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EDUCATION CODE - EDC

TITLE 3. POSTSECONDARY EDUCATION [66000 - 101060] (Title 3 enacted by Stats. 1976, Ch. 1010.)

DIVISION 7. COMMUNITY COLLEGES [70900 - 88922] (Division 7 enacted by Stats. 1976, Ch. 1010.)

PART 51. EMPLOYEES [87000 - 88270] (Part 51 enacted by Stats. 1976, Ch. 1010.)

CHAPTER 4. Classified Employees [88000 - 88270] (Chapter 4 enacted by Stats. 1976, Ch. 1010.)

ARTICLE 3. Merit System [88060 - 88139] (Article 3 enacted by Stats. 1976, Ch. 1010.)

88060. Any community college district adopting the provisions of this article in accordance with Section 88052 or 88057 of this chapter shall cause the personnel commission to be appointed in the manner prescribed in Sections 88065, 88066 and 88067. The personnel commission shall appoint the personnel director in the manner provided in Section 88084 after appointment of at least two of its members.

(Enacted by Stats. 1976, Ch. 1010.)

88061. In any district in which the procedure set forth in this article has been incorporated the governing board shall employ, pay, and otherwise control the services of persons in nonacademic positions in accordance with the provisions of this article.

No governing board shall remove a position from the classified service by title assignment or otherwise unless the position is one for which minimum qualifications have been established by the board of governors pursuant to Section 87356.

(Amended by Stats. 1990, Ch. 1302, Sec. 185. Effective September 25, 1990.)

88063. In any district that has adopted the provisions of this article there shall be appointed a personnel commission composed of either three or five members. The governing board of any community college district, by a majority vote, and with the agreement of the existing personnel commission of the district, if that commission is in existence, may elect to increase the membership of the personnel commission from three to five members or to decrease the membership from five to three members. If two or more districts are under the jurisdiction of governing boards of identical personnel, only one commission shall be appointed. In those cases this article shall apply alike to all of the districts, and the expenses of the commission shall be paid out of the general funds of all of the districts in proportion to the benefits derived therefrom as determined by the governing board.

(Amended by Stats. 1993, Ch. 1296, Sec. 34. Effective October 11, 1993.)

88063.5. Notwithstanding Section 88063 or any other provision of law, in the case of a community college district that was formerly under the jurisdiction of governing boards of identical personnel for both the community college district and a unified district and that had a majority of its population within an incorporated city which had a population between 70,000 and 75,000 as of the 1950 census, and where the governing board, by affirmative vote of the majority of its members, made this article applicable to each of the districts individually and separately, the rights of persons employed in nonacademic positions shall continue in the same manner as if the separation had not occurred, except that the rights shall be limited to the district in which the person is employed on the day the action was taken by the governing board. For purposes of determining seniority, employment shall be deemed to have commenced as of the date of original employment in either the unified district or the community college district.

(Amended by Stats. 1995, Ch. 758, Sec. 207. Effective January 1, 1996.)

88064. (a) To be eligible for appointment or reappointment to the commission, a person shall meet both of the following requirements:

(1) Be a registered voter and resident within the territorial jurisdiction of the community college district.

(2) Be a known adherent to the principle of the merit system.

(b) No member of the governing board of any community college district or a county board of education shall be eligible for appointment, reappointment, or continuance as a member of the commission. During his or her term of service, a member of the commission shall not be an employee of the district.

(c) As used in this section, "known adherent to the principle of the merit system," with respect to a new appointee, shall mean a person who by the nature of his or her prior public or private service has given evidence that he or she supports the concept of employment, continuance in employment, in-service promotional opportunities, and other related matters on the basis of merit and fitness. As used in this section, "known adherent to the principle of the merit system," with respect to a candidate for reappointment, shall mean a commissioner who has clearly demonstrated through meeting attendance and actions that he or she does, in fact, support the merit system and its operation.

(Amended by Stats. 1998, Ch. 954, Sec. 23. Effective January 1, 1999.)

88065. One member of the commission shall be appointed by the governing board of the district and one member, nominated by the classified employees of the district, shall be appointed by the governing board of the district. Those two members shall, in turn, appoint the third member.

As used in this section, "classified employees" shall mean an exclusive representative which represents the largest number of classified employees in a unit or units within the district. If there is no such exclusive representative within the district the governing board shall, by written rule, prescribe the method by which the recommendation is to be made by its classified employees.

In any community college district which has a five-member personnel commission, two members of the commission shall be appointed by the governing board of the district and two members, nominated by the classified employees of the district, shall be appointed by the governing board of the district. Those four members of the personnel commission shall, in turn, appoint the fifth member to the commission.

(Amended by Stats. 1990, Ch. 1302, Sec. 187. Effective September 25, 1990.)

88066. (a) Within 30 days after adoption of the system the governing board shall publicly announce its intended appointee, and the appointee or appointees, as appropriate, nominated by its classified employees. As soon after their appointment as practicable but within 30 days, the appointed members shall announce their intended appointee for the third or fifth member, as appropriate. They may consider the recommendations of the governing board, the classified employees, or other concerned citizens. If these members do not announce their intended appointee within the 30-day period, the Chancellor of the California Community Colleges shall make the appointment.

"Adoption of the system" means, in the case of Section 88051, the day on which a successful election is certified to the governing board or, in the case of Section 88054, the day the governing board approves a motion, order, or resolution to adopt the system regardless of the date specified for operational commencement of the system.

(b) Where a system is already in existence and a vacancy will exist on December 1, by not later than September 30:

(1) The governing board shall publicly announce the name of the person it intends to appoint or reappoint, if the vacancy is its appointee.

(2) The appointee or appointees, as appropriate, of the governing board and the appointee or appointees of the classified employees shall publicly announce the name of the person they intend to appoint, if the vacancy is their appointee.

If the governing board and the classified employees of the district are unable to agree upon a nomination by September 30, the Chancellor of the California Community Colleges shall make the appointment within 30 days.

(c) Where a system is already in existence and a vacancy in a position nominated by the classified employees will occur, the classified employees shall submit the name of its nominee to the governing board at least 30 days prior to the date on which the vacancy will occur and the governing board shall appoint that nominee to be effective on the date on which the vacancy would occur.

(d) At a board meeting to be held after 30 and within 45 days of the dates specified in subdivision (a) and paragraph (1) of subdivision (b), as the case may be, the governing board in open hearing shall provide the public and employees and employee organizations the opportunity to express their views on the qualifications of those persons recommended by the governing board for appointment.

The board at the time may make its appointment or may make a substitute appointment or recommendation without further notification or public hearing.

In the case of the nominees of the classified employees, the board shall appoint the nominee, unless the classified employees voluntarily withdraw the name of the nominee and submit the name of a new nominee. In the latter case, the board shall then appoint the new nominee.

(e) In the event a vacancy exists because of a failure of the classified employees to agree on a nominee, the board may make an emergency appointment as authorized in subdivision (b) of Section 88065. If there is no personnel director, the board may nevertheless make an emergency interim appointment under this subdivision.

(f) At the next regularly scheduled personnel commission meeting to be held after 30 days from adoption of the system, as specified in subdivision (a), or at the next regularly scheduled personnel commission meeting to be held after 30 days from the day the intended appointee is announced, as specified in paragraph (2) of subdivision (b), as the case may be, the appointee or appointees of the governing board and the appointee or appointees nominated by the classified employees shall, in an open hearing, provide the public and employees and employee organizations the opportunity to express their views on the qualifications of each candidate recommended for the vacancy. Each candidate shall be invited to this meeting.

The appointee or appointees of the governing board and the appointee or appointees nominated by the classified employees may make their appointment or may make a substitute appointment or recommendation without further notification or public hearing.

