

 Prosecuting Attorneys' Council of Georgia		
Policies & Procedures		Approved Oct. 30, 2012; Amended Feb. 27, 2014
14.1	Human Resources	Limitations on Hiring Due to Budget Constraints

1. Authority.

- (a) This policy is adopted pursuant to O.C.G.A. §§ 15-18-19, 15-18-40(c)(1), 15-18-44, 45-12-87 and Prosecuting Attorneys' Council of Georgia (PACGA) Rule 3.6(a)(4).
- (b) By law, the Council is “the fiscal officer for the prosecuting attorneys” of this state. As the fiscal officer, the Council has certain fiduciary responsibilities to manage the funds that are appropriated by the General Assembly for the operations of the prosecuting attorneys of this state, or which are otherwise available for such purpose. Among those duties is the obligation to insure that expenditures do not exceed the sums specified by the annual appropriations Acts. See O.C.G.A. § 45-12-87.
- (c) By law, the Council is also responsible for the payment of the compensation of state paid personnel employed within the District Attorneys' offices and providing human resources support for those personnel which includes, but is not limited to:
 - (1) The payment of terminal leave pay to any employee who is separated from employment by death, retirement, resignation, dismissal, abandonment or due to any manner for any accrued unused annual leave which has not been forfeited up to a maximum of forty-five (45) days. See PACGA R. 3.19(e).
 - (2) The payment of the employer's contribution for any forfeited leave which a state paid employee who is a member of the Employees' Retirement System of Georgia is entitled pursuant to O.C.G.A. § 47-2-91, which payment must be made from the funds appropriated for the operations of the District Attorneys.
- (d) By rule adopted by the Council and approved by the District Attorneys as provided in O.C.G.A. § 15-18-19(c),



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Except as specifically authorized by the Council in accordance with O.C.G.A. § 15-18- 14(b)(3)¹, no person shall be appointed to a state-paid position unless a vacancy exists for that position. A vacancy is not deemed to exist if:

(A) the person previously holding the position is granted annual leave, sick leave or compensatory time for any period of time immediately prior to the effective date of such person's resignation or retirement;

(B) the person previously holding the position is receiving terminal leave pay for unused annual leave for the number of days of accrued leave for which the person is paid.

Rules of the Prosecuting Attorneys' Council of Georgia, R. 3.6(a)(4)

2. Procedures.

(a) In order to simplify the administration of R. 3.6(a)(4) and except as provided in Sections 3 and 4 of this Policy, in the event that a state-paid position within a district attorney's office becomes vacant as a result of the resignation, discharge, death or retirement of the incumbent, such position shall remain vacant for a period of two months from the date the incumbent receives his or her final monthly paycheck after which the district attorney may fill such vacancy on the first day of the month following the expiration of the two month period.

(b) The provisions of this Section apply to:

(1) The resignation of a state-paid employee of a district attorney who resigns in order to accept employment as a state-paid employee in another district attorney's office;

(2) An assistant district attorney position that is funded by the Department of Human Services (DHS) pursuant to O.C.G.A. § 15-18-14(a)(1)(B) unless DHS provides the Council with sufficient funds to fully reimburse the Council for the cost of any terminal leave pay due the incumbent;

¹ There is no O.C.G.A. § 15-18- 14(b)(3) in the current Code, nor was there at the time of the adoption of Council R. 3.6(a)(4) in 1999.



