

# Chapter 240

## 1983 REPLACEMENT PART

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## ADMINISTRATIVE PROVISIONS

**240.005 Short title of chapter.** This chapter shall be known as the State Personnel Relations Law. [Amended by 1979 c.468 §2]

**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. [Amended by 1979 c.468 §3]

**240.012 Job sharing; policy statement.** The Legislative Assembly finds that job sharing is an efficient and effective technique which should be used to improve management of state agencies. It further finds that job sharing offers employment opportunities to those who otherwise may be unable to participate in state employment and contribute to state operations. [1977 c.462 §1]

**Note:** 240.012 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**240.013 Job-sharing positions; adjustment of benefits and detriments.** In so far as reasonably possible, individuals who hold job-sharing positions shall be entitled to benefits and privileges and suffer detriments under this chapter in proportion to their seniority as adjusted in the proportion that their monthly time employed bears to the monthly time employed by individuals holding full-time positions. [1979 c.302 §7]

**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 "classification" 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 Employment 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) "Job-sharing position" means a full-time position in the classified service that is classified as one that may be held by more than one individual on a shared time basis whereby the individuals holding the position work less than full time.

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

(9) "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; 1975 c.147 §9; 1979 c.302 §4; 1979 c.468 §4a]

**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]

**240.057 Administrator of Personnel Division; appointment.** The Personnel Division shall be under the supervision and control of an administrator who shall be appointed by and hold office at the pleasure of the Director of the Executive Department. [1979 c.468 §7]

**240.060 Employment Relations Board; qualification of members.** (1) The Civil Service Commission that has functioned under this chapter shall be continued as a board of three members to be known as the Employment 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. In the selection of the members of the Employment Relations Board, the Governor shall give due consideration to the interests of labor, management and the public. Each member of the board shall be trained or experienced in labor-management relations and labor law or the administration of the collective bargaining process. No member of the board shall hold, or be a candidate for, any public office.

(2) A member of the board shall not hold any other office or position of profit or pursue any other business or vocation or serve on or under any committee of any political party, but shall

devote his entire time to the duties of his office.  
[Amended by 1969 c.80 §32; 1973 c.536 §26; 1975 c.147 §10;  
1977 c.808 §1]

**240.065 Appointment; terms; vacancies.** (1) The members of the board shall be appointed by the Governor for a term of four years. The members first appointed to the board after July 27, 1977 shall serve in the following manner:

(a) One shall serve for a term ending June 30, 1979.

(b) One shall serve for a term ending June 30, 1980.

(c) One shall serve for a term ending June 30, 1981.

(d) The chairperson first appointed after July 27, 1977 shall serve for a term ending June 30, 1979.

(2) Each member shall be appointed for a term ending four 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. Appointments to the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

(3) On July 27, 1977, the terms of all members of the Employment Relations Board expire and the Governor shall appoint to the board members who meet the qualifications of ORS 240.060. [Amended by 1969 c.80 §34; 1973 c.536 §27; 1973 c.792 §6a; 1977 c.808 §2]

**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 shall be paid in accordance with the provisions of ORS 240.240. However, the division shall adopt a salary plan that requires the chairperson of the board to receive a higher salary than the other members. In addition, subject to any other applicable law regulating travel and other expenses of state officers, a member shall receive his actual and necessary travel and other expenses incurred in the performance of his official duties. [1967 c.73 §4 (enacted in lieu of 240.070); 1969 c.80 §34a; 1969 c.314 §16; 1975 c.518 §1; 1977 c.808 §3]

**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 Chairperson appointed by Governor; meetings; quorum; hearings.** The Governor shall appoint one of the members of the board as chairperson, who shall serve for a term not to exceed four years. The chairperson shall be the chief administrative officer of the board. The board shall meet at such times and places as are specified by call of the chairperson or a majority of the board. All hearings shall be open to the public. A majority of the members of the board constitutes a quorum for the transaction of business. Any agent designated by the board to make investigations and conduct hearings may administer oaths and affirmations, examine witnesses and receive evidence. [Amended by 1973 c.536 §29; 1977 c.808 §4]

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

**240.086 Duties of board.** The duties of the board shall be to:

(1) Review any personnel action affecting an employe, who is not in a certified or recognized appropriate collective bargaining unit, that is alleged 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.

(2) Review and enforce arbitration awards involving employes in certified or recognized appropriate collective bargaining units. The awards shall be enforced unless the party against whom the award is made files written exceptions thereto for any of the following causes:

(a) The award was procured by corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the arbitrator.

