

Excellence, Accountability, and Management

This Act generally revises the state’s civil service law by:

- Renaming career service as the preferred service and revising the members of the executive service;
- Revising the powers and duties of the commissioner of human resources with regard to the state service;
- Rewriting laws about promotion and entrance tests; revising the manner in which state positions are filled and the manner in which layoffs and dismissals are made;
- Renames the state civil service commission as the state employee’s appeals board, and revising the duties of the commission/board, and
- Replacing the present grievance procedure with a complaint and appeal procedure.

Submitted as:

Tennessee

[Chapter 800](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*]. This Act shall be cited as “The Excellence, Accountability, and
2 Management Act.”

3
4 Section 2. [*Purposes*.]

5 (a) The purpose of this Act is to establish in the state a system of personnel administration
6 that will attract, select, retain and promote the best employees based on merit and equal opportunity,
7 and free from coercive political influences. Because the citizens of the state deserve services from
8 the best employees, the goal of the state personnel system is to provide technically competent
9 employees to render impartial services to the public at all times and to render such services in an
10 ethical and honorable manner. Specifically, the intent of the general assembly is to further this
11 purpose by allowing agencies greater flexibility in personnel management in order to enhance the
12 overall effectiveness and efficiency of state government. The general assembly further intends that
13 state government operate within a framework of consistent best practices across all state agencies
14 and entities and that the state's most valued resource, its employees, be managed in a manner
15 designed to enhance work force productivity and demonstrate sound business practices.

16 (b) It is the policy of the state that agencies treat all employees in accordance with the
17 following principles:

18 (1) Assuring fair treatment of applicants and employees in all aspects of personnel
19 administration without regard to race, color, national origin, gender, age, disability, religion or creed,
20 or political opinions or affiliations. This "fair treatment" principle includes compliance with all
21 applicable state and federal equal employment opportunity and nondiscrimination laws;

22 (2) Recruiting, selecting, and promoting employees on the basis of their relative
23 skills, abilities, competencies and knowledge, including an open process to consider qualified
24 applicants for initial employment;

25 (3) Providing equitable and adequate compensation based on merit, performance, job
26 value, and competitiveness within applicable labor markets;

1 (4) Training and developing employees, as needed, to assure a high level of
2 performance and to provide work force knowledge and skills needed to maintain and advance the
3 state's goals and objectives;

4 (5) Retaining employees on the basis of the adequacy of their performance, correcting
5 inadequate performance when possible and appropriate, and separating employees whose
6 performance and personal conduct is inadequate, unsuitable or inferior; and

7 (6) Assuring that employees are protected against coercion for partisan political
8 purposes and are prohibited from using their official authority for the purpose of interfering with, or
9 affecting the result of, an election or nomination for office.

10 (c) This chapter shall be liberally construed in order to increase governmental efficiency and
11 responsiveness and to secure the employment of qualified persons in the state preferred service.

12 (d) The personnel administration system adopted under this chapter shall govern and limit all
13 other state employment matters and every appointing authority.

14
15 Section 3. [*Applicability.*]

16 (a) Except as provided in subsection (b), this chapter applies to all personnel in state service.
17 "State service" means all officers and positions of trust or employment in the service of state
18 government in the executive branch and all boards, commissions and agencies of state government,
19 except those specifically excluded in this chapter.

20 (b) This chapter does not apply to the following:

21 (1) The legislative branch of state government including, but not limited to,
22 employees of the fiscal review committee, and employees of any other committee, office or other
23 entity created pursuant to law or resolution of either house of the general assembly for the purpose of
24 serving either or both houses of the general assembly in executing its duties under the Constitution
25 of [insert state];

26 (2) The judicial branch of state government including, but not limited to, employees
27 of the administrative office of the courts;

28 (3) The office of the secretary of state;

29 (4) The office of the state treasurer;

30 (5) The office of the comptroller of the treasury;

31 (6) The office of the attorney general and reporter;

32 (7) The offices of the district attorneys general and the district public defenders;

33 (8) The schools, institutions and entities governed by the board of regents and the
34 University of [insert state] board of trustees, including the members of the teaching staffs and the
35 staffs of the boards themselves; and any other special school hereafter established;

36 (9) The [insert state] higher education commission and all employees of that
37 commission; and

38 (10) The Tennessee Housing Development Agency and all employees of that
39 authority.

40 (c) The commissioner shall, upon request of the heads of any of the excluded entries
41 enumerated above, perform any of the functions set forth in this chapter. Such a request shall not be
42 deemed to make the provisions of this chapter applicable to those entries.

43
44 Section 4. [*Definitions.*]

45 As used in this chapter, unless the context otherwise requires:

46 (1) "Appointing authority" means a commissioner, department, officer or agency having
47 power to make appointments to, and separations from, positions in state service;

48 (2) "Board of appeals" refers to the state employees' appeals board established by [insert
49 citation] of this chapter;

1 (3) "Class" or "class of positions" means a group of positions in state service determined by
2 the commissioner to have sufficiently similar duties, authority, and responsibility such that:

3 (A) The same qualifications may be reasonably required for; and

4 (B) The same schedule of pay may be equitably applied to; all positions in the group;

5 (4) "Commissioner" refers to the commissioner of human resources appointed under [insert
6 citation];

7 (5) "Department" refers to the department of human resources pursuant to [insert citation] of
8 this chapter. The term includes the commissioner;

9 (6) "Eligible" means an applicant meeting minimum qualifications whose name is on a list;

10 (7) "Executive service" means all other positions that have not been placed under the
11 preferred service and as are described in [insert citation].

12 (8) "List" means a list of eligibles, including, but not limited to, a promotion list;

13 (9) "List of Eligibles" means a list of applicants who meet the minimum qualifications for
14 appointment to a position as determined by the department;

15 (10) "Official Station" means the town or city where the employee performs a majority of his
16 or her duties;

17 (11) "Preferred service" means all offices and positions of employment in the state service
18 that have been placed under the preferred service provisions of this chapter;

19 (12) "State agency" means an authority, board, branch, commission, committee, department,
20 division, or other instrumentality in state service that is subject to this chapter; and

21 (13) "State service" shall have the same meaning assigned in [insert citation].

