

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2802

By: Ostrander and Hilliard

AS INTRODUCED

An Act relating to reports; amending Section 4, Chapter 299, O.S.L. 1992, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 15, Chapter 247, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7302-3.11), which relates to the Department of Juvenile Justice; amending 17 O.S. 1991, Sections 253 and 257, which relate to fuel adjustment clauses; amending Section 1, Chapter 311, O.S.L. 1995 (27A O.S. Supp. 1997, Section 2-10-205), which relates to recycling; amending 45 O.S. 1991, Section 1d, which relates to duties of the Director of the Department of Mines; amending 59 O.S. 1991, Section 199.15, which relates to cosmetology; amending 59 O.S. 1991, Section 1210, which relates to professional foresters; amending 59 O.S. 1991, Section 1635, which relates to welders; amending 61 O.S. 1991, Section 130, as amended by Section 84, Chapter 133, O.S.L. 1997 (61 O.S. Supp. 1997, Section 130), which relates to the Public Competitive Bidding Act; amending 62 O.S. 1991, Section 88.3, which relates to the Oklahoma Linked Deposit Review Board; amending 68 O.S. 1991, Section 2357.4, as last amended by Section 3, Chapter 190, O.S.L.

1997, Section 2, Chapter 296, O.S.L. 1996, and Section 10, Chapter 225, O.S.L. 1992 (68 O.S. Supp. 1997, Sections 2357.4, 2357.25 and 54006), which relate to certain investment credits; amending 70 O.S. 1991, Section 1210.307, as last amended by Section 4, Chapter 359, O.S.L. 1994 (70 O.S. Supp. 1997, Section 1210.307), which relates to gifted child educational programs; amending 70 O.S. 1991, Section 3412, as amended by Section 13, Chapter 308, O.S.L. 1992 (70 O.S. Supp. 1997, Section 3412), which relates to the Board of Regents for Oklahoma Agricultural and Mechanical Colleges; amending 72 O.S. 1991, Section 404, which relates to special disabled veterans; amending 74 O.S. 1991, Section 85.43, which relates to state contracts; amending 74 O.S. 1991, Section 840.5, as last renumbered by Section 24, Chapter 310, O.S.L. 1995, and as last amended by Section 2, Chapter 320, O.S.L. 1996 (74 O.S. Supp. 1997, Section 840-1.6A), which relates to the Office of Personnel Management; amending 74 O.S. 1991, Section 840.23, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1997, Section 840-2.19), which relates to state payrolls; amending 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), which relates to the Oklahoma Personnel Act; amending 74 O.S. 1991, Section 841.9, as last amended by Section 33, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp.

1997, Section 840-6.2), which relates to grievance procedures; amending 74 O.S. 1991, Section 3106.1, which relates to publication officers; amending 74 O.S. 1991, Section 4120, which relates to incentive award program; removing certain reporting requirements; updating language; removing outdated language; clarifying when certain reports are due; repealing 45 O.S. 1991, Section 395, 47 O.S. 1991, Section 230.16, 63 O.S. 1991, Section 2809, 68 O.S. 1991, Sections 2352.1 and 2357.9, 74 O.S. 1991, Section 20a, and 82 O.S. 1991, Section 1085.6, which relate to certain reports and statements; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 4, Chapter 299, O.S.L. 1992, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 15, Chapter 247, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7302-3.11), is amended to read as follows:

7302-3.11 The Department of Juvenile Justice shall from time to time, but not less often than annually, review its programs and services and submit a report to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Supreme Court of the State of Oklahoma, the Board of Juvenile Affairs, and the Oklahoma Commission on Children and Youth analyzing and evaluating the effectiveness of the programs and services being carried out by the Department of Juvenile Justice. Such report shall include, but not be limited to:

1. An analysis and evaluation of programs and services continued, established and discontinued during the period covered by the report;

2. A description of programs and services which should be implemented;

3. Relevant information concerning the number of children comprising the population of any facility of the Office of Juvenile Affairs operated by the Department of Juvenile Justice during the period covered by the report; and

4. Such other information as will enable a user of the report to ascertain the effectiveness of the programs, services and facilities.

B. Beginning July 1, 1998, and at least annually thereafter, the Department of Juvenile Justice shall ~~review~~ analyze and evaluate the implementation of the Youthful Offender Act ~~and submit a report to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Supreme Court of the State of Oklahoma, the Oklahoma Court of Criminal Appeals, the Board of Juvenile Affairs, and the Oklahoma Commission on Children and Youth~~ analyzing and evaluating, the effectiveness of the Youthful Offender Act and any problems which have occurred which have limited the effectiveness of the Youthful Offender Act. The annual analysis and evaluation shall be incorporated in the report required by subsection A of this section.

