

Chapter 240

1969 REPLACEMENT PART

Merit System for State Employees

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ADMINISTRATIVE PROVISIONS

240.005 Short title of chapter. This chapter shall be known as the State Merit System Law.

240.010 Purpose of chapter. The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles and scientific methods, governing the appointment, promotion, transfer, layoff, removal and discipline of its officers and employees, and other incidents of state employment. Except as otherwise provided in this chapter, all appointments and promotions to positions in the state service shall be made on the basis of merit and fitness, to be ascertained by competitive examinations.

240.015 Definitions. As used in this chapter, unless the context clearly requires otherwise:

(1) "Appointing authority" means an officer or agency having power to make appointments to positions in the state service.

(2) "Class" or "class of positions" means a group of positions in the state classified service sufficiently alike in duties, authority and responsibilities that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to, all positions in the group.

(3) "Board" means the Public Employee Relations Board.

(4) "Division" means, except in the phrase "division of the service," the Personnel Division referred to in ORS 240.055.

(5) "Administrator" means the Administrator of the Personnel Division.

(6) "Division of the service" means a state department or any division or branch thereof, any agency of the state government, or any branch of the state service, all the positions in which are under the same appointing authority.

(7) "Eligible" means a person whose name is on a list.

(8) "Employment list" means a list of persons who have been found qualified by an entrance test for appointment to a position in a particular class.

(9) "Entrance test" means a test for positions in a particular class, admission to which is not limited to persons employed in the state service.

(10) "List" means an employment list, a promotion list or a reemployment list.

(11) "Promotion list" means a list of persons who have been found qualified by a promotion test for appointment to a position in a particular class.

(12) "Promotion test" means a test for positions in a particular class, admission to which is limited to employees in the classified service who have held a position in another class for a period of not less than six months.

(13) "Reemployment list" means a list of persons who have been regular employees in a particular class and who are entitled to have their names certified for appointment to a position in that class.

(14) "Regular employee" means an employee who has been appointed to a position in the classified service in accordance with this chapter after completing his trial service period.

(15) "State service" means all offices and positions in the employ of the state other than those of commissioned, warrant and enlisted personnel in the military and naval services thereof.

[Amended by 1959 c.690 §1; 1969 c.80 §30]

240.055 Personnel Division. The Department of Civil Service that has heretofore functioned under ORS chapter 240 is hereby renamed the Personnel Division and transferred into the Executive Department of the state.

[Amended by 1969 c.80 §31]

240.060 Public Employee Relations Board; qualification of members. The Civil Service Commission that has functioned under ORS chapter 240 shall be continued as a board of three members to be known as the Public Employee Relations Board. Each member of the board shall be a citizen of the state known to be in sympathy with the application of merit principles to public employment and shall be of recognized standing and known interest in public administration and in the development of efficient methods of selecting and administering personnel. No member of the board shall hold, or be a candidate for, any public office. No person shall be appointed to the board who has held an elective public office or appointive public office of a partisan nature, or position in a political party, within six months immediately preceding his appointment to the board. No member of the board shall be an employee of the state, municipality or any political subdivision.

[Amended by 1969 c.80 §32]

240.065 Appointment; terms; vacancies.

The members of the board shall be appointed by the Governor for a term of three years, with the term of one member expiring on June 30 of each year. Each member shall be appointed for a term ending three years from the date of the expiration of the term for which his predecessor was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term. Each member of the board shall hold office until his successor is appointed and qualifies.

[Amended by 1969 c.80 §34]

240.070 [Repealed by 1967 c.73 §3 (240.071 enacted in lieu of 240.070)]

240.071 Compensation and expenses of members. A member is entitled to compensation and expenses as provided in ORS 292.495.

[1967 c.73 §4 (enacted in lieu of 240.070); 1969 c.80 §34a; 1969 c.314 §16]

240.075 Removal of members. A member of the board shall be removable by the Governor only for cause, after being given a copy of charges against him and an opportunity to be heard publicly on such charges before the Governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the Secretary of State.

240.080 Chairman; meetings; hearings. The board shall elect one of its members chairman. It shall meet at such times and places as are specified by call of the chairman or the Governor. All hearings shall be open to the public. Two members shall constitute a quorum for the transaction of business.

240.085 [Repealed by 1969 c.80 §35 (240.086 enacted in lieu of 240.085)]

240.086 Duties of board. The primary responsibility of the board shall be to foster and protect a merit system of personnel administration in state government. In carrying out this function it shall:

(1) Review and hear comments on any rules or modifications thereof adopted by the personnel division. Such a rule or modification does not become effective if the board finds that the rule is arbitrary, improper or contrary to law and disapproves the rule or modification on that basis.

(2) Review any personnel action that is alleged by an affected party, or an organization certified by the rules of the board as representing an affected party, to be arbitrary

or contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct. The board on its own motion may act with like effect under this subsection.

(3) Adopt such rules or hold such hearings as it finds necessary properly to perform the duties, functions and powers imposed on or vested in it by law.

(4) Submit annually to the Governor and regularly to the Legislative Assembly a report of its activities and the operation of this state's personnel system.

[1969 c.80 §35a (enacted in lieu of 240.085)]

240.090 [Repealed by 1969 c.80 §92]

240.095 Division authority to provide services to municipalities and political subdivisions. (1) The division may enter into agreement with any municipality or political subdivision of the state to furnish services and facilities of the division to the municipality or political subdivision in the administration of its personnel on merit principles. Any such agreement shall provide for the reimbursement to the state of the cost of the services and facilities furnished, such reimbursements to be deposited to the credit of the Local Government Personnel Assistance Account. All municipalities and political subdivisions of the state may enter into such agreements.

(2) The division may cooperate with governmental agencies for other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for appointment in accordance with the provisions of this chapter.

