

SCS SB 1007 -- STATE PERSONNEL LAW

SPONSOR: Kehoe (Trent)

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on General Laws by a vote of 8 to 4. Voted "Do Pass" by the Standing Committee on Rules - Legislative Oversight by a vote of 7 to 2.

This bill modifies and repeals several provisions relating to the State Personnel Law, commonly referred to as the merit system.

AT-WILL EMPLOYMENT OF STATE EMPLOYEES

The bill provides that employees of the state not subject to the merit system shall be considered at-will employees, serving at the pleasure of their respective appointing authorities (Section 36.025, RSMo).

APPLICABILITY OF STATE PERSONNEL LAW

Currently, with the exception of attorneys, all offices, positions, and employees within numerous state departments and agencies are subject to the merit system. This bill modifies the merit system so that it only applies to employees in eleemosynary or penal institutions and employees in agencies that are required to maintain merit standards by federal law or regulations for grant-in-aid programs (Sections 36.030, 207.085, 621.075, and 630.167).

LIMITED APPLICABILITY OF MERIT SYSTEM

Currently, the provisions of the merit system relating to classification plans shall apply to certain executive branch departments and agencies. This bill extends this requirement to include provisions relating to pay plans and determination of eligibility for examinations for appointments to positions as well. The bill further explicitly exempts the Department of Higher Education and the Department of Elementary and Secondary Education from these requirements (Section 36.031).

POWERS AND RESPONSIBILITIES OF THE DIRECTOR OF PERSONNEL AND THE PERSONNEL ADVISORY BOARD

Currently, the Personnel Advisory Board (PAB) is required to submit annual reports to the Governor and General Assembly regarding personnel administration. The reports are used to evaluate the effectiveness of the Personnel Division within the Office of Administration and each appointing authority. This bill permits, rather than requires, the report to contain the evaluation of effectiveness.

The bill only permits the PAB to promulgate rules that are consistent with this bill for the procedures for merit selection, uniform classification and pay, and covered appeals.

This bill permits the sitting Director of the Division of Personnel to assist the PAB with the search process for a new director. Furthermore, resources of the division may be used in the course of the search process.

Currently, the director may be removed by the PAB only for just cause after he or she has been given a notice with substantial detail of the charges before the PAB. This bill allows the PAB to remove the director for any reason.

Currently, duties and requirements relating to establishing training programs, recruiting programs, performance appraisals, maintaining rosters of all merit employees and officers, and appointing experts and assistants to execute these provisions are specified in the bill. This bill makes these duties discretionary (Sections 36.040 to 36.090 and 36.510).

CLASSIFICATION OF POSITIONS

Currently, the director may group management positions with similar levels of responsibility or expertise into broad classification bands. This bill modifies that provision to permit grouping of all positions with similar levels of responsibility into broad classification bands.

This bill repeals the provision that specifies that the director is required to conduct initial and ongoing reviews of the number of classifications in each division of service.

This bill also repeals the provision that states that an employee who has been reallocated to a different class of employees may be required by the director to achieve a satisfactory grade on a noncompetitive test of fitness for the class to which they have been reallocated.

The provisions relating to classification shall apply to merit-based positions as well as positions in the non-exempt executive branch departments and agencies (Sections 36.100 to 36.130).

PAY PLANS

This bill requires sufficient notice to be given prior to a public hearing in which the director recommends to the PAB a pay plan for all classes of employees. The bill requires that the pay plan

provide for the use of open, or stepless, pay ranges.

This provision applies to merit-based positions as well as positions in the non-exempt executive branch departments and agencies (Section 36.140).

SELECTION OF EMPLOYEES

The bill provides that no selection, appointment, or promotion to a merit-based position shall be made on the basis of unlawful discrimination. The bill repeals the provision that specifies that any regulations promulgated shall provide a remedy that is required by federal merit system standards for grant-in-aid programs. The bill repeals several current procedures for evaluating qualifications and examinations of applicants for merit-based positions. This bill specifies that the standards of education or experience expected for merit-based positions shall be established on the basis of knowledge, skills, and abilities. The director or the respective appointing authority may conduct examinations to determine eligibility for positions. All examinations conducted under these provisions shall be accessible to persons with disabilities.