SECTION 2. AMENDATORY 17 O.S. 1991, Section 253, is amended to read as follows:

Section 253. A. No proposed monthly fuel adjustment, purchased power adjustment or purchased gas adjustment shall become effective until after the Corporation Commission has had an opportunity to determine that the adjustment is calculated in accordance with the terms and conditions of the applicable fuel adjustment clause.

B. The Commission shall ~~adopt regulations~~ promulgate rules requiring each company as a necessary part of the monthly filing with the Commission and condition to consideration of any adjustment application ~~the monthly filing with the Commission, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the office of the Governor of~~ to submit the following information:

1. A statement by each company subject to a fuel adjustment clause of the items and costs making up the average cost of fuel per million BTU and associated costs in dollars and cents or fraction thereof;

2. A summary of its fuel and gas purchase invoices and its computations of the proposed monthly fuel adjustment or purchased gas adjustment charges;

3. A summary of inventory records of fuel and gas going into and taken out of stockpile or storage;

4. A report containing the average unit price, the change in the average unit price, the volume purchased and a brief explanation of such unit cost increase; and

5. Any other records deemed necessary by the Commission including, but not limited to, the heat rate efficiency and delivery efficiency for affected electric public utilities and the actual capacity factor for each generating facility utilized to produce electric power.

The records and computations filed shall be open to public inspection at the office of the Commission.

C. The Commission shall have five (5) business days after the records and computations prescribed in subsection B of this section have been filed to determine the necessity of an administrative proceeding thereon. If the Commission does not determine that a hearing is required, the proposed adjustment charge shall become effective as filed. In the event the Commission decides to hold a

hearing on the information filed, it shall notify the public utility within such five-day period, set the matter for a public hearing to commence within thirty (30) business days thereafter, and give notice thereof at least three (3) days prior to the commencement of such hearing by publication in a newspaper of general circulation in the area served by such company. The issue to be determined at such hearing shall be either or both of the following determinations:

1. Whether charges or credits made under the fuel adjustment clauses are based upon the actual prices paid for fuel, purchased gas or purchased power and are properly computed in accordance with the applicable adjustment clause; or

2. Whether the fuel adjustment clauses should be discontinued, amended or suspended. In the event that the Commission determines that it is necessary to set any proposed adjustment charge for hearing, the proposed charge shall nevertheless become effective at the option of the utility following the expiration of the five-day period after its records and computations have been filed, pending the Commission's finding with respect to such charges. However, in the discretion of the Commission, the effectiveness of the proposed charge may be conditioned upon the filing by the utility with the Commission of an assurance satisfactory to the Commission, which may include a bond with surety, of the utility's ability and willingness to refund to its customers any such amounts as the utility may collect from them in excess of the charge approved by the Commission in its finding. If the Commission has not approved, in whole or in part, or denied the proposed charge within a seven-day period subsequent to the commencement of such hearing, ~~it~~ the Commission shall promptly submit a written explanation of ~~its~~ the Commission's failure to do so to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the office of the Governor.

SECTION 3. AMENDATORY 17 O.S. 1991, Section 257, is amended to read as follows:

Section 257. Electric generation cooperatives which determine to utilize a fuel adjustment clause shall report such fuel adjustment clause to the Commission. The Commission shall ~~adopt~~ promulgate reasonable ~~regulations~~ rules requiring each such cooperative to file monthly with the Commission, ~~the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the office of the Governor,~~ the following:

1. A report of adjustments charged or credited to its wholesale electric customers on its current monthly billing;
2. A statement of the items and costs making up the average cost of fuel per million BTU and associated costs in dollars and cents or fraction thereof;
3. A summary of its fuel and gas purchase invoices and its computation of the proposed monthly fuel adjustment charges;
4. A summary of inventory records of fuel going into and taken out of stockpile or storage;
5. A report containing the average unit price, the change in the average unit price, the volume purchased and a brief explanation of any change in such unit cost; and
6. Any other records pertaining to fuel adjustment charges deemed necessary by the Commission including, but not limited to, the heat-rate efficiency and delivery efficiency for affected electric generating cooperatives and the actual capacity factor for each generating facility utilized to produce electric power. The records and computations provided for in this section shall be open to public inspection at the office of the Commission.