(g) A commissioner whose term has expired may continue to discharge the duties of the office until a successor is appointed, but for no more than 90 calendar days. This subdivision shall become operative on January 1, 1994.

(Amended by Stats. 1993, Ch. 1296, Sec. 35. Effective October 11, 1993.)

88067. Appointees to a commission in a district which has newly adopted the system shall take office upon receipt of notification of the appointment but the term of office shall run from noon of the first day of December next succeeding.

In community college districts with a three-member personnel commission, the initial appointee of the governing board shall serve a three-year term, and the term of the appointee recommended by classified employees and the third member selected by the other two members shall be for two years and one year respectively.

In community college districts which have elected to establish a five-member personnel commission, one of the initial appointees of the governing board, and one of the initial appointees nominated by the classified employees shall serve three-year terms. The term of the other initial appointee of the governing board and the other initial appointee nominated by the classified employees of the district, shall be for two years, and the term of the appointee selected by the other members of the commission shall be for one year.

Subsequent terms shall be for three years commencing at noon the first day of December.

A three-member commission may perform any act authorized or required by law when two members have been appointed.

A five-member commission may perform any act authorized or required by law when three members have been appointed.

(Amended by Stats. 1985, Ch. 723, Sec. 13.)

88068. (a) Appointment to vacancies occurring subsequent to the initial appointment shall be made by the original appointing authority either for a new full term or to fill an unexpired term. The procedures required in Sections 88065 and 88066 shall be followed in the appointment and recommendation for appointment to fill vacancies occurring subsequent to the initial appointments.

(b) Notwithstanding subdivision (a) the governing board at the request of the personnel director shall declare that an emergency exists and shall make an interim appointment to fill a vacancy or vacancies to insure the continuance of the functions of the personnel commission. An interim appointment shall terminate on the date the notification of permanent appointment is received by the appointee.

(c) An interim appointee must meet the requirements of Section 88064 and be free of the restrictions contained therein.

(d) An interim appointment in no event shall be valid for more than 60 days.

(Enacted by Stats. 1976, Ch. 1010.)

88069. (a) (1) After January 1, 2001, the classified employees of any community college district that has already adopted this article on September 17, 1965, may, in accordance with this article, petition the governing board to request that the process to determine how personnel commission members are appointed be determined by a majority vote of the classified employees entitled to vote. That petition shall read substantially as follows:

"We, the undersigned classified employees of the ____ (name of community college district), constituting 15 percent or more of the classified personnel entitled to vote, request the governing board to submit to an election the question of how personnel commission members shall be appointed.

NAME ____ POSITION CLASSIFICATION ____"

(2) "Classified employee," as used in this section, shall be construed to include all personnel who are a part of the classified service as defined in Section 88001.

(b) (1) Within 90 days after receipt of a petition pursuant to subdivision (a), the governing board shall conduct an election by secret ballot of its classified personnel to determine the following question and the ballot shall read:

"Shall personnel commission members in the ____ (name of community college district) be appointed as follows:

(A) One member appointed by the governing board of the district.

(B) One member appointed by the classified employees of the district.

(C) Those two members shall, in turn, appoint the third member.

____ Yes

____ No"

(2) Although the ballot conducted pursuant to paragraph (1) shall not require the employees' signatures or other personal identifying requirements, the governing board shall devise an identification system to ensure against fraud in the balloting process.

(3) The governing board shall appoint a three- to five-person tabulating committee. At least one member of the committee shall be a member of the governing board, to canvass the ballots and present the results to the governing board and one member shall be a classified employee nominated by the exclusive representative of the classified employees of the district. If a simple majority votes in favor of the process for appointing personnel commission members, that process shall become applicable in the district as follows:

(A) The first vacancy on the commission shall be filled by a person nominated by the classified employees of the district.

(B) The second vacancy on the commission shall be filled by a person appointed by the governing board of the district.

(C) The third vacancy of the commission shall be appointed by the first two members.

(4) If the ballot conducted pursuant to paragraph (2) fails to pass, personnel commission members shall be appointed in accordance with the procedure described in subdivision (c), and a petition by the classified employees for another election shall not occur sooner than two years after an election.

(c) (1) Subject to subdivisions (a) and (b), in a community college district that has already adopted this article on September 17, 1965, members of the personnel commission shall be appointed by the Chancellor of the California Community Colleges who shall consider the recommendation of the governing board and other interested parties.

(2) If the governing board and the personnel commission of a community college district elect to increase the personnel commission from three to five members, the Chancellor of the California Community Colleges shall make one of the additional appointments. Subsequent appointments shall be made in accordance with this section.

(3) No later than 90 days before making the appointment, the Chancellor of the California Community Colleges shall notify the classified employees and the governing board in writing of the vacancy on the personnel commission and provide them with guidelines and procedures for making a recommendation and challenging a nomination. If a vacancy occurs during the term of a member of the personnel commission, the chancellor may appoint a new member after providing the foregoing notice no later than 30 days before making the appointment.

(4) A commissioner whose term has expired may continue to discharge the duties of the office until a successor is appointed but for no more than 90 calendar days.

(d) As used in this section, "classified employees" means an organization of classified employees that represents the greatest number of classified employees of the district as determined by the board. If no organization exists within the district, the governing board, by written rule, shall prescribe the method by which the recommendation is to be made by its classified employees.

(Amended by Stats. 2000, Ch. 488, Sec. 2. Effective January 1, 2001.)

88070. The governing board may authorize payment to members of the commission an amount not to exceed fifty dollars (\$50) per meeting and not to exceed two hundred fifty dollars (\$250) per month.

(Amended by Stats. 1985, Ch. 723, Sec. 15.)

88071. In a community college district with an average daily attendance in excess of 40,000 and which is located in a metropolitan area with a population of more than 4,000,000, the governing board may authorize payment to members of the commission an amount not to exceed one hundred dollars (\$100) per meeting, and not to exceed five hundred dollars (\$500) per month.

(Amended by Stats. 1985, Ch. 723, Sec. 16.)

88072. The governing board shall provide the commission with suitable office accommodations.

(Enacted by Stats. 1976, Ch. 1010.)

88073. The commission shall prepare an annual budget for its own office which, upon the approval of the county superintendent of schools, shall be included by the governing board in the regular budget of the community college district. The annual budget of the commission may include amounts for the purposes of Section 88075.

The budget shall be prepared for a public hearing by the commission to be held not later than May 30 of each year. The commission shall forward a copy of its proposed budget to the governing board indicating the time, date and place for the public hearing of the budget and shall invite board and district administration representatives to attend and present their views. The commission shall fully consider the views of the governing board prior to adoption of its proposed budget. The commission shall then forward its proposed budget to the county superintendent of schools for action.

If the county superintendent of schools proposes to reject the budget as submitted by the commission, he shall, within 30 days after the commission's submission of the budget, hold a public hearing on the proposed rejection within the affected district. He shall have informed both the commission and the governing board of the date, time and place of the hearing. He may after such public hearing either reject, or, with the concurrence of the commission, amend the proposed budget. In the absence of agreement between the personnel commission and the county superintendent the budget of the preceding year shall determine the amount of the new budget, and the items of expenditure shall be determined by the commission.

(Enacted by Stats. 1976, Ch. 1010.)

88075. The commission may, with respect to the staff of the commission, expend funds for their orientation, training, retraining, and development and for any purpose prescribed by Article 7 (commencing with Section 88220) of this chapter.

(Enacted by Stats. 1976, Ch. 1010.)

