

2019 -- H 6088

LC001789

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

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

Introduced By: Representatives Knight, Williams, Speakman, Ucci, and Craven

Date Introduced: May 09, 2019

Referred To: House Labor

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
2 Chapter 36-3 entitled "Division of Personnel Administration" are hereby amended to read as
3 follows:

4 **36-3-3. Definitions.**

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

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

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

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

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

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

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

18 (7) "Disabled veteran" means any war veteran who is an examinee and who is certified

1 by the veterans administration to be physically disabled, as a result of a service connected
2 disability, with a disability rating of zero percent (0%) or more.

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

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

6 (10) "Employment list" means a list of names of persons arranged in the order of their
7 ratings who have been found qualified through suitable tests, and who are entitled to have their
8 names certified to appointing authorities for original appointment under the provisions of chapter
9 4 of this title and rules.

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

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

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

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

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

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

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

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

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

26 (18) "Reemployment list" means a list of names of persons who have occupied positions
27 in the classified service, who have been separated from a position in the classified service, and
28 who are entitled to have their names certified to appointing authorities under the provisions of
29 chapter 4 of this title and rules.

30 (19) "State service" means all offices and positions of trust or employment in the service
31 of the state.

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

34 (21) "War veteran" or "veteran" means any person, male or female, who was employed as

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

15 **36-3-5. Powers and duties of the administrator.**

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

18 (1) As executive head of the division of personnel administration, to direct, supervise,
19 develop, and authorize all personnel related administrative and technical activities including
20 personnel administration and personnel management.

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

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

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

27 (5) To establish and supervise the maintenance of employment lists, ~~promotion lists~~, and
28 reemployment lists; to develop recruitment procedures, monitor agency recruitment processes for
29 compliance with the statutes and policies, and make available to state agencies qualified
30 candidates as vacancies occur; direct and supervise equal opportunity programs; manage
31 employee benefit plans including the coordination of health insurance, prescription/vision care,
32 group life insurance, dental care, prepaid legal services, deferred compensation and cancer
33 programs, and any other programs established by the legislature related to employee benefits; and
34 to manage career awards programs and state and local enforcement firefighters incentive training

1 programs.

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

5 **36-3-10. Appeals to appeal board.**

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

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

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

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

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

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

23 **36-3-14. Facilities for division.**

24 The division shall be provided by the director with the necessary funds and employees to
25 enable the division to examine ~~temporary~~ employees within the time prescribed by law and with
26 suitable offices, examination rooms, and accommodations for itself and staff in the city of
27 Providence, and in localities throughout the state as may be required to suit the public
28 convenience and carry on the work of the division. It shall be the duty of the officers of the state,
29 or any political subdivisions thereof, at any place where examinations or hearings are directed to
30 be held by the personnel administrator to allow the reasonable use of public buildings and rooms
31 and to furnish the buildings and rooms with heat and light for holding hearings and examinations
32 and in all proper ways to facilitate the work of the division in carrying out the provisions of this
33 chapter and chapter 4 of this title.

34 SECTION 2. Sections 36-4-4, 36-4-6, 36-4-7, 36-4-8, 36-4-10, 36-4-17, 36-4-18, 36-4-

1 19, 36-4-21, 36-4-22, 36-4-23, 36-4-24, 36-4-25, 36-4-26, 36-4-26.1, 36-4-37, 36-4-38, 36-4-40,
2 36-4-41, 36-4-42, 36-4-46 and 36-4-57 of the General Laws in Chapter 36-4 entitled "Merit
3 System" are hereby amended to read as follows:

4 **36-4-4. ~~Positions classed as noncompetitive~~ Positions in the classified service.**

5 ~~The noncompetitive branch shall include classes of positions that require the performance~~
6 ~~of routine, laboring, custodial, domestic tasks, or positions that are subject to continuing~~
7 ~~supervision. In addition to the foregoing, classes of positions that require licenses, certificates, or~~
8 ~~registrations shall also be included in the noncompetitive branch. Beginning on July 1, 2020,~~
9 ~~notwithstanding any rule, regulation, or provisions of the public laws or general laws to the~~
10 ~~contrary, there shall be one class of positions in the classified service.~~

