

PENNSYLVANIA CLIENT ASSISTANCE PROGRAM

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Senator Mike Folmer
Chairman, Senate State Government committee
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Chairman Folmer and members of the committee:

The Pennsylvania Client Assistance Program(CAP) is the statewide advocate for people with disabilities seeking services from the Office of Vocational Rehabilitation(OVR). Along with the undersigned, we submit the attached amendments to Senate Bill No. 1037. If adopted, these amendments will incorporate the Senate's commitment to expanding employment opportunities for people with disabilities in the Commonwealth. They will also reinforce the findings and policy declarations set out in the Work Experience for High School Students with Disabilities Act and the Employment First Act regarding the contribution that people with disabilities can make in the workplace. We recognize that Pennsylvania as an employer should serve as a model for the employment of people with disabilities and utilize the full potential of these talented citizens.

In support of these amendments, CAP and the undersigned offer the following written testimony and request that it be made a part of the hearing's record.

Pennsylvania is a unique state in that civil service and non-civil service jobs are controlled by two different entities. Civil service hiring is the responsibility of the State Civil Service Commission (SCSC). Non-civil service hiring is managed by the Bureau of State Employment, Office of Administration (OA). Each has its own process for hiring state employees and follow different statutory and regulatory schemes. The bottom line is that in this bifurcated system, state agencies by themselves are virtually powerless to implement many of the Employment First recommendations made in September 2016 by the Governor's interagency workgroup. It also complicates the way forward for any bill in the General Assembly focused on the employment of people with disabilities.

Senate Bill 1037 is the first step in solving this problem. It also provides an opportunity to reform the state hiring process to create a climate hospitable to workers with disabilities.

CAP has been involved with issues involving the hiring of people with disabilities by the Commonwealth since its inception in 1981. Most recently, CAP commented on SCSC proposed regulations and, among other things, joined with the OVR to urge the Commission to expand opportunities for people with disabilities in the state hiring process. We have also worked with the State Rehabilitation Council (SRC) to look at ways to streamline the hiring process for applicants with disabilities.

Our first task was to understand the state hiring process in Pennsylvania. In addition to reviewing the civil service statute and regulations, and non-civil service OA program management directives, CAP staff met with OA and civil service staff to review their programs. CAP also talked with individuals with disabilities who have had direct experience with the hiring process. It became evident very quickly that the civil service process itself created barriers at every step for applicants with disabilities. This included overall program accessibility, job classification and descriptions, application, posting, testing, interviewing, hiring, onboarding and retention.

CAP staff then compared the findings in Pennsylvania to other states to determine if the barriers here existed in other civil service agencies, and, if so, how they were addressed. This included a review of civil service programs in all 50 states, the federal Office of Personnel Management (Schedule A) and several major cities. CAP identified 18 civil service programs that centralize the hiring process within a state agency and outlined how each focused upon the hiring of people with disabilities. Across the board, these states recognize that inherent barriers exist within a competitive hiring process for people with disabilities. This is not an issue unique to Pennsylvania. However, how states address these barriers varies and includes providing for a disability preference, establishing job set-asides, focusing on test accommodation, and creating an exemption for people with disabilities from competitive hiring. We shared our findings with OVR, the SRC, and OA and based upon their recommendations, formed a work group of disability leaders across the state to look at ways to improve access to civil service.

At the outset, the workgroup agrees that reform of the civil service process is necessary to fulfill the Senate's commitment to ensuring the economic independence of people with disabilities. As you know, the Commonwealth is the largest employer in the state, providing over 100,000 jobs to its citizens. Unfortunately, over the past three years, the number of OVR customers that have obtained state jobs totals only approximately 200. Many of these are unclassified jobs, including those in the State System of Higher Education. This is in stark contrast to the approximately 27,000 jobs OVR has helped its customers obtain in the private sector during the same period. As in other states, the lack of opportunity within civil service in Pennsylvania is directly attributable to the challenges faced by people with disabilities who try to deal with the current civil service process, which is complicated, inaccessible, and not user friendly.