This bill requires appropriate public notice be given sufficiently in advance for each open class or position to give a reasonable opportunity for qualified persons to apply. Furthermore, the methods for evaluating the qualifications for each applicant for a merit-based position will be determined by the appointing authority of the respective officer or agency making the appointment to the position (Sections 36.150 to 36.200).

PREFERENCES

The bill requires preference in appointments to merit-based positions be given to veterans, the surviving spouses of veterans, disabled veterans, and the spouses of disabled veterans.

A preference in appointments is also given to anyone who was previously employed by the state but terminated such employment to care for young children (Sections 36.220 and 36.225).

VACANCIES IN MERIT-BASED POSITIONS

This bill modifies the process for filling vacancies in merit-based positions. The bill permits appointing authorities to fill one or more vacancies in merit-based positions by submitting to the director a requisition for a certification of eligible persons for such positions. Upon receiving a request for certification, the director shall certify for selection of available names. If the

position is temporary then the director may certify anyone eligible who will accept employment. Anyone eligible who does not respond to a notice of certification, within a reasonable amount of time, may be dropped from the register for future employment opportunities (Section 36.240).

PROBATIONARY PERIODS

This bill repeals the provisions that stipulate that no employee shall be paid for work performed after the expiration of the employee's probationary period unless the appointing authority has notified the director and the employee that the employee will be given a regular appointment or, if applicable, the probationary period has been extended.

The bill repeals a provision limiting the number of employees that can be removed successively from the same position during probationary period. Furthermore, a provision is repealed permitting an employee removed from a position during a probationary period to be restored to the register from which he or she was certified (Section 36.250).

TRANSFER, PROMOTION, AND DEMOTION OF EMPLOYEES

This bill repeals provisions regarding the transfer of employees because of layoff, or shortage of work or funds which might require a layoff.

The bill stipulates that the transfer of an employee from a position in one division to a position in the same class in another division may be made with the approval of the appointing authority, rather than both the director and the appointing authority. Written notice is required to be given to the director upon making a transfer.

This bill repeals a provision requiring the promotion of an employee from one position to another position of a higher rank to be done through the certification process as stipulated in the merit system.

The bill repeals a provision entitling employees who have been demoted to a right of appeal to the Administrative Hearing Commission (Section 36.280).

PROMOTIONAL REGISTER

Currently, the director is required to maintain promotional registers of eligible applicants for the various locations or divisions of service with merit-based positions. This bill

specifies that the director may maintain promotional registers. The bill repeals a provision requiring registers to rank eligible applicants in the order of their ratings.

Currently, the time period during which a register shall remain in force varies between one and three years. This bill gives discretion to the director to determine the length of time that best meets the needs of the service. Furthermore, the method for establishing, replenishing, and canceling such a register is permitted, rather than required, to be determined by regulation (Section 36.320).

SERVICE REPORTS

This bill makes the establishment of a system of service reports optional, rather than mandatory, on the part of the joint effort of the director and the appointing authorities (Section 36.340).

DISMISSAL OF EMPLOYEES AND SUBSEQUENT APPEALS

The bill permits an appointing authority to dismiss for cause any regular employee serving in a position in an agency that is required to maintain personnel standards on a merit basis by federal law or regulations for grant-in-aid programs. Such dismissal shall only be made when it is determined that it is in the interests of efficient administration. The bill repeals a provision permitting the director to approve re-employment of an employee if it is determined that the statement of reasons for the dismissal given by the appointing authority shows that such dismissal does not reflect discredit on the character or conduct of the employee.

Currently, the results of examinations and notifications of decisions on employment are required to be sent via mail to applicants. This bill permits such notices to be sent by any means to applicants for merit-based positions only.

The bill limits the right of appeal for a dismissal, involuntary demotion, or suspension to regular employees employed in a position in an agency that is required to maintain personnel standards on a merit basis by federal law or regulations for grant-in-aid programs (Sections 36.380 and 36.390).

