

FIRST REGULAR SESSION

# SENATE BILL NO. 693

## 92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS KLINDT, STEELMAN, GIBBONS,  
FOSTER, NODLER, CAUTHORN AND YECKEL.

Read 1st time February 27, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2005S.021

### AN ACT

To repeal sections 36.010, 36.020, 36.030, 36.031, 36.040, 36.050, 36.060, 36.080, 36.090, 36.150, 36.160, 36.170, 36.240, 36.390, 36.420, 36.430, 36.460, and 36.500, RSMo, and to enact in lieu thereof twenty-one new sections relating to state employee work incentives, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 36.010, 36.020, 36.030, 36.031, 36.040, 36.050, 36.060, 36.080, 36.090, 36.150, 36.160, 36.170, 36.240, 36.390, 36.420, 36.430, 36.460, and 36.500, RSMo, are repealed and twenty-one new sections enacted in lieu thereof, to be known as sections 33.295, 36.010, 36.020, 36.030, 36.031, 36.040, 36.050, 36.060, 36.080, 36.090, 36.142, 36.150, 36.160, 36.170, 36.240, 36.390, 36.420, 36.430, 36.460, 36.500, and 105.1300, to read as follows:

**33.295. During any fiscal year in which any state agency does not fully expend its appropriated amount after applying any withholdings which may have been made during the fiscal year, the general assembly may reappropriate up to fifty percent of the lapsed amount which may be used for the following purposes:**

**(1) Salary bonus payments at the discretion of the agency director to full-time or regular part-time employees of the agency who are not in temporary positions and whose salary is below the median salary for the agency;**

**(2) Purchase or other acquisition of technology equipment; or**

**(3) Professional development training for employees of the agency.**

36.010. This chapter, together with any subsequent amendments thereto, shall be known

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

and may be referred to as "The State [Personnel] **Human Resources** Law".

36.020. Unless the context clearly requires otherwise, the following terms mean:

(1) "Agency", "state agency" or "agency of the state", each department, board, commission or office of the state except for offices of the elected officials, the general assembly, the judiciary and academic institutions;

(2) "Appointing authority", an officer or agency subject to this chapter having power to make appointments;

(3) "Board", the [personnel] **human resources** advisory board as established by section 36.050;

(4) "Broad classification band", a grouping of positions with similar levels of responsibility or expertise;

(5) "Class" or "class of positions", a group of positions subject to this chapter sufficiently alike in duties, authority and responsibilities to justify the same qualifications and the same schedule of pay to all positions in the group;

(6) "Director", the director of the division of [personnel] **human resources** of the office of administration;

(7) "Disabled veteran", a veteran who has served on active duty in the armed forces at any time who receives compensation as a result of a service-connected disability claim allowed by the federal agency responsible for the administration of veteran's affairs, or who receives disability retirement or disability pension benefits from a federal agency as a result of such a disability or a national guard veteran who was permanently disabled as a result of active service to the state at the call of the governor;

(8) "Division of service" or "division", a state department or any division or branch of the state, or any agency of the state government, all the positions and employees in which are under the same appointing authority;

(9) "Eligible", a person whose name is on a register or who has been determined to meet the qualifications for a class or position;

(10) "Open competitive examination", a test for positions in a particular class, admission to which is not limited to persons employed in positions subject to this chapter;

(11) "Promotional examination", a test for positions in a particular class, admission to which is limited to employees with regular status in positions subject to this chapter;

(12) "Public hearing", a hearing held after public notice at which any person has a reasonable opportunity to be heard;

(13) "Register of eligibles", a list of persons who have been found qualified by an open competitive examination for appointment to a position;

(14) "Regular employee", an employee who has successfully completed a probationary period as provided in section 36.250;

(15) "Reinstatement register", a list of persons who have been regular employees and who have been laid off in good standing due to lack of work or funds, or other similar cause, or who have been demoted in lieu of layoff;

(16) "State equal employment opportunity officer", the individual designated by the governor or the commissioner of administration as having responsibility for monitoring the compliance of the state as an employer with applicable equal employment opportunity law and regulation and for leadership in efforts to establish a state workforce which reflects the diversity of Missouri citizens at all levels of employment;

(17) "Surviving spouse", the unmarried surviving spouse of a disabled veteran or any person who was killed while on active duty in the armed forces of the United States or an unmarried surviving spouse of a national guard veteran who was killed as a result of active service to the state at the call of the governor;

(18) "Veteran", any person who is a citizen of this state who has been separated under honorable conditions from the armed forces of the United States who served on active duty during peacetime or wartime for at least six consecutive months, unless released early as a result of a service-connected disability or a reduction in force at the convenience of the government, or any member of a reserve or national guard component who has satisfactorily completed at least six years of service or who was called or ordered to active duty by the President and participated in any campaign or expedition for which a campaign badge or service medal has been authorized.

