

ENROLLED HOUSE  
BILL NO. 2021

By: Dunegan of the House

and

Dickerson of the Senate

An Act relating to the Oklahoma Personnel Act; amending 74 O.S. 1991, Sections 840.3, as amended by Section 1, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994, Section 5, Chapter 242, O.S.L. 1994, 841.12, as amended by Section 35, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994, 841.7, as last amended by Section 1, Chapter 84, O.S.L. 1993, and as renumbered by Section 54, Chapter 242, O.S.L. 1994, 841.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, 62 O.S. 1991, Section 7.12, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 1, Chapter 274, O.S.L. 1994, 74 O.S. 1991, Sections 840.26, as renumbered by Section 54, Chapter 242, O.S.L. 1994, 840.27, as renumbered by Section 54, Chapter 242, O.S.L. 1994, 840.29, as renumbered by Section 54, Chapter 242, O.S.L. 1994, 840.30, as renumbered by Section 54, Chapter 242, O.S.L. 1994, Section 2, Chapter 242, O.S.L. 1994, 840.22, as amended by Section 24, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994, 840.19, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-4.12), and as amended by Section 1 of Enrolled House Bill No. 1577 of the 1st Session of the 45th Oklahoma Legislature, 840.20, as last amended by Section 23, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994, 841.13, as amended by Section 6, Chapter 367, O.S.L. 1992, and as renumbered by Section 54, Chapter 242, O.S.L. 1994, 841.15, as amended by Section 8, Chapter 367, O.S.L. 1992, and as renumbered by Section 54, Chapter 242, O.S.L. 1994, 841.13A, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and 841.15A, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Sections 840-1.3, 840-1.15, 840-1.19, 840-2.5, 840-2.6, 840-2.16, 840-3.9, 840-3.10, 840-3.12, 840-3.13, 840-4.1, 840-4.3, 840-4.13, 840-6.5, 840-6.6, 840-6.7 and 840-6.8), which relate to the Oklahoma Personnel Act; adding definition; modifying certain delegations; prohibiting certain delegations prior to certain date; modifying requirement for distribution of certain rules; deleting certain requirements relating to distribution of the State Employees Bill of Rights; defining term to specify entities restricted from taking certain actions against

employees; modifying references; modifying duty of Oklahoma Merit Protection Commission; removing full-time employee restriction from certain salary adjustment provisions; providing for services without charge or upon contractual basis; defining terms; deleting prohibition related to interchange of employees; modifying rights and procedures with respect to interchange; creating the Certified Public Manager Program; stating purpose; requiring adoption of rules; specifying content of rules; prescribing procedures related to placement of state entities under Merit System of Personnel Administration; providing for interpretation of certain statutory provisions; authorizing delegation of audit function; modifying certain qualification for classification; modifying provisions related to certain examinations or competition for positions; requiring certain certification for certain purposes; authorizing delegation for such certification; modifying certain probationary period; authorizing implementation of certain pilot project; prescribing conditions; granting certain authority to Administrator of Office of Personnel Management; granting authority to state agencies with respect to placement of employees; precluding exercise of jurisdiction by Oklahoma Merit Protection Commission; providing exceptions; conforming references; modifying period of time required for notification to employees; modifying certain appeal and hearing procedures; modifying references to Alternative Dispute Resolution Program; modifying terms; modifying certain procedures; providing for payment of certain costs to prevailing party; prescribing procedures for payment of costs; waiving certain permanent rules; amending 57 O.S. 1991, Section 510, as amended by Section 1 of Enrolled House Bill No. 1211 of the 1st Session of the 45th Oklahoma Legislature, which relates to powers and duties of the Director of the Oklahoma Department of Corrections; deleting references to certain positions; deleting certain dates as of which certain correctional officers and guards are subject to certain qualifications; repealing 62 O.S. 1991, Section 7.12, as last amended by Section 46, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-2.16), which is a duplicate section; providing for codification; providing for recodification; providing for noncodification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 1991, Section 840.3, as amended by Section 1, Chapter 242, O.S.L. 1994, and as renumbered by

Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-1.3), is amended to read as follows:

Section 840-1.3 As used in this act:

1. "Agency" means any office, department, board, commission or institution of the executive branch of state government;
2. "Employee" or "state employee" means an elected or appointed officer or employee of an agency unless otherwise indicated;
3. "Appointing authority" means the chief administrative officer of an agency;
4. "Class" or "class of positions" means positions that are sufficiently similar in duties, levels of responsibility, and requirements of the work to warrant similar treatment as to title, pay grade, and minimum qualifications;
5. "Class specification" means a written document that describes a class;
6. "Classification plan" means the orderly arrangement of positions within an agency into separate and distinct classes so that each class will contain those positions which involve similar or comparable skills, duties and responsibilities;
7. "Classified service" means state employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration;
8. "Examination" means any technique or procedure designed to determine the qualification, fitness, and ability of the persons examined to perform the duties and responsibilities of the class or position;
9. "Interagency transfer" means an action in which an employee leaves employment with one agency and enters employment with another agency while continuously employed with the state;
10. "Intra-agency transfer" means moving an employee from one position to another position with the same agency either with or without reclassification;
11. "Job-related organization" means a membership association which collects annual dues, conducts annual meetings and provides job-related education for its members and which includes state employees, including any association for which payroll deductions for membership dues are authorized pursuant to paragraph 5 of subsection B of Section 7.10 of Title 62 of the Oklahoma Statutes;
12. "Lateral transfer" means reclassification of an employee to another class with the same salary grade;
13. "Merit Rules" or "Merit Rules for Employment" or "Merit System of Personnel Administration Rules" means rules adopted by the Administrator of the Office of Personnel Management or the Oklahoma Merit Protection Commission pursuant to the Oklahoma Personnel Act;
14. "Noncompetitive appointment" means the appointment of a person to a noncompetitive class;
15. "Noncompetitive class" means a class of positions of unskilled or semiskilled labor or a similar class designated by the Office of Personnel Management as noncompetitive;
16. "Permanent classified employee" means a classified service employee who has acquired permanent status in accordance with the Oklahoma Personnel Act, and rules adopted pursuant thereto, and who has the right to appeal involuntary demotion, suspension without pay, and discharge to the Commission;
17. "Presiding official" means a person serving the Oklahoma Merit Protection Commission in the capacity of administrative hearing officer, mediator, or other alternative dispute resolution arbitrator or facilitator;
18. "Progressive discipline" means a system designed to ensure the consistency, impartiality and predictability of discipline and

the flexibility to vary penalties if justified by aggravating or mitigating conditions;

19. "Regular and consistent" means, in connection with the work assignments of an employee, the usual and normal work assignments of the employee, excluding incidental, casual, or occasional tasks and activities the employee assumes without direction to do so. Temporary work assignments of less than sixty (60) days in any twelve (12) consecutive months period shall not be considered regular and consistent;

20. "Regular unclassified service employee" means an unclassified service employee who is not on a temporary or other time-limited appointment;

~~20.~~ 21. "Unclassified service" or "exempt service" means employees and positions excluded from coverage of the Oklahoma Merit System of Personnel Administration;

~~21.~~ 22. "Merit System" means the Oklahoma Merit System of Personnel Administration;

~~22.~~ 23. "Administrator" means the appointing authority of the Office of Personnel Management;

~~23.~~ 24. "Executive Director" means the appointing authority of the Oklahoma Merit Protection Commission;

~~24.~~ 25. "Office" means the Office of Personnel Management;

~~25.~~ 26. "Commission" means the Oklahoma Merit Protection Commission; and

~~26.~~ 27. "Veteran" means a person who has been honorably discharged from the Armed Forces of the United States and has been a resident of Oklahoma for at least one (1) year prior to the date of the examination.

