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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- DIVISION OF PERSONNEL
ADMINISTRATION

Introduced By: Senators Conley, DiPalma, Lynch Prata, Seveney, and Pearson

Date Introduced: March 12, 2020

Referred To: Senate Labor

(Dept. of Administration)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 36-3-3, 36-3-5, 36-3-10 and 36-3-14 of the General Laws in Chapter
2 36-3 entitled "Division of Personnel Administration" are hereby amended to read as follows:

3 **36-3-3. Definitions.**

4 The following terms, when used in this chapter and chapter 4 of this title, shall have the
5 following meanings unless the context clearly requires otherwise:

6 (1) "Appointing authority" means the person or group of persons having the power by
7 virtue of the constitution, a state statute, or lawfully delegated authority to make appointments.

8 (2) "Appropriate list" means ~~any employment list, promotion list, or an~~ employment list
9 which is declared appropriate by the personnel administrator for purposes of certification and
10 appointment.

11 (3) "Classified employee" means any person holding a position in the classified service.

12 (4) "Classified service" means all offices and positions of trust or employment in the state
13 service except those placed in the unclassified service by chapter 4 of this title or any other
14 legislation.

15 (5) "Department" means the department of administration.

16 (6) "Director" means the director of the department of administration.

17 (7) "Disabled veteran" means any war veteran who is an examinee and who is certified by
18 the veterans administration to be physically disabled, as a result of a service connected disability,

1 with a disability rating of zero percent (0%) or more.

2 (8) "Division" means the division of personnel administration.

3 (9) "Employee" means any person holding a position subject to appointment by an
4 appointing authority.

5 (10) "Employment list" means a list of names of persons arranged in the order of their
6 ratings who have been found qualified through suitable tests, and who are entitled to have their
7 names certified to appointing authorities for original appointment under the provisions of chapter
8 4 of this title and rules.

9 (11) "Permanent status employee" means an employee in the classified service who:

10 (i) Has successfully completed the required probationary period; and

11 (ii) Whose appointing authority has filed a statement of satisfactory service with the
12 personnel administrator; and

13 (iii) Who has fulfilled the requirements for character and, if applicable, physical condition.

14 ~~(11)~~(12) "Personnel administration" means the legal framework of the state government
15 personnel system, i.e., statutes, rules, and policies.

16 ~~(12)~~(13) "Personnel administrator" means the head of the division.

17 ~~(13)~~(14) "Personnel management" means the powers and duties of the personnel
18 administrator as set forth in this chapter and chapter 4 of this title.

19 ~~(14)~~(15) "Position" means any office or place of employment in the state service.

20 ~~(15) "Promotion list" means a list of names of classified employees arranged in order of~~
21 ~~their ratings, who have been found qualified through suitable tests for promotion to positions in~~
22 ~~other classes under the provisions of chapter 4 of this title and rules.~~

23 ~~(16) "Provisional status" means:~~

24 ~~(i) the status of an appointee who has completed one year of service in a position for which~~
25 ~~no suitable list has been established; or~~

26 ~~(ii) the status of an appointee on leave from a position in which he or she holds permanent~~
27 ~~status to accept a higher position for which no suitable list has been established.~~

28 ~~(18)~~(16) "~~Reemployment~~ Preferred reemployment list" means a list of names of persons
29 who have occupied positions in the classified service, who have been separated from a position in
30 the classified service, and who are entitled to have their names certified to appointing authorities
31 under the provisions of ~~chapter 4 of this title and rules~~ § 36-4-23.

32 ~~(17)~~(17) "Public hearing" means an opportunity given after public notice of at least five (5)
33 calendar days for any citizen or party to appear and be heard on the matter involved.

34 ~~(19)~~(18) "State service" means all offices and positions of trust or employment in the

1 service of the state.

2 ~~(20) "Temporary status" means the status of an appointee who has not acquired provisional,~~
3 ~~probationary, or permanent status in the position held.~~

4 ~~(21)~~(19) "War veteran" or "veteran" means any person, male or female, who was employed
5 as an officer, member of the enlisted personnel or otherwise in the active military or naval service
6 of the United States or of any auxiliary unit of the military or naval service, except civilian
7 employees, during the Spanish American War, the Philippine Insurrection, the China Relief
8 Expedition or at some time during the period between April 6, 1917, and November 11, 1918, or
9 the period between December 7, 1941, and December 31, 1946, or who was engaged in the active
10 conduct of and/or fighting in the Korean campaign (active conduct of and/or fighting in the Korean
11 Campaign, shall mean service by any man or woman of the armed forces of the United States
12 between June 27, 1950, and January 31, 1955), or the conflict in Vietnam (active conduct of and/or
13 fighting in the conflict in Vietnam shall mean service by any man or woman of the armed forces of
14 the United States between August 5, 1964, and May 7, 1975), and who served for at least six (6)
15 months and one day; provided, however, that the definition shall not include any person who has
16 been separated from employment of service, except through honorable discharge, if the reason for
17 the separation shall be deemed by the personnel administrator to be sufficient cause to deny
18 inclusion.

