

# REINVENTING THE STATE CIVIL SERVICE— RECRUITING AND HIRING FOR EXCELLENCE

## ***How Can the Legislature Foster Excellence in the Civil Service Through Improvements in the State's Recruiting and Hiring Practices?***

### **Summary**

*In a report entitled **Reinventing the State Civil Service (in the 1995-96 Budget: Perspectives and Issues)** we called attention to general problems of the state's civil service. In it we recommended that the Legislature begin a fundamental rethinking of the state civil service system.*

*In this report we focus on the recruiting and hiring aspects of the system. Our review indicates that various provisions of existing law inhibit innovation and revitalization of the state's civil service. These provisions include mandated examination scoring rules that undermine the merit principle of civil service and are unfair to many job applicants. Other provisions grant undue preference to incumbent state employees to the detriment of the state's interest in maximizing the pool of highly qualified candidates. Still other provisions impose an unnecessary strait-jacket on the state's internal personnel practices.*

*To improve the state's recruiting/hiring practices, we recommend enactment of the following law changes:*

- *Replace the "rule of three names" with the "rule of three ranks" in examination scoring, to broaden job candidate pools.*
- *Eliminate extra examination points for nonmerit and non-job-related reasons.*
- *Eliminate the precedence given to hiring lists comprised of state employees over lists of nonstate employees.*
- *Increase the maximum probation period that the State Personnel Board may establish for a job class from one year to two years.*
- *Exempt the state's internal personnel practices from the burdensome requirements of the Administrative Procedure Act.*

*These recommended changes are, in our view, important first steps for the Legislature to take as part of a larger "reinvention" of the state's civil service system.*

## INTRODUCTION

In a report entitled *Reinventing the State Civil Service* (in the *1995-96 Budget: Perspectives and Issues*), we called attention to general problems of the state's civil service and recommended that the Legislature begin a fundamental rethinking of the state civil service system. In the report we also suggested a set of principles to guide efforts at civil service reform. These principles are restated in Figure 1.

In last year's report, we discussed in more general terms concerns with various elements of the civil service system—classifications, recruiting and hiring, probation and tenure, compensation, and discipline. In this report we focus on the recruiting and hiring aspects of the system, and we recommend enactment of several specific law changes to substantially improve the state's recruiting/hiring practices.

## IMPEDIMENTS IN CURRENT LAW TO EFFECTIVE RECRUITING/HIRING

As discussed below, various provisions of current law present barriers to effective hiring practices, and inhibit innovation and revitalization of the state's civil service system.

### **Rule of Three—Examination Scoring Rules That Frustrate Best Person-Job Matches**

Several provisions of current law cause the ranking of examination scores to be rigid or arbitrary in ways that (1) frustrate good individual-to-job matches and (2) are unfair for many applicants.

Government Code Section 19057 requires for many job classes that eligible lists consist of only three names regardless of the number of persons who may have scored highly on the examination. This is known as the “rule of three names” which, at first view, may appear to promote merit by focusing hiring attention on the three “best” candidates. Often, however, the current process does not produce this result. This is in part because there are other provisions of current law that require the awarding of extra points to applicants who are incumbent civil service employees or veterans. Thus, the persons ranked highest on a list may not be those who actually did best on the examination.

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**Figure 1****Principles for Reinventing California's Civil Service System**

- The Public Comes First**  
Every other principle underlying the design of a good civil service system should tie back to this one.
- Base Fully on the Merit Principle**  
This was the core foundation of the civil service established by the State Constitution in 1934. The principle is as appropriate now as it was then.
- Guard Against Politicization and Patronage**  
Although societal and legal changes have diminished the threat of a return to a “spoils” system in state service, it is not an obsolete concern. Any system of state service must contain safeguards against politicization and patronage.
- Make Adaptable to Change**  
The system must have the ability to adapt to change, including change in the state's demographics, the organization of work, and the conceptions of work and career on the part of employees.
- Promote Excellence in State Service and, Thereby, Efficient and Effective Delivery of Services to the Public**  
A good system should foster a culture of excellence. The state should not be content with mediocrity in the public service.
- Promote Full Use and Development of Employees' Talents and Ideas**  
The civil service system must provide an attractive place for people to work and to grow in talent and fulfillment. Employees must feel that their contributions make a difference—that they are engaged in valuable (and valued) public service.
- Promote a Workforce Representative of the State's People**  
We believe this is an important principle for any organization, but particularly so for government in a representative democracy. We also believe this principle can and should be implemented in harmony with the other principles outlined above.

Furthermore, in many exams the number of persons achieving the top score exceeds three—often by large margins. In these cases, three names from among the group are chosen at random. This prevents departments from considering any of the other top scorers. An alternative “rule of three ranks,” often used for state professional and management classes, eliminates the random selection problem and permits a wider pool of high-scoring candidates to be considered. (For example, in an exam scored in one-point increments with 100 being the top score, the rule of three ranks allows departments to consider all candidates scoring either 98, 99, or 100 points.) As described below, however, even under the rule of three ranks, problems arise from the awarding of extra points for nonmerit reasons.

