

SPECIAL REPORT

**Issues Regarding the Efficiency, Effectiveness, and Fairness
of Hiring and Promoting Individuals Through
the State of Tennessee's Current Civil Service Process**

February 2012



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**

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February 16, 2012

The Honorable Justin P. Wilson
Comptroller of the Treasury
State Capitol
Nashville, Tennessee 37243

Dear Mr. Wilson:

Submitted herewith is the special report concerning issues related to the state's Civil Service System. The issues for this report include the fairness, efficiency, and effectiveness of the current Civil Service System's Register Process and whether it serves the needs of the state agencies required to use the system for acquiring and promoting staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur A. Hayes, Jr." with a stylized flourish at the end.

Arthur A. Hayes, Jr., CPA
Director

AAH/ct
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**ISSUES REGARDING THE EFFICIENCY, EFFECTIVENESS, AND FAIRNESS
OF HIRING AND PROMOTING INDIVIDUALS THROUGH
THE STATE OF TENNESSEE’S CURRENT CIVIL SERVICE PROCESS**

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February 2012

There are approximately 88,000 full- and part-time employees in state government. Of that number, approximately 34,500 are in civil service positions established in a framework of personnel procedures intended to protect them from arbitrary negative personnel actions. Appointments and promotions for individuals within civil service positions are required to be based on merit determined by examinations or other methods established by law or policy. Once employed, they are protected from termination without just cause through a system of discrete disciplinary actions.

By contrast, individuals in non-civil-service positions serve at the pleasure of their respective appointing authority, including higher education employees and those employees of the legislative and judicial branches. Their appointment and promotion policies and procedures are not subject to the Civil Service System statutes. The hiring decisions for these individuals are decentralized. For example, in higher education, each campus or office has latitude in identifying, interviewing, and hiring applicants.

The Tennessee Department of Human Resources (DOHR) is responsible for developing and implementing policies and procedures to effectively meet the personnel needs of "state service" as defined under Tennessee's Civil Service System statutes. Among its other duties, DOHR is required by state law to provide a snapshot listing of eligible candidates, "the Register," to state departments and agencies that are attempting to hire or promote. These snapshots are taken from central databases of all persons submitting applications.

The State of Tennessee's system for hiring and promoting individuals is a critical part of state government. It should provide talented individuals to fill new appointments and lead to promotions based on merit, qualifications, knowledge, and experience. As such, the system is not only the primary vehicle for state agencies to continue to acquire new leaders and staff to serve the public, but as a point of contact for members of the public seeking employment with their state government.

Hence, when those attempting to utilize the system have negative experiences, the consequences are magnified even beyond the immediate and material problems of inefficient and ineffective hiring or promotion efforts.

Prospective employees are given an unflattering image of the entity seeking to recruit them, which may be a lasting negative first impression; the resources of agencies seeking to hire those applicants are diverted from their primary focus of concentrating on the best candidate by concentrating time and energy just to decipher the processes, which can discourage the agencies and their potential new hires from jumping through all the complexities presented by the system; and the public in general can feel that their worst fears are true—that the system is either reflective of a general ineptitude in state government or the lack of transparency is intentional to ensure that only those with inside knowledge have the ability to "play the system" and circumvent the processes that are purportedly designed to provide a fair and equitable system for hiring state employees.

The state's hiring and promotion system should also serve as a helpful tool for state officials performing human resources management. To the extent that the system is inefficient and ineffective, the efforts of these officials are also thwarted.

The dysfunction of the state's hiring process is driven home to officials seeking new staff who discover on the back end of the process, after untold time and dollars have been spent, that the candidates, in spite of being rated favorably, in fact lack the essential skills to perform the job. The bureaucracy of the current system frustrates the intent of the laws seeking to promote fair employment practices.

Based on such complaints auditors have received from agencies having to hire and promote staff through the Civil Service System, the Division of State Audit has been reviewing issues involving the system for years. These complaints concerning the current system, which was mandated by state statutes enacted in 1939, are widespread and longstanding and relate in large measure to the fact that the centralized system restricts the choices of all departments of state government as to who can be hired or promoted. Auditors previously compiled tentative findings which were shared with department officials in 2008 for consideration as they moved to make changes to the system. Those issues were also shared with Governor Haslam when he took office in 2011.

The current report expands on those issues and incorporates DOHR management's comments on issues still requiring attention.

The Civil Service System has also been included in previous reports issued by the Comptroller of the Treasury's office, including two prior performance audits as well as a study by the Offices of Research and Accountability. All of these reports found issues with the system.

Over the years since our study of the Civil Service System began, the department has made positive changes in some areas to give hiring agencies more flexibility to meet their hiring and promotional needs.

Officials of DOHR acknowledge being aware of the many longstanding complaints about the system and have expressed their own frustrations with the system as it is presently designed. Although challenged with rigid statutes, department officials have conducted classification/compensation examination studies for some positions which have been regularly difficult to fill, changed approximately 300 job classifications to two groupings (bands) of either qualified or unqualified candidates, and instituted flexible staffing (employees in entry-level or lower-level job classifications are moved up to a "working level" job classification without the use of registers after certain criteria have been met by the employee). With newly implemented human resource software, DOHR officials now filter eligible candidates, announce one-time promotions which limit consideration to only those applicants that apply to the one-time announcement, and limit candidate pools and the number of applications to only those positions with openings rather than their prior open-door policy. DOHR officials have also designated 40 job classifications from competitive to noncompetitive, to eliminate the need for those registers. However, the fundamental structural inefficiencies persist.

The Civil Service System retains a register system by which DOHR centrally establishes exclusive listings of candidates for appointments and promotions from which agencies using the system must select candidates. This system results in inefficiencies and ineffectiveness and calls into question the fairness and transparency of the overall system.

Problems with the system include the following:

- Registers have top rankings filled with applicants who are not even interested in the position, or who are deemed unqualified for the position.
- Uninterested and unqualified candidates are not identified until after the registers are created and the hiring agencies have started trying to contact the candidates for interviews.
- Hiring agencies face time consuming and complex processes in “working down the registers” trying to find suitable candidates beyond the ones who clog the upper rankings of the register.
- Due to the short time frame of registers, agencies have to work several registers to hire or promote because they cannot complete the process within 20 working days due to the nature of the system.
- Job classifications may be too broad, preventing agencies from being able to select candidates who have specialized skills.
- Matters not directly tied to a person’s qualifications may unduly influence the rating of candidates, such as
 - ◊ years of experience being too heavily weighted in the assessment process, resulting in experience being too important versus other qualifications;
 - ◊ the timing of when someone applies giving him or her an unfair advantage;
 - ◊ there being too much variation in scoring depending on the relative length of or amount of detail in candidates’ responses to questions on applications; and
 - ◊ too much influence being given to certain words or phrases.

All of these factors create a hiring process that is slow, is not transparent, and is difficult to use.

In addition, there are errors in raters’ assessments, and there are mistakes in transferring data from applications during the assessment process.

In light of the longstanding issues plaguing the hiring and promotional system, if the department is required to merely tweak the register system, it is questionable whether true progress can be achieved in a reasonable amount of time. Every month the current register system is used, the resulting expenses represent significant inefficiencies and waste of taxpayer dollars.

It is essential that appropriate state officials take immediate steps to further improve the process of hiring and promoting state employees to meet the needs of state departments and agencies, the citizens of the state, and state employees.

Before any substantive changes can be made to the present system, state statutes that contribute to the problems noted in this report must be substantially amended or repealed.

ISSUES REGARDING THE EFFICIENCY, EFFECTIVENESS, AND FAIRNESS OF HIRING AND PROMOTING INDIVIDUALS THROUGH THE STATE OF TENNESSEE’S CURRENT CIVIL SERVICE PROCESS

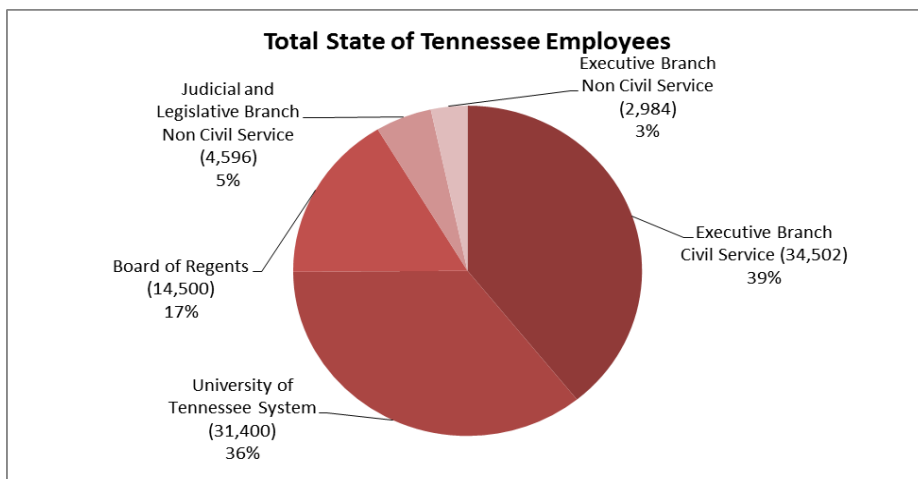
I. BACKGROUND

A. POSITIONS SUBJECT TO THE CIVIL SERVICE SYSTEM

The legislative and judicial branches of state government and higher education in Tennessee are not required to adhere to the state’s Civil Service System. There are approximately 88,000 full- and part-time employees in state government. Of that number, approximately 34,500 are in civil service positions established in a framework of personnel procedures intended to protect them from arbitrary negative personnel actions. Appointments and promotions for individuals within civil service positions are required to be based on merit determined by examinations or other methods established by law or policy. Once employed, they are protected from termination without just cause through a system of discrete disciplinary actions.

By contrast, individuals in non-civil-service positions serve at the pleasure of their respective appointing authority, including higher education employees and those employees of both the legislative and judicial branches. Their hiring and promoting policies and procedures are not subject to the Civil Service System statutes and are all decentralized in their hiring processes. Non-civil-service hiring agencies have latitude in identifying, interviewing, and hiring applicants.

The Tennessee Department of Human Resources (DOHR) is responsible for developing and implementing policies and procedures (see Exhibit A) to effectively meet the personnel needs of “state service” as defined under Tennessee’s Civil Service System statutes. Among its other duties, DOHR is required by state law to provide a listing of eligible candidates to state departments and agencies that are attempting to hire or promote (see Exhibit B). This centralized system restricts the choices of all departments of state government as to who can be hired or promoted.



The number of employees was obtained from officials representing the Department of Human Resources, the University of Tennessee, and the Board of Regents.

B. PRIOR COMPTROLLER REPORTS

The Civil Service System has been included in previous work performed by the Comptroller of the Treasury's office including two prior performance audits of the Department of Human Resources by the Division of State Audit as well as in a prior study by the Offices of Research and Education Accountability (OREA). In the performance audit issued in June 1999, the auditors determined that the state's civil service laws likely impeded the hiring and promotion of high-quality applicants and employees. The OREA study issued in May 2004 recommended that the General Assembly may wish to amend some laws to give state managers greater flexibility in personnel matters. In a recent performance audit by the Division of State Audit, issued in January 2011, the auditors determined that DOHR had not revised its own rules for at least ten years. The department responded with revised rules which were approved by the State's Attorney General and the Secretary of State and went into effect on May 31, 2011.

C. THE CURRENT REPORT

Based on complaints auditors have received from agencies having to hire and promote staff through the Civil Service System and particularly using the registers, the Division of State Audit has been reviewing issues involving the Civil Service System for years. Auditors previously compiled tentative findings which were shared with department officials in 2008 for consideration as they moved to make changes to the system. That information was also shared with Governor Haslam when he took office in 2011.

The current report expands on those issues and has incorporated DOHR management's comments on issues still requiring attention.

D. STATUTORY AUTHORIZATION FOR THE SYSTEM

Section 8-30-208, *Tennessee Code Annotated*, divides state service (the executive branch, all boards, and most commissions in state government) into those state positions subject to civil service provisions (career service) and those not placed under the Civil Service System (executive service). Since 1939, the executive branch, all boards, and most commissions of the State of Tennessee have been required by state statute to use the Civil Service System to fill certain positions of employment whether for new hires into entry-level positions or for promotions into higher-level positions.

E. KEY PROVISIONS OF THE CURRENT SYSTEM WHICH NEGATIVELY IMPACT THOSE USING THE SYSTEM

Appointment and Promotion Lists (Registers)

The central element of the current system is the register. Registers are also identified as one of the greatest sources of frustration by hiring agencies.

The Department of Human Resources establishes and maintains a central database of applicants and their respective rankings (the Tennessee Certification System database). For positions subject to the Civil Service System, state agencies draw potential employees and select

employees for promotions from the respective lists (registers) of eligible applicants that are certified by DOHR and drawn from the database.

These exclusive listings certified by DOHR are referred to as “lists of eligibles,” “employment lists,” or “registers” in the statutes and as “employment certificates” by rules of the department.