36.030. 1. A system of [personnel] **human resources** administration based on merit principles and designed to secure efficient administration is established for all offices, positions and employees, except attorneys, of the department of social services, the department of corrections, the department of health and senior services, the department of natural resources, the department of mental health, the division of [personnel] **human resources** and other divisions and units of the office of administration, the division of employment security, mine safety and on-site consultation sections of the division of labor standards and administration operations of the department of labor and industrial relations, the division of tourism and job development and training, the Missouri housing development commission, and the office of public counsel of the department of economic development, the Missouri state water patrol, the Missouri veterans commission, capitol police and state emergency management agency of the department of public safety, such other agencies as may be designated by law, and such other agencies as may be required to maintain [personnel] **human resources** standards on a merit basis by federal law or regulations for grant-in-aid programs; except that, the following offices and positions of these agencies are not subject to this chapter and may be filled without regard to its provisions:

(1) Other provisions of the law notwithstanding, members of boards and commissions,

departmental directors, five principal assistants designated by the departmental directors, division directors, and three principal assistants designated by each division director; except that, these exemptions shall not apply to the division of **[personnel] human resources**;

(2) One principal assistant for each board or commission, the members of which are appointed by the governor or by a director of the department;

(3) Chaplains and attorneys regularly employed or appointed in any department or division subject to this chapter, except as provided in section 36.031;

(4) Persons employed in work assignments with a geographic location principally outside the state of Missouri and other persons whose employment is such that selection by competitive examination and standard classification and compensation practices are not practical under all the circumstances as determined by the board by rule;

(5) Patients or inmates in state charitable, penal and correctional institutions who may also be employees in the institutions;

(6) Persons employed in an internship capacity in a state department or institution as a part of their formal training, at a college, university, business, trade or other technical school; except that, by appropriate resolution of the governing authorities of any department or institution, the **[personnel] division of human resources** may be called upon to assist in selecting persons to be appointed to internship positions;

(7) The administrative head of each state medical, penal and correctional institution, as warranted by the size and complexity of the organization and as approved by the board;

(8) Deputies or other policy-making assistants to the exempt head of each division of service, as warranted by the size or complexity of the organization and in accordance with the rules promulgated by the **[personnel] human resources** advisory board;

(9) Special assistants as designated by an appointing authority; except that, the number of such special assistants shall not exceed one percent of a department's total authorized full-time equivalent workforce;

(10) Merit status shall be retained by present incumbents of positions identified in this section which have previously been subject to this chapter.

2. All positions in the executive branch transferred to coverage pursuant to this chapter where incumbents of such positions have at least twelve months' prior service on the effective date of such transfer shall have incumbency preference and shall be permitted to retain their positions, provided they meet qualification standards acceptable to the division of **[personnel] human resources** of the office of administration. An employee with less than twelve months of prior service on the effective date of such transfer or an employee who is appointed to such position after the effective date of such transfer and prior to the classification and allocation of the position by the division of **[personnel] human resources** shall be permitted to retain his or her position, provided he or she meets acceptable qualification standards and subject to successful

completion of a working test period which shall not exceed twelve months of total service in the position. After the allocation of any position to an established classification, such position shall thereafter be filled only in accordance with all provisions of this chapter.

3. The system of [personnel] **human resources** administration governs the appointment, promotion, transfer, layoff, removal and discipline of employees and officers and other incidents of employment in divisions of service subject to this chapter, and all appointments and promotions to positions subject to this chapter shall be made on the basis of merit and fitness.

4. [To encourage all state employees to improve the quality of state services, increase the efficiency of state work operations, and reduce the costs of state programs, the director of the division of personnel shall establish employee recognition programs, including a statewide employee suggestion system. The director shall determine reasonable rules and shall provide reasonable standards for determining the monetary awards, not to exceed five thousand dollars, under the employee suggestion system. Awards shall be made from funds appropriated for this purpose.

5.] At the request of the senate or the house of representatives, the commissioner of administration shall submit a report on the employee suggestion award program described in **this** subsection [4 of this section].

