A Pennsylvania War Veterans Council Legislative Committee Review of SB 1037: Restructuring the State Civil Service System

10 April 2018

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I. Preface

In the March 2018 meeting of the Pennsylvania War Veterans Council (PWVC), the Legislative Committee was given the task of providing a recommendation to the committee of the whole on a position in regards to reforming the Civil Service Commission's (CSC) duties and responsibilities – specifically, to supporting Senate Bill 1037 (SB 1037).

II. Statement of the Problem

Should the PWVC support Senate Bill 1037 (PN 1473), introduced on 8 February 2018 by Senators Folmer and Volakovich – or any such proposal – which would alter the shared responsibilities of the Civil Service Commission and the Office of Administration for the management of "classified" service (civil service) hiring?

In Senator Folmer's words: [1]

> Senate Bill 1037 would streamline the Commission by shifting several responsibilities to the Commonwealth's Office of Administration, including merit-based hiring, civil service applications, certifications, examinations and promotions. The changes will not

[1] Folmer, Mike. "Folmer, Vulakovich Introduce Civil Service Reform." *Senator Mike Folmer website*, 12 Feb. 2018, www.senatorfolmer.com/2018/02/12/folmer-vulakovich-introduce-civil-service-reform/. <Accessed 15 Mar 2018>

> impact veterans' preference …Our proposed legislation would allow the Commission to focus on appeals while consolidating the Commonwealth's merit-based hiring into the Office of Administration. These changes will better serve the needs of the 21st Century job applicants.

III. The Official Contention Against the Civil Service Commission and the Intention of the Bill

From the Co-Sponsor Memorandum[2] the following contentions and intentions appear.

In 2016, Act 69 of 2016 was enacted to bring some modest modernizations to the Pennsylvania Civil Service Commission by allowing them to:

- Notify applicants of job openings or tests by email;
- Expand the "Rule of Three" to create stronger pools of job candidates to fill positions by permitting the Commission to provide lists of more than three candidates, and;
- Bring "vacancy-based hiring" to the Civil Service Commission by allowing them to post actual job vacancies rather than general lists of job classifications

Act 167 of 2016 was also passed to:

- Prevent Civil Service Commissioners from being active in politics or being employed by another government entity;
- Establish a uniform method to apply for both civil service and non-civil service positions, and;
- Allow appointing authorities to select the type of exams the Commission uses to develop lists of candidates for agency positions

The goal of these changes was to better meet the needs of the Commission's customers: people seeking employment with the Commonwealth – especially veterans.

The contention is that the neither of these laws have been implemented by the Civil Service Commission, and, therefore, the Civil Service Commission itself needs to be streamlined.

If enacted, the following responsibilities will be transferred from the Civil Service Commission to the Commonwealth's Office of Administration:

- Merit-based hiring;
- Civil service applications;
- Certifications;
- Examinations, and;
- Promotions

The Co-Sponsorship Memorandum further states the Civil Service Commission would retain its current organizational structure with an executive director. However, the Commission's duty would be reduced to having jurisdiction over appeals from employment decisions, including authority and responsibility to:

- Conduct hearings and render determinations;
- Exempt positions from civil service, and;
- Audit Commonwealth compliance with the Civil Service Act

[2] Folmer, Sen. Mike, and Sen. Randy Vulakovich. "Senate Co-Sponsorship Memoranda." *The Official Website for the Pennsylvania General Assembly.*, 18 Jan. 2018, www.legis.state.pa.us//cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20170&cosponId=25041. < Accessed 15 March 2018>

Such would provide checks and balances relating to the transfer of merit-based hiring and employment from the Civil Service Commission to the Office of Administration.

The memorandum goes on to state merit-based hiring would not be affected. Agencies would continue to hire individuals based upon their qualification. Those agencies and professions currently covered by merit-hiring would continue to be subject to merit hiring. No changes to veterans preference found under Title 51 will be made. Both the Department of Military and Veterans Affairs and the Office of Administration support these changes.

IV. Assumptions

The statistical information provided by the Civil Service Commission, Office of Administration, and various websites is accurate, as this organization is unable to survey for itself.

Since most complaints have centered on the hiring process, this review will not consider the Commission's performance in other functional areas of responsibility as core reasons for reorganization.

V. Discussion

1. Introduction

The allegations concerning the Civil Service Commission's failure to comply with Acts 69 and 167 of 2016 over the past two years has resulted in legislation for structural reform of the civil service system in Pennsylvania. Ironically, those proposing legislative changes have added to the confusion on the current role of the Civil Service Commission and its effect upon the existing, complicated system..

2. The Alleged Contention Is Not Correct

The official contention is that the neither Act 69 of 2016 nor Act 67 of 2016 are being obeyed by the Civil Service Commission, and that, therefore, the Civil Service Commission itself needs to be streamlined. A review of the situation shows this to be inaccurate. While the Commission may have been frustratingly slow in initially implementing all the recommendations, it is now complying with the statutes.[3] This was confirmed in a meeting with Secretary P. Minnich, Office of Administration, on 28 March 2018. It did require the Secretary to provide additional manpower. It did require that the Commission to withdraw its proposed new regulation, which may have brought the contention to a head in the first place.[4]

Given that the Commission's not consulting the affected agencies in developing the first draft of its regulation in early 2017[5] may have been a *faux pas* {71 P.S. §745.2(a)}, it was not necessarily a flagrant violation or an act of disrespect to the process of review. Reading the comments from the other agencies to its draft regulation suggests the Civil Service Commission is viewed as out-of-touch and an obstacle to modern processes.

[3] "Home Page." *PA Civil Service Commission*. http://www.scsc.pa.gov/Pages/AlertDetails.aspx <Accessed 10 Mar 2018>

[4] "Notice of Comments Issued [to State Civil Service Commission Regulation # 61-6 (IRRC # 3167)]." *PA Bulletin.* Commonwealth of PA, 1 July 2018. https://www.pabulletin.com/secure/data/vol47/47-26/1105.html and also http://www.irrc.state.pa.us/regulations/RegSrchRslts.cfm?ID=3179 <Accessed 25 Mar 2018>

[5] "Proposed Rule Making …Implementation of Acts 69 and 167 of 2016." *PA Bulletin.* Commonwealth of PA, 22 Apr 2017. https://www.pabulletin.com/secure/data/vol47/47-16/671.html <Accessed 29 Mar 2018>

It is more than understandable, considering the importance of testing to merit-based placement, the Commission would be hesitant to open the door to appointing authorities alone to determine if a "test" was required at all – despite the wording in Act 167. After all, in the past, the method of testing was normally negotiated with the appointing authority. The experience and training examination method (essentially the resume' method) can easily be abused. What works for white-collar-and-tie professionals, whose *bona fides* can be verified through professional organizations and professional associations – which also require testing prior to certification – may not work as well for entry-level applicants entering the main base of civil service: trainees, unskilled and semi-skilled positions.

It was also understandable the Commission wished to ensure vacancy-based hiring used certification lists, a basic safeguard in the civil service system, though sometimes cumbersome when such lists are not current, geographically-based or, occasionally, has no applicants.

There is probably an almost universal, idealistic view among agencies that the private sector has a much more efficient hiring process. There is a tendency to lay the entire blame for inefficiencies at the feet of the Civil Service Commission, without acknowledging the confusing employment system the Commonwealth has developed over time through its laws and practices and who really is in charge of the process.

The commonality of complaints from agencies and how those complaints were expressed suggests that there has been orchestration behind the scenes: a concerted effort to diminish the already limited authority of the Commission before the introduction of SB 1037. That is, the proposed regulation merely spurred on a course of action already in the making.

Over the years several states have eliminated or relegated their Civil Service Commissions to the sidelines as "appeals courts", while consolidating all human resource functions under a single agency, with varying degrees of success. Often this has been done often in an attempt to emulate state-of-the art, private business human resource practices (without the advantages businesses often have). One version of this idea is Ohio's Department of Administrative Service's Office of Talent Management. It has parallels what the Office of Administration is trying to achieve – a system which is partly reliant on NEOGOV Corporation software.

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Figure 1: Ohio DAS's Office of Talent Management Concept

While the concept appears to unify workforce planning, management and recruiting, and has its advantages for particularly small agencies, it also raises the level of complaints if mistakes are made. If New Jersey can be used as an example, the reform in 1986 lent to more confusion regarding regulatory authorities and the role of its civil service commission; and eventually to a return to the original personnel management structure for all intents and purposes in 2006.

Several states have followed the federal's government's lead in "decommissioning" civil service commissions. What is being proposed in SB 1037 had been done by the Carter Administration. In 1979,

the commission created under Title 5 was dissolved via the Civil Service Reform Act of 1978; and the Office of Personnel Management and the Merit Systems Protection Board assumed most of the duties. The change did not have the desired outcome.

Consequently, in the early 1990's under the Clinton Administration, the federal government went to a more decentralized model of personnel management, giving departments more control over their civil service employees. In some cases, such as with the U.S. Department of Veterans Affairs, Congress authorized certain agencies to create their own personnel systems entirely – each effectively operating as entirely separate systems. Examples within Pennsylvania state government already exist; e.g. the State Police. This alternative is not being considered.

The reorganization proposal contained in SB 1037 is an especially sensitive one because the federal government does not review state and local governments to ensure states are in compliance with merit-service when it is required to obtain funding for programs (without federal funding, there would be little in the way of social services in this commonwealth). Instead, it relies upon documents, such as letters of certification, submitted by state and local government agency heads. The potential for abuse and later woes are rife when an authority is transferred to an agency inexperienced in civil service rules, as is being proposed. The Legislative Budget and Finance Committee Study (LBFC) of 1998 produced such an instance: "…OPM accepted as adequate documentation the Commonwealth's letter of notification that Welfare Fraud Investigators transferred from civil service positions in the Department of Public Welfare to non-civil service positions in the Office of Inspector General were still part of a merit system."[6]

Therefore, before going further, a brief review of the Pennsylvania's merit system and its commission is in order.

3. Merit Service Comes to Pennsylvania Fitfully

Pennsylvania's civil service system has its origins in the 1930's and has been significantly affected by the commonwealth's potential losses of federal funding in the areas of health, welfare and employment – particularly with the advent of the Social Security Act of 1935 together with its amendment in 1939.