22
23 Section 5. [*Authority of human resources commissioner.*]

24 (a) The commissioner, as executive head of the department of human resources, shall direct
25 and supervise all administrative and technical human resources activities state service. In addition to
26 other authority and responsibilities imposed upon the commissioner by law, the commissioner shall
27 have the authority to:

28 (1) Survey the administrative organization and procedures, including personnel
29 procedures, of all state agencies, and submit to the governor measures to do the following among
30 state agencies:

31 (A) Secure greater efficiency and economy;

32 (B) Minimize the duplication of activities; and

33 (C) Effect better organization and procedures.

34 (2) Prescribe rules and regulations for the administration and execution of this chapter
35 in accordance with the Uniform Administrative Procedures Act;

36 (3) Develop personnel policies, methods, procedures, and standards for all state
37 agencies;

38 (4) Establish and maintain a roster of all employees in state service;

39 (5) Appoint such departmental employees, experts, and special assistants as may be
40 necessary to carry out the provisions of this chapter;

41 (6) Establish, execute and administer a classification and compensation plan for all
42 employees in state service;

43 (7) Approve or disapprove and record the appointments, transfers, demotions,
44 promotions, suspensions, dismissals, layoffs, reclassifications, reappointments, resignations, sick,
45 annual, compensatory and special leave, and hours of service of employees;

46 (8) Implement a job performance evaluation system for employees in state service;

47 (9) Make available education development specialists, who will administer
48 educational and training programs for employees in the state service, including legal compliance,

1 professional skills, talent development and leadership development. The commissioner shall approve
2 any out-service training for state employees;

3 (10) Require that appointing authorities notify the employee of the right to appeal his
4 or her dismissal, demotion or suspension, if any such right exists, and the time in which the
5 employee must exercise his or her right to appeal;

6 (11) Make available employee relations specialists to:

7 (A) Offer assistance in employment related problems; and

8 (B) Help employees understand the procedures that are available for appeals;

9 (12) Evaluate the need for existing positions and approve new positions in state
10 service and compensation for such positions;

11 (13) Check all payrolls and other compensation for personal services, and supply the
12 information to the commissioner of finance and administration, before the same may be properly
13 authorized for payment;

14 (14) Investigate personnel, salary rate and ranges, and employment conditions in state
15 service as may be requested by the governor, and require the attendance of witnesses and production
16 of documentary evidence pertinent to any such investigation;

17 (15) Process for payroll entry the personnel records of the state special schools; the
18 state board of education shall have the exclusive authority to employ such personnel And determine
19 their compensation;

20 (16) Implement, administer, and enforce this chapter and rules and policies adopted
21 under this chapter; and

22 (17) Perform any other lawful acts that the commissioner considers necessary or
23 desirable to carry out the provisions of this chapter.

24 (b) All supervisory personnel, during the time such person is employed by the state to hold
25 such position, shall be physically present in [insert state] while supervising employees working
26 within [insert state] unless business reasons require out-of-state travel. Supervisory personnel shall
27 include any person who oversees, directs or manages the work, work flow, or employees in the
28 performance of their daily duties. Nothing in this subsection (b) shall be construed as prohibiting
29 telework policies issued by the department.

30 (c) The commissioner and appointing authorities may appoint a designee as they deem
31 necessary to act within the scope of this chapter.

32
33 Section 6. *[Adoption of rules; force of law.]*

34 Rules adopted under the provisions of this chapter shall have the force and effect of law, and
35 may include any provision relating to state employment consistent with the laws of this state, which
36 may be necessary or appropriate to give effect to the provisions and purposes of this chapter.

37
38 Section 7. *[Powers of the department.]*

39 To carry out the purposes of this chapter, the department may do the following:

40 (1) Contract with persons outside the department as the commissioner deems necessary;

41 (2) Administer oaths;

42 (3) Issue subpoenas to compel the attendance of witnesses and the production of documents
43 related to any investigation or hearing authorized by this chapter and secure enforcement of such
44 subpoenas by petition to the chancery court of [insert county, state]; and

45 (4) Maintain such action or proceeding at law or in equity as the commissioner considers
46 necessary or appropriate to secure compliance with this chapter and the rules, regulations and orders
47 issued hereunder.

48
49 Section 8. *[Requirements of officers and state employees.]*

1 (a) All officers and employees of the state shall comply with the provisions of this chapter
2 and the rules, regulations and orders established pursuant to this chapter, unless a specific exemption
3 applies.

4 (b) A state officer or employee who fails to comply with any provision of this chapter or with
5 any rule, regulation or order thereunder commits a Class C misdemeanor.

6
7 Section 9. [*State human resources board.*]

8 (a) There is created and established in the department of human resources a board of appeals
9 of nine (9) members.

10 (b) The members of the board of appeals shall be citizens of the state. No member of the
11 board of appeals shall be a member of any state or national committee of a political party or shall
12 hold or be a candidate for any public office.

13 (c) The governor shall appoint the members of the board of appeals from the public at large.
14 The governor shall strive to appoint members that reflect the geographic, racial, and gender diversity
15 of the state population. Of the nine (9) members newly appointed, three (3) shall be appointed for a
16 term of two (2) years, three (3) for a term of four (4) years, and three (3) for a term of six (6) years.
17 Thereafter, each member shall be appointed for a term ending six (6) years from the date of the
18 expiration of the term, for which the member's predecessor was appointed. A person appointed to fill
19 a vacancy occurring prior to the expiration of such term shall, however, be appointed for only the
20 remainder of the unexpired term. The governor may remove a member of the board of appeals for
21 cause. Removal for cause may include, but is not limited to, three (3) consecutive absences from a
22 meeting of the board of appeals.

23 (d) The commissioner shall establish the pay for the members of the board of appeals by rule.
24 The members of the board of appeals shall be entitled to reimbursement for reasonable necessary
25 travel expenses in accordance with the state comprehensive travel regulations promulgated by the
26 department of finance and administration.

27 (e) The board of appeals shall elect one (1) of its members as chair. The board of appeals
28 shall meet at least once every three (3) months and at such other times as shall be specified by call of
29 the chair, the commissioner of human resources, or the governor. Notice of each meeting shall be
30 given in writing to each member by the commissioner, and such notice shall specify the place and
31 the time of the meeting. Three (3) members shall constitute a quorum.

32 (f) In addition to the duties expressly imposed upon the board of appeals elsewhere in this
33 chapter, the board of appeals shall have jurisdiction to hear appeals brought pursuant to this chapter
34 and regulations promulgated pursuant thereto. The board of appeals shall also be the final step in the
35 appeals procedure provided for preferred service employees.

