



PERFORMANCE AUDIT REPORT

**State Hiring Practices:
Determining Whether Requirements Related to
Veteran's Preferences Are Being Met**

Executive Summary

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
April 2007**

Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$10 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. Government Accountability Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee. Legislators

or committees should make their requests for performance audits through the Chairman or any other member of the Committee. Copies of all completed performance audits are available from the Division's office.

LEGISLATIVE POST AUDIT COMMITTEE

Representative Peggy Mast, Chair
Representative Tom Burroughs
Representative John Grange
Representative Virgil Peck Jr.
Representative Tom Sawyer

Senator Nick Jordan, Vice Chair
Senator Les Donovan
Senator Anthony Hensley
Senator Derek Schmidt
Senator Chris Steineger

LEGISLATIVE DIVISION OF POST AUDIT

800 SW Jackson
Suite 1200
Topeka, Kansas 66612-2212
Telephone (785) 296-3792
FAX (785) 296-4482
E-mail: LPA@lpa.state.ks.us
Website:
<http://kslegislature.org/postaudit>

The Legislative Division of Post Audit supports full access to the services of State government for all citizens. Upon request, Legislative Post Audit can provide its audit reports in large print, audio, or other appropriate alternative format to accommodate persons with visual impairments. Persons with hearing or speech disabilities may reach us through the Kansas Relay Center at 1-800-766-3777. Our office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.



LEGISLATURE OF KANSAS

LEGISLATIVE DIVISION OF POST AUDIT

800 SOUTHWEST JACKSON STREET, SUITE 1200
TOPEKA, KANSAS 66612-2212
TELEPHONE (785) 296-3792
FAX (785) 296-4482
E-MAIL: lpa@lpa.state.ks.us

April 24, 2007

To: Members of the Kansas Legislature

This executive summary contains the findings and conclusions, together with a summary of our recommendations and the agency responses, from our completed performance audit, *State Hiring Practices: Determining Whether Requirements Related to Veterans' Preferences Are Being Met*.

The report includes recommendations for the Division of Personnel Services to implement a strategy to ensure a determination of veterans' eligibility is made and recorded; for the Department of Commerce to work with the Division of Personnel Services to narrow minimum qualifications for certain positions, if necessary; and for Winfield Correctional Facility to begin entering information in the SHARP system for all its vacancies. We also recommended that the Legislature amend State law to clearly state what, if any, veterans' preference applies to State unclassified jobs.

We would be happy to discuss these recommendations or any other items in the report with you at your convenience. If you would like a copy of the full audit report, please call our office and we will send you one right away.

A handwritten signature in black ink that reads "Barbara J. Hinton". The signature is written in a cursive, flowing style.

Barbara J. Hinton
Legislative Post Auditor

EXECUTIVE SUMMARY
LEGISLATIVE DIVISION OF POST AUDIT

Overview of Veterans' Preference Laws in Kansas

State laws give veterans a hiring preference when they apply for public government jobs. page 2
With the enactment of K.S.A. 73-201 in 1886, all State, county, and city governments were required to give a hiring preference to honorably discharged veterans. However, a subsequent amendment specified that the veteran must be deemed "competent" to perform the job duties in order to receive the job.

In a 1907 case, the Kansas Supreme Court defined what's required of veterans to be considered "competent" to perform the job duties, and made it clear the applicant must be more than minimally qualified for the job. On several other occasions, the Court has interpreted the law as giving the hiring authority significant discretion to determine an applicant's competence.

The veterans' preference for certain jobs was altered with the passage of the Kansas Civil Service Act (K.S.A. 75-2955) in 1941. That Act established a merit-based hiring system for State jobs and defined all positions as either classified or unclassified. It created a veterans preference for State classified jobs. K.A.R. 1-6-21, which implements the provisions of this Act, requires that veterans applying for State positions be granted an interview if they meet the minimum qualifications for the position. It doesn't guarantee that veterans will be hired.

In 2006, veterans applied for more than 1,400 State jobs. page 4
For calendar year 2006, nearly 3,400 State job openings were posted in SHARP, the State's personnel and payroll system. Of those jobs, 1,421 had at least one veteran apply, and about 12% of those 1,421 jobs ultimately were filled by a veteran.

Are State Agencies Following the Requirements of State Law and Regulations Related to Granting a Preference to Veterans In the Hiring and Competitive Promotion Process?

Several concerns were raised about whether State agencies are following veterans' preferences laws. page 5
Legislators and veterans' organizations we talked with said the types of complaints they'd heard generally fell into three general areas—veterans weren't receiving interviews, interviews that were given appeared to be "token," and veterans weren't receiving jobs they thought they were qualified for. They also said these complaints most frequently related to Lansing and Winfield Correctional Facilities and the Departments of Commerce and Transportation.

