

CHAPTER 501**(HB 763)**

AN ACT relating to state personnel.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 18A.110 is amended to read as follows:

- (1) The secretary shall promulgate comprehensive administrative regulations for the classified service governing:
 - (a) Applications and examinations;
 - (b) Certification and selection of eligibles;
 - (c) Classification and compensation plans;
 - (d) Incentive programs;
 - (e) Layoffs;
 - (f) Registers;
 - (g) Types of appointments;
 - (h) Attendance; hours of work; compensatory time; annual, court, military, sick, voting, and special leaves of absence, provided that the secretary shall not promulgate administrative regulations that would reduce the rate at which employees may accumulate leave time below the rate effective on December 10, 1985; *and (i) Employee evaluations.*
- (2) The secretary shall promulgate comprehensive administrative regulations for the unclassified service.
- (3)
 - (a) Except as provided by KRS 18A.355, the secretary shall not promulgate administrative regulations that would reduce an employee's salary; and
 - (b) As provided by KRS 18A.0751(4)(e), the secretary may submit a proposed administrative regulation providing for an initial probationary period in excess of six (6) months to the board for its approval.
- (4) The secretary may promulgate administrative regulations to implement state government's affirmative action plan under KRS 18A.138.
- (5)
 - (a) The administrative regulations shall comply with the provisions of this chapter and KRS Chapter 13A, and shall have the force and effect of law after compliance with the provisions of KRS Chapters 13A and 18A and the procedures adopted thereunder;
 - (b) Administrative regulations promulgated by the secretary shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter; and
 - (c) No administrative body other than the Personnel Cabinet shall promulgate administrative regulations governing the subject matters specified in this section.
- (6) Prior to filing an administrative regulation with the Legislative Research Commission, the secretary shall submit the administrative regulation to the board for review.

- (a) The board shall review the administrative regulation proposed by the secretary not less than twenty (20) days after its submission to it;
 - (b) Not less than five (5) days after its review, the board shall submit its recommendations in writing to the secretary;
 - (c) The secretary shall review the recommendations of the board and may revise the proposed administrative regulation if he deems it necessary; and
 - (d) After the secretary has completed the review provided for in this section, he may file the proposed administrative regulation with the Legislative Research Commission pursuant to the provisions of KRS Chapter 13A.
- (7) The administrative regulations shall provide:
- (a) For the preparation, maintenance, and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class. The secretary shall allocate the position of every employee in the classified service to one (1) of the classes in the plan. The secretary shall reallocate existing positions, after consultation with appointing authorities, when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The occupant of a position being reallocated shall continue to serve in the reallocated position with no reduction in salary;
 - (b) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the state budget director. The plan shall take into account such factors as:
 - 1. The relative levels of duties and responsibilities of various classes of positions;
 - 2. Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and
 - 3. The state's financial resources.Amendments to the pay plan shall be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the class of position in which he is employed, provided that the full amount of the annual increment provided for by the provisions of KRS 18A.355, and the full amount of an increment due to a promotion, salary adjustment, reclassification, or reallocation, shall be added to an employee's base salary or wages;
 - (c) For open competitive examinations to test the relative fitness of applicants for the respective positions. The examinations shall be announced publicly and applications accepted at least ten (10) days prior to certification of a register, and may be advertised through the press, radio, and other media. The secretary shall continue to receive applications and examine candidates on a continuous basis long enough to assure a sufficient number of eligibles to meet the needs of the service. Except as provided by this chapter, he shall add the names of successful candidates to existing eligible lists in accordance with their respective ratings. The secretary shall be free to use any investigation of education and experience and any test of capacity, knowledge, manual

skill, character, personal traits, or physical fitness, which in his judgment, serves the need to discover the relative fitness of applicants;