Pennsylvania's merit service was enacted by legislation in 1939 to provide and advance the principles and practices of merit selection as a key driver for the recruitment, selection and promotion of job seekers for public sector merit service employment opportunities.[7]

At the time of the Pennsylvania State Civil Service Commission's creation via Act 144 of 1939, the problems which existed at the time included:

- employee hiring, promotion, and retention on the basis of party registration and political activity, rather than on the basis of qualification and work performance;
- high turnover of employees due to massive employee switches with changes in administration, resulting in a lack of continuity in providing government services;
- poor work performance and service as a result of poorly qualified employees and the fact that they owed their allegiance only to the party in power;
- rampant corruption; purchasing of jobs and promotions; and conflicts of interest as employees solicited votes or other political support at the same time they were being paid to regulate and provide services to the public;

[6] Durgin, Phillip, Editor. "Study on Civil Service Reform." *Legislative Budget and Finance Committee.* Commonwealth of PA, April 1998. http://lbfc.legis.state.pa.us/Resources/Documents/Reports/235.pdf . p. 6 <Accessed 27 March 2018>

[7] McGettigan, Jack, editor. "State Civil Service Commission Annual Report 2015-2016." *State Civil Service Commission.* Commonwealth of PA, Nov 2017.

- poor morale resulting from arbitrary and capricious management powers with employees having no due-process rights; and
- a poor governmental record regarding equal employment opportunity and employment being essentially closed to those not part of the political party in power.[8]

However, it took until 1941 for the Commission to be codified in law as the administrator of the state's merit system of employment. In effect, a comprehensive civil service reform law occurred more than a half century after similar laws had been crafted in states such as New York and Massachusetts [so entrenched was patronage system of the "machine politics" of the time with the ability to obtain state and local government jobs].[9] The enabling statute was the Civil Service Act of August 5, 1941 (P.L. 752, No. 286, Purdon's PA CS 71).

Yet, until 1956, the state government's civil service system remained rather small. By 1961, the number of merit-based positions had risen to forty percent, but primarily in what are now the Departments of Labor and Industry, Health, and Human Services and the Liquor Control Board.

In the face of increasing civil service positions (?), the Act was amended in 1963 to move the classification and pay plan functions for civil service employees out of the Civil Service Commission and into the Office of Administration (within the Governor's Executive Office), where they remain today. This appears to have been the last major structural change in law, until the current proposal.

As a partial consequence, only 70% of all state employees are now in civil service (merit-based) positions. The process of complete transition to one, unified system affecting all employees, except for Governor appointees to top-level management whose duties involve policy-making positions, was never realized.

And, unlike in New Jersey and several other states, merit and fitness based civil service employment in government is not a constitutional right in this Commonwealth.[10] There is no overarching protective "clause" against poor laws in this subject area. Our system requires a particularly vigilant monitoring authority.

4. State Government Corruption in Hiring Practices Must Be Guarded Against

Pennsylvania is considered one of the most corrupt states by the Center for Public Integrity, according to its latest report in 2015.[11] We often think that government corruption is something past, but the dangers of past eras and their associated elements, such as, patronage, cronyism, and nepotism in hiring are ever present. Some of the Center's comments follow:

- Investigations of violations of the Civil Service Act in hiring practices by state agencies are primarily complaint driven, for the Commission lacks the resources to conduct random checks.

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[8] Durgin, Phillip, Editor. "Study on Civil Service Reform." *Legislative Budget and Finance Committee.* Commonwealth of PA, April 1998. http://lbfc.legis.state.pa.us/Resources/Documents/Reports/235.pdf . <Accessed 27 March 2018>

[9] Danson, Benjamin. "Civil Service Reform: Creating a Merit System for Pennsylvania." *Historical Society of Pennsylvania*, Nov. 2011. www.hsp.org/education/unit-plans/civil-service-reform-creating-a-merit-system-for-pennsylvania . <Accessed 15 March 2018>

[10] Unk. "Constitutional Basis." *Civil Service Commission | Regulations and Laws,* NJ State Govt. *website,* 1996-2011, www.state.nj.us/csc/about/about/regulations/. <Accessed 25 March 2018>

[11] Lavelle, Marianne. "State Integrity 2015: Pennsylvania Gets an F Grade in 2015, State Integrity Investigation, An Entrenched Culture of Malfeasance." *Center for Public Integrity,* 9 Nov 2018. https://www.publicintegrity.org/2015/11/09/18507/pennsylvania-gets-f-grade-2015-state-integrity-investigation <Accessed 25 March 2018>

- "It's not uncommon for applicants to appeal to their state representatives for help acquiring a job, but staff for the Civil Service Commission say that political interference is discouraged … Jobs posted for employment within the state Civil Service offer a transparent list of minimum experience and training needed in order to be considered for the position, and those requirements must be met."
- "Hirings based on nepotism, cronyism or patronage do not happen within the Civil Service, according to the staff of the State Civil Service Commission. While attempts frequently are made, the staff, which reviews the process for each hire, require each hire to be based on a set of minimum requirements and training and discourage interference by policymakers and others in position of influence."
- "It's not unheard of for state politicians, particularly those new to their positions, to try and influence the commission or state employees and their work. But staff said the division of powers wins out in the end. Employees cannot be disciplined without cause, and employees have appeal rights."
- "There are no laws in Pennsylvania explicitly prohibiting cronyism or patronage for civil servants. Instead, the concerns that arise under such practices are considered to be covered under the Ethics Commission prohibitions against conflicts of interest …"
- Although, the judiciary is not the subject of this report, it is part of state government, and as such is indicative of its proclivities if not held in check: "The Judicial Code of Conduct was updated in 2014 to more strongly prohibit certain practices that, under the old law, were permitted, including the hiring of relatives …"

With the demise of heavy industry in this commonwealth, state government is currently the second largest employer after the federal government (it employs more people than Walmart, which comes in third, in our state). In 2014, there were about 99,000 FTE positions in all of state government.[12] Therefore fair state government hiring practices have a direct and increased importance to the economic welfare of the citizens in this state.

5. What the Civil Service Commission Is and Is Not

The basic mission of the Civil Service Commission is to evaluate qualified individuals and to verify they are appointed and promoted on the basis of merit. However, its services encompass only those agencies and positions specified in the Civil Service Act of 1941 as amended, and, as discussed elsewhere, these do not include the vital roles normally assigned to a Department of Personnel/Personnel Services.

The agency is led by the Chairman of the Commission, who is one of three commissioners appointed by the Governor with the advice and consent of the majority of the members of the Senate. These commissioners serve six year terms and are staggered at two year intervals. In effect, they are not necessarily all appointed by the incumbent governor. A Governor may only remove a commissioner for proven incompetence, inefficiency, neglect of duty, malfeasance or misfeasance in office. In other words, unlike other agency heads, the commissioners do not serve at the pleasure of the Governor and can have an appropriate degree of independence in defending the merit service system.

Conversely, the Office of Administration is not an organization created by statute and its secretary serves strictly at the pleasure of the Governor. It is entirely under the control of the Governor. What may be a policy bent one day, can conceivably end the next, as Governors change.

[12] "States With Most Government Employees: Totals and Per Capita Rates." *Governing website.* http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html <Accessed 6 April 2018>

The three Commissioners act as a Policy and Governance Board, using an Executive Director to manage the daily operations. Other than a small personal and special staff contingent, the Civil Service Commission is primarily an operations-oriented structure. The bureaus' alignment of functions seems to have been somewhat affected by staffing shortages in the face of increasing requirements:

It is a tight structure that:

- develops examinations appropriate to the job skill sets required together with the client agency. Where testing is involved, it administers them at either three fulltime and four part-time sites, or remotely using computers. After which, it scores the tests; and, finally, adds the applicants to its job classification, eligibility lists in readiness for the later use of its clients in different forms (certification lists) as requested;
- markets civil service employment and recruits on-site for its civil service lists (as best it can);
- investigates and adjudicates appeals;
- audits and evaluates system compliance and performance (including veterans preference);
- trains state government client agency's human resources departments on civil service policy and procedures

It is not a complete personnel agency for civil service employees, for it is not responsible for:

- position need determinations
- classification of positions
- wage and salary rates
- benefits plans
- payroll
- job vacancy announcements
- hiring and promotion
- termination and suspensions
- labor union negotiations
- job safety
- training and development

The Governor and the Assembly have chosen to give these responsibilities to the Governor's Executive Office {Office of Administration (created in 1955) and the Executive Board} or the client agencies themselves, especially since 1963.

Therefore, despite the statement in the LBFC Study of Civil Service Reform conducted in 1998[13], it is untrue there is a dual personnel system. Instead, it is a system with divided duties. It is true that there are two different forms of civil service: formal merit-based service with its protections in law (what the state government calls "civil service"); and a federally unrecognized system with far less statutory protections (what the state calls "non-civil service", and others might call "at will" employees).

Nevertheless, the role of the Civil Service Commission in the current system is an extremely important one though a small part of the overall process: to address the needs for tests for the state's civil service applicants and employees and to ensure the system is working fairly for them – whoever is in charge. Think of merit-based evaluation and adjudication and you have its most essential, core functions. For more on its powers and duties, see the Civil Service Act of 1941, as amended. [14]

[13] Durgin, Phillip, Editor. "Study on Civil Service Reform." op. cit.

[14] "PS Title 71, Chapter 5.Civil Service Act." *Unofficial Purdon's Pennsylvania Statutes from Westlaw website*, http://govt.westlaw.com/pac/Browse/Home/Pennsylvania/UnofficialPurdonsPennsylvaniaStatutes?guid=N3028BBF13C4C46E2997C2459EE631AD5&originationContext=documenttoc&transitionType=Default&contextData=%28sc.Default%29. <Accessed 18 March 2018>

OR-11-014
September 23, 2011

STATE CIVIL SERVICE COMMISSION

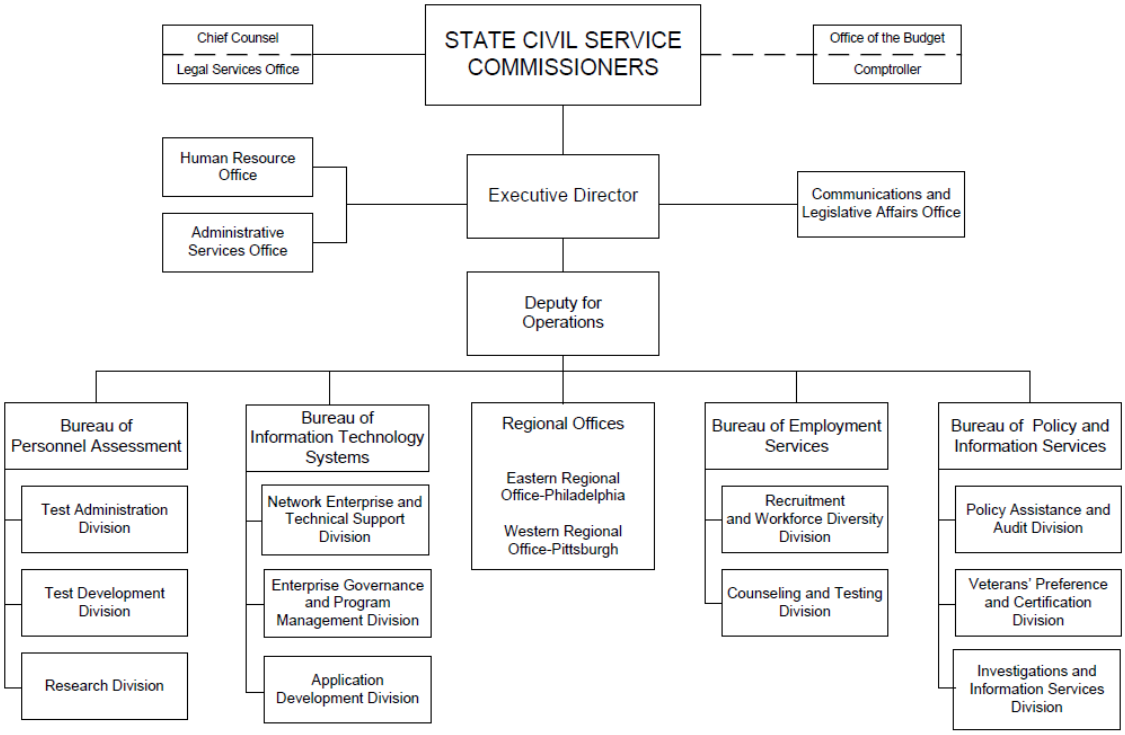


Figure 2: Organizational Chart

Exhibit 1

Personnel Responsibilities for the 34 Agencies Under the Governor's Personnel Control