19 **36-3-5. Powers and duties of the administrator. [Effective January 1, 2020.]**

20 In addition to the duties imposed upon the personnel administrator elsewhere in the law
21 and the personnel rules, it shall be the duty of the personnel administrator:

22 (1) As executive head of the division of personnel administration, to direct, supervise,
23 develop, and authorize all personnel-related administrative and technical activities including
24 personnel administration and personnel management.

25 (2) To prepare and recommend to the director of administration such rules as are deemed
26 necessary to carry out the provisions of the law.

27 (3) To supervise the operation of the classification plan and to recommend to the director
28 amendments and additions thereto.

29 (4) To supervise the operation of the pay plan and to recommend to the director
30 amendments and additions thereto.

31 (5) To establish and supervise the maintenance of employment lists, ~~promotion lists, and~~
32 ~~reemployment lists~~; to develop recruitment procedures, monitor agency recruitment processes for
33 compliance with the statutes and policies, and make available to state agencies qualified candidates
34 as vacancies occur; direct and supervise equal opportunity programs; manage employee benefit

1 plans, including the coordination of health insurance, prescription/vision care, group life insurance,
2 dental care, prepaid legal services, deferred compensation and cancer programs, and any other
3 programs established by the legislature related to employee benefits; and to manage career awards
4 programs and state and local enforcement firefighters incentive training programs.

5 (6) To perform any other lawful act which he or she may consider necessary or desirable
6 to carry out the purposes and provisions of this chapter, and chapter 4 of this title, and the rules and
7 to conduct innovative demonstration projects to improve state personnel management.

8 (7) To facilitate and/or coordinate state and national background checks for applicants
9 and/or employees in state positions with access to federal tax information, as defined in § 36-3-
10 16(a)(6).

11 (8) The personnel administrator is authorized and empowered to revise state job
12 descriptions to ensure the use of appropriate disability language as required by § 43-3-7.1.

13 **36-3-10. Appeals to appeal board.**

14 (a) The personnel appeal board shall hear appeals:

15 (1) By any person with ~~provisional~~, probationary, or permanent status in a position in the
16 classified service aggrieved by an action of the administrator of adjudication for the department of
17 administration on matters of personnel administration.

18 (2) By any person with ~~provisional~~, probationary, or permanent status in a position in the
19 classified service who has been discharged, demoted, suspended, or laid off by any appointing
20 authority.

21 (3) By any person who holds the belief that he or she has been discriminated against
22 because of his or her race, sex, age, disability, or his or her political or religious beliefs in any
23 personnel action.

24 (4) By any person who by the personnel policy of the state of Rhode Island or by
25 contractual agreement with the state of Rhode Island is vested with the right of appeal to the board.

26 (b) Appeals shall be taken in accordance with the provisions of this chapter and chapter 4
27 of this title of the personnel rules provided, however, that the personnel appeal board may dismiss
28 the appeal of a person who has already appealed or seeks to appeal the same matter under provisions
29 of a contractual agreement or other law or regulation.

30 **36-3-14. Facilities for division.**

31 The division shall be provided by the director with the necessary funds and employees to
32 enable the division to examine ~~temporary~~ employees within the time prescribed by law and with
33 suitable offices, examination rooms, and accommodations for itself and staff in the city of
34 Providence, and in localities throughout the state as may be required to suit the public convenience

1 and carry on the work of the division. It shall be the duty of the officers of the state, or any political
2 subdivisions thereof, at any place where examinations or hearings are directed to be held by the
3 personnel administrator to allow the reasonable use of public buildings and rooms and to furnish
4 the buildings and rooms with heat and light for holding hearings and examinations and in all proper
5 ways to facilitate the work of the division in carrying out the provisions of this chapter and chapter
6 4 of this title.

7 SECTION 2. Sections 36-4-6, 36-4-7, 36-4-10, 36-4-17, 36-4-18, 36-4-19, 36-4-21, 36-4-
8 22, 36-4-24, 36-4-25, 36-4-26, 36-4-26.1, 36-4-37, 36-4-38, 36-4-40, 36-4-41, 36-4-42, 36-4-46
9 and 36-4-57 of the General Laws in Chapter 36-4 entitled "Merit System" are hereby amended to
10 read as follows:

11 ~~36-4-6. Appointments to noncompetitive branch~~ **Appointments to classified service.**

12 Appointments to positions in the ~~noncompetitive branch shall be designated as~~
13 ~~"noncompetitive appointments", and~~ classified service shall be made upon recommendation of the
14 appointing authority and approval of the personnel administrator subject to established
15 requirements for character and, if applicable, physical condition.