88076. (a) The commission shall classify all employees and positions within the jurisdiction of the governing board or of the commission, except those which are exempt from the classified service, as specified in subdivision (b). The employees and positions shall be known as the classified service. "To classify" shall include, but not be limited to, allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.

(b) The following positions and employees are exempt from the classified service:

(1) Academic positions.

(2) Part-time playground positions.

(3) Full-time students employed part time.

(4) Part-time students employed part time in any college work-study program or in a work experience education program conducted by a community college which is financed by state or federal funds.

(5) Apprentice positions.

(6) Positions established for the employment of professional experts on a temporary basis for a specific project by the governing board or by the commission when so designated by the commission.

Employment of either full-time or part-time students in any college work-study program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

However, nothing in this section shall prevent an employee, who has attained regular status in a full-time position, from taking a voluntary reduction in time and retaining his or her regular status under the provisions of this law.

No person whose contribution consists solely in the rendition of individual personal services and whose employment does not come within the scope of the exceptions listed above shall be employed outside the classified service.

A part-time position is one for which the assigned time, when computed on an hourly, daily, weekly, or monthly basis, is less than 87 1/2 percent of the normally assigned time of the majority of employees in the classified service.

(Amended by Stats. 1995, Ch. 758, Sec. 208. Effective January 1, 1996.)

88077. Nothing contained in Section 88076 shall be interpreted to exclude the employment of architectural and engineering firms employed on a temporary basis for a specific project by a governing board or the commission when so designated by the commission.

(Enacted by Stats. 1976, Ch. 1010.)

88078. In addition to the exemptions authorized in Section 88076, there shall be exempt from the classified service positions established for the employment of community representatives in advisory or consulting capacities for not more than 90 working days in a fiscal year, provided that:

- (1) The authorized duties are not those normally assigned to a class of positions in the classified service,
- (2) The authorized duties are approved by the personnel commission in advance of employment, and
- (3) A regular classified employee of the community college district shall not receive a concurrent appointment to such a position.

(Enacted by Stats. 1976, Ch. 1010.)

88079. If the governing board of any community college district establishes positions and restricts initial appointment of new employees to mentally, physically, or developmentally disabled persons, then such positions shall, in addition to the regular class title, be classified as "restricted." The positions shall be part of the classified service and persons so employed shall be classified employees for all purposes except that they shall not be subject to the provisions of Section 88091 or 88092, and that they shall not acquire permanent status or seniority credit and shall not be eligible for promotion into the regular classified service until they have complied with the provisions of subdivision (c) of Section 88005.

(Amended by Stats. 1990, Ch. 1206, Sec. 6.)

88080. (a) The commission shall prescribe and, amend, and interpret subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall not apply to bargaining unit members if the subject matter is within the scope of representation, as defined in Section 3543.2 of the Government Code, and is included in a negotiated agreement between the governing board and that unit. The rules shall be binding upon the governing board, but shall not restrict the authority of the governing board provided pursuant to other sections of this code.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the community college employer of the classified employees who would be affected have been given reasonable notice of the proposal.

(Amended (as amended by Stats. 1982, Ch. 1514, Sec. 5.5) by Stats. 1984, Ch. 521, Sec. 16.)

88081. (a) The rules shall provide for the procedures to be followed by the governing board as they pertain to the classified service regarding applications, examinations, eligibility, appointments, promotions, demotions, transfers, dismissals, resignations, layoffs, reemployment, vacations, leaves of absence, compensation within classification, job analyses and specifications, performance evaluations, public advertisement of examinations, rejection of unfit applicants without competition, and any other matters necessary to carry out the provisions and purposes of this article.

(b) With respect to those matters set forth in subdivision (a) which are a subject of negotiation under the provisions of Section 3543.2 of the Government Code, such rules as apply to each bargaining unit shall be in accordance with the negotiated agreement, if any, between the exclusive representative for that unit and the public school employer.

(Amended by Stats. 1977, Ch. 1014.)

88082. The rules of the commission and copies of this article shall be printed and made available to each school, office, and permanent worksite where employees report and shall be distributed to school libraries for loan to employees.

Within one year of when a district adopts the merit system, the commission shall adopt rules pursuant to Section 88080 and shall give to each new regular employee a handbook which summarizes the basic rules and working conditions for classified employees and provides information regarding access to copies of the complete rules and the merit system.

(Enacted by Stats. 1976, Ch. 1010.)

88083. The commission may classify as apprentice positions certain positions where the principal requirement is that of learning to perform efficiently, by study and practice, specific duties concerning which a definite plan of systematic instruction and special supervision has been approved by the California Apprenticeship Council for the designated trade.

The apprenticeship training plan adopted by the governing board of the community college district shall be approved by the California Apprenticeship Council.

No assignment to any position classified as an apprentice position shall be allowed to continue beyond the predetermined apprenticeship period approved by the California Apprenticeship Council for the designated trade, except that the community college district's joint apprenticeship committee may approve retention of an employee as an apprentice up to six months beyond the predetermined apprentice period.

The selection of eligible persons shall be made in accordance with their position on employment lists established by competitive or qualifying examinations.

Section 88033 shall be applicable to apprentice positions. However, relative age may be considered as a factor in the ranking of candidates for apprentice positions.

Credit for prior training in a regularly indentured apprenticeship program shall be given to qualified candidates.

In all cases of apprenticeship probationary periods, the standards of duration and qualifications shall be fixed by the commission insofar as they do not exceed the maximum standards set up by the California Apprenticeship Council. Termination for cause may be prescribed for any apprentice who fails to attain the predetermined standards of apprenticeship or for causes as prescribed by the rules of the commission.

The commission shall recommend to the governing board a graduated scale of compensation rates for the various levels of apprentices, taking into consideration the percentage relationship to the districts' journeyman wage of the trade as provided in the statement of policies of the California Apprenticeship Council.

The commission may determine that promotional examinations shall be held for entrance into various levels of apprentice positions and entrance into journeyman positions in a skilled trade.

(Amended by Stats. 1995, Ch. 758, Sec. 210. Effective January 1, 1996.)

88084. The commission shall appoint a personnel director within 90 days after the adoption of a merit system from an eligibility list established from a competitive examination given under the auspices of the commission. The commission shall appoint all employees paid from funds budgeted for the support of the commission and shall supervise the activities of those employees that are performed as a part of the functions of the commission. These employees shall be appointed from eligibility lists established pursuant to the provisions of this article, be classified employees of the community college district and shall be accorded all the rights, benefits, and burdens of any other classified employee serving in the regular service of the district, including representation by the appropriate exclusive representative, if any.

(Amended (as amended by Stats. 1982, Ch. 572, Sec. 5) by Stats. 1984, Ch. 521, Sec. 18.)

88085. Notwithstanding the provisions of Section 88084, the personnel commission, in a community college district employing 100 or fewer classified employees, may, with the consent of a majority of the classified employees, contract for the services of a qualified personnel director with another school district having the merit (civil service) system, or a city or a county governmental agency if the city or county has a civil service system for the management of its employee personnel.

Such a contract shall be for not more than two years and may be extended, with the approval of a majority of the classified employees, for additional periods not to exceed two years at one time.

If at the end of any contract period the district is employing more than 100 classified employees, the personnel commission shall then comply with the provisions of Section 88084.

A contract approved under the provisions of this section shall become null and void in the event of district reorganization when the provisions of the contract, if continued in force would supersede or be in conflict with the provisions of Section 88019.

(Enacted by Stats. 1976, Ch. 1010.)

88086. (a) The personnel director shall be responsible to the commission for carrying out all procedures in the administration of the classified personnel in conformity with this article and the rules of the commission, and shall be free of prejudgment or bias in order to ensure the impartiality of the commission. He or she shall also act as secretary of the commission and shall prepare, or cause to be prepared, an annual report which shall be sent by the commission to the governing board.