SECTION 4. AMENDATORY Section 1, Chapter 311, O.S.L. 1995 (27A O.S. Supp. 1997, Section 2-10-205), is amended to read as follows:

Section 2-10-205. A. The Legislature hereby recognizes and declares that it is necessary for the public interest, health and economic welfare to encourage and promote the recycling and reuse of recoverable materials. The recycling and reuse of recoverable materials substantially reduces disposal costs and the tremendous flow of solid waste to Oklahoma's dwindling solid waste sites. It is equally necessary that Oklahoma preserve, expand and encourage economic growth. The recycling and reuse of recoverable materials will create new employment, provide and allow for expansion of existing manufacturing, thereby increasing employment and payrolls as well as upgrading the state's natural resources.

B. The Legislature declares that the goal of this state, hereinafter called the Oklahoma Recycling Initiative, is that each incorporated municipality with a population greater than five thousand (5,000), as determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce, should develop and operate a recycling program which will generate raw materials for the manufacturing industries located in this state. Due to the importance of the paper industry to Oklahoma's economy, each recycling and reuse program should at a minimum include the collection of waste paper.

In implementing any recycling program the Oklahoma Recycling Initiative the municipality may:

1. Consider the overall status of the solid waste collection system and management within the municipality, including generation, recycling and disposal;
2. Review five- , ten- , and twenty-year municipality-wide goals for reducing the amount of solid waste through the recycling of recoverable materials;
3. Evaluate alternative methods for achieving the Oklahoma Recycling Initiative through municipality-wide collection systems or

through integrated recoverable materials management on a regional basis;

4. Establish a comprehensive and sustained public information and education program concerning the recoverable materials program's features and requirements; and

5. Include in the program such other information recommended by the Department of Environmental Quality.

C. Each municipality should submit a report of its progress towards meeting the recycling goal pursuant to this section to the Department of Environmental Quality on or before January 1 of each year. ~~The Department of Environmental Quality shall, on or before February 1 of each year, submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor detailing the efforts of the municipalities in achieving the Oklahoma Recycling Initiative.~~

SECTION 5. AMENDATORY 45 O.S. 1991, Section 1d, is amended to read as follows:

Section 1d. A. The Director of the Department of Mines with the approval of the Commission shall have and is authorized to exercise the following duties:

1. To appoint a miner certification advisory council or other such advisory council as may be required to accomplish government functions; and

2. To provide assistance, advice and counsel to the Commission when requested.

B. Any advisory councils shall meet at such times and places as the members may deem most convenient for the transaction of business. A majority of such councils shall constitute a quorum. Each member of such councils shall be reimbursed for actual and necessary expenses incurred in the discharge of official duties with approval of the Director and the Commission as provided in the State Travel Reimbursement Act.

~~C. On October 1, of each year, the Director shall file a written report with the Office of State Finance, the Director of the Legislative Service Bureau, the President Pro Tempore of the Senate and the Speaker of the House of Representatives containing a list of all money received by the Department of Mines from the federal government in the twelve (12) months preceding the report and a list of all federal grants pending or planned in the twelve (12) months following the report. The purpose of the grants received or pending shall be stated in the report.~~

SECTION 6. AMENDATORY 59 O.S. 1991, Section 199.15, is amended to read as follows:

Section 199.15 All fees and penalties collected hereunder and all cash on hand not otherwise encumbered as of the effective date of this act shall be paid into the State Treasury in accordance with the depository laws of this state, and shall be kept in and credited to a separate fund to be known as the State Cosmetology Fund, which is hereby created, under and subject exclusively to the control of the State Cosmetology Board for the purpose of fulfillment and accomplishment of the conditions and purposes of this act.

At the close of each fiscal year hereafter said Cosmetology Board ~~shall file with the Governor and the State Auditor and Inspector a true and correct report of all fees and penalties charged, collected and received during the previous fiscal year and~~ shall pay into the General Revenue Fund of the state ten percent (10%) of the gross fees and penalties so charged, collected and received by such Board. Other than said ten percent (10%) all fees and penalties charged and monies collected and received, plus all cash on hand not otherwise encumbered as of the effective date of this act, are hereby dedicated, appropriated and pledged to the accomplishment and fulfillment of the purposes of this act.