[Amended by 1969 c.80 §37; 1969 c.489 §5]

240.097 Local Government Personnel Assistance Account. There is created in the General Fund of the State Treasury a Local Government Personnel Assistance Account. All moneys in the account are appropriated continuously to the division for purposes of furnishing services and facilities to municipalities and political subdivisions of this state, with respect to the administration of their personnel system on merit principles, under authority of any provision of this chapter.

[1969 c.489 §2]

240.099 Board authority to provide services to municipalities and political subdivisions. The board may enter into agreement with any municipality or political subdivision of this state to furnish any of its services and

facilities, other than fact-finding or the services of the State Conciliation Service for which no reimbursement is required, and such agreement shall provide for reimbursement to the state of the cost of the services and facilities furnished. All municipalities and political subdivisions of this state may enter into such agreements.

[1969 c.658 §2]

Note: ORS 240.099 was not added to and made a part of ORS chapter 240 by legislative action.

240.100 Administer oaths; subpoena witnesses; compel production of papers. Each member of the board may administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter.

[Amended by 1969 c.80 §38]

240.105 Use of public facilities of state or municipalities. All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the division or board the reasonable use of public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing or investigation authorized by this chapter or ORS chapter 243. The division or board shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

[Amended by 1969 c.80 §38a]

240.110 Records and information to be furnished. All officers and employees shall furnish any records or information, except records made confidential by statute, or administrative order or rule, which the division requests for any purpose of this chapter.

[Amended by 1969 c.80 §39]

240.115 Action to secure compliance with chapter. The board may maintain such action or proceeding at law or in equity as it considers necessary or appropriate to secure compliance with this chapter and its rules and orders thereunder.

240.120 Records public. The records of the division and the board, except such records as the rules may require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to regulations as to the time and manner of inspection which may be prescribed by the division or board.

[Amended by 1969 c.80 §39a]

240.123 Board personnel; executive secretary of board. (1) The board shall employ such personnel as it considers necessary for the efficient administration of chapter 80, Oregon Laws 1969, and fix the compensation of its employees in accordance with the compensation plan for classified employees.

(2) The board shall designate one of its employees as its executive secretary and delegate to him such administrative duties and responsibilities as it finds advisable to carry out the purpose of chapter 80, Oregon Laws 1969. The executive secretary shall be in the classified service.

[1969 c.80 §35e]

Note: ORS 240.123 was not added to and made a part of ORS chapter 240 by legislative action.

240.125 Administrator; appointment; confirmation. (1) The Personnel Division shall be under the supervision and control of an administrator, who is responsible for the performance of the duties, functions and powers imposed upon the division.

(2) Not later than the 20th day after any vacancy in the position of administrator, the board shall conduct a competitive examination for the position of administrator and not later than the fifth day thereafter certify to the Governor a list of the names of the five highest ranking eligibles who are willing to accept the appointment. On request, the board shall certify to the Governor a second list of names of the next five highest ranking eligibles who are willing to accept an appointment. The Governor shall appoint the administrator from among the persons so certified. The person appointed may hold no other public office or employment. The administrator shall serve for a term of four years beginning on the date of his appointment.

(3) The appointment of the administrator is subject to confirmation by the Senate by the affirmative vote of the majority of the Senators voting on the confirmation, a quorum being present. In case the Governor's choice of the administrator is not confirmed, the Governor shall make another appointment subject to the confirmation by the Senate as provided in this subsection. If an appointment is made in the interim between legislative sessions, the Senate shall act through the Committee on Executive Appointments as provided by ORS 171.560, and the administrator so appointed is subject to the confirmation of the Senate when it next convenes.

[Amended by 1969 c.80 §40]

240.130 Removal of administrator. The Governor may remove the administrator for cause, but before taking such action he shall first give to the administrator a statement in writing of his intention to effect his removal and the reason therefor. Not later than the fifth day after receipt of such statement in writing, the administrator may appeal in writing to the board for a hearing. Not later than the 10th day after the hearing, the board shall render its decision which shall be binding and final.

[Amended by 1969 c.80 §41]

240.135 Salaries of division personnel. Salaries and positions of personnel in the division shall conform to the classifications and pay plan provided by this chapter.

[Amended by 1969 c.80 §42]

240.140 Deputy administrator. The administrator may designate an employe of the division as the assistant administrator, to act for him when he is unable to act.

[Amended by 1969 c.80 §42a]

240.145 Duties of administrator. The administrator, subject to the approval of the Director of the Executive Department, shall direct and supervise all the administrative and technical activities of the division. In addition to the duties imposed upon him elsewhere in this chapter, he shall:

(1) Attend all meetings of the board.

(2) Establish and maintain a roster of all employes in state service, in which there shall be set forth, as to each employe, the class title of the position he holds, his salary or pay; any change in his class title, pay, status or merit rating; and any other data about him that the division deems necessary.

(3) Select for appointment, under this chapter, such employes of the division and such experts and special assistants as are necessary to carry out effectively the provisions of this chapter.

(4) Prepare, in accordance with the provisions of this chapter and the rules adopted thereunder, appropriate tests, rating of candidates for appointment, and eligible lists.

(5) Make certifications for appointment within the classified service, in accordance with the provisions of this chapter.

(6) Devise plans for and cooperate with appointing authorities and other supervisory officers in the conduct of employe training

programs, to the end that the quality of service rendered by state personnel may be continually improved.

(7) Investigate from time to time the operation and effect of this chapter and the rules thereunder, and report his findings and recommendations to the Director of the Executive Department.

(8) Make annual reports to the Director of the Executive Department regarding the work of the division, and such special reports as the director considers desirable.

[Amended by 1969 c.80 §43]

240.150 Payrolls must be certified by administrator before payment can be made. No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service, or appointed to a position for the duration of an emergency under ORS 240.385, unless the payroll voucher or account of such pay bears the certification of the administrator or his authorized agent that the persons named therein have been appointed and employed in accordance with the provisions of this chapter and the rules and orders thereunder.