36.031. Any provision of law to the contrary notwithstanding, except for the elective offices, institutions of higher learning, the department of transportation, the department of conservation, those positions in the Missouri state highway patrol the compensation of which is established by subdivision (2) of subsection 2 of section 43.030, RSMo, and section 43.080, RSMo, and those positions for which the constitution specifically provides the method of selection, classification, or compensation, and the positions specified in subsection 1 of section 36.030, but including attorneys, those departments, agencies and positions of the executive branch of state government which have not been subject to these provisions of the state [personnel] **human resources** law shall be subject to the provisions of sections 36.100, 36.110, 36.120 and 36.130, and the regulations adopted pursuant to sections 36.100, 36.110, 36.120 and 36.130 which relate to the preparation, adoption and maintenance of a position classification plan, the establishment and allocation of positions within the classification plan and the use of appropriate class titles in official records, vouchers, payrolls and communications. Any provision of law which confers upon any official or agency subject to the provisions of this section the authority to appoint, classify or establish compensation for employees shall mean the exercise of such authority subject to the provisions of this section. This section shall not extend coverage of any section of this chapter, except those specifically named in this section, to any agency or employee. In accordance with sections 36.100, 36.110, 36.120 and 36.130, and after consultation with appointing authorities, the director of the division of [personnel] **human resources** shall conduct such job studies and job reviews and establish such additional new and revised job classes as the director finds

necessary for appropriate classification of the positions involved. Such classifications and the allocation of positions to classes shall be maintained on a current basis by the division of [personnel] **human resources**. The director of the division of [personnel] **human resources** shall, at the same time, notify all affected agencies of the appropriate assignment of each job classification to one of the salary ranges within the pay plan then applicable to merit system agencies. The affected agencies and employees in the classifications set pursuant to this section shall be subject to the pay plan and rates of compensation established and administered in accordance with the provisions of this section, and the regulations adopted pursuant to this section, on the same basis as for merit agency employees. In addition, any elected official, institution of higher learning, the department of transportation, the department of conservation, the general assembly, or any judge who is the chief administrative officer of the judicial branch of state government may request the division of [personnel] **human resources** to study salaries within the requestor's office, department or branch of state government for classification purposes.

36.040. 1. The division of [personnel] **human resources** of the office of administration, the administrative head of which is the [personnel] **human resources** director, shall administer this chapter and render the services to the departments and divisions subject to the provisions of this chapter that are necessary and desirable to assist the officials in discharging their responsibility for maintaining and increasing the effectiveness of [personnel] **human resources** administration. The division shall provide consultation and expertise in [personnel] **human resources** management to all agencies to assist in the accomplishment of the missions of such agencies.

2. The division shall administer this chapter in a manner which complies with equal opportunity law and shall consult with the state equal employment opportunity officer in various aspects of the administration of this chapter to ensure such compliance. In particular, the division shall consult with the state equal employment opportunity officer regarding the classification plan, the pay plan, qualifications for admittance to examinations, noncompetitive registration and selection procedures, waiver of competitive examinations, noncompetitive promotions, alternative promotional procedures, alternatives for filling vacancies, and layoff actions, for the purpose of ensuring compliance with equal opportunity law and regulations and on developed plans to establish a state workforce which reflects the diversity of Missouri citizens at all levels of employment.

36.050. 1. The [personnel] **human resources** advisory board and its functions, duties and powers prescribed in this chapter is transferred by type III transfer to the office of administration.

2. The [personnel advisory] board shall consist of seven members. Four members of the board shall be public members, citizens of the state who are not state employees or officials, of

good character and reputation, who are known to be in sympathy with the application of merit principles to public employment. Two members shall be employees of state agencies covered by section 36.030 or section 36.031, one a member of executive management, and one a nonmanagement employee. Members who are employees shall not participate in disciplinary appeal decisions from their agencies. The state equal employment opportunity officer shall be a member of the board. No member of the board, during the member's term of office, or for at least one year prior thereto, shall be a member of any local, state or national committee of a political party or an officer or member of a committee in any partisan political club or organization, or hold, or be a candidate for, a partisan public office. An employee member who leaves state employment or otherwise fails to further qualify for the appointment shall vacate the position.

3. The members of the board shall be appointed by the governor by and with the advice and consent of the senate. The three current members of the board serving terms which expire July 31, 1998, July 31, 2000, and July 31, 2002, shall continue to serve for the terms for which they were previously appointed. One new public member shall be appointed for a term ending July 31, 1998, one employee member shall be appointed for a term ending July 31, 2000, and one employee member shall be appointed for a term ending July 31, 2002. Thereafter, appointments of all members shall be for terms of six years. Any vacancy shall be filled by an appointment for the unexpired term. Each member of the board shall hold office until such member's successor is appointed and qualified.

4. A member of the board is removable by the governor only for just cause, after being given a written notice setting forth in substantial detail the charges against the member and an opportunity to be heard publicly on the charges before the governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the secretary of state.