OFFICE OF ADMINISTRATION

Civil Service *and* Noncivil Service Positions

- Position classification.
- Pay.
- Labor relations and collective bargaining.
- Equal employment opportunity.
- General oversight of agency personnel offices.

Noncivil Service Positions *Only*

- Establish and manage procedure regarding agency selection, promotion, and termination for most noncivil service positions.[b]
- Recruitment.

CIVIL SERVICE COMMISSION

Civil Service *and* Noncivil Service Positions

- Develop and administer tests for civil service and noncivil service clerical positions.[a]
- Recruitment.

Civil Service Positions *Only*

- Establish and manage procedure regarding agency selection, promotion, and termination for civil service positions.
- Develop and administer tests for civil service nonclerical positions.
- Adjudicate civil service position disputes.
- Investigate potential civil service violations.
- Equal employment opportunity.

[a]OA has contracted with CSC to develop and administer tests to candidates for noncivil service clerical positions simultaneous with those for civil service positions.

[b]There are three exceptions. The Governor's Office directly establishes and manages these procedures for senior level policymaking positions. An internal Pennsylvania State Police panel establishes and manages these procedures for State Police enlisted personnel. The State System of Higher Education establishes and manages these procedures for noncivil service positions at state colleges and universities.

Source: Developed by LB&FC staff.

Figure 3: Division of Responsibilities Between CSC and OA[15]

[15] Durgin, op. cit. page .8.

6. Who is Affected by the Civil Service Commission

The Commission serves mainly the "everyman", state and local government employee. While its work encompasses unskilled, semi-skilled, and skilled labor positions, at the managerial level, it would be rare if any positions above middle management would be involved. In this state, higher level positions are the province of the Senior Management Service and political appointees (e.g. heads of departments).

Accordingly, it affects a broad swath of state and local government: "… Of the nearly 73,000 state government employees in Pennsylvania, approximately 53,000 throughout 38 different state agencies are covered by the merit service. In addition, approximately 6,900 employees in more than 300 local government agencies are covered by the service."[16]

Any changes to the present system may have unintentional, dramatic consequences on the well-being of state employees if not well thought out.

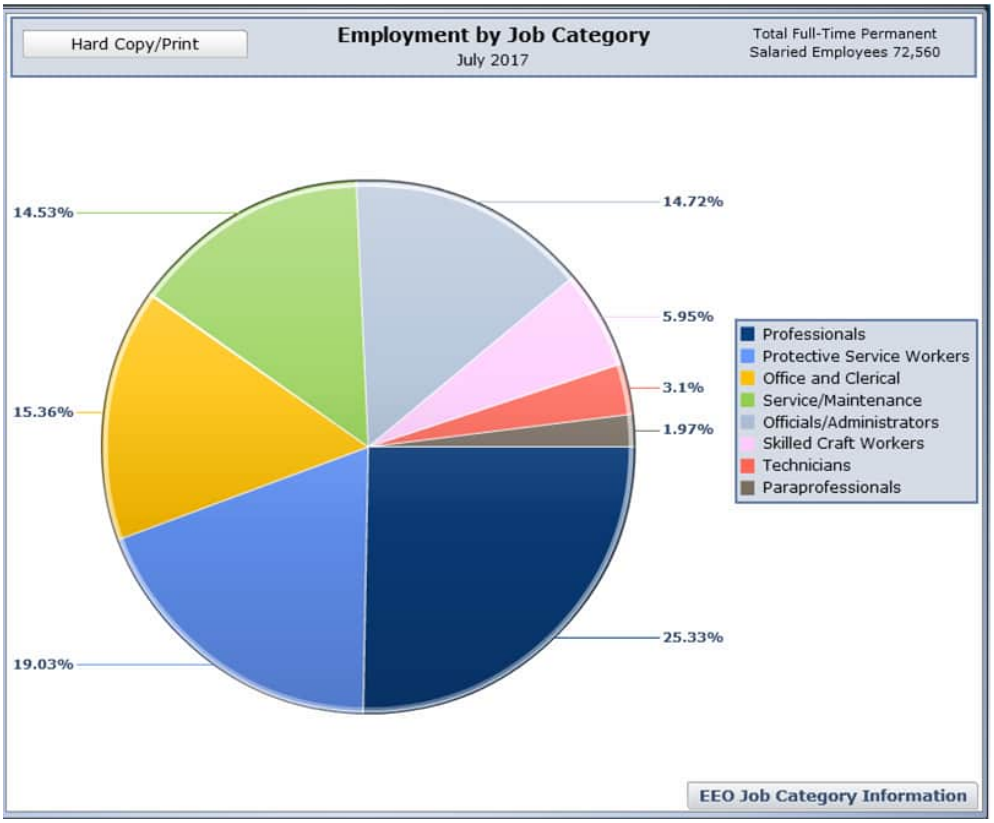


Figure 4: General Classifications of State Government Employees

[16] Hatok, Bernadette, editor. "State Civil Service Commission Annual Report 2016-2017." *State Civil Service Commission.* Commonwealth of PA, Nov 2017. http://www.scsc.pa.gov/About-Us/Documents/annual_report.pdf <Accessed 26 March 2018> Note that the Commission does not combine the subagencies of the Governor's Office (e.g. the Office of Budget and the Office of Administration) under the Goveror's Office in its reporting, as does the Office of Administration. Also 17 counties no longer use its services. With exception of Philadelphia and Pittsburgh, which always had their own civil service commissions, this a recent development which has occurred since 2004 (about 14% of county employees of are civil service employees).

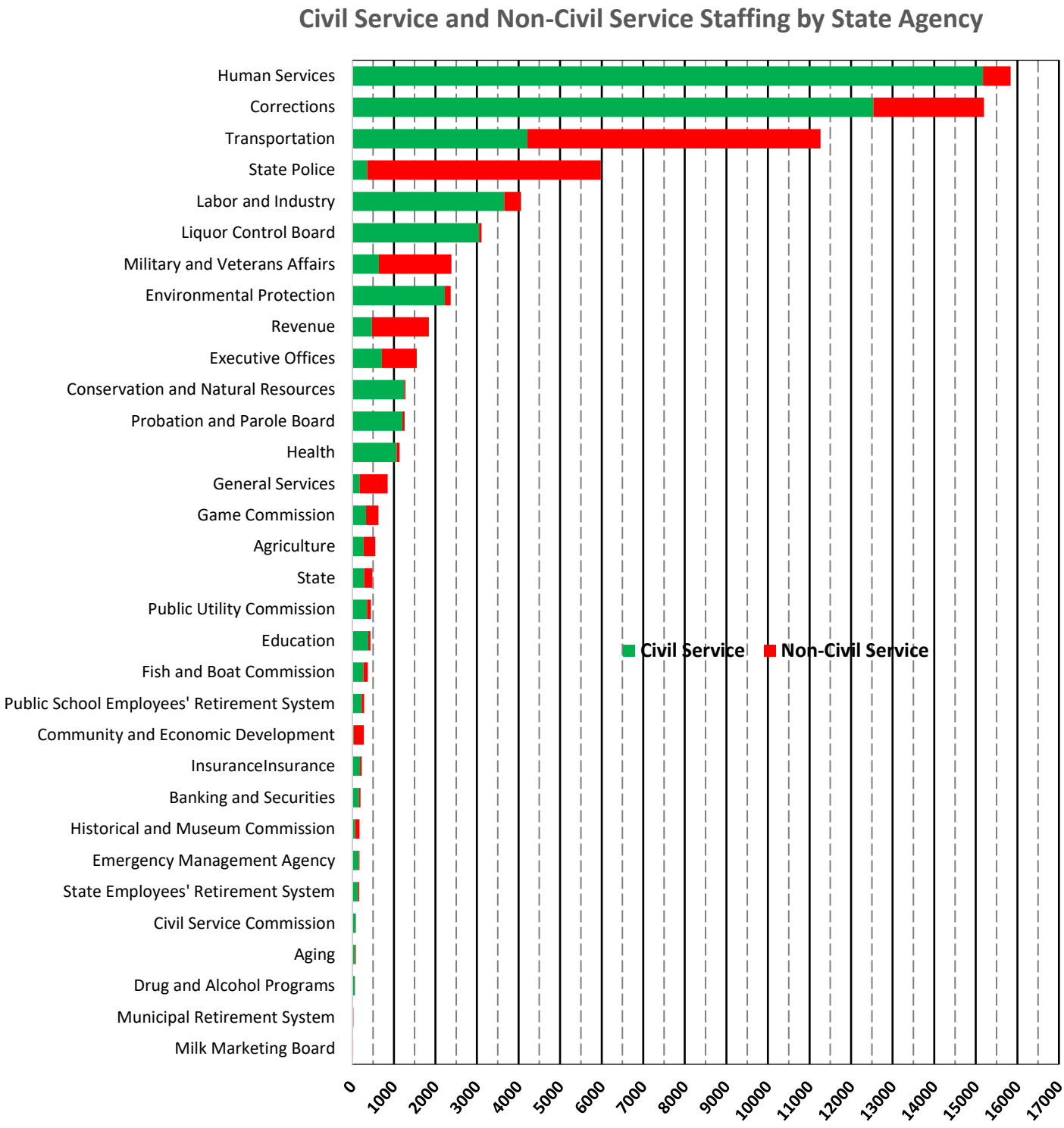


Figure 5: State Agencies Under the Governor's Control (March 2018) [17]

[17] There are other agencies in state government not directly under the control of the Governor and General Assembly, other than the Judiciary, representing some 19,126 additional fulltime employees (what the state calls salaried employees) – the greatest number of these belonging to the Auditor General, Treasury, Attorney General, Assistance, and the State System of Higher Education.