16 ~~36-4-7. Probationary period in noncompetitive branch -- Acquisition of full status~~
17 **Probationary period in the classified service -- Acquisition of permanent status.**

18 (a) Persons appointed to positions in the noncompetitive branch, and persons appointed to
19 competitive positions from a list certified by the personnel administrator, shall serve a probationary
20 period of six (6) months during which time the appointing authority shall report to the personnel
21 administrator every ~~sixty (60)~~ ninety (90) days concerning the work of the employee and at the end
22 of the probationary period no further salary or other compensation shall be paid to the employee
23 unless the appointing authority has filed with the personnel administrator a statement, in writing,
24 that the services of the employee have been satisfactory and that it is desired that his or her services
25 be continued. The probationary period for persons appointed in the noncompetitive branch is
26 further defined to be one hundred-thirty (130) days worked in the non-competitive position to
27 which the person has been appointed. Upon completion of the probationary period and receipt of
28 the statement of satisfactory service by the personnel administrator and having fulfilled the
29 requirements for character and, if applicable, physical condition, the employee shall be deemed to
30 have acquired ~~full~~ permanent status and shall enjoy all the rights and privileges of that status.

31 ~~Whenever a class of positions shall be assigned to the noncompetitive branch, every employee~~
32 ~~holding a position in that class at the time of assignment who is a temporary employee and has~~
33 ~~served in that class for six (6) months or more shall be considered to have completed the required~~
34 ~~probationary period and upon receipt of a statement from his or her appointing authority that his or~~

1 ~~her services have been satisfactory shall be deemed to have acquired full status and shall enjoy all~~
2 ~~the rights and privileges of that status. A temporary employee who has served at least four (4)~~
3 ~~months but has not completed six (6) months shall be deemed to have served four (4) months of~~
4 ~~the required probationary period and his or her appointing authority shall submit a report~~
5 ~~concerning the work of the employee to the personnel administrator and shall at the end of sixty~~
6 ~~(60) days submit a final probationary report for the employee.~~ An employee who has served at least
7 ~~two (2)~~ three (3) months but has not completed four (4) months shall be deemed to have served ~~two~~
8 ~~(2)~~ three (3) months of the required probationary period and his or her appointing authority shall
9 submit a report concerning the work of the employee to the personnel administrator and shall
10 subsequently submit ~~a probationary report at the end of the next sixty (60) days and~~ a final
11 probationary report at the end of six (6) months of service.

12 (b) Persons appointed to positions in the competitive branch, where no list for certification
13 exists, shall be probationary for a period of one year. The probationary period for persons appointed
14 in the competitive branch is further defined to be two hundred sixty (260) days worked in the
15 position to which the person has been appointed. Upon completion of the probationary period and
16 receipt of the statement of satisfactory service by the personnel administrator and having fulfilled
17 the requirements for character and, if applicable, physical condition, the employee shall be deemed
18 to have acquired permanent status and shall enjoy all the rights and privileges of that status. The
19 appointing authority shall submit reports to the personnel administrator at ninety (90) days and one
20 hundred eighty (180) days concerning the work of the employee and shall subsequently submit a
21 final probationary report at the end of the one year of service.

22 (c) A classified employee with probationary status may be dismissed at any time during
23 the probationary period at the discretion of the appointing authority.

24 **36-4-10. Changes in plan -- Notice of establishment of new positions.**

25 (a) Additional classes may be established and existing classes may be divided, combined,
26 altered, or abolished upon recommendation of the personnel administrator, recommendation by the
27 director after public hearing, and approval by the governor. This action may be initiated either by
28 the personnel administrator, the director, or on request of an appointing authority. Appointing
29 authorities intending to establish new positions shall so notify the personnel administrator, and
30 except as otherwise provided in this chapter, no person shall be appointed to or employed for a new
31 position until it has been properly classified as herein provided and an appropriate list established
32 therefor.

33 (b) When amendments are required by federal or state law to the classified pay plan the
34 personnel administrator may make such amendments without a public hearing.

1 **36-4-17. Preparation of employment lists.**

2 The personnel administrator ~~shall~~ may, as in his or her estimation the need requires and in
3 his or her discretion, prepare for ~~the several classes of~~ positions in the classified service statewide
4 or regional lists of persons eligible for original appointment to positions in those classes. Each
5 employment list shall include the names of those persons who have shown by ~~competitive~~ civil
6 service tests that they possess the qualifications which entitle them to be considered eligible for
7 appointment to any position in the class or classes for which the list is prepared.