Overall, there is broad consensus in the disability community, and among service providers and state officials that any reform to Civil Service must include: (1) an alternative path to hiring outside the competitive process, (2) the integration of supports such as supported employment upon hiring, and (3) the inclusion of existing innovative approaches to hiring people with the most significant disabilities in customized state jobs.

The proposed amendments offer the Senate a practical and tested approach to reforming the state civil service process to make it open and responsive to the needs of people with disabilities. Statistics have shown at the federal level that an alternative path to hiring for people with disabilities can be successful. Trying to fix only one or more aspect of the existing hiring process does not work and only continues to exclude people with disabilities from the civil service hiring process.

It is our belief that the adoption of the proposed amendments will create real employment opportunities for people with disabilities who seek a career in state government and will help the Senate fulfill its commitment to the goal of Employment First for all persons with disabilities.

Thank you for the opportunity to submit written testimony in support of S.B. 1037.

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EVP, Bender Consulting Services

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Center for Independent Living of Central PA

CC: Secretary W. Gerard Oleksiak, Department of Labor and Industry
Secretary Sharon Minnich, Office of Administration
Pennsylvania State Board of Vocational Rehabilitation
Director, Office of Vocational Rehabilitation
Pennsylvania State Rehabilitation Council
Executive Director, State Civil Service Commission

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1037 Session of
2018

INTRODUCED BY FOLMER, VULAKOVICH, EICHELBERGER, BARTOLOTTA,
RESCHENTHALER, FONTANA, YUDICHAK, ARGALL, WILLIAMS, SCHWANK,
LANGERHOLC, WARD, AUMENT, RAFFERTY, SCARNATI, TARTAGLIONE,
DINNIMAN, BAKER, BOSCOLA, BLAKE, STEFANO, WHITE, KILLION,
LEACH, LAUGHLIN, ALLOWAY, MARTIN, STREET AND YAW,
FEBRUARY 9, 2018

REFERRED TO STATE GOVERNMENT, FEBRUARY 9, 2018

AN ACT

Amending Title 71 (State Government) of the Pennsylvania
Consolidated Statutes, consolidating the Civil Service Act;
providing for civil service reform in the areas of merit-
based hiring, civil service applications, certification,
examinations and promotions; and making related repeals.

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

Section 1. Title 71 of the Pennsylvania Consolidated
Statutes is amended by adding a part to read:

PART III

CIVIL SERVICE REFORM

Chapter

21. General Provisions
22. Merit System Employment
23. Selection of Employees for Entrance to or Promotion in
Classified Service
24. Appointment and Promotion of Employees in Classified

resulting from temporary pressure of extra work which is likely to continue for a period of 12 months or less.

"Unclassified service." Each position existing on or created after August 5, 1941, in a department and agency included in the definition of classified service which are held by any of the following:

(1) A head and deputy head of a department of the Commonwealth, bureau director, division chief and all other supervisory personnel whose duties include participation in policy decisions.

(2) A member of a board or commission.

(3) One secretary or one confidential clerk and not more than five other personal assistants or aides to each State appointing authority or each member of the State appointing authority, except the commission and the director.

(4) An individual appointed for the duration of a special study, project or internship which is scheduled to be completed after a fixed or limited period of time and which should not be performed by an individual in the classified service.

(5) An attorney that the appointing authority appoints.

(6) Unskilled labor.

(7) Each professional position attached to the department head's office which functions in press, public relations, legislative liaison or development of executive policy.

(8) Appointment of persons with disabilities -

(1) Purpose. For the purpose of this title, persons with disabilities are exempt from examination and rating of competitors in the classified service and may be appointed to a classified position by an appointing authority upon receipt of satisfactory evidence of the persons qualifications.