STATE GOVERNMENT WORKFORCE STATISTICS - Agency Complement
Employment by Agency
July 2017

Civil Service/Non-Civil Service Filled Salaried Positions by Agency
(GAWFR Table 8)

Agency	Civil Service		Non-Civil Service		Totals
	Number	Percent	Number	Percent	
Aging	68	80.0%	17	20.0%	85
Agriculture	276	49.7%	279	50.3%	555
Banking and Securities	164	83.2%	33	16.8%	197
Civil Service Commission	80	94.1%	5	5.9%	85
Community and Economic Development	32	11.6%	245	88.4%	277
Conservation and Natural Resources	1,246	97.5%	32	2.5%	1,278
Corrections	12,538	82.5%	2,658	17.5%	15,196
Drug and Alcohol Programs	56	87.5%	8	12.5%	64
Education	384	87.9%	53	12.1%	437
Emergency Management Agency	154	88.0%	21	12.0%	175
Environmental Protection	2,228	94.1%	139	5.9%	2,367
Executive Offices	711	45.8%	841	54.2%	1,552
Fish and Boat Commission	266	71.7%	105	28.3%	371
Game Commission	334	53.0%	296	47.0%	630
General Services	176	20.7%	673	79.3%	849
Health	1,069	94.2%	66	5.8%	1,135
Historical and Museum Commission	71	40.3%	105	59.7%	176
Human Services	15,176	95.8%	662	4.2%	15,838
Insurance	188	83.2%	38	16.8%	226
Labor and Industry	3,657	90.1%	400	9.9%	4,057
Liquor Control Board	3,050	98.2%	57	1.8%	3,107
Military and Veterans Affairs	638	26.7%	1,750	73.3%	2,388
Milk Marketing Board	12	54.5%	10	45.5%	22
Municipal Retirement System	22	84.6%	4	15.4%	26
Probation and Parole Board	1,207	96.0%	50	4.0%	1,257
Public School Employees' Retirement System	228	80.0%	57	20.0%	285
Public Utility Commission	357	79.9%	90	20.1%	447
Revenue	470	25.5%	1,370	74.5%	1,840
State	286	59.5%	195	40.5%	481
State Employees' Retirement System	138	82.6%	29	17.4%	167
State Police	363	6.1%	5,617	93.9%	5,980
Transportation	4,213	37.4%	7,052	62.6%	11,265
COMMONWEALTH TOTAL	**49,858**	**68.5%**	**22,957**	**31.5%**	**72,815**

SOURCE: Office of Administration | Bureau of Data Management, Analysis & Reporting | IRIS.

NOTE: Includes full-time and part-time filled salaried positions. For this table, Executive Offices also includes the Governor's Office, Lieutenant Governor's Office, Infrastructure Investment Authority (PENNVEST), Environmental Hearing Board, Office of Administration, Office of the Budget and the Pennsylvania Human Relations Commission.

COMMENTS: The percentage of civil service positions decreased by 0.3% from the previous year and non-civil service positions increased by 0.3% from the previous year. The Departments of Human Services, Corrections, and Labor and Industry employ nearly two-thirds of all civil service workers. The Departments of Transportation and State Police employ over half of all non-civil service workers.

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Embedded PDF (Click on Image)

Table 1: Agencies' Fulltime Complements 2017 [18]

[18] None of these numbers reflect part-time employees – what the state government terms "wage" employees. There are just under 7,000 of those who fall under the Governor's control, currently.

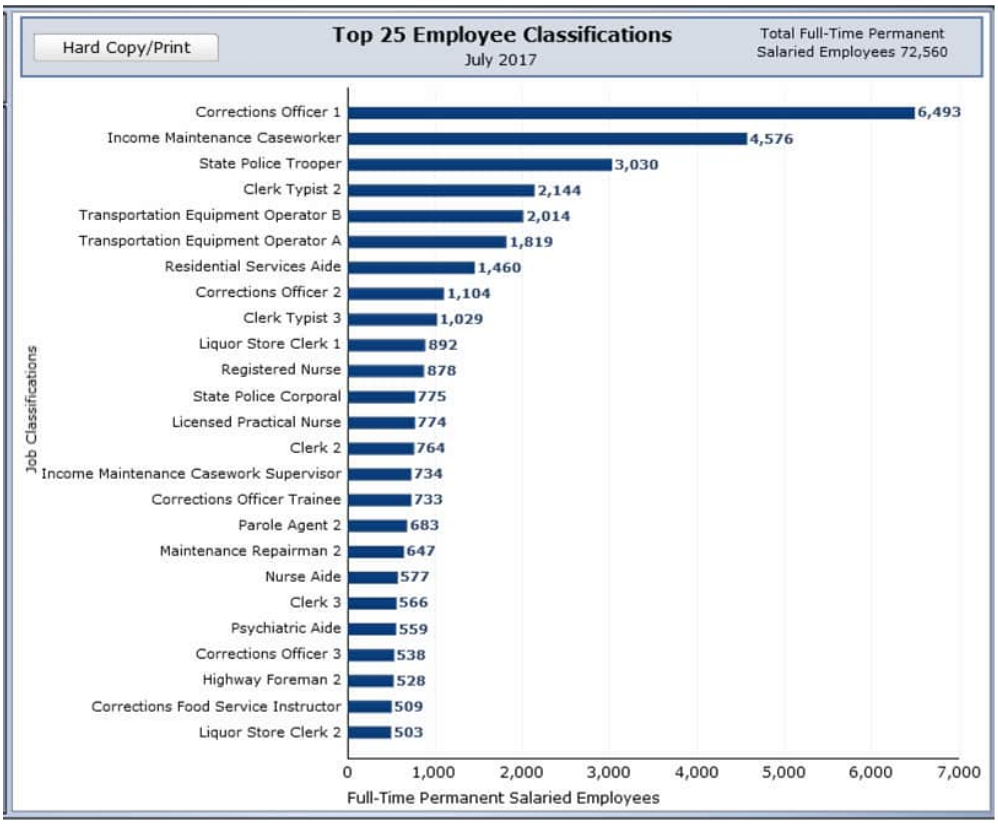


Figure 6: Where the Jobs Are in State Government

7. Staffing May Be Affecting Responsiveness

The organization has been leaned by about 47% over the past ten years, while overall state government has been reduced by about 11%.[19]

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
CSC FTE	160	140	137	131	121	108	108	87	86	85
Executive Office	2,106				1,789			1,449*	1,447	2,964
State Govt FTE	82,183				79,472			74,514	74,212	72,980

Table 2: Staffing FTE

*****Office of Administration Complement in 2016 was about 489.

The reduction in manpower, despite the advancements of technology, normally influences responsiveness.

Note: The Commissioners are considered as fulltime employees but work employee-controlled hours. They are paid as fulltime employees in accordance with the Civil Service Act.

8. Cost of Operations Should Not Be the Issue

The Commission operates for the most part on a fee-for-service basis, except where counties are involved, in which case, the federal government sets aside for its social services grants/contracts a small percentage, typically 1-2%, for administration. The General Fund is not tapped.

[19] Figures are extracted from the yearly Governor's Executive Budget Package

Their cost per civil service employee covered has remained essentially level, with little fluctuation, and without discounting in real dollars. In 2009 real dollars, its budget is expected to decrease 25% over the last ten years. [20]

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total Cost ($000)	14,244	14,832	14,275	13,731	13,636	13,584	141,132	13,771	13,435*	13,369*
Cost per Employee Covered ($)	205	194	194	199	206	208	229	212	206*	209*

Table 3: Cost of Operations
* estimate

The cost of operations should not be a cause for concern in this discussion, especially as most arguments revolve around the cost-to-hire, for which it is not totally responsible. In private industry, $4,000 was the average amount U.S. companies spent to fill an open position in 2014.[21] No such data was available to us for state government, but one would anticipate this relatively small operation with a relatively small (but important) role in hiring, does not substantially contribute unreasonably to the cost of the personnel system currently

9. What Really Irks Client Agencies About the Merit-Service System

Below are some of the common, client agency themes which arise with regard to the state's civil service system hiring process; and taint judgments in a proper review of the implications of SB 1037 to merit service. Paradoxically, in the Office Administration 2008 study cited below there was an assessment of managers' views on the performance of both the civil and non-civil service systems. Interestingly, 77% of the respondents said they were either satisfied or highly satisfied with the hiring process and almost 90% were either satisfied or highly satisfied with the quality of candidates, for both merit-service and non-merit service.

a. Delays in the hiring process

The claim is often made that the private sector can hire a new worker within two to three weeks. While this may be true in certain situations, the private sector also uses a lot "temps" to fill positions in lieu of thorough vetting and probationary hiring. This saves time. They use their intern programs much to the same purpose, retaining about 55-60 percent as permanent hires (while available FTE is a constant barrier to such an enterprise in government).[22] The time-to-hire average in the United States

[20] Ibid.

[21] Bersin by Deloitte. "U.S. Spending on Recruitment Rises, Driven by Increased Competition for Critical Talent." *Cision PR Newswire.* 23 April 2015. https://www.prnewswire.com/news-releases/bersin-by-deloitte-us-spending-on-recruitment-rises-driven-by-increased-competition-for-critical-talent-300070986.html <Accessed 6 April 2018>

[22] Flato and Lavigna, "Recruiting Against the Private Sector: What Government Could Do Better to Compete for Talent on Campus" *ERE Media.* 2 Apr 2014 https://www.ere.net/recruiting-against-the-private-sector-what-government-can-do-to-better-to-compete-for-talent-from-campus/ <Accessed 23 Mar 2018>

for private industry, however, hovered around 52 days in 2015, an increase from 48 days in 2011.[23] In 2011, OPM reported the average for federal agencies was about 102 days.

State government officials often complain it takes three or more months to hire a new worker, and one has claimed an astounding a year and half. In an LBFC study of the county civil service system conducted in 2004[24], it took an average of 18 days from when a certification list was produced by the CSC to when applicants were interviewed and then an additional 30 days before appointment. It should be noted that in most instances, the CSC can produce a certification list(s) overnight via its computer system. This capability exists because the Commission develops lists of those who qualify for various job classifications ahead of time [admittedly currency of the list can be a problem]. If a civil service test were first required (no names on a list), an average of 39 days needed to be added to this process. But that it is not the whole story, for there are other steps to the process of hiring.