8 **36-4-18. ~~Competitive tests~~ Civil service tests.**

9 ~~The competitive~~ Civil service tests shall be designed to determine fairly the capacity of the
10 persons examined to perform the duties of the positions in the classes for which the lists are
11 prepared. ~~The competitive tests shall be open to applicants who are residents of the state of Rhode~~
12 ~~Island; provided, that the personnel administrator may admit to competitive tests for technical,~~
13 ~~professional, or unusual positions residents of other states.~~ Any resident individual denied
14 admission to an examination on the grounds of insufficient qualifications as established in the class
15 specifications involved may, within five (5) calendar days of the mailing of the notices, appeal in
16 writing to the administrator of adjudication for a hearing or review of the denial. On the basis of
17 the review or hearing, the administrator of adjudication may direct the personnel administrator to
18 permit the appellant to take the examination. The tests may take into consideration elements of
19 character, education, aptitude, experience, knowledge, skill, personality, physical fitness,
20 professional license, or specialized training, and other pertinent matters, and may be written, oral,
21 physical, or in the form of demonstration of skill, or any combination of these types. Public notice
22 of every test shall be given in the manner prescribed by the personnel rules. Persons having a
23 legitimate and proper interest in examination questions used in connection with any examination
24 shall be freely allowed to inspect the questions, when all phases of the examination in which the
25 questions were used have been completed under such conditions as shall be specified in the
26 personnel rules. The final earned rating of each person competing in any test shall be determined
27 by the weighted average of the earned rating on all phases of the test according to weights for each
28 phase established by the personnel administrator in advance of the giving of the tests and published
29 as part of the announcement of the examination. However, the personnel administrator may
30 discontinue the examination process for any competitor when it has been determined that the
31 required minimum final earned rating cannot be attained. All persons competing in any test shall
32 be given written notice of their standing on any employment list or of their failure to attain a place
33 upon the list. The personnel administrator may as deemed appropriate establish broadband
34 examinations for a wide variety of entry and/or other levels of positions which would not be ranked

1 in the traditional manner. The examinations would be ranked only upon certification to an
2 appropriate vacancy and subject to conditions established in the personnel rules and the provisions
3 of §§ 36-4-4 and 36-4-7 shall not apply to any appointments which are in the unclassified service.
4 When an appropriate vacancy exists, the appointing authority will certify as to the appropriate
5 knowledge, skills, and abilities required for successful performance in a particular position or
6 positions. The personnel administrator will then proceed to rank all eligibles who have qualified
7 and possess the requisite knowledge, skills, and abilities.

8 **36-4-19. Placement of names on employment lists -- Listing of veterans.**

9 (a) The names of all persons attaining the minimum final earned rating established by the
10 personnel administrator shall be placed upon the employment list in the order of their ratings;
11 provided, however, that there shall be added to the final earned ratings of examinees who are
12 veterans in ~~competitive~~ civil service tests for entrance into the classified service, but not for
13 promotion in the service, who receive at least the minimum required final earned rating as stated in
14 the public notice, service credits amounting to five (5) points for veterans or service credits
15 amounting to ten (10) points for disabled veterans. On all employment lists, the letter "V" shall be
16 placed opposite the name of each veteran as defined in chapter 3 of this title, who, by reason of his
17 or her final earned rating, is entitled to have his or her name placed on an employment list, and the
18 letters "DV" shall be placed opposite the name of each disabled veteran, as defined in chapter 3 of
19 this title, who, by reason of his or her final earned rating is entitled to have his or her name placed
20 on the list.

21 (b) For the purposes of this section:

22 (1) "War veteran" means any veteran of any conflict war, undeclared war or contingency
23 operation who has earned a campaign ribbon or expeditionary medal for his or her service, in these
24 operations, as noted on acceptable military documentation. The war veteran must have been
25 honorably or generally discharged from the armed forces of this nation.

26 (2) "Veteran" means a person who served on active duty for other than training for a period
27 of more than thirty (30) days and was discharged or released there from with other than a
28 dishonorable discharge; or was discharged or released from active duty because of a service-
29 connected disability; or served as a member of the national guard or reserve forces and served a
30 minimum of twenty (20) years of honorable service in the national guard or reserve forces, has
31 received a certificate of retirement and has been honorably or generally discharged from the
32 national guard or reserve forces.

33 **36-4-21. ~~Open continuous competitive tests~~ Open continuous civil service tests.**

34 The personnel administrator may use open continuous ~~competitive~~ civil service tests to

1 establish lists and fill vacancies in an agency or agencies where there is a continued shortage of
2 available qualified persons or where there is a manifest imbalance of minorities (as currently
3 defined in employment law as ~~Blacks, Hispanics, American Indians including Alaska Natives, and~~
4 ~~Asians including Pacific Islanders)~~ Black or African American (not Hispanic or Latino), Hispanic
5 or Latino, Native American or Alaska Native (not Hispanic or Latino), Asian (not Hispanic or
6 Latino), Native Hawaiian or Pacific Islander (not Hispanic or Latino), and two (2) or more races in
7 the job category. Open continuous ~~competitive~~ civil service tests shall be subject to the conditions
8 established in this chapter for the preparation of employment lists.