(b) A personnel director shall not advise or make recommendations to the commission regarding any disciplinary action appealed to the commission under Section 88124, if the personnel director is the party who brought the action against the employee.

(Amended by Stats. 1985, Ch. 730, Sec. 2.)

88086.5. Sections 88022, 88023, 88160, 88198, 88199, 88201, and 88202 are applicable to the employees of community college districts that have adopted a merit system pursuant to the procedure set forth in this article.

This section is declaratory of existing law. The sections here enumerated are to be construed and applied in the same manner and with the same effect as when they were applicable to the employees of those school districts prior to the enactment of Section 88000 by Chapter 1267 of the Statutes of 1959, and in accordance with the applicable provisions of this article and the rules of the personnel commission.

(Amended by Stats. 1995, Ch. 758, Sec. 211. Effective January 1, 1996.)

88087. The commission shall recommend to the governing board salary schedules for the classified service. The governing board may approve, amend, or reject these recommendations. No amendment shall be adopted until the commission is first given a reasonable opportunity to make a written statement of the effect the amendments will have upon the principle of like pay for like service. No changes shall operate to disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the commission.

(Enacted by Stats. 1976, Ch. 1010.)

88088. Any person who has been continuously employed in a position defined as a position in the classified service for a period of six months immediately preceding the date on which the procedure set forth in this article is adopted shall be deemed to be in the permanent classified service. No layoff or suspension of service during the time when the schools of the district are not in session shall count as an interruption of continuous service.

(Enacted by Stats. 1976, Ch. 1010.)

88089. All persons who have been continuously employed by a community college district for less than six months immediately preceding the date on which the procedure set forth in this article is adopted shall be deemed to hold their positions under probationary classification.

(Enacted by Stats. 1976, Ch. 1010.)

88090. Any employee serving in an academic position whose position is by virtue of change of law deemed to be in the classified service shall without examination become a member of the classified service in accordance with the terms of Sections 88088 and 88089. Full seniority rights shall be retained, except that no seniority credit shall be allowed by virtue of previous academic service in case of layoff for lack of funds or lack of work.

Any employee serving in a classified position whose position is by virtue of change of law deemed to be an academic position shall without examination become an academic employee and shall be deemed to have the necessary qualifications for the position. Full seniority rights will be retained, except that no seniority credit will be allowed by virtue of previous classified service in case of layoff for lack of funds or lack of work. Any such person who has been continuously employed in a regular position in the classified service for the length of time necessary to acquire permanency as a faculty member shall, if employed as a faculty member, be deemed to be tenured. Any such person serving in a regular position in the classified service for an amount of time less than that necessary to acquire faculty tenure shall be a probationary employee of the district; such regular classified service shall be considered as probationary service toward the attainment of tenure as a faculty member.

(Amended by Stats. 1990, Ch. 1302, Sec. 189. Effective September 25, 1990.)

88091. (a) All vacancies in the classified service shall be filled pursuant to this article and the rules of the commission, from applicants on eligibility lists which, wherever practicable, as determined by the commission, shall be made up from promotional examinations, or appointments may be made by means of transfer, demotion, reinstatement, and reemployment in accordance with the rules of the commission. All applicants for promotional examinations shall have the required amount of service in classes designated by the commission or meet the minimum qualifications of education, training, experience, and length of service, which shall be determined by the commission to be appropriate for the class for which they have applied. Any promotional applicant who has served the required amount of time in a designated class or who meets the minimum qualifications for admission to a promotional examination shall be admitted to the examination. Applicants shall be placed on the eligibility lists in the order of their relative merit as determined by competitive examinations. The final scores of candidates shall be rounded to the nearest whole percent for all eligibles. All eligibles with the same percentage score will be considered as having the same rank. Appointments shall be made from the eligibles having the first three ranks on the list who are ready and willing to accept the position.

(b) (1) Upon the request of a majority of the members of the governing board of a community college district, the commission may exempt two executive secretarial positions from the requirements of this section. Exemptions authorized under this subdivision shall be limited to one executive secretary position reporting directly to members of the governing board, and one executive secretary position reporting directly to the chancellor.

(2) Any person employed in an exempt executive secretarial position shall continue to be afforded all of the rights, benefits, and burdens of any other classified employee serving in the regular service of the district, except he or she shall not attain permanent status in an executive secretarial position. Positions of executive secretary shall be filled from an unranked list of eligible employees who have been found to be qualified for the positions as determined by the district chancellor or superintendent and determined by the personnel commission. Any person whose services in an executive secretarial position are discontinued for a cause other than a cause for disciplinary action specified in this code or in a rule of the commission shall have the right to return to a position in a classification he or she previously occupied or, if that classification no longer exists, in a similar classification, as determined by the commission. This subdivision shall apply only to the employees hired on or after January 1, 1988.

(c) (1) Upon the request of a majority of the members of the governing board of a community college district, the personnel commission may exempt designated senior classified administrative positions from the requirements of this section. A "senior classified administrative employee" means a classified employee who acts as the chief business, fiscal, facilities, or information technology adviser or administrator for the district chancellor or superintendent or a college president, as determined by the governing board and certified by the personnel commission.

(2) Any person employed in an administrative position exempted under this subdivision shall continue to be afforded all of the rights, benefits, and burdens of any other classified employee serving in the regular service of the district, except that he or she shall not attain permanent status in that administrative position. A vacancy in an administrative position that is exempted under this subdivision shall be filled from an unranked list of eligible persons who have been found to be qualified for the positions as determined by the district chancellor or superintendent and the personnel commission. Any person whose services in an administrative position exempted under this subdivision are discontinued for any reason other than for cause as specified in this code or in a rule of the personnel commission shall have the right to return to a position in a classification he or she previously occupied or, if that classification no longer exists, in a similar classification, as determined by the commission.

(3) This subdivision shall apply only to employees hired on or after January 1, 2001.

(d) Nothing contained in this section shall authorize the selection of eligible candidates in circumvention of the affirmative action programs of any community college district.

(Amended by Stats. 2000, Ch. 951, Sec. 2. Effective January 1, 2001.)

88092. Examinations shall be administered objectively and shall consist of test parts that relate to job performance. For classes of positions deemed by the commission or by the authority responsible for the administration of classified employee examinations to require an oral examination, the oral examination board shall include at least two members.

Unless specifically directed to evaluate candidates' technical knowledge and skills, the oral examination board shall confine itself to evaluating general fitness for employment in the class. When the oral examination board is directed to evaluate technical knowledge and skills, at least two members of the board shall be technically qualified in the specified occupational area. Members of the governing board or personnel commission shall not serve on an oral

examination board. A district employee may serve on an oral examination board if he or she is not at the first or second level of supervision over a vacant position in the class for which the examination is held.

The personnel commission shall provide for the proceedings of all oral examinations to be electronically recorded. In no case will an oral examination board be provided with confidential references on employees of the district who are competing in promotional examinations. Scores achieved by the candidate on other parts of the examination shall not be made available to the oral examination board.

(Amended by Stats. 1995, Ch. 758, Sec. 212. Effective January 1, 1996.)

88093. Examination records, including any recordings and the rating sheet of each member of the oral board for each candidate, shall be retained by the body authorized to administer examinations for a period of not less than 90 days after promulgation of an eligibility list. The commission shall prescribe procedures whereby candidates may review and protest any part of an examination. In promotional examinations for classes for which continuous examination procedures have not been authorized, the review and protest period shall be held prior to regular appointment from the eligibility list. Examination records shall not be available to the public or to any person for any purpose not directly connected with the examination and shall be considered confidential but shall, within reasonable time limits, be made available to a candidate or his or her representative.