(2) The appointing authority may appoint, on a permanent, time-limited, or temporary basis, a person with a disability according to the provisions described below.

(3) Definition. "Person with a Disability" shall include any person who has a physical or sensory disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree or paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impairment, or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological, or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological, or neurological conditions which prevents the typical exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

(4) Proof of disability.

(i) An agency must require proof of an applicant's disability prior to making an appointment under this section.

(ii) An agency may accept, as proof of disability, appropriate documentation (e.g., records, statements, or other appropriate information) issued by a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (State or private); or any Federal agency or State agency that issues or provides disability benefits.

(5) Permanent or time-limited employment options. An agency may make permanent or time-limited appointments under this paragraph where an applicant supplies proof of disability as described in paragraph(4)of this section and the agency determines that the individual is likely to succeed in the performance of the duties of the position for which he or she is applying. In determining whether the individual is likely to succeed in performing the duties of the position, the agency may rely upon the applicant's employment, educational, or other relevant experience, including but not limited to service under another type of appointment in the competitive or unclassified services.

(6) Temporary employment options. An agency may make a temporary appointment when:

(i) The agency determines that it is necessary to observe the applicant on the job to determine whether the applicant is able or ready to perform the duties of the position. When an agency uses this option to determine an individual's job readiness, the hiring agency may convert the individual to a permanent appointment whenever the agency determines the individual is able to perform the duties of the position; or

(ii) The work is of a temporary nature.

CHAPTER 22

MERIT SYSTEM EMPLOYMENT

Sec.

2201. Transfer of duties.

2202. Duties of Office of Administration.

2203. Regulations.

2204. Federal standards.

2205. Legislative representation for collective bargaining.

§ 2201. Transfer of duties.

Beginning on the effective date of this section, the Office of Administration shall perform the duties conducted by the commission and the director under the Civil Service Act, except sections 950 and 951(a), (b) and (c) of the Civil Service Act.

§ 2202. Duties of Office of Administration.

(a) Duties.--The Office of Administration shall have the power and duty to implement and administer this part as follows:

(1) Perform the duties conducted, prior to the effective date of this section, by the commission and the director under section 2201 (relating to transfer of duties).

(2) Direct and supervise the administrative work of merit system employment.

(3) Appoint staff to classified service positions necessary to carry out the provisions of this part.

(4) Provide merit system employment for the Commonwealth in accordance with this part.

(5) **Provide for a hiring process in accordance with the requirements in paragraph 8 of the definition of unclassified service.**

(6) **Implement the goals and recommendations of the September 2016 "EXECUTIVE ORDER 2016-03: RECOMMENDATIONS Establishing 'Employment First' Policy and Increasing Competitive-Integrated Employment for Pennsylvanians with a Disability" and those developed pursuant to future Employment First legislation adopted by the General Assembly (SB21 and HB1641) within 12 months.**

(7) **Require state agencies to adopt policies and procedures to provide vocational rehabilitation services, including supported employment, to people with disabilities in the hiring process.**

(8) **Require state agencies to develop positions that are customized to match agency needs with a worker's skills, interests and strengths.**

(9) Advertise, on the Office of Administration's publicly accessible Internet website and in each Office of Administration announcement and advertisement, that:

(i) veterans' preference is the law of this

permitted by law may be specified in the regulations and in the announcements of the examinations. All applications for positions in the classified service shall be subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(d) Limitation of competition.--The Office of Administration may limit competition in promotion examinations to employees in the classified service who have completed a probationary period in a class or classes designated in the public notice of the examinations and may permit promotions to be accomplished by any one of the following plans:

(1) Appointment from open competitive lists.

(2) Achieving a place on an eligible list after a promotional examination given at the request of the appointing authority.

(3) Promotion based upon meritorious service and seniority to be accomplished by appointment without examination if the individual has completed the probationary period in the next lower position and meets the minimum requirements for the higher position.