### **Extra Examination Points for Nonmerit Reasons**

Article 4 of the State Civil Service Act (beginning with Government Code Section 18971) requires the award of extra examination points for veterans, widows and widowers of veterans, and spouses of disabled veterans for entry-level civil service examinations and for “open non-promotional” examinations. (“Open nonpromotional” examinations are open to both current civil service employees and persons outside civil service. These examinations are authorized when, in the judgment of the State Personnel Board (SPB), open competition will produce more highly skilled candidates and is consistent with the best interests of the state.)

Government Code Section 18951 and related sections grant extra examination points to current state employees for open nonpromotional exams. This granting of more points for reasons other than skills or knowledge (1) negates the merit principle that is a foundation of the civil service, and (2) can result in excluding the selection of excellent candidates for state service. As we noted in last year's report, a recent examination resulted in an eligible list consisting exclusively of veterans and incumbent state employees. In this case (and in others), the scoring rules defeat the purpose of holding open examinations, which is to maximize the pool of highly qualified candidates.

### **Undue Precedence Given Promotional Over Open Hiring Lists**

Although not required by law, in practice, many civil service examinations are closed to persons outside the state civil service. This practice warrants reexamination by the SPB and hiring departments. In those instances where examinations are open to those inside and outside of civil service, however, current law requires that preference always be given to eligible lists of current civil service employees (“promotional

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lists”) over eligible lists of persons from outside civil service (“open lists”). This provision unnecessarily restricts the ability of a state department from selecting the individual most qualified for the position regardless of whether the individual is currently in civil service or not.

### **Probation**

Generally, those hired into civil service or promoted into a new class hold their new appointments subject to satisfactory completion of a probation period specified by the SPB. Current law specifies a six-month probation period unless the board establishes a longer period (but not to exceed one year).

For some types of jobs, we believe one year is not adequate for a department to determine whether an employee will likely excel in a position. That determination is important for the quality of the state's workforce since successful passage of probation grants the employee what amounts to tenure in the civil service. For example, new employees in analytical/professional positions working on the state budget are called upon for a changing set of skills as the annual budget cycle progresses. At the conclusion of an employee's first 12 months, he or she may have demonstrated *potential* to perform all aspects of the job, yet not have demonstrated *attainment* of all necessary skills. Despite the tentative nature of an employee's performance at this point, the department must make a yes or no decision with enduring consequences because current law does not permit the department to evaluate employees through a second budget cycle before deciding to grant permanent civil service status.

### **The Administrative Procedure Act Straitjacket**

As we noted in last year's report, the Administrative Procedure Act (APA) turns even routine contemplated changes in the state's personnel rules and practices into costly and time-consuming ordeals. The APA was intended to reduce the complexity, and improve the clarity and legal consistency, of state regulations affecting those *outside* state government. Rulemaking pertaining to the internal operations of *individual* departments are expressly exempt from the Act. Therefore, the Department of Corrections (CDC), for example, may amend or establish personnel rules for its employees without subjecting itself to the APA processes.

If, however, the SPB or the Department of Personnel Administration (DPA) decided to amend or establish personnel rules governing *both* the CDC and the Youth Authority, the full requirements of the APA would

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be triggered. Among other things, this process would require the DPA to (1) prepare detailed documentation in support of its proposed regulation, (2) provide public notice and receive comments, (3) respond to each comment received, (4) hold a public hearing (if requested by anyone), and (5) submit the regulation and final documentation to the Office of Administrative Law for its review and approval. This APA provision is a significant impediment to effective management of the state's personnel system.

## RECOMMENDATIONS

In last year's report we presented a general picture of a civil service system in deep need of fundamental change. Above, we have identified how specific provisions of current law can impede effective recruiting/hiring practices—the critical initial component of the state's civil service system. Ultimately, the system must provide an attractive place for people to work and to grow in talent and fulfillment. It must foster a culture of excellence.

Many of the changes needed to revitalize the system can and should be done through administrative means. For example, the administration could (1) change procedures to permit examinations to be held essentially at any time instead of intervals of up to six years (current practice) and (2) raise minimum job qualifications and examination difficulty for classes that currently attract unmanageably large numbers of candidates.

As discussed above, however, there are several areas under current law that, if modified, could improve significantly the state's recruitment and hiring process. Consequently, we recommend that the Legislature enact the following law changes:

- Replace the “rule of three names” with the “rule of three ranks” (already used for professional and management positions statewide, as well as CDC peace officer positions) in order to provide departments with deeper pools of highly qualified candidates.
  - Eliminate extra examination points for nonmerit and non-job-related reasons (including preference points for incumbent state employees and veterans), to assure that candidates are determined eligible for hire based on their skills and knowledge.
  - Eliminate the requirement that precedence be given to hiring lists comprised of state employees (“promotional lists”) over lists of nonstate employees (“open lists”).
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- Increase the maximum probation period that the SPB may establish for a job class from one year to two years.
- Exempt rulemaking for the state's internal personnel practices from the burdensome requirements of the APA.

The changes we have recommended above are, in our view, important first steps for the Legislature to take as part of a larger “reinvention” of the state's civil service system. We will continue to review other aspects of this large, complex issue, and advise the Legislature on further ways to revitalize the civil service.

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