

**THE USE OF THE  
UNCLASSIFIED STATE CIVIL SERVICE  
FOR NON-MANAGERIAL POSITIONS**

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Legislative Commission on Employee Relations  
October 15, 1990



The purpose of this report is to review the assignment of unclassified non-management positions in the executive branch of the state civil service. A study evaluating management positions in the unclassified service was conducted by the ICER in 1982.

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Greg Hubinger, Legislative Commission on Employee Relations  
Mark Shepard, House Research



### INTRODUCTION

In the 1989 legislative session, House Advisory 6 requested the Legislative Commission on Employee Relations to study a number of issues related to unclassified positions in the executive branch. The primary legislative concern leading to the House Advisory was the assignment of non-managerial state employee positions to the unclassified service. A copy of the House Advisory is included as Appendix 1.

The last comprehensive legislative review of unclassified positions in the executive branch occurred in the fall of 1981 and during the 1982 legislative session. That study resulted in legislation that set new standards for assignment of top-level managerial positions in the executive branch to the unclassified service. Commissioners and their deputy and assistant commissioners were assigned to the unclassified service. Large agencies were permitted to designate additional unclassified positions for people who reported directly to the agency head and whose duties involved substantial discretion and implementation of agency policy. The commissioner of employee relations was required to approve the unclassified designation of these additional positions.

Most executive branch civil service administrators feel these standards have worked well. There is relatively little controversy about which top-level managerial positions in large agencies should be assigned to the unclassified service.

This study focuses on assignment of non-managerial job classifications and positions to the unclassified service. The study also deals with some managerial positions in very small agencies, such as licensing boards. There is some controversy about many of these designations. Often, the employer would prefer to keep the flexibility that an unclassified designation provides. Employees and their representatives often feel that it is appropriate to grant some of the unclassified employees the rights of classified employees.



#### BACKGROUND: CLASSIFIED AND UNCLASSIFIED SERVICE

Since 1939, Minnesota has based its executive branch personnel system on merit system principles. These principles are codified in Minnesota Statutes 43A.01, subdivision 1, which provides that "it is the policy of the state to maintain an efficient and effective merit based personnel management system..." Key components of this system are hiring procedures based on objective and job-related competitive examinations and procedures providing that employees can be dismissed only for just cause.

From the beginning, the legislature felt there was a need for a certain number of employees to be hired and fired outside of the usual merit system principles in the classified civil service. There have been two major reasons for establishing positions outside of the classified service:

- Provide a certain number of key employees who are accountable to elected officials and to agency heads and who can be counted on to implement the policies of these officials.

- Provide state agencies the ability to hire and dismiss employees efficiently when they are employed for jobs that are anticipated to be of limited duration.

Designation of a position as unclassified has a major effect on the person holding the position. Most importantly, the person can be hired without a competitive examination and is not protected by the "just cause" standard for dismissal. Also, use of unclassified positions can affect seniority rights if there are layoffs. For example, an agency's classified clerical employees may have one seniority list. An unclassified clerical employee in the same agency will not be subject to this list. The unclassified employee may be terminated even if he or she has worked in the agency longer than a classified employee. On the other hand, it is possible that the agency may hire a relatively new unclassified employee, while laying off a classified employee who may have a long work history with the state.

There is a perception among some employee representatives and civil service administrators that the legislature does not use consistent standards for deciding when to place executive branch positions in the unclassified instead of the classified service. These people feel that decisions are sometimes made on an ad hoc political basis. Some employee representatives also believe that the executive branch personnel staff have not been aggressive enough in defending the use of the classified service.



If standards for placing positions in the unclassified service are not applied consistently, the exceptions may begin to undermine the basic policy of a merit-based personnel system. This report assumes that the legislature continues to be committed to the merit based personnel policies expressed in statute, and points out areas where it is not clear if the policies are being applied consistently.

### REVIEW OF TYPES OF UNCLASSIFIED POSITIONS

There is a statutory presumption that executive branch positions are in the classified service unless the legislature assigns them to the unclassified service. As discussed earlier, the legislature has designated certain upper-level managerial positions in the unclassified services. This section of the report reviews other types of positions that the legislature has placed in the unclassified service. Each section lists the affected positions and discusses the policy arguments for and against including the positions in the unclassified service.

#### Executive Directors/Secretaries to Boards

**Background.** The legislature has created numerous state boards to provide oversight in licensing and regulating certain health and non-health related occupations. Funding for these boards and their staffs are provided through fees applied to practitioners throughout the state.

The legislature has provided that executive directors or executive secretaries of most state boards serve in the unclassified service. The policy justification for this placement is that these boards should have at least one employee who can be hired and fired at the will of the board so that, over time, each new board can implement its own policies.

The strongest argument against unclassified designation for these employees is that, in some cases, the executive director duties are primarily administrative in nature and do not involve much exercise of policy discretion. In these cases, there is a stronger argument that the position should be filled by competitive examination and incumbents should be dismissed only for just cause.

Minnesota Statutes, Chapter 214, designate the following executive secretary positions as unclassified:

- Dentistry
- Medical examiners
- Nursing
- Pharmacy
- Accountancy
- Architecture, engineering, land surveying and landscape architecture
- Barber examiners
- Cosmetology
- Electricity
- Teaching
- Peace officer standards and training
- Social work
- Marriage and family therapy

Unlicensed mental health service providers  
Office of social work and mental health

In addition, the legislature has created numerous other boards and councils in statute. They include:

State Arts Board (Chapter 139)  
Board of Water and Soil Resources (Chapter 110B.35)  
Council on Disability (Chapter 256.482)  
Board of Veterinary Medicine (Chapter 156.01)  
Board of Examiners for Nursing Home Administrators (Chapter 144A.19)  
Board of Boxing (Chapter 341)  
Board of Animal Health (Chapter 35)  
Board of Assessors (Chapter 270.41)  
Board of Chiropractic Examiners (Chapter 148.02)  
Board of Abstracters (Chapter 386.63)  
Board of Optometry (Chapter 148.52)  
Board of Podiatric Medicine (Chapter 153.02)

**Survey.** Commission staff distributed a survey to the licensing boards who appear on the payroll records maintained by the Department of Employee Relations. The survey requested data on the tenure of the executive secretary, their total tenure in state service, and their views on whether the positions ought to be in the unclassified service. A summary of those responding is included as Appendix 2.

The survey, distributed in the fall of 1989, was returned by 20 boards. The average tenure in the position of executive secretary was 7.7 years. The average tenure in state service by the executive secretaries was 9.6 years.

Seventy-five percent thought the executive secretary position ought to remain in the unclassified service. The boards offered the following reasons:

--45% of the boards thought they needed the flexibility and authority to hire individuals well-versed in the particular area, and that the executive secretary must be compatible with the membership.

--50% of the Boards also argued that they need their authority to exercise control over the secretary and, if necessary, be able to discharge the executive secretary quickly if he or she is not performing.

--20% of the boards contend that the executive secretary position involves either skills of a very specialized nature or strong administrative skills that the board might not be certain of getting if it was required to hire through the civil service.

--Three boards argued that their executive secretaries were the equivalents of agency heads. Because agency head positions are unclassified, it is also appropriate for the executive secretary position to be unclassified.

--Finally, four boards (20%) believed that their executive secretaries ought to be classified. The boards contend that, if the positions were classified, the boards might have greater access to a larger range of candidates (presumably the state employee pool), and at a lower cost to the board, since the executive secretaries would be in state pay ranges.

**Discussion.** The survey provides some interesting data. Many of the boards claimed that they were involved in specialized issues that required skills and expertise not available from managers in the classified civil service. However, eight of 20 respondents (40%) indicated that their executive secretaries had previous state experience.

Despite the claim by boards that they need the ability to discharge their executive secretaries quickly in the event they don't perform, the average tenure in their current position is almost eight years. The range of seniority is from two to 19 years. If performance of the executive secretary position is indeed a problem, it does not appear to be one that has been treated through discharge.

Comments by the boards indicate numerous misconceptions about the classified civil service:

--Boards apparently believe that if the executive secretary position were classified, they would not be able to determine the qualifications needed to fill the position, nor be able to make the final decision about whom to hire. Although there is greater discretion in unclassified positions, the Department of Employee Relations consults with the agency on the qualifications requisite in determining the class to which a classified position is assigned. It is always up to the agency making the appointment to make the final decision on whom to hire for those positions.

--Boards apparently also believe that it is impossible to fire classified employees, hence the need to have the executive secretary be in the unclassified civil service. The Management Analysis Division, in a study done in 1986, concluded that while the discharge of classified employees was a process seldom used by managers, it is a process that can be accomplished successfully.

--Some boards also indicated that if the positions were classified, the boards would have a lower compensation cost, since the salaries would be within state pay ranges and limits. All positions in the executive branch (including licensing boards), however, are subject to salary ranges in compensation plans that are either negotiated or established by the Department of Employee Relations. Assigning

these positions to the classified civil service would not cause the salaries to change.

The Department of Employee Relations agrees that Boards may use their executive secretaries in two different ways, as an administrator, or that of a top manager. However, the Department concludes that since agencies often not only have their top managers serving in the unclassified service but also a confidential secretary, Boards ought to have one position that is entirely accountable to the Board.

Alternatively, the legislature could devise a hybrid classification for managerial employees. One suggestion would be that a new category of employment be considered whereby the position would be classified, but the manager could be dismissed (without the right of appeal) if his or her performance were rated as unsatisfactory over a set period of time. Such an arrangement would ensure merit principles were used in the hiring process. The manager would have greater protection than unclassified employees, but the employer could discharge the manager if performance were found unsatisfactory.

### Higher Education Institutions

**Background.** The law currently provides that presidents, vice-presidents, deans, other managers and professionals in academic and academic support programs, administrative or service faculty, and teachers in the state university and community college system are in the unclassified service. Chapter 43A.08 Subd 1 (i) states that custodial, clerical, and maintenance employees, and any "professional or managerial employee performing duties in connection with the business administration of these institutions" are in the classified state civil service.