For purposes of this report, “appointment registers” are those listings pulled from the central database for filling positions, and “promotion registers” are those listings pulled from the central database for filling promotion opportunities.

II. RESULTS OF THE CURRENT REVIEW

A. MANAGEMENT’S EFFORTS TO IMPROVE THE SYSTEM

Management of the Department of Human Resources (DOHR) has taken steps over the years to attempt to improve the operation of the Civil Service System. Those measures have been limited, according to DOHR officials, due to the statutory basis for many of the key elements of the system.

These steps have included the acquisition of the NEOGOV software system in 2008 (see Exhibit C).

A summary of those efforts to improve the system is presented in Exhibit D of this report.

Management has been open to auditor suggestions and cooperated fully with this study.

B. COMPLAINTS ABOUT THE CURRENT SYSTEM BY AGENCIES USING THE SYSTEM

Agencies across state government who are subject to the Civil Service System still complain that the process is unduly slow and cumbersome, that it removes them from the key steps in seeking acceptable candidates for appointments and promotions and from identifying, appointing, and promoting the best candidates for their particular needs.

Our review confirmed the tedious nature of the process and the many hurdles that the process presents to making efficient and effective hires and promotions.

Problems Regarding the Registers

- a. The registers are established without direct contact between the applicants and the hiring or promoting agencies. The agencies with the greatest knowledge of what is required of their employees have no direct control over who is placed on the registers.
- b. Due to the rigid processes in which registers are created and must be used, agencies find “working down the registers” trying to reach candidates they deem the best fit for their positions enormously time consuming and frustrating.

- c. The 20 workday deadline for registers to remain open actually creates more work for agencies by not providing adequate time for them to evaluate applicants.
- d. Interviews are not conducted until after the register is established—after the assessments and rankings have been established.
- e. Registers frequently have top rankings filled with applicants who are not even interested in the position, fail to respond to an offer for an interview, or are deemed unqualified for the position.
- f. Registers can include top rankings for individuals whose international experience and education, as well as English language skills, are unacceptable for the position.
- g. There are concerns that the number of years of experience may be given too much weight in assessments.
- h. The timing of application submissions may not consider current experience without updates.
- i. The register system is not transparent.
- j. There are concerns that there may be too much variation in ratings depending on the relative length of or the amount of detail in the responses to questions on the applications.
- k. Job classifications which are too broad prevent agencies from being able to select candidates who have specialized skills.
- l. There are concerns that ratings may be too influenced by specific words or phrases used on applications.
- m. The high degree of interdependence between the department and the agencies, coupled with the front-end loading of all the decisions about who can even be considered by the agencies, increases the risk of errors, inefficiencies, and ineffectiveness.

OTHER ISSUES

- n. Antiquated statutes make layoffs problematic—bumping provisions
- o. Errors in rater assessments
- p. Mistakes in transferring data from applications during assessments

III. DETAILS OF THE REVIEW

Problems Regarding the Registers

- A. The registers are established without direct contact between the applicants and the hiring or promoting agencies. The agencies with the greatest knowledge of what is required of their employees have no direct control over who is placed on the registers.**

The current form of Tennessee’s hiring system is referred to as a centralized Civil Service System by human resource consultants and administrators—one that includes a central register or list of potential candidates maintained by a central authority. The highly centralized Tennessee Civil Service System effectively removes essential control over the hiring process from the hiring entities and places that control in the hands of the DOHR raters. In effect, approximately 12 raters are the filter for all persons placed on registers for all the other state agencies. Although the job specifications and rating guidelines used by the raters are developed by DOHR with the assistance of subject matter experts from the state agencies using the registers, the actual application of the specifications and guidelines to the information submitted by the candidate is not made directly by those agency staff who have the subject matter knowledge and expertise acquired by work experience in the respective hiring agency and who should be in the best position to evaluate prospective employees.

DOHR officials acknowledge the current system’s shortcomings and attribute the lack of reforms to the restrictions set forth in longstanding state statutes. According to DOHR officials, without a change in state laws, they must continue to assess applicants to develop registers from which hiring agencies will continue to be restricted in choices of candidates.

- B. Due to the rigid processes in which registers are created and must be used, agencies find “working down the registers” trying to reach candidates they deem the best fit for their positions enormously time consuming and frustrating.**

1. Appointment Registers

By statute, agencies must select candidates for appointments from the interested candidates with the top five rankings. If there are more than five candidates with the same top ranking, agencies may consider any of those candidates. Appointing agencies then send letters to the eligible candidates via e-mail or postal service. If eligible candidates either fail to respond within the designated time or do respond that they are not interested in the position, they are removed from that register and are subject to being removed from the central database, as noted later in the report.

The agency, however, cannot pass over or reject more than four candidates in the process.

But, for purposes of working down the list of eligible candidates, individuals who are not considered because they either failed to respond or responded that they are not interested in the position are not counted as candidates who have been passed over or rejected.

If the number of eligible candidates who are removed from the register results in the remaining number of eligible candidates being less than five, the agency may move down to also consider the candidates with the next higher ranking.

Candidates with this ranking will also be sent letters for interviews, and those failing to respond or responding that they are not interested will then be removed from the register.

In the event that the agency still has fewer than five eligible candidates, the agency can move down again to the next ranking, and so on until it has five candidates.

2. Promotion Registers

For promotions, agencies may select either from the appointment register for the position in question or the promotion register for the position in question.

By rule, whether the agency selects from the appointment register or promotional register, agencies must select a candidate from the applicants with the top five rankings on appointment registers or the top three rankings on promotional registers as established by the DOHR raters.

Agencies can consider both registers as they are making their selection.

As noted above, if individuals fail to respond to letters or indicate they are not interested in the promotion, they are removed from the register and are subject to removal from the central database.

The promoting agency cannot pass over or reject more than two candidates on the promotion register.

Again though, candidates who are removed from the register because they failed to respond or responded that they weren't interested in the promotion are not counted among those candidates passed over or rejected.

If the number of eligible candidates who are removed from the registers results in the remaining number of eligible candidates being less than three, the agency may move down to also consider the candidates with the next higher ranking, and so on.

DOHR officials acknowledge the rigid process but state that the process is mandated by law, which requires hiring agencies to select from the top five and top three candidates for appointments and promotions, respectively.

C. The 20 workday deadline for registers to remain open actually creates more work for agencies by not providing adequate time for them to evaluate applicants.

Once registers are pulled by hiring agencies, Section 8-30-309, *Tennessee Code Annotated*, requires the vacancy to be filled within 20 workdays after a register is "pulled," or a new register must be established. The rationale for the 20 workday requirement is to prevent applicants who just missed filing their applications in time to be considered for inclusion on the register from

being locked out of existing register positions for long periods. According to DOHR officials, those individuals who submit their applications the moment after a register is pulled are excluded from that register. However, they would be available for any subsequent registers. If the position isn't filled within 20 days, a new register must be pulled.

After an agency uses the register to fill the position (appointment or promotion) or its time has elapsed, the register is no longer valid.

After a register is no longer valid, changes are consequently made to the central database for the following actions: each time a candidate is hired, a candidate fails to respond to an invitation to interview, a candidate declines a job offer, or a candidate requests to be removed from the list.

According to hiring agency officials, however, this 20 workday requirement actually requires them to make repeated attempts at the hiring process because of the tight deadline. Working within this time frame can be difficult because Chapter 1120-2-.06 (4) (a) 4 of the *Rules of Tennessee Department of Human Resources* (see Exhibit A) requires hiring agencies to allow applicants 7 days to respond to a letter (via e-mail or postal service) regarding their interest in the vacant position. According to hiring agency officials, they cannot always complete interviews and make a decision on a candidate in the remaining 13 days. Additionally, due to delays in mailings, there are examples of applicants not having received the letter requiring them to respond by a certain date until after the deadline for responding has passed. This is particularly true for applicants who reside outside Tennessee.

DOHR officials state that the new applicant system, NEOGOV, allows notifications from applicants via e-mail, which expedites the process. Additionally, DOHR officials stated that if the 20 workday period lapses, then a new register would be required, but that new register would typically not be significantly different from the first.

D. Interviews are not conducted until after the register is established—after the assessments and rankings have been established.

The development of registers does not include information from interviews of prospective candidates. Ratings are based solely upon an assessment of the stated education and work experience submitted to DOHR through applications and/or through scores on examinations required for certain job classifications. Under such a system, applicants that are scored in the top rankings based on the information submitted on their application must be considered without any confirmation/verification of the accuracy of the information on the application. This process also moves applicants onto the register without any evaluation, consideration, or even knowledge of the individuals' other material qualifications for the job which could be determined during an interview. Such significant characteristics as interpersonal skills, leadership qualities, problem solving skills, honesty, and creativity play no role in the establishment of the exclusive pool of candidates. Hiring agencies have little flexibility in their choices and must stay within the top scored candidates, leaving agencies frustrated that they can't consider other interested and possibly better-qualified individuals who may have lower rankings due to the way the process works.

DOHR officials acknowledged the importance of interviews but stated that interviewing every applicant as part of the rating assessment process would not be practical or efficient. Those same officials stated that the database inventory for some job classifications can contain the names of hundreds of qualified applicants, as is the case of the job classification Case Manager II with 808 active applicants, or Criminal Investigator with 1,152 active applicants, as of the beginning of calendar year 2011.

E. Registers frequently have top rankings filled with applicants who are not even interested in the position, fail to respond to an offer for an interview, or are deemed unqualified for the position.

Prior reports by this office and studies by various authors reviewing other state human resource systems have criticized centralized systems for their relative inflexibility and ineffectiveness. Officials from various state agencies complain that the Tennessee system remains ineffective in meeting hiring agencies' needs. According to officials within the hiring agencies, current registers are sometimes filled with applicants either uninterested, unqualified, or lacking essential job skills.

1. Registers Filled With Individuals Not Interested in the Position

Hiring entities report that they have to go through considerable effort just to interview someone who is actually interested in the position. Often, the agency learns during the period it invites candidates to interview or during the actual interview that individuals who submit applications for positions are only interested in working with certain agencies. Applications do not allow for applicants to express specific preferences in employment with a department or agency. Therefore, the registers are often saturated with state employees that are only on the register so that they will be eligible for promotion within their current department.

2. Registers Containing Top-Ranked Candidates Who Later Turn Out to Be Unqualified

Unverified information on the applications forms the basis for the ratings and rankings.

The current system provides the hiring entities with very little substantive control over their own hiring decisions, since they are required to hire from a closed pool, which is defined exclusively on determinations by DOHR staff regarding the credentials of applicants that DOHR staff don't even confirm.

A lack of verification of credentials on the front end of the selection process results in the exclusive pools containing candidates that may meet the minimum requirements but lack the essential job skills or ineligible candidates that have submitted applications with inaccurate information. DOHR officials acknowledge that credentials and key information on these applications are not verified by DOHR staff as part of the rating process. According to DOHR officials, verifying credentials of applicants would significantly slow the already cumbersome rating process. Additionally, DOHR officials state that they do not have enough resources to verify credentials.

According to DOHR officials, approximately 2 % of applications contain material misstatements.

3. Removal of Candidates With Inaccurate Information on Their Applications

According to DOHR policy, the hiring agency is required to conduct education and related work experience background verifications for the final candidates being considered. When discrepancies of a material fact are found, the hiring agency is to provide documentation to DOHR, and the applicant will be removed from the central database if DOHR makes a determination that there was a discrepancy of a material fact. The individual may apply for reinstatement after two years.

The individual is required to submit information to DOHR before reinstatement that explains the nature of the discrepancy.

It is essential that the basic information that applicants submit on their employment applications be confirmed as part of a screening process. When individuals who are not qualified are erroneously identified as qualified applicants, all of the subsequent time and energy spent processing their applications is a waste of scarce public resources. These determinations should be made as early in the process as possible.

Furthermore, when background information is not adequately reviewed and verified prior to employment, the risk that someone is hired who is not suitable for employment in a public position is increased.

According to DOHR management, although registers for new positions still contain many individuals who are not interested, NEOGOV has alleviated some of the overall volume by allowing agencies the ability to announce promotions and restrict applicants by department, division, or even work unit. So, although individual registers may still have applicants who are not interested in the position, there are fewer registers and therefore fewer situations in which this occurs.

DOHR officials acknowledge that disinterested individuals often immediately request to be placed back on the certification system central database even after being removed by DOHR because the individuals declined an interview with a hiring agency. If candidates are coded to be removed from the register, DOHR will first notify the applicants that they have been removed. DOHR policy allows these individuals to be reinstated to the register through a written request.

F. Registers can include top rankings for individuals whose international experience and education, as well as English language skills, are unacceptable for the position.