5. Each public member of the board shall be paid an amount for each day devoted to the work of the board which shall be determined by the commissioner of administration and filed with the reorganization plan of the office of administration; provided, however, that such amount shall not exceed that paid to members of boards and commissions with comparable responsibilities. All board members are entitled to reimbursement for necessary travel and other expenses pertaining to the duties of the board. Duties performed for the board by any employee member of the board shall be considered duties in connection with the appointment of the individual, and such employee member shall suffer no loss of regular compensation by reason of performance of such duties.

6. The board shall elect from among its membership a chairman and vice chairman, who shall act as chairman in the chairman's absence. It shall meet at the times and places specified by call of the chairman, the governor, or the director. At least one meeting shall be held every three months. All regular meetings are open to the public. Notice of each meeting shall be given

in writing to each member by the director. Two members shall constitute a quorum until January 1, 1997, thereafter, four members shall constitute a quorum for the transaction of official business.

7. To assist in the performance of its duties the board may employ staff from funds appropriated for this purpose; provided, however, that this provision shall not be interpreted to limit the ability of the [personnel] **human resources** director to provide assistance to the board.

36.060. 1. In addition to the duties imposed upon it elsewhere in this chapter, it shall be the duty of the board:

- (1) To conduct hearings and render decisions on appeals as provided in this act;
- (2) To make any investigation which it may consider desirable concerning the administration of [personnel] **human resources** subject to this law;
- (3) To hold regular meetings with appointing authorities to propose methods of resolving general [personnel] **human resources** problems;
- (4) To make annual reports, and such special reports as it considers desirable, to the governor and the general assembly regarding [personnel] **human resources** administration in the state service and recommendations there. These special reports shall evaluate the effectiveness of the [personnel] division of **human resources** and the appointing authority in their operations under this law;
- (5) To make such suggestions and recommendations to the governor and the director relating to the state's employment policies as will promote morale, efficiency and uniformity in compensation of the various employees in the state service;
- (6) To promulgate rules and regulations to ensure that no applicant or employee is discriminated against on the basis of race, creed, color, religion, national origin, sex, ancestry or handicap.

2. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

36.080. 1. The director shall be a person who is experienced in the [principals] **principles** and methods of [personnel] **human resources** administration, who is familiar with and in sympathy with the application of merit principles and efficient methods of public administration. He shall be appointed for a term of four years beginning on July first following the election of a governor, which term may be renewed at its expiration at the option of the governor; except that the provisions of this section shall not apply to the incumbent [personnel] **human resources** director on September 28, 1979, who shall retain such merit system status as has been previously attained.

2. The [personnel] **human resources** director shall not during his term of office, or for one year prior thereto:



- (1) Be a member of any local, state or national committee of a political party;
- (2) Be a member of any partisan political club or organization;
- (3) Actively participate in any partisan political campaign; or
- (4) Hold or be a candidate for any partisan public office.

3. Upon an impending or actual vacancy in the position of director, the board shall publicly solicit applications for the position and prepare and submit to the governor a list of the five most qualified applicants. In the course of preparing such a list the board may engage the services of persons experienced in [personnel] **human resources** administration as consultants to assist it in examining and determining the best qualified available persons for appointment as director. The board shall be authorized to pay, out of the funds appropriated to it, the necessary travel and other expenses of any consultants engaged under the provisions of this section, and may also defray the travel expenses of candidates for the position who are requested to report for an interview.

4. The provisions of subdivision (2) of subsection 5 of section 1 of the Reorganization Act of 1974 notwithstanding, the total compensation of any director appointed after September 28, 1979, shall not exceed the statutory salary of department heads.

5. The provisions of subsection 8 of section 15 of the Reorganization Act of 1974 notwithstanding, the governor shall appoint to the position of director, without regard to his political affiliation and subject to the advice and consent of the senate, one of the persons named on the list submitted by the board.

6. The director may be removed by the board for just cause after being given a notice setting forth in substantial detail the charges before the board. A copy of the charges and a transcript of the record of the hearing shall be filed with the secretary of state.

36.090. 1. The director, as executive head of the [personnel] division **of human resources**, shall direct and supervise all its administrative and technical activities. In addition to the duties imposed upon him elsewhere in this chapter, it shall be his duty:

(1) To require the development of effective [personnel] **human resources** administration and to make available the facilities of the division to this end;

(2) To develop in cooperation with appointing authorities a management training program, a recruiting program, and a system of performance appraisals, and to assist appointing authorities in the setting of productivity goals.

