STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2860 By: Steidley of the House

and

Leftwich of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to state government; amending Section 22, Chapter 340, O.S.L. 1995 (40 O.S. Supp. 1997, Section 61), which relates to disclosure of information by employers; authorizing a state agency to disclose certain information regarding a current or former employee to another state agency which is a prospective employer of the employee; amending 74 O.S. 1991, Sections 840.7a, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 4, Chapter 320, O.S.L. 1996, 840.42, as renumbered by Section 54, Chapter 242, O.S.L. 1994, 840.19, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 8, Chapter 320, O.S.L. 1996, 840.20, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1997, Section 840-4.13), and as last amended by Section 1 of Enrolled House Bill No. 2379 of the 2nd Session of the 46th Oklahoma Legislature, 841.16, as amended by Section 18, Chapter 367, O.S.L. 1992, and as renumbered by Section 54, Chapter 242, O.S.L. 1994, and 841.13, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 17, Chapter 310, O.S.L. 1995 and Section 1, Chapter 387, O.S.L. 1992, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as amended by Section 2, Chapter 406, O.S.L. 1997, and Section 27, Chapter 242, O.S.L. 1994, as amended by Section 4, Chapter 286, O.S.L. 1997 (74 O.S. Supp. 1997, Sections 840-2.20, 840-3.1, 840-3.4, 840-3.8, 840-4.12, 840-4.17 and 840-6.5), which relate to the Oklahoma Personnel Act; modifying certain requirements concerning holiday leave; clarifying intent of legislation; authorizing transfer of leave accumulations to outside entity under certain circumstances; modifying requirements concerning training programs for supervisory personnel; modifying eligibility for certain intern programs; modifying rotation assignment requirements for mentor executives; adding six-month trial period at time of promotions; providing exceptions; modifying probationary period procedure for certain employees; modifying purposes for which service ratings of current and former state employees may be used; adding requirement that certain employees be discharged under certain circumstances; repealing 74 O.S. 1991, Section 840.41, as renumbered by Section 54,

Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1997, Section 840-3.3), which relates to the Carl Albert Public Internship Program Advisory Committee; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 22, Chapter 340, O.S.L. 1995 (40 O.S. Supp. 1997, Section 61), is amended to read as follows:

Section 61. A. An employer may disclose information about a current or former employee's job performance to a prospective employer of the current or former employee upon request of the prospective employer and with consent of the current or former employee, or upon request of the current or former employee. A state agency, as defined in Section 840-2.5 of Title 74 of the Oklahoma Statutes, may disclose information regarding a current or former employee's job performance to another state agency which is a prospective employer of the current or former employee without the employee's consent. The employer is presumed to be acting in good faith, unless lack of good faith is shown by a preponderance of the evidence. The current or former employer shall be immune from civil liability for the disclosure or any consequences of such disclosure unless the presumption of good faith is rebutted upon a showing that the information disclosed by the current or former employer was false and the employer providing the information had knowledge of its falsity or acted with malice or reckless disregard for the truth.

B. The provisions of this section shall apply to any employee, agent, or other representative of the current or former employer, including a state agency, who is authorized to provide and who provides information in accordance with the provisions of this section.

C. Failure to comply with any provision of this section shall not give rise to any liability or causes of action which did not exist prior to ~~the effective date of this section~~ July 1, 1995. This section shall only apply to causes of action accruing on and after ~~the effective date of this section~~ July 1, 1995.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 840.7a, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 4, Chapter 320, O.S.L. 1996 (74 O.S. Supp. 1997, Section 840-2.20), is amended to read as follows:

Section 840-2.20 A. The Administrator of the Office of Personnel Management shall promulgate such emergency and permanent rules regarding ~~annual~~ leave and ~~sick~~ holiday leave as are necessary to assist the state and its agencies ~~in the equitable implementation of the State Disability Insurance Program. Such rules shall be so designed as to provide for coordination between leave accrual, leave accumulation, leave use, and eligibility for disability insurance coverage, such disability insurance coverage to be determined by the State and Education Employees Group Health, Dental and Life Insurance Board~~.

The Administrator of the Office of Personnel Management, in adopting new rules, amending rules and repealing rules, shall ensure that the following provisions are incorporated:

1. Eligible employees who enter on duty or who are reinstated after a break in service shall receive leave benefits in accordance with the schedule outlined below. Leave will be accrued on a monthly basis and prorated, as appropriate, for less than full-time service. Years of service shall be based on cumulative periods of employment calculated in the manner that cumulative service is determined for longevity purposes pursuant to Section 840-2.18 of this title.