9 **36-4-22. Promotion examinations and lists Promotion points Promotional points.**

10 (a) ~~(1) Promotional examinations shall be conducted in the same manner as open~~
11 ~~competitive examinations subject to the following conditions:~~

12 (i) ~~A person~~ An existing employee is eligible for promotional ~~examination~~ points provided
13 the employee is currently employed in the classified, unclassified, or nonclassified service as of the
14 official closing date of the examination announcement or twenty one (21) calendar days prior to
15 the administration of the first phase of the examination, whichever is later, ~~and meets one or more~~
16 ~~of the following requirements:~~

17 (A) ~~Any employee who holds or within three (3) years has held permanent status in the~~
18 ~~classified service;~~

19 (B) ~~Any employee who is serving in a probationary period as of the official closing date of~~
20 ~~the examination announcement;~~

21 (C) ~~A minority (as currently defined in federal employment law as Blacks, Hispanics,~~
22 ~~American Indians including Alaska Natives, and Asians including Pacific Islanders) who is a~~
23 ~~qualified exam applicant seeking entry to a classification where there is a manifest imbalance in~~
24 ~~the job category; or~~

25 (D) ~~Any employee who has served twelve (12) months service in the classified,~~
26 ~~unclassified, or nonclassified service and, in addition, meets the minimum requirements established~~
27 ~~in the class specification.~~

28 (ii) ~~Promotion lists shall remain in effect for a period of three (3) years or until exhausted~~
29 ~~or until combined with or replaced by a more recently prepared list.~~ Existing classified, unclassified
30 or nonclassified employees, who receive at least the minimum required final earned rating as stated
31 in the public notice, will have five (5) additional promotional points added to their final earned
32 ratings.

33 (b) This section shall not apply to the Rhode Island state police or the legislative branch of
34 state government.

1 ~~(c) An employee who is not on the promotional list shall be eligible to take the promotional~~
2 ~~examination for the position the employee occupies.~~

3 **36-4-24. Removal of disqualified names from lists.**

4 The personnel administrator may remove the name of any person from any list or lists who
5 is physically so disabled as to be rendered unfit for performance of the required duties; or who is
6 addicted to the use of narcotics or excessive use of intoxicating liquors; or who has been found
7 guilty of any infamous or notoriously disgraceful conduct; or who has made false statement of
8 material fact in his or her application; or who has terminated or retired from state service, ~~except~~
9 ~~as provided under § 36-4-23.1~~; and those individuals who have had their certification notices
10 returned with no forwarding address provided the notice was sent by certified mail.

11 **36-4-25. Designation of appropriate list for filling of vacancies.**

12 The preferred reemployment list shall have precedence over all other lists for the filling of
13 vacancies of comparable or less comparable positions in state service until the list is exhausted.
14 ~~Vacancies in positions in the classified service shall be filled as far as practicable by promotional~~
15 ~~appointments. Whenever a vacancy does exist in any position in the classified service, the~~
16 ~~appointing authority may choose to use either the employment, promotion, or reemployment list to~~
17 ~~fill the vacancy and shall request the personnel administrator to certify the names of persons eligible~~
18 ~~for appointment from the designated list; provided, however, that in~~ In the event of the
19 reorganization of a department or division, or the abolishment of a position or positions in state
20 service, any classified employee with permanent status affected thereby shall be placed in a
21 comparable position for which they meet the qualifications of within the department or division, if
22 such vacancy exists. ~~If, however, placement within the department or division is not possible, then~~
23 ~~the affected employee shall be placed in a comparable position elsewhere in state service.~~
24 Whenever a position is allocated or reallocated upward, the classified employee ~~with permanent~~
25 ~~status~~ holding that position shall be given an opportunity to qualify for the allocated or reallocated
26 position by taking a qualifying examination ~~and shall be placed on leave of absence from the old~~
27 ~~position until the employee has gained status or failed to qualify for the position, if one should be~~
28 given.

29 **36-4-26. Certification and appointment to positions in classified service.**

30 If the appointing authority has ~~designated the~~ established an employment list, and in the
31 event of a need to fill a vacancy, the personnel administrator shall ~~immediately~~ certify the names
32 of the six (6) persons standing highest thereon who are available for appointment, if there are as
33 many as six (6) names thereon, or all the names on the list if there are less than six (6). If any of
34 the eligibles notifies the personnel administrator that he or she is unavailable for appointment,