2. The director shall assist the board in the performance of its functions and attend board meetings.

3. The director shall:

(1) Establish and maintain a roster of all officers and employees subject to this law, in which there shall be set forth, as to each employee, a record of the class title of the position held; the salary or pay; any change in class title, pay or status, and such other data as may be deemed

desirable to produce significant facts pertaining to [personnel] **human resources** administration;

(2) Appoint, under the provisions of this chapter, and, with the approval of the board, fix the compensation of such experts and special assistants as may be necessary to carry out effectively the provisions of this chapter, such employees to be selected upon the basis of merit and fitness and as other employees subject to this law unless otherwise directed under the provisions of this chapter;

(3) Investigate the effects of this law, the rules promulgated under this law and the operation of the merit system and report his finding and recommendations to the board and the governor;

(4) Make annual reports concerning the work of the division, problems in [personnel] **human resources** management, and actions taken or to be taken by the division to resolve those problems;

(5) Perform any other lawful act which he may consider necessary or desirable to carry out the purposes and provisions of this law.

4. The director shall appoint, in full conformity with all the provisions of this chapter, a deputy or deputies. In case of the absence of the director or his inability from any cause to discharge the powers and duties of his office, such powers and duties shall devolve upon his deputy.

**5. The director shall work with the appointing authorities and may delegate any of his or her duties as he or she deems appropriate for the purpose of promoting economy, efficiency, and improved services in human resource administration.**

**36.142. 1. Based on a system of performance evaluation, the director shall promulgate rules for:**

**(1) Periodic salary increases for employees in the state personnel system based on demonstrated ability for satisfactory performance and quality of performance;**

**(2) The withholding of periodic salary increases for employees in the state personnel system based on performance that is less than satisfactory; and**

**(3) The payment of an incentive award to employees in the state personnel system in recognition of above standard or outstanding performance.**

**2. By July 1, 2004, the director shall prepare a performance plan pursuant to the provisions of this section that:**

**(1) Is simple and understandable to employees;**

**(2) Is cost neutral as compared to the compensation plan in place for the fiscal year ending June 30, 2003, as modified each fiscal year thereafter by personal services appropriations;**

**(3) Is developed with input from employees in the state personnel system, managers, and other affected parties;**

(4) Emphasizes planning, management, and evaluation of employee performance; and

(5) Includes uniform and consistent guidelines for all state agencies.

3. The performance plan prepared in accordance with the provisions of subsection 2 of this section shall be submitted to the general assembly no later than January 1, 2004. The plan shall be implemented and coordinated by the division of personnel of the office of administration subject to available appropriations.

4. The director may authorize state agencies to establish a plan for the particular state agency to implement the performance plan prepared by the division of personnel of the office of administration in accordance with the provisions of this section. Salaries may be increased or left unchanged subject to available appropriations for the performance plan; except that no annual increase shall be guaranteed.

5. Initial hiring shall typically be at the minimum rate in the pay plan for similar positions. On a showing of recruiting difficulty or other unusual condition, the appointing authority may authorize the appointment of a person at a higher base salary within the pay grade.

6. The director shall monitor compliance with this section and shall report the director's findings by January of each year to the general assembly. The report shall include, by agency or department, the total amount of dollars appropriated for periodic salary increases and incentive awards for the prior fiscal year, the total amount of those appropriated dollars awarded to employees for periodic salary increases and incentive awards, and the total amount of dollars awarded for each performance category.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

36.150. 1. Every appointment or promotion to a position covered by this chapter shall be made on the basis of merit as provided in this chapter. Demotions in and dismissals from employment shall be made for cause under rules and regulations of the board uniformly applicable to all positions of employment. No appointment, promotion, demotion or dismissal shall

be made because of favoritism, prejudice or discrimination. The regulations shall prohibit discrimination in other phases of employment and [personnel] **human resources** administration and shall provide such remedy as is required by federal merit system standards for grant-in-aid programs and is not provided in chapter 296, RSMo.

2. Political endorsements shall not be considered in connection with any such appointment.

3. No person shall use or promise to use, directly or indirectly, for any consideration whatsoever, any official authority or influence to secure or attempt to secure for any person an appointment or advantage in appointment to any such position or an increase in pay, promotion or other advantage in employment.

4. No person shall in any manner levy or solicit any financial assistance or subscription for any political party, candidate, political fund, or publication, or for any other political purpose, from any employee in a position subject to this chapter, and no such employee shall act as agent in receiving or accepting any such financial contribution, subscription, or assignment of pay. No person shall use, or threaten to use, coercive means to compel an employee to give such assistance, subscription, or support, nor in retaliation for the employee's failure to do so.

5. No such employee shall be a candidate for nomination or election to any partisan public office or nonpartisan office in conflict with that employee's duties unless such person resigns, or obtains a regularly granted leave of absence, from such person's position.