Two policy decisions are apparent in the civil service treatment of these higher education personnel.

--First, the legislature has recognized the autonomy of these institutions, and has given them substantial discretion to hire and fire employees by placing large groups of positions in the unclassified service. Generally, the legislature appears to have decided that positions that are unique to higher education systems should be in the unclassified service, even though some positions are not high-level management positions involved in making policy for the institution.

--Second, the higher education institutions have been granted substantial latitude to decide which positions are unique to higher education systems and thus should be unclassified. Each higher education system has been permitted to draw the line between positions that are "managers and professionals in academic and academic support programs" (and thus unclassified) and positions that are "professional or

managerial employees performing duties in connection with the business administration of these institutions" (and thus are classified).

There is little dispute that faculty and high-level administrators should remain in the unclassified service, or that clerical and maintenance employees should remain classified. The primary issue involves the statutory distinction between **unclassified** "managers and professionals in academic and academic support programs" and **classified** "professional or managerial employees performing duties in connection with...business administration."

The Department has been expressing increasing concern over the higher education systems' use of the unclassified service. The Department is concerned about classification relationships, not only between the systems and other executive branch agencies, but also within the systems themselves. For example, the Department cites Personnel Office Director positions which on one campus in the State University System are in the unclassified service, and on another are in the classified service.

There is much disagreement between the higher education systems and the Department of Employee Relations regarding the amount of flexibility and freedom the systems should have. DOER argues that the systems are part of the state civil service codified in Chapter 43A. Because the commissioner has statutory authority to implement those statutes, the Department believes that it should determine the extent of latitude the systems can enjoy in determining whether positions ought to be in the classified or unclassified service. In the past, the Department has lacked the administrative controls to exercise that authority, but has recently taken steps to wield greater control.

The higher education systems, on the other hand, argue that they operate in a different market than state agencies. Their market is not other state agencies, or other public sector organizations, but rather private colleges, the University of Minnesota, and higher education institutions in Wisconsin and the rest of the country.

The State University System contends that, unlike state agencies, it manages an enterprise that exists in a highly competitive environment, vying for students that are free to choose other systems. Unless they are given the tools and authority to make the best decisions for their system, they cannot compete effectively.

The Community Colleges System also argues that the legislature has recognized the unique environment within which the higher education systems operate through changes in the appropriations process. Just as the higher education systems need greater flexibility in the use of appropriated funds, they also require flexibility in the personnel systems.

An additional policy issue is intertwined with the issue of which positions should be unclassified and which classified. Compensation for

classified employees is negotiated by the Department of Employee Relations with exclusive representatives and ratified by the LCER and the legislature.

Current law provides that the higher education systems can establish their own compensation plans for non-unionized unclassified employees. However, those plans must be reviewed and approved by the Department of Employee Relations. The 1990 legislature further amended this provision to require that the LCER and legislature also approve these compensation plans.

Thus, designation of a higher education position as unclassified not only frees the system from the usual hiring and firing rules, but also gives the system more flexibility in establishing compensation. The systems generally feel this flexibility is necessary. The Department of Employee Relations feels that the higher education systems have sometimes used this authority to pay their employees more than comparable employees in the rest of state government.

The Department of Employee Relations cites numerous examples where the higher education systems have used the unclassified service to enable them to provide greater compensation to their managers. Examples of higher education positions and comparisons to other state agencies include:

Community College Director/Planning and Research at \$69,680 compared to the State Planning Agency Commissioner at \$67,500

State University Vice Chancellor for Finance at \$87,306 compared to the Commissioner of Finance at \$78,500

State University Public Information Director at \$68,781 compared to the classified Information Directors at the Departments of Public Safety, Revenue and Trade and Economic Development at \$51,469

The Department also notes that an entire classification at the Community College System, that of Business Officers, has been eliminated since the system transferred all of the incumbents to the unclassified service. As Business Officers in the classified service, these employees' maximum salaries were \$50,300. However, in the unclassified service, these same employees carrying out the same job responsibilities can earn \$61,900. The Department contends that this transfer is an egregious violation of the intent of the statute that explicitly provides that "managerial employees performing duties in connection with the business administration of these institutions" must serve in the classified service.

The State University System points out that higher education institutions operate in a different market than the state agencies DOER works with. The State University System routinely competes with the higher education systems in Wisconsin and the University of Minnesota for qualified candidates. If salaries are not competitive, they will consistently lose out in attracting and retaining high quality managers.

The Department of Employee Relations understands that higher education systems operate in a different market, but points out that many other state agencies also operate in unique environments. There are many state agencies that compete on a national market for specific professionals. The higher education systems are thus similar to other agencies in the need to compete nationally to attract and retain qualified employees.

The State University also points out that its managers and other unclassified staff only receive compensation in accordance with compensation plans that have been approved by the Department. If it is true that some positions receive greater compensation than some other positions in state government, it occurs because the Department approved them.

The Community College System adds that flexibility in managing the unclassified service is critical in providing equitable compensation patterns within the system. Unless the higher education systems are able to establish competitive salary ranges for management positions, they would be unable to provide faculty with the ability to move between teaching and administrative responsibilities, an essential component in managing higher education systems.

**Response.** There is no inherent reason why decisions on the classified/unclassified service should control the decision to give higher education systems flexibility over compensation. For example, the Department of Employee Relations could be given more control over unclassified higher education compensation, similar to the control they exercise over classified positions through managing the collective bargaining process. The Department could be given direction and authority to work with the higher education systems to establish clearer criteria which would govern whether a specific position should be placed in the classified or unclassified service.

Alternatively, the higher education systems could be given more control over both their classified and unclassified positions. For example, each system could be treated as a separate and unique public employer, responsible for negotiating contracts with represented employees and establishing personnel and compensation systems for their unclassified employees.

Under this alternative, new bargaining units for represented employees in each higher education system would be split off from existing state units. Each system would negotiate the terms and conditions of employment with these units directly, or they could contract with DOER for these services. For other employees not represented by an exclusive representative, each system would be responsible for establishing appropriate compensation plans.



### Rule 10 Positions

**Background.** The legislature has authorized the commissioner of Employee Relations, upon request of an appointing authority, to authorize the temporary designation of a position in the unclassified service. This authorization only applies to professional, managerial, or supervisory positions that are anticipated to be of limited duration. These appointments to the unclassified service are referred to as "Rule 10" appointments, based on the former number of the administrative rule implementing the authority. This authority is used frequently, mostly in cases where agencies need an employee for a project of limited duration.

Policy arguments in favor of Rule 10 appointments are:

- An agency can hire an employee for a short-term project immediately, instead of going through the lengthier competitive examination process.

- A person hired under Rule 10 knows that the appointment is for a limited time. At the end of the appointment, the agency can terminate the person without having to disrupt its permanent work force.

- Many Rule 10 employees are hired for special skills needed on a particular project, and the agency may not be able to use these skills once the project has been completed.

Policy arguments against Rule 10 appointments are:

- Rule 10 appointments are not competitive. Furthermore, a person who has served a year in a Rule 10 position and who passes a qualifying exam may be appointed to a classified position without open competition. The merit system of hiring can be avoided.

- Employees hired under Rule 10 serve in the unclassified service and thus do not have "just cause" protection.

- People can be hired under Rule 10 to do work that a regular classified employee could do. If layoffs are necessary, it is possible that classified employees could be laid off, while more recently hired Rule 10 appointees may maintain their jobs.

**Discussion.** The Department of Employee Relations reports biennially to the Commission on Employee Relations on the number of non-competitive appointments that are made in the Executive Branch. These data indicate that, on average, approximately 160 Rule 10 positions are established each year. The data also show that about 60 positions are converted from the

unclassified to the classified service each year by the Department.

Appendix 3 shows data on the number of non-competitive appointments approved by DOER, including Rule 10 appointments (temporary unclassified designation) and conversions of unclassified to classified appointments. The data are for the last five years. The top graph on Appendix 4 indicates the pattern of temporary unclassified designations over the last eight years. The bottom graph on Appendix 4 shows the pattern of conversion of unclassified to classified positions in the last eight years.

### LCMR and R2000 positions

Positions funded under money allocated by the LCMR involve issues similar to those relating to Rule 10 positions. The rider accompanying the LCMR appropriation traditionally states that all positions created to fill LCMR jobs are in the unclassified service.

Use of the unclassified service for these positions has advantages and disadvantages similar to those described above for Rule 10. One difference is that Rule 10 is limited to professional, managerial, and supervisory employees, while the LCMR rider is not. It is possible that a person could be hired as a clerical for an LCMR job and, when that was done, be hired for another LCMR job, etc. The person may be doing the type of work that the agency could use on an ongoing basis, but this person is not included on the seniority list for classified employees and does not have just cause protection from dismissal. In summary, the person may have different terms and conditions of employment from a classified staffer, even though both do the same work.

### LCMR positions

LCMR-funded positions exist primarily in the Department of Natural Resources and the Pollution Control Agency. Appendix 5 lists LCMR positions in these two agencies. The DNR indicates that it has 22 LCMR positions, with incumbents having an average tenure in those jobs of 1.9 years. The average length of state service of those incumbents is 5.7 years.

The PCA indicates it has seven filled LCMR funded positions, with incumbents having an average tenure in those jobs of .8 years. The average length of state service of those incumbents is 2.7 years.

The rationale that these positions ought to remain unclassified since the projects are of a defined and limited nature seems borne out by the data. Because the average length of service is less than 2 years, it appears appropriate that these positions remain unclassified.

Although some of the incumbents have lengthy state tenure, the Departments indicate that there is little movement **between** LCMR positions. Rather, LCMR funded employees tend either to come from outside state service or to

take a leave from a classified position, work for a short period as an unclassified LCMR employee, and then leave the LCMR position. The employee either takes a new position, or returns to the original position from which the leave of absence was taken.

**Response.** One of the arguments for LCMR positions being unclassified (besides that they are short-term) is that they involve specialized skills for a specific project. Since the project often does not continue, there usually is not a need for those skills in the long term. However, some LCMR positions are assigned to clerical classifications. Because the skills provided by these positions are presumably more generic in nature, it is less clear that these positions ought to be unclassified. The legislature should consider making clerical position classified when they are established for LCMR projects.