(c) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party were prejudiced.

(d) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(e) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award.

(f) The arbitrators awarded upon a matter not submitted to them, unless it was a matter

not affecting the merits of the decision upon the matters submitted.

(g) The award is in violation of law.

(3) Adopt such rules or hold such hearings as it finds necessary to perform the duties, functions and powers imposed on or vested in it by law. [1969 c.80 §35a (enacted in lieu of 240.085); 1971 c.575 §5; 1975 c.605 §14; 1979 c.468 §5]

**240.088 Review of arbitration awards after written exceptions filed.** (1) If after a hearing on the exceptions filed as provided in ORS 240.086 (2), it appears to the board that the award should be vacated or modified, the board may by order refer the award back to the arbitrator with proper instructions for correction or rehearing. Upon failure of the arbitrator to follow the instructions, the board shall have jurisdiction over the case and proceed to its final determination by order.

(2) Review of arbitration awards shall be limited exclusively to that provided under ORS 240.086 and this section, except for such judicial review as may be provided for under ORS 183.480. [1979 c.468 §6]

**240.090** [Repealed by 1969 c.80 §92]

**240.091** [Repealed by 1979 c.468 §1]

**240.093** [1971 c.576 §3; repealed by 1979 c.468 §1]

**240.095** [Amended by 1969 c.80 §37; 1969 c.489 §5; repealed by 1979 c.468 §1]

**240.097** [1969 c.489 §2; repealed by 1979 c.468 §1]

**240.099** [1969 c.658 §2; repealed by 1973 c.536 §39]

**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 employes 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 243.005 to 243.215, 243.305, 243.315 and 243.400 to 243.940. 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** [Amended by 1969 c.80 §39; repealed by 1973 c.794 §34]

**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** [Amended by 1969 c.80 §39a; repealed by 1973 c.794 §34]

**240.123 Board personnel; executive secretary of board; general counsel.** (1) The board shall employ such personnel as it considers necessary for efficient administration of its vested duties, and fix the compensation of its employes in accordance with the compensation plan for classified employes.

(2) The board shall designate one of its employes as its executive secretary and delegate to the executive secretary such administrative duties and responsibilities as it finds advisable. The executive secretary shall be in the classified service.

(3) The board shall designate a member of the Oregon State Bar as its general counsel to assist it in the performance of its functions and duties. Notwithstanding ORS chapter 180 and independently of the Attorney General, the general counsel may represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested. The general counsel shall not appear before the board in any capacity other than general counsel to the board. The board may also delegate to its general counsel such other administrative duties and responsibilities as it finds advisable. [1969 c.80 §35e; 1973 c.536 §30; 1977 c.808 §5; 1979 c.468 §8]

**240.125** [Amended by 1969 c.80 §40; repealed by 1979 c.468 §1]

**240.130** [Amended by 1969 c.80 §41; repealed by 1979 c.468 §1]

**240.135** [Amended by 1969 c.80 §42; repealed by 1979 c.468 §1]

**240.140** [Amended by 1969 c.80 §42a; repealed by 1979 c.468 §1]

**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 the administrator elsewhere in this chapter, the administrator shall:

(1) 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 held, the salary or pay; any change

in class title, pay, status or merit rating; and any other data about the employe that the division deems necessary.

(2) 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.

(3) Prepare such rules, policies and procedures, tests and eligible lists as are necessary to carry out the duties, functions and powers of the Personnel Division under this chapter.

(4) 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.

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

(6) 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; 1971 c.695 §1; 1979 c.468 §9]

**240.150** [Amended by 1969 c.348 §1; repealed by 1979 c.468 §37]

**240.155** [Amended by 1969 c.80 §44; repealed by 1979 c.468 §1]

**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 Employment Relations Board in behalf of the state service shall be paid by the various divisions of the service in the state government. The board shall determine the amount of the expenses and costs to be paid by each division of the service on the basis of the proportion that the number of employes of that division in the classified service bears to the total number of employes of all divisions of the service in the classified service, or on any other basis that the board determines to be equitable.

(2) The Employment 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; 1979 c.66 §1]

**240.170 Personnel Account; Public Employe 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 Employe 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 Employe 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** [1969 c.80 §36; 1971 c.734 §20; repealed by 1979 c.468 §1]

**240.185 Maximum number of state employes; applicability; exceptions.** (1) On and after January 1, 1984, the number of persons employed by the state shall not exceed 1.5 percent of the state's population of the prior year.

(2) The population figure shall be that required by ORS 190.510 to 190.610.

