



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #317

Appointment of DMRS Administrator (Employment Relations)

[LFB 2003-05 Budget Summary: Page 160, #6 (part)]

CURRENT LAW

Under current law, most of the responsibilities for state employment relations under Chapter 230 of the statutes rest ultimately with the Secretary of the Department of Employment Relations. However, those statutory provisions relating to merit recruitment and selection activities are explicitly placed with a statutorily-enumerated position of Administrator of Merit Recruitment and Selection. That position is required to be filled by gubernatorial appointment, subject to Senate confirmation, to a five-year term. There is also a statutory provision requiring the establishment of a Division of Merit Recruitment and Selection with the Department of Employment Relations.

GOVERNOR

The budget bill would transfer the Chapter 230 employment relations responsibilities from the Department of Employment Relations and the Secretary of that Department to the Department of Administration and the Secretary of DOA. Under the bill, there would be a statutorily-required Division of Merit Recruitment and Selection (DMRS) under DOA and all those responsibilities and duties currently assigned to the Division would continue except for two. One exception relates to providing, by rule, for exceptional methods and kinds of employment for state employees during periods of disaster or national emergency and for other exceptional employment situations, such as to allow the employment of the mentally or physically disabled and the disadvantaged. The other exception relates to the appointment of county veterans service officers. Under the bill, both of these responsibilities would be transferred from the DMRS Administrator to the Secretary of the Department of Administration.

Under the bill, it is also proposed that a different statutory procedure be established for the appointment of the Administrator of the Division of Merit Recruitment and Selection. Current law provisions regarding the appointment of the Administrator would be repealed. Instead, a selection committee would be established to provide a list of nominees to the Governor for appointment of an individual to the position. The selection committee would be composed of the Chief Justice of the Supreme Court, the Speaker of the Assembly, the President of the Senate, and two individuals appointed by the Governor (one of whom could not be a state employee), or these individuals' designees, to compile a list of three qualified individuals from which the Governor could select a person to serve as the DMRS Administrator. As under current law, the Governor's nominee would be appointed, subject to the advice and consent of the Senate, to a five-year term. In the event a Governor declined to nominate a person from the list, the Governor could request that the same group provide him or her with another list of three qualified individuals for the position. Such process would be repeated until the Governor selected an individual from such a list to nominate to the position.

DISCUSSION POINTS

1. The administration has indicated that the provisions in the bill which would move the responsibilities relating to establishing exceptional methods of employment for state employees and appointment of county veterans service officers from the DMRS Administrator to the Secretary of Administration were inadvertent drafting errors and that the bill should be corrected to retain those responsibilities under the Administrator as under current law. The Legislative Reference Bureau has also indicated that a deleted reference to the Secretary's rules should be retained but changed to refer to the DOA Secretary. The Committee could delete those language changes in the bill as a technical adjustment to correctly reflect the Governor's intent to make no change to current law in those areas except for the transfer to DOA.

2. In a March 17, 2003, memorandum to the Committee, the Secretary of Administration indicated that the proposed language in the bill which would modify the current law procedures for appointment of the DMRS Administrator does not fully reflect the Governor's intent. The administration has requested that changes to the bill be made so that all current law procedures relating to the appointment of the DMRS Administrator be retained, except for the change that the instead of having the Secretary of Employment Relations (under current law) or the Secretary of Administration (under the bill) provide a list of five qualified individuals to the Governor, the nomination committee as proposed in the bill would present a list of three names of qualified individuals from the initial register to the Governor as possible nominees, with successive lists possible.

3. Under both current law and the amended selection proposal as requested by the administration, the initial steps of the selection process would be the same. Under current law, when the DMRS Administrator position becomes vacant, the Secretary of Employment Relations is required to develop a civil service register containing the name of at least five qualified individuals whom the Governor may consider for nomination to the position of DMRS Administrator. The

statute requires the Secretary to develop the register by means of an examination for the position that is consistent with the statutory requirements for the filling of other positions under the classified service.