#### **R2000 positions**

R2000 positions exist exclusively within the Department of Natural Resources and are part of the Reinvest in Minnesota Program (RIM). Unlike the LCMR Program, positions funded with RIM dollars appear to be longer term. Appendix 5 lists the R2000 positions for the Department and shows the tenure of the present incumbent in both the R2000 position and in state service. There are 37 RIM-funded positions. The average tenure in the RIM-funded position is 5.25 years, and the incumbents' state service averages 7.8 years.

**Response.** Because the R2000 program appears to employ people for significant periods of time, it does not appear that these positions can be considered to be of a short-term or project nature. Because of their longevity, the legislature should consider converting them to the classified service.

#### **Student Worker Positions**

Under Chapter 43A.08, Subdivision 1 (p), agencies are permitted to hire students as employees in the unclassified service. These positions are not included in calculating an agency's complement. DOER requires that students be enrolled in a bona fide program in order to qualify for employment under this provision.

There is a concern by employee representatives that state agencies may abuse the concept of student workers by hiring them as lower cost replacements for full time employees. Rather than providing an opportunity for students to gain work experience and gain familiarity with a potential employer for when they graduate, some believe that students are used to displace employees who could otherwise be regular state employees.

Although agencies were not required to provide data on their student workers in the survey sent out by staff, several agencies did provide some

information. Because the data were not requested and received from all agencies, they can not be attributed to state agencies as a whole. However, it seems reasonable that they provide at least a glimpse of how student workers are employed in the executive branch. These data are shown on Appendix 6.

The table indicates that these seven agencies employed some 68 student workers at the time of the survey in the fall of 1989. The average tenure for these student employees was 15 months.

In this group there were:

- \*11 students who had worked for more than 2 years
- \*4 students who had worked more than 3 years
- \*1 student who had worked more than 5 years
- \*1 student who had worked more than 7 years

**Response.** The general concern that student workers are used to supplant full time classified employees is difficult to evaluate. Because the average tenure of this sampling of unclassified student workers is a little over one year, it is evident that the individual students are not seen as long term employees.

However, it is conceivable that agencies could rely on student workers as a flexible response option for short term projects, or to use as a seasonal labor pool. In order to conduct an analysis of this type, it would be necessary to aggregate all staff hours of regular employees in an agency and contrast that with the total hours supplied by student workers. Such an exercise is beyond the scope of this report.

Finally, it does appear that there are instances where individual student employees may be more than students in a traditional program. The sample of data provided by agencies indicated some students who had been working in the agency for many years. One option the legislature could consider might be to place a limit on the number of years a student can be employed in this status.

#### Unclassified Positions Created by Session Law

The legislature, when establishing a new program, will often establish new positions to staff it. If there is a perception that staffing must be done rapidly, the legislature will frequently provide that the position be in the unclassified service.

Placing the position in the unclassified service has several impacts. The persons hired into these positions do not gain any seniority in their job classification in the event there are layoffs, no matter how long they work in the position. If the position is eliminated in the future, the employee will have no rights, even though other employees in other similar positions may have less seniority. They also can be fired at will. Finally, by placing the position in the unclassified service, the agency

is not required to follow civil service practices to hire based solely on merit. It should be noted that many agencies have developed their own procedures that they follow in filling unclassified positions. Many of these procedures mirror those used to fill classified positions.

The Hire/Fire study conducted by the Management Analysis Division in 1986 did not, in most cases, find tremendous differences in the time required to fill classified and unclassified positions. In 70% of the cases, appointments to classified positions were made from existing lists of eligible applicants, and vacancies were generally filled in seven to eight weeks. (Classified positions take longer to fill if there is no list of eligible applicants or if a new job classification has to be created.) Unclassified positions, according to the study, were filled in five to six weeks.

In some cases, the savings of time filling a new position may not warrant the position being placed in the unclassified service. However, if there is a real need to hire a new employee more quickly, one option the legislature could consider might be to provide for the agency to hire under a process that would be similar to Rule 10. That process permits the agency to hire quickly, but also starts a time line so that within three years the position would need to be either eliminated or converted to the classified service.

### AGENCY-SPECIFIC POSITIONS

In addition to the general categories of unclassified jobs discussed previously, the legislature has specified particular positions in specific agencies that are to be in the unclassified service. These positions are discussed in this section, on a department by department basis.

Commission staff provided each agency with a print out prepared by the Department of Employee Relations listing all unclassified employees. Commission staff marked positions for specific review, and agencies provided a written response. This section does not include a review of positions in each department that have been discussed previously in cross-agency issues such as student workers or Rule 10 appointments. The survey also led to the discovery of numerous unclassified positions that were listed under DOER records, but have since either been classified or deleted.

#### Department of Administration

The Department has two positions meriting review. One position (control number 133650) is the Director of the Office of Volunteer Services. This position was at one time assigned to the Governor's Office, but was re-assigned several years ago. It is not clear why this position ought to be unclassified.

The other position (control number 577450) was originally assigned as the Director of the Cable Access Commission (Chapter 238.04). That authority has been repealed, and the position (with the incumbent) has been assigned responsibilities relating to coordination of oil overcharge funds. It is not clear why this position ought to be unclassified.

#### Department of Agriculture

The Department had one unclassified position meriting review. A clerical position, with position control number 967320, was established in statutes under authority of the commissioner to hire necessary staff during "seed analysis season."

**Response.** In order to consolidate hiring authority language, it might be appropriate to instead have this position classified and filled under generic temporary appointments authority in Chapter 43A.15, Subd. 3.

#### Attorney General

Under Minn. Stat 43A.08 Subd. 1 (k) attorneys, legal assistants, examiners

and three confidential employees in the Office of the Attorney General are appointed in the unclassified service. There are approximately 145 positions in the attorney classes, 88 in the legal assistant classes, and 49 in the management ranks. In addition, the Attorney General employs approximately 94 people who are in classified positions.

The Attorney General argues that the same policy that places employees of the legislature and the supreme court in the unclassified service applies to these positions. As an elected official, the Attorney General is "accountable to the public for efficient, productive delivery of fundamental government services to the public. With this responsibility to perform, must go the freedom to make personnel decisions that will assist us to that end."

The Attorney General points out that the attributes found in the statutes establishing the unclassified service (confidentiality, discretion, accountability, and professionalism) are consistent with the nature of the relationship between attorney and legal assistants, and their clients.

The Attorney General notes that there is considerable competition for legal positions in his office, enabling him to preserve a sense of professionalism that might or might not be achievable under a classified environment. He also indicates that there is no evidence that lawyers or legal assistants have left because of a lack of job protection that might accompany classified service.

The Attorney General points out that there are a number of legal protections available to employees in the unclassified service. The Minnesota Human Rights Act, the "Whistle Blower" law, and other federal laws afford protections against discrimination.

Finally, the Attorney General indicates that the present personnel system for its unclassified employees is well-respected and uses a compensation plan based on employee performance.

**Response.** The Attorney General contends that because attorneys and legal assistants must maintain confidential relationships with their clients, they appropriately are assigned to the unclassified service. However, there are many other employees in classified positions in other state positions who routinely handle confidential materials and information.

Although the Attorney General argues that employees of elective officials ought to be unclassified because the officials are ultimately accountable to the public, there are numerous examples where employees are nevertheless placed in the classified service. Numerous employees in the State Auditors Office and the Secretary of State's office are classified. In the Attorney General's Office, approximately 25% of the current employees are classified.

The legislature could review whether it is appropriate for these positions to remain in the unclassified service.



### Department of Corrections

The Department had two identical unclassified positions included in the review. The position is entitled "Internal Affairs Investigator," with position control numbers 172160 and 164780. Each position reports to a warden, and handles sensitive material conducting investigations of inmates and staff. The Department contends that the position ought to remain unclassified so that the warden can fill the position with someone who "enjoys the comfort and confidence of the warden, without being hampered by various rules and regulations." The Department believes that incumbents in these positions would lose their neutrality and objectivity if the positions were classified.

The Department also indicates that part of the original intent of placing these positions in the unclassified service was a belief that incumbents would only serve for a limited number of years. Lengthy service was unexpected due to burnout and alienation from staff over time that would lead to ineffectiveness. Finally, the Department believes that the warden ought to be able to remove the incumbent if he or she is no longer effective.

**Response.** It is not clear that these positions ought to remain in the unclassified service. There are many classified state employees who must handle sensitive materials. There are numerous positions in the executive branch filled with individuals in sensitive areas who are hired from pools of qualified candidates (i.e., qualified lists) that carry the confidence of their commissioners. The contention that incumbents would only serve for short time periods is only partially supported by the data: Of the two incumbents, one has served for 1.2 months, the other for 8 years.

### Department of Education

The Department has one unclassified position that was reviewed, listed as an Education Specialist 4, position control number 260610. The Department explains that this position was created by the 1989 legislature to head the Office of Educational Leadership. It is a two year research project. The department contends that, until it is determined that it is an on-going project, the position ought to remain unclassified.

**Response.** It seems reasonable that this position ought to remain unclassified, since there is a definite time limit to the position. If the project were to be made permanent, or continued past the two year time frame, the position ought to be made classified.

### Department of Gaming/(Lottery, Racing Commission)

The print-out of unclassified positions for all three organizations was sent to the Commissioner. Responses were received from the Racing Commission, the Lottery and the Department.



The Department of Gaming. There are three unclassified positions in the Department of Gaming, one of which is the Commissioner. The other two positions are a clerical (PCN 271130) and a research analyst (PCN 271140). The Department had no strong opinion either way whether the positions ought to be classified.

**Response.** If the clerical position serves as a confidential secretary, it should properly be unclassified under Chapter 43A.08 Subdivision 1 (c). If this position does not serve in that capacity, it should be classified. It is not clear why the research position should not be classified.