(3) This section applies to all full-time equivalent budgeted positions.

(4) This section does not apply to the Governor, the Secretary of State, the State Treasurer, the Supreme Court or the Legislative Assembly in the conduct of duties vested in any of them by the Oregon Constitution. However, this exception applies only to the office of the Governor and not to the executive branch of government.

(5) This section does not apply to personnel who administer unemployment insurance benefits programs of the Employment Division of the Department of Human Resources, to personnel who administer programs required to be implemented as a condition for the continued certification of the Employment Division Law by the United States Secretary of Labor or to personnel who administer programs implemented by the United States Department of Labor under federal law if the state is required to enter into contracts to provide such programs. [1979 c.604 §1; 1983 c.340 §1]

**Note:** 240.185 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## CATEGORIES OF SERVICE; CLASSIFICATION AND COMPENSATION PLANS

**240.190 Policy on comparability of value of work and compensation and classification.** (1) It is declared to be the public policy of the State of Oregon to attempt to achieve an equitable relationship between the comparability of the value of work performed by persons in state service and the compensation and classification plans within the state system. To further this end, a single, bias-free, sex-neutral point factor job evaluation system shall be applied to all jobs in state service, across job families to rank order jobs, to set salaries, and to create career ladders for advancement according to the value of the work performed.

(2) As used in this section, "comparability of value of work" means the value of the work measured by the needs of the employer and the knowledge, composite skill, effort, responsibility and working conditions required in the performance of the work.

(3) As used in this section, "compensation and classification plan" means the full range of work-related benefits, including but not limited to salary, fringe benefits, continuing education and career advancement opportunities for classified and management services and those in unclassified and exempt but comparable positions. [1983 c.814 §1]

**Note:** 240.190 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**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.

(4) The management service as provided in ORS 240.212. [1955 c.738 §1; 1981 c.409 §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 who serve on a part-time basis and who, if compensated, receive compensation on a per diem basis.

(3) Judges, referees, receivers, jurors and notaries public.

(4) Officers and employes 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; 1975 c.427 §1; 1983 c.763 §29]

**240.205 Unclassified service.** (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 state government, each full-time salaried head of a state agency required by law to be appointed by the Governor and each full-time salaried member of a board or commission required by law to be appointed by the Governor.

(3) 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) Principal assistants and deputies and one private secretary for each executive or administrative officer specified in ORS 240.200 (1) and in subsections (1), (2) and (3) of this section. "Deputy" means the deputy (or deputies) to an above-specified executive or administrative officer who is authorized to exercise that officer's authority upon absence of the officer. "Principal assistant" means a manager of a major agency organizational component who reports directly to an above-specified executive or administrative officer or deputy and who is designated as such by that executive or administrative officer with the approval of the Director of the Executive Department.

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

(6) The deans, professors, principals, instructors and teachers in facilities operated under ORS 346.010.

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

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

(9) Licensed physicians and dentists employed in their professional capacities and stu-

dent nurses, interns, and patient or inmate help in state institutions.

(10) Lawyers employed in their professional capacities.

(11) All members of the Oregon State Police appointed under ORS 181.250 and 181.265.

(12) The deputy superintendent and five associate superintendents in the Department of Education.

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

(14) Division administrators of the Department of Transportation designated as follows:

(a) State Highway Engineer.

(b) Administrator of the Motor Vehicles Division.

(c) Aeronautics Administrator.

(15) Any individual employed and paid from federal funds received under the Comprehensive Employment and Training Act of 1973 (United States Public Law 93-203) and the Emergency Job and Unemployment Assistance Act of 1974 (United States Public Law 93-567) or any other federal program intended primarily to alleviate unemployment. However, persons employed under this subsection shall be treated as classified employes for purposes of ORS 243.650 to 243.782.

(16) Managers, department heads, directors, producers and announcers of the state radio and television network.

(17) Any other position designated by law 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; 1971 c.301 §19; 1971 c.467 §25c; 1975 c.3 §1; 1975 c.393 §1a; 1975 c.427 §2a; 1977 c.271 §1; 1979 c.747 §1; 1979 c.468 §11; 1981 c.518 §3; 1981 s.s. c.3 §40; 1983 c.763 §30]

#### **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. [1969 c.564 §2; 1979 c.468 §29]

**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, 240.205 or 240.212. [Amended by 1955 c.738 §7; 1981 c.409 §2]

**240.212 Management service.** The management service shall comprise all positions not in the unclassified or exempt service which have been determined to be "confidential employes" as defined by ORS 243.650 (6) and "supervisory employes" as defined by ORS 243.650 (14). [1981 c.409 §6]

**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 classifications based on their duties, authority and responsibilities; and which shall set forth for each classification, a class title, a statement of the minimum qualifications, duties, authority and responsibilities thereof. Each classification of positions may be subdivided and classes may be grouped and ranked in an appropriate manner.