All expenses, per diem, salaries, wages, travel, rents, printing, supplies, maintenance, and other costs incurred by ~~said~~

the Board in the performance of ~~their duties~~ its duty and in accomplishment and fulfillment of the purposes of this act, shall be a proper charge against and paid from said State Cosmetology Fund; provided that, in no event shall any claim or obligation accrue against the State of Oklahoma nor against said Cosmetology Fund in excess of the ninety percent (90%) or the amount of fees and penalties collected and paid into the State Treasury under the provisions of this act.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 1210, is amended to read as follows:

Section 1210. The State Board of Registration for Foresters shall keep a record of its proceedings and a register of all applications for registration, which register shall show the name, age, and residence of such applicant; the date of the application; address for the receipt of mail and the place of business of such applicant; ~~his educational~~ the education and other qualifications of the applicant; whether or not an examination was required; whether the application was rejected; whether a license was granted; the date of the action of the Board; and such other information as may be deemed necessary by the Board. ~~Annually, as of June 30th, the Board shall submit to the Governor a report on its transactions.~~

SECTION 8. AMENDATORY 59 O.S. 1991, Section 1635, is amended to read as follows:

Section 1635. The Commissioner of Labor shall have the following duties in addition to any other duties prescribed by law:

1. Examine, certify and renew the certification of qualified applicants, and keep a record of all such proceedings, ~~and submit annual reports to the Governor;~~

2. Promulgate rules ~~and regulations~~ concerning the quality of welds and qualification of welders;

3. Designate and approve persons qualified to administer welding tests; and

4. Designate and approve shops, testing facilities or other establishments qualified for testing coupons and weldments.

SECTION 9. AMENDATORY 61 O.S. 1991, Section 130, as amended by Section 84, Chapter 133, O.S.L. 1997 (61 O.S. Supp. 1997, Section 130), is amended to read as follows:

Section 130. A. The provisions of the Public Competitive Bidding Act with reference to notice and bids shall not apply whenever the governing body of a public agency declares by a two-thirds (2/3) vote of all of the members of the governing body that an emergency exists; provided, the Oklahoma Transportation Commission and the Oklahoma Tourism and Recreation Commission may, by majority vote of all the members of each Commission, declare that an emergency exists.

B. The governing bodies of all public agencies are further authorized, upon approval of two-thirds (2/3) of all of the members of the governing body, to delegate to the chief administrative officer of a public agency the authority to declare an emergency situation, in which event the provisions of the Public Competitive Bidding Act with reference to notice and bids shall not apply, but such authority shall not extend to any contract exceeding Twenty-five Thousand Dollars (\$25,000.00) in amount; provided, such authority of the Oklahoma Department of Transportation shall not extend to any contract exceeding One Hundred Fifty Thousand Dollars (\$150,000.00) in amount.

C. An emergency declared by the Board of Corrections pursuant to subsection C of Section 65 of this title shall exempt the Department of Corrections from the limits which would otherwise be imposed pursuant to subsection B of this section for the contracting and construction of new or expanded correctional facilities.

D. Whenever said chief administrative officer shall declare such an emergency he shall notify the governing body, the President Pro Tempore of the State Senate and Speaker of the House of

Representatives of such action within ten (10) days. Such notification shall contain a statement of the reasons for his action, and shall be recorded in the official minutes of said governing body.

E. Emergency as used in this section shall be limited to conditions resulting from a sudden unexpected happening or unforeseen occurrence or condition and situation wherein the public health or safety is endangered.

F. The reasons for declaring an emergency and not complying with the provisions of the Public Competitive Bidding Act shall be entered into the official minutes of the governing body of the public agency. Copies of said minutes shall be submitted to the Central Purchasing Director of the Department of Central Services who shall compile an annual report detailing all emergencies declared pursuant to this section during the previous calendar year. The report shall be submitted to the Governor, the President Pro Tempore of the ~~State~~ Senate and the Speaker of the House of Representatives.

SECTION 10. AMENDATORY 62 O.S. 1991, Section 88.3, is amended to read as follows:

Section 88.3 A. There is hereby created the Oklahoma Linked Deposit Review Board. The Board shall consist of seven (7) members as follows:

1. The State Auditor and Inspector or ~~his~~ designee;
2. The Lieutenant Governor or ~~his~~ designee to represent Oklahoma small business;
3. The State Insurance Commissioner or ~~his~~ designee;
4. The State Treasurer or ~~his~~ designee;
5. The Director of the Department of Commerce or ~~his~~ designee;
6. A representative from an Oklahoma banking institution appointed by the Bank Commissioner; and
7. A representative appointed by the Governor.