(Amended by Stats. 1995, Ch. 758, Sec. 213. Effective January 1, 1996.)

88095. The governing board shall fix the duties of all positions a part of the classified service as required by Section 88009. The board may recommend the minimum educational and work experience requirements for classified positions to the personnel commission. Minimum qualification requirements shall be subject to approval of the commission.

In approving minimum educational and work experience requirements for classified positions, the commission shall insure that such requirements reasonably relate to the duties of the position, as established by the governing board, and that they will admit an adequate field of competition. No requirements may be approved which unduly or unreasonably restrict the field of competition.

The position duties shall be prescribed by the board and qualification requirements for the position class shall be prepared and approved by the commission, as required by this section, prior to issuance of an announcement calling for a competitive examination to fill position vacancies.

(Enacted by Stats. 1976, Ch. 1010.)

88096. Appointments may be made from other than the first two or three, as the case may be, applicants on the eligibility list when the ability to speak, read, or write a language in addition to English or possession of a valid driver's license is a requirement of the position to be filled. The recruitment bulletin announcing the examination shall indicate the special requirements which may be necessary for filling one or more of the positions in the class. Where such a position is to be filled, using the authority of this section, the appointment shall be made from among the highest two or three, as the case may be, applicants on the appropriate eligibility list who meet the special requirements and who are ready and willing to accept the position. If there are insufficient applicants who meet the special requirements, the commission shall certify the top applicant or applicants plus those applicants who meet the special requirements, not to exceed two or three candidates, as the case may be.

(Enacted by Stats. 1976, Ch. 1010.)

88097. Written notices concerning tests, vacancies, transfer opportunities, and other selections of shifts, positions, assignments, classifications, or locations shall be posted at all work locations of employees who may be affected not later than 15 working days prior to the closing date of filing appropriate applications, together with the normal use of newspapers and bulletins for public notice for open or promotional vacancies. Whenever the subject of these notices may affect a probationary or permanent classified employee who will not be reporting at his or her work location during periods when the employee is not normally required to work, such as Christmas, Easter, summer recesses, and other paid or unpaid leaves of absences, including vacations, and who has previously requested notification, the notices shall be mailed to the employee. However, the failure of an employee to receive a notice shall not invalidate any procedure, if, in fact, the notice was placed in the mail and postage paid.

This section shall not apply to any community college district that publishes and distributes to all work locations examination bulletins at least once each month, provided that records of employee requests for transfer and change of location are maintained and that the names of all candidates for transfer and change of location to a vacancy are certified to the appointing authority along with names of appropriate applicants from employment lists.

The personnel commission shall establish procedures for the maintenance of employee requests for transfer, change of location, change of shift, and notification of forthcoming examinations.

(Amended by Stats. 1995, Ch. 758, Sec. 214. Effective January 1, 1996.)

88098. A regular employee who is determined by the governing board to be incapable of performing the duties of his or her class because of illness or injury may, at the discretion of the governing board, be assigned duties that he or she is capable of performing. The position to which the employee is assigned shall be subject to classification by the personnel commission, but the employee shall receive no increase in wage or salary because of his or her assignment to the position unless he or she is appointed from an eligibility list resulting from a competitive examination in the event that the position is classified and allocated to a higher wage or salary than that previously attained by the employee, he or she may be assigned to the position without competitive examination, but shall continue to receive the wage or salary of his or her former classification. If the position is classified and allocated to a lower wage or salary than that attained by the employee, he or she shall be paid the wage or salary appropriate to the position.

(Amended by Stats. 1995, Ch. 758, Sec. 215. Effective January 1, 1996.)

88099. The commission shall, by rule, provide for an open competitive examination and a promotional examination to be held at the same time for the position of business manager or for any other single position class which it declares to be at or above the level of business manager. It shall require that all educational and work experience requirements be developed to fit the needs of the position in such a manner that the position will attract competent and qualified applicants from within the classified service, among academic personnel, or other persons meeting the minimum requirements established for the position.

Such rule shall provide: (a) that all permanent employees of the district, classified and academic, who meet the established minimum qualifications, shall be eligible to compete in the examination as promotional candidates; (b) that promotional credits, including seniority credits, if any, shall be equally applicable to both classified and academic promotional candidates; (c) that eligibility lists resulting from such an open competitive and promotional examination shall be merged according to the order of the examination scores into a single eligibility list, after the scores of each candidate on the promotional list have been adjusted for promotional credits, including seniority credits, if any; and (d) that the examination for any such position shall not be construed to be an entrance level position examination.

(Amended by Stats. 1990, Ch. 1302, Sec. 190. Effective September 25, 1990.)

88100. The commission may by rule provide for the competition of academic employees of the governing board in promotional examinations for positions in the classified service.

(Amended by Stats. 1990, Ch. 1302, Sec. 191. Effective September 25, 1990.)

88101. The commission shall, by rule, provide for an open competitive examination and a promotional examination to be held at the same time for the positions that existed or could be created, when the positions become available for competitive examination, under the provisions of subdivisions (m), (n), and (o) of former Section 13055 as those subdivisions existed prior to their repeal by action of the 1965 General Session of the Legislature.

The rule shall provide: (a) that all permanent employees of the district, classified and academic, who meet the established minimum qualifications, shall be eligible to compete in the examination as promotional candidates; (b) that promotional credits, including seniority credits, if any, shall be equally applicable to both classified and academic promotional candidates; (c) that eligibility lists resulting from such an open competitive and promotional examination shall be merged according to the order of the examination scores into a single eligibility list, after the scores of each candidate on the promotional list have been adjusted for promotional credits, including seniority credits, if any; and (d) that the examination for any such position shall not be construed to be an entrance level position examination.

(Amended by Stats. 1990, Ch. 1302, Sec. 192. Effective September 25, 1990.)

88102. In any community college district which has geographical boundaries encompassing more than 200 square miles and which divides the area it serves into smaller areas for assignment of classified personnel, when an eligibility list is exhausted in one assignment area but there are available eligibles in another assignment area, an area eligibility list may be established for the assignment area in which the eligibility list is exhausted. The life of such new area eligibility list shall be one year. Seniority for the purpose specified in Section 88127 shall continue to be districtwide.

(Enacted by Stats. 1976, Ch. 1010.)

88103. When an open competitive examination and a promotional examination for a particular class are held at the same time, the commission may, prior to the examination, authorize certification for employment of candidates from the open competitive eligibility list before the promotional eligibility list has been exhausted if the candidate on the open list has a higher score before adjustment for preferential credits than the score of the highest available candidate on the promotional list after seniority credits have been added.

(Amended by Stats. 1977, Ch. 535.)

88104. (a) When all of the positions in a class are reclassified to a higher class, the incumbents of the positions who have been in the class for two or more years may be reclassified with their positions by the personnel commission. When a portion of the positions within a class are reclassified to a higher class, an incumbent who has a continuous employment record of two or more years in one or more of the positions being reclassified may be reclassified with his or her position as provided by personnel commission rule.

(b) The basis for reclassification of the position shall be a gradual accretion of duties and not a sudden change occasioned by a reorganization or the assignment of completely new duties and responsibilities. Determinations as to gradual accretion shall be on the basis of guidelines provided by personnel commission rules.

(c) An employee who has been reclassified with his or her position is ineligible for subsequent reclassification with his or her position for a period of at least two years from the initial action.

(Amended by Stats. 2003, Ch. 181, Sec. 2. Effective January 1, 2004.)

88104.5. No position classification or reclassification plan which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the community college employer of the classified employees who would be affected have been given reasonable notice of the proposed classifications or reclassifications.