In state government, 92% of hires during the late 1990's were accomplished within 90 days and a third within 30 days. For whatever reason, those fill rates had declined by about half in 2008. However, since non-civil service and civil service position-fill rates track within a few percentage points of each other, the blame cannot be laid at the feet of the Civil Service Commission. Other factors were in play, undoubtedly, that are given scant consideration in such complaints, such as the labor market skill shortages, lack of geographically-based pay scales, and the restraints imposed by down-sizing in obtaining approval hire, as examples.

A 2008 study by the Office of Administration,[25]the last time a study of this nature is known to have been published, separately recorded the average civil service position is filled was 140 calendar days (99 business days) and the average non-civil Service position was filled in 152 calendar days (108 business days). Considering there was a hiring freeze ongoing, most civil service positions were filled within 90 business days.

Step	Civil Service (Days)	Non-Civil Service (Days)	DMVA CS&NCS (Days)
1. Vacancy occurs	0	0	0
2. Job announcement*	45	46	60
3. Interviews commence	38	37	34
4. Selection made	15	24	52
5. Selection approved	16	21	10
6. Position filled	24	20	41
Total Calendar Days	**140**	**152**	**197**
Total Business Days	99	108	140

Table 4: Average Hiring Timeline (State Agencies Surveyed in 2008) [26]

* A hiring freeze was in place which on average added 19 days between the first and second step.

In the general case, the hiring cycle matches the sensing of managers on how long it takes to fill a position but regardless of whether or not one is applying for a civil service (merit service) position.

[23] Bersin by Deloitte. op. cit.
[24] Durgin, Phil, Editor. "Review of the Effectiveness of the Civil Service System in County Government." *Legislative Budget and Finance Committee."* COPA, September 2004
[25] "Commonwealth Hiring Assessment and Supervisor Satisfaction Survey." *Office of Administration.* COPA, 2008.
[26] Ibid.

Though dated, these statistics serve only to illustrate a more important point, Civil Service Commission procedures have relatively little influence on hiring turnaround times.[27] The non-civil service requirements, which has fewer statutory requirements, performed at the same pace, and perhaps a little worse historically. As Secretary of the Office of Administration and Budget Michael Masch (who was part Governor Rendell's Administration and commissioned the 2008 study) realized, turnaround times were more the result of the performance and alacrity of the appointing agency and the Office of Administration than the performance of the Civil Service Commission.

***Observation*:** In the vast majority of situations, time-to-hire problems (delays in hiring) are generally not the result of the Commission's process; and the expectations for turnaround times, considering all the loops agencies most go through as a result of regulations driven by statute law (both state and federal) may have been unrealistic.

b. Veterans' Preference

This is a common bone of contention within agencies and counties, and it has been a longstanding one. The requirements of the "Rule of Three", even as amended under Act 67, in the belief of many managers, forces them to hire individuals they believe will not perform well. Games have been played in with lists until veterans do not appear on at least one of them, as noted by the Auditor General in 2008, by simply postponing the filling of the position the hope the veteran will find other employment, as has occurred in counties according to the LBFC. This may affect up to fifteen percent of all hiring situations and adds to the time-to-hire statistics of which officials complain..

Some believe the expansion of the Rule of Three could actually have the opposite effect of what is intended. Under a Rule of Five, for example, if any of the five candidates was a veteran, the job would have to be offered to that individual – allowing for the possibility of even a more unqualified individual to gain employment. Regardless, the current rules reduce the purpose of having an interview at all unless it is the intention to use the interview as a basis for denying the veteran employment. Interviews are meant to be a key component of any manager's hiring protocol, after all.

While Title 51, Chapter 71 has created this issue, its wisdom is not actually the subject of this review. Nevertheless, it has directed fire upon the Commission, which ironically had been chastised for its failure to ensure compliance with the law at one time. [28] It led to the requirement in 2011 for one of the Commissioners to be a veteran. The Office of Administration is likewise on the hook to ensure compliance for non-civil service employees, a topic area in which it has recently become interested as it presses for passage of SB 1037. It has, however, had the poorer track record in rates of hire statistics.

[27] In March 2018, the Office of Administration announced at a State Veterans Commission meeting that the hiring turnaround time for non-civil service had been reduced to 45 days. We assume that the figure was over a year's time, and calculation is from the date of announcement of the position and does not include the review and approval to announce the position which proceeds. To reasonably compare, from the time a certification lists are provided (one day or less on average), it took on average 42 days to hire a civil service position employee. The argument holds forth.

[28] "A Special Performance Audit Of The State Civil Service Commission Veterans' Preference Program." *Bureau of Dept. Audits, Auditor General's Office.* COPA, November, 2008. http://www.paauditor.gov/Media/Default/Reports/speSCSCVetsPrefPrg111308.pdf <Accessed 3 April 2018>

Department Name	Total Hired	Non-Veteran	Veteran	% Vet
Probation and Parole Board	53	35	18	34%
Fish & BOAT Commission	3	2	1	33%
Public School Employes' Retirement System	3	2	1	33%
State Employees' Retirement System	3	2	1	33%
Department of Corrections	882	609	273	31%
PA Emergency Management Agency	4	3	1	25%
Department of Education	17	13	4	24%
Department of Transportation	120	96	24	20%
Public Utility Commission	10	8	2	20%
Department of Revenue	20	17	3	15%
Department of State	21	18	3	14%
Department of Environmental Protection	82	71	11	13%
Conservation & Natural Resources	236	208	28	12%
Department of Health	76	67	9	12%
Department of Labor & Industry	175	157	18	10%
Pennsylvania State Police	11	10	1	9%
Liquor Control Board	924	854	70	8%
Department of Military & Veterans Affairs	111	103	8	7%
Department of Agriculture	14	13	1	7%
County Assistance Offices	15	14	1	7%
Department of Human Services	1183	1111	72	6%
Department of General Services	17	16	1	6%
Executive Offices	189	183	6	3%
Department of Banking	11	11	0	0%
Insurance Department	10	10	0	0%
Historical & Museum Commission	3	3	0	0%
Community & Economic Development	2	2	0	0%
Game Commission	2	2	0	0%
State Civil Service Commission	1	1	0	0%
Department of Aging	0	0	0	0%
Department of Drug and Alcohol Programs	0	0	0	0%
Municipal Retirement System	0	0	0	0%
Total	**4,198**	**3,641**	**557**	**13%**

Table 5: Civil Service Hiring Rate by Agency in FY 2016-2017 [29]

* Total FTE Veteran Hiring Rate in Non-Civil Service was 9%.for the same period

The issue has parallels with the requirement for Area Agencies on Aging being required to comply with statute established by the Department of Aging requiring absolute hiring preference for persons who are 60 years and older. This is not entering the discussion, but such agency rules also add to the time-to-hire timeline.

[29] Information derived from March 2018 inquiries of CSC and OA.

Observation: Take this issue off the table as a point in favor of implementing SB 1037. The problem is not one of structure affecting performance, but of appropriate law. It has been raised as an issue needing addressing in previous Legislative Budget and Finance Committee studies.

c. Number of Certified Candidates

There has been frustration over having only one or two candidates on the certified list of candidates received and that lists are outdated; that only a small percentage of the applicants are interested in filling a vacancy in some geographical areas; and that the Commission does not maintain lists for some low density classifications [author's assumption], forcing them to use another, closely related, better populated classification.

This has been reported in the studies cited, but probably affects less than 10% of all hiring situations. No system is perfect. New technology and the requirements of Act 69 of 2016, assuming the Commission retains sufficient manpower, should reduce this problem. In the case of rural areas and high demand professions where there are shortages nationally, continued problems should be anticipated as a practical reality.

Observation: This is an issue of process and not structure. Investigation should reveal that non-civil service has similar problems if merit-based procedures were followed.

d. Written Tests

Many entry-level positions require a written test, the score of which determines their ranking on eligibility lists, and later, on certification lists. Many managers think these tests, although purpose-built in collaboration with the agenceis to be a valid measure of job readiness, do not measure certain important job-related skills. An even higher proportion of managers advocate for experience and training examinations instead. This is the method exclusively used in non-civil service.

Others worry that written tests discourage application because individuals must take a day off from work to go to a remote test center, not always conveniently open or nearby. Actually, the possibility exists many are applying to state government for employment because they are unemployed and cannot find a decent job elsewhere.

However, due to manpower constraints imposed by each Administration, currently the Commission operates only three full-time sites and four part-time sites, generally well distributed, considering distances and population densities (manpower pools).

Location	Type	Days	Testing Days	Time
Philadelphia	Full time	M-F	4/wk.	8 a.m.- 4 p.m.
Harrisburg	Full time	M-F	4/wk.	8 a.m.- 4 p.m.
Pittsburgh	Full time	M-F	4/wk.	8 a.m.- 4 p.m.
Scranton	Part time	T,W+ some W evening & a Sat	10/mo.	
Lock Haven	Part time	T,W+ some W evening & a Sat	10/mo	
Johnstown	Part time	T,W+ some W evening & a Sat	10/mo	
Erie	Part time	T,W+ some W evening & a Sat	10/mo.	

Table 6: Test Center Locations and Availability[30]

[30] "Test Center Information." *CSC Website. http://www.scsc.pa.gov/About-Us/Test-Center-Information/Pages/default.aspx. <Accessed 6 April 2018>*

In all professions, certification examinations exist, whether for a simple college degree or for a professional association certification. However, in lower skilled work, such certifications of competency do not always exist. Most experienced managers know that experience and training examinations (what the private sector calls a resume) are not reliable. People exaggerate and falsify their abilities and experiences to get through the door of opportunity. In the professions, there are ways to validate qualifications. In the lower skills that is not often the case; and volume adds complications to available time needed to check more thoroughly – testing is a simpler route. The whole concept of merit-based hiring is based on using leveling tools to ensure all, no matter their background, no matter their connections, get equal opportunity in the competition. Therefore testing (proper examination techniques) must remain an integral part of any merit-based system, even though improvements can be made.

The Commission has made considerable strides in adjusting testing to the needs of the agencies over the years. Regardless, the implementation of Act 167 of 2016 has accelerated the move towards Experience and Training examinations (certification through a resume process). Since it gives the appointing authorities (the agencies) the authority to determine the method of examination (testing), experience and training examinations will increase significantly. Written testing can be expected to decline. Whereas, the more basic problem was matching testing windows with the accelerated demands of vacancy hiring, when valid eligibility lists have too few qualified candidates.