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 physical condition.~~

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

18 ~~Persons appointed~~ All appointments to positions in the ~~noncompetitive branch~~ classified
19 service, shall ~~serve a~~ be probationary for a period of six (6) months during which time the
20 appointing authority shall report to the personnel administrator every sixty (60) days concerning
21 the work of the employee and at the end of the probationary period no further salary or other
22 compensation shall be paid to the employee unless the appointing authority has filed with the
23 personnel administrator a statement, in writing, that the services of the employee have been
24 satisfactory and that it is desired that his or her services be continued. A classified employee with
25 probationary status may be dismissed at any time during the probationary period, at the discretion
26 of the appointing authority. The probationary period is further defined to be one hundred-thirty
27 (130) days worked in the ~~non-competitive~~ position to which the person has been appointed. Upon
28 completion of the probationary period and receipt of the statement of satisfactory service by the
29 personnel administrator and having fulfilled the requirements for character and physical
30 condition, the employee shall be deemed to have acquired full status and shall enjoy all the rights
31 and privileges of that status. ~~Whenever a class of positions shall be assigned to the~~
32 ~~noncompetitive branch, every employee holding a position in that class at the time of assignment~~
33 ~~who is a temporary employee and has served in that class for six (6) months or more shall be~~
34 ~~considered to have completed the required probationary period and upon receipt of a statement~~

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

13 **36-4-8. Rules -- Amendments.**

14 (a) The personnel administrator shall recommend such rules as he or she may consider
15 necessary, appropriate, or desirable to carry out the provisions of this chapter and chapter 3 of this
16 title and may from time to time recommend amendments thereto. ~~When the rules or amendments~~
17 ~~are recommended by the personnel administrator, the director shall hold a public hearing thereon,~~
18 ~~and shall have power to approve or reject the recommendations of the personnel administrator~~
19 ~~wholly or in part or to modify them and approve them as so modified. The director shall give~~
20 ~~notice of the hearing at least fourteen (14) calendar days prior to the date of the hearing. Rules or~~
21 ~~amendments thereto which are approved by the director, shall be submitted to the governor, who~~
22 ~~shall have power to approve them, with or without modification or to reject them. The rules or~~
23 ~~amendments thereto shall become effective when approved by the governor. Such rules shall be~~
24 promulgated in full accordance with chapter 35 of title 45, the ("administrative procedures act").
25 Rules adopted under this section shall have the force and effect of law.

26 (b) Rules promulgated pursuant to this section shall not change conditions of employment
27 in a unit covered by a collective bargaining agreement.

28 **36-4-10. Changes in plan -- Notice of establishment of new positions.**

29 (a) Additional classes may be established and existing classes may be divided, combined,
30 altered, or abolished upon recommendation of the personnel administrator, recommendation by
31 the director after public hearing, and approval by the governor. This action may be initiated either
32 by the personnel administrator, the director, or on request of an appointing authority. Appointing
33 authorities intending to establish new positions shall so notify the personnel administrator, and
34 except as otherwise provided in this chapter, no person shall be appointed to or employed for a

1 new position until it has been properly classified as herein provided and an appropriate list
2 established therefor.

3 (b) The personnel administrator may make amendments to the classification plan without
4 public hearing when the amendments are required by law.