(Added by Stats. 1982, Ch. 1514, Sec. 7.)

88105. Whenever the appointing power requires the appointment of a person to a position, the duration of which is not to exceed six months, or, in case of an appointment in lieu of an absent employee, is not to exceed the authorized absence of that employee, he or she shall submit a request in which the probable duration of the appointment is stated. Eligible persons shall be certified in accordance with their position on the appropriate employment list and their willingness to accept appointment to such a position as limited-term employees. Limited-term employees shall be subject to those conditions affecting status and tenure during and after the employment as the commission may by rule determine.

(Amended by Stats. 1995, Ch. 758, Sec. 217. Effective January 1, 1996.)

88106. When no eligibility list exists for a position in the classified service, an employee may receive provisional appointments which may accumulate to a total of 90 working days. A 90-calendar-day interval shall then elapse during which the person will be ineligible to serve in any full-time provisional capacity. No person shall be employed in provisional capacities under a given governing board for a total of more than 126 working days in any one fiscal year, except that when no one is available on an appropriate eligibility list for a part-time position, as defined in Section 88076, successive 90 working days provisional appointments may be made to the part-time position for a total of more than 126 working days in any one fiscal year.

(Enacted by Stats. 1976, Ch. 1010.)

88107. The personnel commission may authorize the extension of a provisional employee's assignment for a period not to exceed 36 working days, if all of the following requirements are met:

(a) An examination for the class was completed during the first 90 working days of his or her provisional assignment.

(b) Evidence satisfactory to the personnel commission is presented indicating all of the following:

(1) That an adequate recruitment effort has been and is being made.

(2) That extension of the provisional assignment is necessary to carry on vital functions of the district.

(3) That the position cannot be satisfactorily filled by use of other employment lists or procedures.

(Amended by Stats. 1995, Ch. 758, Sec. 218. Effective January 1, 1996.)

88108. Successive provisional appointments of 90 working days or less each may be made in any class in the absence of an appropriate eligibility list; provided, that continuous examination procedures for the class have been authorized by the commission. Such successive provisional appointments may be made and persons employed in temporary capacities under a given governing board for a total of more than six months in any one year. Such appointments may continue for the length of time for which they were made, but may not be extended if a certification can be made from an appropriate eligibility list. While this section is in effect, it shall supersede any other provisions of this article which are in conflict with this section, but only to the extent there is a conflict.

(Repealed and added by Stats. 1976, Ch. 1011.)

88109. The appointing power may, to prevent the stoppage of public business when an actual emergency arises and persons on eligibility lists are not immediately available, make appointments for a period not to exceed 15 working days, in accordance with commission rule.

(Enacted by Stats. 1976, Ch. 1010.)

88110. Combinations of successive eligibility lists may be made during their first year. Eligibles on lists established within the first year of the life of another list may be placed in the order of their relative excellence in the examination on the like list, if lists so merged have been promulgated under conditions and techniques which are sufficiently similar to preserve their competitive character.

(Enacted by Stats. 1976, Ch. 1010.)

88111. The commission may by rule provide for the continuous examination of eligibles for classes of positions which the commission determines cannot be practicably filled by promotional examination only.

(Enacted by Stats. 1976, Ch. 1010.)

88112. No questions relating to political or religious opinions or affiliations, or any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, shall be asked of any applicant, or any candidate whose name has been certified for appointment, nor shall any discrimination be exercised therefor, except as otherwise provided in Section 12940 of the Government Code.

(Amended by Stats. 2004, Ch. 788, Sec. 7. Effective January 1, 2005.)

88113. "Veteran" as used in this article means any person who has served in the United States armed forces in time of war, or national emergency declared by the President of the United States of America, and who has been discharged or released under conditions other than dishonorable, proof of which shall be submitted to the commission at the time of the examination.

"Armed forces" means the United States Air Force, Army, Navy, Marine Corps, or Coast Guard.

(Enacted by Stats. 1976, Ch. 1010.)

88114. "Disabled veteran" as used in this article means any veteran, as defined in Section 88113, who is currently declared by the United States Veterans Administration to be 10 percent or more disabled as a result of service in the armed forces. Proof of disability shall be deemed conclusive if it is of record in the United States Veterans Administration.

(Enacted by Stats. 1976, Ch. 1010.)

88115. In the case of all entrance examinations, veterans with 30 days or more of service who become eligible for appointment by attaining the passing mark established for the examination, shall be allowed an additional credit of five points and disabled veterans shall be allowed an additional credit of 10 points, which shall be added to the percentages attained in the examinations by the veterans. Veterans shall be placed on eligible lists and be eligible for appointment in the order and on the basis of the percentages attained by them in examinations after the credit of five points, or 10 points in the case of disabled veterans, is added.

(Enacted by Stats. 1976, Ch. 1010.)

88116. (a) Whenever, during the absence of an employee of a community college district or student body association operating under Sections 76060 to 76065, inclusive, in the active military service of the United States of America during any period of national emergency declared by the President of the United States of America, or during any war in which the United States of America is engaged, the position held by that employee at the time of

his or her entrance into that military service is placed within the classified service of the district and an eligible list is established for that position through competitive examination, the employee shall, at his or her request made within six months after leaving the active military service under honorable conditions, be given immediately an examination of substantially the same character and scope as the competitive examination through which the original eligibility list was established. The grade secured by that employee in that examination shall be deemed to be the grade the employee would have secured had he or she taken the competitive examination as a veteran, and the employee shall be placed on the original eligibility list accordingly with all the rights and privileges to which he or she would have been entitled had he or she had that place on the original eligibility list at the time of its establishment.

(b) Notwithstanding subdivision (a), any member of the Military Reserve or the National Guard who is called to active duty, either voluntarily or involuntarily, during any period of national emergency declared by the President of the United States of America, or during any war in which the United States of America is engaged, shall be entitled to any rights, in addition to the rights accorded under subdivision (a), that are accorded that member under the federal Veterans' Reemployment Rights Law or any other applicable provision of federal law.

(Amended by Stats. 1993, Ch. 589, Sec. 54. Effective January 1, 1994.)

88117. (a) A person laid off because of lack of work or lack of funds shall be eligible for reemployment for a period of 39 months as follows:

(1) The person's reemployment shall take preference over new applicants.

(2) The person shall have the right to participate in promotional examinations within the district during the period of 39 months.

(3) If the person is reemployed in a new position and fails to complete the probationary period in the new position, he or she shall be returned to the reemployment list for the remainder of the 39-month period. The remaining time period shall be calculated as the time remaining in the 39-month period as of the date of reemployment.

(b) An employee who takes a voluntary demotion or a voluntary reduction in assigned time in lieu of layoff or to remain in his or her present position rather than be reclassified or reassigned, shall be granted the same rights as persons laid off and shall retain eligibility to be considered for reemployment for an additional period of up to 24 months, provided that the same tests of fitness under which the employee qualified for appointment to the class still apply. The personnel commission shall make the determination of the specific period of eligibility for reemployment on a class-by-class basis.

(c) An employee who takes a voluntary demotion or a voluntary reduction in assigned time in lieu of layoff shall be, at the option of the employee, returned to a position in his or her former class or to a position with increased assigned time as vacancies become available, and without limitation of time, but if there is a valid reemployment list the employee shall be ranked on that list in accordance with his or her proper seniority.

(Amended by Stats. 2012, Ch. 586, Sec. 2. Effective January 1, 2013.)

88119. Eligibility lists shall be established for a period of not less than one year except that when a list is exhausted for appointments to current vacancies, through use and eligibles being unavailable, the commission may, upon the recommendation of the officer charged with certifying eligibles, and after due notice to eligibles who may have made themselves unavailable for appointment, terminate it before a year has expired.