2. a. The following accrual rates and accumulation limits apply to eligible employees who initially enter into the state service prior to July 1, 1996, and who have less than ten (10) years' cumulative service:

	ACCRUAL RATES		ACCUMULATION LIMITS
Cumulative Years of Service	Annual Leave	Sick Leave	Annual Leave
Persons employed 0-5 yrs =	15 day/yr	15 days/yr	30 days
5-10 yrs =	18 day/yr	15 days/yr	60 days

b. The following accrual rates and accumulation limits apply to eligible employees who either:

(i) initially enter into the state service prior to July 1, 1996, and who have ten (10) years or more cumulative service, or

(ii) initially enter into the state service on or after July 1, 1996:

	ACCRUAL RATES			ACCUMULATION LIMITS
	Cumulative Years of Service	Annual Leave	Sick Leave	Annual Leave
Persons employed	0-5 yrs =	10 day/yr	15 days/yr	30 days
	5-10 yrs =	15 day/yr	15 days/yr	60 days
	10-20 yrs =	20 day/yr	15 days/yr	60 days
	over 20 yrs =	25 day/yr	15 days/yr	60 days

All accrued annual leave and all leave eligibility under O.A.C. 530:10-15-11(b)(5) which is in excess of annual leave limits shall not be reduced or eliminated as a result of these rule changes.

3. Temporary employees and other limited term employees are ineligible to accrue, use, or be paid for sick leave and annual leave. ~~Such employees shall be eligible for paid holiday leave at the discretion of the appointing authority.~~

4. Employees shall not be entitled to retroactive accumulation of leave as a result of amendments to this section. Effective September 1, 1994, employees shall be eligible to accrue leave pursuant to paragraph 1 of this ~~section~~ subsection.

5. The Administrator of the Office of Personnel Management and the Executive Director of the Oklahoma Merit Protection Commission shall cooperate to assist agencies in developing policies to prevent violence in state government workplaces without abridging the rights of state employees. Such policy shall include a paid administrative leave provision as a cooling-off period which the Administrator of the Office of Personnel Management is authorized to provide pursuant to the Administrative

Procedures Act. Such leave shall not be charged to annual or sick leave accumulations.

6. State employees who terminated their employment in the state service on or after October 1, 1992, may be eligible to have sick leave accrued at the time of termination of employment restored if they return to state employment, provided that the state employees' enter-on-duty dates for reemployment occur on or before two (2) years after their termination of employment and they are eligible to accrue sick leave before the two (2) years expire.

7. Persons subject to the University Hospitals Authority Model Personnel System shall be exempt from the provisions of this section.

B. Nothing in the Oklahoma Personnel Act is intended to prevent or discourage an appointing authority from disciplining or terminating an employee due to abuse of leave benefits or absenteeism. Appointing authorities are encouraged to consider attendance of employees in making decisions regarding promotions, pay increases, and discipline.

C. Upon the transfer of a function in state government to an entity outside state government, employees may, with the agreement of the outside entity, waive any payment for leave accumulations to which the employee is entitled and authorize the transfer of the leave accumulations or a portion thereof to the outside entity.

SECTION 3. AMENDATORY Section 1, Chapter 387, O.S.L. 1992, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as amended by Section 2, Chapter 406, O.S.L. 1997 (74 O.S. Supp. 1997, Section 840-3.1), is amended to read as follows:

Section 840-3.1 A. Each supervisor employed as of January 1, 1993, by a state agency, board or commission in the executive branch of state government, excluding those within The Oklahoma State System of Higher Education, shall attend, prior to December 31, 1993, a training program for supervisory personnel. The training program shall be established pursuant to subsection D of this section.

B. Employees appointed to supervisory positions after January 1, 1993, shall complete training pursuant to subsection D of this section within six (6) months of assuming such supervisory position. Thereafter, supervisors are required to complete twenty-four (24) hours of training pursuant to subsection D of this section each year. The appointing authority of each agency shall ensure each supervisory employee is notified and scheduled to attend such required training and shall make time available for each such employee to complete the training.

C. As used in this section "supervisor" means a classified or unclassified employee who has been assigned authority and responsibility for all of the following functions on a continuous and uninterrupted basis with respect to subordinates:

1. Assigning work to subordinates and making sure work is performed correctly and in a timely manner;

2. Training subordinates in the performance of their assigned duties or planning and directing such training through subordinates;

3. Reviewing work performance of subordinates; and

4. Participating in determining appropriate personnel actions regarding subordinates such as performance appraisal, discipline, and corrective action.