1 another name shall be certified to the appointing authority. The appointing authority shall appoint
2 one of the persons so certified to the position from the appropriate list, or in accordance with the
3 special certification provided for in § 36-4-26.1 of this chapter. ~~If he or she has designated the~~
4 ~~promotional list, certification shall be made in the manner prescribed for the employment list. If he~~
5 ~~or she has designated the reemployment list, the names of all available eligibles on the list shall be~~
6 ~~certified to him or her for appointment. He or she may choose from any of the names so certified.~~
7 If there are as many as ~~three (3)~~ four (4) available eligibles certified from an employment list, a
8 ~~promotion list, or a reemployment list,~~ the appointing authority shall make an appointment from
9 ~~one of these lists~~ the list. ~~If there are less than three (3) available eligibles certified from any of~~
10 ~~these lists, the appointing authority may choose to appoint one of the persons so certified. If the~~
11 ~~appointing authority decides not to make an appointment from any of the names so certified when~~
12 ~~there are less than three (3) available eligibles, the personnel administrator shall certify the names~~
13 ~~of three (3) available eligibles from any list which he or she shall declare to be appropriate and the~~
14 ~~appointing authority shall appoint one of the persons so certified.~~ If there are less than ~~three (3)~~
15 four (4) available eligibles certified from an ~~appropriate~~ employment list, the appointing authority
16 may elect to appoint one of the names so certified or may make ~~a temporary~~ an appointment of
17 some other person ~~as hereinafter provided~~. Whenever the personnel administrator is requested to
18 certify names to fill more than one vacancy in a given class, he or she shall certify to each of the
19 appointing authorities concerned ~~one~~ three (3) additional ~~name~~ names for each additional vacancy.

20 **36-4-26.1. Supplemental certification in the civil service -- Expanded certification for**
21 **equal opportunity and affirmative action.**

22 (a) To eliminate the overall adverse impact of systemic barriers to the employment of
23 minorities as a protected class, the office of personnel administration shall provide all appointing
24 authorities the necessary flexibility to remedy the effects of systemic discriminatory practices.
25 Supplemental certification does not guarantee employment of protected classes. It guarantees the
26 appointing authority increased opportunities, where possible, to appoint qualified employees from
27 an expanded eligibility list whenever a department can demonstrate that there is statistical
28 underrepresentation based on demographic analysis, otherwise called a "manifest imbalance"
29 elsewhere in this chapter.

30 (b) Wherever a manifest imbalance exists, as ~~substantiated by the appointing authority and~~
31 certified by the equal opportunity administrator in conjunction with the state personnel
32 administrator, a supplemental certification list of minorities ~~may~~ shall be called for in addition to
33 the appropriate employment ~~or promotion~~ list, except in the following instances:

34 (1) The absence of statistical data or reasonable evidence to show significant past

1 discrimination, patterns of possible discrimination, and/or adverse impact on the protected classes;

2 (2) The presence of at least one minority ranked among the three (3) persons standing
3 highest on the list of persons certified by the personnel administrator for the position in question;

4 (3) The absence of any minorities on the appropriate eligibility list; or

5 (4) Any instance in which the department or agency is subject to a contradictory or
6 inconsistent court order.

7 (c) Supplemental certifications based on race or color as a protected class shall be made by
8 an appointing authority whenever:

9 (1) The appointing authority shall make requisition to fill one or more positions included
10 in the appointing authority's affirmative action plan on file with the equal opportunity
11 administrator;

12 (2) The equal opportunity administrator has made a written determination substantiating
13 that previous practices of the department and/or of the appointing authority with respect to the
14 filling of the position or positions have discriminated against minorities in contravention of any
15 provision of the Constitution of the United States or the Constitution of Rhode Island and
16 Providence Plantations, title VII of the federal Civil Rights Act of 1964 (42 U.S.C. 2000e) or any
17 other federal or state statute; and

18 (3) Eligible minorities have passed an examination for the classification being recruited
19 and/or other list deemed appropriate by the personnel administrator.

20 (d) At least seven (7) days prior to certifying names under this section, the appointing
21 authority shall post a notice of intention to do so in the offices of the personnel administrator and
22 of the equal opportunity administrator, and shall mail a copy of the notice to the applicable union,
23 if any, with instructions to post copies of the notice at all locations where persons whose names
24 may be certified under the provisions of this section may, if employed, be assigned.

25 (e) In certifying names for appointment to a classification for which supplemental
26 certification is required, the personnel administrator shall include upon the applicable list the names
27 of six (6) persons certified pursuant to this section.

28 **36-4-37. Layoffs -- Preference for retention or reemployment.**

29 An appointing authority may lay off a classified employee whenever he or she deems it
30 necessary because of a material change in duties or organization, or shortage or stoppage of work
31 or funds. In every case of layoff, the appointing authority shall, before the effective date of the
32 layoff, give written notice of his or her action to the personnel administrator and the employee and
33 shall certify that consideration has been given to length and quality of service of all employees in
34 the affected class under his or her jurisdiction. No employee with ~~full~~ permanent status shall be laid

1 off while ~~probational, provisional, or temporary~~ probationary employees are employed by the same
2 appointing authority in the same class of positions. ~~No probationary employee shall be laid off~~
3 ~~while provisional or temporary employees are employed by the same appointing authority in the~~
4 ~~same class of positions. No provisional employee shall be laid off while temporary employees are~~
5 ~~employed by the same appointing authority in the same class of positions. Nor shall any temporary~~
6 ~~appointment be made to any position in the class by the appointing authority while any employee~~
7 ~~who has been laid off by the appointing authority is available for certification from a reemployment~~
8 ~~list.~~ Any person who has held ~~full~~ permanent status and who has been laid off shall have his or her
9 name placed on the appropriate reemployment list.

