

June 15, 2012

REGULAR MEETING MINUTES
ILLINOIS CIVIL SERVICE COMMISSION
June 15, 2012

I. CALL TO ORDER THE REGULAR OPEN MEETING AT 11:05 A.M. AT 160 NORTH LASALLE STREET, SUITE S-901, CHICAGO, ILLINOIS

II. PRESENT

Chris Kolker, Chairman; Anita M. Cummings¹, Garrett P. FitzGerald, and Susan Moylan Krey, Commissioners; Daniel Stralka, Executive Director; Andrew Barris, Assistant Executive Director; Roneta Taylor (by telephone), Mark Magill (by telephone), and Paul Cerpa, Illinois Department of Central Management Services; Elizabeth Sarmiento, Scott Viniard (by telephone) and Heidi Guernsey (by telephone), Illinois Department of Human Services; and Jessica Nunes (by telephone) and Connie Westfall (by telephone), Administrative & Regulatory Shared Services Center.

III. APPROVAL OF MINUTES OF REGULAR OPEN MEETING HELD ON MAY 18, 2012

IT WAS MOVED BY COMMISSIONER KREY, SECONDED BY COMMISSIONER FITZGERALD, AND THE MOTION ADOPTED 3-0 TO APPROVE THE MINUTES OF THE REGULAR OPEN MEETING HELD ON MAY 18, 2012.

¹ Commissioner Cummings arrived at 11:15 a.m.

June 15, 2012

IV. EXEMPTIONS UNDER SECTION 4d(3) OF THE PERSONNEL CODE

A. Report on Exempt Positions from Illinois Dept. of Central Management Services

<u>Agency</u>	<u>Total Employees</u>	<u>Number of Exempt Positions</u>
Aging.....	137.....	11
Agriculture	345.....	16
Arts Council	18.....	2
Capitol Development Board.....	43.....	0
Central Management Services	1,596.....	113
Children and Family Services	2,867.....	49
Civil Service Commission.....	4.....	0
Commerce & Economic Opportunity	393.....	67
Commerce Commission	76.....	0
Corrections.....	11,326.....	105
Criminal Justice Authority	61.....	5
Deaf and Hard of Hearing Comm.....	7.....	1
Developmental Disabilities Council.....	8.....	1
Emergency Management Agency.....	89.....	6
Employment Security	1,799.....	26
Environmental Protection Agency.....	849.....	16
Financial & Professional Regulation.....	462.....	42
Gaming Board	130.....	5
Guardianship and Advocacy	101.....	7
Healthcare and Family Services	2,088.....	25
Historic Preservation Agency.....	175.....	11
Human Rights Commission.....	14.....	2
Human Rights Department	139.....	8
Human Services	12,577.....	76
Illinois Sentencing Policy Advisory Council.....	2.....	2
Illinois Torture Inquiry Relief Commission	2.....	1
Insurance	250.....	13
Investment Board	2.....	1
Juvenile Justice.....	1,253.....	20
Labor	91.....	9
Labor Relations Board Educational.....	11.....	2
Labor Relations Board State.....	17.....	2
Law Enforcement Training & Standards Bd.	18.....	2
Lottery.....	150.....	6
Military Affairs	125.....	3
Natural Resources	1,158.....	28
Pollution Control Board	22.....	1
Prisoner Review Board.....	20.....	0
Property Tax Appeal Board.....	29.....	1
Public Health.....	1,061.....	41
Racing Board.....	2.....	1
Revenue.....	1,662.....	51
State Fire Marshal	129.....	12
State Police.....	1,173.....	6
State Police Merit Board	5.....	1
State Retirement Systems	97.....	2
Transportation	2,311.....	0
Veterans' Affairs.....	1,280.....	9
Workers' Compensation Commission.....	132.....	8
TOTALS	46,306.....	816