COMMISSIONER OF ADMINISTRATION

Currently, the director and the Division of Personnel shall perform all duties as directed by the Commissioner of Administration with regard to personnel work in state departments and agencies not covered by the merit system. This bill modifies that so that it

applies to all personnel work in state departments and agencies, regardless of whether the employees are covered by the merit system (Section 37.010).

WHISTLEBLOWER PROTECTION - STATE EMPLOYEES

Currently, state employees are permitted to disclose information which relates to the violation of law, mismanagement, or waste of funds within a state agency without fear of disciplinary action being taken for such disclosure. This bill modifies that provision to apply to all public employees and broadens the scope of entities that a public employee can discuss information with to include prosecuting and circuit attorneys, law enforcement agencies, news media, and the public.

The bill expands the scope of information that can be disclosed by employees to include any violation of policy, waste of public resources, alteration of technical findings or communication of scientific opinion, and breaches of professional ethical canons. Furthermore, no public employee can be prevented from testifying before a court, administrative body, or legislative body regarding any such disclosure.

Currently, any administrative appeal filed by a state employee alleging that disciplinary action was taken against them in violation of these provisions must be filed within 30 days of the disciplinary action. Currently, such employees may bring a civil action in court within 90 days of the alleged violation. This bill extends both of those time limits to one year and further allows any person commencing such an action to demand a jury trial.

Currently, the standard for determining whether a state employee was unlawfully disciplined under the state whistleblower protection law is whether the disciplinary action was "unreasonable." This bill repeals the term "unreasonable" and instead requires the disciplinary action to have been taken for any reason that violates the state employee whistleblower law.

In a civil action brought under this bill, the public employer shall bear the burden of demonstrating that the disciplinary action taken against the employee was not the result of the employee reporting alleged misconduct.

If the misconduct alleged by a public employee involves the receipt and expenditure of public funds, the employee may request an investigation by the State Auditor.

Any person who obtains a claim or final judgment for a payment to be made out of the state legal expense fund shall not be offered or

required to sign any confidentiality agreement stating that he or she will not discuss his or her claim or final judgment or stating that if he or she does discuss such claim or final judgment, he or she will waive any right to moneys from the state legal expense fund (Section 105.055).

These provisions are identical to SB 786, as perfected (2018).

MISCELLANEOUS

The bill repeals provisions allowing for provisional and emergency appointments to merit-based positions as well as layoff, stipulating how vacancies in a merit-based position should be filled, and entitling merit-based employees to a service letter upon being discharged or voluntarily quitting such position.

The bill repeals obsolete provisions relating to the PAB and Director of Division of Personnel of Office of Administration.

PROPOSERS: Supporters say that this is a merit reform bill. The current merit system is over 70 years old and needs to be updated. Supporters think this bill will create more efficiencies: the hiring process will be quicker and employees can be moved where needed. Supporters say that only a little more than half of state workers are currently in the merit system. This bill moves most state workers out of the merit system so that more state workers are treated the same. Supporters say that these changes will make it easier to reward employees that are working hard by ensuring that they have a path for advancement and aren't held back by the merit register.

Testifying for the bill were Senator Kehoe and the Office of Administration.

OPPOSERS: Those who oppose the bill say that state workers are underpaid and overworked but that isn't addressed in this bill. Opponents say they agree that workers who are not performing their job duties should be terminated but opponents argue that the current merit system allows for termination, the state just needs to provide a reason for the termination. It is important that the state provide that reason for termination to ensure that state workers are not being fired for political reasons. Opponents are concerned that the changes in this bill would open the door to political favoritism and a lack of accountability for how we manage employees. Other opponents would like to have more information about what a stepless pay range system would actually look like in practice before making that change in legislation. Opponents stress that while there are currently state workers who are not under the merit system, they do have certain protections with

regard to dismissals but this bill removes those protections. Currently, agencies not within the merit system are required by law to adopt dismissal and appeal procedures similar to those required by the merit system. This bill repeals those provisions. Opponents stress that this bill does not have any features that would improve the motivation of or output by state employees. Opponents say their biggest concern is a lack of due process.

Testifying against the bill were American Federation of Teachers-Missouri; Service Employees National Union State Council; Missouri AFL-CIO; Missouri NEA; Natasha Pickens, CWA 6355; and Missouri Jobs with Justice.