SECTION 2. AMENDATORY Section 5, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-1.15), is amended to read as follows:

Section 840-1.15 A. Effective September 1, 1994, there is hereby created a nine-member Human Resources Management Advisory Committee. The membership of the advisory body shall be as follows:

1. The Administrator of the Office of Personnel Management or a designee; and

2. The Executive Director of the Oklahoma Merit Protection Commission or a designee; and

3. The Executive Director of the Oklahoma Public Employees Association or a designee; and

4. Two members shall be appointed by the Governor, one of whom shall be an employee of an agency employing less than two hundred full-time-equivalent employees and the other shall be an employee of an agency employing more than two hundred full-time-equivalent employees; and

5. Two members appointed by the Speaker of the House of Representatives, one of whom shall be a member of the House of Representatives, the other shall have human resource management experience in the public sector; and

6. Two members appointed by the President Pro Tempore of the Senate, one of whom shall be a member of the Senate, the other shall have human resource management experience in the public sector.

B. The Administrator or designee shall chair the Advisory Committee. The Chairman of the Advisory Committee shall call the first meeting of the Advisory Committee by September 15, 1994. A majority of the members of the Advisory Committee shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining members to exercise all of the powers of the Advisory Committee, and every act of a majority of a quorum of the members present shall be deemed an act of the Advisory Committee.

Any vacancy in office shall be filled in the same manner as the original appointment. Staff for the Advisory Committee shall be provided by the Office of Personnel Management and the Oklahoma Merit Protection Commission.

The Advisory Committee shall be exempt from the Administrative Procedures Act and shall not have authority to promulgate administrative rules pursuant to Article I of the Administrative Procedures Act.

C. Members of the Advisory Committee shall receive no compensation for serving on the Advisory Committee but shall receive travel reimbursement for their necessary travel expenses incurred in the performance of their duties on the Advisory Committee as follows:

- a. legislative members of the Advisory Committee shall be reimbursed in accordance with Section 456 of Title 74 of the Oklahoma Statutes from the legislative body in which they serve,
- b. nonlegislative members of the Advisory Committee who are officers or employees of the state shall be reimbursed by their employing agency in accordance with the State Travel Reimbursement Act, and
- c. members of the Advisory Committee who are not otherwise officers or employees of the state shall be reimbursed by the Office of Personnel Management in accordance with the State Travel Reimbursement Act.

D. The Advisory Committee shall conduct the following studies and shall make recommendations to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives according to the following schedule:

1. Study of the State Government Positions.

The Advisory Committee shall study the nature, status, functions, and composition of the classified and unclassified services of the state. In making recommendations based on this study, the Advisory Committee shall include recommendations regarding:

- a. appropriate conditions and provisions for employment in the classified and unclassified services,
- b. the types of offices, positions, and personnel that should comprise the classified service and the unclassified service, including recommendations for the transfer of positions from the classified service to the unclassified service and vice versa, and
- c. the establishment of a career or senior executive service.

These recommendations shall be submitted by December 1, 1994;

2. Study of Recruitment and Selection.

The Advisory Committee shall study the laws, standards, policies, and procedures for recruiting, screening, and certifying persons for appointment and promotion within the Merit System. The study may include but shall not be limited to:

- a. use of a wide array of testing methods ranging from improved tests, rankings of individual achievement records, oral interviews and simulations,
- b. creation of a method for combining and ranking written tests with individual achievement records and other valid assessment criteria,
- c. creation of alternative assessment criteria based on superior academic record or other professional achievement,

- d. creation of tests for a broad series of similar occupations, and
- e. exempting classifications requiring state or nationally recognized professional licensure from this testing and rating procedures.

The Advisory Committee's recommendations shall be submitted by February 1, 1995;

3. Study of Single Leave.

The Advisory Committee is to study the feasibility and the advantages or disadvantages of creating a system for state government to accrue leave on an undifferentiated basis in lieu of the current practice that divides leave accrual into annual and sick leave. The Advisory Committee shall consider the fiscal impact and potential benefits that state employees may derive from such reform in the leave system for the state service. The Advisory Committee shall submit its recommendations regarding this study by July 1, 1995;

4. Study of Performance Appraisals.

The Advisory Committee shall study the purposes for, and uses of, employee performance appraisals within Merit System agencies. It shall consider:

- a. an annual evaluation of the employee's performance of assigned duties and responsibilities,
- b. factors that affect individual, work group, or agency performance,
- c. consideration of acquisition of additional skills and competencies relevant to agency performance,
- d. information solicited from the state employee's peers, if appropriate, and
- e. an annual evaluation of supervisors in agencies that shall include performance evaluation information from employees of their supervisors.

The recommendations of the Advisory Committee shall include guidelines for a new performance appraisal system for the classified service. The recommendations shall be submitted by July 1, 1995;

5. Study of Delegation of Personnel Functions of the Office of Personnel Management, Model Projects and Annual Agency Human Resource Management Plans and Self-Evaluations.

The Advisory Committee shall recommend systems and establish standards and procedures for delegating to appointing authorities the authority to administer human resources functions normally conducted by the Office of Personnel Management to appointing authorities. The delegation projects shall not include discipline or compensation. Recommendations for legislation to implement the Delegation Program shall be submitted by March 1, 1995. Additional recommendations for implementation shall be submitted by August 1, 1995. Delegation would be restricted to two initial delegation approvals, one involving position classification ~~or~~ and one involving certification of candidates. One delegation effort would be to an agency with more than two hundred full-time-equivalent employees and the other to an agency under two hundred full-time-equivalent employees. The Administrator shall have the authority to approve delegation applications which shall constitute authority for the agency to implement approved delegations of personnel authority. No initial delegation could start before January 1, 1996. No additional delegations may start before January 1, 1997.

The Advisory Committee is to develop recommendations to create a program to allow agencies to design model human resource projects to test and evaluate the effect of innovative policies, standards, and procedures.

The number and scope of model projects would be limited only by capacity of the agency to implement the model projects, the quality of model project applications, and the ability of the Office of Personnel Management to monitor the projects. The Advisory Committee would have to approve the projects and would receive recommendations from the Office of Personnel Management Administrator. Upon approval by the Advisory Committee, the Administrator shall have the authority to approve model project applications which shall constitute authority for the agency to implement approved model projects. No model projects would be able to start before January 1, 1996.

Such procedures for delegations of personnel authority and model projects may include, but not be limited to, an evaluation component, employee participation in the development of the plan and notification of approved delegation of personnel authority or model project, audits, and conditions for termination of a delegation of personnel authority or a model project by the Administrator.

A Human Resource Management Plan and Self-Evaluation Report system for agencies should include but not be limited to provisions related to affirmative action; staffing, recruitment, and promotion; classification and compensation; training and staff development expenditures; the reporting of internal agency grievances and discrimination complaints filed, discharges, suspensions without pay and demotions, and number of investigations directed by the Oklahoma Merit Protection Commission and the outcome of all such actions; and strategies for assuring employee participation in the development of agency personnel activities. The self-evaluation should include comparisons with the previous year or years' personnel actions. The Advisory Committee shall submit its recommendations regarding this study by January 1, 1996.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 841.12, as amended by Section 35, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-1.19), is amended to read as follows:

Section 840-1.19 A. ~~It shall be the responsibility of the Office of Personnel Management to supply all state agencies with a sufficient quantity of Merit System of Personnel Administration Rules promulgated by that Office for distribution to all employees of the classified service.~~ It shall be the responsibility of each appointing authority to provide a copy of such rules distribute copies of the Merit System of Personnel Administration Rules promulgated and published by the Administrator of the Office of Personnel Management or the Merit Protection Commission, respectively, to all classified employees of the classified service employed in his agency upon becoming subject to this act at the request of the Administrator or the Executive Director.