B. Governing Rule – Section 1.142 Jurisdiction B Exemptions

- a) The Civil Service Commission shall exercise its judgment when determining whether a position qualifies for exemption from Jurisdiction B under Section 4d(3) of the Personnel Code. The Commission will consider any or all of the following factors inherent in the position and any other factors deemed relevant to the request for exemption:
 - 1) The amount and scope of principal policy making authority;
 - 2) The amount and scope of principal policy administering authority;
 - 3) The amount of independent authority to represent the agency, board or commission to individuals, legislators, organizations or other agencies relative to programmatic responsibilities;
 - 4) The capability to bind the agency, board or commission to a course of action;
 - 5) The nature of the program for which the position has principal policy responsibility;
 - 6) The placement of the position on the organizational chart of the agency, board or commission;
 - 7) The mission, size and geographical scope of the organizational entity or program within the agency, board or commission to which the position is allocated or detailed.
- b) The Commission may, upon its own action after 30 days notice to the Director of Central Management Services or upon the recommendation of the Director of the Department of Central Management Services, rescind the exemption of any position that no longer meets the requirements for exemption set forth in subsection (a). However, rescission of an exemption shall be approved after the Commission has determined that an adequate level of managerial control exists in exempt status that will insure responsive and accountable administrative control of the programs of the agency, board or commission.
- c) For all positions currently exempt by action of the Commission, the Director of Central Management Services shall inform the Commission promptly in writing of all changes in essential functions, reporting structure, working title, work location, position title, position number or specialized knowledge, skills, abilities, licensure or certification.
- d) Prior to granting an exemption from Jurisdiction B under Section 4d(3) of the Personnel Code, the Commission will notify the incumbent of the position, if any, of its proposed action. The incumbent may appear at the Commission meeting at which action is to be taken and present objections to the exemption request.

(Source: Amended at 34 Ill. Reg. 3485, effective March 3, 2010)

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C. Requests for 4d(3) Exemption

Executive Director Daniel Stralka reported:

- As to Item C, this request is for the Associate Deputy Director of the Business Enterprise Program (BEP), a position that reports to the Deputy Director who reports to the Chief Operating Officer who reports to the Director of Illinois Department of Central Management Services (CMS). BEP is a program to help businesses that are owned by minorities, women, and persons with disabilities increase their capacity, grow revenue and enhance their credentials. The primary way this is done is by ensuring that BEP vendors participate in the maximum number of State procurements possible.

The BEP Deputy Director is already 4d(3) exempt and the agency is seeking an additional exempt position in this program area. Such requests typically receive additional scrutiny due to the statutory restriction that eligible positions have “principal” policy responsibilities. While the Commission has approved several such requests in the past from agencies – especially in the Department of Commerce and Economic Opportunity – it is usually due to the nature or size of the supporting program. Such positions are also more likely to be placed in a collective bargaining unit which is inconsistent with 4d(3) exemption.

With regard to this request, the BEP program was recently charged with an additional statutory mandate in Public Act 97-0260, the Veterans Business Program. This program is legislatively placed under CMS and is to foster economic opportunities for service disabled veteran owned small businesses. While this position will be providing support to the Deputy Director in general, it is specifically charged with formulating and implementing the policies for the Veterans Business Program. Given that it has such responsibility for a statutorily designated program, Staff recommended approval of this request.

Paul Cerpa, Deputy Director for BEP, was present and confirmed the above information. Chairman Kolker inquired if this position had been placed in a collective bargaining unit. Mr. Cerpa responded negatively. He further explained how the Veterans Business Program requires that an additional 3% from State procurements be set aside for these businesses – approximately 1400 eligible businesses presently – so that a new process similar to BEP will be developed and run in a parallel manner. This position will have the principal policy responsibility for developing and managing this process.

- As to Item D, this request is for the Assistant Deputy General Counsel – Downstate, a position that reports to the Deputy General Counsel – Downstate who reports to the General Counsel who reports to the Director of the Department of Children & Family Services. This position is three levels removed from the Director and the Commission has never approved a request for an attorney position that far removed from the Director. In addition, the agency acknowledges that the position serves as a legal advisor making it more

appropriate for a Section 4d(5) partial exemption. Finally, the agency stated that exemption was warranted because it oversees other attorneys in the region which counts as a principal policy implementer. Staff responded that such oversight was inadequate to support exemption so the recommendation was to deny this request.

