

## Comments of the Independent Regulatory Review Commission



### State Board of Crane Operators Regulation #16A-7104 (IRRC #3338)

#### Licensure by Endorsement - Crane Operators

**June 1, 2022**

We submit for your consideration the following comments on the proposed rulemaking published in the April 2, 2022 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (Act) (71 P.S. § 745.5b). Section 5.1(a) of the Act (71 P.S. § 745.5a(a)) directs the State Board of Crane Operators (Board) to respond to all comments received from us or any other source.

#### **1. Comments, objections, or recommendations of a committee.**

The House Professional Licensure Committee (Committee) submitted the following comments on the proposed regulation:

1. *Section 6.16 (b)(1)(i)* — This section requires an applicant to submit a copy of the current law and regulations along with scope of practice requirements in the jurisdiction that issued a license, certificate, registration, or permit. Act 41 of 2019 does not explicitly state this requirement and the committee recommends changes that remove this responsibility from the applicants and applies it to Board Counsel.
2. *Section 6.16 (b)(4)* — This section states that an applicant must not have any discipline by the jurisdiction that issued the license, certificate, registration, or permit. The committee recommends clarifying this section to specify the types of discipline (i.e., formal discipline or complaint) and the timeframe when such discipline occurred.
3. *Section 6.17 (b)(1)* — This section would give the Board authority to issue a provisional license for less than a year. It is unclear under what circumstances the Board would need to exercise this authority. The Committee asks for clarification.
4. *Section 6.17 (d)* — This section states that the Board will not issue subsequent provisional licenses after the provisional licenses expires. We believe this section is unintentionally vague. Further, Act 41 of 2019 does not specifically state that the Board shall only issue one provisional license. The Committee believes this section should be amended to correct the unintended harm of limiting provisional licenses and would further suggest incorporating a time frame to re-apply.

Under the RRA, the comments, objections, or recommendations of a Committee is one of the criteria the Commission must consider when determining if a regulation is in the public interest. When this proposed regulation is delivered as a final-form regulation to this Commission and the

Committees for review, the issues raised by the Committee, and the Board's response to those issues, will be one of the criteria used by this Commission to determine if the regulation is in the public interest.

**2. Sections 6.16. Licensure by endorsement. – Economic impact; Protection of the public health, safety, and welfare.**

Subparagraphs (a)(1)(i) requires that an applicant must submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration, or permit requirements and scope of practice in the jurisdiction that issued the license, certificate, registration, or permit. Subparagraphs (a)(1)(iii) requires that the copy of the applicable law, regulation, or other rule must include enactment date of law, regulation, or other rule. These provisions seem to place a substantial burden and possible costs on applicants. Paragraph (a)(2) provides for showing competency by practice in two of the past five years in a “substantially equivalent jurisdiction or jurisdictions.” What standard determines whether a jurisdiction is substantially equivalent? This provision, too, seems to place an additional burden on the applicant and/or the Board to prove equivalency since the experience does not have to be in the jurisdiction that the applicant is using for endorsement and also can be in multiple jurisdictions. Has the Board considered, at least for the jurisdictions in the United States, creating and publishing an annual determination of those jurisdictions which have law and regulations substantially equivalent to Pennsylvania? We ask the Board to explain how these provisions in the final regulation balance protection of the public health, safety, and welfare with the burden and cost to applicants and the Board.

**3. Compliance with the RRA.**

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)). The information contained in the RAF is not sufficient to allow this Commission to determine if the regulation is in the public interest.

We ask the Board to amend the citation for its statutory authority in RAF Question 8. The cited 63 Pa.C.S § 3111 does discuss the Board's obligation in issuing these licenses, but only mentions regulations “established by the licensing board.” We ask the Board to identify the specific statutory authority which provides for its actual authority to promulgate these regulations in the final RAF.

RAF Question 14 requires the promulgating agency to describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups in the development and drafting of the regulation. It also requires the agency to list the specific persons and/or groups that were involved. The Board's response states that it solicited comments from “stakeholders and interested parties” in July of 2020. We ask the Board to

provide an updated RAF that includes a list of specific persons and/or groups involved in the development and drafting of the proposal.

To be issued a license by endorsement under 63 Pa.C.S. Section 3111 (relating to licensure by endorsement) as a professional crane operator, an applicant shall provide, among other things, a copy of the current applicable law, regulation, or other rule governing licensure, certification, registration, or permit requirements and scope of practice in the jurisdiction that issued the applicant's license, certificate, registration, or permit. Under Section 6.16 (a)(1)(ii), if the applicable law, regulation, or rule is in a language other than English, the document must be translated, at the applicant's expense, by a professional translation service and verified to be complete and accurate. The Board's response to RAF Question 19 does not provide a specific estimate of the costs to the regulated community for translation of an applicable law, regulation or rule. Also, in response to RAF Questions 17, 19, and 23 regarding the financial impact on or cost to the applicant, the Board does not address the cost of a Criminal History Records Check. We ask the Board, when it submits the final version of this rulemaking, to provide an updated RAF that estimates the costs associated with translation and a Criminal History Records Check.