Eligibility lists may be established for a period of six months upon the approval of the personnel commission so long as the six months' duration of such a list is noted in the recruitment bulletin announcing the examination. If a list is exhausted for appointments to current vacancies, through use and eligibles being unavailable, the commission may, upon the recommendation of the officer charged with certifying eligibles, and after due notice to eligibles who may have made themselves unavailable for appointment, terminate it before the expiration date.

A list may be extended for an additional period of one year or less in the discretion of the commission.

(Amended by Stats. 1982, Ch. 572, Sec. 8.)

88120. A person who has served an initial probationary period in a class not to exceed six months or 130 days of paid service, whichever is longer, as prescribed by the rules of the commission shall be deemed to be in the permanent classified service, except that the commission may establish a probationary period in a class not to exceed one year for classes designated by the commission as executive, administrative, or police classes. No employee shall attain permanent status in the classified service until he or she has completed a probationary period in a class. In any case the rules of the commission may provide for the exclusion of time while employees are on a

leave of absence. The rights of appeal from disciplinary action prior to attainment of permanent status in the classified service shall be in accordance with Section 88124.

(Amended by Stats. 1995, Ch. 758, Sec. 219. Effective January 1, 1996.)

88121. No person in the permanent classified service shall be demoted or removed except for reasonable cause designated by rule of the commission as detrimental to the efficiency of the service. This section shall not be construed to prevent layoffs for lack of work or lack of funds.

(Enacted by Stats. 1976, Ch. 1010.)

88122. In addition to any causes for suspension or dismissal which are designated by rule of the commission, employees in the classified service shall be suspended and dismissed in the manner provided by law for any one or more of the following causes:

(a) Knowing membership by the employee in the Communist Party.

(b) Conduct specified in Section 1028 of the Government Code.

(Amended by Stats. 1982, Ch. 251, Sec. 45. Effective June 11, 1982.)

88123. For reasonable causes, an employee may be suspended without pay for not more than 30 days, except as provided in this section, or may be demoted or dismissed. In such case, the personnel director, shall within 10 days of the suspension, demotion, or dismissal, file written charges with the commission and give to the employee or deposit in the United States registered mail with postage prepaid, addressed to the employee at his or her last known place of address, a copy of the charges.

Whenever an employee of a community college district is charged with the commission of any sex offense, defined in Section 87010, or any narcotics offense, as defined in Section 87011, or a violation of Sections 11357 to 11361, inclusive, 11363, 11364, or 11377 to 11382, inclusive, insofar as such sections relate to, any controlled substances in paragraph (4) or (5) of subdivision (b) of Section 11056, or any controlled substances in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), and (17) of such subdivision, of the Health and Safety Code by complaint, information, or indictment filed in a court of competent jurisdiction, the governing board of the district may immediately suspend the employee for a period of time extending for not more than 10 days after the date of the entry of the court judgment. However, the suspension may be extended beyond such 10-day period in case the governing board gives notice within such 10-day period that it will dismiss the employee 30 days after the service of the notice, unless the employee demands a hearing. An employee so suspended shall continue to be paid his or her regular salary during the period of the suspension if and during such time as he or she furnishes to the district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the district the amount of salary so paid to him or her during the period of the suspension in case the employee is convicted of such charges, or the employee does not return to service after such period of suspension. If the judgment determines that the employee is not guilty of such charges, or if the complaint, information, or indictment is dismissed, the district shall reimburse the employee for the cost of the bond; or, if the employee has not elected to furnish such bond, the district shall pay to the employee his or her full compensation during the period of the suspension; provided the employee returns to service after such period of suspension.

(Amended by Stats. 1980, Ch. 514, Sec. 6.)

88124. Any employee in the permanent classified service who has been suspended, demoted, or dismissed may appeal to the commission within 14 days after receipt of a copy of the written charges by filing a written answer to the charges. Such an appeal is not available to an employee who is not in the permanent classified service except as provided by rules of the commission. An employee in the permanent classified service who has not served the time designated by the commission as probationary for the class may be demoted to the class from which promoted without recourse to an appeal or hearing by the commission, except as otherwise provided by rules of the commission; and provided, that such demotion does not result in the separation of the employee from the permanent classified service. Nothing in this section shall operate to alter the protections guaranteed under Section 88128.

(Enacted by Stats. 1976, Ch. 1010.)

88125. The commission shall investigate the matter on appeal and may require further evidence from either party, and may, and upon request of an accused employee shall, order a hearing. The accused employee shall have the right to appear in person or with counsel and to be heard in his or her own defense. The decision shall not be subject to review by the governing board.

(Amended by Stats. 1995, Ch. 758, Sec. 220. Effective January 1, 1996.)

88126. If the commission sustains the employee, it may order paid all or part of his or her full compensation from the time of suspension, demotion, or dismissal, and it shall order his or her reinstatement upon terms and conditions that it deems appropriate. The commission may modify the disciplinary action, but may not make the action more stringent than that approved by the board. In addition, the commission may direct any other action that it finds necessary to effect a just settlement of the appeal, including, but not limited to, compensation for all or part of the legitimate expenses incurred in pursuit of the appeal, seniority credit for off-duty time pending reinstatement, transfer or change of location of the employee, and expunction from the employee's personnel record of disciplinary actions, cause, and charges that were not sustained by the commission. Upon receipt of the commission's written decision, the board shall comply with its provisions. When the board has fully complied with the commission's decision, it shall so notify the commission in writing.

(Amended by Stats. 1995, Ch. 758, Sec. 221. Effective January 1, 1996.)

88127. Classified employees shall be subject to layoff for lack of work or lack of funds. Whenever a classified employee is laid off, the order of layoff within the class shall be determined by length of service. The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. Reemployment shall be in the reverse order of layoff.

For purposes of this section, for service commencing or continuing after July 1, 1971, "length of service" means all hours in paid status, whether during the school year, a holiday, recess, or any period that a school is in session or closed, but does not include any hours compensated solely on an overtime basis as provided for in Section 88027. Nothing in this section shall preclude the governing board of a community college district from entering into an agreement with the exclusive representative of the classified employees that defines "length of service" to mean the hire date.

If a governing board enters into an agreement with the exclusive representative of classified employees that defines "length of service" to mean the hire date, the governing board may define "length of service" to mean the hire date for a classification of employee not represented by any exclusive bargaining unit.

Nothing in this section shall preclude the granting of "length of service" credit for time spent on unpaid illness leave, or unpaid industrial accident leave. In addition, for military leave of absence, "length of service" credit shall be granted pursuant to Section 88116.

"Hours in paid status" shall not be interpreted to mean any service performed prior to entering into a probationary or permanent status in the classified service of the district except service in restricted positions as provided in this chapter.

(Amended by Stats. 1993, Ch. 589, Sec. 55. Effective January 1, 1994.)

88128. Any permanent classified employee of a community college district, who voluntarily resigns from his or her permanent classified position, may be reinstated or reemployed by the governing board of the district, within 39 months after the employee's last day of paid service and without further competitive examination, to a position in his or her former classification as a permanent or limited-term employee, or as a permanent or limited-term employee in a related lower class or a lower class in which the employee formerly had permanent status.

If the governing board elects to reinstate or reemploy a person as a permanent employee under this section, it shall disregard the break in service of the employee and classify him or her as, and restore to the employee all of the rights, benefits and burdens of, a permanent employee in the class to which he or she is reinstated or reemployed.

(Amended by Stats. 1995, Ch. 758, Sec. 222. Effective January 1, 1996.)