- (d) As provided by this chapter, for the establishment of eligible lists for appointment, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Except as provided by this chapter, an eligible's score shall expire automatically one (1) year from the date of testing, unless the life of the score is extended by action of the secretary for a period not to exceed one (1) additional year. Except for those individuals exercising reemployment rights, all eligibles may be removed from the register when a new examination is established;
- (e) For the rejection of candidates or eligibles who fail to comply with reasonable requirements of the secretary in regard to such factors as age, physical condition, training, and experience, or who have attempted any deception or fraud in connection with an examination;
- (f) Except as provided by this chapter, for the appointment of a person whose score is included in the five (5) highest scores earned on the examination;
- (g) For annual, sick, and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided by KRS 18A.155(1)(d);
- (h) For layoffs, in accordance with the provisions of KRS 18A.113, 18A.1131, and 18A.1132, by reasons of lack of work, abolishment of a position, a material change in duties or organization, or a lack of funds;
- (i) For the development and operation of programs to improve the work effectiveness of employees in the state service, including training, whether in-service or compensated educational leave, safety, health, welfare, counseling, recreation, employee relations, and employee mobility without written examination;~~and~~
- (j) ***For a uniform system of annual employee evaluation for classified employees, with status, that shall be considered in determining eligibility for discretionary salary advancements, promotions, and disciplinary actions. The administrative regulations shall:***
 1. ***Require the secretary to determine the appropriate number of job categories to be evaluated and a method for rating each category;***
 2. ***Provide for periodic informal reviews during the evaluation period which shall be documented on the evaluation form and pertinent comments by either the employee or supervisor may be included;***
 3. ***Establish a procedure for internal dispute resolution with respect to the final evaluation rating;***
 4. ***Permit a classified employee, with status, who receives either of the two (2) lowest possible evaluation ratings to appeal to the Personnel Board for review after exhausting the internal dispute resolution procedure. The final evaluation shall not include supervisor comments on ratings other than the lowest two (2) ratings ;***
 5. ***Require that an employee who receives the highest possible rating shall receive the equivalent of two (2) workdays, not to exceed sixteen (16) hours, credited***

to his or her annual leave balance. An employee who receives the second highest possible rating shall receive the equivalent of one (1) workday, not to exceed eight (8) hours, credited to his or her annual leave balance; and

6. Require that an employee who receives the lowest possible evaluation rating shall either be demoted to a position commensurate with the employee's skills and abilities or be terminated; and

(k) For other administrative regulations not inconsistent with this chapter and KRS Chapter 13A, as may be proper and necessary for its enforcement.

Section 2. KRS 18A.095 is amended to read as follows:

- (1) (a) The provisions of this section shall not apply to employees commissioned pursuant to the provisions of KRS 281.770.
- (b) Dismissals, demotions, suspensions, and other penalizations of these commissioned employees, and appeals relating thereto, shall be governed by the provisions of KRS 281.771 and 281.772.
- (2) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (3) Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him. The notice shall also state:
 - (a) The specific reasons for dismissal including:
 1. The statutory or regulatory violation;
 2. The specific action or activity on which the intent to dismiss is based;
 3. The date, time, and place of such action or activity; and
 4. The name of the parties involved; and
 - (b) That the employee has the right to appear personally, or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (4) The Personnel Cabinet shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the head of the cabinet or agency or his designee, to each appointing authority. The form shall be attached to every notice of intent to dismiss, and shall contain written instructions explaining:
 - (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
 - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- (5) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives the notice, the employee may request to appear, personally or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (6) Unless waived by the employee, the appearance shall be scheduled within six (6) working days after receipt of an employee's request to appear before the head of the cabinet or agency or his designee, excluding the day his request is received.