- As to Item E, this request is for the Senior Policy Advisor in the Illinois Emergency Management Agency, a position that reports to the Director. This position was first granted an exemption back in 2008, but it was for a limited term due to uncertainty surrounding whether it would be placed in a collective bargaining unit. For that reason, it was granted a limited term exemption of 12 months. Three times previous to this, the limited term was extended to allow for resolution of this issue. The Commission has consistently indicated that the placement of a position in a collective bargaining unit is inconsistent with a principal policy exemption. The agency comes before the Commission now for another six month extension, having indicated that the position was included in a bargaining unit but that decision remains on appeal. For that reason, Staff recommended approval of this request for another limited term exemption.
- As to Item F, this request is for the Chief of the Bureau of Recruitment and Selection, a position that reports to the Director of the Office of Human Resources who reports to the Secretary of the Department of Human Services (DHS). This position was first granted exemption back in 2003. Last month, it had its exemption rescinded due to extended vacancy. Staff also noted for the agency at the time that the Recruitment and Selection program may not be an appropriate program to support a principal policy exemption since that is primarily the province of CMS. The agency indicated it has now had a waiting appointment to this position approved so it resubmitted it to renew the exemption with minimal changes to the position description. While Staff still has concerns over this program supporting an exempt position, there are a number of factors in favor of exemption including: i) The size of the agency potentially warrants an additional exempt position in the personnel program area; ii) DHS is responsible for the recruitment, testing and selection process of mental health technicians independent of CMS which falls within this position's responsibilities; iii) It has been the practice of the Commission to reinstate exempt status to positions that have had it rescinded due to extended vacancy when the agency demonstrates it is prepared to fill the position; and iv) The hardship potentially caused to the potential appointee who appears to have been caught in the lengthy ePAR process. Staff would recommend approval of this request only with the representation of the agency that the position would be "red-circled" so that a more substantive review of its qualifications can occur the next time it is vacated.

Elizabeth Sarmiento, Director of Human Resources at the Illinois Department of Human Services, requested further elaboration as to Staff's concerns. Executive Director Stralka again noted his concern that the Recruitment and Selection program was not suitable to support exemption given the role of CMS in these functions. Ms. Sarmiento confirmed that the timing of last month's rescission left an appointee whose appointment had finally been approved without a job to be

placed into. She also explained how the term “red circle” references freezing an employee’s pay at the agency so was unsure how it was being used here. Executive Director Stralka explained that it would mean the Commission would approve this exemption request to allow the agency’s contemplated appointment, but that the next time the position becomes vacant the agency would notify the Commission prior to filling it again so that further discussion could occur as to the position’s eligibility for exemption. The Commissioners expressed a consensus with proceeding in this manner and Elizabeth Sarmiento agreed to this approach also.

- These requests are both from the Department of Labor and both report to the Director. Item G is the Chief of Staff while Item H is the Chief Information Officer.

As to Item G, this position has significant input in the longer term policy and planning decisions of the agency. The Commission has traditionally approved requests for such positions so Staff recommended approval of this request. Chairman Kolker noted the importance for agency Director’s to have exempt Chief of Staff positions to ensure control over programs. Executive Director Stralka agreed but noted how agencies at times will request exemption for such titled positions even though there may already be an exempt position with a different title performing these functions.

As to Item H, this position is responsible for all aspects of the agency’s management information system. Again, the Commission has traditionally approved requests for such positions so Staff recommended approval of this request.

IT WAS MOVED BY COMMISSIONER CUMMINGS, SECONDED BY COMMISSIONER KREY, AND THE MOTION ADOPTED 4-0 TO GRANT THE REQUESTS FOR 4D(3) EXEMPTION FOR THE FOLLOWING POSITIONS:

- C: Associate Deputy Director, Business Enterprise Program (CMS)**
- F: Chief of the Bureau of Recruitment and Selection (DHS)**
- G: Chief of Staff (Labor)**
- H: Chief Information Officer (Labor)**

IT WAS MOVED BY COMMISSIONER KREY, SECONDED BY COMMISSIONER FITZGERALD, AND THE MOTION ADOPTED 4-0 TO DENY THE REQUEST FOR 4D(3) EXEMPTION FOR THE FOLLOWING POSITION:

- D: Assistant Deputy General Counsel for Southern Region (DCFS)**

IT WAS MOVED BY COMMISSIONER KREY, SECONDED BY COMMISSIONER CUMMINGS, AND THE MOTION ADOPTED 4-0 TO GRANT THE REQUEST FOR 4D(3) EXEMPTION FOR SIX MONTHS FOR THE FOLLOWING POSITION:

E: Senior Policy Advisor (Emergency Management Agency)

The following 4d(3) exemption requests were granted on June 15, 2012:

C. Illinois Department of Central Management Services

Position Number	40070-37-04-000-01-01
Position Title	Senior Public Service Administrator
Bureau/Division	Business Enterprise Program
Functional Title	Associate Deputy Director, Business Enterprise Program (BEP)
Incumbent	Vacant
Supervisor	Deputy Director who reports to the Director
Location	Cook County

F. Illinois Department of Human Services

Position Number	40070-10-11-200-00-01 ²
Position Title	Senior Public Service Administrator
Bureau/Division	Human Resources
Functional Title	Chief of the Bureau of Recruitment and Selection
Incumbent	Vacant
Supervisor	Human Resources Director who reports to the Secretary
Location	Cook County

G. Illinois Department of Labor

Position Number	40070-15-00-000-00-03
Position Title	Senior Public Service Administrator
Bureau/Division	Director's Office
Functional Title	Chief of Staff
Incumbent	Vacant
Supervisor	Director
Location	Sangamon County

² 4d(3) exemption was previously rescinded on May 18, 2012.