We selected a sample of 61 classified positions posted by these four State agencies during the first 10 months of 2006 for an in-depth review. In all, 144 veterans applied for these 61 positions.

Only 3 of the 144 veterans we reviewed weren't interviewed when they should have been. page 6
In all, 102 of the 144 veterans who had applied for the positions in our sample received an interview. For the 42 veterans who weren't interviewed, we reviewed applications materials to determine if veteran applicants met minimum qualifications and were eligible to receive a veterans' preference.

Most of those 42 veterans either didn't meet minimum qualifications for the job, withdrew from the process, or hadn't submitted a DD-214 form, which is required to verify eligibility for veterans' preference.

However, we found that two qualified veterans didn't receive the interviews they were entitled to because of administrative oversights by agency staff. In the third case, the veteran met minimum qualifications as written, but agency officials applied an interpretation of the minimum qualifications that led them to conclude the veteran wasn't qualified.

We saw no evidence that veterans received only "token" interviews. page 9
We compared interview records for the 102 veterans in our sample who had received an interview with the interview records of non-veteran applicants for the same position. We saw no evidence that veterans were being treated differently than non-veteran applicants. In all cases, records indicated the same people interviewed all applicants for a particular position, standard interview questions or standard tests were used, and all interviews were conducted before the position was filled.

Although we didn't do a content analysis of the interview notes, we reviewed enough to assure ourselves that interviewers were taking notes during interviews with veterans, and that those notes, on the surface, didn't suggest a "token" interview.

It's unclear whether State unclassified positions are subject to any veterans' preferences. page 10
The Kansas Civil Service Act created a new type of veterans' preference for State classified jobs, but makes no mention of veterans' preference for unclassified positions. Unclassified State positions include most policy-making positions within the executive branch, many positions at the Regents' universities, and all positions within the legislative and judicial branches of government. Agencies aren't required to post unclassified job openings, the positions don't have to be filled competitively, and employees hired for unclassified positions can be fired at-will.

Officials with the Division of Personnel Services haven't interpreted the law as requiring State agencies to apply veterans' preference for unclassified positions, but it could be interpreted in several different ways. On the one hand, because the Kansas Civil Service Act created unclassified positions and is silent on veterans' preference for those positions, it could be

argued no veterans' preference exists for State unclassified positions. That would be consistent with the Division's interpretation.

On the other hand, because the Kansas Civil Service Act creates a veterans' preference only for classified positions, it could be argued that unclassified positions remain subject to K.S.A. 73-201, which would require agencies to hire eligible veterans who apply for unclassified jobs for which the agency determines them to be competent.

House Bill 2562, which at the time of this audit had only passed the House during the 2007 legislative session, explicitly states that veterans' preference doesn't apply to State unclassified positions or any other "at-will" employment.

Conclusion. *Veterans' preference under the Kansas Civil Service Act entitles eligible veterans to an interview for State classified positions, so long as the veteran meets minimum qualifications for the job. This guarantee of an interview, rather than a job, is in keeping with the merit-based foundation of civil service, which seeks to award jobs to the best-qualified candidate. Our review of 144 veterans found only 3 who didn't receive an interview when they should have, and we saw no evidence to suggest that interviews that did occur were "token" interviews. However, in cases where a veteran who meets only the minimum qualifications for a job is competing against a pool of applicants who possess preferred qualifications, the outcome is not likely to be in the veteran's favor. Such situations may be contributing to veterans' dissatisfaction with the process.* page 11

Recommendations. *We recommended that the Division of Personnel Services develop and implement a strategy to ensure that, when a veteran submits a DD-214 form to support a claim for veterans' preference, a determination of eligibility is made and recorded. We also recommended that the Department of Commerce interview all veteran applicants who meet the minimum qualifications for a job, and work with the Division to narrow qualifications if necessary, and that Winfield Correctional Facility begin entering information in the SHARP system on each vacancy the agency seeks to fill. Finally, to help ensure that veterans' preference is applied to the types of positions intended, we recommended the Legislature amend State law to clearly state what, if any, veterans' preference applies to State unclassified jobs.* page 11

APPENDIX A: Scope Statement page 13

APPENDIX B: Agency Responses page 14

In their responses, the State agencies agreed with these recommendations.

<p>This audit was conducted by Lisa Hoopes and Brad Hoff. Cindy Lash was the audit manager. If you need any additional information about the audit's findings, please contact Lisa at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at LPA@lpa.state.ks.us.</p>