(2) The allocation of positions within the various operating agencies to the classifications in the classification plan shall be performed by the agency appointing authority with post-audit review by the division.

(3) In adopting a classification system, the division shall consult with appointing authorities to determine the positions in a class of positions that can be classified as job-sharing positions. [Amended by 1969 c.80 §50; 1979 c.302 §5; 1979 c.468 §10a]

**240.217 Certain reclassifications prohibited.** Whenever class specifications for a class of positions in the classified service are changed to reflect revised or added responsibilities that require either the same level or a higher level of competence, such change will not result in a downward reclassification of the class. [1978 c.6 §2]

**Note:** 240.217 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**240.220** [Amended by 1969 c.80 §51; repealed by 1979 c.468 §1]

**240.225** [Repealed by 1979 c.468 §1]

**240.230** [Repealed by 1979 c.468 §1]

**240.233** [1955 c.738 §8; 1969 c.80 §52; 1975 c.139 §1; repealed by 1979 c.468 §1]

**240.235 Compensation plan for classified service.** The division shall establish and implement a merit pay system which shall take into consideration individual performance and organizational accomplishment, prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, maintenance or other benefits received, obligations established by collective bargaining agreements, and the state's financial condition and policies. The merit pay system may provide for monetary awards to employes for past meritorious service and contribution to the mission and goals of the employing agency.

(2) Modifications of the merit pay system may be adopted by the division and shall be effective only when approved by the Director of the Executive Department.

(3) Except as provided in subsection (4) of this section, each employe in the classified service shall be paid a rate within the salary range set forth in the merit pay system for the class of positions in which employed.

(4) Following any modification of the classification plan affecting a position, the division may provide that the rate of compensation of the employe holding such position shall not be reduced by reason of any such modification. An employe holding such a position shall not be eligible for any salary increase during such period of time that the employe's salary is above the maximum of the salary range of the classifica-

tion to which the employe's position is allocated.

[Amended by 1961 c.451 §1; 1969 c.80 §53; 1975 c.305 §1; 1979 c.468 §12]

**240.240 Application of chapter to unclassified or management service.** (1) The unclassified or management service shall not be subject to this chapter, except that employes and officers in the unclassified or management service shall be subject to the laws, rules and policies pertaining to any type of leave with pay except as otherwise provided in subsections (4) and (5) of this section, and shall be subject to the laws, rules and policies pertaining to salary plans except as otherwise provided in subsections (3) and (4) of this section.

(2) With regard to any unclassified or management service position for which the salary is not fixed by law, and except as otherwise provided in subsections (3) and (4) of this section, the division shall adopt a salary plan which is equitably applied to various categories in the unclassified or management service and is in reasonable conformity with the general salary structure of the state. The division shall maintain this unclassified and management salary plan in accordance with the procedures established for the classified salary plan as provided in ORS 240.235.

(3) The Secretary of State and the State Treasurer, for the purpose of maintaining a salary plan for unclassified and management service positions in their departments, may 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.

(5) With regard to unclassified instructors and teachers under annual teaching contracts for an academic year in facilities operated under ORS 346.010, arrangements for leave with pay shall be established by the Department of Education. [1955 c.738 §5; 1969 c.80 §54; 1971 c.695 §2; 1975 c.427 §4; 1981 c.409 §3]

**240.245 Application of chapter to 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]

**240.250 Rules for operation of management service.** The division shall adopt rules, policies and procedures necessary for the management service. The rules shall further merit principles in the examination, selection and promotion of individuals for the management service. [1981 c.409 §7]

#### METHOD OF SELECTING EMPLOYEES FOR SERVICE IN CLASSIFIED POSITIONS

**240.305** [Amended by 1975 c.427 §5; repealed by 1979 c.468 §1]

**240.306 Recruitment, selection and promotion of state employes; criteria; procedures; duties of division.** (1) Recruiting, selecting and promoting employes shall be on the basis of their relative ability, knowledge, experience and skills, determined by open competition and consideration of qualified applicants, without regard to an individual's race, color, religion, sex, marital status, national origin, political affiliation, age, handicap or other nonjob related factors, with proper regard for an individual's privacy. Nothing in this subsection shall be construed to enlarge or diminish the obligation of the state or the rights of employes concerning claims of employment discrimination as prescribed by applicable state and federal employment discrimination laws.