Several years ago, one hiring agency attempting to fill an Auditor II position found the choices on the register so insufficient that the agency left the position unfilled. In that case, the hiring agency had to send out 44 letters to candidates before it found seven individuals who would even interview for the position. Of the seven, six did not meet the needs of the agency. Five were international candidates with degrees deemed equivalent to one from a university in the United States, according to the services of various corporations that serve as clearinghouses to

assess foreign education. In the subsequent interviews with staff of the hiring agency, it was determined that the overseas experience of two of the five international candidates was completely unrelated to the experiences required for accounting or auditing positions in the United States. Additionally, four of the five international candidates lacked sufficient communication skills for the position, according to hiring agency officials.

Recently, agencies seeking to hire an Accountant II and an Accountant III experienced the same issues before they were able to find a suitable candidate from lower in the respective registers. Both registers contained several international candidates. Similar to the example above, one international candidate was deemed unfit for the position because the candidate lacked the basic knowledge of Lotus spreadsheets and lacked adequate communication skills, according to an agency official. Furthermore, in both of the recent examples, the registers contained many individuals that were not interested in the position but wanted to remain on the central database in the hopes that they might become eligible for a position in another department. Additionally, in both cases, the agencies had identified a strong candidate for the positions through previous interviews but they were unable to hire that person because of the high number of less qualified candidates with many years of state experience who were in the top rankings.

As noted below, the rating system weights years of experience of equal value to education, contributing to registers being clogged with individuals with lots of time in state service but not necessarily other strong credentials. The agencies were able to identify a better candidate further down the register because the system does not prevent hiring agencies from interviewing applicants who are not in the top rankings, but it does prevent them from offering such individuals positions except under the circumstances noted above. Although the agencies were ultimately able to make effective hires, they spent considerable wasted time working through the process and eliminating individuals who probably shouldn't have been on the register in the first place.

According to DOHR officials, agencies should bring such matters to their attention by providing clear supporting data as to why individuals are deemed unsuitable for a position. If the position is properly classified but the register is insufficient, DOHR will post a new job announcement. To address the concerns identified in the accountant job series, a complete job analysis was conducted on each accountant classification in 2008.

G. There are concerns that the number of years of experience may be given too much weight in assessments.

Is the number of years of experience given too much weight in assessments?

Hiring agencies have also complained that one of the reasons registers often are top-heavy with individuals who aren't the best candidates is that the system awards too much credit for years of experience and not enough for the quality of the experience or for education. As a result, they say that many registers are "saturated" by individuals who are already long-term state employees who, when contacted about a position they applied for, turn down an interview on the grounds that they are merely "testing the waters" to see if they can get a higher rated position to increase their retirement pay or are using the system as a safety net that might

provide them with another position if their current position is abolished or shifted to a different department.

DOHR officials stated that they use accepted federal processes for developing job classifications and rating guidelines. Typically, an applicant's years of experience and education are weighted the same, or 50 percent each. Furthermore, the number of years of experience assessed is limited to the most current experience in the last 8 to 12 years and therefore there is no extra advantage given to someone with more than 8 to 12 years' experience. The weights are based on a collaboration between staff of DOHR and agency experts. There are some classifications that solely use written tests as the assessment. In these cases, no weight is assigned to the years of experience or education.

DOHR officials stated that upper-level job classifications may contain large numbers of long-term state employees, as opposed to job classifications for lower-level positions. DOHR officials also note that the situations with higher amounts of experience affecting the ratings are most often found on applications from individuals seeking promotions. According to DOHR officials, the logic is that recent experience is more relevant due to changes that occur in the work place, advanced technology, new work methods, processes, and efficiency changes.

Certainly prior experience in government should not be disregarded when agencies are considering individuals for appointments or promotions. However, finding the right mix of qualifications including years of service can be difficult, particularly when many individuals may have many years of service. And capping the total experience that can be considered at 8 to 12 years may actually unfairly reduce the scores of more seasoned candidates.

H. The timing of application submissions may not consider current experience without updates.

It also appears that the method the raters use to assign points for assessments is flawed in that higher points are available for those candidates that submit applications later in the same 12-month period (more updated experience) than those candidates who submit applications earlier in the same year (no updates for experience).

All experience is probably valuable and should be given consideration, but without recalculating two candidates from the same point and time, the candidate with the latest updated application will be given an unfair advantage (higher points) if both candidates have similar work experiences and less than 8 to 12 years' total experience (which is generally the maximum range of time DOHR raters consider for ratings). It may not be clear to most applicants that they can gain an advantage by "updating" their application later in the year if they don't have any new information other than a few more months on their current job to present. Hence, applicants who are encouraged to update their application and thereby gain a few extra points on their rating will have an advantage over applicants who don't know that this could affect their rating since every month of service has an impact up to the maximum years of total service.

Before 2008, when DOHR implemented the software NEOGOV, all positions were always open so that there were seldom announcements except for newly created positions. Since DOHR now closes job classifications when that register has at least 15 applicants, job applicants often won't even see a new job announcement in such cases. Hence, they won't know to submit an updated application, and even if they do, it won't be considered for that position.

If a position is announced, and if applicants have already submitted an application with an earlier announcement, they may not realize the importance of resubmitting an application to give them additional points for the subsequent time in service. Thus, individuals aware of the impact of the recalculation of experience and its effect on their rating will have an advantage over other candidates.

I. The register system is not transparent.

For all of the reasons stated in this report, the way the register system operates provides practically no transparency, not only to the agencies using the system, but also to the public which relies on the system to provide access to employment with state government. This lack of transparency, in such a critical function of state government, does little to dispel notions among some that obtaining employment with the state depends more on who you know than what you know and increases the concerns that the system is not fair. This is particularly ironic, since the reason the system was introduced initially was to protect the process from hidden pressures and unfair hiring practices.

Furthermore, as noted above, since 2008, not all opportunities for appointments and promotions are announced to the public. As a result, individuals who might be interested in submitting an application won't know there is an opening. Furthermore, even if they submitted an application, if the pool of potential candidates in the central database already contains at least 15 people, their application won't be considered anyway.

And, since the pool of possible candidates is not as large as it might have been with a public announcement, the agency may not get the most qualified person to fill the position.

At best, the unnecessary complications and non-intuitive nature of the Civil Service System leave state officials and applicants confused about just how the system works.

J. There are concerns that there may be too much variation in ratings depending on the relative length of or the amount of detail in the responses to questions on the applications.

As with any evaluation process, the DOHR assessment guidelines provide for the subjective assessment of the quality/applicability of work experience, and different raters may apply materially different scores to very similar work.

DOHR officials acknowledge that applicants can be scored differently, although they have the same basic experience and education, since applicants complete the applications with differing levels of explanation. Some applicants may fully explain their work duties and the responsibilities of their current job while others may assume those duties are a given based on their job title.

Furthermore, the assessment rating may depend on the detailed information provided by applicants for each previous position held.

To attempt to lessen the impact of such variations, the application instructions explicitly advise candidates to accurately describe their major responsibilities, and that incomplete information may lower their application rating.

Furthermore, DOHR attempts to ensure that the same rater reviews all applications for a particular job classification to provide more consistency and continuity.

DOHR raters perform these assessments uniformly on all applications regardless of whether the information on the form shows the applicants are highly qualified or minimally qualified for the position(s) applied for. As shown earlier in this study, the current system restricts the choices of the hiring agency (top five eligibles) and therefore it would appear unnecessary to spend too much time on those applications that show on their face that the applicants are only minimally qualified.

K. Job classifications which are too broad prevent agencies from being able to select candidates who have specialized skills.

One difficulty hiring agencies have with the current hiring system is that the job classifications are often a collaborative effort between staff of DOHR and agency experts to define the qualities of a particular job classification without creating an endless number of classifications. The end result is often a general description which can be problematic when an agency is looking for a specific skill within this class. As was the case for a recent hire of an Accountant III, the agency was looking for an individual with specific experience in grant accounting, which is just one part (but in this case a significant part) of all the duties and responsibilities and the total scoring of an application under the general listing of Accountant III.

Because the qualities and ratings related to grant accounting were understated in relation to the overall qualities and ratings for the individuals listed on the register for the position, the agency was unable to reach the individual who best suited its needs. As a result, the agency hired someone else rather than its primary choice.

L. There are concerns that ratings may be too influenced by specific words or phrases used on applications.

There is a perception among agencies that the DOHR raters are prone to look for key phrases or “buzz words” in the applicants’ responses to requests for information on the application forms, resulting in some people having an unfair advantage while others are at a loss because they don’t know what words are key.

Although the auditors did not perform enough test work to determine whether such situations ever occur, it appears that this perception may not be true.

The raters who assess the applications refer to written guidelines when evaluating experience. These guidelines contain descriptions of various job activities that often include certain key phrases. However, it is not unexpected that they would look for words and phrases in applications which relate directly to the position and its responsibilities. It would appear that candidates for a position should also be familiar with the requirements and activities of a position that they are seeking and include relevant words and phrases in their applications for

those positions. While two individuals with the same experience can receive materially different ratings for their experience merely because one includes such words and phrases, this does not mean that there is any apparent unfair advantage to one of them.

DOHR officials are very sensitive to this perception and are careful to attempt to provide applicants with clear instructions to attempt to eliminate such arbitrary scoring circumstances.

M. The high degree of interdependence between the department and the agencies, coupled with the front-end loading of all the decisions about who can even be considered by the agencies, increases the risk of errors, inefficiencies, and ineffectiveness.

In the normal course of the hiring process, DOHR staff require agency staff to perform many significant duties and coordinate those actions with DOHR. In light of the centralized structure of the system and the fact that most critical decisions are made on the very front end of the process, these requirements just add more complexity to the system with little gain in terms of better hiring and promoting practices. It would be preferable to have the agencies actually doing more of the early screening work without having to depend on DOHR to take their information and apply it after the fact.

These agency duties include

- interviewing applicants (which occurs after the register has been established),
- verifying applicant credentials (also occurring after the register has been established),
- developing guidelines to be used by the DOHR raters (an ongoing activity),
- developing minimum qualifications for positions (a regular activity),
- assisting in the establishment of proper classifications of employees based on job duties (a regular activity),
- coding of uninterested or unqualified candidates so that DOHR can remove those names from registers (an ongoing activity), and
- informing DOHR of any material misstatements by applicants on their applications (an ongoing activity).

Other Issues

N. Antiquated Statutes Make Layoffs Problematic—Bumping Provisions

Pursuant to Sections 8-30-320 and 8-30-322, *Tennessee Code Annotated*, an appointing authority may lay off an employee in career service whenever that authority deems it necessary by reason of shortage of work or funds, or the abolition of a position or other material change in duties or organization. In determining the order of layoffs (Reductions in Force, or RIFs), agencies use departmental or total state service time as the predominant factor. An appointing

authority must notify DOHR whenever that agency determines it will have employees involved in a RIF.

According to DOHR Policy 11-061 (see Exhibit E), a career employee subject to the RIF must be notified in writing, within 90 days of the potential layoff and notification of any right to “bump” (the action whereby an employee of higher retention level displaces an employee of lower retention level in the same job classification) or “retreat” (the action of an employee moving from one position to a lower competitive level within the same occupational series or in which the employee had previously held career status) to another position within the competitive area. Employees who are least senior and do not have a right to bump or retreat may be offered an opportunity for placement into a vacant position within their agency, if one exists. According to DOHR Policy 11-061, if a career employee refuses a RIF offer to bump or retreat, the employee will be laid off at the end of the 90-day notice period. A reduction of a single position, therefore, has the potential to cause a chain reaction whereby employees continue to displace others with less seniority until all affected employees find a position or the least senior employee is laid off.

DOHR officials confirmed that recent RIFs have created chain reactions of career service employees displacing other career service employees with less seniority and those employees transferring to other positions within the agency and displacing still other employees with lesser seniority.

O. Errors in Rater Assessments

In light of the complexity of the system, human errors can and do occur. Auditors found department staff errors in assigning points for applicant work experience for the Accountant III position in three applicants’ scores out of 10 tested, resulting in ratings one to four points higher on the register than the applicants’ scores should have been. Because of the complexity of the scoring system, a one or two point difference is often enough to knock an applicant out of one of the top five positions. Our testwork found that the errors were due to department staff incorrectly giving the applicants points for work experience during full periods of time even though the applicants had breaks in service during those periods. Additionally, we determined that scores for applicants’ education regarding the Purchasing Agent I position were incorrect on 3 out of 19 occasions tested and applicants’ scores for experience were wrong on 4 out of 19 occasions. (Errors were both higher and lower than the correct score should have been).

According to DOHR officials, some errors do occur as would be expected when staff are charged with rating hundreds of applications that are received by the department on a daily basis.

The volume of assessments in a given period has been reduced, according to department officials, since the department began using NEOGOV. With NEOGOV, applications are only accepted when a job position is announced—thus reducing the number of assessments. Furthermore, the number of detailed assessments needed has further been reduced with the implementation of the two-banded scoring process. (See Exhibit D.)