[Amended by 1969 c.348 §1]

240.155 Merit system examiners. The administrator, with the approval of the Director of the Executive Department, shall select officers or employes in the state service to act as examiners in the preparation and rating of tests. An appointing authority shall excuse an employe in his division from his regular duties for the time required for his work as an examiner. Officers and employes shall not be entitled to extra pay for their service as examiners, but shall be entitled to reimbursement for necessary traveling and other expenses.

[Amended by 1969 c.80 §44]

240.160 Agency personnel officers. A division of the service may designate a staff employe to serve as personnel officer for that division of the service. Such a personnel officer shall administer, within his division of the service, training and educational programs developed by the administrative head thereof in cooperation with appointing authorities and others and shall have such other functions of the Personnel Division as are authorized by the administrator.

[Amended by 1969 c.80 §45]

240.165 Cost of operating division divided among various agencies of state government. (1) The administrative expenses and costs of operating the division shall be paid by the various divisions of the service in the state government. To establish an equitable division of the costs, the amount to be paid by each division of the service shall be determined in such proportion as the service rendered to each division of the service bears to the total service rendered by the Personnel Division.

(2) The Personnel Division, at such times as its administrator deems proper, shall estimate in advance the expenses that will be incurred during a given period of not to exceed six months and, upon approval by the Director of the Executive Department, the division shall render to each division of the service affected thereby an invoice for its pro rata share of such expenses. Each division of the service shall pay such invoice as an administrative expense of that division of the service from funds or appropriations available to that division of the service in the same manner as other claims against the state are paid. If the estimated expenses in the case of any division of the service are more or less than the actual expenses, the difference shall be reflected in the next following estimate of expenses and invoice for that division of the service.

[Amended by 1969 c.80 §46; 1969 c.489 §6]

240.167 Cost of operating board divided among various divisions of state government.

(1) The administrative expenses and costs of operation of the Public Employee Relations Board in behalf of the state service shall be paid by the various divisions of the service in the state government. To establish an equitable division of the expenses and costs, the amount to be paid by each division of the service shall be determined in such proportion as the service rendered to that division bears to the total service rendered by the board to all divisions.

(2) The Public Employee Relations Board, at such times as its executive secretary considers proper, shall estimate in advance the expenses and costs that will be incurred during a period of not to exceed six months and shall render to each division of the service in the state government affected thereby an invoice for its pro rata share of such expenses and costs. Each division shall pay such invoice promptly as an administrative expense of that division from funds appropriated to or otherwise available for expenditure by that

division, in the same manner as other claims against the state are paid. If the estimated expenses in the case of any division are more or less than the actual expenses, the difference shall be reflected in the next following estimate of expenses and invoice for that division of the service.

[1969 c.658 §4]

Note: ORS 240.167 was not added to and made a part of ORS chapter 240 by legislative action.

240.170 Personnel Account; Public Employee Relations Account.

(1) The separate account in the General Fund formerly known as the Civil Service Department Account is continued as the Personnel Account. All moneys received by the division pursuant to the state personnel management program shall be deposited in the State Treasury to the credit of the Personnel Account. Moneys deposited to the credit of the Personnel Account are appropriated continuously out of that account for the payment of all expenses incurred by the division for administration of the state personnel management program.

(2) There is established in the General Fund a separate account to be known as the Public Employee Relations Account. All moneys received by the board shall be deposited in the State Treasury to the credit of the account. Moneys deposited to the credit of the Public Employee Relations Account are appropriated continuously out of the account for the payment of all expenses incurred by the board.

[Amended by 1957 c.437 §2; 1969 c.80 §47; 1969 c.489 §8]

240.180 Rule-making authority of administrator; non-applicability of Administrative Procedures Act to actions of Governor.

(1) The administrator, subject to approval by the Director of the Executive Department and the board and in compliance with ORS 183.310 to 183.510, shall make such rules as are necessary to carry out the duties, functions and powers of the Personnel Division under ORS chapter 240.

(2) Notwithstanding ORS 183.310 to 183.510, ORS 183.310 to 183.510 does not apply with respect to actions of the Governor authorized under ORS chapter 240, or with respect to actions of the division or rules thereof authorized under ORS 240.215, 240.220, 240.235, 240.240, 240.380, 240.385, 240.395, 240.565 or 240.570.

[1969 c.80 §36]

Note: ORS 240.180 was not added to and made a part of ORS chapter 240 by legislative action.

CLASSIFICATION AND COMPENSATION PLANS

240.195 Categories of positions in state service. Positions in the service of the state are divided into the following categories:

(1) The classified service as provided in ORS 240.210.

(2) The unclassified service as provided in ORS 240.205.

(3) The exempt service as defined in ORS 240.200.

[1955 c.738 §1]

240.200 Exempt service. The exempt service shall comprise:

(1) Officers elected by popular vote and persons appointed to fill vacancies in elective offices.

(2) Members of boards and commissions and administrative heads required by law to be appointed by the Governor.

(3) Judges, referees, receivers, court reporters, bailiffs, officers of the court, jurors and notaries public.

(4) Officers and employees of the Legislative Assembly.

(5) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislative Assembly or a committee thereof, or by authority of the Governor.

(6) Any other position designated by law as exempt.

[1955 c.738 §2; 1969 c.80 §48; 1969 c.199 §17]

240.205 Unclassified service. The unclassified service shall comprise:

(1) One executive officer and one secretary for each board or commission, the members of which are elected officers or are appointed by the Governor.

(2) The director of each department of the state government.

(3) Except for an administrator described in subsection (2) of ORS 240.200, the administrator of each division within a department of state government required by law to be appointed by the director of the department with the approval of the Governor.

(4) One principal assistant or deputy and one private secretary for each elective executive or administrative officer, and one for each executive or administrative officer required by law to be appointed by the Governor.

(5) Employees in the Governor's office and the principal assistant and private secretary in the Secretary of State's division.

(6) One secretary or clerk of each judge of a court of record.