(e) Preference.--To the extent permitted by law, when all applicants for appointment and promotion to a position in the classified service are equally qualified, preference shall be shown to applicants who are United States citizens over those who are not United States citizens.

§ 2302. Nature of examinations.

(a) General rule.--Examinations shall be conducted to establish employment and promotion lists. Examinations may be:

(1) Written or oral.

Commonwealth;

(ii) to determine standing on each certified eligibility list, an additional 10 points shall be applied to the final examination score obtained by a veteran, in accordance with 51 Pa.C.S. § 7103 (relating to additional points in grading civil service examinations); and

(iii) the same preferential rating given to veterans under this chapter shall be extended to include spouses of deceased or disabled veterans, in accordance with 51 Pa.C.S. § 7108 (relating to preference of spouses).

(10) Administer this part, except for Chapters 30 (relating to State Civil Service Commission and Director) and 31 (relating to hearings and records).

(11) Request assistance from State departments, agencies, boards or commissions, if necessary.

(12) Cooperate with other civil service agencies.

(13) Investigate as requested by the Governor or the General Assembly and to report on the investigation.

(14) Investigate, notwithstanding any other provision of this part, personnel action taken under this part and hold public hearings, record findings and conclusions and order action to assure observance of this part.

(15) Administer oaths and require testimony and the production of documents and records.

(b) Oaths, testimony and documents.--The following shall apply:

(1) The Secretary of Administration and any other employee or agency authorized by the secretary shall have the

(2) A demonstration of skill.

(3) An evaluation of experience and education.

(4) A combination of paragraphs (1), (2) and (3) which fairly appraise the fitness and ability of competitors.

(b) Method of examination.--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. The examinations shall:

(1) Be practical in nature.

(2) Relate to the duties and responsibilities of the position for which the applicant is being examined.

(3) Fairly test the relative capacity and fitness of individuals examined to perform the duties of the position or class of positions to which the individuals seek to be appointed or promoted.

(c) Qualifications.--An applicant may be required to possess scholastic education qualifications only if the position for which the applicant is being examined requires professional or technical knowledge, skills and abilities or if the scholastic qualifications are required to ensure the continued eligibility of the Commonwealth for Federal grants-in-aid. No greater credit for experience gained during a provisional, emergency or temporary appointment under this chapter shall be given to an individual in an examination than is given for experience in the same type of work performed in a similar position not under the provisions of this chapter.

(d) Military service.--In evaluating experience in order to compute the final rating in an examination to establish eligible

active service during a war or armed conflict in which the United States engaged, from a branch of the armed forces of the United States or from a women's uniformed service directly connected with the armed forces of the United States, may not be given less credit for experience than would be given for continued experience in the position held at the time of induction into the service.

(e) Discriminatory questions prohibited.--No question in an examination shall relate to the race, gender, **disability**, religion or political or labor union affiliation of the candidate.

§ 2303. Holding examinations and rating competitors.

The Office of Administration shall prepare and hold examinations rating the work of competitors and prepare the resulting eligible lists. Individuals not on the regular staff of the Office of Administration may be called on for assistance.

§ 2304. Public notice of examinations.

The Office of Administration shall give public notice of all examinations for positions or promotions in the classified service at least two weeks in advance of the final date for filing applications.

§ 2305. Ratings of competitors.

(a) Computation of rating.--The final earned rating of an individual competing in an examination shall be attained by computing the ratings for each part or parts of the examination, the qualifying point for which is set by the Office of Administration, according to weights for each test.

(b) Notification.--The Office of Administration shall provide notice by e-mail or other communication or method, if

2506. Other personnel standards and rules.

§ 2501. Performance ratings.

(a) Evaluations.--Performance evaluations shall be considered for purposes prescribed by the Office of Administration.

(b) Frequency of evaluations.--Agencies shall evaluate the performance of agency employees during the employees' probationary periods and at least once a year thereafter.