P. Mistakes in Transferring Data

In reviewing the ranking process, state auditors determined that the data regarding job experience initially entered into the Tennessee Certification System database by DOHR technicians and raters did not always match the original applications. State auditors found that these mistakes resulted in one candidate from our sample of 19 applicants receiving a significantly higher score than she should have received. Generally, in scoring education and experience, raters will use the data keyed from the applications. Only when an entry is questioned will the rater view the original application(s). In this case, the length of service at a particular job was overstated in the database and was not detected by the rater.

DOHR officials stated that by using NEOGOV, errors in transferring data have been reduced because the applicants enter 97 percent of the data themselves.

IV. EXPERIENCES OF OTHER STATES

Many states in the southeastern region have decentralized the hiring process and do not utilize rank-order registers (from highest score to lowest score) that restrict the selection process such as the Tennessee system (Arkansas [1999], Florida [prior to 2002], Georgia [1996], South Carolina [2000], and Virginia [1980]). Under a decentralized Civil Service System, the hiring departments are given a range or other latitude in identifying, interviewing, and hiring applicants. The shift to a more decentralized process is a long-term trend. Officials from these other states have reported no increases in reported favoritism or legal challenges.

The following actions were taken by these state governments to move toward a decentralized hiring process:

- elimination of rank-order registers,
- reduction in formal testing,
- simplification of job titles and classifications,
- establishment of broad bands of job classes and pay ranges to provide for more flexibility in moving employees (referred to as “broad banding”), and
- changes in state statutes when needed.

The central personnel departments in these governments still set guidelines to promote fairness and continue to perform some central functions such as

- establishment of job titles and minimal qualifications;
- preparation and administration of tests, if applicable;

- maintenance of lists for agencies to consider (not mandatory) which contain minimally qualified candidates or categorized lists of candidates (most qualified, less qualified, and possessing minimum qualifications); and
- continued monitoring of job titles, job descriptions, and pay scales to keep discrepancies between departments at a minimum.

Individual hiring agencies in these governments are now responsible for hiring selections, independent of the central personnel department. The hiring agency staff directly

- develop their own procedures for recruiting, screening, and hiring;
- assess job candidates' overall knowledge, skills, and abilities rather than just their technical abilities;
- select candidates through direct interviews and confirmation of references; and
- may develop testing or rely on the central department.

Modification of Centralized Hiring Systems

Similar to the leaders facing issues in Tennessee government, officials from the states of Alabama, Kentucky, Louisiana, and Mississippi have experienced trouble in finding quality candidates to hire or promote under centralized hiring systems. Rather than switching to a more decentralized system, these officials have maintained centralized hiring systems but with key revisions to allow for more flexibility. Generally, this flexibility was gained through shifting hiring agency choices from small groups of candidates under rigid rank-order registers to larger pools of candidates that have similar scores (banding) or that meet minimum qualifications. Working with larger pools results in more choices for hiring agency officials.

Other key modifications include direct hire options for hiring agencies for those positions that have historically been hard to fill. Additionally, their websites now include all job postings. E-mails to candidates are automatically sent when positions become available. The websites have eliminated the need for the traditional mailing of invitations to interview.

Officials from Kentucky, Louisiana, and Mississippi were able to make modifications to their centralized hiring systems without having to amend existing statutes. Without restrictions of law, officials from these states promulgated new policies and procedures that added flexibility to their centralized systems. In Tennessee and Alabama, however, personnel officials are required by statute to rank candidates by scores on registers, and departments are restricted to the top five and ten rankings, respectively.

Alabama's Flexible Hiring System

According to an official from Alabama's State Personnel Department, rather than changing the laws of that state, officials changed the process of scoring to a broad banded scoring system. That

department's website explains "banding" as a statistical procedure for grouping scores that statistically are not meaningfully different from one another. Certified bands or ranges of scores are set objectively and mathematically. The candidates in a certified band are similar to each other in that statistically there is no meaningful difference in their scores. In other words, the candidates' scores are not so different that separate scores need to be used. According to the official from Alabama's State Personnel Department, although the scores resulting from tests or from evaluations of a candidate's training and education in the first band may range from 95 to 100, she stated that there was no material difference between the candidate with the 95 score and the candidate with the score of 100. The Department of Personnel certifies bands centrally to the hiring agencies until at least ten candidates are included, but bands usually include many more than ten eligible candidates. She stated that the hiring agencies can choose any candidate from any of the certified bands.

Potential Issues: Other Effects of Decentralization

Although personnel from these states reported more flexible recruitment, more timely hiring, and more flexibility in pay and promotions after moving away from a centralized system, the decentralized system places more responsibility with the hiring agencies and does not remove the need for a central personnel department. Although a duplication of efforts or overlap between the central personnel department and the hiring agencies is a potential issue, officials from the states with decentralized systems stated that the duplication of efforts is minimal and the hiring agencies are better equipped to find those individuals with unique characteristics to best suit the needs of the hiring agencies.

Additionally, it would appear that with empowering hiring agencies to seek out new hires that there might be inconsistencies in hiring practices between the various hiring agencies across that state. Although one state reported inconsistency problems after hiring agencies were initially allowed to develop job classifications and pay scales, those problems can be avoided with those responsibilities left with the central personnel department.

V. RECOMMENDATIONS

The recommendations presented below are just a basic outline of possible ways to address the challenges facing the department and the state in seeking to establish and maintain a personnel system that is efficient, effective, and fair in providing the citizens with public employees who are accountable and qualified to perform their duties. The system should also provide a transparent and easily understood process for citizens to apply for employment with their state government.

LEGISLATIVE

The Tennessee General Assembly should consider the removal of the traditional civil service language regarding "maintenance of lists" and "appointments from lists" from the state statutes since the current hiring process is neither effective nor efficient. Without lifting the restrictive language regarding lists from state statutes, progress toward a more flexible hiring system will be extremely difficult.

The Tennessee General Assembly should also study the effects of the statutes that allow displacement of employees primarily based on the relative amount of departmental or total state service they have

when reductions in force are necessary, to determine whether they are consistent with good public policy.

ADMINISTRATIVE

The Department of Human Resources should work with the leadership of the General Assembly and the Administration to review the issues presented in this report and develop a formal plan for improving the current system. Since there are several approaches to reform, they should evaluate each possibility and consider their respective advantages and disadvantages.

There are basically two main options to improving the system and addressing the issues noted in this report: abolishing the current register system and moving the primary responsibility for identifying and interviewing candidates to the agencies using the system, or significantly expanding the department's efforts to move to broader bands.

It is our recommendation that the former option be taken.

With the current system, all of the critical steps are taken on the front end of the process, and they are executed by individuals who are not in the affected agencies. Much of the time and energy of the agencies is spent basically working through and around the initial decisions. The department does not have enough staff to perform all of the steps that are needed to establish the best pool of candidates through early interviews of candidates and verification of credentials. These are steps that should be performed by the agencies seeking the candidates.

This approach would alleviate the other issues noted in this report including registers containing individuals who are not qualified or interested in the positions in question.

Whatever option is decided, all of the issues noted in this report should be addressed, including the need for evaluation of the adequacy of the current application forms and assessment procedures, such as training for staff engaged in assessments and improved communication among all parties, particularly to provide more transparency and to identify and deal with complaints and concerns of all parties using the system.

Even if the register system is abolished, there are responsibilities for DOHR to support and foster an efficient, effective, and fair hiring and promoting process, including establishing better communication between the department and the agencies, assisting agencies in their efforts to identify and assess the best candidates, and developing job classifications that assist agencies in identifying candidates with specialized skill sets.

The department, the administration, and the legislature should take into consideration the steps taken by other states, as noted in this report, as they work to improve the current system.

DOHR management should also consider the impact on internal controls for any changes made to the system. They should assess risks of fraud, waste, abuse, and errors as the current system is changed, to ensure that adequate internal controls are designed and implemented to address and appropriately mitigate those risks. This would include reviewing controls that were in place in the system before it is changed and ensuring that they are still needed and are still effective after changes or whether they

need to be amended as well. The assessment and the mitigating controls should be well documented. The assessment should be ongoing since all risks may not be evident at the outset of the changes. Management should consider qualitative as well as quantitative risks.

These controls should provide for

- the continual assessment of all risks in the system and promptly address any identified concerns;
- ongoing monitoring of the controls to ensure that they are operating as designed and that any problems noted by the controls are adequately and timely reviewed by upper management and corrected; and
- improving communication throughout DOHR and between DOHR and the hiring entities it serves to ensure that the department knows of issues and problems with the system it administers, as it affects hiring entities, and that the department is aware of and promptly and effectively deals with issues raised by the entities it serves to
 - promptly identify and correct problems;
 - effectively identify emerging issues and to take appropriate action to deal with them;
 - identify fraud, waste, abuses, and errors to take prompt action to address them;
 - identify bottlenecks throughout the system and deal with them effectively;
 - improve the training of raters and all staff involved in the hiring processes;
 - improve accountability for all staff, including better linkage of performance reviews with accuracy and other factors affecting the efficiency and effectiveness of the system; and
 - ensure the decisions regarding policies and procedures are made on the basis of empirical data whenever at all possible, rather than assumptions about the impact on or the need for certain policies and procedures.

As part of these controls and processes, management should develop methodologies to measure and report key functions, including the average cost and the average length of time per hire and promotion, and establish benchmarks to evaluate the system's efficiency and effectiveness.

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 1120-02
EMPLOYMENT PRACTICES**

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1120-02-.01 RESPONSIBILITY. The Commissioner is responsible for administering the Act, these Rules, and establishing policies and procedures.

Authority: T.C.A. § 8-30-202, 8-30-203, and 8-30-204. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.02 DIVISIONS OF STATE SERVICE. The state service is divided into the career service and the executive service.

Authority: T.C.A. § 8-30-208. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.03 APPLICATION FOR EMPLOYMENT.

- (1) Applying for Positions in the Career Service. All applications for employment in career service positions must be made in a manner prescribed by the Commissioner.
- (2) Disqualification of Applicants. The Commissioner may refuse to examine or, after examination, may disqualify an applicant or remove an applicant's name from an eligible or referred list for a period of time as prescribed by the Commissioner, if the applicant:
 - (a) is found to lack any of the minimum or special qualification requirements established for the class of positions;
 - (b) has willfully or intentionally submitted false information or documents in support of any application or has intentionally omitted information in any application which materially affects score, position on a list, or eligibility for employment consideration;
 - (c) has previously been dismissed from any public service for delinquency, gross misconduct, or other similar cause;

(Rule 1120-02-.03, continued)

- (d) has used or attempted to use political pressure or bribery to secure an advantage in examination or appointment;
 - (e) has directly or indirectly obtained information regarding an examination to which the applicant was not entitled;
 - (f) has failed to submit an application correctly or within the prescribed time limit;
 - (g) has taken part in the compilation, administration, or correction of the examination; or
 - (h) has otherwise violated provisions of this Rule or related policies established and distributed by the Commissioner.
- (3) Appeal of Removal from Eligible Lists. An eligible whose name has been removed from an eligible list for any of the reasons specified in T.C.A. § 8-30-305, by Rule, or by policy may appeal to the Commissioner for reconsideration. Such appeal must be filed in writing with the Commissioner within fifteen (15) calendar days after the date of the notification. The Commissioner, after consideration, shall make a decision and notify the applicant accordingly.
- (4) Equal Employment Opportunities. The provisions of this section shall be administered consistent with the State's equal employment opportunities policies and obligations. All actions taken pursuant to this section shall be in strict compliance with all applicable state and federal civil rights laws.

Authority: T.C.A. § 8-30-222, 8-30-302, 8-30-304, and 8-30-305.. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.04 EXAMINATIONS.

- (1) Notice of Examinations. The Commissioner will give public notice of all examinations, at least two (2) weeks in advance of the closing date for receipt of applications, by posting notices throughout the State. Public notice of examinations will specify the title and salary range of the class of positions, examples of duties to be performed, the minimum or desirable qualifications required, the final date on which applications will be received, and other conditions of competition, including the relative weights assigned to the various parts in the examination.
- (2) Promotional Examinations. Promotional examinations may be limited to employees of a defined organizational unit or may be open to all employees in the career service. The Commissioner shall determine and specify in the notice of examinations the classifications in an organizational unit or units eligible to compete. Any career employee in such classification(s) in the organizational unit(s) shall be eligible to compete in the promotional examination, provided the employee possesses the minimum qualifications required for the class of positions for which the examination is held. The Commissioner will grant additional performance bonus points to the examination scores of career employees who attain good, superior, or exceptional ratings on their probationary or annual performance evaluation as follows:
- (a) Good overall performance 1 performance bonus point
 - (b) Superior overall performance 2 performance bonus points

(Rule 1120-02-.04, continued)

- (c) Exceptional overall performance 3 performance bonus points

Performance bonus points are granted to employees only on a promotional list of eligibles.