(2) The division shall establish procedures to provide for state-wide open recruitment and selection for classifications which are common to state agencies. Such procedures shall include adequate public notice, affirmative action to seek out underutilized members of protected minorities, and job related testing. The division may delegate to individual operating agencies the responsibility for recruitment and selection of classifications where appropriate.

(3) Competition for appropriate positions may be limited to facilitate employment of those with a substantial physical or mental impairment or who are economically disadvantaged, or for purposes of implementing a specified affirmative action program.

(4) Appointments to positions in state service shall be made on the basis of qualifications and merit by selection from eligible lists established by the division or a delegated operating agency.

(5) Noncompetitive selection and appointment procedures may be used for unskilled or semiskilled positions, or where job related ranking measures are not practical or appropriate.

(6) Minimum qualifications and performance requirements and duties of a classification may be appropriately modified to permit the appointment and promotion of trainees to positions normally filled at full proficiency level.

(7) The division or delegated agencies shall establish systems to provide opportunities for promotion through meritorious service, training, education and career development assignments. The division shall certify to the eligibility of persons selected for promotion or delegate that responsibility to operating agencies in appropriate situations. Provision shall be made to bring persons into state service through open competition at higher levels where such competition provides abilities not available among existing employes, enrich state service or contribute to improved employment opportunity for underrepresented groups.

(8) Temporary employes may be given nonstatus appointments without open competition and consideration for a period of less than one year in appropriate circumstances. Temporary nonstatus appointments shall not be used to defeat the open competition and consideration system, and temporary service shall not be used as any portion of a required trial service period.

[1979 c.468 §20]

**240.310** [Amended by 1969 c.80 §56; 1975 c.427 §6; repealed by 1979 c.468 §1]

**240.311 Delegation of authority and responsibility by division; post-audit review.** (1) Delegations of authority and responsibility to operating agencies shall be subject to appropriate post-audit review by the division.

(2) Controversies between operating agencies and the division arising from post-audit reviews shall be resolved by the Director of the Executive Department. [1979 c.468 §22]

**240.315** [Amended by 1969 c.80 §57; 1975 c.427 §7; repealed by 1979 c.468 §1]

**240.316 Trial service; regular status; procedures for transfer, demotion and separation of employes; discipline for certain disclosures prohibited.** (1) Persons initially appointed to or promoted to a permanent or seasonal position in state service shall be subject to a trial service period. Any employe who serves the trial service period designated by the division or a delegated operating agency for a given classification shall be given regular employe status.

(2) Employes who have acquired regular status will not be subject to separation except for cause as defined by ORS 240.555 or lack of work,

curtailment of funds, or reorganization requiring a reduction in force.

(3) Procedures shall be established by the division to provide for the layoff and opportunity for reemployment of employes separated for reasons other than cause, which shall take into account the needs of the service, qualifications, quality of performance, relative merit and length of service.

(4) Procedures shall also be established by the division for the transfer, discipline or demotion of employes for the good of the service or separation of employes whose conduct or performance continues to be improper or inadequate after reasonable attempts have been made to correct it, where appropriate.

(5) No employe shall be subject to disciplinary action or separation for disclosure, not prohibited by law, of violation of laws, rules, other improper actions or inefficiency of superior officers or fellow employes. The division shall:

(a) Establish a procedure whereby employes may report wrongdoing or inefficiency to an independent agency;

(b) Prohibit reprisals against employes because of their disclosures;

(c) Protect employes against reprisals because of their disclosures; and

(d) Establish an appeal procedure for employes who suffer reprisal because of their disclosures. [1979 c.468 §23; 1981 c.155 §1]

**240.320** [Amended by 1969 c.80 §58; repealed by 1979 c.468 §1]

**240.321 Collective bargaining; Director of Labor Relations; effect of collective bargaining agreements on State Personnel Relations Law; grievance procedures.**

(1) All collective bargaining between the state and its agencies and any certified or recognized exclusive employe representative of classified employes shall be under the direction and supervision of a Director of Labor Relations, who shall be appointed by and serve at the pleasure of the Director of the Executive Department.

(2) Notwithstanding any of the provisions of ORS 240.235, 240.306, 240.316, 240.430 and 240.551, employes of state agencies who are in certified or recognized appropriate bargaining units shall have all aspects of their wages, hours and other terms and conditions of employment determined by collective bargaining agreements between the state and its agencies and the exclusive employe representatives of such employes pursuant to the provisions of ORS 243.650 to 243.762, except with regard to the recruitment

and selection of applicants for initial appointment to state service.