B. ~~It shall be the responsibility of the Oklahoma Merit Protection Commission to supply all state agencies with a sufficient quantity of the provisions of the Oklahoma State Employee Bill of Rights within thirty (30) calendar days of the effective date of this act for distribution to all state employees. It shall be the responsibility of each appointing authority to provide a copy of said provisions of the Oklahoma State Employee Bill of Rights to all state employees employed in his agency within sixty (60) calendar days of the effective date of this act.~~

C. ~~Every new state employee shall be provided a copy of the provisions of the Oklahoma State Employee Bill of Rights by his appointing authority upon the effective date of his appointment.~~

SECTION 4. AMENDATORY 74 O.S. 1991, Section 841.7, as last amended by Section 1, Chapter 84, O.S.L. 1993, and as

renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-2.5), is amended to read as follows:

Section 840-2.5 A. For purposes of this section, "agency" means any office, department, commission or institution of the state government. No officer or employee of any state agency shall prohibit or take disciplinary action against employees of such agency, whether subject to the provisions of the Merit System or in unclassified service, for:

1. Disclosing public information;
2. Reporting any violation of state or federal law, rule or policy; mismanagement; a gross waste of public funds; an abuse of authority; or a substantial and specific danger to public health or safety;
3. Reporting such information without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command;
4. Discussing the operations and functions of the agency, either specifically or generally, with the Governor, members of the Legislature or others.

B. ~~No employee~~ Any person who has authority to take, direct others to take, recommend or approve any personnel action shall not take or fail to take any personnel action with respect to any employee for filing an appeal with the Oklahoma Merit Protection Commission. This section shall not be construed as prohibiting disciplinary action of an employee who discloses information which the employee:

1. Knows to be false;
2. Knowingly and willfully discloses with reckless disregard for its truth or falsity; or
3. Knows to be confidential pursuant to law.

C. Each state agency, department, institution, board and commission in all branches of state government, including all institutions in The Oklahoma State System of Higher Education, shall prominently post a copy of this section of law in locations where it can reasonably be expected to come to the attention of all employees.

D. As used in this section:

1. "Disciplinary action" means any direct or indirect form of discipline, any dismissal, demotion, transfer, reassignment, suspension, reprimand, admonishment, warning of possible dismissal, reduction in force, reduction in rank, reduction in status, or withholding of work; and

2. "Probation" means that period of time, after an officer or employee is found to have violated the provisions of this section and corrective action is ordered, during which time that officer's or employee's performance and conduct is being monitored by the employing agency for further violations of the Oklahoma Personnel Act.

E. Any employee or any former employee aggrieved pursuant to this section may file an appeal with the Oklahoma Merit Protection Commission within thirty (30) days of the alleged disciplinary action. The Oklahoma Merit Protection Commission shall promulgate rules to establish procedures for the conduct of investigations. If, after investigation, the Executive Director determines a violation of this section may have occurred, the Executive Director shall appoint a hearing examiner to hear the case as provided for in Section 841.15 of this title.

F. If, after the hearing, it is determined that a violation has occurred, the Commission or hearing examiner shall order corrective action pursuant to Section 841.15 of this title. Such corrective

action shall include, but not be limited to, suspension without pay, demotion or discharge. Any employee found to have violated this section of law, in addition to being suspended or demoted, shall be placed on probation for six (6) months. Such probation shall commence on the date of the final decision filed by the Commission. Any employee who is determined to have violated the Oklahoma Personnel Act, Section 840.1 et seq. of this title, while serving said probation shall forfeit his position for one (1) year. Any employee, supervisor or appointing authority of any state agency, whether subject to the provisions of the Merit System of Personnel Administration or in unclassified service, who knowingly and willfully violates the provisions of this section shall forfeit his position and be ineligible for appointment to or employment in a position in state service for a period of at least one (1) year and no more than five (5) years, and the Merit Protection Commission shall also refer the matter to the local district attorney for action pursuant to Section 841.23 of this title. The decision of the Commission in such cases may be appealed by any party pursuant to Article II of the Administrative Procedures Act, Sections 309 through 323 of Title 75 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 841.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-2.6), is amended to read as follows:

Section 840-2.6 The Oklahoma Merit Protection Commission shall be responsible for enforcing the provisions of Section ~~841.7~~ 840-2.5 of this title and shall be responsible for ~~holding hearings requested pursuant to said section, and shall be responsible for~~ promulgating rules and regulations for the enforcement of said section.

SECTION 6. AMENDATORY 62 O.S. 1991, Section 7.12, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 1, Chapter 274, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-2.16), is amended to read as follows:

Section 840-2.16 Except as otherwise provided by law, any ~~full-time~~ classified, unclassified or exempt employee of the state, excluding members of boards and commissions, institutions under the administrative authority of the Oklahoma State Regents for Higher Education, employees of public school districts and elected officials, on July 1, 1991, and earning less than Twelve Thousand Sixty-three Dollars (\$12,063.00) per annum shall receive the necessary grade or salary adjustment to provide for a minimum ~~annual~~ annualized salary of Twelve Thousand Four Hundred Eighty-three Dollars (\$12,483.00). Any ~~full-time~~ classified, unclassified or exempt employee of the state, excluding members of boards and commissions, institutions under the administrative authority of the Oklahoma State Regents for Higher Education, employees of public school districts and elected officials, employed after July 1, 1991, shall receive a minimum ~~annual~~ annualized salary of Twelve Thousand Four Hundred Eighty-three Dollars (\$12,483.00). This section shall not apply to those persons employed pursuant to paragraph 12, of Section 840.8 of Title 74 of the Oklahoma Statutes ~~840-5.5 of this title~~ or to those persons employed pursuant to Sections 1806.1, 1825 and 1825.1 of Title 74 of the Oklahoma Statutes or those persons employed pursuant to Section 1.6a of Title 53 of the Oklahoma Statutes.

SECTION 7. AMENDATORY 74 O.S. 1991, Section 840.26, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-3.9), is amended to read as follows:

Section 840-3.9 Sections ~~4~~ 840-3.9 through ~~6~~ 840-3.14 of this ~~act~~ title shall be known and may be cited as the "State Personnel Interchange Program".

SECTION 8. AMENDATORY 74 O.S. 1991, Section 840.27, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-3.10), is amended to read as follows:

Section 840-3.10 A. It is ~~hereby declared to be~~ the policy of this state that:

1. State agencies, ~~boards, and commissions~~ in all branches of state government ~~are directed to~~ shall provide, whenever possible, such services as shall be required by other entities of state government ~~without charge~~; and

2. All entities of state government shall provide required services ~~without charge or, when it is not possible to provide such services without charge,~~ on a contractual basis when it is not possible to provide such services without charge.

B. "Agency" or "agencies" shall include agencies, boards or commissions in all branches of state government and "employee" or "employees" shall include persons employed in all branches of state government when used in Sections 840-3.10 through 840-3.14 of this title.

SECTION 9. AMENDATORY 74 O.S. 1991, Section 840.29, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-3.12), is amended to read as follows:

Section 840-3.12 All employees in the classified and unclassified service are eligible for interchange ~~except those persons in the classified service who are serving on a limited term, provisional, or emergency appointment or who are serving an original probationary period.~~

SECTION 10. AMENDATORY 74 O.S. 1991, Section 840.30, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-3.13), is amended to read as follows:

Section 840-3.13 A. All personnel interchange assignments are intended to be temporary in nature. ~~No~~ An individual's period of assignment to any receiving agency shall not exceed twelve (12) months, ~~nor shall any participating employee be assigned to any receiving agency for more than a total of twelve (12) months in any thirty-six (36) month period.~~

B. ~~No person~~ An individual shall be assigned as a participating employee ~~except~~ only upon the individual's freely given written consent ~~of such person,~~ without any form of coercion or duress ~~whatsoever.~~ Personnel interchanges shall be executed by mutual consent agreement by the appointing authority of the sending agency, the appointing authority of the receiving agency, and the participating individual.