10 **36-4-38. Dismissal.**

11 ~~A classified employee with temporary status may be dismissed at the pleasure of an~~
12 ~~appointing authority under the provisions of § 36-4-31.~~ A classified employee with ~~provisional or~~
13 probationary status may be dismissed ~~for reasons relating to the employee's qualifications or for~~
14 ~~the good of the service~~ at any time during the probationary period, at the discretion of the appointing
15 authority. A classified employee with permanent status may be dismissed by an appointing
16 authority whenever he or she considers the good of the service to be served thereby, stated in
17 writing, with full and sufficient reason, and filed with the personnel administrator. Any removal or
18 separation of an employee from the classified service not otherwise provided for in this chapter
19 shall be deemed to be a dismissal. In every case of dismissal, the appointing authority shall on or
20 before the effective date thereof give written notice of this action and the reason therefor to the
21 employee and shall file a copy of the notice with the personnel administrator not later than three
22 (3) days after the effective date.

23 **36-4-40. Appeal from administrator to administrator of adjudication.**

24 Any person with ~~provisional,~~ probationary, or permanent status who feels aggrieved by an
25 action of the personnel administrator may, within ten (10) calendar days of the mailing of the notice
26 of that action, make a request in writing for an appeal hearing to the administrator of adjudication
27 for the department of administration, and be heard within fourteen (14) calendar days of receipt of
28 the appeal request.

29 **36-4-41. Appeal from administrator of adjudication to appeal board.**

30 Any person with ~~provisional,~~ probationary, or permanent status who feels aggrieved by a
31 decision of the administrator of adjudication may, within thirty (30) calendar days of the rendering
32 of a decision, request in writing for the personnel appeal board to review the decision or conduct a
33 public hearing. Within thirty (30) calendar days of the receipt of the request, the personnel appeal
34 board shall make a report of its findings and recommendations to the governor based upon the

1 decisions of the administrator of adjudication or the testimony taken at a hearing. Copies of the
2 report shall be forwarded to the office of labor relations within the department of administration
3 and to the office of the administrator of adjudication. Within fifteen (15) calendar days of the receipt
4 of the report, the governor shall make his or her decision and so notify the appellant, the personnel
5 appeal board, administrator of adjudication, and the office of labor relations.

6 **36-4-42. Appeal from appointing authority to appeal board.**

7 Any state employee with ~~provisional~~, probationary, or permanent status who feels
8 aggrieved by an action of an appointing authority resulting in a demotion, suspension, layoff, or
9 dismissal or by any personnel action which an appointing authority might take which causes the
10 person to believe that he or she had been discriminated against because of his or her race, sex, age,
11 disability, or his or her political or religious beliefs, may, within thirty (30) calendar days of the
12 mailing of the notice of that action, appeal in writing to the personnel appeal board for a review or
13 public hearing. Within thirty (30) days after conclusion of the hearing the personnel appeal board
14 shall render a decision and shall notify the affected employee and other interested parties of the
15 decision which may confirm or reduce the demotion, suspension, layoff, or dismissal of the
16 employee or may reinstate the employee and the board may order payment of part or all of the
17 salary to the employee for the period of time he or she was demoted, suspended, laid off, or
18 dismissed. The decision of the board shall be final and binding upon all parties concerned, and upon
19 the finding of the personnel administrator, or upon appeal, in favor of the employee, the employee
20 shall be forthwith returned to his or her office or position without loss of compensation, seniority,
21 or any other benefits he or she may have enjoyed, or under such terms as the appeal board shall
22 determine. The employee who is returned to his or her office or position by the appeal board
23 following a review or public hearing shall be granted by the state of Rhode Island counsel fees,
24 payable to his or her representative counsel, of fifty dollars (\$50.00) for each day his or her counsel
25 is required to appear before the appeal board in the behalf of the aggrieved employee.

26 **36-4-46. Reports of changes in status of employees.**

27 Every appointment, transfer, promotion, dismissal, vacancy, change of salary rate, leave of
28 absence, absence from duty, and other ~~temporary or permanent~~ change in status of employees in
29 both the unclassified service and the classified service shall be reported to the personnel
30 administrator at such time, in such form, and together with such supporting or pertinent information
31 as the personnel rules shall prescribe.

32 **36-4-57. Compliance with federal standards.**

33 The provisions of this chapter, chapter 3 of this title, or of the personnel rules shall not
34 apply in each instance where it is contrary to merit standards established by the federal government

1 or any agency of the state where compliance with the merit standards is a condition precedent to
2 the granting of federal funds to the state or any agency of the state. [Pursuant to § 36-4-17, the](#)
3 [personnel administrator shall prepare an employment list for any classes of employees required to](#)
4 [maintain merit standards by federal law or regulations for grant-in-aid programs.](#)

5 SECTION 3. Sections 36-4-23.1, 36-4-28 and 36-4-31 of the General Laws in Chapter 36-
6 4 entitled "Merit System" are hereby repealed.