- (7) No later than five (5) working days after the employee appears before the head of the cabinet or agency or his designee, excluding the day of the appearance, the cabinet head or agency or his designee shall:
- (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
 - (b) Notify the employee in writing of the decision.
- (8) If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:
- (a) The effective date of his dismissal or other penalization;
 - (b) The specific reason for this action, including:
 1. The statutory or regulatory violation;
 2. The specific action or activity on which the dismissal or other penalization is based;
 3. The date, time, and place of the action or activity; and
 4. The name of the parties involved;
 - (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.
- (9) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
- (a) The demotion, suspension, or other penalization;
 - (b) The effective date of the demotion, suspension, or other penalization;
 - (c) The specific reason for the action including:
 1. The statutory or regulatory violation;
 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 3. The date, time, and place of the action or activity; and
 4. The name of the parties involved; and
 - (d) That he has the right to appeal to the board within sixty (60) days, excluding the day that he received notification.
- (10) Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after the dismissal, demotion, suspension, or other form of penalization, appeal to the board for review thereof.
- (11) (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
1. The reallocation; and
 2. His right to request reconsideration by the secretary within ten (10) working days of receipt of the notice, excluding the day he receives notification;

- (b) He shall be provided with a form prescribed by the secretary on which to request reconsideration; and
 - (c) The employee shall file a written request for reconsideration of the reallocation of his position with the secretary in a manner and form prescribed by the secretary and shall be given a reasonable opportunity to be heard thereon by the secretary. The secretary shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the secretary, the employee may appeal to the board.
- (12) Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied, abridged, or impeded by a public agency. The board shall conduct a hearing to determine whether the records related to the employee, applicant, or eligible, and whether his right to inspect or copy these records was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy these records has been denied, abridged, or impeded, the board shall order the public agency to make them available for inspection and copying and shall charge the cost of the hearing to the public agency. A state employee, an applicant for employment, and an eligible on a register shall not have the right to inspect or to copy any examination materials.
- (13) Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
- (14) When an eligible's name is removed from a register, the secretary shall notify the eligible of his action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the secretary or in accordance with the decision of the board.
- (15) (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board;
- (b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of this rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the secretary pending reconsideration by the board;
 - (c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of the examination to assure that uniform rating procedures have been applied equally and fairly;
 - (d) An appeal to the board by applicants or eligibles under subsections (11) and (13) of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.

- (16) An evaluation may be appealed to the board if an employee has complied with the review procedure established *in subsection (7)(j) of Section 1 of this Act* ~~[under KRS 18A.112]~~.
- (17) (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The Personnel Cabinet shall be responsible for the distribution of these forms;
- (b) The appeal form shall be attached to any notice, or copy of any notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an employee may appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney;
- (c) The form shall also instruct a classified employee to state the action he is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason for the appeal and the cause given for his dismissal; and
- (d) Upon receipt of the appeal by the board, the appointing authority and the Personnel Cabinet shall be notified and the board shall schedule a hearing.
- (18) All administrative hearings conducted by the board shall be conducted in accordance with KRS Chapter 13B.
- (19) (a) The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100;
- (b) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing.
- (20) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
- (a) Employ class action procedures;
- or (b) Conduct test representative cases.
- (21) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- (22) An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the board pursuant to KRS 13B.030.

- (23) (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal;
- (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal;
- (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action;
- (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.
- (24) If a final order of the board is appealed, a court shall award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. This award shall not include attorney fees attributable to the hearing before the board.
- (25) When any employee is dismissed and not ordered reinstated after the appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.
- (26) After a final decision has been rendered by the board or court, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.
- (27) If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.
- (28) For the purposes of subsections (3), (4), (5), (6), (7), and (8) of this section, the word "agency" means any agency not assigned to a cabinet for organizational purposes.
- (29) Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

Section 3. KRS 18A.355 is amended to read as follows:

- (1) An annual increment of not less than five percent (5%) of the base salary or wages of each state employee shall be granted to each employee on his anniversary date. The employee's

base salary or wages shall be increased by the amount of the annual increment. When any increment due to a promotion, reallocation, reclassification or salary adjustment is granted an employee, the employee's base salary or wages shall be increased by the amount of such increment. An employee's base salary or wages shall not be increased by the amount of lump-sum payment awarded under *subsection (7)(j) of Section 1 of this Act*~~[the provisions of KRS 18A.112 awarded him]~~.