36
37 Section 10. [*State service; preferred service and executive service.*]

38 (a) The following positions shall be executive service positions:

39 (1) Any officer or employee appointed by the governor and all positions in the
40 governor's office;

41 (2) Any deputy commissioner or equivalent authority in each department or state
42 agency;

43 (3) Any assistant commissioner or equivalent authority in each department or state
44 agency;

45 (4) Wardens and directors of correctional facilities identified in [insert citation] and
46 chief officers of mental health institutes or developmental centers identified in [insert citation];

47 (5) The head of a division or major unit within a state agency or a regional director or
48 manager for a state agency, regardless of the title of the position, who, as a substantial part of the
49 position's duties, provides meaningful input on:

- 1 (A) The development of policy goals; or
2 (B) The implementation of policy;
3 (6) The highest ranking employee of a state agency who has a primary responsibility
4 for one (1) or more of the following functions:
5 (A) Public information and legislative affairs;
6 (B) Fiscal, budget and audit matters;
7 (C) Security or internal affairs;
8 (D) Information technology systems; and
9 (E) Human resources;
10 (7) A clinical director, medical director, or other licensed physician;
11 (8) A licensed attorney engaged in the practice of law and representing the state in
12 such capacity; and
13 (9) Any position serving in a confidential capacity to a commissioner, deputy
14 commissioner, assistant commissioner or equivalent authority.
15 (b) An employee in the executive service is an employee at will and serves at the pleasure of
16 the employee's appointing authority.
17 (c) All other full-time positions in state service shall be in the preferred service.
18 (d) An employee becomes a member of the preferred service upon successful completion of
19 the probationary period under the provisions of this chapter.
20 (e) Preferred service employees include any commissioned member of the department of
21 safety, below the rank of captain, serving in the capacity of executive security, who has been so
22 certified by the commissioner of safety to the commissioner of human resources.
23 (f) The commissioner shall determine equivalent levels for the purpose of assigning positions
24 not specifically addressed in subsection (a) to the preferred or executive service. Such determination
25 may be based on duties, responsibilities and reporting relationships and shall not be subject to review
26 through any procedure. However, within any department, implementation of this provision shall not
27 jeopardize federal funding resources.

28
29 Section 11. [*Determinations of preferred service by the commissioner.*]

- 30 (a) The commissioner, after consulting with appointing authorities and other qualified
31 authorities, shall determine, or cause to be determined, the authority, duties, and responsibilities of
32 all positions in the state preferred service.
33 (b) The commissioner shall prepare a classification plan that groups all positions in the
34 preferred service in classes, based on the authority, duties, and responsibilities of each position. The
35 classification plan must set forth, for each class of positions, the class title and a statement of the
36 authority, duties, and responsibilities of the class. Each class of positions may be subdivided, and
37 classes may be grouped and ranked in such manner as the commissioner considers appropriate.
38 (c) The commissioner shall periodically:
39 (1) Review the positions in the state preferred service; and
40 (2) Reallocate the positions to the proper classes based on the duties and
41 responsibilities of the positions at the time of the review under subdivision (1).
42 (d) The commissioner shall also prepare a statement of minimum qualifications for each class
43 of positions in the preferred service.
44 (e) When any position classification is upgraded in the classification plan, all employees in
45 that position classification shall receive any necessary salary adjustment so that the employee's
46 salary does not fall below the minimum range of the classification.

47
48 Section 12. [*approval of establishing new positions.*]

1 Before establishing a new position in the preferred service or making a material change in the
2 authority, duties, or responsibilities of a position in such service, an
3 appointing authority shall receive approval from the commissioner in writing.
4

5 Section 13. [*Position allocations and classifications.*]

6 The commissioner may, at any time, allocate any new position to a class, or change the
7 allocation of any position to a class, or make changes in the classification plan. If any change is
8 made in the classification plan by which a class of positions is divided, altered, or abolished, or the
9 classes are combined, the commissioner shall reallocate the positions and/or the affected employee
10 to the appropriate class.
11

12 Section 14. [*Limitations on appointed preferred positions.*]

13 No person shall be appointed to or employed in a position in the preferred service under a
14 classification title that has not been approved by the commissioner as appropriate to the duties to be
15 performed. Nothing in this section prohibits the use of working job titles assigned by the appointing
16 authority.
17

18 Section 15. [*Compensation plans and pay guidelines for employees.*]

19 (a) The commissioner shall prepare and recommend to the governor a compensation plan for
20 all employees. Such compensation plan shall include, for each class of positions, a minimum and
21 maximum rate, and such intermediate rates as the commissioner considers necessary or equitable. In
22 establishing such rates, the commissioner shall consider the ability to effectively recruit for positions
23 in state service, the prevailing rates of pay for the services performed and for comparable services in
24 public and private employment, living costs, other benefits received by employees, and the state's
25 financial condition and policies. The compensation plan shall take effect when approved by the
26 governor. The commissioner may initiate and recommend amendments, from time to time, to the
27 governor. Each employee shall be paid at one of the rates set forth in the compensation plan for the
28 class of positions, in which he or she is employed. The commissioner may approve payment at a rate
29 above that assigned to the employee's position in the compensation plan when he or she determines
30 it to be in the interest of the state. Nothing in this chapter shall be construed to affect salary surveys
31 and compensation schedules conducted and implemented pursuant to statute, including, but not
32 limited [insert citation].

33 (b) Notwithstanding any provision of law to the contrary, the commissioner shall establish
34 guidelines to govern the distribution of any funds which may be available for merit pay for members
35 of the state service.

36 (1) The guidelines shall establish objectively measurable criteria, which ensure that
37 the merit pay system:

38 (A) Rewards above-average performance;

39 (B) Improves efficiency;

40 (C) Encourages participation in programs that will improve job performance
41 and skills; and

42 (D) Does not permit, facilitate or promote discrimination on account of race,
43 color, national origin, gender, age, disability, religion or creed, veteran's status or political opinions
44 or affiliations.

45 (2) Such guidelines shall also provide that merit pay funds are consistently distributed
46 in a fair and equitable manner.

47 (3) All employees shall be eligible for merit pay pursuant to rules promulgated by the
48 department.