6. No person elected to partisan public office shall, while holding such office, be appointed to any position covered by this chapter.

7. Any officer or employee in a position subject to this chapter who purposefully violates any of the provisions of this section shall forfeit such office or position. If an appointing authority finds that such a violation has occurred, or is so notified by the director, this shall constitute cause for dismissal pursuant to section 36.390 and a final determination by the board as to the occurrence of a violation.

36.160. 1. No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provision of this chapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this law and the regulations. **No person shall seek, offer, or provide assistance in the completion of an examination conducted for the purpose of consideration for employment to a position subject to this section.**

2. No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position subject to this law.

3. No employee of the [personnel division] **state**, examiner, or other person shall defeat,

deceive or obstruct any person in this right to examination, eligibility, certification or appointment under this law, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in a division of service subject to this law. Any person who shall violate any provision of this section shall be guilty of a **class A** misdemeanor.

36.170. 1. The director shall from time to time conduct such open competitive and promotional examinations as the director considers necessary. The examinations shall be of such character as to determine the relative qualifications, fitness and ability of the persons tested to perform the duties of the class for which a register is to be established. No question shall be so framed as to elicit information concerning the political or religious opinions or affiliations of an applicant.

2. Agencies may request authority from the director to administer examinations for all positions, in accordance with rules adopted by the board. When such a request is approved, the director, in accordance with rules established by the board, shall establish standards and guidelines to be followed.

3. Pursuant to rules promulgated by the board, appointing authorities may request that the division of **[personnel] human resources** administer promotional examinations limited to those already employed by the state or within the department or division of service involved.

4. All examinations conducted by the director shall be conducted in a location which is fully accessible to persons with disabilities or if such a facility is not available in a given location for such regular examinations, a special examination will be arranged upon request of an applicant with a disability in a facility which is fully accessible.

36.240. 1. Whenever an appointing authority proposes to fill one or more vacancies in a class of positions subject to this chapter, the appointing authority shall submit to the director, as far in advance of the desired appointment date as possible, a requisition for the certification of eligible persons from an appropriate register. The requisition shall contain information as required by the director. The appointing authority, subject to conditions specified in the regulations, may also designate special requirements of domicile or the possession of special skills. If the director finds that such requirements would contribute substantially to effective performance of the duties involved, certification may be limited to persons on the register who meet such requirements.

2. When vacancies to be filled are in a class from which employees have been laid off, or demoted in lieu of layoff, certification shall be limited to previous employees until all employees of a division of service on the appropriate reinstatement register have been reinstated in order of rank on the register. Thereafter, certification from reinstatement and other registers shall be in accordance with the provisions of this section and the regulations of the board.

3. Upon a request for certification, the director shall certify for selection the names of the

[top fifteen ranking] available eligibles [or the names of available eligibles comprising the top ranking fifteen percent of available eligibles, whichever is greater, plus such additional eligibles as have a final rating equal to that of the last certified eligible. Upon request of the appointing authority, the director may also certify, for each additional vacancy to be filled from the same certification, the next five ranking available eligibles plus such additional eligibles as have a final rating equal to that of the last certified eligible].

4. If the director finds that the nature of the examination process and the type of positions involved justify alternative procedures for filling vacancies, the board may by rule prescribe such procedures which may include certification by broad category of examination rating or within a specified range of scores.

5. When a position in divisions of the service subject to this chapter is limited in duration, certification may be limited to the highest ranking eligible who will accept employment under such conditions. A person appointed to a position under such conditions shall retain his or her relative position on the register and shall be eligible for certification to a permanent position in the regular order until the register itself has expired. If a temporary position is limited to less than ninety calendar days' duration, the appointing authority may fill the position by temporary appointment in the manner provided in section 36.270.

6. The rules shall prescribe the conditions under which the name of an eligible who has been certified to and considered for appointment by an appointing authority but has not been appointed may be withheld from further certification to such appointing authority. The eligible shall be entitled to retain his or her place on the eligible register during the life of the register, and shall be certified in the order of his or her rank to other vacancies in the class under other appointing authorities.

7. Eligibles who are not available for appointment when offered certification shall be granted a waiver of certification upon their request. Eligibles who do not respond within a reasonable period to a notice of certification may at the discretion of the director be dropped from the eligible register.