(3) The provisions of rules adopted by the division, the subjects of which are incorporated into collective bargaining agreements, shall not be applicable to employes within appropriate bargaining units covered by such agreements.

(4) The division shall assure the speedy resolution of employe grievances by adopting a grievance procedure resulting in a final employer determination within 60 days of the filing of a written grievance, with appeal thereafter to the board, the Civil Rights Division of the Bureau of Labor and Industries, or other appropriate review agency. Employes in collective bargaining units shall have their grievances resolved as provided for by the collective bargaining agreement. [1979 c.468 §24]

**240.325** [Amended by 1969 c.80 §59; repealed by 1979 c.468 §1]

**240.330** [Amended by 1969 c.80 §60; repealed by 1979 c.468 §1]

**240.335** [Repealed by 1979 c.468 §1]

**240.340** [Amended by 1959 c.689 §5; 1959 c.694 §1; 1969 c.80 §61; 1973 c.189 §1; 1973 c.827 §23; 1975 c.427 §8; 1979 c.861 §7; repealed by 1979 c.468 §1]

**240.345** [Amended by 1969 c.80 §62; repealed by 1979 c.468 §1]

**240.350** [Amended by 1969 c.80 §63; repealed by 1979 c.468 §1]

**240.355** [Amended by 1969 c.80 §64; 1971 c.695 §3; 1975 c.325 §1; repealed by 1979 c.468 §1]

**240.360** [Amended by 1955 c.140 §1; 1969 c.80 §65; 1975 c.427 §9; repealed by 1979 c.468 §1]

**240.365** [Amended by 1969 c.80 §66; 1969 c.347 §1; 1975 c.427 §10; repealed by 1979 c.468 §37]

**240.370** [Amended by 1971 c.696 §1; repealed by 1979 c.468 §1]

**240.375** [Amended by 1959 c.375 §1; 1969 c.80 §67; repealed by 1979 c.468 §1]

**240.379 Notifying Vocational Rehabilitation Division of vacancies in state service; interviewing severely handicapped persons.** (1) The Personnel Division of the Executive Department shall notify the Vocational Rehabilitation Division of vacancies in positions in state service as the vacancies occur. The Vocational Rehabilitation Division shall reimburse the Personnel Division for expenses incurred in preparing the notice.

(2) A division of the service shall interview for appointment to positions in state service any severely handicapped person applying for a position in state service if:

(a) The applicant is referred to the division by the Vocational Rehabilitation Division or the Commission for the Blind; and

(b) The division of the service determines the applicant meets the standards necessary to qualify for the position. [1981 c.557 §2]

**240.380** [Amended by 1971 c.695 §6; repealed by 1979 c.468 §1]

**240.384 Records of severely handicapped persons hired; annual report; recommendations for legislative action.** (1) The Personnel Division of the Executive Department shall maintain a record of all severely handicapped persons hired by a division of the service. The record shall include:

(a) The number of initial hires;

(b) The number completing 90-day appointments; and

(c) The number completing trial service.

(2) Annually, the Vocational Rehabilitation Division shall submit a statistical report on the employment progress of severely handicapped persons, with recommendations for legislative action concerning severely handicapped persons. [1981 c.557 §3]

**240.385** [Repealed by 1971 c.695 §10]

**240.387** [1971 c.697 §2; repealed by 1979 c.468 §1]

**240.390** [Repealed by 1979 c.468 §1]

**240.391 Definitions for ORS 240.379 to 240.394.** As used in ORS 240.379 to 240.394, unless the context requires otherwise, "severely handicapped person" means a person who:

(1) Has a severe physical or mental disability which seriously limits functional capacities including but not limited to mobility, communication, self-care, self-direction, work tolerance or work skills, in terms of employability; and

(2) Has one or more physical or mental disabilities resulting from amputation; arthritis; blindness; cancer; cerebral palsy; cystic fibrosis; deafness; heart disease; hemiplegia; hemophilia; respiratory or pulmonary dysfunction; mental retardation; mental illness; multiple sclerosis; muscular dystrophy; musculoskeletal disorders; neurological disorders, including stroke and epilepsy; paraplegia; quadriplegia and other spinal cord conditions; sickle cell anemia; and end-stage renal disease; or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation. [1979 c.217 §2]

**240.392 Employment of severely handicapped persons; policy statement.** The Legislative Assembly finds that many severely handicapped people are unable to compete successfully on state merit system examinations. The Legislative Assembly further finds that many severely handicapped people could profit greatly from an opportunity to demonstrate their abilities under a 90-day appointment instead of taking a competitive examination. [1979 c.217 §3]

**240.393 Certification of severely handicapped person for temporary appointment.** (1) A severely handicapped person may be certified to the appointing authority by the Vocational Rehabilitation Division for a 90-day appointment without examination. In the case of persons who are legally blind, the certificate shall be by the Commission for the Blind. The Vocational Rehabilitation Division, in conjunction with the Commission for the Blind, shall adopt and circulate rules to establish the certification procedure.