(7) The deans, professors, principals, instructors and teachers in the Oregon State School for the Deaf and in the Oregon State School for the Blind.

(8) Apprentice trainees only during the prescribed length of their course of training.

(9) Student employees on part-time basis in the state system of higher education.

(10) Licensed physicians and dentists employed part time, student nurses, interns, and patient or inmate help in state institutions.

(11) Lawyers employed in their professional capacities.

(12) The deputy superintendent, all captains, lieutenants, sergeants, corporals, privates first class, privates, recruits, and the directors and assistant directors of the bureaus of the Oregon State Police.

(13) The deputy superintendent, three associate superintendents, and one executive assistant in the Department of Education.

(14) Temporary seasonal farm laborers engaged in single phases of agricultural production or harvesting.

(15) Three division administrators of the Department of Transportation designated as follows:

(a) State Highway Engineer.

(b) Administrator of the Motor Vehicles Division.

(c) Aeronautics Administrator.

(16) Any other positions designated by ORS 184.615 or another statute as unclassified.

[Amended by 1953 c.699 §3; 1955 c.738 §4; 1957 c.597 §1; 1959 c.230 §1; 1959 c.566 §4; 1961 c.645 §1; 1965 c.405 §2; 1969 c.80 §49; 1969 c.199 §18; 1969 c.564 §3; 1969 c.599 §§66a, 66b]

240.207 Other unclassified positions. (1)

In addition to those positions designated by ORS 240.205, the unclassified service shall include:

(a) The chancellor of the state system of higher education, the vice chancellors and the assistants and one private secretary to the chancellor; and

(b) All staff members of the state system of higher education in the following positions, whether the type of service is teaching, research, extension or counseling:

(A) President and one private secretary to each president.

(B) Vice president.

(C) Comptroller, chief budget officer, business manager, director of admissions and registrar.

(D) Dean, associate dean and assistant dean.

(E) Professor, associate professor, assistant professor, instructor, lecturer, research assistant, research associate, scholar and fellow.

(F) Director of athletics, coach and trainer.

(2) No position may be filled and no appointment made under this section, other than to a position directly involved in teaching, research, extension or counseling, unless a determination has been made by the Personnel Division as to whether the position shall be in the classified or unclassified service.

(3) Pending legislative action, the division may exclude from the classified service any additional positions within the state system of higher education that it finds not to be in the best interests of this state to be within the classified service. Such exclusions are effective only when promulgated as a rule of the division under ORS 240.180. [1969 c.564 §2]

240.210 Classified service. The classified service comprises all positions in the state service existing on June 16, 1945, or thereafter created and which are not listed in ORS 240.200 or 240.205. [Amended by 1955 c.738 §7]

240.215 Classification plan; minimum qualifications for each class. (1) The division shall adopt a classification plan which shall group all positions in the classified service in classes based on their duties, authority and responsibilities; and which shall set forth for each class of positions, a class title and a statement of the duties, authority and responsibilities thereof. A statement of the minimum qualifications for each class shall be adopted in like manner. Each class of positions may be subdivided and classes may be grouped and ranked in an appropriate manner. The classification plan and minimum qualifications shall be effective only when approved by the Governor.

(2) After consultation with appointing authorities, the administrator shall allocate each position in the classified service to the appropriate class therein on the basis of its duties, authority and responsibilities. Any employee affected by allocation of a position to a class shall, after filing with the administrator a written request for reconsideration thereof, be given a reasonable opportunity to be heard by the board. [Amended by 1969 c.80 §50]

240.220 Modification of classification plan or minimum qualifications. (1) An appointing authority desiring to establish a new position in the classified service or to make any permanent and substantial change in the duties, authority or responsibilities of a position in that service, shall notify the division in writing of the proposed change. Any employee affected by the contemplated change may appeal the change to the board.

(2) A modification of the classification plan or the minimum qualifications shall be effective only when approved by the Governor.

[Amended by 1969 c.80 §51]

240.225 Class titles used to designate positions. The class titles set forth in the classification plan shall be used to designate the positions allocated to such classes in all official records, vouchers and communications.

240.230 Employment only under approved class titles. No person shall be appointed to or employed in a position in the classified service under a class title which has not been approved by the administrator as appropriate to the duties to be performed.

240.233 Continuing salary survey program. (1) The division shall maintain a continuing salary survey program. For this purpose the division shall compile information and prepare statistics on prevailing rates of salaries and wages in all positions of state service, regardless of position classification under ORS 240.195, as compared with salaries and wages for similar positions in private industry, in the service of other state governments and in federal service.

(2) Annually on December 1 the division shall publish a report on the results of the salary survey during the preceding year. The report shall disclose, among other things, the source of the information upon which the salary and wage comparison is based. Copies of the report shall be furnished to the Governor, the members of the legislature and the appointing authorities in the several state agencies.

(3) The appointing authorities and department heads of the state agencies shall cooperate with and assist the division in compiling the data required for the salary survey. [1955 c.738 §8; 1969 c.80 §52]

240.235 Compensation plan for classified service. (1) The division shall adopt a

compensation plan which shall include, for each class or position, a minimum and a maximum rate, and such intermediate rates as are considered necessary or equitable. In establishing the rates the division shall consider the prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, maintenance or other benefits received by employees, and the state's financial condition and policies.

(2) Modifications of the plan may be adopted by the division and shall be effective only when approved by the Governor.

(3) Except as provided in subsection (4) of this section, each employee in the classified service shall be paid at one of the rates set forth in the compensation plan for the class of positions in which he is employed.

(4) For a period not longer than 120 days next following any modification under ORS 240.220 affecting a position, the division may provide that the rate of compensation of the employee holding such position shall not be reduced by reason of any such modification.

[Amended by 1961 c.451 §1; 1969 c.80 §53]

240.240 Salary plans and leave with pay arrangements for unclassified service. (1) The unclassified service shall not be subject to this chapter, except that employees and officers in the unclassified service shall be subject to the laws and regulations pertaining to any type of leave with pay, except as otherwise provided in subsection (4) of this section.