5 **36-4-17. Preparation of employment lists.**

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

12 **36-4-18. ~~Competitive tests~~ Civil service tests.**

13 ~~The competitive~~ Civil service tests shall be designed to determine fairly the capacity of
14 the persons examined to perform the duties of the positions in the classes for which the lists are
15 prepared. ~~The competitive tests shall be open to applicants who are residents of the state of Rhode~~
16 ~~Island; provided, that the personnel administrator may admit to competitive tests for technical,~~
17 ~~professional, or unusual positions residents of other states.~~ Any resident individual denied
18 admission to an examination on the grounds of insufficient qualifications as established in the
19 class specifications involved may, within five (5) calendar days of the mailing of the notices,
20 appeal in writing to the administrator of adjudication for a hearing or review of the denial. On the
21 basis of the review or hearing, the administrator of adjudication may direct the personnel
22 administrator to permit the appellant to take the examination. The tests may take into
23 consideration elements of character, education, aptitude, experience, knowledge, skill,
24 personality, physical fitness, professional license, or specialized training, and other pertinent
25 matters, and may be written, oral, physical, or in the form of demonstration of skill, or any
26 combination of these types. Public notice of every test shall be given in the manner prescribed by
27 the personnel rules. Persons having a legitimate and proper interest in examination questions used
28 in connection with any examination shall be freely allowed to inspect the questions, when all
29 phases of the examination in which the questions were used have been completed under such
30 conditions as shall be specified in the personnel rules. The final earned rating of each person
31 competing in any test shall be determined by the weighted average of the earned rating on all
32 phases of the test according to weights for each phase established by the personnel administrator
33 in advance of the giving of the tests and published as part of the announcement of the
34 examination. However, the personnel administrator may discontinue the examination process for

1 any competitor when it has been determined that the required minimum final earned rating cannot
2 be attained. All persons competing in any test shall be given written notice of their standing on
3 any employment list or of their failure to attain a place upon the list. The personnel administrator
4 may as deemed appropriate establish broadband examinations for a wide variety of entry and/or
5 other levels of positions which would not be ranked in the traditional manner. The examinations
6 would be ranked only upon certification to an appropriate vacancy and subject to conditions
7 established in the personnel rules and the provisions of §§ 36-4-4 and 36-4-7 shall not apply to
8 any appointments which are in the unclassified service. When an appropriate vacancy exists, the
9 appointing authority will certify as to the appropriate knowledge, skills, and abilities required for
10 successful performance in a particular position or positions. The personnel administrator will then
11 proceed to rank all eligibles who have qualified and possess the requisite knowledge, skills, and
12 abilities.

13 **36-4-19. Placement of names on employment lists -- Listing of veterans.**

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

26 (b) For the purposes of this section:

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

31 (2) "Veteran" means a person who served on active duty for other than training for a
32 period of more than thirty (30) days and was discharged or released there from with other than a
33 dishonorable discharge; or was discharged or released from active duty because of a service-
34 connected disability; or served as a member of the national guard or reserve forces and served a

1 minimum of twenty (20) years of honorable service in the national guard or reserve forces, has
2 received a certificate of retirement and has been honorably or generally discharged from the
3 national guard or reserve forces.

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

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

14 **~~36-4-22. Promotion examinations and lists~~ Promotional points.**

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

17 (i) A ~~person is eligible for~~ full status employee shall receive five (5) promotional
18 ~~examination points on his or her final civil services test score, provided the employee is currently~~
19 ~~employed in the classified, unclassified, or nonclassified service as of the official closing date of~~
20 ~~the examination announcement or twenty one (21) calendar days prior to the administration of the~~
21 ~~first phase of the examination, whichever is later, and meets one or more of the following~~
22 ~~requirements:~~

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

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

27 ~~(C)~~(b) A probationary status employee shall receive five (5) promotional points if that
28 employee is a minority (as currently defined in federal employment law as ~~Blacks~~ Black or
29 African American (not Hispanic or Latino), ~~Hispanics~~ Hispanic or Latino, Native American
30 ~~Indians including~~ or Alaska ~~Natives~~ Native (not Hispanic or Latino), and ~~Asians including Pacific~~
31 ~~Islanders)~~ Asian (not Hispanic or Latino), Native Hawaiian or Pacific Islander (not Hispanic or
32 Latino), and two (2) or more races (not Hispanic or Latino) who is a qualified exam applicant
33 seeking entry to a classification where there is a manifest imbalance in the job category; ~~or~~