1 (c) Each employee whose job conduct and performance are satisfactory shall receive a
2 periodic salary increase, if and when, authorized by the legislature; provided, that employees at or
3 above the top step of their salary ranges shall not be eligible for such a salary increase. Periodic
4 salary increases shall only be awarded to employees who have completed twelve (12) continuous
5 months of state service as of [insert date] of each year. Employees who have not completed twelve
6 (12) continuous months of state service as of [insert date] of each year shall be eligible for a periodic
7 salary increase upon completion of twelve (12) continuous months of state service. Periodic salary
8 increases shall be subject to availability of funds as provided in the general appropriations act for
9 each fiscal year.

10
11 Section 16. [*Compensatory time.*]

12 The commissioner shall establish guidelines for the accumulation and use of state
13 compensatory time not governed by the Fair Labor Standards Act. Employees who accumulate the
14 maximum number of hours of state compensatory time or more shall be paid for each additional hour
15 of overtime worked based on that employee's hourly wage. Payment shall be made at the end of each
16 pay period for eligible hours accumulated
17 during the previous pay period .

18
19 Section 17. [*Assigned duties of employees.*]

20 No preferred service employee shall be assigned to perform the majority of the duties and
21 responsibilities of a position in a higher level classification than that of the position occupied by the
22 employee, without the approval of the appointing authority. When an employee is so assigned, the
23 duration of such assignment may not exceed ninety (90) days without the approval of the
24 commissioner. The commissioner, in consultation with the commissioner of finance and
25 administration, shall establish a procedure under which an employee who is assigned to perform the
26 majority of the duties and responsibilities of a higher level classification for a period in excess of
27 ninety (90) days shall receive additional compensation for such assignment.

28
29 Section 18. [*Payment of employees.*]

30 (a) No employee may receive payment, unless the commissioner or the commissioner's agent
31 has certified that the employee has been appointed and employed in accordance with the provisions
32 of this chapter and the rules, regulations and orders issued thereunder.

33 (b) If the commissioner wrongfully withholds certification of the payroll voucher or account
34 of any employee, the employee may maintain a proceeding in a court of record to compel the
35 commissioner to certify such payroll voucher or account.

36
37 Section 19. [*Recovery of sums.*]

38 The commissioner may bring an action to recover any sum paid contrary to any provision of
39 this chapter or of any rule, regulation or order thereunder from:

40 (1) Any employee who made, approved or authorized such payment or who signed or
41 countersigned a voucher, payroll, check or warrant for such payment;

42 (2) The sureties on the official bond of any such officer; or

43 (3) Any employee who incorrectly or improperly received any payment from the
44 state.

45 All moneys recovered in any such action shall be paid into the state treasury.

46
47 Section 20. [*Application for state employment.*]

48 (a) The commissioner shall inform prospective applicants for state employment of the
49 process for obtaining state employment.

1 (b) The commissioner shall give public notice of a job opening at least one week prior to the
2 closing of the application period.

3 (c) The commissioner shall include the duties of, and pay for, the position or the class, the
4 qualifications required for such position, and any other information that the commissioner considers
5 pertinent and useful. The notice shall also state the requisite assessment method.

6 (d) All assessments administered by the department, the total bank of questions from which
7 such assessments were developed and the answers thereto shall be confidential and shall not be
8 public records or state records open for public inspection in [insert citation].
9

10 Section 21. [*Employee reassignments.*]

11 (a) If an executive service position is reassigned to the preferred service, the incumbent
12 employee may, within one (1) year, be given a noncompetitive assessment in a manner prescribed by
13 the commissioner.

14 (b) (1) The commissioner shall certify whether each employee has, met the minimum
15 qualifications to retain the position. Upon certification, the employee shall be classified as a
16 preferred service employee.

17 (2) An employee who is not certified shall be dismissed from the position as soon as
18 is practicable, but no later than sixty (60) days after certification, unless the appointing authority
19 notifies the commissioner that the employee has rendered satisfactory service and should be retained.
20

21 Section 22. [*Assessments of eligible applicants.*]

22 (a)(1) The commissioner shall, from time to time, conduct the assessments that the
23 commissioner considers necessary for the purpose of establishing lists of eligibles.

24 (2) The assessments shall be competitive and shall be designed to determine the
25 qualifications, fitness and ability of the applicant to perform the duties of the class of positions for
26 which a list is to be established. The assessment may consist of a written, oral, or physical exam, or a
27 demonstration of skills, or any combination of such types. The assessment may also consist of an
28 evaluation of education, experience, skill, ability, competency, knowledge, aptitude, capacity,
29 character, and other qualifications as, in the judgment of the commissioner, may determine and
30 measure the relative ability of the applicant.

31 (3) No part of an assessment shall be framed to elicit information concerning the race,
32 color, national origin, gender, age, disability, religion or creed, or political opinions or affiliations of
33 an applicant.

34 (b) The commissioner may substitute a working test period in lieu of a written assessment for
35 an applicant with a disability, who has been certified as unable to perform such a test by the
36 department. The working test period shall not exceed one (1) year.

37 (c) The commissioner shall notify each applicant in writing of the results of the assessment as
38 soon as reasonably practicable.

39 (d) A manifest error in the assessment result shall be corrected, if called to the attention of
40 the commissioner within one (1) month after the establishment of the list of eligibles. The correction,
41 however, shall not invalidate any appointment previously made from such list.
42

43 Section 23. [*Rejection of applicants.*]

44 (a) The commissioner may reject the application of any person for admission to an
45 assessment or may strike the name of a person from a list, if the department determines that the
46 applicant:

47 (1) Lacks any of the required qualifications;
48 (2) Is incapable of performing the essential functions of the position that the applicant
49 is seeking;

1 (3) Has been convicted of a crime rendering the applicant unsuitable for a particular
2 position;

3 (4) Has been dismissed for cause from state service;

4 (5) Has made a false statement of a material fact; or

5 (6) Committed or attempted to commit a fraud or deception in connection with
6 submitting an application or attempting to secure an appointment to state service.

7 (b) Any person whose name is removed from a list of eligibles for any reason shall be
8 notified.

9
10 Section 24. [*Establishment of eligibles list.*]

11 (a) The commissioner shall establish and maintain a list of eligibles for the various classes of
12 positions as the commissioner deems necessary or desirable to meet the needs of the service.

13 (b) At the time a list of eligibles is established, the commissioner shall determine the period
14 during which such list shall remain in force.