(2) With regard to any unclassified position for which the salary is not fixed by law, and except as otherwise provided in subsections (3) and (4) of this section, a salary plan which is equitably applied to various categories in the unclassified service and is in reasonable conformity with the general salary structure of the state shall be maintained by the elected officials and other appointing authorities. For the purpose of establishing a salary plan, the appointing authorities may request the advice and assistance of the division. Any salary plan under this subsection shall be approved by the Executive Department. The department shall, before approval, submit all salary plans established by an appointing authority under this subsection to the division for review and recommendation if the salary plan was not submitted to the division by the appointing authority.

(3) The Secretary of State and the State Treasurer may for the purpose of

maintaining a salary plan for unclassified positions in their departments request the advice and assistance of the division.

(4) With regard to unclassified positions in the state system of higher education, the salary plan and arrangements for leave with pay shall be established by the State Board of Higher Education.

[1955 c.738 §5; 1969 c.80 §54]

240.245 Salary plans for exempt service. The exempt service shall not be subject to the provisions of this chapter, except that, with regard to any position for which salaries are not fixed by law, the officer authorized by law to appoint or fill such position shall maintain a salary plan equitably applied to the exempt position and in reasonable conformity with the general salary structure of the state.

[1955 c.738 §3; 1969 c.80 §55]

METHOD OF SELECTING EMPLOYEES FOR SERVICE IN CLASSIFIED POSITIONS

240.305 Filling positions in classified service. No person shall be appointed or promoted to a position in the classified service unless certified as eligible by the administrator. Vacancies in the classified service shall be filled only by appointment of an eligible certified by the administrator from a list or by provisional, temporary or emergency appointment or by transfer or demotion of a regular employee.

240.310 Lists to be maintained. In accordance with rules adopted by the division, the administrator shall establish and maintain divisional reemployment, reemployment, employment and promotion lists.

[Amended by 1969 c.80 §56]

240.315 Reemployment lists. (1) Divisional reemployment lists and reemployment lists, shall contain the names of persons who have been regular employees, and who were separated from their positions for reasons other than fault or delinquency on their part.

(2) The order in which names shall be placed on divisional reemployment or reemployment lists shall be established by the rules in which merit rating and length of service shall be taken into account.

(3) The term of eligibility of such candidates shall be determined by the division, but shall not exceed two years from the

date of their separation from the service in which they earned reemployment rights.

(4) The division may strike the name of a person from a reemployment list of a division of the service or a reemployment list, if it finds, after giving him notice and an opportunity to be heard, that such person is not qualified to perform satisfactorily the necessary duties.

[Amended by 1969 c.80 §57]

240.320 Promotion and employment lists. (1) Promotion lists and employment lists for the various classes of positions in the classified service as are found necessary or desirable to meet the needs of the service, shall contain the names of persons who have been found qualified for appointment to a particular position by test.

(2) The eligibles shall be ranked in order of their ratings earned in the tests given for the purpose of establishing such lists.

(3) The division may consolidate or cancel promotion lists and employment lists as the needs of the service may require and as authorized by the rules of the division. A promotion list or employment list which has been in force for six months or more shall be deemed canceled upon the establishment of a new promotion list or employment list, as the case may be, for the same class of positions.

[Amended by 1969 c.80 §58]

240.325 Extending eligibility of lists. The division may extend the period of eligibility of any list by order made before the expiration of the list, but the eligibility of a list shall not be extended to a total of more than two years.

[Amended by 1969 c.80 §59]

240.330 Entrance and promotion tests. In accordance with the rules adopted by the division, the administrator shall from time to time conduct entrance tests and promotion tests as necessary for establishing employment lists and promotion lists.

[Amended by 1969 c.80 §60]

240.335 Character of tests. (1) The entrance and promotion tests shall be competitive and shall be of such character as to determine the qualifications, fitness and ability of the persons tested to perform the duties of the class of positions for which a list is to be established.

(2) The tests may be written, oral, physical or in the form of a demonstration of skill, or any combination of such types.

(3) The tests may take into consideration education, experience, aptitude, capacity, knowledge, character, physical fitness and other qualifications as enter into the determination of the relative fitness of the applicants.

240.340 Limitations on inquiries in application or test; discrimination based on race, religion or political opinions prohibited. (1) No question in any form of application or in any test shall be so framed as to elicit any information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions or affiliations. All disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened or promised by any person in the employ of any division of the service or of the Personnel Division against or in favor of any applicant, eligible or employee because of his race or religious or political opinions or affiliations or solely because of age if he is 25 years of age or older and under 65 years of age.

(2) However, the limitations of subsection (1) of this section shall not prevent any inquiry as to whether the applicant, employee or eligible supports the Constitution of the United States of America and of the State of Oregon.

[Amended by 1959 c.689 §5; 1959 c.694 §1; 1969 c.80 §61]

240.345 Admission to tests. The division shall establish rules specifying the qualifications for admission to any test. Subject to the rules, admission to tests shall be open to all persons who appear to possess the required qualifications and may be lawfully appointed to a position in the class for which a list is to be established and who pay the fee, if any, prescribed by the rules.

[Amended by 1969 c.80 §62]

240.350 Public notice of tests. (1) The administrator shall give public notice of each test at least two weeks in advance of such tests in the manner specified by rules adopted by the division.

(2) Each official notice of a test shall state the duties and pay of positions in the class for which the test is to be held, the qualifications required therefor, the time, place and manner of making application for admission to such test, the estimated number of vacancies to be filled, and other information considered pertinent.

[Amended by 1969 c.80 §63]

240.355 Test ratings; notice and review. The rating of each test shall be completed and the resulting list established not later than 90 days after the date on which the test was held, unless such time is extended by the division. Each person competing in any test shall be given written notice of his final earned rating and of his relative standing on the list, or of his failure to attain a place on the list. Each person competing in a test may, not later than one month after the establishment of the list and in accordance with the rules adopted by the division, have his rating in any and all parts reviewed and corrected if manifest errors are found. No such correction shall invalidate any appointment previously made from such a list.