B. The purpose of the Board shall be to insure eligibility and compliance with the linked deposit program by lenders and applicants. The Board shall review applications and make recommendations for approval or rejection of a linked deposit loan package. In reviewing linked deposit loan applications the Board shall take into consideration the economic needs of the area in which the business is to be located and the number of jobs to be created or preserved by the receipt of such loan. The Board shall adopt and administer a reporting plan whereby the use and economic impact of jobs created and saved by linked deposit loans shall be reviewed and analyzed on ~~a semiannual~~ an annual basis. The Board shall be responsible for preparing a report summarizing these findings on ~~a semiannual~~ an annual basis ~~with the first report due on or before January 1, 1993~~. The Board shall base such report upon information as available from the Employment Security Commission as to each applicant for which a linked deposit loan has been approved. Such report shall list separately each loan, with name, address, and type of business by Standard Industrial Code, amount, estimated jobs saved or created, lending institution and locations by county and/or enterprise zone, if applicable. The report shall be filed with the State Treasurer, the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Chairmen of the House of Representatives and the Senate Economic Development Committees. The Office of the State Treasurer shall provide staff assistance to the Board. Notwithstanding any other provision of law, the holding of other office or employment under the government of this state shall not be prohibited due to service on the Oklahoma Linked Deposit Review Board.

SECTION 11. AMENDATORY 68 O.S. 1991, Section 2357.4, as last amended by Section 3, Chapter 190, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2357.4), is amended to read as follows:

Section 2357.4 A. For taxable years beginning after December 31, 1987, there shall be allowed a credit against the tax imposed by Section 2355 of this title for investment in qualified depreciable property placed in service during those years for use in a manufacturing or processing facility or a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of Section 1357 of this title in this state or for a net increase in the number of full-time-equivalent employees engaged in manufacturing, processing or aircraft maintenance in this state including employees engaged in support services.

B. The credit provided for in subsection A of this section, if based upon investment in qualified depreciable property, shall not be allowed unless the investment in qualified depreciable property is at least Fifty Thousand Dollars (\$50,000.00) and shall not be allowed if such investment causes a decrease in the number of full-time-equivalent employees. Qualified property shall be limited to machinery, fixtures, equipment, buildings or substantial improvements thereto, placed in service in this state during the taxable year. The taxable years for which the credit may be allowed if based upon investment in qualified depreciable property shall be measured from the year in which the qualified property is placed in service. If the credit provided for in subsection A of this section is calculated on the basis of one percent (1%) of the cost of the qualified property, the credit shall be allowed in each of the four (4) subsequent years. If the qualified property on which a credit has previously been allowed is acquired from a related party, the date such property is placed in service by the transferor shall be considered to be the date such property is placed in service by the transferee, for purposes of determining the aggregate number of years for which credit may be allowed.

C. The credit provided for in subsection A of this section, if based upon an increase in the number of full-time-equivalent

employees, shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Seven Thousand Dollars (\$7,000.00) during each year the credit is claimed shall be included in the calculation. Provided, that the first year a credit is claimed for a new employee, such employee may be included in the calculation notwithstanding paid wages of less than Seven Thousand Dollars (\$7,000.00) if the employee was hired in the last three quarters of the tax year, has wages or salary which will result in annual paid wages in excess of Seven Thousand Dollars (\$7,000.00) and the taxpayer submits an affidavit stating that the employee's position will be retained in the following tax year and will result in the payment of wages in excess of Seven Thousand Dollars (\$7,000.00). The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

D. The credit allowed by subsection A of this section shall be the greater amount of either one percent (1%) of the cost of the qualified property in the year the property is placed in service or Five Hundred Dollars (\$500.00) for each new employee. No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

E. Any credits allowed but not used in any taxable year may be carried over in order to each of the four (4) years following the year of qualification and to the extent not used in those years in

order to each of the five (5) years following the initial five-year period.

~~F. The Oklahoma Tax Commission, on or before January 31 of each year, shall submit a report regarding the credit authorized by this section to both houses of the Oklahoma Legislature. Such report shall summarize the total amount of credits claimed and likely to be claimed and allowed under this section.~~

SECTION 12. AMENDATORY Section 2, Chapter 296, O.S.L. 1996 (68 O.S. Supp. 1997, Section 2357.25), is amended to read as follows:

Section 2357.25 A. There shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for direct investments by Oklahoma agricultural producers in Oklahoma producer-owned agricultural processing cooperatives, Oklahoma producer-owned agricultural processing ventures, or Oklahoma producer-owned agricultural processing marketing associations created and designed to develop and advance the production, processing, handling and marketing of agricultural commodities grown, made or manufactured in Oklahoma. For calendar years 1997 and 1998, the amount of the credit shall be thirty percent (30%) of the amount of the investment by the Oklahoma agricultural producer in Oklahoma producer-owned agricultural processing cooperatives, ventures, or marketing associations.