15 (c) No person who is required to register for the federal draft under 50 U.S.C. Appx. § 453
16 shall be eligible for employment with the state of Tennessee until such
17 person has registered for such draft.

18
19 Section 25. [*Filling an open preferred service position.*]

20 (a)(1) Whenever an appointing authority proposes to fill a position in the preferred service,
21 the authority shall submit to the commissioner a statement showing the position to be filled, the
22 duties for such position, the official station, the minimum qualifications and preferred skill, abilities,
23 competencies and knowledge of the person to be appointed.

24 (2) The commissioner shall refer a list of eligibles who meet the minimum
25 qualifications for the position.

26 (3) An appointing authority must offer an invitation to interview to a minimum of
27 three (3) applicants from the referred list of eligibles, if three (3) or more applicants are on the list. If
28 less than three (3) applicants are on the list of eligibles, the appointing authority must invite each
29 person on the list to interview.

30 (4) Within thirty (30) days after being referred a list of eligibles, the appointing
31 authority shall appoint one (1) of the applicants on the list of eligibles.

32 (b) Upon the request of the appointing authority, the commissioner may establish
33 employment, promotional, unit, divisional or any other list of eligibles as deemed necessary or
34 appropriate.

35 (c) If the official station of the vacancy to be filled is permanently located outside the
36 geographic boundaries of the state of Tennessee, then the appointing authority may fill the vacancy
37 without complying with subsections (a) and (b).

38 (d) In applying the provisions of this chapter, no person shall give any weight to political
39 opinions or affiliation. No person holding a position in the preferred service shall solicit, directly or
40 indirectly, or require any other person to solicit, directly or indirectly, donations or contributions for
41 any political party, candidate, cause or purpose in order to acquire or deny a position in state service
42 or to materially affect the retention, promotion or demotion of any employee in state service.

43
44 Section 26. [*Consideration of eligible veterans.*]

45 (a) When invitations to interview candidates are extended, whether for appointment or
46 promotion, and the list of eligibles includes any person who has been honorably discharged from the
47 army, navy, air force, marine corps or coast guard or any member of the reserve components, as
48 defined in 10 U.S.C. § 10101, who performs active federal service in the armed forces of the United
49 States, these persons must be invited to interview.

1 (b) If a veteran is on the list of eligibles, and if the minimum qualifications and the skills,
2 abilities, competencies and knowledge of the veteran and any another applicant being interviewed
3 for the position are equal, preference will be given to the veteran for the position.

4 (c) When invitations to interview candidates are extended, whether for appointment or
5 promotion, the spouse or surviving spouse of a veteran must be invited to interview, if the spouse or
6 surviving spouse is a qualified voter in [insert state] or has been a resident of this state for two (2)
7 years preceding such person's application, and one of the two following circumstances exists:

8 (1) As a result of such military service, the veteran suffered a one hundred percent
9 (100%) service-connected disability or is permanently and totally disabled; or

10 (2)(A) The veteran died in the line of duty during such military service; and

11 (3) The surviving spouse has not remarried since the death of the veteran.

12 (d) Any appointing authority who passes over an eligible veteran and selects an eligible
13 nonveteran shall file with the commissioner, within thirty (30) days, the reasons for so doing, which
14 reasons will become a part of the veteran's record, but will not be made available to anyone other
15 than the veteran, except in the discretion of the appointing authority.

16
17 Section 27. [*Probationary period.*]

18 (a) Every person appointed to a position in the preferred service shall be subject to a
19 probationary period of employment. The probationary period shall commence immediately upon
20 appointment and shall continue for such time, not less than one (1) year, as shall be established by
21 the commissioner. At any time during the employee's probationary period the appointing authority
22 may remove the employee if, in the opinion of the appointing authority, the employee's performance
23 or conduct during the probationary period indicates that such employee is unable or unwilling to
24 satisfactorily perform or is not satisfactorily performing his or her duties, or that the employee's
25 habits, dependability, or conduct do not merit continuance in the service.

26 (b) During the last month of an employee's probationary period, the appointing authority
27 shall notify the commissioner in writing whether the performance and conduct of the employee have
28 been satisfactory and whether continued employment is recommended.

29
30 Section 28. [*Temporary appointments.*]

31 (a) When an appointing authority desires to fill a position in the preferred service, and the
32 commissioner cannot timely evaluate the list of eligibles for such vacancy, the commissioner may
33 authorize the appointing authority to fill the position by temporary appointment for a period not to
34 exceed six (6) months. A temporary appointee shall hold a position only until an appropriate list has
35 been established, the required evaluation is completed, and the appointment of the preferred service
36 employee begins. No temporary appointment shall be renewed.

37 (b) An appointing authority may, with the approval of the commissioner, temporarily fill an
38 existing preferred service position, for a period not to exceed ninety (90) days, by utilizing a
39 temporary staffing service having a contract with the state to provide short-term temporaries. The
40 provisions of this subsection (b) apply only to the utilization of vendor-supplied temporaries.

41 (c) If the position to be filled is not officially vacant, the appointing authority must obtain the
42 commissioner's approval to overlap the position with another prior to making an appointment.

43
44 Section 29. [*Emergency appointments.*]

45 When an emergency occurs, affecting the ability to fill a position in the preferred service
46 under any other provision of this part, an appointing authority, in order to prevent stoppage of public
47 business or loss or serious inconvenience to the public, may appoint any qualified person to such
48 position with the approval of the commissioner. Any such person shall be employed only during

1 such emergency and for a period not exceeding one hundred twenty (120) days. No such
2 appointment shall be renewed.

3
4 Section 30. [*Assigning employees to different positions.*]

5 (a) An appointing authority may at any time assign an employee from one position to another
6 position in the same job classification or rank within the same department. Upon making such
7 assignment, the appointing authority shall give written notice of such action and the reasons for such
8 action to the commissioner.

9 (b) A transfer of an employee from one department to another may be made with the
10 approval of the commissioner and of the appointing authorities. The appointing authority, or
11 authorities, with the approval of the commissioner, shall have authority to make such a transfer for
12 any reason that they may deem to be for the good of the service. Their actions shall not be subject to
13 appeal except as provided in this chapter.

14 (c) No employee shall be transferred from a position in one class to a position in another
15 class of a higher rank or for which there are substantially dissimilar requirements for appointment,
16 unless the employee is appointed to such latter position after certification of the employee's name
17 from a list of eligibles in accordance with the provisions of this chapter.