C. ~~No participating employee shall by virtue of such assignment be considered an employee of a receiving agency. Any~~ A participating employee ~~received by a receiving agency~~ shall be considered an employee of the sending agency for ~~any purpose~~ all purposes other than supervision. The receiving agency shall be responsible for all costs and liabilities arising from the performance of work assigned to the participating employee by the receiving agency which is found to be contrary to law and public policy by a court of competent jurisdiction.

D. A participating classified or unclassified employee may be assigned to a classified or unclassified position for the duration of the assignment without regard to the status of the employee in the sending agency.

E. Work ~~assignments~~ assigned to a participating employee by a receiving agency shall be ~~consistent with the employee's~~ exempt from

the classification and compensation provisions of the Oklahoma Personnel Act. Further, although all agencies are encouraged to resolve employee complaints at the lowest possible level, nothing in this section shall be construed to require a receiving agency to establish or adopt a grievance procedure pursuant to Section 840-6.2 of this title, to hear formal grievances, or to designate a grievance manager.

F. ~~No~~ Except as provided in subsection E of this section, a participating employee who is assigned to a receiving agency shall neither lose, or suffer diminution of, any right, power, privilege, or benefit to which the employee would otherwise be entitled, including but not limited to salary, seniority, promotion, reinstatement, insurance, retirement, and classified or unclassified status, progressive discipline, and use of grievance and appeals procedures. An employee's class shall not be adversely affected by another employee's participation in an interchange.

G. Any participating employee who suffers injury, occupational disease, or death, arising out of and in the course of an assignment to a receiving agency or sustained in the discharge of duties in connection with said assignment shall be considered an employee of the sending agency, and shall not be deprived by virtue of participating in said program of any right or expectancy that would otherwise accrue pursuant to the laws of this state governing labor and workers' compensation.

H. Except as provided ~~herein~~ in this section, ~~no~~ a participating employee shall neither receive ~~or~~ nor accept any compensation from the receiving agency to which the employee is assigned. Any receiving agency ~~may~~ shall, in accordance with any applicable laws and policies, reimburse the per diem and travel expenses of any participating employee assigned thereto.

I. Nothing in the State Personnel Interchange Program is intended to preclude the adoption of rules governing the interchange of employees of state governmental entities via other interchange provisions, such as leaves of absence without pay and career executive appointments.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840-3.15 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Certified Public Manager Program within the Office of Personnel Management. The Program shall be administered by the Administrator of the Office of Personnel Management. The purpose of the Program shall be to develop the management skills of those employees and persons who enter into the Program and to assist state agencies and other employers in the identification and development of future managers and leaders. The Program, when space is available, may be available to political subdivisions and not-for-profit employers.

B. The Administrator of the Office of Personnel Management shall adopt rules necessary to implement the Certified Public Manager Program. These shall include:

1. Admission and curriculum requirements for the Program; and
2. Fees sufficient for the operation of the Program. Fees charged to state agencies for their employees who participate in the Program may be less than fees charged to other employers for persons employed by them. The Administrator shall also require a nominal fee to be charged individuals who participate in the Program.

SECTION 12. AMENDATORY Section 2, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-4.1), is amended to read as follows:

Section 840-4.1 A. The Governor of the State of Oklahoma is hereby empowered and authorized by an Executive Order to place any agency, and the employees thereof, except positions exempted from the classified service as stipulated by said Order, under the Merit System of Personnel Administration prescribed by the Oklahoma Personnel Act and the rules promulgated thereunder. Further, the Governor may issue an Executive Order to place any position exempted from the Merit System by Executive Order and its incumbent under the Merit System. This section shall not authorize the removal of any agency, position, or employee placed under the Merit System of Personnel Administration.

B. The provisions of the Merit System of Personnel Administration shall not be extended to any agency except by Executive Order as provided in this section or by legislation.

C. The placement of an agency under the Merit System of Personnel Administration covers functions, positions, and employees in an agency ~~at the time~~ on the effective date of the legislation or the Executive Order and functions, positions, and employees subsequently added to the agency, unless otherwise provided by law.

D. Upon placement of an agency under the Merit System of Personnel Administration by Executive Order or ~~law~~ legislation, or subsequent changes in the name of the agency, its organization or structure shall not alone be construed to remove the agency from the Merit System.

E. Upon placement of an agency under the Merit System of Personnel Administration by Executive Order or legislation, the agency shall abide by the provisions of the Merit System of Personnel Administration Rules and the Oklahoma Personnel Act. Statutory provisions not included in the Oklahoma Personnel Act that authorize agencies to effect personnel transactions, including but not limited to preparing personnel schedules, employing and appointing personnel, defining their duties and fixing their salaries or compensation shall not be interpreted as contrary to the provisions of the Merit System of Personnel Administration and the rules promulgated thereunder.

SECTION 13. AMENDATORY 74 O.S. 1991, Section 840.22, as amended by Section 24, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-4.3), is amended to read as follows:

Section 840-4.3 A. The Office of Personnel Management shall conduct audits of positions in the classified service to ensure that positions are properly allocated, and may delegate the auditing function to an agency pursuant to paragraph 5 of subsection D of Section 840-1.15 of this title. Appointing authorities have control of positions within their agency and have the authority to organize their agencies, to create positions, to abolish positions and to prescribe or change the duties and responsibilities assigned to any position or employee at any time. The Administrator of the Office of Personnel Management shall be responsible for establishing a procedure for conducting and resolving position audits to ensure compliance with the provisions of the Oklahoma Personnel Act and the rules and orders promulgated thereunder. Such procedure shall assure prompt and impartial review of a final allocation of a position which is in dispute and guarantee each party an opportunity to present evidence and to otherwise be heard. The audit procedure, including the impartial review process, shall be exempt from Article II of the Oklahoma Administrative Procedures Act. Individual audits of positions shall be conducted at the request of the appointing authority based on information provided by the agency. An incumbent employee will be given an opportunity to respond; however, the

Office of Personnel Management will rely on the appointing authority for an official listing of the duties and responsibilities of the position.

B. The appointing authority has the responsibility to ensure that employees are properly classified and that the work performed conforms to the appropriate class specification describing the position. Employees shall be classified in accordance with the work they are assigned on a regular and consistent basis as an integral part of their normal work assignment and class specification. An employee has the right and responsibility to file a classification grievance, as provided by law and rule, when duties performed on a regular and consistent basis do not conform to the class specification. An employee is entitled to the compensation assigned to the class specification for which duties were performed on a regular and consistent basis as determined by the Office of Personnel Management. This provision does not entitle the employee to a higher classification.

C. Class specifications shall be used for the purpose of distinguishing one job classification from another as clearly and definitively as possible in order that positions may be properly allocated and employees may be properly classified in accordance with this section. Class specifications shall be applied in accordance with the following:

1. The position description questionnaire and class specification shall be interpreted and applied as a composite picture of the job requirements. An employee is not required to perform all of the work operations described in a class specification in order to be eligible for classification thereunder. An employee is not eligible or entitled to classification by reason of performing isolated or singular duties incidental to the job but which are described in another class specification. Employees are entitled to the classification they are currently assigned.

2. An employee normally performs some of the work of higher-rated jobs and some of the work of lower-rated jobs when required. The normal duties of an employee may include some of the work of related jobs in the same salary grade when required. The normal duties of an employee may include assistance to others.

3. An employee is required to perform the work operations and duties described or appraised as being covered by a class specification pursuant to that degree or amount of guidance or instruction which is considered usual and normal regular and consistent in order to qualify for the classification.