For calendar year 1999, and all subsequent years, the credit percentage, not to exceed thirty percent (30%), shall be adjusted annually so that the total estimate of credits does not exceed One Million Dollars (\$1,000,000.00) annually. The formula to be used for the percentage adjustment shall be thirty percent (30%) times One Million Dollars (\$1,000,000.00) divided by the credits claimed in the preceding year. In no event shall the credit be claimed more than once by a taxpayer each taxable year.

In the event the total tax credits authorized by this section exceed One Million Dollars (\$1,000,000.00) in any calendar year, the Oklahoma Tax Commission shall permit any excess over One Million Dollars (\$1,000,000.00) but shall factor such excess into the percentage adjustment formula for subsequent years.

B. If the credit allowed pursuant to this section exceeds the amount of state income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of credit allowed but not used in any taxable year may be carried forward as a credit against subsequent income tax liability for a period not exceeding six (6) years following the year in which the investment was originally made.

C. The Oklahoma Tax Commission shall have the authority to prescribe forms for purposes of claiming the credit authorized by this section. The Oklahoma Tax Commission shall be authorized to conduct an investigation of the relevant facts as may be required in order to verify the eligibility of a claimant to receive a credit for any applicable income tax year.

D. 1. For any taxable year during which a taxpayer sells or otherwise disposes of the ownership interest for which a tax credit has previously been allowed to the taxpayer or for which a tax credit will be allowed to the taxpayer for the year in which the sale or other disposition of the ownership interest is made, the taxpayer shall be required to reduce the cost of the ownership interest in the Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association, as reported upon the applicable income tax return, by the amount of the tax credit which has previously been granted or for which the taxpayer is claiming credit if the credit is allowable for the year during which the sale or other disposition is made.

2. If a taxpayer sells or otherwise disposes of an ownership interest in the Oklahoma producer-owned agricultural processing

cooperative, venture, or marketing association for which the tax credit authorized by this section may be taken in a taxable year following the year in which the ownership interest in the Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association is sold or otherwise disposed of, the credit authorized by this section shall be reduced to account for the prior sale or other disposition.

~~E. The Oklahoma Tax Commission, on or before January 31 of each year, shall submit a report regarding the tax credit authorized by this section to the Speaker of the House of Representatives and the President Pro Tempore of the Senate of the Oklahoma Legislature. The report shall summarize the total amount of tax credits claimed and likely to be claimed and allowed pursuant to this section.~~

~~F.~~ E. The tax credit authorized by this section shall not be available or taken for any calendar year during which the claimant of the credit received any incentive payments pursuant to the Oklahoma Quality Jobs Program Act or the Saving Quality Jobs Act.

~~G.~~ F. As used in this section:

1. "Direct investment" means the payment of money in an Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association or the transfer of any form of economic value, whether tangible or intangible, other than money;

2. "Oklahoma producer-owned agricultural processing cooperative" means a legal entity in the nature of a partnership or business undertaking agricultural transactions or agricultural commercial enterprises for mutual profit which are owned and controlled by Oklahoma agricultural producers. An Oklahoma producer-owned agricultural processing cooperative requires a community of interest in the performance of the undertaking, transaction or enterprise, a right to direct and govern the policy in connection therewith and the duty, which may be altered by agreement, to share both in profit and losses. The term does not

include a cooperative that provides only, and nothing more than, storage, cleaning, drying, or transportation of agricultural commodities;

3. "Oklahoma producer-owned agricultural processing venture" means a legal entity in the nature of a corporation or company organized to invest in or operate an agricultural commodity processing facility operated primarily for the processing or production of marketable products from agricultural commodities. The term does not include a venture that provides only, and nothing more than, storage, cleaning, drying, or transportation of agricultural commodities;

4. "Oklahoma producer-owned agricultural processing marketing association" means a legal entity owned by Oklahoma producers of agricultural commodities and organized to jointly market agricultural commodities, facilitate the marketing process and to promote and stimulate the processing, sales, and marketing of agricultural commodities. The term does not include a marketing association that provides only, and nothing more than, storage, cleaning, drying, or transportation of agricultural commodities;