34 ~~(D) Any employee who has served twelve (12) months service in the classified,~~

1 ~~unclassified, or nonclassified service and, in addition, meets the minimum requirements~~
2 ~~established in the class specification.~~

3 ~~(ii) Promotion lists shall remain in effect for a period of three (3) years or until exhausted~~
4 ~~or until combined with or replaced by a more recently prepared list.~~

5 ~~(b)(c)~~ This section shall not apply to the Rhode Island state police or the legislative
6 branch of state government.

7 ~~(e) An employee who is not on the promotional list shall be eligible to take the~~
8 ~~promotional examination for the position the employee occupies.~~

9 **36-4-23. Preferred reemployment list.**

10 Any person in the classified service who holds permanent full status and is laid off as a
11 result of reorganization, abolishment of positions by reason of reduction of force due to lack of
12 work or lack of funds shall be placed on the list in the order of length of service and appointment
13 therefrom shall be in the same order.

14 **36-4-24. Removal of disqualified names from lists.**

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

22 **36-4-25. Designation of appropriate list for filling of vacancies.**

23 The preferred reemployment list shall have precedence over all other lists for the filling
24 of vacancies of comparable or less comparable positions in state service until the list is exhausted.
25 ~~Vacancies in positions in the classified service shall be filled as far as practicable by promotional~~
26 ~~appointments. Whenever a vacancy does exist in any position in the classified service, the~~
27 ~~appointing authority may choose to use either the employment, promotion, or reemployment list~~
28 ~~to fill the vacancy and shall request the personnel administrator to certify the names of persons~~
29 ~~eligible for appointment from the designated list; provided, however, that in In the event of the~~
30 reorganization of a department or division, or the abolishment of a position or positions in state
31 service, any classified employee with permanent full status affected thereby shall be placed in a
32 comparable position for which they meet the qualifications within the department or division, if
33 such vacancy exists. ~~If, however, placement within the department or division is not possible,~~
34 ~~then the affected employee shall be placed in a comparable position elsewhere in state service.~~

1 Whenever a position is allocated or reallocated upward, the classified employee ~~with permanent~~
2 ~~status~~ holding that position shall be given an opportunity to qualify for the allocated or
3 reallocated position by taking a qualifying examination, if one should be given ~~and shall be~~
4 ~~placed on leave of absence from the old position until the employee has gained status or failed to~~
5 ~~qualify for the position.~~

6 **36-4-26. Certification and appointment to positions in classified service.**

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

32 **36-4-26.1. Supplemental certification in the civil service -- Expanded certification**
33 **for equal opportunity and affirmative action.**

34 (a) To eliminate the overall adverse impact of systemic barriers to the employment of

1 minorities as a protected class, the office of personnel administration shall provide all appointing
2 authorities the necessary flexibility to remedy the effects of systemic discriminatory practices.
3 Supplemental certification does not guarantee employment of protected classes. It guarantees the
4 appointing authority increased opportunities, where possible, to appoint qualified employees from
5 an expanded eligibility list whenever a department can demonstrate that there is statistical
6 underrepresentation based on demographic analysis, otherwise called a "manifest imbalance"
7 elsewhere in this chapter.

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

12 (1) The absence of statistical data or reasonable evidence to show significant past
13 discrimination, patterns of possible discrimination, and/or adverse impact on the protected
14 classes;

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

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

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

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

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

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

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

33 (d) At least seven (7) days prior to certifying names under this section, the appointing
34 authority shall post a notice of intention to do so in the offices of the personnel administrator and

1 of the equal opportunity administrator, and shall mail a copy of the notice to the applicable union,
2 if any, with instructions to post copies of the notice at all locations where persons whose names
3 may be certified under the provisions of this section may, if employed, be assigned.