SECTION 14. AMENDATORY 74 O.S. 1991, Section 840.19, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-4.12), and as amended by Section 1 of Enrolled House Bill No. 1577 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 840-4.12 A. The Administrator shall be responsible for conducting promotional examinations and entrance examinations as required under ~~this act~~ the Oklahoma Personnel Act. Such examinations shall be of such character as to determine the qualifications, fitness and ability of the persons tested to perform the duties of the class of positions for which such tests or examinations are given. Provided however, tests and examinations of ~~handicapped~~ persons with severe disabilities who have satisfactorily completed vocational and technical education courses in vocational training units or divisions approved by the Department of Rehabilitation Services shall be limited in scope so as to relate to the skill and physical capability required for a particular

position. Adequate public notice shall be given of all examinations except for promotion within a department or agency.

B. No person shall be required to take an entrance examination if that person has been previously tested and licensed by the State of Oklahoma; such person shall be rated according to training and experience.

C. No entrance examination shall be required when the job specifications require a bachelor's degree or its equivalent, plus three (3) years of qualifying work experience; such person shall be rated according to training and experience.

D. Promotional examinations for promotion within an agency, unless requested by the agency, shall not be required; provided that said promotion is in accordance with guidelines adopted by the Administrator and is in accordance with a plan adopted by the promoting agency.

E. The Administrator shall accept Certificates of Proficiency issued by accredited private or public schools, colleges or the Oklahoma Employment Security Commission in lieu of typing and shorthand tests.

F. ~~The appointing authority may certify that an applicant meets necessary job qualifications of a position in the classified service, for the purpose of allowing said applicant to take any required examination or otherwise compete for said position~~ The Office of Personnel Management shall certify that a candidate meets the necessary job qualifications of a position in the classified service for the purpose of allowing a candidate to take any required examination or otherwise compete for a position. The Administrator of the Office of Personnel Management may delegate the certification function provided by this section to an agency pursuant to paragraph 5 of subsection D of Section 840-1.15 of this title. Any statute which creates any position or qualifications for any position in the classified service shall not be construed to limit the power of the Administrator to interpret or add to those qualifications in a reasonable manner consistent with the intent of the Legislature and the duties of that position. Any statute which empowers any agency head or other employer to hire or nominate persons for employment within the classified service shall not be construed to empower that agency head or other employer to waive or modify any qualification or rule for employment established by the Administrator. The Administrator shall not be construed to have the authority to limit or reduce any qualification established by statute for any position. The constructions established herein shall apply to any statutes or positions heretofore or hereafter created unless that statute clearly and specifically states that such constructions do not apply.

G. Subsections A, B, C, D, E and F of this section shall not apply to special disabled veterans who are considered for employment under the provisions of Sections 401 through 404 of Title 72 of the Oklahoma Statutes. Provided, said veterans may elect instead to be considered for employment according to the procedures set out in subsections A through F of this section.

H. Subsections A, B, C, D, E and F of this section shall not apply to persons with severe disabilities who are considered for employment under the provisions of this subsection. Provided, said persons may elect instead to be considered for employment according to the procedures set out in subsections A through F of this section.

1. As used in this subsection "persons with severe disabilities" means persons certified as having disabilities according to standards and procedures established by the

Administrator. Said standards and procedures shall be developed by the Administrator of the Office of Personnel Management with the assistance of the Office of Handicapped Concerns, and the Department of Rehabilitation Services.

2. Agencies of this state may employ persons with severe disabilities who are legal residents of the state in competitive and noncompetitive jobs. Except for the requirement of minimum qualifications specified in applicable job specifications, such persons with disabilities shall be exempt from entrance examinations and hiring procedures administered by the Office of Personnel Management pursuant to Sections 840-4.12 and 840-4.13 of this title.

3. Persons with severe disabilities hired pursuant to this subsection shall be appointed for a probationary period of ~~one (1) year~~ six (6) months. At the end of the probationary period if the work of said ~~handicapped~~ person with severe disabilities is satisfactorily performed, the person with a severe disability shall acquire permanent status.

4. ~~Upon acquiring permanent status, persons~~ Persons with severe disabilities hired pursuant to this subsection shall be subject to the rules ~~and regulations~~ of the Administrator of the Office of Personnel Management.

5. A list of persons with severe disabilities employed by state agencies pursuant to this section shall be provided by each state agency to the Office of Personnel Management which shall maintain records regarding the employment of persons with severe disabilities and report the total number of such persons with severe disabilities so employed to the Director of the Office of Handicapped Concerns.

I. 1. This subsection shall be known and may be cited as the "Fair Employment Practices Act".

2. Agencies of this state may use the optional hiring procedure provided in this subsection to employ females, blacks, Hispanics, Asian/Pacific Islanders and American Indians/Alaskan natives, as defined by the Equal Employment Opportunity Commission, who are legal residents of the state in competitive and noncompetitive jobs. Individuals must meet the minimum qualifications and pass any required examinations established by the Office of Personnel Management or by statute. Except for any required examinations and minimum qualifications specified in applicable job specifications, such persons shall be exempt from the hiring procedures administered by the Office of Personnel Management. Persons may only be employed under this subsection in a job class, group or category which has been identified as underutilized and in which an appropriate hiring goal has been set in the state agency's affirmative action plan approved by the Office of Personnel Management pursuant to the provisions of Section 840-2.1 of this title. In addition, the appointing authority of the employing agency must determine that a manifest imbalance exists which justifies remedial action pursuant to this subsection in order to reach the affirmative action hiring goal. Provided further, that eligible war veterans, as defined by Section 67.13a of Title 72 of the Oklahoma Statutes, who are members of the group for which a hiring goal has been set shall be considered by the employing agency before a nonveteran is appointed pursuant to this subsection.

3. To be eligible for appointment, the persons who are members of the group for which a hiring goal has been set must score within the top ten scores of other available members of said group based on any examination or rating of education and experience.

4. Persons hired pursuant to this subsection shall be appointed for a probationary period of six (6) months, except that the appointing authority may extend a probationary period, not to exceed

a total of nine (9) months for an individual, provided, however, that the employee and the Administrator of the Office of Personnel Management shall be notified in writing as to such action and the reason therefor. At the end of the probationary period if the work of such person is satisfactorily performed as reflected in a service rating made pursuant to Section 840-4.17 of this title, such person shall acquire permanent status.

5. Upon acquiring permanent status, the employee shall be subject to the rules and regulations of the Office of Personnel Management and to full rights and entitlements of state employees in the classified service.

6. The authority for an agency to make appointments pursuant to this subsection shall be temporary and shall cease when the appointing authority of an agency can no longer justify remedial action pursuant to this subsection.

7. A list of persons employed by state agencies pursuant to this subsection shall be provided by each state agency to the Office of Personnel Management which shall maintain records regarding the employment of persons and annually report the total number of persons so employed to the Governor, Speaker of the House of Representatives, President Pro Tempore of the Senate and the Merit Protection Commission.

SECTION 15. AMENDATORY 74 O.S. 1991, Section 840.20, as last amended by Section 23, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-4.13), is amended to read as follows:

Section 840-4.13 A. Based upon the results of competitive entrance examinations and registers, as provided by ~~this act~~ the Oklahoma Personnel Act, the Administrator of the Office of Personnel Management shall certify to the appointing authority the names of the ten persons receiving the highest grade or score in said examinations plus all eligible applicants whose grade or score is tied with the lowest ranking of those so eligible. The Administrator of the Office of Personnel Management is authorized to implement a pilot project which will allow agencies to make appointments from broad band certificates issued by the Administrator. The pilot project shall include no more than twenty (20) classes and will begin no earlier than January 1, 1996, and end July 1, 1997. During the pilot project, the Administrator may implement a variety of broad band certification methods that certify to appointing authorities no fewer names for appointment than they otherwise receive. The Administrator shall consult with employing agencies prior to implementing broad band certification for a specific class and shall notify eligibles for a specific class subject to the pilot project.