88129. No warrant shall be drawn by or on behalf of the governing board of any district for the payment of any salary or wage to any employee in the classified service unless the assignment bears the certification of the personnel director that the person named in the assignment has been employed and assigned pursuant to this article and the rules of the commission.

Whenever the commission, after a public hearing, finds that any appointment has been made in violation of this article or the rules of the commission as they apply to examination procedures, the commission may order that no salary warrant shall thereafter be drawn to the employee so appointed, for services rendered after the date of said order. Any violation of this article or the rules of the commission as they apply to examination procedures shall constitute grounds for the dismissal of the employee or employees guilty of such violation.

(Enacted by Stats. 1976, Ch. 1010.)

88130. The commission may conduct hearings, subpoena witnesses, require the production of records or information pertinent to investigation, and may administer oaths. It may, at will, inspect any records of the governing board that may be necessary to satisfy itself that the procedures prescribed by the commission have been complied with. Hearings may be held by the commission on any subject to which its authority may extend as described in this article.

(Enacted by Stats. 1976, Ch. 1010.)

88131. The commission may authorize a hearing officer or other representative to conduct any hearing or investigation which the commission itself is authorized by this article to conduct. Any such authorized person conducting such hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. The commission may instruct such authorized representative to present findings or recommendations. The commission may accept, reject or amend any of the findings or recommendations of the said authorized representative. Any rejection or amendment of findings or recommendations shall be based either on a review of the transcript of the hearing or investigation or upon the results of such supplementary hearing or investigation as the commission may order.

The commission may employ by contract or as professional experts or otherwise any such hearing officers or other representatives and may adopt and amend such rules and procedures as may be necessary to effectuate this section.

(Amended by Stats. 2004, Ch. 182, Sec. 28. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)

88132. The legal counsel of the governing board shall aid and represent the commission in all legal matters. If the legal counsel does not respond to a written request by the commission for aid or representation within 15 working days of receipt of the written request, the counsel is deemed to have refused to aid or represent the commission in that matter.

The legal counsel shall refuse to represent the commission in circumstances in which the counsel knows, or has reason to know, that at the time the request is made a conflict exists between the interests of the commission and the interests of the governing board or the community college district.

If the legal counsel refuses to aid or represent the commission in a legal matter, the commission may employ its own attorney, and the reasonable cost thereof shall constitute a legal charge against the general funds of the community college district.

(Amended by Stats. 1995, Ch. 900, Sec. 2. Effective January 1, 1996.)

88136. Any person who willfully, or through culpable negligence, violates this article is guilty of a misdemeanor. It is also unlawful for any person to do any of the following:

- (a) Willfully, by himself or herself or in cooperation with another person, to defeat, deceive, or obstruct any person with respect to his or her right of examination, application, or employment under this article or commission rule.
- (b) Willfully and falsely, to mark, grade, estimate, or report upon the examination or proper standing of any person examined or certified under this article or commission rule, or to aid in so doing, or to make any false representation concerning the same or the person examined.
- (c) Willfully, to furnish to any person any special or secret information regarding contents of an examination for the purpose of either improving or injuring the prospects or chances of any person examined, or to be examined under this article or commission rule.

(Amended by Stats. 1995, Ch. 758, Sec. 224. Effective January 1, 1996.)

88137. In every community college district coterminous with the boundaries of a city and county, employees employed in nonacademic positions shall be employed, if the city and county has a charter providing for a merit system of employment, pursuant to the provisions of the charter providing for the system and shall, in all respects, be subject to, and have all rights granted by, those provisions; provided, however, that the governing board of the district shall have the right to fix the duties of all of its employees.

(Amended by Stats. 1990, Ch. 1302, Sec. 193. Effective September 25, 1990.)

88138. A merit (civil service) system within a community college district may be terminated by one of the following methods:

(a) If the governing board of a community college district, receives a written petition of qualified electors not less in number than 10 percent of the number voting in the last election for a member of the board calling for the termination of the merit (civil service) system and the system has been in operation for not less than five years, the board shall order the county superintendent of schools to place the question of termination of the system on the ballot at the next regular governing board member election, or the next primary or general election in a general election year, whichever is the earlier after receipt by the county superintendent of schools.

The statement of purpose of the election shall read:

"Shall the merit (civil service) system for school employees not employed as faculty or educational administrators, as provided for in Article 3 (commencing with Section 88060) of Chapter 4 of Part 51 of Division 7 of Title 3 of the Education Code of the State of California, and which has been in operation for at least five years, be terminated by the _____ Community College District of _____ County (or counties, where appropriate) on _____ (date to be specified by board)?"

The petition calling for the election, to be valid, shall contain the statement of purpose for the election as contained in this section.

(b) If the governing board of a community college district receives a written petition from 40 percent of the classified employees entitled to vote calling for the termination of the merit (civil service) system and the system has been in operation for not less than five years or has been imposed pursuant to the terms of Section 45119 or 45120, the governing board shall conduct an election by secret ballot of its classified personnel to determine whether or not they desire to have the merit system terminated within the district. The ballot shall read: "Shall the merit (civil service) system for classified employees be terminated in the _____ (name of community college district) as of _____ (termination date)?"

As used in this subdivision, "classified employees" means all personnel who are a part of the classified service who are appointed in accordance with Section 88091.

In order to be valid, the petition calling for the termination of the merit (civil service) system must be submitted to the governing board of a community college district within 90 days after the date that the notice for the circulation of the petition was filed with the governing board of the community college district. The election shall be held during the regular academic year and shall be held no earlier than 45 days and no later than 180 days after the date that the petition was submitted to the governing board.

If the merit system was adopted pursuant to Section 88057, classified employees entitled to vote in an election pursuant to this subdivision shall be limited to those classified employees who reside in the district.

(c) The governing board of a community college district shall devise an identification system designed to protect against fraud in the balloting process. In addition, the governing board shall appoint a three-member tabulation committee consisting of one member of the governing board, one member of the personnel commission of the community college district, and one member who shall be a classified employee of the community college district. It shall be the responsibility of the tabulation committee to canvass the election ballots and to certify the results of the election to the governing board at the next regular meeting of the governing board following the completion of the tabulation of the election results by the committee.

(d) Notwithstanding any other provision of law, the governing board of a community college district shall not be required to provide release time for classified personnel to vote in an election conducted pursuant to subdivision (b). The governing board shall not conduct an election under subdivision (b) more than once in any two-year period.

(e) It shall be unlawful for a public school employer and the exclusive representative of the classified employees of a community college district to include the subject of the termination of the merit (classified service) system within the scope of representation.

(f) Members of the classified service shall be provided an adequate and ample opportunity to be informed of the arguments in favor of and in opposition to the termination of the merit (classified service) system prior to the conducting of an election called pursuant to subdivision (b). That opportunity shall include an open forum during which proponents of, and opponents to, the termination of the merit (civil service) system shall be permitted to debate the issue.

(Amended by Stats. 1992, Ch. 443, Sec. 2. Effective January 1, 1993.)

88139. If the majority of the qualified electors vote to terminate the merit system in a community college district, or if the majority of the classified employees vote to terminate the merit system in a community college district, the personnel commission shall cease to function on the date specified in the election and the law pertaining to merit system districts shall cease to have any force or effect in that district.

Simultaneously, with the termination of the merit system, the governing board shall adopt rules and regulations relating to classified school employees as required by Section 88013.

Notwithstanding an action to terminate the merit system in a community college district, the provisions of Section 88051, 88053, and 88054 shall be applicable at any time after at least two years have elapsed after the system has ceased to operate.

(Amended by Stats. 1982, Ch. 188, Sec. 4.)