18 (d) Any change of an employee from a position in one class to a position in a class of a lower
19 rank shall be considered a demotion, except that the employee shall not be considered to have been
20 demoted and shall not be required to serve a period of probation, if the change from a position in one
21 class to a position in a class of a lower rank occurred:

- 22 (1) At the employee's request, with the concurrence of the department or agency; or
23 (2) (A) Because of a change in the organizational structure of the government entity;
24 (B) Because of the abolishment of a position;
25 (C) As the result of a reduction in force; or
26 (D) For reasons caused by organizational necessity.

27
28 Section 31. [*Employee performance standards.*]

29 (a) In cooperation with appointing authorities, the commissioner shall establish, and may
30 periodically amend:

- 31 (1) The standards of performance for employees;
32 (2) The expected outcomes for employees; and
33 (3) A system of job performance evaluations based upon the standards described in
34 subdivisions (1) and (2).

35 (b) Employee performance standards and expected outcomes must be specific, measurable,
36 achievable, relevant to the strategic objective of the employee's state agency or division, and time
37 sensitive.

38 (c) Each appointing authority shall, at periodic intervals (but at least annually), make, and
39 report to the commissioner, job performance evaluations for the employees in the appointing
40 authority's department or state agency. Upon request by the commissioner, the appointing authority
41 shall provide the information on which the appointing authority relied in evaluating job performance.

42 (d) The performance evaluations of state service employees shall not be considered public
43 records under [insert citation]. Nothing in this subsection shall be construed to limit access to these
44 records by law enforcement agencies, courts, or other governmental agencies performing official
45 functions.

46 (e) Job performance evaluations may be used as follows:

- 47 (1) To determine salary increases and decreases within the limits established by the
48 compensation plan developed under the provisions of this chapter;
49 (2) As a factor in making or denying promotions; and

1 (3) As a means of determining employees:

2 (A) Who are candidates for promotion or transfer; or

3 (B) Who, because of a low job performance evaluation, are candidates for
4 demotion, dismissal or reduction in force.

5 (f) On or before [insert citation], the department of human resources shall report to the state
6 and local government committees of the senate and house of representatives on the job performance
7 evaluation system, and shall provide to those committees a copy of any rules or regulations
8 promulgated with respect to the performance evaluation system.

9 (g) In the process of establishing the system of job performance evaluations, the department
10 shall afford representatives of recognized employee groups an opportunity to present facts, views or
11 arguments related to the proposed system of job performance evaluations.

12
13 Section 32. [*Furlough and layoff authority.*]

14 (a) An appointing authority has the authority to layoff or furlough employees or reduce hours
15 of employment for any of the following reasons:

16 (1) Lack of funds;

17 (2) A reduction in spending authorization;

18 (3) Lack of work;

19 (4) Efficiency; or

20 (5) Other material change in duties or organization.

21 (b) The appointing authority has the authority to determine the extent, effective dates, and
22 length of a layoff, furlough, or reduction in hours taken under subsection (a).

23 (c) The appointing authority shall determine the classifications affected and the number of
24 employees laid off in each classification and each county to which a layoff applies.

25 (d) The commissioner shall approve all reductions in force and no such layoff, furlough, or
26 reduction in hours may begin until such approval has been granted.

27 (e) In determining a layoff, the appointing authority must consider all employees under the
28 same appointing authority, within the classification affected, and within the county affected and
29 must also consider job performance evaluations as the primary factor. Thereafter, consideration shall
30 be given to the following relevant factors:

31 (1) Seniority;

32 (2) Abilities; and

33 (3) Disciplinary record.

34 (A) Beginning [insert date], to [insert date], any preferred service employee
35 whose position is abolished because of a reduction-in-force shall be provided written notice
36 containing the reason for the layoff at least sixty (60) days in advance of the effective date for
37 abolishing the position. This sixty-day period shall be used for career counseling, job testing, and
38 placement efforts.

39 (B) Beginning [insert date], any preferred service employee whose position is
40 abolished because of a reduction-in-force shall be provided written notice containing the reason for
41 the layoff at least thirty (30) days in advance of the effective date for abolishing the position. This
42 thirty-day period shall be used for career counseling, job testing, and placement efforts.

43 (1) Subject to certification by the commissioner of finance and
44 administration that the rainy day fund, also known as the revenue fluctuation reserve fund, is likely
45 to fall below two hundred million dollars (\$200,000,000), any notice required by this section may be
46 reduced to a different period of time, but not less than fourteen (14) days.

47 (2) Nothing in this section shall place the state in a position of liability
48 for the portion of any employee's salary attributed to a governmental grant in cases when the state
49 had less than one hundred twenty (120) days' notice of the funding reduction. Nor shall the

1 requirement for notice prohibit any agency from closing the fiscal year with a balanced budget. In
2 such cases, employees shall be provided the maximum notice possible.

3 (3) For purposes of seniority as a consideration for a reduction in
4 force, a person with veteran's status, as defined in [insert citation], shall have an additional sixty (60)
5 months of service credit added to their total months of state service.

6 (4) Any preferred service employee whose position is abolished
7 because of a reduction-in-force shall receive the employee's final paycheck, including accumulated
8 leave, no later than thirty (30) days after the date of layoff.

9 (f) A position in the preferred service shall not be considered to have been abolished as
10 provided in subsection (a) if the same or essentially similar duties, as determined by the
11 commissioner, are incorporated in a new position in the same agency within one (1) year after the
12 effective date of the layoff that resulted in the position abolishment. Any preferred service employee
13 so affected by abolishing the position shall be offered the newly established position upon
14 application. The newly established position to which the employee returns shall not be placed in the
15 executive service but shall remain in the preferred service.

16 (g) Notwithstanding any other law to the contrary, including, but not limited to, [insert
17 citation], the reduction of scheduled hours of work authorized by this section shall including the
18 closing of any or all state departments on any day or partial day of the week, when determined to be
19 necessary by the governor as a result of reductions in funding levels.

20 (h) If at any time prior to or during any reduction-in-force the governor determines that the
21 reduction-in-force will materially impair and/or disrupt governmental services to the public, the
22 governor shall notify the speaker of the senate and the speaker of the house of representatives of the
23 anticipated impairment and/or disruption of such governmental services. The governor shall advise
24 the speakers of the actions that the governor and the affected department or departments will
25 undertake to minimize the impairment and/or disruption of such governmental services.