8. Any person who has obtained regular status in a class of positions subject to subsection 1 of section 36.030 and who has resigned from state service in good standing or who has accepted demotion or transfer for personal reasons may be reemployed without competitive certification in the same or comparable class at the discretion of the appointing authority and under conditions specified in the regulations. Any person who has successfully served at least one year in a position not subject to subsection 1 of section 36.030, but which is subject to section 36.031, and who has resigned from state service in good standing or who has accepted demotion or transfer for personal reasons, may be reemployed without competitive certification in the same or comparable class at the discretion of the appointing authority and under conditions specified in the regulations, provided he or she possesses the qualifications and has successfully completed

a noncompetitive examination for the class involved. No one shall be reemployed pursuant to this section until reinstatement has first been offered to all eligibles on the reinstatement register for the class and division of service involved.

9. Preference in certification and appointment from promotional registers or registers of eligibles under conditions specified in the regulations, may be given to employees of the division of service in which the vacancy occurs.

36.390. 1. An applicant whose request for admission to any examination has been rejected by the director may appeal to the board in writing within fifteen days of the mailing of the notice of rejection by the director, and in any event before the holding of the examination. The board's decision on all matters of fact shall be final.

2. Applicants may be admitted to an examination pending a consideration of the appeal, but such admission shall not constitute the assurance of a passing grade in education and experience.

3. Any applicant who has taken an examination and who feels that he or she has not been dealt with fairly in any phase of the examination process may request that the director review his or her case. Such request for review of any examination shall be filed in writing with the director within thirty days after the date on which notification of the results of the examination was mailed to the applicant. A candidate may appeal the decision of the director in writing to the board. This appeal shall be filed with the board within thirty days after date on which notification of the decision of the director was mailed to the applicant. The board's decision with respect to any changes shall be final, and shall be entered in the minutes. A correction in the rating shall not affect a certification or appointment which may have already been made from the register.

4. An eligible whose name has been removed from a register for any of the reasons specified in section 36.180 or in section 36.240 may appeal to the board for reconsideration. Such appeal shall be filed in writing at the office of the director within thirty days after the date on which notification was mailed to the board. The board, after investigation, shall make its decision which shall be recorded in the minutes and the eligible shall be notified accordingly by the director.

5. Any regular employee who is dismissed or involuntarily demoted for cause or suspended for more than five working days may appeal in writing to the board within thirty days after the effective date thereof, setting forth in substance the employee's reasons for claiming that the dismissal, suspension or demotion was for political, religious, or racial reasons, or not for the good of the service. Upon such appeal, both the appealing employee and the appointing authority whose action is reviewed shall have the right to be heard and to present evidence at a hearing which, at the request of the appealing employee, shall be public. At the hearing of such appeals, technical rules of evidence shall not apply. After the hearing and consideration

of the evidence for and against a suspension or demotion, the board shall approve or disapprove such action and in the event of a disapproval the board shall order the reinstatement of the employee to the employee's former position and the payment to the employee of such salary as the employee has lost by reason of such suspension or demotion. After the hearing and consideration of the evidence for and against a dismissal, the board shall approve or disapprove such action and may make any one of the following appropriate orders:

(1) Order the reinstatement of the employee to the employee's former position and the payment to the employee of part or all of such salary as has been lost by reason of such dismissal;

(2) Sustain the dismissal of such employee, unless the board finds that the dismissal was based upon political, social, or religious reason, in which case it shall order the reinstatement of the employee to the employee's former position and the payment to the employee of such salary as has been lost by reason of such dismissal;

(3) Except as provided in subdivisions (1) and (2) of this subsection, the board may sustain the dismissal, but may order the director to recognize reemployment rights for the dismissed employee pursuant to section 36.240, in an appropriate class or classes, or may take steps to effect the transfer of such employee to an appropriate position in the same or another division of service.

**6. An order by the board pursuant to subsection 5 of this section shall be a final decision subject to judicial review as provided in sections 536.100 to 536.140, RSMo.**

**7. An order of reinstatement by the board pursuant to subsection 5 of this section shall include guidelines specifying how back pay should be calculated. If the parties are not able to reach an agreement on the amount of back pay owed based on the board's guidelines, either party may request in writing that the board hold a separate hearing to determine the amount of back pay owed. Upon such request, both the employee and the appointing authority shall have the right to be heard and to present evidence at a hearing which, at the request of the employee, shall be public. After the hearing and consideration of the evidence regarding the amount of back pay owed, the board shall issue an order specifying the amount of back pay owed to the employee that has been lost by reason of suspension exceeding five days, involuntary demotion or dismissal. Upon request from either party following the filing of an appeal of the order of reinstatement, back pay hearing shall be stayed pending the final disposition of proceedings for review pursuant to sections 536.100 to 536.140, RSMo.**