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- (3) A position that is funded in accordance with O.C.G.A. § 15-18-20.1 pursuant to a contract between the Council and the governing authority of a county or municipal government and which are referred to as being state-paid, county reimbursed (SPCR) positions, unless the contracting local government has provided the Council with sufficient funds to fully reimburse the Council for the cost of any terminal leave pay due the incumbent.
3. Exemptions. Section 2 does not apply to:
 - (a) A vacancy in the office of the district attorney which is filled by election or appointment by the Governor;
 - (b) A chief assistant district attorney or senior assistant district attorney who becomes acting district attorney pursuant to O.C.G.A. § 15-18-16 or who reverts to his or her former position upon the election or appointment of the district attorney.
4. Application for Waiver. A district attorney may make application to the Council for a waiver of the provisions of Section 2 of this Policy.
 - (a) Any such application for waiver shall be submitted in writing, signed by the district attorney, addressed to the Chairman and delivered to the Council office in Atlanta.
 - (1) An application for waiver shall succinctly set forth the reasons why the district attorney believes that filling such position is critical to the operation of the office and explain how a failure to fill such position will adversely impact the administration of justice in the Judicial Circuit. It shall also set forth any costs to the state budget that can reasonably be anticipated if the waiver is approved.
 - (2) Such application shall also include a listing of all positions which have been authorized in such district attorney's office, the source of the funding for each position and, for each assistant district attorney position, the number of years of experience, both as lawyer and as a prosecuting attorney, for each such position.
 - (b) An application for a waiver must be received at the Council offices not less than 10 days prior to any regular or special meeting of the Council in order for it to be considered by the

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Council. Any application which is received within 10 days of a Council meeting will automatically be deferred to the meeting next following. The Council may waive this requirement by a majority vote.

- (c) Upon receipt of an application for a waiver, the Council staff shall prepare and submit to the Council an estimate of the financial impact that granting such waiver will have on the overall budget for the fiscal year.
 - (1) If after review, the staff determines that approving the waiver will not result in a net increase in the financial liability to state appropriations (i.e., is budget neutral), the Executive Director may submit the application to the Council by electronic means with a recommendation that the waiver be approved. The Council may vote to accept such recommendation by electronic means. If a majority of the Council does not approve the waiver, the application shall be placed on the agenda for the next Council meeting.
 - (2) If after review, the staff determines that granting the waiver may result in a net increase in the financial liability to state appropriations, the application shall be placed on the agenda for the next Council meeting.
 - (3) An application will be considered as not causing a net increase in the financial liability to state appropriations (budget neutral) if as a result of the waiver, the overall cost remains the same or is less than the amount of compensation, including fringe benefits, that would have been paid to the incumbent employee during the fiscal year. In calculating such financial liability, the staff shall consider:
 - (A) The cost of any terminal leave payout (if any);
 - (B) The cost of the employer share of any accumulations of forfeited annual and sick leave which the Council is responsible for paying to the Employees Retirement System of Georgia pursuant to O.C.G.A. §§ 47-2-91 for the former incumbent of the position;²

² Ga. Op. Att’y Gen. 91-30.



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- (C) Any increase in the amount of compensation that will be paid to the new employee and compared to the compensation paid the former incumbent of the position;
 - (D) Any savings in costs as a result of the position being vacant.
- (4) If a state employee resigns from a position in one district attorney's office in order to accept employment as a state-paid employee in another district attorney's office, it will be considered a transfer and the the overall affect of such transfer on state appropriations will be considered.
- (d) If a waiver is approved, the Council may provide that such waiver shall be subject to such conditions or restrictions as the Council deems appropriate and fiscally necessary.
- (e) No waiver shall be granted to fill a state-paid position which exists as a result of the application of O.C.G.A. § 15-18-28 to a Judicial Circuit which has been split into two or more Judicial Circuits.
5. This Policy supersedes in its entirety a Resolution adopted by the Council October 21, 2010, relating to the hiring freeze for state-paid personnel employed by the District Attorneys pursuant to Chapter 18 of Title 15 of the Official Code of Georgia Annotated, as amended by a Resolution adopted January 27, 2011 and shall apply to any vacancy that exists on or after the date that this policy is adopted.
6. The Council may, by a majority vote, suspend this policy or reinstate it based on the availability of funds appropriated or otherwise available for the operations of the district attorneys.³

³ Policy 14-1 was amended Feb. 27, 2014 to add Section 6 which was effective upon adoption by the Council.