- (3) Admission to Examinations. Examinations will be open to all persons who meet the requirements specified in the respective public notices. Each applicant admitted to an examination will be notified of the time, date and place of the examination. Applicants not meeting the requirements for a class of positions may appeal the decision by requesting that the Commissioner reevaluate their qualifications based on documents submitted during the application process which were received during the open examination period. The Commissioner may also request other documents from the applicant. Applicants reevaluated as meeting the requirements may then be admitted to the examination at the discretion of the Commissioner.
- (4) Employees in Positions Added to the Career Service. An employee in a position which is added to the career service may, within one (1) year after the establishment of such positions in the career service, be given a noncompetitive test prescribed by the Commissioner to determine if the employee is fit to satisfactorily perform the duties of the position. The Commissioner shall certify whether each employee tested has met a reasonable standard of fitness qualifying such employee to retain such position, and each person so certified shall be deemed to be a career employee.
- (5) Conduct of Examinations. All examinations will be approved by the Commissioner with every precaution taken to prevent unauthorized persons from gaining knowledge of the nature or content of the tests. Examinations will be conducted in locations that are practical for proper administration. All applicants admitted to sit for civil service examinations must adhere to the Department's established testing rules and procedures. The Commissioner may take any appropriate action, up to and including criminal prosecution, against applicants who do not adhere to these established Rules and procedures.
- (6) Scoring Examinations. The Commissioner will determine a final examination score for each applicant in accordance with the weights established on the announcement of the examination. Failure in one part of any examination may disqualify the applicant from the entire examination.
- (7) Reapplying for Examination. Applicants rejected for not meeting minimum qualifications may reapply during an open examination period provided they can furnish evidence that they meet the required education, experience, or special qualifications. Applicants failing a written or performance test or wanting to improve their current score may retake the examination in accordance with established policy. An applicant's score is based on the latest examination results. Applicants may reapply for examination when changes in job minimum qualifications or examination method results in the abolishment of an eligible list and the establishment of a new eligible list.
- (8) Promotional Rating Update. The Commissioner may establish a procedure and develop the manner by which state employees may update scores based on a rating of education and experience after gaining additional education or experience.
- (9) Rating Training and Experience. When education, training and/or experience form a part or all of an examination, the Commissioner will establish a procedure for the evaluation of the education, training, and experience qualifications, including licenses, certifications, approved Continuing Education Units (CEU's), and other merit factors as deemed appropriate by the Commissioner.

(Rule 1120-02-.04, continued)

- (10) **Work Test Period.** With input from the Division of Rehabilitation Services, Department of Human Services, the Commissioner may substitute a working test period in lieu of a written examination for an applicant with a disability. Such test period shall be the same as the individual's established probationary period.
- (11) **Investigations.** The Commissioner or any appointing authority may investigate an applicant's education, training, and experience to verify the statements contained in the application form or to verify statements regarding the applicant's character and fitness. If this investigation shows any falsification, including false information or documents submitted in support of any application or intentionally omitted information in any application which materially affects score, position on a list, or eligibility for employment consideration, the applicant may be removed from consideration for employment or, if employed, may be dismissed and disqualified from future examinations. Lesser discrepancies in applicant information may result in a reevaluation of examination scores as necessary.
- (12) **Oral Examinations.** When an oral examination is part of the examination for a class of positions, the Commissioner will appoint or approve one or more oral examination boards as needed.
- (13) **Notice of Examination Results.** The Commissioner will notify an applicant in writing of their examination results as soon as scoring has been completed. Scores based on the rating of an employment application including education, experience, and other merit factors as deemed appropriate shall be reported to the applicant within ninety (90) calendar days or a reasonable time period thereafter when the number of applicants applying for a particular job class prevents the scoring process from being completed within the ninety (90) calendar day period. An error in the scoring of any phase of an examination will be corrected, if called to the attention of the Commissioner; however, such correction will not invalidate any appointment previously made to a class of positions.
- (14) **Examination Records.** The Commissioner will maintain all records pertinent to an examination program. The retention of applications and other necessary examination records shall be maintained as prescribed by law.
- (15) **Rescheduling Examinations.** When an applicant is unable to appear for an examination, the applicant may, upon satisfactorily showing the cause of his failure to appear, be granted permission by the Commissioner to take the examination at a later date.

Authority: T.C.A. §8-30-222, 8-30-301, 8-30-302, 8-30-303, 8-30-305, 8-30-307 and 10-7-504.

Administrative History: (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.05 ELIGIBLE LIST.

- (1) **Establishment of Eligible List.** The Commissioner will establish an eligible list for competitive career service job classifications no later than four (4) months after the date on which the test was held, unless such time is extended by the Commissioner for reasons which the Commissioner shall record in the official records of the Department. The Commissioner may establish a promotional eligible list or roster of employee names in addition to or in lieu of an employment eligible list. A promotion list or employment list which has been in force for six (6) months or more shall be deemed cancelled upon the establishment of a new promotion list or employment list, as the case may be, for the same class of positions.
- (2) **Supplementing Eligible Lists.** The Commissioner will routinely review existing employment eligible lists to determine whether there is an adequate number of eligibles available to meet

(Rule 1120-02-.05, continued)

the needs of the service. When the Commissioner determines that a particular eligible list is inadequate or is likely to become inadequate, the Commissioner may order a supplemental examination for the class of positions. The public announcement for supplemental examinations will give notice of the dates when applications will be accepted and, where applicable, when written examinations will be administered.

Eligible lists for job classifications examined on a continuous basis are supplemented daily as applicants are scored.

- (3) Duration of Eligible Lists. All scores based on a rating of an applicant's education, training, and experience will be in effect for two (2) years unless the score is otherwise ruled ineligible or unless the eligible list is abolished. All scores derived as a result of a written examination will remain in effect until such time as prescribed by the Commissioner. Subject to the limitations of the Act and these Rules, the Commissioner may consolidate or cancel an eligible list at any time after it has been established.
- (4) Removal and Notification of Names from an Eligible List. Any applicant whose name is removed from an eligible list for any reason shall receive written notice of such action within ten (10) days of the date of removal.
 - (a) The name of an eligible may be removed or made inactive on an eligible list for a class of positions for any of the following:
 1. an eligible receives a regular appointment to a vacancy in that class of positions;
 2. the agency advises the Commissioner that the eligible is unwilling to accept appointment;
 3. an eligible declines an appointment offered under conditions the eligible had previously indicated would be acceptable;
 4. an eligible fails to respond within seven (7) days of the date of an invitation to interview;
 5. an eligible cannot be located;
 6. an eligible falsifies his legal residence;
 7. An eligible has been convicted of a crime related to the position or class of positions for which he or she has applied; or
 8. any cause occurs as specified in the Act or Rules regarding the rejection or disqualification of applicants.
- (5) Removal of Names from a Referred List. The Commissioner may remove the name of an eligible from a referred list who has been considered and rejected for three (3) different positions in the same classification in an agency.
- (6) Reinstatement to an Eligible List. An eligible's name may be reinstated to an eligible list upon showing of satisfactory cause to the Commissioner.

Authority: T.C.A. § 8-30-307, 8-30-308, and 8-30-309. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.06 CERTIFICATION OF ELIGIBLES.

- (1) Eligible List. The Commissioner shall certify an eligible list containing qualified applicants for the position to be filled by the requesting agency.
- (2) Request for a Referred List. When a vacancy occurs, the agency shall request a referred list.
- (3) Referred List. If requested by the agency, a list of eligibles may be narrowed by the geographic area, organizational unit, or promotional criteria. The Commissioner shall issue a policy that agencies may use to establish a referred list.

Authority: T.C.A. §§8-30-222, 8-30-308, and 8-30-309. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.07 VETERANS PREFERENCE POINTS.

The Commissioner will grant additional points to eligible veterans attaining a passing examination score in compliance with T.C.A. § 8-30-306 and any other applicable statutes, rules, or policies.

Authority: T.C.A. § 8-30-306 and 8-30-310. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.08 CERTIFICATION AND USE OF REFERRED LISTS.

- (1) Request for Certification. When a vacancy occurs in one (1) or more established positions in a classification in the career service, the appointing authority may request a list to fill the position(s) in a manner prescribed by the Commissioner.
- (2) Methods of Certification. The Commissioner will certify to the appointing authority the names of eligibles from the appropriate referred list for the classification. When requesting a referred list for a flexibly staffed position, the appointing authority may request a referred list for the working level or one of the trainee level classifications.
- (3) Appointment from a Referred List. An appointment made from a referred list must be made from the five (5) highest ranking eligibles plus any other eligible with a score equal to the score of the fifth ranked eligible. An appointing authority is not required to consider a referred list that contains the names of less than three (3) eligibles.
- (4) Promotion from a Referred List. A promotion made from a referred list must be made from the three (3) highest ranking eligibles plus any other eligible with a score equal to the score of the third ranked eligible. An appointing authority is not required to consider a promotional list that contains the names of less than three (3) eligibles.
- (5) Contacting Eligibles on a Referred List. The appointing authority must invite in writing all eligibles in the original top five (5) on a referred list for appointment and the original top three (3) on a referred list for promotion to interview for the position prior to the final selection of a candidate for appointment or promotion. All eligibles who are interviewed but not selected will be notified in writing that they were not selected.

Authority: T.C.A. § 8-30-307, 8-30-308, and 8-30-309. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new

(Rule 1120-02-.08, continued)

rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.09 OTHER LISTS.

- (1) **Transfer List.** An agency may request a list of career employees in career service positions who wish to transfer to other agencies or locations in their current job classification.
- (2) **Layoff List.** All career employees affected by a reduction in force shall be placed on a layoff list. Employees so listed shall have a priority right to transfer, promotion, or reappointment to the location or job classification held prior to any reduction in force.
- (3) **Reemployment/Reappointment.** A person may be appointed to a class of positions without further certification or examination because that employee previously held career status in the classification or a related classification.
- (4) **Selective Certification.** An individual position or group of positions in a classification may, under special circumstance, be placed into a sub-classification because the group requires unique or special qualifications. Requests for selective certification must be made in writing and approved by the Commissioner. Appointments must be made from the top five (5) or, if promotional, top three (3) eligibles possessing the special qualifications.

Authority: *T.C.A. § 8-30-318, 8-30-322, and 8-30-323. Administrative History: (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011.*

1120-02-.10 OTHER MATTERS RELATED TO LISTS.

- (1) **Reinstatement on an Eligible List.** Any career employee who leaves state service in good standing may have his name reinstated to the eligible list for the job classification from which appointed or promoted, provided:
 - (a) the eligible list has not been abolished or expired; and
 - (b) the applicant's score is not older than the time for which the score would have been otherwise eligible.
- (2) **Three Considerations.** Any applicant who has been considered for three (3) different positions in the same classification in an agency will be ineligible to be referred for other positions in that classification to that agency. This ineligibility will last until one of the following occurs:
 - (a) the expiration of the score in effect at the time of the third consideration;
 - (b) the eligible list from which the eligible was certified is abolished;
 - (c) the appointing authority requests that the three (3) considerations be removed from the eligible's record; or
 - (d) the applicant re-applies for that classification.
- (3) **Non-Competitive Classifications.** The Commissioner may designate unskilled or semi-skilled classifications as non-competitive. Generally, appointments to non-competitive classifications do not require a referred list; however, the Commissioner may require the use

(Rule 1120-02-.10, continued)

of a referred list for certain non-competitive classifications. Applicants for all non-competitive classifications must meet the minimum qualifications for the class of positions.

Authority: T.C.A. § 8-30-209, 8-30-308, 8-30-309, 8-30-311, 8-30-313, and 8-30-317. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.11 FILLING POSITIONS.

- (1) Career Service Positions. All career service positions are regular full-time positions. These positions may be filled on a regular full-time basis by persons who have been successful in a competitive process by being among the top available eligibles on a referred list or who have achieved career status in a classification and have the right to be reemployed or reappointed to that classification or to a related classification to which they could be reclassified without further examination or certification as determined by the Commissioner.

Certain unskilled and semi-skilled classifications are designated "non-competitive" by the Commissioner. Qualified persons may be employed in these classifications on a regular full-time basis without competition.

Career service positions may be filled on a full-time temporary basis outside the competitive process by qualified persons as determined by the Commissioner by temporary provisional appointment, emergency appointment, or interim appointment. Career service positions may also be filled on a part-time temporary basis outside the competitive process by a regular part-time appointment or on a temporary basis with a seasonal appointment.

- (2) Executive Service Positions. Referred lists are not required to fill executive service positions. Executive service positions may be filled in the following manner:
- (a) Regular full-time positions may be filled by one (1) of the following appointment types:
1. regular full-time;
 2. regular part-time;
 3. temporary full-time;
 4. temporary part-time;
 5. seasonal full-time;
 6. seasonal part-time; or
 7. limited term appointment.
- (b) Regular part-time positions may be filled by one (1) of the following appointment types:
1. regular part-time;
 2. temporary part-time;
 3. seasonal part-time; or
 4. limited term part-time appointment.