26 The names of all preferred service employees affected by a reduction-in-force shall be placed
27 on a layoff list maintained by the department. For a period of one (1) year following the date of the
28 layoff, an employee, who is laid off as a result of a reduction-in-force, shall be notified of any job
29 openings in the same job classification that the employee served immediately prior to layoff, shall be
30 extended an invitation to apply for the job, and shall be granted an interview.

31
32 Section 33. [*Suspension of an employee.*]

33 An appointing authority may suspend without pay an employee, for disciplinary purposes, for
34 such length of time as the authority considers appropriate, not exceeding thirty (30) days in any
35 twelve-month period. With the approval of the commissioner, an employee may be suspended for a
36 longer period pending the appeal or the processing of an appeal in accordance with this chapter.

37
38 Section 34. [*Dismissal of a preferred service employee.*]

39 (a) An employee in the preferred service who has successfully completed a probationary
40 period becomes a preferred service employee and may be dismissed, demoted, or suspended for
41 cause. The dismissal of a preferred service employee will take effect immediately after the
42 appointing authority gives notice to such employee and files a written statement with the
43 commissioner. The employee shall continue to receive compensation for ten (10) days following the
44 date of dismissal.

45 (b) An appointing authority may dismiss any employee when the authority determines that
46 the good of the service will be served thereby. Whenever an employee is dismissed "for the good of
47 the service," the notice of termination must outline the reasons for dismissal.

48 (c) If an employee in state service willfully refuses or fails to appear before any legislative
49 committee, or any officer, board or body authorized to conduct any hearing or inquiry, the employee

1 shall forfeit his or her position and shall not be eligible for appointment to any position in state
2 service.

3 (d) Any employee who is absent from duty for more than three (3) consecutive work days
4 without giving prior written or electronic notice to the appointing authority or appropriate manager
5 that specifies the reason for such absence, and without securing permission to be on leave, or who
6 fails to report for duty or to the immediate supervisor or the appointing authority within two (2)
7 work days after the expiration of any authorized leave of absence, is considered as having resigned
8 not in good standing, absent extenuating circumstances beyond the control of the employee causing
9 the employee's absence or preventing the employee's return. An employee deemed to have resigned
10 in accordance with these circumstances shall have the right to appeal such action through the appeal
11 procedure described herein.

12 (e) The commissioner may dismiss an employee if the commissioner finds that the employee
13 was appointed as a result of fraud.

14 (f) A preferred service employee is entitled to appeal a dismissal, demotion, or suspension as
15 provided in [insert citation].

16
17 Section 35. [*Report on promotions and dismissals.*]

18 The department of human resources and the department of finance and administration shall
19 report electronically each month to the [insert appropriate oversight committee] committees of the
20 senate and house of representatives and the fiscal review committee on bona fide employee
21 promotions, showing clearly by department the names and the increases in pay as a result of such
22 promotions. The departments shall also furnish an electronic copy of the report to the speakers of the
23 senate and house of representatives and upon request to any member of the general assembly. The
24 report shall also include employee transfers, dismissals, terminations, demotions, separations,
25 positions reclassified from the preferred service to the executive service, and position abolishments
26 showing clearly by department the name and title of each employee affected and such employee's
27 position after such action.

28
29 Section 36. [Appeals process for employees.]

30 (a) The department shall promulgate regulations establishing an appeal procedure for
31 employees.

32 (b) An employee in the preferred service system, who has successfully completed the
33 required probationary period, may file a complaint concerning the application of a law, rule, or
34 policy to the dismissal, demotion, or suspension of the employee. If the term of the suspension is less
35 than three (3) days, the right to appeal is limited to an appeal to the commissioner under Step II of
36 subsection (h). An employee shall not be entitled to appeal a suspension of less than three (3) days to
37 the board of appeals.

38 (c) An executive service employee, however, does not have standing to file a complaint
39 under this section.

40 (d) A complaint filed under this section must identify the law, rule, or policy that was
41 allegedly violated.

42 (e) An employee who files a complaint under this section must file the complaint as soon as
43 possible after the occurrence of the act or condition complained of, and not later than fourteen (14)
44 days after the date the employee became aware, or by the exercise of reasonable diligence should
45 have become aware, of the occurrence giving rise to the complaint. If an employee fails to file the
46 complaint within the fourteen-day period, the right to appeal under this chapter lapses and is deemed
47 to have been waived in its entirety by the employee.

1 (f) For the purposes of this chapter, a complaint is filed when the appointing authority, the
2 commissioner, or the board of appeals, depending on whether the complaint is being made under
3 Step I, II or III as provided in subsection (h), receives a written or electronic copy of the complaint.

4 (g) A remedy granted under this section may not extend back more than thirty (30) days
5 before the complaint was filed.

6 (h) The following appeal procedure is established:

7 Step 1: The complainant shall reduce the complaint to writing and file the complaint
8 with the complainant's appointing authority. The appropriate appointing authority or designee shall
9 conduct any investigation considered necessary, meet with the complainant in person, and issue a
10 decision, in writing, not later than fifteen (15) days after the date the appointing authority receives
11 the complaint. If the appointing authority does not issue a decision fifteen (15) days after the
12 appointing authority receives the complaint, the complainant may appeal to the commissioner by
13 filing the complaint in accordance with Step 11.

14 Step II: If the appointing authority does not find in favor of the complainant, the
15 complainant may appeal to the commissioner of the department of human resources by filing the
16 complaint not later than fourteen (14) days after the date of the appointing authority's written
17 decision. The commissioner of the department of human resources shall review the complaint and
18 the appointing authority's decision, and issue a decision, in writing, not later than thirty (30) days
19 after the date the complaint was filed with the commissioner. If the commissioner does not issue a
20 decision thirty (30) days after the commissioner receives the complaint, the complainant may appeal
21 to the board of appeals in accordance with Step III.