The Racing Commission. The Racing Commission had three positions under review, including the directors of security and veterinary and a vacant inspector position. The commission's response indicated that it was not aware of the rationale for the positions being classified, or what would be gained from classifying them.

**Response.** Unless these positions meet the standard criteria established in the Chapter 43A, it is not clear why these positions should not be classified.

The Lottery Division. The State Lottery is a division of the Department of Gaming and was established by the 1989 legislature under Chapter 349A. Although the Lottery is a state agency (actually a subdivision of one) its structure is very dissimilar to other executive branch divisions.

The division's professional employees, except for those who are in data processing and accounting, are all unclassified. The division's director is unclassified (as would be the director for similar subdivisions in other departments). However, under Chapter 349A.02, Subdivision 2, the director can be terminated only for failure to meet certain requirements.

In developing the legislation to create the Lottery it was argued that the Lottery was to be run like a business, and to make a profit. In order to give agency management the ability to carry out that mission, they contended that most staff had to be unclassified so that the Lottery would have flexibility to meet operational needs, and to attract the best applicants with experience in profit making and sales organizations. It was stated that most positions in the Lottery would be unique, so that Department of Employee Relations' eligibility lists would either be inappropriate, or would unacceptably slow the hiring process. They also argued that employees needed to be unclassified so that non-performers, especially in the area of marketing and sales, could be dismissed quickly if necessary.

According to data submitted by the Lottery Division, there are now approximately 142 people under employment. Of these, 59 are classified and 83 serve in the unclassified service. The data are listed in Appendix 7.

Following the intent of the enabling legislation, classified employees are

primarily clerical and technical in nature. Professional and managerial employees are unclassified. Of the classified employees, 18 (31%) have previous state experience, probably indicating that they transferred to the Lottery Division from some other state agency. Of those employees who are in the unclassified service, 11 (13%) had previous state experience.

Classified employees at the Lottery who previously worked in another state agency brought an average of 4.3 years experience with them. Unclassified employees who had previously worked for the state brought an average 11.1 years experience with them.

**Discussion.** As noted above, the Lottery's classified/unclassified structure appears to be the inverse of most other state agencies. Most heads of state agencies are in the unclassified service, and can be dismissed at will by the Governor. However, while the director of the Lottery Division is also unclassified, under Chapter 349A he can be discharged only for certain causes, a protection usually provided to non-management classified employees.

Unlike other state agencies, professional positions in the Lottery Division are unclassified. The Lottery therefore need not use civil service lists of qualified applicants for openings, and can discharge these employees at will.

The arguments for assigning professional employees in the Lottery Division to the unclassified service mirror comments made by some other heads of state agencies. Some agency heads would prefer the flexibility of being able to appoint persons without being constrained by DOER's eligibility lists, or to be able to move quickly to discharge non-performing employees. However, the State of Minnesota's general policy is a civil service where positions are filled based on the merit of applicants' qualifications, and that employees are discharged for just cause only.

Lottery management express concern that DOER's lists of eligible applicants would be inappropriate to meet their needs. They cite other eligibility lists for sales positions in other agencies, but whom they believe work under different circumstances than do Lottery staff. However, DOER frequently develops agency-specific classes or subclasses to meet unique needs, and there is no reason to believe that such a list could not be developed to meet the needs of marketing/sales for the Lottery.

Many divisions of other agencies rely totally on earned revenues to finance agency activities. Many agencies use clear performance indicators for professional employees (a concern for Lottery officials for the marketing and sales employees) that enable them to make objective judgments on performance evaluations and continued employment.

The Department of Employee Relations indicates that there is some confusion and conflict with the Lottery Division as it has moved to staff the new agency. The Department contends that in an effort to maximize its flexibility, the Lottery Division has attempted to place as many of its

new positions into the professional ranks as possible, so that the positions are in the unclassified service. One result, the Department argues, is that position descriptions are adjusted to make it appear that the positions are more professional in nature than they may in actuality be. One outcome is that two Lottery Division employees may work side by side with similar responsibilities. However, one may be a clerical/technical employee who is classified, while the other is a professional, unclassified employee.

The Department is concerned that an agency where a portion of the work force is in the classified service while the other is not, creates great stress on the personnel system. (In some ways the issue is somewhat similar to the one found in the higher education institutions where some managers/professionals are classified while other peers in similar positions are unclassified.) The Department believes that if the Lottery is so unique that its budgetary, procurement, and fiscal processes are exempt from general state requirements, then perhaps the entire personnel system ought also be exempted.

**Response.** The Lottery's primary mission, making a profit, is clearly different from the primary mission of most state agencies. The legislature must decide if this mission justifies exempting most state lottery employees from the classified civil service rules that govern most state agencies. In particular, the legislature must evaluate whether the Lottery Division's needs to quickly dismiss employees who are not performing up to expectations outweighs the right that most state employees have to be dismissed only for just cause.

#### Department of Health

The Department of Health has one position that was reviewed in the study. The Director of the Office of Health Facility Complaints Office was established as an unclassified position in Chapter 144A.51 and is appointed by the Commissioner.

The Department believes that the position ought to be continued in the unclassified service. The director investigates and takes action on complaints against health facilities and investigates allegations of abuse. Because, the Department contends, the investigations can be politically sensitive and receive media attention, the Director must have considerable rapport and frequent communications with the commissioner. For these reasons, the position ought to be unclassified.

**Response.** The Department contends that because the position deals with sensitive information, and it reports to the commissioner, it ought be unclassified. However, Chapter 43A, in setting policy for determining whether positions ought to be classified or unclassified, does not provide for positions dealing with sensitive issues to be unclassified. There are many positions in state government that deal with sensitive data and issues, and that are classified. It is not clear that this non-upper management position ought to be unclassified.

### Higher Education Coordinating Board

The Higher Education Coordinating Board employs approximately 80 persons, of whom 30 are in the unclassified service. Chapter 136A.03 provides that the executive director "and other officers and professional employees" shall serve in the unclassified service, while all other employees must be classified.

The Board maintains that the current arrangement is important to maintain in order to be able to attract staff with "superb analytical and administrative skills, skills that are comparable with the best staff in the private sector." The Board lists examples of staff they require: staff with expertise in economics to build sophisticated models projecting financial aids needs, finance to provide a background in financial management, a doctoral major in history to provide a broad policy perspective.

The Board argues that it needs to recruit staff from an experienced and qualified clientele, who are not on the regular state lists, but are instead one-of-a-kind positions. It indicates that the unclassified service works very well, and that it uses affirmative action procedures when filling these positions. Finally, it contends that since each position is unique to the agency, it would need a separate list each time a vacancy occurred. Filling vacancies would then become an arduous and time-consuming task.

**Response.** Most agencies in the executive branch deal with issues and programs that are quite specific and require employees with specialized skills and knowledge. Yet most positions in the executive branch are filled with employees who are hired from lists of qualified persons who have expertise and experience in particular fields. While each agency may deal with different issue areas, DOER's responsibility is to develop examinations and lists of qualified applicants for the thousands of positions in state government.

In order to provide lists of qualified candidates for agencies with specific needs, DOER will frequently develop a general list (e.g. economist) and further divide those applicant into subspecialties such as natural resources, economic development, and regulated utilities.

One may argue that the qualifications or expertise for these positions at the HECEB are no more specialized or unique than most other positions in state government. There is no reason to believe that DOER, working with the HECEB, could not develop examinations and lists of qualified applicants who would meet the needs of the board.

On the other hand, some of the arguments made by the other higher education institutions could apply here. HECEB argues that it operates not in the traditional market with other state agencies, but rather one consisting of higher education systems, similar to that of the State University and Community Colleges.



### Higher Education Facilities Authority

This entity is structured as a state agency under Chapter 136A.25. Chapter 136A.29 provides that the Authority may appoint its own staff in the unclassified service and/or share staff with the Higher Education Coordinating Board.

One position, that of the Executive Director, is listed as being in the unclassified service. Because the Director is appointed by the Authority Board, this position is similar to those in the licensing boards, where the incumbent is expected to serve at the pleasure of the Board. The legislative policy for those boards ought to apply to the Higher Education Facilities Authority as well.

### Department of Human Services

Staff reviewed two positions. One, with position control number 229450, was originally assigned to the Rochester State Hospital until it was closed. The position remains in the unclassified service due to the closure legislation. The Department states that the position will revert to the classified service when the incumbent retires.

The second position (PCN 089510) carries the title of Executive Aide. The incumbent reports directly to the commissioner and is concerned with the application and interpretation of sensitive policy issues. The Department contends that the position meets the criteria established at 43A.08 Subd. 1a.

**Response.** Because the incumbent appears to be part of the Department's management team, and the position is established to focus on interpretation and application of policy issues, it appears reasonable that the position remain in the unclassified service.

### State Board of Investment

The Board of Investment has 18 positions in the unclassified service. Under Chapter 11A.07 Subd. 4 (2), "employees whose primary responsibility is to invest or manage money or employees who hold positions designated as unclassified pursuant to section 43A.08, subdivision 1a, shall be in the unclassified service of the state."

**Response.** It is not clear what the policy rationale is for having professional employees who work for the Board of Investment to be in the unclassified service. The ability to ensure performance is often cited as the need to have a position be unclassified, so that if the employee does not perform, he or she can be discharged. However, classified employees are also required to perform. Effective management will establish clear standards for all of their employees, so that if a classified employee

fails to perform, the employer can more easily establish just cause for dismissal.

The legislature should consider whether the Board could ensure adequate performance if professional employees were classified.

### Ombudsman for Corrections

The Office of Ombudsman for Corrections lists seven unclassified positions. Two include the Ombudsman and the Deputy Ombudsman, who constitute the agency's top management, and meet the policy established by Chapter 43A.08.

The other five positions are listed as human rights enforcement officers. According to the office, the Ombudsman has access to corrections, detention, and medical data that is classified as private data. The Office argues it cannot tolerate staff who are not above reproach, and any staff who loses credibility must be replaced.