H. Illinois Department of Labor

Position Number	40070-15-10-100-00-02
Position Title	Senior Public Service Administrator
Bureau/Division	Administration
Functional Title	Chief Information Officer
Incumbent	Vacant
Supervisor	Director
Location	Sangamon County

The following 4d(3) exemption request was denied on June 15, 2012:

D. Illinois Department of Children & Family Services

Position Number	40070-16-03-110-00-01
Position Title	Senior Public Service Administrator
Bureau/Division	Legal Services
Functional Title	Assistant Deputy General Counsel for Southern Region
Incumbent	Gregory Seifert
Supervisor	Deputy General Counsel-Downstate who reports to the General Counsel, who reports to the Director
Location	Sangamon County

The following 4d(3) exemption request was granted on June 15, 2012 for six months:

E. Illinois Emergency Management Agency

Position Number	37015-50-17-040-00-03
Position Title	Public Service Administrator
Bureau/Division	Director's Office
Functional Title	Senior Policy Advisor
Incumbent	Phil Anello
Supervisor	Director
Location	Sangamon County

V. CLASS SPECIFICATIONS

- None submitted.

IT WAS MOVED BY CHAIRMAN KOLKER, SECONDED BY COMMISSIONER KREY, AND THE MOTION ADOPTED 4-0 TO DISAPPROVE ANY CLASS SPECIFICATIONS RECEIVED BY THE COMMISSION NOT CONTAINED IN THIS REPORT TO ALLOW ADEQUATE STUDY.

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VI. MOTION TO CLOSE A PORTION OF THE MEETING

IT WAS MOVED BY COMMISSIONER FITZGERALD, SECONDED BY COMMISSIONER KREY, AND BY ROLL CALL VOTE THE MOTION ADOPTED 4-0 TO CLOSE A PORTION OF THE MEETING PURSUANT TO SUBSECTIONS 2(c)(1), 2(c)(4), 2(c)(5), AND 2(c)(11) OF THE OPEN MEETINGS ACT.

KOLKER	YES	CUMMINGS	YES
DALIANIS		FITZGERALD	YES
KREY	YES		

June 15, 2012

VII. RECONVENE THE OPEN MEETING

Upon due and proper notice the regular open meeting of the Illinois Civil Service Commission was reconvened at 160 North LaSalle Street, Suite S-901, Chicago, Illinois at 11:42 a.m.

PRESENT

Chris Kolker, Chairman; Anita M. Cummings, Garrett P. FitzGerald, and Susan Moylan Krey, Commissioners; Daniel Stralka, Executive Director; and Andrew Barris, Assistant Executive Director.

VIII. NON-MERIT APPOINTMENT REPORT

The Personnel Code permits non-merit appointments for a limited period of time, i.e., emergency appointments shall not exceed 60 days and shall not be renewed, and positions shall not be filled on a temporary or provisional basis for more than six months out of any twelve-month period. Consecutive non-merit appointments are not violative of the Code; however, they do present a possible evasion of merit principles and should be monitored. Set forth below is the number of consecutive non-merit appointments made by each department. These statistics are from the Illinois Department of Central Management Services' Consecutive Non-Merit Report.

Agency	4/30/12	5/31/12	5/31/11
Aging	1	1	0
Arts Council	1	1	0
Central Management Services	0	0	1
Children and Family Services	3	4	2
Corrections	1	0	0
Employment Security	0	0	12
Healthcare and Family Services	3	3	4
Human Rights	1	1	0
Human Services	4	1	2
Natural Resources	1	3	5
Property Tax Appeal Board	0	0	6
Veterans' Affairs	0	0	1
Totals	15	14	33

IX. INTERLOCUTORY APPEAL

LA-7-12

Employee	Katherine Levin	Appeal Date	08/10/11
Agency	Educational Labor Relations Board	Order Date	05/17/12
Type	Layoff	ALJ	Andrew Barris
Issue(s)	Does the Commission have jurisdiction to hear the appeal?	Order	The Commission has jurisdiction.