(2) The statement of certification provided to the appointing authority under this section:

(a) Shall be in writing by a person responsible for certification within the Vocational Rehabilitation Division or the Commission for the Blind; and

(b) Shall not include any medical information concerning the severely handicapped person. [1979 c.217 §4; 1981 c.557 §4]

**240.394 Satisfactory completion by severely handicapped person of temporary appointment; trial service status without additional examination.** A person certified under ORS 240.393 may be appointed to a position in the classified service for a period not to exceed 90 days. Upon satisfactory completion of the 90-day appointment, as evidenced by a written statement from the appointing authority, the severely handicapped person shall be placed in trial service status in the position without additional examination. Service under the 90-day appointment immediately preceding the appointment may be counted as part of the trial service period. [1979 c.217 §5; 1983 c.740 §63]

**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 induction 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]

**240.400 Designation by appointing authority of staff employes to act as alternates.** An appointing authority may file in writing with the division names of staff employes to act in the name of the appointing authority and to perform any act or duty of the appointing authority authorized under the provisions of this chapter. [1971 c.695 §5; 1979 c.468 §14]

#### REMOVAL IN TRIAL SERVICE; SEASONAL EMPLOYEES; MERIT RATINGS

**240.405** [Amended by 1961 c.647 §1; 1963 c.185 §1; 1969 c.80 §69; 1969 c.346 §1; repealed by 1979 c.468 §1]

**240.410 Removals during trial period.** At any time during the trial service period, the appointing authority may remove an employe if, in the opinion of the appointing authority, the trial service indicates that such employe is unable or unwilling to perform duties satisfactorily or that the habits and dependability of the employe do not merit continuance in the service. [Amended by 1979 c.468 §15]

**240.415** [Repealed by 1979 c.468 §1]

**240.420** [Repealed by 1961 c.646 §1]

**240.425 Regular seasonal employes.** Positions which occur, terminate and recur periodically and regularly regardless of the duration thereof shall be designated by rule, policy or procedure of the division as seasonal positions. An employe who satisfactorily serves in a seasonal position the trial service period designated by the division or a delegated operating agency for the classification to which the seasonal position is allocated is entitled to permanent status as a regular seasonal employe. [Amended by 1969 c.80 §70; 1981 c.156 §1]

**240.430 Merit ratings.** In cooperation with appointing authorities, the division shall establish a system of merit ratings to determine the quality of performance and relative merit of employes in the classified service. [Amended by 1969 c.80 §71; 1979 c.468 §16]

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

**240.505** [Repealed by 1979 c.468 §1]

**240.510** [Amended by 1963 c.199 §3; 1969 c.80 §72; repealed by 1979 c.468 §1]

**240.515** [Amended by 1953 c.353 §2; 1961 c.450 §1; 1969 c.80 §73; 1973 c.471 §1; repealed by 1979 c.468 §1]

**240.520** [Amended by 1969 c.80 §74; repealed by 1979 c.468 §1]

**240.525** [Repealed by 1979 c.468 §1]

**240.530** [Repealed by 1979 c.468 §1]

**240.535** [Amended by 1969 c.80 §75; repealed by 1979 c.468 §1]

**240.540** [Amended by 1969 c.80 §76; repealed by 1979 c.468 §1]

**240.545** [Repealed by 1979 c.468 §1]

**240.546 Payments in lieu of sick leave with pay; exclusions.** The Personnel Division may adopt rules, policies and procedures for state agencies to provide employes in the classified and unclassified service with payments on account of sickness in lieu of accrued and any future sick leave with pay. The Legislative Assembly, state courts, Secretary of State, State Treasurer, Department of Education and State Board of Higher Education may similarly adopt rules, policies and procedures providing unclassified employes with such payments. Payments on account of sickness may be made directly or from an insured plan, but such payments shall not include medical treatment, hospitalization, dental or eye or other health care or duplicate any group insurance coverage otherwise provided in whole or in part by employer contributions. [1981 c.567 §9]

**240.550** [Repealed by 1979 c.468 §1]

**240.551 Working hours, holidays, leaves of absence and vacations of employes in state classified service.** The division shall establish the hours of work, holidays, leaves of absence with and without pay and vacations of employes in the state classified service. The division may delegate this responsibility to individual operating agencies where

appropriate. [1979 c.468 §21]

**240.555 Suspension, reduction, demotion or dismissal.** 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. [Amended by 1969 c.80 §77; 1975 c.427 §11; 1979 c.468 §17]

**240.560 Appeal procedure.** (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 conducted as provided for a contested case in ORS 183.310 to 183.550.