D. 1. The Administrator of the Office of Personnel Management shall promulgate any rules necessary to develop and implement training programs for supervisory personnel which shall include areas such as: supervisory skills, affirmative action and equal employment opportunity, selection, performance management and performance appraisal, employee assistance, corrective discipline, and other legal and ethical issues relevant to supervisors. Rules authorized by this subsection shall require supervisors to attend training in the specified areas within a reasonable period of time determined by the Administrator.

2. Training programs for supervisors under this ~~act~~ section may be approved by the Office of Personnel Management; provided, however, such programs shall be subject to standards developed by the Office of Personnel Management. All state agencies, boards

and commissions may participate in any such government employee training program established by an institution that is a member of The Oklahoma State System of Higher Education and approved by the Office of Personnel Management as provided for in this paragraph.

SECTION 4. AMENDATORY 74 O.S. 1991, Section 840.42, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1997, Section 840-3.4), is amended to read as follows:

Section 840-3.4 The Carl Albert Public Internship Program shall consist of two individual internship programs as follows:

1. An Undergraduate Internship Program consisting of a temporary position for students enrolled ~~for internship credit~~ in an institution of higher education within the state and working toward an undergraduate degree;

2. An Executive Fellows Program consisting of six-month to two-year placements in professional or managerial level positions for students who have:

a. successfully completed a baccalaureate degree and at least six (6) semester hours of approved graduate level work with at least a three point zero (3.0) grade point average calculated on a four point zero (4.0) scale in all graduate coursework,

b. demonstrated a substantial interest in public sector management,

c. been recommended by the institution of higher education at which they are enrolled, and

d. such additional requirements as determined by the Office of Personnel Management; <u>and</u>

3. ~~Persons who are attending institutions of higher education within the state and who qualify under the Oklahoma Academic Scholarship Act shall be encouraged to apply for positions in the appropriate program as provided for in this section; and~~

~~4.~~ State employees, who otherwise meet the qualifications of the program, shall be eligible to participate in the program upon the written recommendation of the chief administrative officer of the applicant's agency.

SECTION 5. AMENDATORY Section 27, Chapter 242, O.S.L. 1994, as amended by Section 4, Chapter 286, O.S.L. 1997 (74 O.S. Supp. 1997, Section 840-3.8), is amended to read as follows:

Section 840-3.8 A. Effective July 1, 1995, the Administrator of the Office of Personnel Management shall design a mentor program for state employees with executive potential in all branches of state government. The mentor program shall be open to all state employees but shall place a special emphasis on development of women, racial minorities and persons with disabilities as executives. As used in this section, "agency" means any office, department, board, commission, or institution in all branches of state government.

B. Effective July 1, 1995, there is hereby created a seven-member Mentor Selection Advisory Committee which shall be composed of the following permanent members: The Administrator or designee, the Director of the Office of State Finance or designee, a designee of the Governor, a designee of the President Pro Tempore of the Senate and a designee of the Speaker of the House of Representatives. Two other agency appointing authorities shall be selected every two (2) years by the Advisory Committee's permanent members. Agency appointing authority members may be represented at committee meetings by a designee. Appointed members not serving a specific term will serve at the pleasure of their appointing authority. Members shall be reimbursed for necessary travel expenses incurred in the performance of their duties by the Office of Personnel Management.

Any state employee may nominate another state employee for the mentor program. The Mentor Selection Advisory Committee shall select candidates for the mentor program and recommend those candidates to the Administrator for approval. The Advisory Committee shall select candidates from those employees nominated for participation in the program. The Mentor Selection Advisory Committee may recommend to the Administrator up to five candidates during a two-year period for participation in the mentor program. Selection criteria shall include, but not be limited to:

1. Demonstrated leadership qualities;

2. Outstanding achievement record;

3. Outstanding recommendations by supervisors or peers;

4. Special knowledge of state systems; and

5. Completion of the Certified Public Manager Program or similar achievement.

Individuals recommended by the Advisory Committee, approved by the Administrator, and placed in a management rotation shall be referred to as mentor executives. Mentor executives shall complete a two-year management rotation assignment in which they are assigned to a policy level ~~management duties~~ manager for six (6) months ~~within~~ in any or all of the following entities: the sending agency, ~~six (6) months~~ with one or both houses of the Legislature, ~~six (6) months in any or all of the following agencies:~~ the Office of State Finance, the Governor's Office ~~and~~, the Office of Personnel Management, and ~~six (6) months in~~ any other agency accepting the mentor executive.