5. "Oklahoma agricultural producer" means an individual who produces agricultural commodities in this state; and

6. "Agricultural commodities" means a farm or ranch product, including but not limited to, wheat, corn, soybeans, cotton, timber, cattle, hogs, sheep, horses, poultry, animals of the families bovidae, cervidae and antilocapridae or birds of the ratite group produced in farming or ranching operations or a product of such crop or livestock in its unmanufactured state such as ginned cotton, wool-dip, maple syrup, milk and eggs, or any other commodity listed under any Industry Group Number under Major Group 20 of Division D of the Standard Industrial Classification (SIC) Manual.

H. G. For purposes of this section, an agricultural commodity shall be deemed to be produced within this state if it is

substantially produced, by any person, partnership, company, association or corporation:

1. Authorized to do and doing business under the laws of this state;
2. Paying all taxes duly assessed; and
3. Domiciled within this state by having a location of production within this state.

SECTION 13. AMENDATORY Section 10, Chapter 225, O.S.L. 1992 (68 O.S. Supp. 1997, Section 54006), is amended to read as follows:

Section 54006. A. For taxable years beginning after December 31, 1992, and before January 1, 2003, there shall be allowed a credit against the tax imposed by Section 2355 of this title for a net increase in the number of full-time-equivalent employees engaged in computer services, data processing or research and development as defined in Section 7 54003 of this ~~act~~ title, in this state including employees engaged in support services.

B. The credit provided for in subsection A of this section shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Thirty-five Thousand Dollars (\$35,000.00) during each year the credit is claimed shall be included in the calculation. The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

C. In order to be eligible to receive the credit provided for in subsection A of this section, a new or expanding business shall not include the existing employee positions of any business

enterprise that is directly or beneficially owned by a corporation, trust, joint venture, proprietorship, or partnership doing business in this state as of January 1, 1992.

D. The credit allowed by subsection A of this section shall be Five Hundred Dollars (\$500.00) for each new employee, but not to exceed fifty new employees.

E. Any credits allowed but not used in any taxable year may be carried over in order to each of the four (4) years following the year of qualification and to the extent not used in those years in order to each of the five (5) years following the initial five-year period.

~~F. The Oklahoma Tax Commission, on or before January 31 of each year, shall submit a report regarding the credit authorized by this section to both houses of the Oklahoma Legislature. Such report shall summarize the total amount of credits claimed and likely to be claimed and allowed under this section.~~

SECTION 14. AMENDATORY 70 O.S. 1991, Section 1210.307, as last amended by Section 4, Chapter 359, O.S.L. 1994 (70 O.S. Supp. 1997, Section 1210.307), is amended to read as follows:

Section 1210.307 A. It shall be the duty of each school district to provide gifted child educational programs and to serve those children, as defined in Section 1210.301 of this title, who reside in that school district. This duty may be satisfied by:

1. The district directly providing gifted child educational programs for such children;
2. The district joining in a cooperative program with another district or districts to provide gifted child educational programs for such children;
3. The district joining in a cooperative program with a private or public institution within such district; or
4. The district transferring identified gifted and talented children to other school districts which provide the appropriate

gifted child educational programs, provided, no transfer shall be made without the consent of the board of education of the receiving school district. The district in which the child resides shall provide transportation for the transferred student and pay an amount of tuition equal to the proportion of the operating costs of the program to the receiving district. Transfers authorized by this section shall be made under such rules and regulations as the State Board of Education may prescribe.

B. Each district shall, regardless of the method used for accomplishing the duty set forth in subsection A of this section, notify in writing the parents of each child identified as gifted of the fact that the child has been so identified. The district shall also provide each such parent a summary of the program to be offered such child.