(Rule 1120-02-.11, continued)

- (c) Seasonal part-time positions may be filled on that basis alone.
- (3) **Overlap.** An appointing authority may place more than one (1) employee in a single position in an overlap status subject to budgetary limitations and the approval of the Commissioner.
- (4) **Job Sharing.** An appointing authority may place more than one (1) part-time employee in a single full-time position in a job sharing status subject to budgetary limitations and the approval of the Commissioner. Agencies are responsible for ensuring that the number of hours worked by all employees assigned to the position number do not exceed the maximum number of full-time hours assigned to that position in a fiscal year. Positions used for job sharing are considered to be in the executive service.
- (5) **Mismatch.** An appointing authority may request approval from the Commissioner to appoint an employee to a classification different from the classification of the position, provided the employee's classification is not higher than the classification of the position.

For career service appointments the mismatch should be in the same or related classification series. The employee appointed should be able to meet the qualifications for the classification of the position upon attainment of additional education, experience or credentials. Career service mismatches should not exceed one (1) year except for employees in lower level flex classes with probationary periods longer than one (1) year.

Authority: T.C.A. § 8-30-201, 8-30-202, 8-30-203, 8-30-204, 8-30-208, 8-30-309, 8-30-311, 8-30-315, 8-30-316, 8-30-317, 8-30-318, 8-30-322, and 8-30-323. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.12 APPOINTMENTS.

- (1) **Regular Appointment.** A regular appointment is an appointment to either a career or executive service position for an indeterminate period of time. A regular appointment is expected to continue contingent upon satisfactory performance and behavior by the employee and upon continued funding, classification and utilization of the position by the State. In the executive service, a regular appointment continues at the pleasure of the appointing authority.
- (2) **Temporary Provisional Appointment.** A temporary provisional appointment is an appointment to a full-time career position for a period not to exceed four (4) months and may be made when there is an insufficient referred list or no established eligible list. Temporary provisional appointees must meet the minimum qualifications for the class of positions to which appointed. A temporary provisional appointment may not be renewed and no person can receive more than one (1) temporary provisional appointment in a twelve (12) month period. Temporary provisional appointments do not require the use of eligible lists.
- (3) **Emergency Appointment.** An emergency appointment is an appointment to a full-time career service position for a period of service not to exceed one hundred twenty (120) days and may be made when conditions exist that necessitate an immediate short term appointment. Emergency appointees must meet the minimum qualifications for the class of positions to which appointed. An emergency appointment may not be renewed and no person may receive more than one (1) emergency appointment in a twelve (12) month period. Emergency appointments do not require the use of eligible lists. Time served in an emergency appointment does not constitute creditable service for sick and annual leave accrual or service credit except for the purpose of longevity payments. Emergency appointments are not eligible for participation in the state insurance plan, but may be eligible

(Rule 1120-02-.12, continued)

for participation in the Tennessee Consolidated Retirement System (TCRS) as outlined in TCRS rules and policies.

- (4) **Interim Appointment.** Based on written justification submitted by an appointing authority, the Commissioner may approve an interim appointment to a full-time career service position for a period not to exceed one (1) year. Based on written justification submitted by an appointing authority, the Commissioner may approve, up to a one (1) year extension, after determining that such an extension is in the best interest of the State.

To be eligible for an interim appointment, the employee must meet the minimum qualifications for the job classification to which the employee is appointed. If the interim appointment is made using a referred list, the appointing authority may grant the employee a regular appointment in the position using the referred list from which the interim appointment was made, provided:

- (a) the employee was within the original top five (5) or top three (3) eligibles on a referred list, and
- (b) the rules for contacting eligibles were followed and applicants on the eligible list were notified that the interim appointment could change to a regular appointment at a later time.
- (5) **Seasonal Appointment.** Seasonal appointments may be made to seasonal positions in the executive service. Seasonal appointments do not require the use of eligible lists.
- (6) **Temporary Appointment.** A temporary appointment is an appointment to an executive service position for a limited period, usually less than six (6) months, and does not require the use of eligible lists.
- (7) **Limited Term Appointment.** The governor, the governor's cabinet, and members of boards, commissions, agencies and authorities receive limited-term appointments pursuant to statute. Limited term appointments do not require the use of eligible lists.
- (8) **Temporary Employment of Retired State Employees.** Retired State employees may temporarily return under certain conditions as outlined in the temporary employment form obtained from the Retirement Division of the Treasury Department. The retired employee may accept employment with a covered employer for up to one hundred twenty (120) days (900 hours for employees on a seven and a half (7.5) hour work day or 960 hours for employees on an eight (8) hour work day) during a twelve (12) month period.
- (9) **Reemployment of Former Career Employees.** Unless otherwise stated in statute, an appointing authority may reappoint a former career employee without further examination or certification under the following provisions:
- (a) Reappointment to any classification in which the employee formerly held career status or to any related classification to which the employee could have been demoted, reduced in rank, or transferred without further examination or certification, provided the employee returns to the career service within three (3) years of the date of separation from State employment. The three (3) year reemployment eligibility period commences with the employee's separation from State government and expires three (3) years later, regardless of subsequent State employment; or
- (b) A former career employee who obtained career status in a classification and held that same career service classification in State government for five (5) or more years has permanent reemployment eligibility to that classification and to any related classification to which the employee could have been demoted, reduced in rank, or

(Rule 1120-02-.12, continued)

transferred without further examination or certification. Permanent reemployment eligibility is based on an employee's cumulative periods of employment in classification and not on a continuous employment period.

Note that this Rule does not provide a right to reappointment for any employee. Any decision to reappoint a former career employee in accordance with this Rule is solely at the discretion of the appointing authority.

- (10) Reappointment of Current State Employees. Any State employee who is a current or former career employee is eligible for appointment to any classification in which the employee formerly held career status or to any related classification to which the employee could have been demoted, reduced in rank, or transferred without further examination or certification, provided the employee has not had a break in State government employment.
- (11) Appointments to Flex Class Positions. To fill the vacancy of a flex class position, the appointing authority must request from the Commissioner a referred list of applicants for either one of the trainee level classifications or the working level class. Any eligible appointed to a flex class position from the referred list for either the trainee or working level class shall serve a period of probationary employment as prescribed by the Commissioner for the classification. During the last month of the probationary period, the appointing authority shall certify to the Commissioner whether the employee has successfully completed the period of probationary employment and should, therefore, be made a career employee in the position in the working level classification without further examination or certification. The employee must be removed from the position if the probationary period has not been successfully completed. Such notification should be made in the same manner as prescribed for any other period of probationary employment.

Authority: T.C.A. § 8-30-202, 8-30-203, 8-30-204, 8-30-208, 8-30-309, 8-30-311, 8-30-315, 8-30-316, 8-30-323, 8-50-801, and 8-50-802. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.13 PROBATIONARY PERIOD.

- (1) Purpose of the Probationary Period. The probationary period is an essential part of the employment process, and is used for the adjustment of an employee to a new position and to provide an employee with the opportunity to demonstrate ability to perform the job.
- (2) Probationary Period for the Career Service. For career service positions, a probationary period of at least six (6) months is required for all employees who receive regular appointments from a referred list. An appointing authority also has discretion to impose a probationary period for employees who receive regular appointments through reemployment, reappointment, demotion, voluntary reduction in rank, or interdepartmental transfers. The probationary period for a regular appointment may be reduced by the amount of time served in a temporary provisional, emergency or interim appointment provided the appointment is for the same appointing authority in the same class of positions and there is no break in service. Employees serving temporary provisional, emergency or interim appointments do not serve a probationary period. Successful completion of a probationary period in a trainee, entry, or intermediate level classification satisfies the probationary period requirement necessary for career status when the position is deemed to be the working level classification.
- (3) Duration of the Probationary Period. A period of probation is completed at the close of business or shift on the day the employee completes the number of months of probationary status required for the class of positions.

(Rule 1120-02-.13, continued)

- (4) **Initial Probationary Period.** The initial probationary period is the first probationary period an employee serves in a department or agency in a continuous period of employment prior to becoming a career employee in that agency.

An employee on initial probation may not be dismissed for cause relating to performance of duties before completion of one (1) month's service. Employees dismissed during their initial probationary period have neither right of appeal nor right of hearing. The appointing authority must submit a written reason for dismissal to the Commissioner. Initial probationary employees not terminated or otherwise removed from the classification by the end of the probationary period become career employees.

- (5) **Subsequent Probationary Period.** Any probationary periods served by an employee who holds career status in that agency are considered subsequent probations. Career employees serving subsequent probations retain grievance rights except when demoted to their former classification. Employees serving a subsequent probationary period retain career status in the classification in which that status was most recently attained.
- (6) **Promotion During Probation.** The probationary period for the class of positions to which an employee on probation is promoted begins with the date of appointment to such higher classification. If the newly promoted employee was on initial probation at the time of promotion, the new probationary period will be considered to be the initial probationary period. An employee on subsequent probation who is promoted to a position in a different agency where they have not attained status will be placed on initial probation in that agency. Names of employees on initial probation will not appear on promotional lists.
- (7) **Work Test Period.** The Commissioner may substitute a working test period in lieu of a written examination for any applicant with a disability, with input from the Division of Rehabilitation Services and the Department of Human Services. Such test period shall be the same as the individual's established probationary period.

Authority: T.C.A. § 8-30-302, 8-30-208, 8-30-312, and 8-30-314. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-.14 PROMOTIONS.

- (1) **Methods of Making Promotions.** A vacancy may be filled by the promotion of a qualified employee with the approval of the Commissioner. Promotions between departments or agencies must be approved by the appointing authorities concerned. Promotions of employees to regular career service appointments will be made by a competitive process as determined by the Commissioner. Any employee who has been demoted or reduced in rank may, at the discretion of the appointing authority and with the approval of the Commissioner, be promoted to a career service position in a classification without additional examination or certification if the employee was a career employee in that classification.
- (2) **Promotion by Competitive Examination.** The Commissioner and the appointing authority may fill a vacancy by a promotional examination. The promotional list resulting from such examination will be established in accordance with the applicable provisions of this Rule.

Authority: T.C.A. 8-30-302, 8-30-309, and 8-30-311. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-15 EMPLOYEE TRANSFER, LATERAL RECLASSIFICATION, DEMOTION AND REDUCTION IN RANK.

- (1) Transfer. A transfer is authorized in accordance with the following:
 - (a) An appointing authority may transfer an employee from one position to another position in the same classification in the same agency with the approval of the Commissioner.
 - (b) An employee may be transferred from a position in one agency to a position in the same classification in another agency with the approval of both appointing authorities and the Commissioner.
 - (c) The Commissioner will not approve a transfer from the executive service to the career service unless the employee is eligible for reemployment in the career service in the classification or is appointed from a referred list.
- (2) Lateral Reclassification. A lateral reclassification is authorized in accordance with the following:
 - (a) An appointing authority may laterally reclassify any qualified employee from one position to another position in another classification in the same agency with the approval of the Commissioner.
 - (b) A qualified employee may be laterally reclassified from a position in one agency to a position in another classification in another agency with the approval of both appointing authorities and the Commissioner.
 - (c) The Commissioner will not approve a lateral reclassification from the executive service to the career service unless the employee is eligible for reemployment in the career service in the classification or is appointed from a referred list.
- (3) Demotion. With the approval of the Commissioner, an agency may demote an employee who has failed to render satisfactory service in a position held but is considered worthy of employment. The agency must meet any applicable minimum due process requirements and give the employee written notice prior to the effective date.
- (4) Involuntary Reduction in Rank. An involuntary reduction in rank occurs when the position occupied by an employee is affected by a reduction in force or in compliance with T.C.A. § 8-30-212. An involuntary reduction in rank is not a demotion.

Employees receiving an involuntary reduction in rank do not serve an additional probationary period. Under an involuntary reduction in rank, an employee's salary may be reduced only to the top step of the salary range of the new job classification unless otherwise specified by statute. Subject to budgetary limitations, employees receiving involuntary reductions in rank may retain a salary rate above the salary range for the new job classification with the approval of the appointing authority and the Commissioner.

- (5) Voluntary Reduction in Rank. A voluntary reduction in rank occurs when an employee requests assignment to a position at a lower salary grade and the appointing authority concurs. A voluntary reduction in rank may require a salary reduction and a requirement for the completion of an initial or subsequent probationary period. A voluntary reduction in rank is not considered a demotion.

Generally, employees who receive a voluntary reduction in rank will have their salary reduced equivalent to one-half (1/2) the difference between the salary grades of the new and the current classification. Employees who receive a voluntary reduction in rank must be paid

(Rule 1120-02-.15, continued)

within the salary range for the new classification even if this results in a salary reduction greater than one-half (1/2) the difference between the salary grades of the new and the current classification.

Authority: T.C.A. § 8-30-214, 8-30-318, and 8-30-320. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2010.

1120-02-.16 TENURE, EMPLOYEE RECLASSIFICATION, SUSPENSION AND SEPARATION.

