The  
6 following states use NeoGov, but only  
7 for job applications: Alaska, Illinois,  
8 Louisiana, Mississippi, Nebraska, North  
9 Carolina, South Carolina, Oregon, Rhode  
10 Island, Texas, West Virginia, and  
11 Wyoming.

12 The following states are  
13 using NeoGov for job applications and  
14 some additional functions, such as job  
15 postings, and scheduling for paper and  
16 pencil examinations, and/or scheduling  
17 for job interviews: Colorado, Hawaii,  
18 Massachusetts, Michigan, New Mexico,  
19 Tennessee and Washington.

20 Our research revealed no  
21 states are using NeoGov to administer  
22 online computerized written  
23 examinations.

24 Many of the Commission's  
25 highest volume and most popular



1 examination programs are written  
2 computerized examinations, many with a  
3 video and/or oral examination  
4 component. Examinations in this  
5 category include corrections officer  
6 trainee, corrections officer two,  
7 wildlife conservation officer trainee,  
8 aide trainee, and income maintenance  
9 caseworker. These examinations are  
10 specifically designed to measure  
11 personal attributes and skills, such as  
12 observational skills, which can predict  
13 which candidates will be most likely to  
14 succeed if hired. None of these tests  
15 could be offered by the Commission  
16 using only NeoGov software.

17 In order to avoid the  
18 Budget Office's estimated costs, 100  
19 percent conversion to NeoGov software  
20 will be required. One-hundred (100)  
21 percent conversion to NeoGov software  
22 will mean an end to all other forms of  
23 competitive written and oral testing by  
24 this Commission. The available choices  
25 for examination method to the

1 appointing authorities will be reduced  
2 to one choice, an evaluation of  
3 experience and education.

4 The Commission does not  
5 agree that this is the result intended  
6 by the legislature when it passed into  
7 law Acts 69 and 167 of 2016. It seems  
8 evident to this Commission that the  
9 legislature wanted to give appointing  
10 authorities actual choices of available  
11 examination methods, not just the  
12 illusion of having a choice.

13 In addition to changes  
14 made as a direct result of Acts 69 and  
15 167, the proposed regulations also  
16 incorporate other needed changes to  
17 conform with current law. The change  
18 to rule 95.43 conforms to the revised  
19 definition for the personal security  
20 exemption in the Right to Know Law, 65  
21 Purdon's Section 67.708(b)(1)(ii).

22 Rule 97.31 clarifies that  
23 regular status can never be obtained  
24 merely by the passage of time without  
25 an affirmative act by an Appointing

1 Authority as held by the Commonwealth  
2 Court in Wernersville State Hospital v.  
3 Peters, 659 A.2d 67, also Pennsylvania  
4 Commonwealth 1995.

5 An employee who has not  
6 been elevated from probationary status  
7 to regular status by an affirmative act  
8 of the Appointing Authority, even  
9 though the entire statutory maximum  
10 period of time for the employee's  
11 probationary period has expired, will  
12 have a right to appeal pursuant to  
13 Section 951(b) of the Civil Service  
14 Act. 71 Purdon's Section 741.951(b).

15 Rule 103.11 is changed to  
16 incorporate the holding of the  
17 Pennsylvania Supreme Court in Pinto v.  
18 State Civil Service Commission, 912A.2d  
19 787, Pennsylvania 2006.

20 Other changes are  
21 intended to conform to the Commission's  
22 existing personnel regulations to  
23 current Commission policies and  
24 practices, or to clarify the meaning of  
25 existing rules without making a

1 substantive change to the operation of  
2 the rules. These latter changes will  
3 primarily benefit those who are already  
4 employed in the Civil Service  
5 positions, approximately 56,000  
6 members.

7                   These proposed  
8 regulations have been reviewed and  
9 approved for form and legality by the  
10 Office of the Attorney General.

11                   And as I look around the  
12 room today, I notice that there are no  
13 members of the public present to  
14 introduce their comments. And I would  
15 like to note for the record the time of  
16 1:39 p.m. Eastern Time.

17                   And I'd like to close the  
18 record at this point.

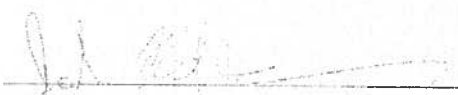
19                   \* \* \* \* \*

20                   HEARING CONCLUDED AT 1:39 P.M.

21                   \* \* \* \* \*

## CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Chairman Preston was reported by me on 04/25/2017 and that I, Jed Reifer, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.



---

Jed Reifer,

Court Reporter