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

7 **36-4-37. Layoffs -- Preference for retention or reemployment.**

8 An appointing authority may lay off a classified employee whenever he or she deems it
9 necessary because of a material change in duties or organization, or shortage or stoppage of work
10 or funds. In every case of layoff, the appointing authority shall, before the effective date of the
11 layoff, give written notice of his or her action to the personnel administrator and the employee
12 and shall certify that consideration has been given to length and quality of service of all
13 employees in the affected class under his or her jurisdiction. No employee with full status shall be
14 laid off while ~~probational, provisional, or temporary~~ probationary employees are employed by the
15 same appointing authority in the same class of positions. No probationary employee shall be laid
16 off while provisional or temporary employees are employed by the same appointing authority in
17 the same class of positions. ~~No provisional employee shall be laid off while temporary employees~~
18 ~~are employed by the same appointing authority in the same class of positions. Nor shall any~~
19 ~~temporary appointment be made to any position in the class by the appointing authority while any~~
20 ~~employee who has been laid off by the appointing authority is available for certification from a~~
21 ~~reemployment list.~~ Any person who has held full status and who has been laid off shall have his
22 or her name placed on the appropriate reemployment list.

23 **36-4-38. Dismissal.**

24 ~~A classified employee with temporary status may be dismissed at the pleasure of an~~
25 ~~appointing authority under the provisions of § 36-4-31.~~ A classified employee with ~~provisional or~~
26 probationary status may be dismissed ~~for reasons relating to the employee's qualifications or for~~
27 ~~the good of the service~~ at any time during the probationary period, at the discretion of the
28 appointing authority. A classified employee with ~~permanent~~ full status may be dismissed by an
29 appointing authority whenever he or she considers the good of the service to be served thereby,
30 stated in writing, with full and sufficient reason, and filed with the personnel administrator. Any
31 removal or separation of an employee from the classified service not otherwise provided for in
32 this chapter shall be deemed to be a dismissal. In every case of dismissal, the appointing authority
33 shall on or before the effective date thereof give written notice of this action and the reason
34 therefor to the employee and shall file a copy of the notice with the personnel administrator not

1 later than three (3) days after the effective date.

2 **36-4-40. Appeal from administrator to administrator of adjudication.**

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

8 **36-4-41. Appeal from administrator of adjudication to appeal board.**

9 Any person with ~~provisional~~, probationary, or ~~permanent~~ full status who feels aggrieved
10 by a decision of the administrator of adjudication may, within thirty (30) calendar days of the
11 rendering of a decision, request in writing for the personnel appeal board to review the decision
12 or conduct a public hearing. Within thirty (30) calendar days of the receipt of the request, the
13 personnel appeal board shall make a report of its findings and recommendations to the governor
14 based upon the decisions of the administrator of adjudication or the testimony taken at a hearing.
15 Copies of the report shall be forwarded to the office of labor relations within the department of
16 administration and to the office of the administrator of adjudication. Within fifteen (15) calendar
17 days of the receipt of the report, the governor shall make his or her decision and so notify the
18 appellant, the personnel appeal board, administrator of adjudication, and the office of labor
19 relations.

20 **36-4-42. Appeal from appointing authority to appeal board.**

21 Any state employee with ~~provisional~~, probationary, or ~~permanent~~ full status who feels
22 aggrieved by an action of an appointing authority resulting in a demotion, suspension, layoff, or
23 dismissal or by any personnel action which an appointing authority might take which causes the
24 person to believe that he or she had been discriminated against because of his or her race, sex,
25 age, disability, or his or her political or religious beliefs, may, within thirty (30) calendar days of
26 the mailing of the notice of that action, appeal in writing to the personnel appeal board for a
27 review or public hearing. Within thirty (30) days after conclusion of the hearing the personnel
28 appeal board shall render a decision and shall notify the affected employee and other interested
29 parties of the decision which may confirm or reduce the demotion, suspension, layoff, or
30 dismissal of the employee or may reinstate the employee and the board may order payment of
31 part or all of the salary to the employee for the period of time he or she was demoted, suspended,
32 laid off, or dismissed. The decision of the board shall be final and binding upon all parties
33 concerned, and upon the finding of the personnel administrator, or upon appeal, in favor of the
34 employee, the employee shall be forthwith returned to his or her office or position without loss of