Because of the demands on the office, and limited staffing, the Ombudsman contends the office cannot afford extended vacancies, and needs the authority to fill positions immediately. The office argues that the process to hire from a list provided by DOER is cumbersome, even if a list were to exist.

**Response.** The Office of the Ombudsman for Corrections acknowledges that the primary reason for having the enforcement officer positions unclassified is to expedite hiring in the event of a vacancy. Although the office cites the fact that these employees handle sensitive and confidential data, it is also true that classified employees also treat similar data.

Ease of filling vacancies does not seem to meet the policy established in Chapter 43A to provide for limited circumstances in which positions in the executive branch would be unclassified. Ease of hiring and filling of vacancies does not seem to be an adequate reason for maintaining positions in the unclassified service. That is an issue that ought to be treated by working with the Department of Employee Relations to expedite its process to quickly provide up-to-date lists of qualified applicants for state jobs.

### Department of Public Safety

The Department had ten unclassified positions that were reviewed. Four of the positions are assigned to the newly (1989) created Drug Policy Office. Chapter 299A.30 provides for the head of the Office to be an unclassified assistant commissioner, and that other employees also be appointed in the unclassified service. The Department supports this policy, noting that it is difficult to determine whether the various positions ought to be remain unclassified or be placed in the classified service.

The other six positions in the Department report to various boards or councils. They include:

Executive Secretary, Peace Officer Standards and Training Board  
 Executive Secretary, Private Detectives Board  
 Executive Aide, Children's Trust Fund Advisory Trust Council  
 Management Analyst 3, Crime Victim And Witness Advisory Council  
 Executive Officer, Crime Victim And Witness Advisory Council  
 Planning Director, Emergency Response Commission

The Department argues that since these positions report to these councils, they need to be unclassified.

**Response.** The four non-management unclassified positions in the Drug Policy Office appear to be designated as professional positions, which are normally in the classified service. Although it is a newly created office, that alone is not sufficient reason to place the positions in the unclassified service. There are numerous programs created in the executive branch each year whose long-term future is uncertain. Because those positions are generally classified, there does not appear to be a good reason for the positions in the Drug Policy Office to be unclassified. The Drug Policy Office concurs that these positions ought to be transferred to the classified service, but requests that the transfer be delayed until 1992. The delay would give the legislature an opportunity to review the Office's program responsibilities and to make any changes in staff structure and composition that are needed.

Of the six positions reporting to various councils and boards, two would be considered Directors (POST Board and Private Detectives). The legislature should treat these positions like other heads of boards and agencies.

The other four positions appear to be professional positions that properly ought to be assigned to the classified service.

#### Department of Public Service

The Department had two unclassified positions that were reviewed. One of the two positions has not been in use and can now be abolished. The other is entitled Public Utility Regulation Unit Manager. The Department argues that the position involves significant discretion in the development, interpretation, and implementation of agency policy requiring the occupant to be loyal and accountable to the agency head.

**Response.** The Department lists one deputy, two assistant commissioners, and one executive assistant in its list of unclassified employees in top management. Because the Public Utility Regulation Unit Manager position is part of the Executive Management Team and reports directly to the commissioner, it would appear that this position properly belongs in the unclassified service.

### State Planning Agency

The agency had 18 unclassified positions under review. All 18 belong to one of two groups--either the Washington Office or the Land Management Information Center.

The Agency argues that the 3 positions in the Washington Office represent the Governor on national policy issues and therefore ought to remain in the unclassified service.

The other 15 in IMIC are unclassified because, according to the agency, IMIC's funding is based on revolving funds. The agency also notes that the Center is undergoing a review to look at its role. The study will be completed in January, 1991.

**Response.** It seems appropriate that the 3 positions representing the governor in Washington are appropriately placed in the unclassified service. Because they effectively are extensions of the governor's office, which is exclusively unclassified, it is appropriate that these three positions also be treated in a similar fashion.

It is not so clear that the positions assigned to the Land Management Information Center should be unclassified. There are numerous other positions in the executive branch that are classified where the funding is based on revolving funds. The Department of Administration has numerous positions in the State Printer, Central Stores, and Intertech that rely on provision of services to other agencies for support. It would appear that these positions ought to be classified as well.

### Department of Trade and Economic Development

The Department had 34 unclassified positions that were reviewed by staff. For ease of analysis, these positions have been divided into management and non-management categories.

Management positions. The Department of Trade and Economic Development (DTED) is somewhat unique among state agencies in its personnel structure. Most state agencies have one commissioner, one deputy commissioner, and (depending on the size of the agency) a number of assistant commissioners. Usually, all of these positions, because they constitute the management executive team, are in the unclassified service.

DTED, on the other hand, has under the Commissioner a position entitled Sr. Administrative Officer, who functions as chief deputy. The Department then has four deputy commissioners, and one director (of Tourism) who manage the various divisions of the department. DTED also has two assistant commissioners who report to two deputy commissioners. The Department has 11 directors who manage functions within the major divisions or report to various boards. A list of the Department's management positions is included as Appendix 8.



Because of the Department's management structure, the executive management team is considerably larger, and therefore includes substantially more managers who operate in the unclassified service. The Department contends that since these managers (including directors) develop and implement the commissioner's policies, they are appropriately assigned to the unclassified service.

**Response.** Although the management model at the Department does not follow that of most other state agencies, it does seem appropriate to maintain the general policy of placing the department's executive management team in the unclassified service. A commissioner needs the ability to bring in his or her own team to ensure that the policy initiatives and directions they want to pursue can be implemented.

#### Non-Manual positions.

The Department has a number of non-managerial positions that are also unclassified. Of 65 unclassified positions (not including student worker positions), 43 are held by non-managers. A list of those positions, including job title and position control number, is included in Appendix 8. The Department indicates that a number of the positions currently in the unclassified position could be transferred to the classified service. These include several positions in the Rural Development Office, the Outdoor Recreation Office, and clerical positions in the Tourism Division. The positions are shown in Appendix 8. The Department indicates that 22 positions could be converted to the classified service.

The Department contends that a number of the remaining unclassified positions ought to remain there because the positions are short term in nature. For example, these positions support pilot programs (such as CANDO or the Tourism Loan Program), or short term projects (such as the Celebrate Minnesota Program). As a result, these eight positions ought to remain unclassified.

The remaining positions are found throughout the Department. They generally are allocated to the professional bargaining unit, indicating they are professional-level, non-managerial employees. (However, because they are unclassified they do not gain seniority and may be discharged for other than just cause. They do receive the same compensation as those employees in identical classifications who are classified.)

The remaining unclassified positions and the Department's rationale for maintaining them in the unclassified service are:

Trade Office. The Department explains that two positions with the job title of "International Trade Representative" are unclassified because "as global economics change, it is imperative that the state be in a position to marshall and redirect existing staff resources to respond." The Department also points out that it may be necessary for the Trade Office to redirect its export service within current budgetary constraints. The Department acknowledges that six

identical positions exist in the classified service.

The other Trade Office position serves management by initiating and completing special projects and reports. The Department argues that because of the limited duration and changing nature of these projects, and the need to evaluate the combination of skills required to carry out the requirements of the position, further study is necessary before deciding whether the position should be continued or moved to the classified service.

Desktop Publishing Coordinator. This position is being evaluated as are all current information management functions. The Department believes the position ought to be unclassified during the evaluation period.

Tourism Division. The division has four unclassified positions entitled "Tourism Regional Manager" and one called "Travel and Tourism Representative." The Department contends that because the decision to hire and fire these employees is made jointly with private sector regional tourism associations, and because the employees must implement policies with the confidence of the association board of directors, the positions ought to remain unclassified.

Amateur Sports Commission. The four professional unclassified non-managerial positions include the jobs of Planner Principal, Planner Principal State (two), and Information Officer. The Department argues that the positions should remain unclassified "as they recommend policy within their respective policy areas, and must appropriately implement the policies of the commission."

#### **Response.**

Limited duration positions. The positions that are of limited duration reasonably belong in the unclassified service. Because they are similar to Rule 10 positions, where the project is reasonably expected to be short term, the positions ought to remain unclassified. However, if the positions remain unchanged after three years (the standard limit for Rule 10 positions), the positions ought to be classified.

Trade Office. The Department argues these positions ought to be unclassified to give the commissioner flexibility, and because the position must be filled with an incumbent who supports the policies of the commissioner. These positions are similar (in some cases identical) to positions that are classified. All state employees are expected to implement the policies of the commissioner of their department. There does not appear to be a good reason for these positions to remain unclassified.

Tourism Division. The Department agrees that the unclassified

clerical positions in the regional offices could be classified. The argument by the department that because the regional managers are selected in consultation with private tourism associations does not alter the fact that they are employed and paid by the state. Because the state relies on a civil service based on merit principles, the positions ought to be classified so that individuals are hired based on their skills and experience, and fired for just cause.

Amateur Sports Commission. The Department argues these positions should remain unclassified because they recommend and implement policy. The Department agrees that the clerical staff ought to be transferred to the classified service. The Department also notes that the Legislative Auditor has concluded that the Commission is an independent entity and is no longer a part of the Department.

If the standard to classify employees were based on the DTED standard of whether they recommend or implement policy, or that they need to support their commissioner's policies, it would be possible to argue that almost all professional employees be unclassified. There does not appear to be a good rationale for maintaining these professional positions in the unclassified service.

#### Department of Veterans Affairs

The Department had one position included in the review. The position of Agent Orange Information and Assistance Director was established in the unclassified service because, according to the Department, there was belief that the controversy surrounding this issue would be settled quickly. Veterans and their families would receive the necessary information to address their concerns and allow time to plan for the rest of their lives.

However, because the issues regarding Agent Orange are still unsettled, and there is uncertainty what the federal government may do, the Department contends the position ought to remain unclassified.

**Response.** The Agent Orange position was created eight years ago and the current incumbent has been in the position almost five years. It appears that this position is not a temporary one, and ought to be classified.

### SUMMARY OF FINDINGS

This report has focused on the unclassified service in the executive branch. Many concerns regarding these positions were resolved in 1982 when the legislature adopted a general policy establishing criteria that were to be used in deciding when a position was to be unclassified. This report generally examines other positions that are not clearly top management.