(3) If the board finds that the action complained of was taken by the appointing authority for any political, religious or racial reasons, or because of sex, marital status or age, 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.

(5) Reinstatement or settlement agreements entered into either prior to or subsequent to hearing as provided in this section shall be subject to the provisions of ORS 657.315 (3). [Amended by 1957 c.205 §1; 1959 c.689 §6; 1969 c.80 §78; 1971 c.734 §35; 1975 c.427 §12; 1977 c.400 §1; 1977 c.770 §6]

**240.563 Judicial review.** Judicial review of orders under ORS 240.560 shall be as provided in ORS 183.310 to 183.550. [1971 c.734 §31]

**240.565** [Amended by 1969 c.80 §79; repealed by 1979 c.468 §1]

**240.570 Classified employe filling position in unclassified, exempt or management service.** (1) Positions in the unclas-

sified, management and exempt services may be filled by classified employees. After termination of unclassified or exempt service or removal from the management service, for reasons other than specified by ORS 240.555, an employe formerly in the classified service shall be restored to a position in the same agency and in the same class as the position last held in the classified service. Should there be no vacant position in that class, a layoff shall occur. Should there be no position in that class in the agency, the employe shall be appointed to a position in the classified service in that agency in the next highest class for which the employe is qualified.

(2) An appointing authority may assign, reassign and transfer management service employes for the good of the service and may remove such employes from the management service due to reorganization or lack of work.

(3) A management service employe may be disciplined by reprimand, salary reduction, suspension or demotion or removed from the management service if the employe is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily.

(4) Employes who are assigned, reassigned, transferred or removed, as provided in subsection (2) of this section, and employes who are disciplined or removed from the management service for the reasons specified in subsection (3) of this section may appeal to the board in the manner provided by ORS 240.560.

(5) Management service employes with immediate prior former regular status in the classified service may be dismissed from state service only for reasons specified by ORS 240.555 and pursuant to the appeal procedures provided by ORS 240.560. [1955 c.738 §6; 1979 c.468 §18; 1981 c.409 §4]

**240.572** [1977 c.271 §3; repealed by 1979 c.468 §1]

**240.575** [1971 c.542 §2; repealed by 1979 c.468 §1]

**240.580 Service credits for service in unclassified service.** An employe who is initially appointed to a position in the unclassified service as a member of the Oregon State Police under ORS 181.250 or 181.265, who separates voluntarily from that service and who, within two years after the separation, is appointed to a position in the classified service, whether within a bargaining unit covered by a collective bargaining agreement or not, and acquires regular employe status shall be entitled, for purposes of layoff and opportunity for reemployment after separation for reasons other than cause, to service credit for the service in the unclassified service preceding the service in the classified

service. ORS 240.321 (3) does not apply to service credit granted under this section. [1983 c.746 §2]

**Note:** Section 3, chapter 746, Oregon Laws 1983, provides:

**Sec. 3.** Section 2 of this Act applies only to appointments to positions in the classified service on or after January 1, 1980, and to layoff and opportunity for reemployment on or after the effective date of this Act [October 15, 1983].

## 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 employe 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]

**240.740 Identity of employe who reports violation confidential; discipline prohibited.** (1) The identity of the employe who discloses information which the employe reasonably believes shows any of the following shall not be disclosed without the written consent of the employe during any investigation of the information or in any related matters:

- (a) Violation of any law or rule.
- (b) Gross waste of funds.
- (c) Abuse of authority.
- (d) Specific danger to public health or safety.

(2) No disciplinary action shall be taken against any employe for the disclosure of any alleged activity described in subsection (1) of this section under investigation or for any related activity.

(3) This section applies to state employes and to employes of a public corporation created

under ORS 656.751. [1983 c.808 §2]

### 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 employe 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 employe 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 employe of the state, shall be deemed guilty of malfeasance in office and shall be subject to forfeit of his office or position.

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