4. In the case of the Administrator position, the examination for this position generally consists of the following process: (a) a notice is published inviting written applications for the position; (b) applicants, as a part of the application process, submit a written achievement history in response to a set of questions developed by Department; (c) a panel of raters who have detailed knowledge of the requirements of the position rate these achievement histories without knowing the identity of the applicants; (d) those applicants rated as qualified for the job based on their achievement histories are then interviewed by a panel of raters, and -- dependent upon the size of the initial pool of applicants deemed qualified -- may be narrowed down to a second, smaller group; (e) a final interview is then generally conducted by the Secretary from which the final required list (register) of at least five names is submitted to the Governor.

5. Under the modified language as proposed by the administration, it is intended that this selection process would be changed only in so far as that, in lieu of the step in the current process where the Secretary is involved in determining the final register of at least five names from the Governor is to make a selection, the proposed five member panel would instead be involved in the final selection process and would compile the list of only three names from which the Governor could make a nomination. The language would also specifically provide that the existing register could be used to provide additional lists of names to the Governor in the event no nomination was made from the previously submitted list. Current law is silent on this. The modified language proposed by the administration would also restore a current law provision that permits a Governor to reappoint an existing DMRS administrator whose term has expired to a new term, subject to Senate confirmation of the appointment.

6. The administration's explanation for the proposed change (under its proposed modification to SB 44) is that it was felt that one administration appointee (the DER or DOA Secretary) should not be formally involved in the selection of another gubernatorial appointee. The proposed independent selection committee therefore is intended to remove the Secretary from the final step of the process that results in the final list of potential nominees.

7. The reason for this distinct appointment process for the DMRS Administrator traces back to the creation of the Department of Employment Relations by Chapter 196, Laws of 1977. There were concerns at that time that the individual who would be immediately responsible for operation of the merit recruitment and selection process needed to have some insulation from the normal political appointment process. Therefore, a modified commissioner-type appointment process for this position was selected whereby the appointee would be nominated by the Governor, but would be subject to Senate confirmation and would serve a five-year fixed term, subject to dismissal only for cause. Further, a civil service examination process was required to develop the list of nominees to ensure that the pool of nominees would be qualified, as determined under the merit system, to hold the position. Both of these special requirements were intended to provide additional insulation from political appointment procedures by use of a civil service recruitment and

selection process.

8. The Committee should note that, notwithstanding the proposed change in the process for the ultimate appointment of the DMRS Administrator, the Department has commenced the process for selection of nominees for the Governor to consider for appointment to the currently vacant Administrator position. The Department indicates that it was felt that it was necessary to do this because there was no certainty if or when the proposed change to the selection process would become law. An initial register has already been certified and the interviewing process has commenced. The Department indicates it is hopeful that the Governor will be able to make an appointment to the position from the five names that will be forwarded to the Governor under the current law process.

9. The Committee could modify the provisions of SB 44 to include the changes in the current appointment process as requested by the administration. Alternatively, the Committee could retain the current law appointment process in its entirety.

10. If the Committee chooses to include the proposed modified language as requested by the administration, the Committee could also consider a the following changes to that suggested language. If the goal is provide that the final nominees come from an independent review of potential nominees provided via the examination process, then the argument could be made that a somewhat different committee might be considered, so that both parties in each house of the Legislature would be represented, and that private individuals appointed by the Governor to the selection committee would have to both be non-state employees and also be required to be individuals with demonstrated experience in personnel administration.

11. One additional technical modification might also be considered. Under both the bill and the proposed modified language, there would be authority for any of the committee appointees to delegate another individual to serve on the selection committee. This is a proviso that is often adopted for elected and appointed agency heads named to standing state committees and bodies. However, it is not typically done for private individuals serving on such bodies nor is it typically done for entities that have a short life span like this selection committee would have for any given appointment process. The Committee could delete the language dealing with the appointment of designees.

ALTERNATIVES

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation to include the corrective language requested by the administration.
3. Include the administration's requested language with modifications to: (a) add the minority leaders of the Assembly and Senate to the selection committee; (b) provide that the two individuals appointed to the selection committee by the Governor must both be non-state employees

and must have demonstrated experience in personnel administration; and (c) delete the provision that would allow individuals named to the selection committee to appoint designees to serve in their stead on the selection committee.

4. Retain the current law selection process.

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