(c) Forms and procedure.--Performance evaluation forms and procedures shall be reviewed and approved by the Office of Administration prior to utilization.

§ 2502. Transfers and reassignments.

(a) Transfers.--The transfer of a classified service employee from a position under the jurisdiction of one appointing authority to a position in the same class under the jurisdiction of another appointing authority may be made with the approval of the Office of Administration and both appointing authorities.

(b) Reassignments.--An appointing authority may reassign a classified service employee under the appointing authority's jurisdiction from one position to another in the same class or in a similar class at the same pay range for which the employee qualifies.

(c) Manner of transfers and reassignments.--Transfers and reassignments shall be accomplished in a manner prescribed by the Office of Administration.

(d) Promotion.--A transfer or reassignment of an employee from a position in one class to a position in a class for which a higher maximum salary is prescribed shall be deemed a

for in this part.

(e) Appointment after certification.--No individual may be transferred or reassigned from a position in the unclassified service to a position in the classified service, **except as provided for in paragraph(f) of this section**, unless appointed to the classified service position after certification of the individual's name from an eligible list in accordance with the provisions of this part.

(f) **Noncompetitive conversion to the competitive service.**

(a) An agency may noncompetitively convert to the competitive service an employee who has completed up to 2 years of satisfactory service under this authority, **except as provided for in paragraph (b) of this section.**

(b) Time spent on a temporary appointment specified in paragraph (5) of this section does not count towards the 2-year requirement.

§ 2503. Demotions.

(a) Employees subject to demotion and rights.--The following apply:

(1) An appointing authority may demote to a vacant position in a lower class an employee in the classified service who does not satisfactorily perform the duties of the position to which the employee was appointed or promoted and who is able to perform the duties of the lower class position.

(2) In case of a demotion, the employee shall have all rights of appeal as provided in this part.

(3) No employee may be demoted because of the employee's race, gender, **disability**, religion or political, partisan or

one year, be given preference for reemployment in the same class of position from which furloughed and shall be eligible for appointment to a position of a similar class in other agencies under this part unless the terms of an existing labor agreement preclude the employee from receiving the preferential treatment contained in this paragraph, in which event the terms of the labor agreement shall control.

§ 2603. Suspension.

(a) Right to suspend.--The following apply:

(1) An appointing authority may, for disciplinary purposes, suspend without pay an employee holding a position in the classified service.

(2) Suspensions, including suspensions pending internal investigation, may not exceed 60 working days in one calendar year.

(3) Suspensions pending investigation by external agencies may be maintained up to 30 working days after conclusion of the external investigation.

(b) Discrimination prohibited.--No individual may be suspended because of race, gender, **disability**, religion or political, partisan or labor union affiliation or any other nonmerit factor.

(c) Good cause.--Employees may only be suspended for good cause.

(d) Report of suspension.--An appointing authority shall immediately report in writing to the Office of Administration a suspension, together with the reason or reasons for the suspension, and shall send a copy of the report to the suspended employee.

manner another individual to impersonate him or her in connection with an examination or request to be examined, certified or appointed.

(6) Furnishes false information about the individual or another individual in connection with a request to be examined, certified or appointed.

(7) Makes an appointment to office or selects an individual for employment contrary to this part.

(8) Refuses to comply with the provisions of this part.

(9) Willfully or through culpable negligence violates the provisions of this part or rules made under this part.

§ 2704. Prohibition of discrimination.

An officer or employee of the Commonwealth may not discriminate against an individual in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of race, gender, **disability**, religious or political, partisan or labor union affiliation or other nonmerit factors.

§ 2705. Political activity.

(a) General rule.--An individual in the classified service may not use the individual's official authority or influence for the purpose of interfering with or affecting the result of an election.

(b) Political activities prohibited.--An individual in the classified service may not take an active part in political management or in a political campaign. Activities prohibited by this subsection include the following:

(1) Serving as an officer of a political party, a member of a national, State or local committee of a political party