Rotation assignments shall be accomplished through the State Personnel Interchange Program, Section 840-3.9~~,~~ et seq. of this title. Each mentor executive shall be considered an employee of the sending agency for all purposes other than supervision. The Administrator shall establish minimum compensation for mentor executives and shall adopt rules as the Administrator finds necessary for the administration of the State Mentor Program. Such rules shall provide for the sending agency and the agency in which the mentor executive is completing his or her management rotation to share the compensation of the mentor executive or for either agency to pay the total amount. A state employee's salary may be increased during the period of his or her participation in the State Mentor Program, but shall not be reduced during such period. Each agency participating in the mentor program shall assign an executive-level manager to serve as the mentor for the period the mentor executive is completing the mentor executive's management rotation in that agency.

The mentor's duties are to instill in the mentor executive knowledge of the agency's purpose and functions, and a sense of professionalism and public service. Mentors will further serve as

a source of career guidance and reference after the management rotation is finished. The employees participating in the mentor program shall be exempt from any full-time-equivalent limitations established by law.

SECTION 6. AMENDATORY 74 O.S. 1991, Section 840.19, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 8, Chapter 320, O.S.L. 1996 (74 O.S. Supp. 1997, Section 840-4.12), 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 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 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~~ rules adopted by the Administrator and is in accordance with a plan adopted by the promoting agency. Every employee promoted within an agency shall serve a six-month trial period in the class to which the

employee is promoted, unless the trial period is waived, in writing, by the appointing authority. At any time during a trial period, the appointing authority may return the employee to the class from which the employee was promoted upon written notification to the employee as to such action and the reason therefor, and the employee shall not have the right to appeal.

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 Office of Personnel Management shall certify that a candidate meets the necessary job qualifications of a classification in the classified service for the purpose of allowing that candidate to be appointed to a position in that class. 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~~ E 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~~ through 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~~ through 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 this section and Section 840-4.13 of this title.

3. Persons with severe disabilities hired pursuant to this subsection shall be appointed for a probationary period ~~of six (6) months. At the end of the probationary period if the work of said person with severe disabilities is satisfactorily performed, the person with a severe disability shall acquire permanent status~~ pursuant to Section 840-4.13 of this title.

4. Persons with severe disabilities hired pursuant to this subsection shall be subject to the rules 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~~ 840-4.13 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 7. AMENDATORY 74 O.S. 1991, Section 840.20, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1997, Section 840-4.13), and as last amended by Section 1 of Enrolled House Bill No. 2379 of the 2nd Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 840-4.13 A. Based upon the results of competitive entrance examinations and registers, as provided by 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, 1999. 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. The Department of Public Safety, in filling vacancies for Highway Patrol Cadets, may disqualify any eligible whose name has been certified for Highway Patrol Cadet pursuant to subsection A of this section, if the Department of Public Safety considers the eligible in connection with the hiring of three other eligibles pursuant to subsection A of this section from that certificate. The name of such disqualified eligible shall be omitted from future certification to, and consideration by, the Department of Public Safety for appointment as a Highway Patrol Cadet. Such disqualification shall not deprive any person of any preference pursuant to paragraph 3 of subsection A of Section 840-4.14 of this title. The Department of Public Safety shall provide written notice of the disqualification to the Office of Personnel Management. The Department of Corrections, in filling vacancies for Correctional Officer Cadets and Probation and Parole Officers, may disqualify any eligible whose name has been certified for Correctional Officer Cadet or Probation and Parole Officer, pursuant to subsection A of this section, if the Department of Corrections considers the eligible in connection with the hiring of three other eligibles pursuant to subsection A of this section from that or any other certificate. The name of such disqualified eligible shall be omitted from future certification to, and consideration by, the Department of Corrections for appointment as a Correctional Officer Cadet or Probation and Parole Officer for a period of six (6) months, at which time the eligible may request restoration to the register by the Office of Personnel Management. Such disqualification shall not deprive any person of any preference pursuant to paragraph 3 of subsection A of Section 840-4.14 of this title. The Department of Corrections shall provide written notice of the disqualification to the Office of Personnel Management.