- (1) Tenure of Office. The service of career employees is contingent on both satisfactory performance and satisfactory conduct. Satisfactory performance is evidenced by the employee's current performance evaluation. This provision, however, does not prevent the layoff of an employee in accordance with a reduction in force plan approved by the Commissioner.
- (2) Suspension. An appointing authority must provide any applicable minimum due process requirements and give written notice before suspending a career employee without pay for disciplinary purposes. Cumulative suspensions without pay shall not exceed thirty (30) workdays in a twelve (12) month period. With approval of the Commissioner, an appointing authority may suspend an employee without pay for a period greater than thirty (30) workdays, pending an investigation or trial of any charges. The agency shall place a copy of the written notice of the suspension in the employee's human resources file.
- (3) Layoff/Reduction in Force. After written notice to the Commissioner, an appointing authority may implement a layoff/reduction in force, in accordance with the provisions of T.C.A. § 8-30-101, T.C.A. § 8-30-320, and T.C.A. § 8-30-322. Performance evaluation ratings of employees affected by reductions in force may be considered in determining the order of layoff only when the seniority calculations produce an order of layoff difference of less than one year.
- (4) Resignations. An employee who resigns may state the reasons in writing to the appointing authority. A copy of the resignation must be placed in the employee's human resources file.
- (5) Job Abandonment. Any employee who is absent from duty for more than three (3) consecutive work days without giving notice to the appointing authority or appropriate manager concerning the reason for such absence and without securing permission to be on leave, or who fails to report for duty to the immediate supervisor or the appointing authority within two (2) work days after the expiration of any authorized leave of absence, is considered as having resigned not in good standing, absent exigent circumstances causing the employee's absence or preventing the employee's return. A career employee who is designated resigned in accordance with these circumstances shall have the right to appeal such action through the grievance procedure and to be reviewed by the Commission.
- (6) Dismissal. An appointing authority may dismiss a career employee for either unsatisfactory performance or unsatisfactory conduct after ensuring minimum due process requirements are met. Executive service employees serve at the pleasure of the appointing authority.
- (7) Reemployment Recommendation. When an employee leaves State government, the appointing authority may make a recommendation concerning reemployment. All separating employees not recommended for reemployment must be informed in writing by the appointing authority of the recommendation and its effect on future employment in state service.

Authority: T.C.A. . § 8-30-320, 8-30-322, 8-30-325, and 8-30-326. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.)

(Rule 1120-02-.16, continued)

Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

1120-02-17 CERTIFICATION OF PAYROLLS.

- (1) Certification of Payrolls. All payments for personal service to any person holding a position in the state service must be submitted by the appointing authority to the Commissioner in a manner prescribed by the Commissioner and the Commissioner of Finance and Administration. The Commissioner must certify the payroll before it may be honored by the Department of Finance and Administration. The Commissioner shall determine that the persons named on the payroll have been appointed or employed in accordance with the Act and applicable rules, and that the salary rate is in accordance with the compensation plan before certification of that payroll for payment.
- (2) Refusal to Certify. If the Commissioner determines that a person on the payroll has not been appointed or paid in conformity with the provisions of the Act and these Rules, the Commissioner will refuse to certify payment for that employee. The removal of a name or item from the payroll shall serve as official notification to the Department of Finance and Administration that the drawing, signing, or issuing of any warrant by any disbursing officer of the State for the payment of salary or compensation to such person is unlawful.
- (3) Illegal Payments. Any appointing authority who appoints or employs any person in violation of the Act and these Rules may be required to pay the agreed upon salary. Any such amount so paid will not be reimbursed by the State.

Authority: T.C.A. § 8-30-216 and 8-30-217. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) *Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.*

1120-02-18 RECORDS AND REPORTS.

- (1) Employee Records. The Commissioner will maintain employee records as necessary to carry out the intent and purpose of the Act and these Rules and cause to be maintained in each agency a human resources file on each active employee. These files shall be maintained in accordance with policy established by the Commissioner.
- (2) Reports from Appointing Authorities. The appointing authorities will report to the Commissioner in a manner prescribed by the Commissioner all permanent changes in the status of employees under their jurisdiction. Upon request, the appointing authorities may also be required to make other reports regarding their employees to the Commissioner.
- (3) Investigations. The Commissioner has the right of the records, books, papers and other documents of any organizational unit pertinent to any investigation which may be necessary or which the Governor or the Commission may direct to be conducted.

Authority: T.C.A. § 8-30-202, 8-30-203 and 10-7-504. **Administrative History:** *Original rule filed December 14, 2010; effective May 31, 2011.*

Exhibit B

Title 8 Public Officers And Employees
Chapter 30 Civil Service
Part 3 Civil Service Appointments and Tenure

Tenn. Code Ann. § 8-30-308 (2011)

8-30-308. Maintenance of lists -- Notice of removal from lists.

(a) The commissioner shall establish and maintain such promotion lists and employment lists for the various classes of positions in the career service as the commissioner deems necessary or desirable to meet the needs of the service. On each promotion list and employment list, the eligibles shall be ranked in the order of their ratings earned in the test given for the purpose of establishing such list. If training and experience form a part of the total examination, the rating of an employee shall be recalculated for use on the current promotion registers, pursuant to the rating procedure established by the commissioner, upon notice to the department on the prescribed form approved by the commissioner, which shall serve as a supplement to the original employee application on file with the department. All information submitted on such supplemental application forms shall be subject to verification by the commissioner.

(b) At the time any promotion list or employment list is established, the commissioner shall determine the period during which such list shall remain in force, which shall be not less than six (6) months. The commissioner may consolidate or cancel promotion lists and employment lists, as the needs of the service may require and as authorized by the rules. A promotion list or employment list which has been in force for six (6) months or more shall be deemed cancelled upon the establishment of a new promotion list or employment list, as the case may be, for the same class of positions.

(c) Any person whose name is removed from a promotion or employment list for any reason shall be mailed written notice of such action within ten (10) days of the date of removal. Notice shall include the reason for the removal of such person's name from the promotion or employment list.

HISTORY: Acts 1939, ch. 221, § 15; C. Supp. 1950, § 1034.37 (Williams, § 423.24o); impl. am. Acts 1959, ch. 9, § 4; impl. am. Acts 1961, ch. 97, §§ 2, 4; T.C.A. (orig. ed.), § 8-3208; Acts 1983, ch. 288, § 1; 1986, ch. 869, §§ 4, 6; 1989, ch. 284, § 1.

Tenn. Code Ann. § 8-30-309 (2011)

8-30-309. Appointment from employment list.

(a) (1) Whenever an appointing authority proposes to fill a vacancy in the career service, such authority shall submit to the commissioner a statement showing the position to be filled, the duties thereof, the official station, and the necessary and desirable qualifications

of the person to be appointed thereto, and shall request the commissioner to certify the names of persons eligible for appointment to such position. If the official station of the vacancy to be filled is permanently located outside the geographic boundaries of the state of Tennessee, then the appointing authority may fill such vacancy without submitting such information to the commissioner and without regard to registers used to certify applicants.

(2) The commissioner shall thereupon certify to the appointing authority a list of eligibles which shall come from the register established as a result of competitive examinations for that class of positions. A promotion list shall consist of three (3) available eligibles scoring the highest grades (whole numbers) listed in rank order of examination scores, plus any available eligibles who have a grade equal to that of the third eligible, and an employment list shall consist of five (5) available eligibles scoring the highest grades (whole numbers) listed in rank order of examination scores, plus any available eligibles who have a grade equal to that of the fifth eligible.

(3) The appointing authority shall appoint, within twenty (20) work days after such names are certified, one (1) of those whose names are certified to fill the vacancy.

(4) When a given name has been considered and rejected for three (3) different positions, it need not again be certified to the same appointing authority.

(b) If the appropriate promotion list does not contain the names of at least three (3) available eligibles willing to accept appointment, or the appropriate employment list does not contain the names of at least five (5) available eligibles willing to accept appointment, the names of all persons on such list who are willing to accept employment shall be certified. The appointing authority is not required to appoint from the eligible list if less than three (3) names appear thereon.

(c) The names of persons who have been considered by the commissioner for certification three (3) times or who have expressed unwillingness to accept appointment may, at the discretion of the commissioner, be removed from a list.

(d) The commissioner may advise with the appointing authority as to the eligible registers to be used in the certification of eligibles. The commissioner, with the approval of the commission, may establish subregisters of the state list upon a geographical basis in order of standing on the state lists. Such subregisters are to be composed of eligibles who have legal residence in the geographical area for which the register was issued. "Legal residence" is defined as the county in which a person's home is located, and to which the person definitely intends to return even if temporarily absent.

(e) Any person securing a regular appointment under the provisions of this section, who was employed by a political subdivision, a quasi-governmental entity or a non-profit agency, exclusively administering a state program through a contract between the state and such agency, shall be granted all such time employed in the administration of the state program as creditable state service, if such person is to be administering the same program as a regular state employee. Such service shall be considered creditable for the purposes of the

administration of the provisions of §§ 8-23-206, 8-30-320 and 8-50-801. The commissioner shall establish a certification procedure by which such service shall be deemed creditable under this subsection (e).

(f) Any person who falsifies legal residence or changes legal residence for the purpose of improving such person's standing on any eligible register shall have such person's name removed from such register and, if employed by the state, the person shall be subject to disciplinary action, up to and including dismissal. Any state employee who advises, encourages or instructs an applicant to falsify legal residence or to change residence for the purpose of improving the applicant's standing on any eligible register shall be disciplined, up to and including dismissal.

(g) The securing of "waivers," or statements of the relinquishment of the rights of eligibles on promotion lists, is prohibited. No such eligible shall be required, forced or coerced to provide such a waiver or statement. A state officer or employee who violates the provisions of this subsection (g) commits a Class C misdemeanor. The commissioner shall comply with the provisions of § 8-30-207 in order to assure compliance with this subsection (g).

(h) The commissioner shall issue guidelines in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, which shall be specific relative to the manner in which:

- (1)** Civil service registers are used by appointing authorities;
- (2)** The manner in which applicants are interviewed relative to both conduct and content;
- (3)** The notification of applicants not selected for appointment or promotion; and
- (4)** The notification of applicants of their current status on civil service registers.

HISTORY: Acts 1939, ch. 221, § 20; C. Supp. 1950, § 1034.42 (Williams, § 423.24t); Acts 1972, ch. 453; 1979, ch. 241, § 1; T.C.A. (orig. ed.), § 8-3209; Acts 1980, ch. 880, § 1; 1983, ch. 279, § 1; 1988, ch. 612, §§ 1, 2; Acts 1989, ch. 591, § 113; 1996, ch. 947, § 1.

Exhibit C – NEOGOV Contract

Additionally, a contract between the Tennessee Department of Finance and Administration and NEOGOV, Inc., a private corporation based in El Segundo, California, provides software to assist DOHR in human resource management. DOHR has used software from NEOGOV since 2008. The software automates and streamlines the recruitment process through on-line certifications, applications, testing, and selections. The software allows for filtering for eligible candidates that are required to have certifications and allows candidates to directly input their application information. The software allows for candidates to receive notifications through emails. This software also provides for the announcement of one-time promotions, whereby the hiring agency can tailor the parameters of the candidate pools based on work-units, divisions, departments, or service-wide postings. DOHR officials also use NEOGOV software to close enrollment to all job classes except those positions with openings, thereby limiting the number of classes that candidates can apply.

Exhibit D – Steps DOHR Has Taken to Improve the System

DOHR officials acknowledge that many rating guidelines include complex terms and technology that is ever-changing. In efforts to reduce the number of required assessments, DOHR has

- designated 40 job classifications from competitive to non-competitive, eliminating the need for hiring agencies to use registers for these special job classes, provided through the *Tennessee Code Annotated*, Section 8-30-317;
- changed 300 job classifications (15 percent) out of a total 1330 to two-banded pools (an exclusive listing with only two distinct groups, either qualified or unqualified)-these changes have removed the need for complex, subjective, and time-consuming measures of rater assessments and ultimately give hiring agencies more choices than the previous pools;
- instituted a flexible staffing policy for approximately 100 select job classifications which enable employees in entry level or lower level job classifications to move up to the “working level” job classification without the use of registers after certain criteria have been met by the employee;

DOHR raters have traditionally used a 32 band scoring system to rank candidates on registers. The 32 bands were made up of those candidates scores of 70, 71, 72 . . . 100, and those that did not qualify (score was less than 70). If multiple candidates (five or more) scored 100 and all five were interested in the job, the hiring agency would be limited to choosing from those top five that scored 100. In 2009, DOHR initiated a two-banded scoring system for several job classifications including nurses and physicians. Candidates are placed in either the qualified pool or the unqualified pool and each candidate in the pool has the same score. Therefore, the hiring agency may choose any candidate from the qualified pool. DOHR has changed over 300 job classifications from the traditional 32 band scoring to the two-banded process. According to DOHR officials, job classes with fewer than 40 qualified candidates is effective and efficient as all must be considered by the hiring agency. DOHR officials stated that this two-banded process greatly simplifies the rating assessment process.