[6.] **8.** The board shall establish such rules as may be necessary to give effect to the provisions of this section. The rules may provide that the board or the chairman of the board



may delegate responsibility for the conduct of investigations and the hearing of appeals provided pursuant to any section of this chapter to a member of the board or to a hearing officer designated by the board. Such hearing officer shall have the power to administer oaths, subpoena witnesses, compel the production of records pertinent to any hearing, and take any action in connection with such hearing which the board itself is authorized to take by law other than making the final decision and appropriate order. When the hearing has been completed, the individual board member or the hearing officer who conducted the hearing shall prepare a summary thereof and recommend a findings of fact, conclusions of law, decision and appropriate order for approval of the board. The board may adopt such recommendations in whole or in part, require the production of additional testimony, reassign the case for rehearing, or may itself conduct such new or additional hearing as is deemed necessary prior to rendering a final decision. The board may also establish rules which provide for alternative means of resolving one or more of the types of appeals outlined in this section.

[7.] **9.** The provisions for appeals provided in subsection 5 of this section for dismissals of regular merit employees may be adopted by nonmerit agencies of the state for any or all employees of such agencies.

[8.] **10.** Agencies not adopting the provisions for appeals provided in subsection 5 of this section shall adopt dismissal procedures substantially similar to those provided for merit employees. However, these procedures need not apply to employees in policy-making positions, or to members of military or law enforcement agencies.

[9. The hearing] **11. Hearings pursuant to this section** shall be deemed to be a contested case and the procedures applicable to the processing of such hearings and determinations shall be those established by chapter 536, RSMo. Decisions of the [personnel] **human resources** advisory board shall be final and binding subject to appeal by either party. Final decisions of the [personnel] **human resources** advisory board pursuant to this subsection shall be subject to review on the record by the circuit court pursuant to chapter 536, RSMo.

36.420. The records of the [personnel] division **of human resources**, except such records as the regulations may require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to regulations as to the time and manner of inspection which may be prescribed by the board.

36.430. All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the [personnel] division **of human resources** the reasonable use of public buildings under their control, and furnish heat, light and furniture, for any examination, hearing or investigation authorized by this law. The [personnel] division **of human resources** shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

36.460. Any person holding any position of employment covered by the provisions of this chapter who shall [willfully] **knowingly** violate any provision hereof shall forfeit his or her position as well as his or her eligibility rating and for a period of at least five years from and after the date of such violation shall be ineligible for appointment to or employment in any position covered by this law.

36.500. The [personnel] division **of human resources** shall collect information, provide services, make studies and analyses as directed by the commissioner of administration of [personnel] **human resources** covered by the provisions of this chapter and other systems in the executive branch of state government and to perform any other service as directed by the commissioner or the governor to promote uniformity in employment conditions and compensation of state employees, provide aid to departments in [personnel] **human resources** matters and to develop a career system of state service that will enable the state to utilize all its [personnel] **human resources** in as efficient and effective a manner as possible without restrictions of department, agency or other entity of the executive branch of state government.

105.1300. 1. **The commissioner of administration shall adopt rules and regulations to establish a state employee suggestion program through which all state employees may submit suggestions for saving state moneys or for increased efficiencies or other economies in the operations of one or more state agencies. The commissioner of administration shall consult with the senate appropriations committee and house budget committee in the development of the procedures and guidelines for state employee suggestion program and prior to the adoption of rules and regulations for the state employee suggestion program. At least annually, the commissioner of administration shall prepare a report setting forth all suggestions received from state employees under the state employee suggestion program and shall submit such report to the general assembly.**

2. **Salary bonus payments under the state employee suggestion program shall be made only to state employees who submit workable suggestions for saving state moneys or for increased efficiencies or other economies in the operations of one or more state agencies.**

3. **The total gross value of awards to any employee of the state during a single fiscal year shall not exceed five thousand dollars. No award paid pursuant to this section during the fiscal year shall be compensation within the meaning of sections 104.010 or 104.1003, RSMo, for any purpose pursuant to the Missouri state employees retirement system and shall not be subject to deductions for employee contributions thereunder. Each taxable award paid pursuant to this section shall be a discretionary bonus, as defined in 29 C.F.R. 778, and shall be in addition to the regular earnings to which that employee may be entitled or for which the employee may become**

eligible. Monetary awards are subject to taxes in accordance with federal Internal Revenue code regulations.

4. The awards shall be paid or provided by the state agency that benefitted from and implemented the suggestion.

5. The commissioner of administration shall adopt rules and regulations that provide oversight and administrative review of the employee suggestion program. The commissioner of administration shall adopt rules and regulations to provide safeguards to preclude opportunities for abuse within the employee suggestion program in each state agency and to ensure objective decision-making procedures in award and recognition determinations for all participating employees.

6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

Bill

T

Copy