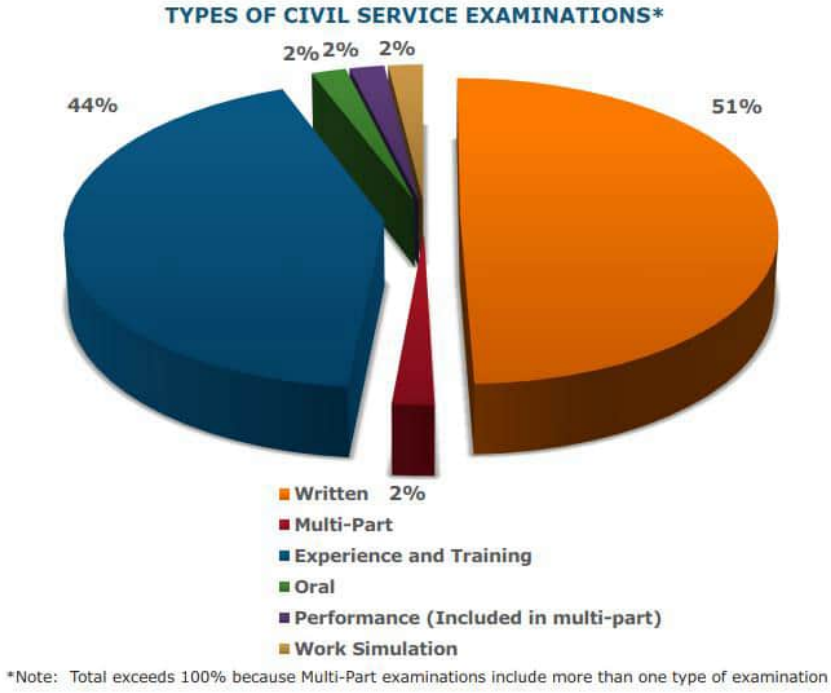


Figure 7: Types of Civil Service Testing in 2016-2017

We need only look at non-civil service hiring practices to confirm the problem of a non-examination, interview-reliant hiring process to recognize cronyism is alive and well in Pennsylvania government. Section 4 above alludes to that problem. Talks with ex-employees of state government, as many ex-veterans are, confirms it.

Observation: Acts 69 and 167 of 2016 will eventually make written tests a non-issue, as the appointing authorities have full control over the manner of examination. In the first place, fixing the written test issue was a matter of process affected by manpower and management philosophy – not reorganization.

e. Cost to Operate the Civil Service Commission

In the 2004 Legislative Budget and Finance Committee (LBFC) study, it was reported that the Commission charged the counties approximately $1.8 million annually for the services it provides, which amounted to approximately $225 per civil service employee (currently it is about $209 per employee). Some contended the Commission makes a makes a "profit" through this aspect of its operations. It may have contributed to 15 counties ending their contracts with the commission – all over a misunderstanding of how the system works.

For state government agencies, it is true that the Commission operates on a fee for service basis, but as stated in Section 8 above, it draws upon the administrative set-asides in federal contracting for its services to counties and local agencies – money they never see and is reported in their budget probably as Special Merit Services. Regardless, the Commission's costs have remained generally level, before discounting for real dollars, over the past ten years.

Since the Commission is no longer a personnel agency (particularly so, since 1963) and a small part of the hiring operation, it is difficult to run a cost comparison for its services with other government human resource agencies. The state does not openly report, if it collects such information at all, cost-to-hire statistics, which would be more germane to this review, even though the Commission's portion would be small, as previously stated in Section V.8.

***Observation*:** Cost savings through reorganizations and consolidation is a marginal argument for change.

10. What Other States Have Done

States vary as to how they approach civil service, or rather, merit-based hiring and promotion systems. A few state examples of what is being proposed structurally in SB 1037 exist:

State	Personnel Agency	Client Base	Merit Employees	Separate Commission for Appeals
California	Selection Division, Department of Human Resources	Decentralized HR's	Yes	Yes
New York	Department of Civil Service	State Agencies, Colleges	Yes, 80%	Yes*
Ohio	Human Resources Div, Dept. of Administrative Services	State Agencies	Yes, 80%	Yes
Wisconsin	Div of Personnel Mgmt, Dept. of Administration		Yes	Yes
Louisiana	Department of Civil Service		Yes	Yes*

Table 7: Human Resource Management Concepts Similar to SB 1037

***** also enacts and adjudicates civil service rules to regulate state personnel activities

But at least two states have assigned all their personnel functions, except for workforce planning and labor relations perhaps, to their commission. It seems a logical way to both unify a personnel system better and to ensure the full protection of the merit-service system, since most of the states' employees are civil service.

State	Personnel Agency	Date	Merit Employees	Separate Commission for Appeals
Michigan	Civil Service Commission	Exec Order, 2007	Yes	No
New Jersey	Civil Service Commission	Statute, 2006	Yes, 80%	No

Table 8: Giving the Human Resource Management Duty to the Commission Instead

New Jersey went to the concept that SB 1037 is proposing in 1986 by creating a Department of Personnel Services, relegating its civil service commission to an appeals adjudication role only. The change caused regulatory confusion and did not result in cost savings, if the testimony is correct. In 2006, it returned the personnel management functions to the State Civil Service Commission, except for Labor Relations and the workforce planning function (given to its Treasury Department). It like, Pennsylvania, California, and Illinois, has among the most stringent civil service regulations in the country.[31]

The following states have also reformed their merit service systems relatively recently: Arizona, Colorado, Georgia, Indiana, Tennessee, Texas, and Wisconsin. The jury is still out on the impact upon performance. If initial reports are to be believed, the results have been a mixed bag.

11. Some Additional Concerns Over the Legislation as Written

A cursory review of SB 1037 as proposed, prompts additional concerns which will need addressing:

a. There is no requirement to audit the implementation process to ensure that all merit-service functions and safeguards are retained.

b. The legislation allows the Secretary of Administration to produce temporary regulations valid for up to three years and without undergoing the normal review process. Such a lengthy transition suggests the plan will involve a substantial measure of "learning on the job." The Assembly should have a plan to review to assure it understands to what it is committing.

c. The Office of Administration has not used testing as one of the methods of examination – a fundamental function in the civil service system used, when advised, to ensure equal and fair competition between applicants. Act 167 of 2016 gave the appointing authorities the authority to determine the method of examination without consultation with the Commission. This proposed legislation may ultimately lead to the elimination of this function unless it is specifically addressed.

d. The Co-Sponsorship Memorandum states the Commission will retain its current organizational structure. However, since its functions are being changed, its staffing will also.

e. As written, the selection requirements under Commission Resolution 2018-1 would end. The resolution requires state agencies to request a veterans' preference list and consider veterans exclusively during the hire and selection process.

f. Act 76 of 2011 added the requirement that one of the three Commissioners must be a veteran. This was done, as a result of the Auditor General's findings of 2008 [32] specifically to ensure there would be an advocate for veterans in civil service. As written, the legislation would eliminate the authorities of the position as it reduces a Commissioner's function to one of being an

[31] Barrett and Greene. "Can Government Hiring Get Out of the Stone Age?" *Governing website.* February 2016. http://www.governing.com/topics/mgmt/gov-government-hiring-best-practices.html. <Accessed 6 April 2018>

[32] "A Special Performance Audit Of The State Civil Service Commission Veterans' Preference Program." op. cit.

administrative appeals judge, for all enforcement responsibilities are transferred to the Office of Administration. That agency has had problems in ensuring compliance with veterans preference. Otherwise correspondence on this very subject would not have occurred earlier this year. [33]

VI. Conclusions

1. **The contentions have been resolved.** The contentions in the Co-Sponsorship Memorandum have been addressed by the Civil Service Commission. Historically it has accepted criticism and adapted. One should expect a certain amount of resistance to change from an organization designed to defend the merit service system.

2. **The real issues revolve around the desire of the Administration to reorganize human resources to promote efficiency.** The contentions are excuses for Executive Branch effort already underway to consolidate human resource functions throughout the Executive Branch into the equivalent of a Department of Personnel Services with a separate civil service appeals agency. The Office of Administration has already consolidated the human resource functions of the other agencies into six service centers.

   Pennsylvania's workforce planning, hiring and retention system undoubtedly does need updating. Efforts to unify website systems and to use enterprise software to make access to employment easier for the applicant are particularly commendable.

   However, it is the same software and its demands which might be contributing to the problem, if it is inflexible, and thereby clouding judgment.

   As there seems to have been a concerted effort to lay a significant amount of the blame for lack of hiring performance at the door of the Commission and, therefore, to see it as an obstruction to be knocked down, it is logical to suspect something more must be at stake than pure reorganization; i.e. civil service reform.

   This is the high stakes proposition slowly being revealed to the Pennsylvania War Veterans Council as an undercurrent of thought, while the Administration and Assembly have tried to gain its support.

3. **The current problems are ones of process and procedure, not organization, and consequently the present merit service procedures (and rules) are a target.** Most of the arguments brought forth for change and presented to the Council revolve around expediting processes creating efficiencies, and wise use of taxpayer dollars. In the age of information technology, process can be improved without major structural realignments such as is being proposed in SB 1037. However, an evolved human resources plan, which has not been shown to us other than for what is in the present bill, also contains a review of statutes, regulations and policies which will require changing.

   States have been known to review and reform their merit service systems as part of their reorganizing of human resource systems. As far back as 1998, the LBFC made recommendations for changes in merit service, to include changing the veterans preference laws. Since Acts 69 and 167 of 2016 together with SB 1037 would essentially be implementing most of its recommendations, there is cause for concern on the part of veterans.

   The LBFC recommended one, common merit service system for all. This concept is not to be found in any of the recent legislation. The bill is manager-oriented.[34] Unfortunately the bill also severely curtails the protective powers of the Commission, which has scrupulously complied with civil service statutes authored by the General Assembly; and unlike the Memorandum for Co-Sponsorship states,

[33] Letter of 18 January 2018 from the Civil Service Commission to the Secretary of Administration on the subject of a statement in a 16 January NEOGOV Monthly Enhancement Meeting slide presentation that Veterans Preference for non-civil service is not an absolute requirement. The statement must be assumed to be consistent with actual practice or it would not have been made.

[34] Durgin, Phillip, Editor. "Study on Civil Service Reform." op. cit. p. S-6ff

its current organizational structure will change as a result of loss of functions – further diminishing its effectiveness.

4. **The continuation of a true, merit service system is therefore endangered in the long-term.** Pennsylvania has been resistant to merit service historically, and the Commission has seen a reduction of its functions, staffing and budget over the last half century. Stripping it of its examination and regulatory functions would essentially neuter the Commission's effectiveness in ensuring a merit-based system – and in applying preventive measures. It would be relegated to the role of an administrative court and cease to serve as a proper commission. As a consequence the primary guarantor of the safeguards to fair employment practices would cease for all intents and purposes. Since state government is the second largest employer in the state, the structural change takes on increased significance.

   There is good reason to be concerned over the future of the merit-service system in state government if the Secretary of the Administration has full control of the regulatory process, and ultimately a primary influence on changes to the existing laws. However well-intentioned and no matter what assurances are given, the Secretary of Administration serves at the pleasure of the Governor. As implied in para. 3 above, any assertion that veterans preference (laws) will not change may be disingenuous, as it is major complaint of managers.