Findings from this review include:

1) **Licensing boards.** The executive secretaries to health and other licensing boards are generally designated in their statutes as being unclassified. The legislature should consider re-evaluating whether these are top management/policy making positions, or are more administrative in nature. Alternatively, the legislature could consider boards to be similar in nature to state agencies, such that each board would be entitled to a management/confidential secretary position in the unclassified service.

2) **Higher Education employees.** Chapter 43A.08 Subd. 1 (i), provides that top management officials are unclassified. However, it also provides that other managers and professionals in academic and academic support positions will be unclassified, while professionals and managers related to business administration will be classified. Distinguishing between these groups is sometimes difficult, and has led to disagreements between the Department of Employee Relations and the higher education systems.

The legislature should consider clarifying this statute to ensure that there is consistency in establishing classified and unclassified positions, and to ensure that compensation patterns between the systems are equitable. Alternatively, the legislature could consider severing the higher education systems from the personnel system of the rest of the executive branch.

3) **Rule 10 positions.** The legislature has authorized the Department of Employee Relations to establish unclassified positions if an agency fully anticipates the positions to be of limited duration. Approximately 160 Rule 10 positions are created each year, and approximately 60 positions each year are converted from Rule 10 to the permanent, classified service. Incumbents in these positions bypass the normal civil service procedures for hiring.

4) **LCMR and R2000 positions.** LCMR positions are unclassified through rider language in the appropriations process. R2000 positions are those associated with the Reinvest in Minnesota program, funded with state and federal dollars.

Data indicate that LCMR staff are typically hired for short term projects, with an average tenure under two years. RIM-funded staff have longer tenure, at an average of over five years.

Because the R2000 positions appear to be of longer duration, the legislature should consider placing these positions in the classified service.

5) **Student Workers.** State agencies hire enrolled students to provide them with meaningful work experiences and to carry out limited work projects. However, data from agencies showed that in some instances, agencies employed students for long periods of time, which may have the effect of displacing regular state employees. The legislature should consider placing a time limit on the amount of time a student can be employed in an agency.

6) **Unclassified positions created in Session Law.** The legislature frequently establishes unclassified positions to support new programs it is creating. They are often unclassified in order to permit an agency to hire more quickly to get the program operational. However, most of these positions are non-managerial and except for their creation in session law as unclassified, would be in the classified service.

The legislature should consider a new provision in Chapter 43A that would be used when a new program is created and there is a need to fill positions quickly. The authority would be similar to that of Rule 10, and would be used to establish a position temporarily in the unclassified service but which would provide for the position to be transferred to the classified service within three years. A new position could be placed in the unclassified service only if the Commissioner of Employee Relations determined there was no current eligible list of applicants for the new position, and there was an urgent need to fill the position.

7) **Distinguishing top management.** A number of agencies supported having greater numbers of unclassified positions because those filling the positions either reported to top management, or were involved in policy development or formulation. If lines are not carefully drawn by the legislature, it would be possible to argue that almost any professional position could be assigned to the unclassified service. The legislature should consider clearly stating that unclassified employees status is limited to top management. It should not include those who report to top management, or those who develop or implement policy for top management.

8) **Converting unclassified positions to the classified service.** This report has identified numerous unclassified positions that agencies agree ought to be classified. The report also has recommended numerous other positions that the legislature should consider classifying.

In converting positions to the classified service, normal procedures developed by the Department of Employee Relations ought to be followed. The Department generally requires incumbents to have served in the unclassified position for at least one year, and the incumbent must have

passed a qualifying examination. Alternatively, the legislature could consider grandparenting in all incumbents based on an endorsement of satisfactory performance. These procedures protect incumbents already in the positions, while ensuring that the positions are filled by qualified individuals.

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HOUSE ADVISORY NO. 6

Appendix 1

Introduced by Simoneau HAUKOOS  
Kricheldorf

Date \_\_\_\_\_ Referred to Committee on \_\_\_\_\_

(TITLE: not to exceed 12 additional words)

A proposal ~~for~~ to study issues relating to classified and  
unclassified positions in the executive branch.

The LEGISLATIVE Commission on Employee Relations shall direct that a study be conducted  
of state agencies and their use of unclassified positions. The study shall be completed  
and submitted to the legislature by February 1, 1990.

The study shall address the following:

- (1) What positions are unclassified under 43A.08 Subd. 1, and what number of unclassified  
positions are filled and vacant in each state agency under this subdivision.
- (2) What positions are unclassified under 43A.08, Subd. 1A, and what number of unclassified  
positions are filled and vacant in each state agency under this subdivision.
- (3) What positions are unclassified under other chapters or session laws.
- (4) What public policy criteria distinguish classified from unclassified positions.
- (5) Whether state agencies are using unclassified positions consistent with established  
public policy.
- (6) What, if any, unclassified positions under Chapter 43A.08, other chapters or  
session laws, should be transferred to the classified service.
- (7) What, if any, classified positions under Chapter 43A.07, other chapters or session  
laws, should be transferred to the unclassified service.

The Department of Employee Relations shall cooperate and assist the Commission as  
necessary to carry out this study.

INSTRUCTIONS: Type body of Advisory on this form using additional blank sheets if necessary. The  
language can be informal and the style need not conform to the rules governing House Bills. Double space  
body. "Date introduced" and "Referred to Committee on" will be completed by House Desk. Deliver origi-  
nal and three copies to Speaker's Office or House Desk. Author should retain last copy.



# Unclassified Service Survey

## PERCEPTIONS ON HEADS OF STATE BOARDS

### Position State

Tenure	Tenure	Bd hiring authority	Bd firing authority	Specilized Skills	StrngAdmin Skills	AgncyHead Equiv	Statutory Provision	Position Remain unclassif?
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Comments

1=yes, 0=no, 3=?

Board

Accountancy	6	7	1	1				1	
Arch/Eng/Lan	17	17		1	1	1		1	
State Arts	6	6					1	1	
AsianPacific								0	
BarberExam	vacant	vacant						0	If classif,would have large range of candidates,lower cost to Bd due to lower sal
Marriage&Fam	1.5	1.5						0	If classif,would have better recruiting within st system
Boxing	13	13			1			1	Person must have boxing bkgrd,can't learn in govt serv, unique board
Dentistry	3.5	4	1	1			1	1	
Disability	vacant	vacant						3	
Electricity	10	15	1					1	Uncl gives most flex hire most qualif person
EthicalPrac	9	15		1			1	1	Bd places greater restrictions than those in civil service
MedicalExam	2	2	1	1				1	Bd needs clear auth to hire,fire & set compensation of CEO
Municipal	11	11	1					1	
Nursing	16	16	1	1			1	1	Pos involves signif discretion, must be loyal to Bd.
NursingHomeA	19	19	1	1	1			1	Pos. requires flex in hours, not found in classif
SocWork/Mntl	1.5	5.5						0	If classified, could possible recruit good cand w/in st system
Pharmacy	17	19	1	1				1	Head must be loyal to Bd. Significant discretion. Developmt of policies&rules
Psychology	9	19		1				1	Unless uncl, Bd has less control, difficult to dismiss
Water&Soil	1.75	9	1				1	1	
Vet Medicine	2.5	2.5		1				1	Bd needs right set qualif for position