CHAIRMAN KOLKER RECUSED HIMSELF FROM VOTING ON THIS APPEAL. IT WAS MOVED BY COMMISSIONER CUMMINGS, SECONDED BY COMMISSIONER FITZGERALD, BY VOTE OF 3-0, THE RESOLUTION OF THE COMMISSION IS THAT LEVIN WAS EFFECTIVELY LAID OFF FROM HER POSITION ON JULY 31, 2011 AS OPPOSED TO RESIGNING FROM HER POSITION ON AUGUST 1, 2011 AND THEREFORE, THE CIVIL SERVICE COMMISSION HAS JURISDICTION OVER THIS LAYOFF APPEAL. THE INVESTIGATION IN THIS MATTER MAY CONTINUE IN ACCORDANCE WITH THE AFOREMENTIONED RESOLUTION OF THIS ISSUE.

X. PUBLICLY ANNOUNCED DECISIONS RESULTING FROM APPEAL

DA-15-12³

Employee	Orelia Cornell-Underwood	Appeal Date	9/13/11
Agency	Human Services	Decision Date	6/04/12
Type	Discharge	Proposal for Decision	30-day suspension plus the duration of her suspension pending discharge
ALJ	Daniel Stralka		

IT WAS MOVED BY COMMISSIONER CUMMINGS, SECONDED BY COMMISSIONER FITZGERALD, AND BY ROLL CALL VOTE OF 4-0 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE’S PROPOSAL FOR DECISION THAT THE CHARGES HAVE BEEN PARTIALLY PROVEN AND WARRANT A 30-DAY SUSPENSION PLUS THE DURATION OF HER SUSPENSION PENDING DISCHARGE FOR THE REASONS SET FORTH IN THE PROPOSAL FOR DECISION DATED JUNE 4, 2012.

KOLKER	YES	CUMMINGS	YES
DALIANIS		FITZGERALD	YES
KREY	YES		

³ DA-15-12, DA-17-12, and DA-18-12 were consolidated on October 11, 2011.

IT WAS MOVED BY COMMISSIONER FITZGERALD, SECONDED BY COMMISSIONER CUMMINGS, AND BY ROLL CALL VOTE OF 4-0 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION THAT THE CHARGE HAS BEEN PROVEN AND WARRANTS DISCHARGE FOR THE REASONS SET FORTH IN THE PROPOSAL FOR DECISION ON REMAND DATED MAY 31, 2012.

KOLKER	YES	CUMMINGS	YES
DALIANIS		FITZGERALD	YES
KREY	YES		

XI. STAFF REPORT

Executive Director Daniel Stralka reported:

- That according to a recent opinion of the Attorney General the use of a personal communication device to conduct official business during a meeting may be subject to a FOIA request. A general discussion followed in which all Commissioners participated.
- The Commission's fiscal year 2013 appropriation as passed by the legislature represented a 20% decrease from the Commission's fiscal year 2012 reallocated appropriation. Given the hardship this would impose on the Commission's operations, he is meeting with representatives of the Governor's Office to review options for restoring needed funds for next year.

XII. REVIEW OF CLOSED MEETING MINUTES PURSUANT TO OPEN MEETINGS ACT

Executive Director Daniel Stralka reported that after review of the Closed Meeting Minutes, the need for confidentiality still exists as to all those Minutes.

IT WAS MOVED BY COMMISSIONER FITZGERALD, SECONDED BY CHAIRMAN KOLKER, AND THE MOTION ADOPTED 4-0 THAT AFTER REVIEW OF CLOSED MEETING MINUTES PURSUANT TO THE OPEN MEETINGS ACT, THE NEED FOR CONFIDENTIALITY STILL EXISTS AS TO ALL THOSE MINUTES.

XIII. ANNOUNCEMENT OF NEXT MEETING

Announcement was made of the next regular open meeting to be held Friday, July 20, 2012 at 11:00 a.m. in the Commission's Chicago office.

June 15, 2012

XIV. MOTION TO ADJOURN

IT WAS MOVED BY CHAIRMAN KOLKER, SECONDED BY COMMISSIONER KREY, AND THE MOTION ADOPTED 4-0 TO ADJOURN THE MEETING AT 11:50 A.M.