   The Commissioners are allowed greater independence to act in the best interests of all in a nonpartisan way. This is particularly important in light of the fact that while the federal government often requires merit service to obtain federal funding, it does not audit the states for their truthfulness. Abuse have occurred. An experienced Commission is again a first line of defense.

5. **The Civil Service Commission generally has little effect on the length of the hiring process.** This has been a central argument for change. The Commission has historically performed well despite constraints on its resources. There is no real difference in performance in hiring times associated with civil and non-civil service; and, as shown, the Office of Administration and appointing authorities actually affect the process timeline much more significantly. In reviewing its current functions, the Commission controls little to none of the timeline. Looking at its functions, it cannot affect timelines for hiring except when its lists are poor. That is a process issue, not one of organization.

   As testing is normally conducted without consideration of an actual vacancy, the Commission is actually capable of anticipating requirements by preparing eligibility lists ahead of time. This is a good thing and an improvement on the business world's methodology, for it also conducts tests during its hiring process where warranted. Testing and poor hiring and hiring timelines are not intrinsically connected, therefore. The Office of Administration has no such equivalent track record regarding testing, another guarantor of fairness in hiring for those otherwise disadvantaged.

   The Civil Service Commission does not operate separate personnel system for civil service employees, as may have been implied. It examines and audits employment of a category of employee instead, helping in their recruitment also. It is Office of Administration which operates the Commonwealth's personnel (human resources) system. Per the previous discussion, one might venture managerial oversight of the hiring problem has been lacking: some of the delays being frequently attributable to jockeying to get the candidate wanted – and to the disadvantage of veterans as it happens, for veterans preference laws are a sore point with appointing authorities.

6. **The Civil Service Commission is a focused agency which has proven itself adaptable to the needs of its clients.** The Commission has proven an adaptable organization and appears, overall, to work well with other agencies to meet their needs. Its innovative interactions with the Department of Corrections, one of the largest employers of veterans, on how to test entry level corrections officers is one proof of that. It has also continually pressed for the modernization of its information technology – as its use has a direct correlation to improving its performance turnaround times.

7. **The Civil Service Commission is a frugal user of the taxpayer dollar.** Its costs have been contained. It is not a drain on the state budget – often a cause for consolidation of functions in

management thinking. Counties do not pay for its costs, the federal government does. Much of the state government fee-for-service is related to federal government funding also, if someone would take the time to track this. The state government is getting a service at a bargain, which if it did not have it, would lead to loss of federal funding.

8. **Since 2008, the Civil Service Commission has become, properly, a stronger advocate for veteran hiring.** The requirement to have one of the veterans to be a commissioner has helped. The Commissioners have regulatory authorities which will be lost under SB 1037. That it renamed one of its divisions in 2015 to the Veterans Preference and Certification Division suggests veterans hiring is now one of their priorities. Veterans would be ill advised to overlook these facts if a negative managerial culture in state government exists. The dislike of the veterans preference laws by managers makes this possible. The legislation does not address this.
9. **Alternative organizational structures should be considered, if the aim is improvements through reorganization and not eliminating merit service.** Since the preponderance of state employees are civil service (about 70%), consideration should be logically given, as has been done in New Jersey and Michigan, to considering placing at least the most essential personnel functions under the Commission, if fair hiring is a first principle of this reform. The Office of Administration should be required to more thoroughly justify the course of action before passage of any bill. A more probative examination might be in order, especially as we currently anticipate negative, practical consequences for veterans hiring presently.

VII. Recommendation

There are at four alternatives:

1. Do nothing.
2. Support the enactment of SB 1037.
3. Do not support the enactment of SB 1037.
4. Do not support SB 1037 as currently written and suggest changes.

Alternatives 1 and 2 are non-starters based upon this review; and potentially dangerous to the welfare of our veterans seeking employment, for with or without veterans preference (used to gain our support but already existent law), the first issue is a monitored system which allows them the opportunity to compete fairly – to allow veterans preference then to be applied.

Alternative 3 is a better alternative, but it would just delay the inevitable as there have been movements across the nation over the decades to reform civil service. Pennsylvania may be blindly following in the footsteps of others. We must ensure the direction of that reform goes a direction we can accept.

Alternative 4 is the best alternative. The General Assembly needs to more carefully examine the direction it is charting through legislation. Alternative thinking does exist. As Section IV.10 suggests and, as noted in the discussion, the Commission at one time was in charge of a personnel system. Since the majority of employees are civil service, perhaps a better alternative for such sweeping reform, which also would also better ensure the preservation of the merit system, with some appropriate changes to existing statutes, and to extend it (if that is indeed wanted by the Executive and Assembly) is to transfer the authorities for human resource management, and perhaps workforce planning, to the Civil Service Commission, instead. This suggestion should at least be given serious consideration in any hearings and testimony. The federal government and some states went in a slightly different direction, acknowledging the needs of its agencies – decentralization.

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Pennsylvania War Veterans Council
Testimony before Senate State Government Committee
Subject: SB 1037 - Civil Service Reforms
Date: 16 April 2018

Thank you for providing us this opportunity to testify before you over our concerns with Senate Bill 1037 as written.

You have also been provided with a Pennsylvania War Veterans Council's Legislative Committee review (dated 10 April) which goes into much greater depth on this issue.

The Council's main position is as follows:

Despite assurances to the contrary, we believe the bill in its present form threatens, rather than improves the hiring situation for veterans. As written, it will not better meet the needs of our veterans, as the Co-Sponsorship Memorandum states. The bill will reopen the door to the patronage, cronyism and nepotism which once prevailed in state government employment … and unfortunately still endures in parts of it.

Two different viewpoints of civil service already prevail in this state government, causing tension. While this bill purports to be about streamlining the hiring process through reorganization, it really is about civil service reform, for it would take the one true guarantor of merit service in this state and relegate it to the sidelines. I speak of the State Civil Service Commission, which over the years has already been "streamlined" – to include being stripped of its personnel management functions. If you are going reform the merit service system, address that issue upfront, not under the cover of reorganization.

Together with Acts 69 and 167 of 2016, the current Senate Bill 1037 would effectively complete action on a series of the most important recommendations found in the Legislative Budget and Finance Committee's 1998 "Study on Civil Service Reform." In layman's terms, it would rob the Commission of its testing, certification, and compliance and enforcement functions – making it a weakened merit service appeals board only.

Upfront, we lean on the side of the Civil Service Commission as structured because we know our history and we know that veterans' preference would be dead in state government without them.

We know that not everyone understands the value of hiring veterans.

We know the laws you have passed regarding veterans' preference seem unreasonable to managers and have developed antipathy to giving veterans a chance.

We know that veterans get jobs by chance because managers play with lists, whether civil service or non-civil service, trying to exclude them.

We know the Governor and Assembly recognized this situation, as a result of an Auditor General Report, and in 2011 passed a law to make one of the Commissioners a veteran to put more attention to the problem.

We know that in the process of implementing NEOGOV, the new enterprise software system for personnel management, the Office of Administration had to be reminded by the Commission that veterans preference also applies to non-civil service hirings – without exception.

We know the Civil Service Commission dutifully applies the laws others have given them, only to be disliked for doing so … yet laws mean nothing without the ability to enforce, an essential American legislative principle.

We strongly suspect the Office of Administration is bent on eliminating testing requirements in the mistaken belief that resumes are sufficient in each and every case and testing slows the hiring process unduly. Tests of various forms are often needed where credentialing systems do not already exist, as in the lower skill positions. They are not barriers to employment. They allow the common person to compete fairly and equally for positions on the basis of their own knowledge and abilities – to include our veterans - who already have difficulty in obtaining credit for their skills acquired during service, as you already must know (you have passed some laws on the subject). Therefore, it is a bedrock of the merit service system, unlike in our non-civil service. It opens doors to public service. It opens doors to our veterans.

We are also extremely concerned the Office of Administration will be given the power to develop temporary regulations good for three years without IRRC review, or any review whatsoever. It already controls classifications and the hiring process from start to finish. Such a power gives it *carte blanche* authority to affect implementation of existing laws and to change policies. We know the implementation of veterans' preference is at risk based on history, despite assurances to the contrary to gain our support. Saying veterans' preference will not change is not the same as saying it will be enforced.

The streamlining argument, therefore, does not wash with us. There is only one personnel management system in the first place, not two as is sometimes implied. In 2008, then Secretary Michael Masch, when studying the time-to-hire and quality of employees hired, found more fault with his own Office of Administration and Budget and agency managers than with the Civil Service Commission. It is the Office of Administration, especially as it has now centralized all human resource functions of the various agencies, which controls the speed of hiring and who is hired, not the Commission. Therefore, if there are to be changes, it should be about the Office of Administration cleaning up its own processes, not adding additional organization to them.

Consequently, we are alarmed at the "fuzzy logic" being applied. We think more probative examination of the situation is required before proceeding. To repeat, all we see is the need to improve processes …not organization … and consequently, no overarching need for such a major reorganization as proposed in this bill, considering its consequences. "If it ain't broke … make it better, not worse."

But if you do insist upon civil service reform through a reorganization, then be upfront about it and consider this: about 70 percent of the state government employees under the Governor's control are civil service employees. Would not a logical person who truly believed in merit service want to return control of all personnel management to the Civil Service Commission instead? New Jersey and Michigan have done it. It would result in one merit system for all – incidentally a recommendation that LBFC study also made. It indeed would allow for the "streamlining" truly needed, for it would ensure all have access to fair hiring and promotion practices and are properly managed.

Some of us have not only fought to defend our liberties but also to ensure the American rule of fair play: that any man or woman can advance themselves if provided fair opportunity. That is what makes the American way of life attractive to others. Prove you believe that. We ask that you labor on the side of fairness for all … for us veterans. Senate Bill 1037 as written is not the way.

Thank you.

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May 18, 2018

The Honorable Mike Folmer
Senate Box 203048
Room 337 Main Capitol
Harrisburg, Pennsylvania 17120

The Honorable Anthony H. Williams
11 East Wing Box 203008
Harrisburg, Pennsylvania 17120

Dear Senators Folmer and Williams:

Thank you for providing us the opportunity to review your Amendment #07118 to Senate Bill 1037 Civil Service Commission Reforms and to ask questions. We suggest a meeting in person in an effort to help improve the bill.

While the amendment attempts to address enforcement of veterans preference, it does not do this sufficiently. Moreover, the amendment does not address an underlying concern expressed in testimony and in our 10 April 2018 report to the Pennsylvania War Veterans Council: the guaranteed preservation of the merit service system, the foundation upon which veterans preference laws are built.