1 compensation, seniority, or any other benefits he or she may have enjoyed, or under such terms as
2 the appeal board shall determine. The employee who is returned to his or her office or position by
3 the appeal board following a review or public hearing shall be granted by the state of Rhode
4 Island counsel fees, payable to his or her representative counsel, of fifty dollars (\$50.00) for each
5 day his or her counsel is required to appear before the appeal board in the behalf of the aggrieved
6 employee.

7 **36-4-46. Reports of changes in status of employees.**

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

13 **36-4-57. Compliance with federal standards.**

14 The provisions of this chapter, chapter 3 of this title, or of the personnel rules shall not
15 apply in each instance where it is contrary to merit standards established by the federal
16 government or any agency of the state where compliance with the merit standards is a condition
17 precedent to the granting of federal funds to the state or any agency of the state. [Pursuant to § 36-](#)
18 [4-17, the personnel administrator shall prepare an employment list for any classes of employees](#)
19 [required to maintain merit standards by federal law or regulations for grant-in-aid programs.](#)

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

22 **~~36-4-3. Branches of classified service.~~**

23 ~~The classified service shall be divided into a competitive branch and a noncompetitive~~
24 ~~branch. The competitive branch shall consist of all positions in the classified service except those~~
25 ~~assigned to the noncompetitive branch as hereinafter provided.~~

26 **~~36-4-5. Assignment of positions to noncompetitive branch -- Transfer to competitive~~**
27 **~~branch.~~**

28 ~~No class of positions shall be assigned to the noncompetitive branch unless the~~
29 ~~assignment has been recommended by the personnel administrator, the director has held a public~~
30 ~~hearing thereon, has recommended the assignment to the governor, and the governor has~~
31 ~~approved the assignment. A class of positions may be transferred from the noncompetitive branch~~
32 ~~to the competitive branch in the same manner.~~

33 **~~36-4-23.1. Reemployment lists.~~**

34 ~~Any person who holds full status in the classified service and resigns in good standing~~

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

10 **36-4-28. Probationary period.**

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

23 **36-4-31. Temporary appointment when no list available.**

24 (a) Whenever it is not possible to certify the required number of eligible persons for
25 appointment to a vacancy in the classified service because no appropriate list exists, the
26 appointing authority may nominate a person to the personnel administrator and if the nominee is
27 found by the personnel administrator to have had experience and education which appear to
28 qualify him or her for the position and meets such other requirements as are established by this
29 chapter and the personnel rules, he or she may be temporarily appointed to fill the vacancy. All
30 persons with temporary status who have been or who shall be temporarily appointed to those
31 vacancies shall serve at the pleasure of the appointing authority or until removed in accordance
32 with other provisions of this chapter. The personnel administrator shall within one year of the
33 appointment of the temporary appointee establish an appropriate list. In the event the personnel
34 administrator has failed or fails to establish an appropriate list within one year of a temporary

1 ~~appointment, the temporary employee shall become a provisional employee until a suitable list is~~
2 ~~established, at which time the appropriate merit system laws, rules, and regulations shall apply.~~
3 ~~When an appropriate list is established for a position held by a temporary or provisional~~
4 ~~appointee, the position shall be deemed to be vacant for the purposes of certification and~~
5 ~~appointment, and no salary or other compensation shall be paid to any temporary or provisional~~
6 ~~appointee for services in the position for more than fifteen (15) days after certification of at least~~
7 ~~three (3) available eligibles from the appropriate list.~~

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

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

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LC001789
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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 The act would make numerous changes to the merit system.
- 2 This act would take effect upon passage.

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LC001789
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