[Amended by 1969 c.80 §64]

240.360 Order in which eligibles are certified. (1) Upon written notice of an appointing authority that a position in the classified service is to be filled, the administrator shall certify the names of highest ranking eligibles who are willing to accept appointment from lists for the class to which the position is allocated, or a comparable class.

(2) Reemployment lists of divisions of the service which contain only those names of employees laid off in good standing shall be used first in filling any vacant position. The order of priority of all other lists shall be governed by rules of the Personnel Division.

[Amended by 1955 c.140 §1; 1969 c.80 §65]

240.365 Number of names certified for each vacancy. (1) The number of names certified from:

(a) Reemployment lists of divisions of the service shall be equal to the number of vacancies to be filled.

(b) Employment lists may be five in the case of one vacancy with two additional names for each additional vacancy, plus the names of all individuals who have the same whole-number base score as the individual ranking lowest on the certificate. The Personnel Division by rule may prescribe separately for any classification a greater number of names to be certified from employment lists for each vacancy, but any such rule shall expire one year after the date of its promulgation unless sooner rescinded by the division.

(c) Other lists shall be three in the case of one vacancy with one additional name for each additional vacancy, plus the names of all individuals who have the same whole-number

base score as the individual ranking lowest on the certificate.

(2) The detailed condition and provisions for certification and appointments shall be prescribed by rule of the Personnel Division.

(3) If the appropriate lists do not contain the names of a sufficient number of eligibles willing to accept appointment to make possible the certification provided for in this section, the names of all eligibles on such lists who are willing to accept appointment shall be certified.

[Amended by 1969 c.80 §66; 1969 c.347 §1]

240.370 Removal of eligibles from list. The names of persons who have been certified for appointments three times to the same appointing authority and who have not received appointment, and the names of persons who have expressed unwillingness to accept appointment may, in the discretion of the administrator, be removed from a list.

240.375 Provisional appointments. If there is no appropriate list available, the administrator may authorize the provisional appointment of a person meeting at least the minimum prerequisites for the class to which the position is allocated. No position shall be filled by provisional appointment for more than 90 days unless the division declares an emergency pending the establishment of an appropriate employment list. No position shall be filled by provisional appointment more than once in any fiscal year, nor shall any person be appointed as a provisional employee more than once in any fiscal year, nor shall a provisional appointment in any event be extended more than 180 days; except that in those instances where a provisional appointee meeting the minimum qualifications for the class has served the specified 180 days and no examination has been given, the employee shall be placed in trial service status if the operating agency declares in writing that such employee is competent and the Personnel Division determines him qualified by an appropriate examination which includes an evaluation of performance. Any employee appointed to provisional status prior to January 1, 1959, shall be placed in trial service status upon passing the examination for his classification.

[Amended by 1959 c.375 §1; 1969 c.80 §67]

240.380 Temporary appointments. Whenever there is need of an employee for a

temporary period the administrator may authorize a selection from the five highest ranking available eligibles on the appropriate employment, promotion or reemployment list. Successive temporary appointments of the same person to the same position shall not total more than 90 days in any one year.

240.385 Emergency appointments. To prevent the stoppage of work or inconvenience to the public in case of an emergency, any appointing authority may appoint any person to any position for the duration of the emergency but not to exceed 60 days. A vacancy of which the appointing authority has had reasonable notice, or an employment condition of which he had previous knowledge, shall not be considered an emergency under this section. The appointing authority shall report each emergency appointment to the administrator forthwith. No emergency appointment shall be renewed.

240.390 Procedure for selecting unskilled, semi-skilled and part-time employees.

(1) For positions involving unskilled or semi-skilled labor, or domestic, attendant or custodial work, or part-time positions, when the character or place of the work or other conditions of employment make it impracticable to supply the needs of the service by appointments made in accordance with the procedure prescribed by this chapter, the administrator, subject to the rules, may adopt, or authorize the use of, such other procedures as he determines to be appropriate in order to meet the needs of the service, while assuring the selection of such employees on the basis of merit and fitness.

(2) Such procedures may include the testing of applicants and maintenance of lists of eligibles by localities; the testing of applicants, singly or in groups, at periodic intervals, at the place of employment or elsewhere, after such notice as the administrator considers adequate; the registration of applicants who pass a noncompetitive test or submit satisfactory evidence of their qualifications; or any variation or combination of the foregoing, or other suitable method.

240.395 Suspension of merit system in emergencies; reinstatement. (1) In the event of emergency or abnormal employment conditions due to disaster, national defense, war or conflict in which the Armed Forces of the United States are participating and because of which Oregon citizens are subject to induc-

tion into the Armed Forces, if a critical shortage of persons available and employable to fill positions and discharge duties in the classified service results, and the division so finds and the Governor so certifies, the examination, certification and appointment procedures required by law shall be suspended for the duration of the emergency as to all or any classes of positions in which there is a shortage of employees.

(2) When the division determines that the emergency or abnormal condition no longer exists, and the Governor so certifies, the regular examination, certification and employment procedures shall be reestablished. Temporary appointments made with the approval of the division during the emergency period shall terminate 90 days after the date of establishment of eligible lists for positions to which temporary appointments have been made.

[Amended by 1969 c.80 §68]

TRIAL SERVICE AND REGULAR STATUS; MERIT RATINGS

240.405 Trial service period. (1) Except as provided in subsection (4) of this section, every person appointed to a position in the classified service after certification of his name from a promotional or an employment list, or a reemployment list containing the names of eligibles who have separated voluntarily from positions in the state service, shall serve a trial service period of not to exceed six months.

(2) Uninterrupted service in a position by a provisional employee which immediately precedes appointment to the position shall be counted as part of the trial service period.