Average 7.67 9.55

Percent Provding Response 45.0% 50.0% 15.0% 5.0% 15.0% 15.0%

Count 20

Percent remain unclassif 75.0%

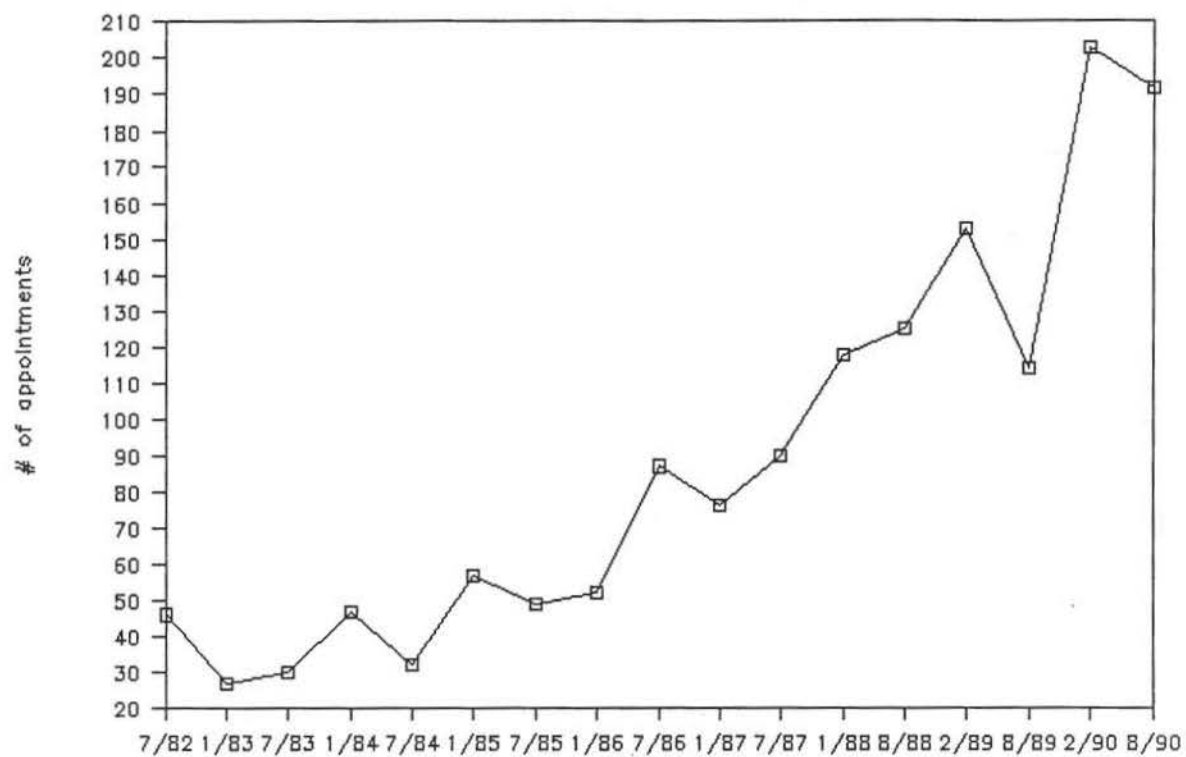
Percent change classif 20.0%

Percent uncertain 5.0%

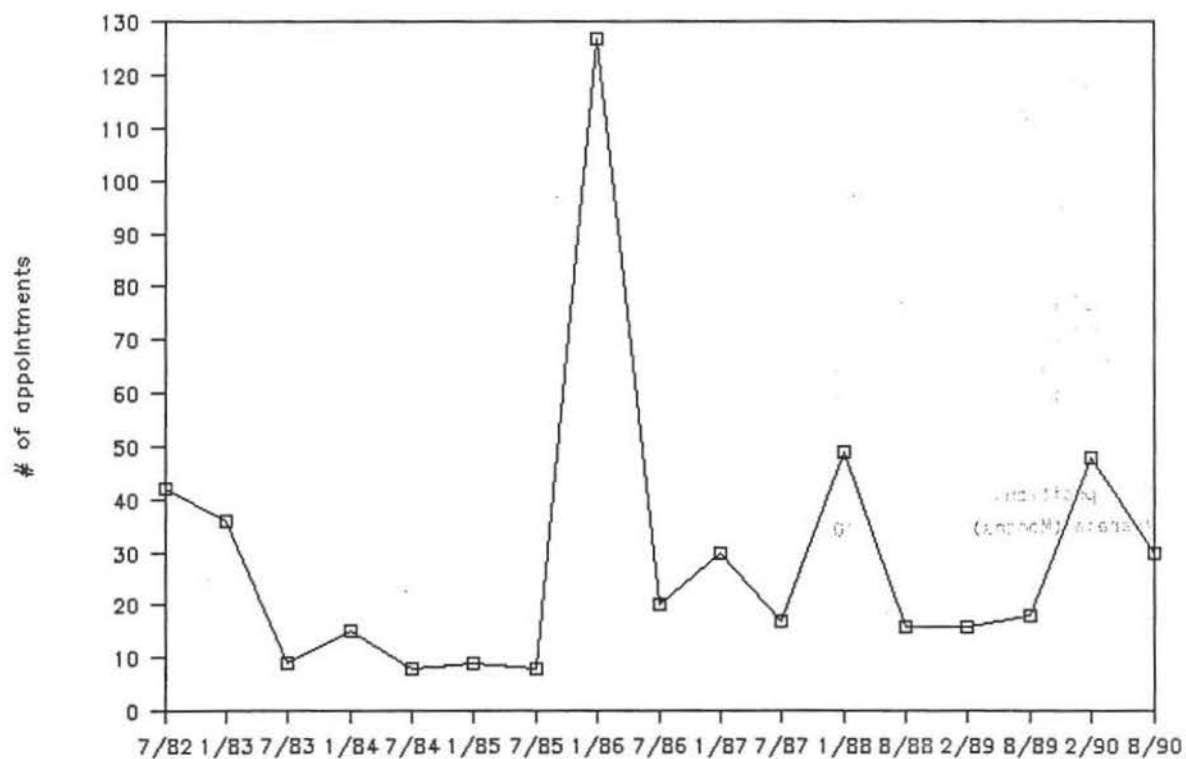
# NONCOMPETITIVE APPOINTMENTS IN THE EXECUTIVE BRANCH

	1/85 biennial	7/85 biennial	1/86 biennial	7/86 biennial	1/87 biennial	7/87 biennial	1/88 biennial	8/88 biennial	2/89 biennial	8/89 biennial	2/90 biennial	8/90 biennial	AVERAGE
Emergency	698	756	797	587	601	634	685	636	687	558	675	565	682
Temporary	470	531	376	327	366	386	382	454	331	396	423	619	442
Provisional	10	13	9	10	13	12	20	18	14	10	29	15	15
Conv Prov to Prob	11	9	9	8	10	8	19	16	11	6	22	17	12
Non-compet Promo	828	658	554	531	685	824	841	627	622	602	891	945	739
Transfer	264	231	262	226	219	281	355	281	208	240	601	418	282
Interjurisd. Transfer	5	5	8	8	2	2	8	8	6	2	7	9	6
Demotion	193	109	144	119	119	177	199	114	132	99	133	139	135
Conv Unclas to Classif	9	8	127	20	30	17	49	16	16	18	48	30	29
Exceptional Qualif	12	9	6	9	5	13	8	8	9	6	8	5	8
Labor Service	404	1048	417	868	371	991	277	829	256	818	591	717	686
Routine Service	129	126	101	118	127	134	158	128	137	179	133	243	141
Shortage occupation	0	0	5	11	12	19	18	17	16	10	78	59	14
Conv Work Trng to Prob	42	68	51	85	31	65	48	37	34	50	109	63	71
Temp Unclas Design.	57	49	52	87	76	90	118	125	153	114	203	192	88
Revenue Seasonal								99	0	85	3	76	53
TOTAL-ALL NON CONVTL	3132	3620	2918	3014	2667	3653	3185	3413	2632	3193	3954	4112	3382
TOTAL-ALL LISTED APPTS	1666	1515	1370	1268	1259	1417	na	1841	1517	1424	1854	1885	1446
TOTAL NONCON-EMERG&TEMP	1964	2333	1745	2100	1700	2633	2118	2323	1614	2239	2856	2928	2254

## TEMPORARY UNCLASSIFIED DESIGNATION



## CONVERT UNCLASSIFIED TO CLASSIFIED



# Appendix 5

## LCMR and R2000 unclassified positions

LCMR positions				
Position Control #	Job Title	Position State		
		Tenure (months)	Tenure (months)	
DNR				
221040	Plng Grants Ana Sr	30	75	
969950	Res Sci	3	3	
162200	Rlty Spec Sr	76	95	
262730	Intern			
266440	Plnr Sr St			
270510	NR Spec Sr			
270540	NR Spec Sr	3	56	
271060	Hydro 3			
272490	Eng Aide In			
272500	Eng Aide SE			
272510	Eng Aide			
262730	Plner Interm			
958050	NR Spec	9	15	
036710	Clerk Typist 3	25	62	
996740	Res Anal	23	23	
221220	NR Spec Int	31	64	
966210	Rlty Spec	5	5	
195200	Fisher			
960520	Wildlife			
958820	Clerk Typist 1	27	27	
967440	Clerk Typist 2	6	235	
216500	NR Spec	35	154	
	# of positions	22		
	Average (Months)	22.75	67.83	
PCA				
261490	PCS Inter	12	24	
272460	Hydro II	9	32	
260750	Bio	9	9	
260470	Res Sci 2	12	130	
260480	Res Sci 2	9	9	
270950	Grad Eng 1	9	9	
264290	Res Sci 2	9	9	
	# of positions	7		
	Average (Months)	10	32	

Resource 2000 positions				
DNR	Position	Job Title	Position	State
	Control	#	Tenure	Tenure
			(months)	(months)
	053100	Eng Aide In	139	164
	053210	Clerk Typist 2	18	23
	052770	Apprsl Sr	29	29
	211800	CLerk Typist 3	41	58
	053140	Survey Crew Super	170	248
	053120	Survey Crew Super	105	146
	194250	Apprsl Super	58	164
	045450	Exec 1	174	197
	052970	Eng Aide In	147	144
	045350	Rlty Spec Sr	22	22
	053060	Eng Aide In	119	119
	056560	Eng Aide In	163	178
	048840	Lndscpe Archit	40	66
	049460	Eng Aide In	183	267
	948190	Graphic Arts Spec	58	69
	045350	Clerk Typist 2	4	4
	052260	Exec 1	172	213
	053040	Eng Aide In	117	117
	958690	Eng Aide	32	32
	064840	Rlty Spec Sr	42	137
	048780	Eng Sr		
	051970	Word Process Oper	3	172
	054210	Rlty Spec 5	1	1
	052420	Clerk Typist 2	4	4
	231720	Eng 2 Grad	17	17
	588600	Arch Draft Tech 2	13	13
	937720	Eng Aide	8	8
	967630	Eng 1 Grad	7	7
	183450	Res Sci 2	60	71
	067030	Rlty Spec Sr	22	22
	124420	Rlty Spec Sr	75	156
	987380	NR Aide	22	22
	956310	Eng Aide In	22	22
	049050	Clerk Typist 2		
	953070	Vol Svcs Coord	16	172
	992030	Eng Aide Sr	87	87
	961380	Nat Res Spec 3	15	117
		# of positions	37	
		Average (Months)	63	93.94

6/4/90

STUDENT WORKERS  
SAMPLE OF STATE AGENCIES

Appendix 6

Department	PCN	Tenure	Department	PCN	Tenure
Admin			Labor&Industry		
	954370	38		955420	15
	994400	8		957610	18
	927630	7		967670	21
	959930	17		967670	17
	958150	33		967750	3
	958060	12		967760	14
	951550	18		967760	4
	959750	13		967760	21
	958140	4		967760	13
	954440	21		967760	14
	950300	16		967760	23
	944490	13		967760	13
	960160	9		967760	15
	994400	33	Subtotal	13	
	989720	43	Average (Months)	14.69	
	927740	18			
	944490	12	Public Service		
	994070	14		943650	7
	947770	15		927940	29
	958140	87		929730	35
	994080	14		993740	12
	936900	9		959990	22
Subtotal	22		Subtotal	5	
Average (Months)	20.64		Average (Months)	21.00	
Agriculture			Trade&EconDev		
	944470	3		926820	1
	959380	3		955710	12
	959020	3		955700	1
	958600	35		927900	62
	952810	21		955060	3
Subtotal	5			900170	4
Average (Months)	13			946610	29
Corrections				987110	4
	985200	24		996180	3
	947710	9		946040	3
	962460	3		945310	3
	962460	6		982440	9
	962460	6		996370	3
Subtotal	5			946920	3
Average (Months)	9.6			956860	5
Education				958900	3
	899340	6	Subtotal	16	
	948530	6	Average (Months)	9.25	
Subtotal	2				
Average (Months)	6				
			TOTAL	68	
			OVERALL AVERAGE (MONTHS)	15.04	

