

Testimony of Brian S. Cechnicki, Executive Director
Senate Standing Committee on Civil Service and Pensions
October 11, 2023

The Civil Service system in New York State counts itself to be 140 years old, enacted at the same time as the federal Pendleton Act; both pieces of legislation sought to professionalize those serving in government and create separation between the nonpartisan needs of implementing government policy and the partisan means by which those policies are created, and individuals are appointed.

The first act, Chapter 354 of the Laws of 1883, is all of three pages long in the digital record available on the State Archives website. Today, the *summary* of the Civil Service Law available on the Department of Civil Service's website is forty-four pages long. A century and a half is a long time for a policy to develop and expand, often in ways that run counter to its original intent.

On behalf of ASBO New York, the Association of School Business Officials, I offer this written testimony on the challenges school districts face in recruiting and retaining a quality workforce through the rules established by the Civil Service System.

The Lived Experience of Civil Service

I would like to take a moment and offer three personal anecdotes that are relevant to this conversation. Before coming to ASBO, I spent nearly twenty years with the state in a variety of agencies and positions, and four stories stand out to me that underscore the reality of the civil service that is misaligned with its stated intent.

First, I came to supervise the State Aid Office at the New York State Education Department after spending eight years at the Division of the Budget and a year in the Executive Chamber. My role at SED was exempt and management/confidential. It was immediately apparent to me that some of the most highly qualified and capable individuals in the state that could fill future vacancies in my SED office would be my former colleagues at the Division of Budget and the central staff in the Legislature that we worked with. The problem? The Budget Examiner title at DOB was incompatible with the titles at SED, and the legislative staff had no titles at all and would need to go through the same entry-level process that anyone with no experience in school finance would have to.

Can this possibly be the intent of the Civil Service system? To so overcomplicate the recruitment process in the service of hiring the most capable individuals that, the most capable, qualified individuals could never be

considered for the position without jeopardizing their own financial security?

Second, in one of my roles, I supervised an individual who was in their title provisionally because an exam had never been offered during their tenure. The person worked provisionally for three years and under my supervision for one year and was highly effective at their work. Through no fault of their own, the Civil Service Department finally opted to issue an exam for the title. Despite being a highly effective employee and passing the exam, they were not immediately reachable under the rule of three, and I was forced to terminate them. Breaking this news to them was and continues to be the only time I have shed tears in a professional setting about my work. The injustice was unconscionable to me. This individual, with their commitment, quality performance, and experience, was reduced to nothing more than a test score.

Third, there was a vacancy I was seeking to fill that had an outdated, but still active, list. As we attempted to recruit off this list as best as possible, I had noted to our internal human resources staff that I was aware one of the individuals lower on the list was currently serving a prison sentence. I commented that once we got to that point, we'd be able to move on to the next individual, and I was informed that I was incorrect, and that we would still need to receive a written declination from the individual for the position before we could move on to the next candidate. What would happen if they refused? I'd have to offer the job to someone in prison or else simply leave the position vacant? This cannot possibly be the intended goal of the system.

Lastly, the inconsistent patchwork of title series, exam offerings, and lists greatly impacted my ability to promote and retain qualified staff. Some individual staff were in a title series that had outdated lists, and when they departed, I was unable to promote others from within because they were not part of that title series. Still others were highly qualified for promotion within the office, but we did not have a complete career ladder for that series in the office, which meant that when promotion opportunities presented themselves from other offices or departments, they were forced to leave unless they wanted to turn down a higher position and salary. When they left for other positions, I was then unable to hire a replacement because the potential internal candidates were not on the eligible list, and the people who were on the were not interested in the position. While that resulted in the possibility of a provisional appointment, no existing permanent staff were willing to risk their employment by taking that leap. We were completely paralyzed.

School District Challenges

School district officials face many of the same challenges at the local level; and in some ways face even more difficulties than other municipalities. Unlike many town, city, or county-based jobs where employment is rooted in residents of the community, school district positions are often filled by individuals who don't live in the district or the county where the school district is located. Especially at the higher levels of management, we see a

very fluid labor market, with individuals changing districts within their region and around the state. This becomes problematic in a system that is built upon county-specific civil service regulations and examinations.

Because of the fluidity of school personnel, we also see many staff shortages across the state, but especially in rural areas upstate. The barriers to entry caused by the civil service process, including a lack of test administration by local commissions and inflexibility in hiring allowances, further exacerbate this problem. Where flexibility is provided through provisional appointments, counterproductive and draconian enforcement rules further hinder the ability of school districts to retain quality staff, much like the personal example I noted above.

The overall staff shortage and need for a diverse pool of candidates for management-level positions are exacerbated by this point—if non-exempt supervisory positions can only draw from exam lists, and the exam list themselves are only populated with individuals who are already in the lower-level positions. This empowers the legacy systems over an ability to find and recruit qualified candidates from diverse backgrounds.

The state has long addressed some of these challenges in the teaching profession by eschewing civil service rules in favor of a professional certification. Qualified individuals can receive their teaching certification from the State and be eligible to work in any school district in the state, regardless of the whims of their local county civil service commission.

The state should consider exploring other similar avenues for school district positions that face the same labor market challenges that the teaching profession has faced.

Coalition Solutions

Last year, our association partnered with NYSAC, NYSSBA, NYSCOSS, NYCOM, NYSAOT, and NYLA to call on the governor to include the following reforms in her Executive Budget:

1. **Continuous Recruitment:** Continuous recruitment should be required, where possible. In instances when continuous recruitment is not possible, exams shall be offered no less frequently than every two years, regardless of the status of existing lists.
2. **Standard Grading Metrics:** A public standard across all counties should be established for Civil Service grading metrics. These metrics should be understandable and predictable in order to assist potential applicants to take multiple-choice exams as well as complete training and experience-based exams.

3. **Modernize Exam Content from the Field:** Individuals from the profession should be given the opportunity to provide input on the content of experience and multiple-choice exams specific to their industry.
4. **Transitioning from Provisional to Permanent Appointments:** If a test is not offered within nine months after an individual is provisionally appointed to a position, an employee becomes permanent. If an exam is offered within nine months, a person in the provisional appointment is scored as pass/fail on that exam.
5. **Part-Time Positions:** Part-time positions (i.e., less than 25 hours per week) should be non-competitive by operation of law instead of the local rule.
6. **Allow for An Electronic Canvassing Process:** Simplify the list canvassing process by allowing for email and phone contact in lieu of mailing letters.
7. **Expand the number of eligible employees for appointments to a Rule of 5:** The Rule of 3 restricts the number of candidates that are eligible to be canvassed when public employers are seeking employees.

Reforms Already Enacted

We greatly appreciate the changes enacted in the FY2024 State Budget that addressed continuous recruitment and ask that these other changes be adopted as well.

We also appreciate the enactment of Chapter 358 of the Laws of 2023 and hope that additional marketing of examinations will help expand the pool of potential candidates. But further reforms are necessary to ensure that examinations are being offered in a timely manner that maintains a healthy pool of candidates and prevents lists from becoming fallow.

Next Steps

As you have heard, there are a number of impediments that the civil service system is creating that prevent the state and municipalities from recruiting a diverse and qualified staff in light of labor market shortages across the state. Though well-intentioned, the guardrails the system has put in place have begun to derail the process of building an effective public sector workforce. We join the chorus of stakeholders asking for the enactment of solutions to this problem and are happy to help in any way that we can.