(3) At such times during the trial service period and in such manner as the administrator may require, the appointing authority shall report to the administrator his observation of the employee's work, and judgment as to the employee's willingness and ability to perform his duties satisfactorily, and as to his habits and dependability.

(4) Where the appointing authority has established a professional or technical training program for positions requiring graduation from a four-year college or university or the satisfactory equivalent thereof in training and experience as established by the division, including but not limited to the training of accountants and auditors, which program has been approved by the administrator and which is for the purpose of developing the skills or

knowledge necessary for competent job performance in the specialized work of such authority, the employee may be required to train under such program for a period not exceeding six months and the trial service period for such employee shall be the length of the approved training program plus six months.

[Amended by 1961 c.647 §1; 1963 c.185 §1; 1969 c.80 §69; 1969 c.346 §1]

240.410 Removals during trial period.

(1) The appointing authority may remove an employee within the first two months of his trial service period only with the approval of the administrator.

(2) At any time during his trial service period, after the first two months thereof, the appointing authority may remove an employee if, in the opinion of the appointing authority, the trial service indicates that such employee is unable or unwilling to perform his duties satisfactorily or that his habits and dependability do not merit his continuance in the service. Upon such removal, the appointing authority shall forthwith report to the administrator, and to the employee removed, his action and the reason therefor.

(3) No more than three employees shall be removed successively from the same position during their trial service periods without the approval of the administrator.

(4) The administrator may remove an employee during his trial service period if he finds, after giving him notice and an opportunity to be heard by the board, that such employee was appointed as a result of fraud or error.

(5) If any employee is removed from his position during or at the end of his trial service period, and the administrator determines that he is suitable for appointment to another position, his name may be restored to the list from which it was certified. If any such employee was a regular employee in another position in the classified service immediately prior to his appointment, he shall be reinstated to his former position unless charges are filed and he is discharged as provided in this chapter.

240.415 Regular employee status upon satisfactory completion of trial service period. The employee shall be deemed to have served his trial service period satisfactorily, and to be a regular employee, unless at least 10 days prior to the expiration of the trial service period the appointing authority has notified the administrator in writing

that the employee's services have not been satisfactory.

240.420 [Repealed by 1961 c.646 §1]

240.425 Regular seasonal employees. Positions which occur, terminate and recur periodically and regularly regardless of the duration thereof shall be designated by rule of the division as seasonal positions, and employees regularly certified for and serving satisfactorily in such positions through one seasonal service period shall be entitled to permanent status as regular seasonal employees.

[Amended by 1969 c.80 §70]

240.430 Merit ratings. (1) In cooperation with appointing authorities, the division shall establish standards of performance for employees in each class of position in the classified service or for groups of classes, and a system of merit ratings based upon such standards.

(2) In such manner and with such weight as shall be provided in the rules, merit ratings shall be considered:

(a) In determining salary increases and decreases within the limits established by law and by the compensation plan.

(b) As a factor in promotion tests.

(c) As a factor in determining the order of layoff when forces must be reduced because of lack of funds or work, and the order in which names are to be placed on reemployment lists.

(d) As a means of discovering employees who should be promoted, demoted, transferred or dismissed.

[Amended by 1969 c.80 §71]

WORKING HOURS, LEAVES, VACATIONS, LAYOFFS, TRANSFERS, SUSPENSION, REDUCTION, DEMOTION, DISMISSAL

240.505 Working hours. The rules shall provide for the hours of work, holidays, and attendance regulations in the various classes of positions in the classified service.

240.510 Leaves of absence. (1) Written leave of absence without pay may be granted by the appointing authority with the approval of the division for a period not to exceed one year. Upon expiration of the leave the employee shall be reinstated to the position held before the leave was granted. Failure of

the employee to report promptly at the expiration of the leave shall be cause for dismissal.

(2) Leaves of absence shall be automatically granted all regular employees who have entered the service of the United States or its allies, since September 14, 1940, or who hereafter enter such military service. Such employees who are honorably discharged at the expiration of their military service, and who report for duty within six months following discharge, shall be returned to their last held position and at the salary rates prevailing for such positions on the date of resumption of duty, without loss of seniority or other employment rights. Term of military leave shall be counted in computing seniority according to rules established.

(3) Leaves of absence without pay for at least two years shall be granted automatically to all regular employees who serve in the Peace Corps as volunteers. Upon expiration of the leave the employee shall have the right to be reinstated to the position held before the leave was granted and at the salary rates prevailing for such positions on the date of resumption of duty without loss of seniority or other employment rights. Failure of the employee to report within 90 days after termination of his service shall be cause for dismissal.

[Amended by 1963 c.199 §3; 1969 c.80 §72]

240.515 Vacations. (1) Vacation with pay shall be granted to employees in accordance with the rules adopted by the division. Except as otherwise provided in subsection (3) of this section, an employee shall be entitled to a vacation of at least two work weeks with pay on completion of the first full 12 calendar months of service, and shall accrue at least one week of vacation with pay for each subsequent six full calendar months of service. An employee may accumulate a maximum of five work weeks of vacation with pay.

(2) Upon termination of employment:

(a) If a claim has been filed with the appointing authority charging that the employee has damaged or misappropriated state property or equipment, payment for accrued vacation shall be withheld until the claim has been settled. If the employee takes no action toward settlement of the claim within 60 days of the date his employment terminated, the appointing authority may declare the cash value of the accrued vacation forfeited.

(b) If no claim has been filed with the appointing authority against the employee, the appointing authority shall authorize payment of cash remuneration for accrued vacation earned up to the end of the last full month of service.

(3) The division may provide that employees whose full work year is an academic year, that is, that period between July 1 and June 30 next following during which school is normally in session, shall accrue at least one week of vacation with pay for each six full calendar months of service and shall be entitled to a vacation with pay of all accrued vacation time at the end of each academic year.