B. In addition to establishing statewide registers pursuant to subsection A of this section, the Administrator is hereby authorized to promulgate rules creating a local register to fill a vacancy in a local office of an agency by providing a certificate of available names of eligible persons who are residents of the county where the local office is located or said county and adjacent counties or a group of contiguous counties comprising a service area of an agency. Available eligible residents shall be certified ahead of other available eligible persons who reside outside the area of the local register. In filling vacant positions, the appointing authority shall select any one of the persons whose names have been so certified and may give preference in all cases to persons who have resided in this state for at least one (1) year prior to the date of the examination. Provided, however, that any appointing authority authorized to employ persons who are not citizens of the United

States, pursuant to Section 255 of this title, may request the Office to certify only the names of persons who are citizens of the United States in carrying out the provisions of this section; and such appointing authority may select any person so certified to the Administrator to fill such vacant positions even though a noncitizen may have received a higher grade on the examination. Provided, further, that any appointing authority may select special disabled veterans considered for employment pursuant to Sections 401 through 404 of Title 72 of the Oklahoma Statutes.

C. Every person, except for agents employed by the Alcoholic Beverage Laws Enforcement Commission who shall be appointed for probationary periods of one (1) year, upon initial appointment under the classified service, shall be appointed for a probationary period of six (6) months, except that the appointing authority may extend a probationary period, not to exceed a total of nine (9) months for an individual, provided, however, that the employee and the Administrator of the Office of Personnel Management shall be notified in writing as to such action and the reason therefor. The probationary appointment of any person may be terminated at any time during the probationary period without the right of appeal. At the close of the probationary period, as herein provided, said person shall acquire a permanent status under the conditions prescribed in ~~this act~~ the Oklahoma Personnel Act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840-4.19 of Title 74, unless there is created a duplication in numbering, reads as follows:

A state agency shall have sole and final authority to designate the place or places where its employees shall perform their duties. The Oklahoma Merit Protection Commission shall not have jurisdiction to accept an appeal of an employee resulting from the employing agency transfer of an employee from one county or locality to another, changing the assigned duties of an employee, or relieving the employee from performance of duty at a particular place and reassigning to an employee duties to be performed at another place, unless an employee asserts that:

1. The action resulted in a change in job classification or reduction of the base salary of the employee;
2. A violation of the provisions of Section 840-2.5 or 840-2.9 of this title may have occurred; or
3. The action was taken clearly for disciplinary reasons and to deny the employee the right of appeal.

SECTION 17. AMENDATORY 74 O.S. 1991, Section 841.13, as amended by Section 6, Chapter 367, O.S.L. 1992, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-6.5), is amended to read as follows:

Section 840-6.5 A. It is the purpose of this section to provide a system for the prompt, fair, and equitable disposition of appeals by permanent classified employees who have been demoted, suspended, or discharged. Further, it is the intent of this section that all decisions rendered as a result of this procedure shall be confined to the issues submitted for decision and consistent with the applicable laws and rules.

B. Any employee in the classified service may be discharged, suspended without pay for not to exceed sixty (60) calendar days, or demoted by the agency, department, institution, or officer by whom employed for misconduct, insubordination, inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or of the rules prescribed by the Office of Personnel Management or by the Oklahoma Merit Protection Commission, conduct unbecoming a

public employee, conviction of a crime involving moral turpitude, or any other just cause. Before any such action is taken against a permanent classified employee, the employing agency, department, institution or officer shall provide the employee with a written statement of the specific acts or omissions that are causes or reasons for the proposed action, an explanation of the agency's evidence, and an opportunity to present reasons why the proposed action is improper. ~~A state agency shall have sole and final authority to designate the place or places where its employees shall perform their duties. The Oklahoma Merit Protection Commission shall not have jurisdiction to entertain an appeal of an employee from action of the employing agency transferring the employee from one county or locality to another, changing the assigned duties of the employee, or relieving the employee from performance of duty at a particular place and reassigning to the employee duties to be performed at another place, unless:~~

- ~~1. the action results in a change in job classification or reduction of base salary; or~~
- ~~2. an investigation by the Commission indicates that a violation of the provisions of Section 841.7 or 841.10 of this title may have occurred; or~~
- ~~3. it is established that the action was clearly taken for disciplinary reasons and to deny the employee the right of appeal.~~

~~Within five (5) calendar~~ ten (10) business days after such discharge, suspension, or demotion, the appointing authority shall notify the employee by certified mail or personal service of the action taken and the specific cause for which said appointing authority has so acted. Within twenty (20) calendar days after receiving the written notification provided for in this section, the employee may file a written request for appeal with the Oklahoma Merit Protection Commission. The Executive Director shall determine if the jurisdictional requirements provided for in this section have been met. If the jurisdictional requirements are not met, the Executive Director shall notify both the employee and the agency within five (5) calendar days after the receipt of a written appeal request. Such notice shall specifically describe the requirements that were not met. If said requirements have been met, the Executive Director shall refer the appeal request to ~~a~~ an administrative hearing examiner officer for a hearing on said discharge, suspension, or demotion, or refer the appeal request to the Alternative Dispute Resolution Program.

If the case is not referred to the Alternative Dispute Resolution Program, then within five (5) calendar days after receipt of said properly executed appeal request, the Executive Director shall provide said employee and the appointing authority with a written notice of (1) a prehearing conference to be held at least five (5) working days, but not more than ten (10) working days, before the date of the hearing; and (2) the appeal hearing date which shall be no later than thirty-five (35) calendar days after the receipt of the appeal request, unless continued for good cause. Any continuances shall not exceed a combined total of sixty (60) calendar days except for good cause shown. Both the prehearing conference and the hearing shall be conducted in accordance with the provisions of Section ~~841.13A~~ 840-6.7 of this title. The notice shall be in the following form:

Notice of Hearing

Oklahoma Merit Protection Commission to \_\_\_\_\_. You are hereby notified that pursuant to your request an appeal hearing on your (discharge), (suspension), (demotion), from the position of \_\_\_\_\_ has been set for the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_ M. at \_\_\_\_\_ in \_\_\_\_\_, a copy of said cause for your (discharge), (suspension), (demotion), being hereto attached.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ City of \_\_\_\_\_ By \_\_\_\_\_  
Special Counsel of the Oklahoma Merit Protection Commission.

In ~~all hearings of~~ appeals from demotion, suspension, or discharge, the burden of proof shall rest with the appointing authority, and decisions shall be made based on the rule of preponderance of evidence. The employee shall be sustained or not sustained. If the employee is not sustained in the appeal, the employee shall be discharged, or suspended without pay for not to exceed sixty (60) calendar days, or demoted. If sustained in the appeal, in whole or in part, the ~~hearing examiner~~ presiding official may either adjudge a forfeiture of pay not in excess of sixty (60) calendar days without loss of other rights and benefits or order reinstatement of appellant to the class previously held with full rights and without loss of pay or other benefits; provided that the decision will not result in an employee working out of proper classification as determined by the Office of Personnel Management.

The findings of the ~~hearing examiners~~ presiding officials shall be final and conclusive upon all questions within their jurisdiction between the parties except as provided for in Sections 317 and 318 of Title 75 of the Oklahoma Statutes. Such decisions are subject to judicial review if appealed to the district court within thirty (30) calendar days. The State of Oklahoma or any agency of the state shall not be allowed to appeal to the district court unless the employee is continued on full pay in the same status of employment existing prior to suspension or discharge.

SECTION 18. AMENDATORY 74 O.S. 1991, Section 841.15, as amended by Section 8, Chapter 367, O.S.L. 1992, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-6.6), is amended to read as follows:

Section 840-6.6 A. Any person who believes that his or her rights under the Oklahoma Personnel Act, Section ~~840-1~~ 840-1.1 et seq. of this title, have been violated may appeal to the Oklahoma Merit Protection Commission for corrective action.