DOHR flexible staffing policy provides a method for moving employees up to a “working level” job classification from an entry-level job class or lower-level job class (“training” job classes). Initially, the entry-level job classification is filled through the normal rater assessment of the applicant’s experience and education or an examination. The flexible staffing policy allows for the department/agency to promote employees without the use of registers or reclassifications, or job announcements after certain criteria have been met by the employee. Employees appointed to a flexibly staffed training level job class must successfully complete the required probationary period before moving to the working level class without further examination, certification, or probationary period. Once the criteria has been met (usually a time period with good evaluations), the employee is moved up to the higher position. DOHR has established this method only for certain classifications, currently there are

approximately 100 working level job classifications. Some of the flexibly staffed job classes are “single flex,” in which an entry level job class “flexes” to a working level job class. An example would be a Correctional Counselor 1 flexes to a Correctional Counselor 2 after one year probation. A multi-flex position would involve an entry level job class and an intermediate level job class that flex directly to the working level in the same job series or two or more entry-level job classes that flex directly to the working level job classification.



POLICY

Approved by: Deborah E. Story, Commissioner	Policy Number: 11-061
Signature:	Supersedes: 09-021
Application: Executive Branch Agencies, Human Resource Officers	Effective Date: January 12, 2011
Authority: T.C.A. §4-3-1703, T.C.A. §8-30-101, T.C.A. §8-30-202, T.C.A. §8-30-320, and T.C.A. §8-30-322	Rule: Chapter 1120-02

Subject:

Reduction in Force Procedures

Required Notice to the Department of Human Resources

Pursuant to Tenn. Code Ann. §8-30-320, a reduction in force [RIF] occurs when a career employee is subject to layoff or possible layoff due to a shortage of work or funds, the abolition of a position, or other material change in duties or organization.

An appointing authority must notify the Commissioner of the Department of Human Resources [Commissioner] whenever that agency determines it will have employees involved in a RIF. After the initial contact, a formal written notification from the appointing authority to the Commissioner must be submitted which provides:

1. The reason for the RIF;
2. The number of positions identified for involvement in the RIF, the number of those positions currently filled and the number of positions slated for abolishment [the notification may provide an estimate if the agency has not yet determined the exact number of positions at the time of the written notification]; and
3. A copy of the agency's current approved competitive area plan.

This letter will become the agency's RIF Plan.

The Commissioner will notify the appointing authority in writing when the RIF plan is approved. After approval, DOHR will contact the agency's human resources officer and require the agency to provide additional information that includes:

1. The agency's list of positions to be abolished; and
2. The agency's list of potential RIF affected employees.

The agency must provide an excel spreadsheet in both electronic format and hard copy to the Department of Human Resources [DOHR] Reassignment Office that includes the position numbers slated for abolishment, the classifications and location by county, and the number of filled positions. An agency must provide this notice and the spreadsheets to the Commissioner and the Reassignment Office before the agency provides any notification letters to its employees.

Mission – providing innovative Human Resources leadership and solutions through people, for people.

Values – Communications * User-Friendly * Respect * Excellence * Integrity * Teamwork

Agencies must provide the DOHR Reassignment Office with two copies of all RIF related correspondence to employees [both initial and subsequent], copies of the Statement of Understanding where appropriate, and copies of the signed Acknowledgement of Receipt from the employee. Include the employee's Edison Employee Identification Number [Empl ID] in the top right-hand corner of each page. The DOHR Reassignment Team will provide one copy of each letter to the Technical Services Division for review and inclusion of career employees affected by RIF on the recall list.

Required Notice to Employees

A career employee affected by a RIF may be subject to layoff as least senior in a classification and competitive area or as a result of declining an offer to bump, retreat, or for placement in another state job. Therefore, all career employees in positions identified for a RIF and/or all career employees facing possible layoff because of a RIF shall receive written notice containing the reason[s] for the RIF ninety [90] calendar days in advance of the effective date of abolishment of a position or of a layoff. The ninety [90] day written notification required under the Tenn. Code Ann. §8-30-320 shall be hand-delivered and signed and dated by the employee, or sent to the employee by certified mail with return receipt requested. The notification period shall begin on the date of receipt of the written notice by the employee.

Within this ninety [90] day notice period, career employees affected by the RIF shall receive written notification containing any right to bump or retreat to another position within the competitive area. Employees serving subsequent probationary periods at the time of a RIF retain career status in the classification held immediately prior to appointment and compete based on that classification. Employees who are least senior and do not have a right to bump or retreat may be offered an opportunity for placement into a vacant position within their agency in accordance with civil service regulations. Employees receiving an offer to bump, retreat, or for placement into a vacant position have three [3] workdays to accept or reject the job offer. A Statement of Understanding outlining the classification, location, and new salary, if appropriate, must accompany an offer letter. The employees must indicate on the Statement of Understanding whether they will accept or refuse the offer, sign and date, and return the completed statement to the appropriate person as listed in the offer letter. Should a career employee refuse a RIF offer to bump or retreat, provisions of Tenn. Code Ann. §8-30-320 are considered met and the employee will be laid off at the end of the ninety [90] day notice period.

The written notice relative to a RIF option of bumping, retreating, or an offer for placement into a vacant position for an employee without a right to bump or retreat, may be included in the initial ninety [90] day written notification or be in subsequent written correspondence if the employee's rights are not identified at the time of the initial notice. If there is no right to bump or retreat and no opportunity for placement, the employee must receive written notification that shows the effective date of layoff as the 91st day of the notice period. Subsequent notification of a RIF option or a subsequent notice of layoff does not begin a new ninety [90] day notice period.

Business needs of the organization may necessitate a temporary delay in the date of layoff to ensure continuation of services. In these cases, the appointing authority must provide written notification to the Commissioner stating the necessity for delaying the layoff along with the names and position numbers of the employees affected by this decision. After approval from the Commissioner, the employees shall receive written notice of the delay and the approximate length from the appointing authority. This does not extend or alter the original ninety [90] day notification period.

The notification requirements addressed in this policy shall apply in all instances except where such notice shall place the state in a position of liability for the federal or grant portion of any employee's salary in cases where the state had less than one-hundred twenty [120] day notice of funding reduction, or when such notice would prohibit any agency from closing the fiscal year with a balanced budget.

Determining the Order of Layoff

Prior to the initiation of a RIF, former career employees in a job sharing situation shall, where possible, have the opportunity to return to full-time employment, within their competitive area, with career status. Such return to full-time employment shall not displace any career employee. If both employees held career status in the classification at the time they entered into a job sharing situation and both wish to return to the career service, the employee with the highest total months of state service has first priority to return to full-time employment in the position.

Determining bumping or retreating rights for career employees is based on total months of state service in the executive branch of state government as defined in Tenn. Code Ann. §8-30-101[23]. When calculating total months of state service for the purpose of a RIF, an employee entitled to veterans preference points receives an additional five [5] years, or sixty [60] months, credit towards the total months of state service. Eligibility for veterans preference points is determined pursuant to Tenn. Code Ann. §8-30-306 and Policy 11-008.

An agency may formally designate positions to remain vacant during a RIF for budgetary purposes. For vacant positions not designated to remain vacant for budgetary purposes, freeze exceptions are not required when an employee moves into a vacant position as a result of a RIF offer to bump or retreat or an offer for placement into a vacant position. Freeze exceptions are required for filling vacancies from the recall list or through the reassignment process using the minimum qualifications list as outlined in the Employee Reassignment Process Implementation Plan.

Each agency is responsible for making determinations in relation to any ties in total months of state service. In the case of a tie between two [2] or more employees in determining the order of bumping or retreating or in the order of layoff, the agency is responsible for resolving the tie using the criteria below. The agency must maintain documentation regarding the factors used in making any decision and is responsible for resolving any disputes in its decisions.

1. If all employees involved in the tie have a performance rating within the last twelve [12] months, employees whose most recent evaluation is good [3], superior [4], or exceptional [5] will be given preference over those whose most recent rating on record is an unacceptable [1] or marginal [2].
2. If there continues to be a tie, priority is given for the highest overall performance rating score on the most recent evaluation.
3. If there continues to be a tie, priority is given for the highest register score at the time of appointment to the current classification.
4. If there continues to be a tie, priority is given for the highest register score at the time of initial appointment.

A career employee may bump or retreat into a position classified for selective certification by the Examination Development, Classification-Compensation Division of DOHR if the employee previously gained status in a position with the same special qualifications necessary for appointment to that position. If the employee has never gained status in a position with those same special qualifications, the Applicant Services

Division of DOHR must first determine that the employee holds the necessary special qualifications as outlined in the approval for selective certification.

An involuntary reduction in rank occurs when a career employee accepts an offer to retreat or for placement into a lower level classification in accordance with civil service procedures. The salaries of employees that retreat or those reduced in rank [moving from a position in a job classification to a position in another job classification with a lower salary grade] as the result of a RIF will be subject to a reduction in salary as outlined in the Employee Reassignment Process Implementation Plan.

Requirements for Processing RIF Transactions

Staff in the Technical Services Division of DOHR will review each RIF related letter and determine the employee's status on the recall list. This includes the employee's eligibility for placement on the list, changes in priority ranking based on subsequent job offers, and removal from the list once an employee accepts or declines an equal or higher level position in an acceptable location [county] or two [2] years pass as outlined in Tenn. Code Ann. §8-30-322 and the Rules of the Department of Human Resources.

Employee transactions that are the result of a RIF situation should include the message "RIF RELATED" in the comments box of the transaction when entered into Edison. Transactions for employees receiving an involuntary reduction in rank or employees changing work counties as a result of a RIF action will require a copy of the Statement of Understanding signed by the employee indicating their understanding of the effect of these actions.

Questions regarding RIF policy and procedures should be directed to the Employee Relations Division. Questions regarding the recall list should be directed to the Technical Services Division.

Definitions Relating to Reduction in Force (Attachment 1)

Bona Fide Offer. An offer of employment to an employee affected by a reduction in force to a position at a comparable level and in a location previously declared acceptable by the employee.

Bumping. The action of an employee of higher retention level displacing an employee of lower retention level in the same job classification.

Career Employee. An employee who holds a position in an agency in the state service in which the employee has career status.

Career Status. The status granted an employee by an agency upon completion of any probationary period required for the job classification in that agency.

Classification/Class of Positions. A group of positions sufficiently alike in duties, authority and responsibilities such that the same general qualifications may reasonably be required and the same schedule of pay equitably applied to all positions in the group.

Competitive Area. A geographic organizational area, designated by the appointing authority, within which reduction in force competition takes place. Whenever feasible, the appointing authority should make the competitive area be the county in which the employee works and each county that touches the county in which the employee works.

Eligible. A person who has qualified for appointment to a position in the career service.

Initial Probation/Initial Probationary Period. The first probationary period an employee serves in a continuous period of employment in an agency pursuant to becoming a career employee in that agency.

Job Sharing. Placement of more than one part-time employee in a single full-time position subject to budgetary limitations and the approval of the Commissioner. Positions used for job sharing are considered in the executive service.

Layoff. A separation of an employee from state service as a result of a reduction in force.

Occupational Series. A group of job classifications with sufficiently similar duties, responsibilities, authorities and minimum qualifications so that movement from higher to lower level jobs may be accomplished without further examination or competition.

Reduction in Force/RIF. Any job action due to a shortage of work or funds, or the abolition of a position or other material change in duties or organization that may result in the layoff of a career employee.

Retreating. The action of an employee moving from one position to another position at a lower competitive level which is within the same occupational series or, in which the employee has previously held career status.

Selective Certification. The process of identifying eligibles who possess the special qualifications necessary for appointment to a position or a group of positions designated as a sub-classification.

State Service. All officers and positions of trust or employment in the executive branch and all boards, commissions and agencies in state government, except those specifically excluded herein. The state service does not include officers, employees and positions in:

- [A] The legislative branch of state government including, but not limited to, employees of the fiscal review committee, and the employees of any other committee, office or other entity created pursuant to law or resolution of either house of the general assembly for the purpose of serving either or both houses of the general assembly in executing its duties under the Constitution of Tennessee;
- [B] The judicial branch of state government including, but not limited to, employees of the administrative director of the courts;
- [C] The office of the secretary of state;
- [D] The office of the state treasurer;
- [E] The office of the comptroller of the treasury;
- [F] The office of the attorney general and reporter;
- [G] The offices of the district attorneys general and the district public defenders;
- [H] The schools, institutions and entities governed by the board of regents and the University of Tennessee board of trustees, including the members of the teaching staffs and the staffs of the boards themselves; only certified professional employees of the Tennessee School for the Blind, Tennessee School for the Deaf, Alvin C. York Institute, and any other special school hereafter established;
- [I] Any administrative boards and commissions, or any other officers or employees, attached to the entities listed in subdivisions [A]-[H] for administrative purposes;
- [J] The Tennessee higher education commission and all employees of that commission; and
- [K] All employees of the Tennessee advisory commission on intergovernmental relations.

Subsequent Probation. Any probationary period served by a career employee in an agency after the successful completion of an initial probationary period in that agency or after the employee obtains career status in that agency.