[Amended by 1953 c.353 §2; 1961 c.450 §1; 1969 c.80 §73]

240.520 Sick and disability leave. Sick and disability leave shall be granted with pay to employees in accordance with rules adopted by the division.

[Amended by 1969 c.80 §74]

240.525 Layoffs. (1) Whenever a reduction in employees is required because of a shortage of funds or work or a material change in duties or organization, employees shall be laid off by appointing authorities and under rules, which shall take into account length of service and merit rating.

(2) In every case of layoff of a regular employee, the appointing authority shall, 15 days before the effective date thereof, give written notice to the employee and the administrator. In any case where an appointing authority refuses, or fails to certify before the effective date thereof, that the layoff was for reasons not reflecting discredit on the employee, it shall be deemed a dismissal and shall be subject to the provisions concerning dismissals in this chapter.

240.530 Transfers from discontinued or reclassified positions. Subject to the rules, a regular employee whose position is discontinued or reclassified may be transferred to a vacant position in the same or comparable class, or may elect to accept voluntary transfer to a vacant position for which he is qualified and have his name placed upon an appropriate reemployment list. An incumbent of a reclassified position may be retained in the position under the new classification, or, advanced thereto if he passes a noncompetitive test for the new position.

240.535 Transfers within a division. An appointing authority may at any time assign an employe from one position to another position in the same class or rank in his division of the service. Upon making such an assignment, the appointing authority shall forthwith give written notice of his action to the administrator.

[Amended by 1969 c.80 §75]

240.540 Transfers between divisions. A transfer of an employe from a position in one division of the service to a position in the same class or rank in another division of the service may be made with the approval of the administrator and of the appointing authorities of both divisions of the service.

[Amended by 1969 c.80 §76]

240.545 Transfer to higher class. No employe shall be transferred from a position in one class to a position in another class of a higher rank or for which there are substantially dissimilar requirements for appointment unless he is appointed to such latter position after certification of his name from a list in accordance with the provisions of this chapter.

240.550 Transfer to lower class. Any change of an employe from a position in one class to a position in a class of lower rank shall be considered a demotion and shall be made only in accordance with the procedure prescribed for dismissal, except when an employe submits to the administrator a written request for change to a class of lower rank, and the request is granted, such change shall be termed a "voluntary demotion."

240.555 Suspension, reduction, demotion or dismissal. (1) The division shall establish by rule a procedure in accordance with this chapter whereby the appointing authority in any division of the service may suspend, reduce, demote or dismiss an employe thereof for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service, and for the investigation and public hearing of appeals of such suspended, reduced, demoted or dismissed employe.

(2) The appointing authority may suspend a regular employe for disciplinary reasons and without pay for a period not exceeding 30 days in any 12 months.

[Amended by 1969 c.80 §77]

240.560 Appeal from suspension, reduction, demotion or dismissal; hearings; findings; reinstatement or modification of order of dismissal. (1) A regular employe who is reduced, dismissed, suspended or demoted, shall have the right to appeal to the board not later than 10 days after the effective date of such reduction, dismissal, suspension or demotion. Such appeal shall be in writing and shall be heard by the board within 30 days after its receipt. The board shall furnish the division of the service concerned with a copy of the appeal in advance of the hearing.

(2) The hearing shall be public. Both the employe and his appointing authority shall be notified reasonably in advance of the hearing and shall have the right to have subpoenas issued, present witnesses, give evidence before the board and be represented by counsel. The finding and decision of the board as to such appeal shall be in writing and a copy thereof shall be mailed or delivered to the appellant within 10 days of the hearing.

(3) If the board finds that the action complained of was taken by the appointing authority for any political, religious or racial reasons, or was an unlawful employment practice as described in subsection (1) of ORS 659.026, the employe shall be reinstated to his position and shall not suffer any loss in pay.

(4) In all other cases, if the board finds that the action was not taken in good faith for cause, it shall order the immediate reinstatement and the reemployment of the employe in his position without the loss of pay. The board in lieu of affirming the action, may modify it by directing a suspension without pay for a given period, and a subsequent restoration to duty, or a demotion in classification, grade or pay. The findings and order of the board shall be certified in writing to the appointing authority and shall be forthwith put into effect by the appointing authority.

[Amended by 1957 c.205 §1, 1959 c.689 §6; 1969 c.80 §78]

240.565 Reemployment after dismissal without reinstatement. When any regular employe is dismissed and is not reinstated after appeal, the division may, where the circumstances are found to warrant reemployment, place his name on an appropriate reemployment list.

[Amended by 1969 c.80 §79]

240.570 Classified employe filling position in unclassified or exempt service. Positions in the unclassified and exempt service

may be filled by classified employees upon request of the appointing authority. Any classified employee so appointed shall, after termination of service in an unclassified or exempt position, be restored to his status in the classified service.

[1955 c.738 §6]

PROHIBITED CONDUCT

240.705 [Repealed by 1967 c.630 §5]

240.710 Certain acts unlawful. (1) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification, or appointment made under this chapter, or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules.

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

(3) No employee of the division, examiner or other person shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any

person with respect to employment in the classified service.

[Amended by 1969 c.80 §80]

PENALTIES

240.990 Penalties. (1) Any person who wilfully violates any provision of this chapter or of the rules thereunder is guilty of a misdemeanor and is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail for a term not exceeding one year, or both.

(2) Any person who fails to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any investigation or hearing authorized by this chapter is guilty of a misdemeanor.

(3) A state officer or employee who fails to comply with any provision of this chapter or of any rule, regulation or order thereunder is subject to all penalties and remedies provided by law for failure of a public officer or employee to do an act required of him by law.

(4) Any person who is convicted of a misdemeanor under this chapter shall, for a period of five years, be ineligible for appointment to or employment in a position in the state service, and if he is an officer or employee of the state, shall be deemed guilty of malfeasance in office and shall be subject to forfeit of his office or position.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on December 1, 1969.

Robert W. Lundy
Legislative Counsel