B. Excluding the procedures set forth in Section ~~841.13~~ 840-6.5 of this title, the Executive Director shall conduct preliminary investigations of possible violations of the Oklahoma Personnel Act. The Executive Director shall prepare a report of each such investigation stating the issues and findings of fact. If it is the determination of the Executive Director that a violation of the Oklahoma Personnel Act or the Merit System of Personnel Administration Rules may have occurred, the Executive Director shall, within ten (10) calendar days after the date of the report, appoint ~~a~~ an administrative hearing examiner officer to hear the case or refer the case to the Alternative Dispute Resolution Program, as appropriate and provided for by law. If the appeal is to be heard by ~~a hearing examiner~~ an administrative hearing officer, the Executive Director shall notify the appellant and the appointing authority of the date, time, and place of the hearing in accordance with the provisions of Section ~~841.13A~~ 840-6.7 of this title. Such hearing shall be conducted within thirty-five (35) calendar days of the date of the investigative report unless continued for good cause. Any continuances shall not exceed a combined total of sixty (60) calendar days except for good cause shown.

The prehearing conference and hearing shall be conducted in accordance with the provisions of Section ~~841.13A~~ 840-6.7 of this title. If, ~~after the hearing,~~ it is determined a violation has occurred, the Commission or ~~hearing examiner~~ presiding official shall:

1. Direct the appointing authority to take the necessary corrective action; or
2. Report the finding to the appropriate authorities for further action.

Corrective action shall be confined to issues submitted for decision and shall be consistent with applicable laws and rules and limited to actions specifically granted to the Oklahoma Merit Protection Commission and ~~hearing examiners~~ presiding official in ~~this act~~ the Oklahoma Personnel Act and shall not alter, reduce, or modify any existing right or authority as provided by statute or rule.

C. The following procedures shall pertain to the closing of a hearing or Alternative Dispute Resolution Program proceeding record:

1. When a hearing or Alternative Dispute Resolution Program proceeding is convened, the record will close at the conclusion of the hearing or Alternative Dispute Resolution Program proceeding unless otherwise specified by the presiding official;
2. When a hearing or Alternative Dispute Resolution Program proceeding is not convened, the record will close on the date set by the presiding official as the final date for the receipt of submissions of the parties; and
3. Once the record is closed, no additional evidence or argument shall be considered except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record.

SECTION 19. AMENDATORY 74 O.S. 1991, Section 841.13A, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-6.7), is amended to read as follows:

Section 840-6.7 All hearings held pursuant to the Oklahoma Personnel Act shall be conducted in accordance with the following provisions:

- A. Prehearing Conferences
  1. A prehearing conference may be held on all appeals set for hearing.
  2. The prehearing conference may be conducted by the assigned administrative hearing examiner officer, who may take an active part in the conference. The conference shall be informal, and shall not be open to the public. Each party may be represented by a designated individual who has knowledge of the case.
  3. All discovery shall be completed at the prehearing conference. Thereafter, discovery may be conducted only where authorized by the administrative hearing examiner officer where good cause is shown.
  4. Copies of all documents or exhibits submitted to the administrative hearing examiner officer must be submitted to the adverse party.
  5. At the prehearing conference, the parties shall be required to:
    - a. identify which allegations are admitted and which are denied; and
    - b. submit a joint statement of the facts which are agreed and the issues to be decided; and
    - c. submit a list of their witnesses, exhibits, and documents to be offered into evidence; and
    - d. confer in regard to settlement; and
    - e. perform any other acts which will facilitate the prehearing conference or the hearing.
  6. The administrative hearing examiner officer shall:
    - a. determine the facts to which the parties agree and the issues to be decided; and

- b. hear all pending motions; and
- c. consider any other matters which will aid in the fair and prompt disposition of the appeal, including the possibility of settlement; and
- d. prepare a prehearing conference order which shall record the actions taken, the agreements reached, and the issues to be decided. The order shall control the subsequent course of the hearing.

B. Hearings

All hearings shall be open to the public, and shall only be conducted by ~~a~~ an administrative hearing examiner officer appointed by the Executive Director. The hearing shall be conducted in accordance with the Administrative Procedures Act of the Oklahoma Statutes, except that if any party chooses to designate a representative, the representative shall not be required to be an attorney. All administrative hearing examiners officers shall serve at the pleasure of the Executive Director for such compensation as may be provided.

Each party shall have the right to present witnesses in his behalf and evidence to support his position.

The appointing authority concerned, or a designee, shall appear in person and shall present the position of the agency in the personnel action. The ~~hearing examiners~~ administrative hearing officers shall rule upon the questions of admissibility of evidence, competency of witnesses, and any other question of law upon which they have jurisdiction as provided in the Oklahoma Personnel Act and the rules promulgated thereunder.

Within ten (10) calendar days after said hearing, the administrative hearing examiner officer shall prepare findings of fact and conclusions of law. The Executive Director shall notify the appellant and the appointing authority of the decision of the administrative hearing examiner officer by certified mail within five (5) calendar days of the receipt of the decision of the administrative hearing examiner officer.

The findings of the administrative hearing examiner officer shall be final regarding all questions of law within their jurisdiction except as provided in the Administrative Procedures Act. After exhausting all remedies under the Administrative Procedures Act, either party to an appeal of demotion, suspension, or discharge may appeal to district court within thirty (30) calendar days.

SECTION 20. AMENDATORY 74 O.S. 1991, Section 841.15A, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-6.8), is amended to read as follows:

Section 840-6.8 A. The presiding officer of any hearing or Alternative Dispute Resolution Program proceeding before the Oklahoma Merit Protection Commission may require payment ~~by the agency~~ of reasonable attorney fees and costs to the prevailing party if the ~~appellant is the prevailing party and the agency's~~ position of the nonprevailing party was without reasonable basis or was frivolous.

B. Requests by prevailing ~~appellants~~ parties for payment of attorney fees and costs shall be filed by motion with a copy served on ~~the agency and other appellees~~ parties within ten (10) days of the date that the decision is issued. ~~The agency or other appellee may file a~~ A responsive pleading may be filed within ten (10) days of the date the motion is ~~received~~ filed with the Oklahoma Merit Protection Commission. The motion shall be filed at the office of the Oklahoma Merit Protection Commission to the attention of the

presiding officer and the ruling on the motion shall be made in an addendum decision.

C. The motion for fees and costs shall state why the ~~appellant~~ prevailing party believes he or she is entitled to an award under this statute and shall be supported by evidence substantiating the amount of the request. Such evidence shall include the following:

1. Accurate and current time records;
2. A copy of the terms of any fee agreement between the ~~appellant~~ party and the attorney;
3. The attorney's customary billing rate for similar work, provided the attorney has a billing practice to report; and
4. Evidence of the prevailing community rate sufficient to establish a market value for the services rendered.

D. If the Oklahoma Merit Protection Commission determines that the appeal is frivolous, ~~the appellant~~ any party may be assessed attorney fees and costs of the action.

E. A petition for judicial review by the Oklahoma Merit Protection Commission of the addendum decision shall be filed in accordance with Article II of the Administrative Procedures Act, ~~Section 250.1 et seq. and 301 et seq. of Title 75 of the Oklahoma Statutes~~, within ten (10) days of the issue date of said decision.

SECTION 21. The Legislature hereby waives permanent rules adopted April 5, 1995, by the Administrator of the Office of Personnel Management proposing amendments to Title 530, Chapter 10 of the Oklahoma Administrative Procedures Act from the provisions of subsection F of Section 308 of Title 75 of the Oklahoma Statutes.