- (2) The branch budget recommendation submitted to the General Assembly under KRS Chapter 48 shall include a request for the amount of the annual increment expressed as a percentage of each employee's base salary or wages and a request for the total appropriation needed to fund the annual increment. The annual increment shall be uniform for all employees. The financial plan enacted under the provisions of KRS 48.300 shall contain the annual increment expressed as a percentage of each employee's base salary or wages, and the total appropriation needed to fund the annual increment.
- (3) The budget reduction plan submitted and enacted under the provisions of KRS Chapter 48 shall provide that a reduction of the annual increment granted under this section shall be made only after other cost savings measures, as provided by KRS 18A.1132, are taken. Any such reduction shall be uniform for all state employees and shall comply with the provisions of this chapter and KRS Chapter 48.

SECTION 4. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO READ AS FOLLOWS:

The requirement of a high school diploma, equivalency certificate, or a passing score on the General Educational Development (GED) test in the Highway Equipment Operator series shall not apply to employees hired prior to July 1, 1999.

Section 5. KRS 64.640 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, and excepting officers elected by popular vote, employees of the General Assembly, including employees of the Legislative Research Commission, members of boards and commissions, those officers and employees of Kentucky Educational Television exempt from classified service as provided in KRS 18A.115, presidents and employees of the state universities and the state colleges, and persons employed by the commissioner of parks on a temporary basis under KRS 148.026, the Personnel Cabinet shall prepare a schedule of compensation, payable out of the State Treasury, with a minimum and maximum salary rate, and such intermediate salary rates as are deemed necessary or advisable, for the office or position of employment of every state officer and employee, including specifically the offices and positions of employment in every constitutional administrative department, statutory administrative department, independent agency, or other unit of state government. Such schedules shall be based upon studies of the duties and responsibilities of the offices and positions and upon a comparison with rates being paid for similar or comparable services elsewhere, and in the preparation of such schedules, the Personnel Cabinet shall ascertain and record the duties, responsibilities, and authority pertaining to the various offices and positions in the state service, and classify such positions in the manner provided in KRS 18A.030, 18A.035, 18A.110, 18A.130, 18A.135, and 18A.150 to 18A.160. No such schedule shall become effective until it has been approved by the Governor.

- (2) The Governor shall set the compensation payable out of the State Treasury to each officer or position in the state service, which officer or position heads a statutory administrative department, independent agency, or other unit of state government except for those excluded under subsection (1) of this section. Such compensation shall be based upon studies of the duties and responsibilities and classification of the positions by the Governor and upon a comparison with compensation being paid for similar or comparable services elsewhere, provided, however, such compensation shall not exceed the ***total taxable compensation of the Governor derived from state sources*** ~~amount provided for compensation to the Governor in KRS 64.480~~, the provisions of KRS 64.660 to the contrary notwithstanding. ***For the purposes of this section, the total taxable compensation of the Governor from state sources shall include the amount provided for compensation to the Governor under KRS 64.480 and any benefits or discretionary spending accounts that are imputed as taxable income for federal tax purposes.***
- (3) The compensation payable out of the State Treasury to officers and employees subordinate to any office or position covered by subsection (2) of this section shall not exceed the maximum rate established pursuant to subsection (2) of this section for such office or position, except with respect to physicians as provided in KRS 64.655 and employees of the Public Service Commission of Kentucky whose compensation shall be fixed, within constitutional limits, by the Personnel Cabinet with the approval of the Governor as provided in subsection (1) of this section.
- (4) Nothing in this section shall preclude the allowance of maintenance to officers and employees of the state.

Section 6. The following KRS section is repealed:

18A.112 Performance evaluations.

Approved April 21, 2000