7 **36-4-23.1. Reemployment lists.**

8 ~~Any person who holds full status in the classified service and resigns in good standing shall~~
9 ~~be entitled to have his or her name placed on an appropriate reemployment list, provided that the~~
10 ~~person so requests in writing within three (3) years of the date of his or her termination from the~~
11 ~~state service. Any person with full status who has resigned and whose appointing authority has~~
12 ~~failed to certify that he or she has resigned in good standing or any person with full status who has~~
13 ~~been dismissed from the classified service may request in writing within three (3) years of the date~~
14 ~~of his or her termination that his or her name be placed on the appropriate reemployment list and~~
15 ~~the request may be granted at the discretion of the personnel administrator. Each name placed on a~~
16 ~~reemployment list shall be stricken therefrom at the expiration of three (3) years from the official~~
17 ~~termination date.~~

18 **36-4-28. Probationary period.**

19 ~~All original appointments and promotional appointments to the classified service shall be~~
20 ~~for a probationary period of six (6) months, during which time the appointment authority shall~~
21 ~~report to the personnel administrator every sixty (60) days concerning the work of the employee~~
22 ~~and at the expiration of the probationary period unless the appointing authority files with the~~
23 ~~personnel administrator a statement in writing that the services of the employee during the~~
24 ~~probationary period have not been satisfactory and that it is not desired that he or she be continued~~
25 ~~in the service, he or she shall receive permanent status in this classification. Any employee may be~~
26 ~~dismissed by the appointing authority during the probationary period for reasons relating to the~~
27 ~~employee's qualifications or for the good of the service stated by the appointing authority in writing~~
28 ~~and filed with the personnel administrator. The probationary period is further defined to be one~~
29 ~~hundred and thirty (130) days worked in the classified position to which the person has been~~
30 ~~appointed.~~

31 **36-4-31. Temporary appointment when no list available.**

32 (a) ~~Whenever it is not possible to certify the required number of eligible persons for~~
33 ~~appointment to a vacancy in the classified service because no appropriate list exists, the appointing~~
34 ~~authority may nominate a person to the personnel administrator and if the nominee is found by the~~

1 ~~personnel administrator to have had experience and education that appear to qualify him or her for~~
2 ~~the position and meets such other requirements as are established by this chapter and the personnel~~
3 ~~rules, he or she may be temporarily appointed to fill the vacancy. All persons with temporary status~~
4 ~~who have been or who shall be temporarily appointed to those vacancies shall serve at the pleasure~~
5 ~~of the appointing authority or until removed in accordance with other provisions of this chapter.~~
6 ~~The personnel administrator shall within one year of the appointment of the temporary appointee~~
7 ~~establish an appropriate list. In the event the personnel administrator has failed or fails to establish~~
8 ~~an appropriate list within one year of a temporary appointment, the temporary employee shall~~
9 ~~become a provisional employee until a suitable list is established, at which time the appropriate~~
10 ~~merit system laws, rules, and regulations shall apply.~~

11 ~~(1) Whenever any provisional employee who is serving in a competitive branch position~~
12 ~~within the classified service completes five (5) consecutive years of satisfactory service, and the~~
13 ~~personnel administrator has failed to establish a timely appropriate list as required by subsection~~
14 ~~(a) during that time, that provisional employee shall be deemed to have qualified for his or her~~
15 ~~position and shall be awarded permanent status, without the need of examination.~~

16 ~~(2) When an appropriate list is established for a position held by a temporary or provisional~~
17 ~~appointee, the position shall be deemed to be vacant for the purposes of certification and~~
18 ~~appointment, and no salary or other compensation shall be paid to any temporary or provisional~~
19 ~~appointee for services in the position for more than fifteen (15) days after certification of at least~~
20 ~~three (3) available eligibles from the appropriate list.~~

21 ~~(b) Any employee who holds temporary or provisional status for at least twelve (12)~~
22 ~~consecutive months in the class in which he or she is serving and who takes the appropriate~~
23 ~~examination for the position shall receive in addition to his or her test score five (5) additional~~
24 ~~points for each year of state service, which shall be added to his or her test score; provided,~~
25 ~~however, that in no case shall an employee receive credit for more than four (4) years of service.~~
26 ~~An employee who holds temporary provisional status for at least twelve (12) consecutive months~~
27 ~~in the class in which he or she is serving and is found to be reachable for certification to the position~~
28 ~~he or she holds shall be appointed to the position unless the appointing authority certifies to the~~
29 ~~personnel administrator that the individual's service has been unsatisfactory.~~

30 SECTION 4. This act shall take effect upon passage.

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LC004580
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- DIVISION OF PERSONNEL
ADMINISTRATION

- 1 This act would make numerous changes to the merit system.
- 2 This act would take effect upon passage.

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LC004580
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