C. Agencies may fill positions requiring professional practice licensure and hard-to-fill positions pursuant to

authorization by the Administrator without regard to subsections A and B of this section. The Administrator shall promulgate rules to authorize agencies to fill positions directly, pursuant to this subsection. Such rules shall include criteria for identifying professional practice licensure positions and hard-to-fill positions which shall not require establishment of an employment list of eligible persons or the application of veterans preference. The Administrator shall monitor appointments made by agencies pursuant to this subsection and shall establish recordkeeping and reporting procedures and the conditions under which the Administrator may withdraw authorization for agencies to directly hire persons into hard-to-fill positions. Nothing in this subsection shall be construed to waive any requirement for any job classification or position established by statute or the Administrator.

D. Every person, except ~~for agents employed by the Alcoholic Beverage Laws Enforcement Commission who shall be appointed for probationary periods of one (1) year~~ as provided in subsection E of this section, upon initial appointment under the classified service~~,~~ shall be appointed for a probationary period of ~~six (6) months~~ one (1) year, except that the appointing authority may ~~extend a~~ waive in writing the remainder of the probationary period~~, not to exceed a total of nine (9) months for an individual,~~ at any time after a probationary employee has served six (6) months; 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 the Oklahoma Personnel Act.

E. Every person initially appointed under the classified service as an agent of the Alcoholic Beverage Laws Enforcement Commission shall be appointed for a probationary period of one (1) year.

SECTION 8. AMENDATORY 74 O.S. 1991, Section 841.16, as amended by Section 18, Chapter 367, O.S.L. 1992, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1997, Section 840-4.17), is amended to read as follows:

Section 840-4.17 A. Each agency shall adopt and maintain a system of employee service ratings. The Office of Personnel Management shall make available a standard system for this purpose, but an appointing authority may develop a separate system, subject to approval of the Administrator of the Office of Personnel Management. The purpose of the system of employee service rating is to evaluate the performance of each regular classified, unclassified and exempt employee in the executive branch of state government except those in the exempt unclassified service as specified in paragraphs 1 and 2 of subsection A of Section ~~840.8~~ 840-5.5 of this title and those employees employed by the institutions under the administrative authority of The Oklahoma State System of Higher Education. The Administrator of the Office of Personnel Management, on or before January 1 of each year, shall submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor identifying those state agencies that have complied with the provisions of this section.

B. The system shall provide for the following:

1. An objective evaluation of the employee, by the immediate supervisor, of the performance of the employee within the assigned duties of the job;

2. The identification of the strengths and deficiencies of the employee;

3. Corrective actions, if necessary, to correct deficiencies;

4. An interview with the employee by the immediate supervisor who shall provide the employee with a copy of the service ratings; and

5. The opportunity for the employee to submit written comments regarding the service rating.

C. Each employee shall be rated thirty (30) days prior to the end of the probationary period. Thereafter, each employee shall be rated no less than once each year.

D. Any permanent classified employee who disagrees with his or her individual service rating may file a grievance pursuant to Section ~~841.9~~ 840-6.2 of this title. Any employee, regardless of status, who is required to be rated pursuant to this section and who disagrees with his or her individual service rating may file a complaint through any other dispute resolution process made available through the employing agency or the Oklahoma Merit Protection Commission. The Oklahoma Merit Protection Commission shall not have jurisdiction to investigate or hear appeals of individual service ratings.

E. The agency shall use ~~the~~ available service ratings of current or former state employees in decisions regarding promotions, appointments, demotions, performance pay increases and discharges. Reductions-in-force shall not be considered discharges.

F. The agency shall retain a copy of the service rating for each employee of the agency. A copy of the service rating shall be furnished to the Administrator of the Office of Personnel Management for review to determine compliance with the provisions of this section and shall be retained in the file on the employee.

SECTION 9. AMENDATORY 74 O.S. 1991, Section 841.13, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 17, Chapter 310, O.S.L. 1995 (74 O.S. Supp. 1997, 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. Employees in the classified service, upon final conviction of, or pleading guilty or nolo contendere to, a felony shall be discharged if the felony is job-related pursuant to Section 24.1 of Title 51 of the Oklahoma Statutes. 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.

Within 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 an administrative hearing 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 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 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 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 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 10. REPEALER 74 O.S. 1991, Section 840.41, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1997, Section 840-3.3), is hereby repealed.

SECTION 11. This act shall become effective July 1, 1998.

SECTION 12. 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.

46-2-11428 GH