As one example, we consider proctored testing to be the bedrock of merit service, for it opens the doors of employment opportunity for more Pennsylvanians (veterans among them) to the second largest employer in Pennsylvania, our state government. We know the Office of Administration is not a strong advocate of testing of the forms we consider invaluable and actually wanted by various agencies of state government. We wish to see something addressing this subject. The bill's statute provisions are satisfactory when under a state civil service commission with a record of accomplishment in this area of concern. They are not when placed under a new agency with no record of accomplishment and seemingly wanting a resume-based examination method only.

There are other concerns, but at this time, we believe the "modernization" of the Civil Service Commission should not be your central focus. It appears to us that it had been "streamlined." Instead, many of the issues which have been presented to you are of a project management variety centered around the conversion to NEOGOV, which has been the source of many of the frictions (especially when a "cold start" mentality is applied).

Other issues which have been presented now lie within the control of the Office of Administration. None of these problems are driven by the structure and functions of the Civil Service Commission. In testimony, we stated we see a certain "fuzzy logic" being applied, and wonder why other alternatives were not considered, if structural change is wanted.

Almost a hundred years ago, the General Assembly and the Governor showed great wisdom in creating a Civil Service Commission and in giving it a certain measure of insulation from the daily course of politics. That idea has worked well and to the benefit of Pennsylvanians.

Consequently, the further breaking up the Commission and the giving of more powers to an Office of Administration should raise alarm bells for all of us. It therefore warrants a stepping back and a fuller discussion with others, before moving forward.

We are available to meet at your convenience.

Sincerely,

Keith G. Beebe

Keith G. Beebe
LTC USA (Ret)
VP and Chairman, Legislative Committee
Pennsylvania War Veterans Council

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12 Jun 2018

The Honorable Daryl Metcalfe
Chairman, State Government Committee
144 Main Capitol
Harrisburg, PA 17120-2012

Dear Representative Metcalfe:

As discussed at our meeting yesterday, it is the position of the Pennsylvania War Veterans Council that we cannot support SB 1037 in its present form and do not understand why the bill must be fast-tracked without further refinements to get it right, since we believe ultimately the merit service system and veterans preference will be put at risk. Since the state government is the commonwealth's second largest employer, these issues take on increased significance to us. Furthermore, the problems that really led to this extraordinary bill will continue to persist -- our study of 10 April 2018 points out some of the flaws in the thinking. In other words, the bill is not a problem solver. What the legislation will do is put to rest the errant notion that the Civil Service Commission is the primary source of the state's personnel management system's problems. Therefore, we currently believe the Civil Service Commission must remain intact.

You have told us that you will not consider the creation of a Department of Personnel Services (DPS) with a Secretary appointed with the advice and consent of the Senate who has a personnel management background. This is what most other states have done when dismantling their civil service commissions to ostensibly create modern merit service systems. Nor will you consider transferring the Civil Service Commission to within the Office of Administration or DPS to ensure the merit service test and test development divisions continue to operate smoothly and, thereby, allow better integration of the enforcement of civil service laws through prevention of problems. The Office of Administration lacks both the experience and inclination in this area so key to merit service, which in turn affects veterans hiring. An ounce of prevention is worth a pound of cure, as one of our most esteemed legislators once said.

Having stated the above for the record, with this letter we are complying with your request for marginal changes to the bill for your consideration and some questions for you to ask of the Office of Administration to inform your future judgments. They are attached as Appendix A (changes to legislation) and Appendix B (Questions to Ask). Your deadline makes it impossible to be as thorough as we would wish to be.

Sincerely yours,

Kit D. Watson

Kit Watson
Secretary

Delete from § 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:

~~(12) Appoint a special advisor for veterans' programs who shall be a veteran and who will:~~
~~(i) ensure compliance under this part with the provisions of 51 Pa.C.S. Pt. V (relating to employment preferences and pensions); and~~
~~(ii) promote and implement policies to increase the awareness and understanding of the value of recruiting, hiring and retaining veterans for the Commonwealth workforce under this part.~~

Add to § 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:

(12) ENSURES ENSURE THE PERSONNEL MANAGEMENT SYSTEM AND CLIENTS FOR WHICH IT IS RESPONSIBLE COMPLIES WITH THE VETERANS' PREFERENCE LAWS AND REGULATIONS FOR BOTH CIVIL AND NON-CIVIL SERVICE, REFERRING NOTED POSSIBLE PROBLEMS IN COMPLIANCE TO THE CIVIL SERVICE COMMISSION. WORKS WITH THE CIVIL SERVICE COMMISSION TO EXECUTE THIS DUTY. SEE SECTION 3303 (DUTIES OF THE COMMISSION).

(13) PAYS SPECIAL ATTENTION TO THE CONTINUANCE OF TEST AND TEST DEVELOPMENT FUNCTIONS ASSUMED FROM THE CIVIL SERVICE COMMISSION FOR THE VARIOUS AGENCIES SERVED. **[Note: the inexperience of OA in this area makes removal of this function from the Commission's area of responsibility a difficult transition for it.]**

(14) CREATES ONE CIVIL SERVICE SYSTEM BASED UPON THE PRINCIPLES OF THE MERIT SERVICE SYSTEM.

Add to § 2203. Regulations.
(a) Authority.--The Office of Administration may promulgate regulations necessary to carry out the provisions of this part.
(b) Temporary regulations.--

(1) In order to facilitate the prompt implementation of this part, the Office of Administration may promulgate temporary regulations which shall expire no later than three TWO years following the publication of the temporary regulations. THE TEMPORARY REGULATIONS WILL BE FORWARDED TO THE INDDEPENDENT REGULATORY REVIEW COMMISSION FOR REVIEW NO LATER THAN THE TIME OF PUBLICATION. **[The espoused reason for this provision is that it takes so long to get something through the IRRC; does not mean have to wait two years and then submit] …**

(2) The authority provided to the Office of Administration to adopt temporary regulations under paragraph (1) shall expire ~~three~~ TWO years following the publication of the temporary regulations. Regulations adopted after this period shall be promulgated as provided by law.

Add to § 3003. Duties of commission.
It shall be the duty of the commission:

(9) TO ENSURE TOGETHER WITH THE OFFICE OF ADMINISTRATION STRICT COMPLIANCE WITH VETERANS PREFERENCE PROVISIONS FOUND UNDER 51 PA C.S. PART V (RELATING TO EMPLOYMENT PREFERENCES AND PENSIONS) FOR BOTH CIVIL SERVICE (AKA CLASSIFIED OR MERIT SERVICE) AND NON-CIVIL SERVICE (AKA NON-MERIT SERVICE) POSITIONS.

(10) TO PROMOTE AND, IN COORDINATION WITH THE OFFICE OF ADMINISTRATION, IMPLEMENT POLICIES THAT INCREASE THE AWARENESS AND UNDERSTANDING OF THE VALUE OF RECRUITING, HIRING AND RETAINING VETERANS FOR THE COMMONWEALTH WORKFORCE UNDER THIS PART.

(11) TO CONDUCT AUDITS OF APPOINTMENTS, CHANGES IN EMPLOYMENT AND PROMOTIONS OF EMPLOYEES IN THE CLASSIFIED SERVICE TO ENSURE STRICT COMPLIANCE WITH THIS PART AND REGULATIONS PROMULGATED BY THE OFFICE OF ADMINISTRATION UNDER THIS PART.

Delete in its entirety:

~~§ 3008. Periodic audits of employees by commission.~~
~~The commission shall conduct audits of appointments, changes in employment and promotions of employees in the classified service to ensure strict compliance with this part and regulations promulgated by the Office of Administration under this part.~~ **[This more properly belongs with Section 3003 as shown above.]**

Correct CHAPTER 33
RECORDS, STATUS AND APPROPRIATIONS
Sec.
3303. Veterans' preference.
3304. Audits Of Application Of Veterans' Preference.

[These sections are stated elsewhere in the same words and their placement adds confusion on citation. Chapter 33 is about recordkeeping and reporting. Something about keeping veterans' preference audits and the regularity of reports would be more appropriate.]

More questions could be asked, but these might give you a clearer picture of Office of Administration's (OA) attention to human resources customer service (applicants and agencies), and some of the problems not being resolved or requiring addressing

A. Learning about the problems created by NeoGov

QUESTION 1: The purpose of SB 1037 has been to alternately modernize the Civil Service Commission or civil service itself. What process steps must the Civil Service Commission now do manually with the implementation of NeoGov that was once done automatically? How do you plan on addressing these issues once you assume their responsibilities?

QUESTION 2: [This is the same type of question as Question 1 but on a more specific subject related to veterans preference.] Before 23 April 2018 (GOTIME), veterans preference points were added automatically to applicant's applications in the civil service system. Now, the Commission must add them manually. When do you plan on re-automating this requirement?

QUESTION 3: [Another question of the sort related to Question 1] The Civil Service Commission's IT system had access to the states SAP database, which enabled it to perform its duties of certification and reviews quickly. Is or can NeoGov do the same for the Commission and your staff as you assume the more functions in the administration of the merit service system?

B. Learning about the problems of OA's enforcement of Veterans' Preference enforcement/hiring practices

QUESTION 4: During the SB 1037 development period, the Civil Service Commission offered its services in reviewing, enforcing and defending veterans' preference for non-civil service, as the OA had no history or applying and defending veterans preference. At that time, despite the concurrence of OA staff members involved in the discussion, the Secretary stated that such would be illegal for the Commission to be involved in non-civil service preference. Yet, with the implementation of SB 1037, the OA would assume the role for both. Why not now use the expertise of the Civil Service Commission in this subject area? It would reduce duplication of efforts.

QUESTION 5: Since OA has expressly emphasized that the Civil Service Commission slows the hiring process, and as you keep data for both civil service and non-civil service, what are the current turnaround times for hiring as compared to your 2008 study? What areas of its performance, once assumed by you, will be improved?

QUESTION 6: What statistics does OA currently and routinely keep on veterans, their hiring, veterans preference hiring, and problems in hiring.

C. Learning about OA's intentions for a maintaining a merit service system

QUESTION 6: As OA has stated it wants to go to a pure Experience and Training based examination (E&T) process, what are your plans for test centers? [Already E&T has reached as high as 88% at OA insistence, whereas just a year or two ago it was in the 50% range. Some departments want proctored testing (of different forms) and industry continues to use it]

QUESTION 7: OA's push to have one site for job applications is a step the right direction, but what are OA's plans for a single merit-service system, the lack of which defeats truly modernizing the system and addressing a number of key complaints of managers in regards to lateral transfers, reassignments and transfers – true modernization. [This had greater importance in various studies than the hiring cycle.]

QUESTION 8: [Have not been able to get an answer to this. In planning, the review of tables of organization help to assess how well an organization will perform in the duties assigned.] Since the enactment of SB 1037 has been a sure thing, and OA would have nine months to complete its execution, what would be the difference in the your organizational diagram and the FTE being assigned? Show me the present and future organization?