SECTION 22. AMENDATORY 57 O.S. 1991, Section 510, as amended by Section 1 of Enrolled House Bill No. 1211 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 510. The Director shall have the following specific powers and duties relating to the penal institutions:

1. To appoint, subject to the approval of the State Board of Corrections, a warden or superintendent for each penal institution, who shall qualify for the position by character, personality, ability, training, and successful administrative experience in the correctional field; and if he is not the incumbent warden or superintendent of a penal institution, he shall have a college degree with a major in the behavioral sciences. As used in this section, "major in the behavioral sciences" means a major in psychology, sociology, criminology, education, corrections, human relations, guidance and counseling, administration, criminal justice administration, or penology. ~~The persons holding the positions of warden of the Oklahoma State Penitentiary, warden of the Oklahoma State Reformatory, deputy warden, deputy associate warden, or superintendent on January 1, 1967, shall continue to hold such positions, respectively, subject to the provisions of the Merit System of Personnel Administration, except the retirement age requirements, and said positions and persons holding said positions as of January 1, 1967, are hereby placed under the classified service of the Merit System of Personnel Administration;~~

2. To fix the duties of the wardens and superintendents and to appoint and fix the duties and compensation of such other personnel for each institution as may be necessary for the proper operation thereof. However, correctional officers and guards hired after November 1, 1995, shall be subject to the following qualifications:

- a. the minimum age for service shall be twenty-one (21) years of age and the maximum age for service shall be seventy (70) years of age. However, the Director

- shall have the authority to establish the maximum age for correctional officers entering service, and
- b. possession of a minimum of thirty (30) semester hours from an accredited college or university, or possession of a high school diploma acquired from an accredited high school or GED equivalent testing program and graduation from a training course conducted by or approved by the Department and certified by the Council on Law Enforcement Education and Training either prior to employment or during the first six (6) months of employment, and
  - c. be a resident of this state during employment, and
  - d. be of good moral character, and
  - e. before going on duty alone, satisfactory completion of an adequate training program for correctional officers and guards, as prescribed and approved by the State Board of Corrections, and
  - f. satisfactory completion of minimum testing or professional evaluation through the Merit System of Personnel Administration to determine the fitness of the individual to serve in the position written evaluations shall be submitted to the Department of Corrections, and
  - g. satisfactory completion of a physical in keeping with the conditions of his job description on an annual basis and along the guidelines as established by the Department of Corrections;

3. To designate as peace officers qualified personnel in any Department of Corrections job classifications. The peace officer authority of employees so designated shall be limited to: maintaining custody of prisoners; preventing attempted escapes; pursuing, recapturing and incarcerating escapees and parole or probation violators and arresting such escapees, parole or probation violators, and serving warrants. Such powers and duties of peace officers may be exercised for the purpose of maintaining custody, security, and control of any prisoner being transported outside this state as authorized by the Uniform Criminal Extradition Act. To become qualified for designation as peace officers, employees shall meet the training and screening requirements conducted by the Department and certified by the Council on Law Enforcement Education and Training and shall not be subject to Section 3311 of Title 70 of the Oklahoma Statutes;

4. To maintain such industries, factories, plants, shops, farms, and other enterprises and operations, hereinafter referred to as prison industries, at each institution as the State Board of Corrections deems necessary or appropriate to employ the prisoners or teach them skills, or to sustain the institution; and as provided for by policies established by the State Board of Corrections, to allow compensation for the work of the prisoners, and to provide for apportionment of their wages, the amounts thus allowed to be kept in accounts by the Board for the prisoners and given to them upon their discharge from the institution, or upon their order paid to their families or dependents or used for the personal needs of the prisoners. Any industry which employs prisoners shall be deemed a "State Prison Industry" if the prisoners are paid from state funds including the proceeds of goods sold as authorized by Section 123f of Title 74 of the Oklahoma Statutes. Any industry in which wages of prisoners are paid by a nongovernmental person, group, or corporation, except those industries employing prisoners in

work-release centers under the authority of the Department of Corrections shall be deemed a "Private Prison Industry";

5. To assign residences at each institution to institutional personnel and their families;

6. To provide for the education, training, vocational education, rehabilitation, and recreation of prisoners;

7. To regulate the operation of canteens for prisoners;

8. To prescribe rules for the conduct, management, and operation of each institution, including rules for the demeanor of prisoners and punishment of recalcitrant prisoners or the treatment of incorrigible prisoners;

9. To transfer prisoners from one institution to another;

10. To transfer to a state hospital for the mentally ill for care and treatment, any prisoner who appears to be mentally ill. Said prisoner shall be returned to the institution when the superintendent of the hospital certifies that the prisoner has been restored to mental health;

11. To maintain courses of training and instruction for employees at each institution;

12. To maintain a program of research and statistics;

13. To provide for the periodic audit, at least once annually, of all funds and accounts of each institution and the funds of each prisoner;

14. To provide, subject to rules and regulations established by the State Board of Corrections, for the utilization of prison labor for any agency of the state, city, town, or subdivision of this state, upon the duly authorized request for such labor by said agency. Said labor shall not be used to reduce employees or replace regular maintenance or operations of the agency. The labor shall be used solely for public or state purposes. Any such prison labor shall not be used for private use or purpose. Insofar as it is practicable, all such prison labor shall be of such a nature and designed to assist and aid in the rehabilitation of inmates performing the labor;

15. To provide clerical services for, and keep and preserve the files and records of, the Pardon and Parole Board; make investigations and inquiries as to prisoners at the institutions who are to be, or who might be, considered for parole or other clemency; assist prisoners who are to be, or who might be, considered for parole or discharge in obtaining suitable employment in the event of parole or discharge; report to the Pardon and Parole Board, for recommendation to the Governor, violations of terms and conditions of paroles; upon request of the Governor, make investigations and inquiries as to persons who are to be, or who might be, considered for reprieves or leaves of absence; report to the Pardon and Parole Board, for recommendation to the Governor, whether a parolee is entitled to a pardon, when the terms and conditions of his parole have been completed; make presentence investigations for, and make reports thereof to, trial judges in criminal cases before sentences are pronounced; supervise persons undergoing suspended sentences, or who are on probation or parole; and develop and operate, subject to the policies and guidelines of the Board, work-release centers, community treatment facilities or prerelease programs at appropriate sites throughout this state;

16. To conduct continual planning and research and periodically evaluate the effectiveness of the various correctional programs instituted by the Department; manage the designing, building, and maintaining of all the capital improvements of the Department; establish and maintain current and efficient business, bookkeeping, and accounting practices and procedures for the operations of all

institutions and facilities, and for the Department's fiscal affairs; conduct initial orientation and continuing in-service training for the Department employees; provide public information services; inspect and examine the condition and management of state penal and correctional institutions; investigate complaints concerning the management of prisons or alleged mistreatment of inmates thereof; and hear and investigate complaints as to misfeasance or nonfeasance of employees of the Department; and

17. When an employee of the Department of Corrections has been charged with a violation of the rules of the Department or with a felony pursuant to the provisions of a state or federal statute, the Director may, in his discretion, suspend the charged employee, in accordance with the Oklahoma Personnel Act and/or the Merit System of Personnel Administration Rules, pending the hearing and final determination of the charges. Notice of suspension shall be given by the Director, in accordance with the provisions of the Oklahoma Personnel Act. If after completion of the investigation of the charges, it is determined that such charges are without merit or are not sustained before the Oklahoma Merit Protection Commission or in a court of law, the employee shall be reinstated and shall be entitled to receive all lost pay and benefits.

This provision shall in no way deprive an employee of their right of appeal according to the Oklahoma Personnel Act, Section 840-6.5 of Title 74 of the Oklahoma Statutes.

SECTION 23. REPEALER 62 O.S. 1991, Section 7.12, as last amended by Section 46, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-2.16), is hereby repealed.

SECTION 24. RECODIFICATION 74 O.S. 1991, Section 840.5, as last amended by Section 3, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1994, Section 840-2.12), shall be recodified as Section 840-1.6A of Title 74 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 25. NONCODIFICATION Section 21 of this act shall not be codified in the Oklahoma Statutes.

SECTION 26. Section 22 of this act shall become effective November 1, 1995.

SECTION 27. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 24th day of May, 1995.

Speaker of the House of  
Representatives

Passed the Senate the 25th day of May, 1995.

President of the Senate