6/4/90

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## Appendix 7

7/11/90

## Lottery

CLASSIFIED				UNCLASSIFIED			
Last Name	Title	Position Tenure (Months)	State State (Months)	Last Name	Title	Position Tenure (Months)	State Tenure (Months)
Allen	CT3	2	14	Addabbo	Lot Mkt Rep	5	5
Anderson	CT1	3	3	Andersen	Exec Dir Mn St. L	7	7
Bednarek	Admin Sec	7	57	Anderson	Lot Marketing Rep	5	5
Burmeister	Del Van Driver	3	29	Bacon	Gamb Sec. Dir.	7	257
Churchill	CT1	5	5	Barrett	Buss. Mgr.	4	148
Cossette	CT1	4	30	Beecham	Lot Mkt Rep	5	5
Deroode	Stores Clerk	2	2	Beishanger	Lot Mkt Rep	5	5
Driver	CT1	4	5	Berneck	Comm Invest Sen	5	5
Erion	CT3	7	42	Blomquist	Audt Princ	6	6
Evenson	Per Aide Sen	11	132	Boehm	Asst Dir St Lot	8	8
Flom	Edp Pro Sen	2	2	Boerner	Lot Mkt Rep	5	5
Frakes	Clerk 1	3	7	Bolstad	Lot Mkt Rep	5	5
Gertz	Gen Min Worker	5	5	Brenam	Lot Mkt Rep	5	5
Hansen	Stores Clerk	4	4	Bristow	Lot Mkt Rep	5	5
Harty	Stores Clk Sen	4	4	Buchholtz	Lot Reg Mkt Supv	5	5
Hoffmann	Exec 1	8	42	Burleson	Exec Asst	8	8
Holets	CT1	5	5	Bye	Lot Mkt Rep	5	5
Hoyum	Stores Clerk	3	3	Christenson	Stud Wkr Cler	4	4
Jackson	CT1	6	48	Conroy	Lot Mkt Rep	5	5
Jahner	Stores Clk Sen	4	4	Conroy	Off Serv Supv 1	6	123
James	Acct Clk Sen	5	18	Cote	Lot Mkt Rep	5	5
Kapaun	Acct Off	1	1	Crabb	Lot Mkt Rep	5	5
Kapetanias	Edp Opers Tech	3	3	Cruz	Lot Mkt Rep	5	5
Kirby	CT1	3	3	Durheim	Lot Mkt Rep	5	5
Klein	Del Van Driver	4	3	Edwards	Lot Mkt Rep	5	5
Koesling	Admin Sec	6	133	Eichhorn	Lot Mkt Rep	5	5
Kranz	CT1	5	5	Goodspeed	Asst Dir St Lot	5	7
Kuchenmeister	Admin Sec	7	126	Gorghuber	Lot Mkt Rep	5	5
Le	Edp Oper Tech	3	3	Guadardo	Lot Mkt Rep	5	5
Lein	CT1	4	4	Hanson	Lot Reg Mkt Supv	5	5
Lein-Huberg	CT1	5	5	Heffley	Inven Cont Supv	6	6
Machacek	Admin Sec	5	138	Heilzng	Lot Reg Mkt Supv	5	65
Maier	Edp Oper Tech	3	3	Hennen	Asst Dir St Lot	8	223
Maki	CT1	4	6	Hernandez	Lot TelMkt Rep	5	48
Mazzeo	CT1	3	3	Hornanan	Infor Dir	7	180
McCarty	CT1	4	5	Jaeger	Lot Telmkt Supv	5	5
Miller	Syst Anal Sr	6	6	Javorina	Lot Mkt Rep	5	5
Olsen	Syst Anal Unit Sup	6	45	Johnson	Lot Mkt Rep	5	5
Olson	Acct Sup Sr	4	4	Johnson	Lot Sales Sup Mgr	6	6
Proulx	Stores Clerk	3	4	Kellan	Lot Mkt Rep	5	5
Raftevoid	Stores Clerk	3	3	Kivi	Buyer 2	7	176
Robke	Edp Oper Sup	6	6	Knutson	Stud Wk Cler	5	5
Rogers	CT1	4	4	Knutson	Lot Mkt Rep	5	5
Rosendahl	CT1	3	3	Krause	Lot Mkt Rep	5	5
Ruiz	CT1	6	7	Landsman	Lot Mkt Rep	5	5
Schmidt	Gen Maint Wk	3	3	Lance	Lot Reg Mkt Supv	5	5
Schultz	Acct Off	3	3	Lindblad	Lot Mkt Rep	5	5
Sharp	CT1	4	4				

Slatoski Acct Clk Sen

Lonnen Lot Mkt Rep 5 5

Stensrud	CT1	3	9
Stoffel	CT1	3	3
Struss	CT1	4	5
Takavitz	CT1	3	4
Tauer	CT2	5	6
Theisen	CT3	5	83
Waggoner	Clerk 1	5	20
Warner	Stores Clerk	4	3
Weiser	Gen Maint Wk	5	5
Wuertz	CT3	4	43
Yakel	CT1	6	6

Average Position Tenure (Months)	4	
Average State Tenure (Months)		20
Count	59	

Makidon	Mgmt Anal Supv 2	5	5
Kasterson	Infor Mgmt Serv D	7	7
McConnell	Lot Leg Coun	9	9
Meskan	Lot Mkt Rep	5	5
Mills	Lot Retail Relat	6	6
Moir	Lot Mkt Rep	5	5
Montgomery	Lot Mkt Rep	5	5
Naughton	Admin Officer	8	204
Okerlund	Lot Fiscal Mgr	6	6
Olson	Lot Mkt Rep	5	5
Olson	Lot Mkt Rep	5	5
Osceola	Lot Mkt Rep	5	5
Pallin	Lot Mkt Rep	5	25
Pessenda	Lot Mkt Rep	5	5
Quicksell	Persn Off Sen	7	70
Rebholz	Lot Key Acct Rep	5	5
Rolbiecki	Lot Mkt Rep	5	5
Roth	Exec Asst	9	9
Rugroden	Cash Flow Anal	3	3
Rushmeyer	Infor Off 1	6	8
Schlegal	Lot Mkt Rep	5	5
Scofield	Info Off 2	4	4
Seifert	Spec Event Coord	7	7
Smith	Off Serv Supv 3	6	6
Staniger	Lot Reg Mkt Supv	5	5
Tomaszewski	Stud Wk Cler	4	4
Vandebrake	Lot Mkt Rep	5	5
Vaughan	Stud Wk Cler	4	4
Watters	Lot Mkt Rep	5	5
Weaver	Lot Mkt Rep	5	5
Wiebolt	Lot Mkt Rep	3	3
Wilkinson	Lot Metro Reg Mkt	5	5
Williams	Comm Invert Sen	5	5
Winter	Lot Mkt Rep	5	5
Wudtla	Lot Mkt Rep	5	5
Average Position Tenure (Months)			
Average State Tenure (Months)			
Count			



# Appendix 8

## DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT

### UNCLASSIFIED POSITIONS

Top Management		Move to Classified Service	
PCN	Job Title	PCN	Job Title
177650	Commissioner	167730	Plner Sr St
030340	Director-Tourism	189950	Plner Sr St
071810	Deputy Comm-Trade	167340	Plner Sr St
030370	Deputy Comm-Bus Promo	250080	Plner Sr St
177570	Asst Comm-Trade	219820	Plng Grants Anal
183360	Deputy Comm-Pol Anal/S&T	093290	Plng Grants Anal
073620	Deputy Comm-Comm Dev	073150	Plng Grants Anal
073570	Asst Comm-Comm Dev	133850	Plng Grants Anal
183370	Dir-Rural Dev Bd	266470	Plng Grants Anal Sr
220770	Dir-Pub.Facility Auth	190650	Mgmt Anal 4
189720	Dir-Agric & Res Dev	244530	Planner
178410	Dir-Intl Trade	030360	Planner
183930	Dir-Export Fin	218030	Tourism Info Clrk
216650	Asst Dir Tourism (Exec Dir Am Sports Comm)	218070	Tourism Info Clrk
177670	Asst to Comm	218040	Tourism Info Clrk
190430	Sr Admin Officer	965820	Clrk Typist 1
133830	Dir-Developmental Resources	271970	Clrk Typist 2
183350	Dir-Info Systems	965830	Clrk Typist 1
182590	Dir-Science & Techn	926790	Trvl & Tourism Rep
192760	Dir-Mktg Services	189750	Exec 2
189730	Dir-Env'tal Res Devel	236220	Clrk Typist 2
276660	Dir-CANDO	262010	Clrk Typist 1
Subtotal	22	Subtotal	22
Short Term Positions		Other	
PCN	Job Title	PCN	Job Title
270810	Community Dev Rep-Toursim Loans	189820	Intl Trade Rep
275620	Plng Grnts Anal Sr-CANDO	190340	Intl Trade Rep
275630	Plng Grnts Anal Sr-CANDO	192730	Plner Prin St-Trade Office
185170	Plng Grnts Anal Sr-Comm Dev	233590	Info Officer 1-Desktop Publ
196030	MIS Coordinator	220880	Tourism Reg Mgr
266470	Plng Grnts Anal Sr-Celebrate MN	220860	Tourism Reg Mgr
185330	Info Officer 2-Celebrate MN	220870	Tourism Reg Mgr
233130	Plner Prin St-Celebrate MN	030310	Tourism Reg Mgr
Subtotal	8	270800	Trvl & Tourism Rep
		221660	Plnr Prin St
		196000	Plnr Sr St
		969900	Plnr Sr St
		233570	Info Officer 1
TOTAL UNCLASSIFIED		Subtotal	13