22 Step III: The complainant or state agency may appeal in writing to the board of
23 appeals not later than fourteen (14) days after the date the complainant, or in the case of a state
24 agency, the state agency receives written notice of the action taken by the commissioner of the
25 department of human resources. Within ten (10) days after the receipt of the appeal, the
26 administrative law judge assigned to assist the board of appeals in the proceedings related to the
27 appeal shall determine whether all previous procedural requirements were completed properly and in
28 a timely manner. If a procedural requirement has not been met, the appeal shall be dismissed. If the
29 procedural requirements have been met, the board of appeals shall conduct proceedings in
30 accordance with the Uniform Administrative Procedures Act as modified herein, to determine if the
31 law, rule, or policy specified in the complaint was violated.

32 Each hearing under this chapter shall occur before a panel of at least three (3) members of the
33 board of appeals, assisted by one (1) administrative law judge ("ALJ"). The ALJ shall assist at the
34 hearing by ruling on questions of the admissibility of evidence, swearing witnesses, advising
35 members of the board of appeals on the law of the case, and ensuring that the proceedings are carried
36 out in accordance with this chapter and other applicable law. At no time shall the ALJ take part in
37 the determination of a question of fact. An ALJ, upon timely motion, may decide any procedural
38 question of law.

39 The board of appeals shall issue its final decision in each proceeding no later than one
40 hundred twenty (120) days after the date of the filing of the appeal with the board of appeals.

41 (i) In order to ensure that the board of appeals issues its final decision no later than one
42 hundred twenty (120) days after the date of the filing of the appeal, the following conditions shall be
43 imposed on hearings before the board of appeals:

44 (1) The parties shall participate in a pre-hearing conference no later than twenty (20)
45 days after the filing of the appeal. At the pre-hearing conference, a date must be set on which the
46 hearing before the board of appeals will be held.

47 (2) All discovery must be completed no later than sixty (60) days after the filing of
48 the appeal.

1 (3) All motions, both dispositive and non-dispositive, must be ruled on no later than
2 thirty (30) days before the date of the hearing.

3 (4) Extensions on the deadlines provided herein are only to be granted in
4 extraordinary circumstances. In any event, the granting of an extension shall not extend the one
5 hundred twenty (120) day time period for the board of appeals to issue its decision.

6 (5) Continuances of the hearing before the board of appeals may be granted only in
7 extraordinary circumstances, as determined by the board of appeals or the ALJ.

8 (j) Decisions of the board of appeals are subject to judicial review in accordance with the
9 Uniform Administrative Procedures Act, title 4, chapter 5 and the rules and regulations promulgated
10 thereunder, in each case as amended in this chapter.

11 (k) The board of appeals may award attorney's fees and costs to a successfully appealing
12 employee. The commissioner shall establish by rule the manner in which those fees shall be
13 determined. The unsuccessful party or other state agency shall pay any fees or costs awarded under
14 this subsection.

15 (l) If the employee is successful in obtaining reinstatement to a position from which the
16 employee has been terminated, the employee shall be reinstated to a position in the county in which
17 he or she was employed at the time of termination. The commissioner may grant exceptions on a
18 case-by-case basis.

19 (m) In any case in which a successful complainant has been awarded reinstatement, back pay
20 or attorney's fees, the agency involved shall have a period of thirty (30) days from the date of the
21 final order within which to provide reinstatement, back pay and/or attorney's fees.

22
23 Section 37. [*Responsibilities of a supervisor.*]

24 (a) The supervisor is responsible for maintaining the proper job performance level, conduct,
25 and discipline of the employees under the supervisor's supervision. When corrective action is
26 necessary, the supervisor should administer disciplinary action at the step appropriate to the
27 infraction, conduct, or performance, as determined by the supervisor.

28 (b) Upon written application by the employee, any written warning or written follow-up to an
29 oral warning, which has been issued to an employee, shall be expunged from the employee's
30 personnel file after a period of two (2) years; provided, that the employee has had no further
31 disciplinary actions with respect to the same area of performance, conduct, and discipline.

32
33 Section 38. [*Agreements with municipalities.*]

34 The commissioner may enter into agreements with any municipality or political subdivision
35 of the state to furnish services and facilities of the department to such municipality or political
36 subdivision in the administration of its personnel. Any such agreement shall provide for the
37 reimbursement to the state of the reasonable cost of the services and facilities furnished, as
38 determined by the commissioner. All municipalities and political subdivisions of the state are
39 authorized to enter into such agreements.

40
41 Section 39. [*Use of public buildings.*]

42 All officers and employees of the state and of municipalities and political subdivisions of the
43 state shall allow the department the reasonable use of public buildings under their control for
44 conducting an assessment, hearing or investigation authorized by this part [insert citation] of this
45 chapter. The department shall pay to a municipality or political subdivision the reasonable cost of
46 any such facilities furnished by it.

47
48 Section 40. [*Ethical behavior regarding appointments; assessments.*]

1 (a) No person shall make any false statement, certificate, mark, rating or report with regard to
2 any assessment, certification or appointment made under any provision of this chapter, or on any
3 manner commit or attempt to commit any fraud preventing the impartial execution of this chapter. .

4 (b) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any
5 money, service or other valuable consideration for or on account of any appointment, proposed
6 appointment, promotion or proposed promotion to, or any advantage on, a position in the state
7 service.

8 (c) No employee of the department, examiner, or other person shall defeat, deceive or
9 obstruct any person in such person's right to an assessment, eligibility, certification or appointment
10 under this chapter, or furnish to any person any special or secret information, for the purpose of
11 affecting the rights or prospects of any person with respect to employment in the preferred service.
12

13 Section 41. [*Outside employment.*]

14 Nothing in this chapter shall be construed to prohibit a state employee from engaging in
15 outside employment. Such outside employment shall not adversely affect the employee's
16 performance with the state, create a conflict of interest between such additional employment, or
17 conflict with the regular employment schedule of the employee.
18

19 Section 42. [*Holiday and sick leave.*]

20 The rules shall provide for the hours of work, holidays, attendance regulations and leaves of
21 absence in state service. They may contain provisions for annual, sick, and special leaves of absence,
22 with or without pay.
23

24 Section 43. [*Computing time.*]

25 In computing any period of time prescribed or allowed by this chapter, the date of the Act or
26 event after which the designated period of time begins to run is not to be included. The last day of
27 the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as
28 defined in [insert citation], or, when the act to be done is the filing of a paper, a day on which the
29 office where the paper to be filed is closed or on which weather or other conditions have made the
30 office inaccessible, in which event the period runs until the end of the next day which is not one of
31 the aforementioned days. When the period of time prescribed or allowed is less than eleven (11)
32 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.