C. Beginning with the 1994-95 school year, and each year thereafter, each board of education shall submit a plan for gifted child educational programs as defined in Section 1210.301 of this title to the State Department of Education which shall include:

1. A written policy statement which specifies a process for selection and assessment of children for placement in gifted and talented programs that is consistent for grades one through twelve;

2. A description of curriculum for the gifted child educational program. Such description shall demonstrate that the curriculum is differentiated from the normal curriculum in pace and/or depth and that it has scope and sequence;

3. Criteria for evaluation of the gifted child educational program;

4. Evidence of participation by the local advisory committee on education for gifted and talented children in planning, child identification process and program evaluation;

5. Required competencies and duties of gifted child educational program staff;

6. Number and percentage of students identified by the district as gifted children pursuant to subparagraph g of paragraph 2 of subsection B of Section 18-201 of this title; and

7. A budget for the district gifted child educational programs.

D. At the conclusion of the 1994-95 school year and each school year thereafter, the board of education of each school district shall prepare a report which outlines the expenditures made by the district during that year for gifted child educational programs. For districts which receive six percent (6%) or more of their total State Aid money for gifted and talented programs or which received One Million Dollars (\$1,000,000.00) or more in State Aid for gifted and talented programs for the preceding year, the report shall identify expenditures by major object codes and program classifications pursuant to the Oklahoma Cost Accounting System, as adopted by the State Board of Education pursuant to Section 5-135 of this title. All other districts shall identify expenditures by major object codes. Copies of the report shall be sent to the State Department of Education by August 1 of each year.

~~E. The State Department of Education shall, after each school year, report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives concerning the number of children identified for the programs, number of children served by the programs, type of programs provided, type of screening procedures utilized, cost analysis of the programs and the estimated number of gifted and talented children unserved by the programs.~~

SECTION 15. AMENDATORY 70 O.S. 1991, Section 3412, as amended by Section 13, Chapter 308, O.S.L. 1992 (70 O.S. Supp. 1997, Section 3412), is amended to read as follows:

Section 3412. The Board of Regents for Oklahoma Agricultural and Mechanical Colleges shall have the supervision, management and control of Oklahoma State University, Panhandle State University, Langston University, Connors State College of Agriculture and

Applied Science, and Northeastern Oklahoma Agricultural and Mechanical College; and shall have the following additional powers and duties:

~~(a)~~ 1. Adopt such rules and regulations as it deems necessary to govern each of the institutions under its jurisdiction~~;~~;

~~(b)~~ 2. Employ and fix the compensation and duties of such personnel as it deems necessary, including architects, attorneys, engineers, and other professional and technical persons deemed necessary by the Board, for its operation and for the operation of the institutions under its jurisdiction. Any of such personnel having custody of public funds or other public property may be required to furnish corporate surety bonds in such amounts as may be deemed necessary by the Board, payable to the State of Oklahoma and conditioned upon a faithful accounting of all such funds and property~~;~~;

~~(c)~~ 3. Enter into contracts, purchase supplies, materials and equipment, and incur such other expenses as may be necessary to make any of its powers effective~~;~~;

~~(d)~~ 4. Authorize officials at the several institutions under its jurisdiction to act in its behalf in the making of contracts, or in carrying out the powers conferred upon it~~;~~;

~~(e)~~ 5. Receive and make disposition of monies, grants and property from federal agencies, and administer the same in accordance with federal requirements~~;~~;

~~(f)~~ 6. Accept gifts of real and personal property, money and other things, and use or dispose of the same in accordance with the directions of the donors or grantors thereof~~;~~;

~~(g)~~ 7. Direct the disposition of all monies appropriated by the Legislature or by the Congress or derived from the sale of bonds or received from any other source by institutions under its jurisdiction~~;~~;

~~(h)~~ 8. Acquire and take title to real and personal property in its name, on behalf of any of the institutions under its jurisdiction, and convey, exchange or dispose of, or otherwise manage or control, such property in the interest of such institutions, including the granting of leases, permits, easements and licenses over or upon any such real property. The Board shall have the power to institute any legal action in the name of the Board before any court having jurisdiction of such actions. The Board shall have the custody and control of abstracts of title and instruments affecting the ownership of or title to real property belonging to the Board, and being held by the Board on behalf of a particular state educational institution-i

~~(i)~~ 9. Have supervision and charge of the construction of all buildings at the institutions under its jurisdiction-i

~~(j)~~ 10. Determine the need for and cause to be constructed, dormitories and other buildings, on a self-liquidating basis, at any institution under its jurisdiction-i

~~(k)~~ 11. Establish and maintain plans for tenure and retirement of employees of the Board and of the institutions under its jurisdiction, and for payment of deferred compensation of such employees; and provide hospital and medical benefits, accident, health and life insurance, and annuity contracts, for such employees and their dependents. The Board may pay for all or a part of the cost for employees thereof with funds available for the operation of the institution. Amounts payable by an employee for such insurance or annuity contracts may, with the consent of the employee, be deducted from his salary-i

~~(l)~~ 12. The said Board shall cause a complete inventory to be made of all properties belonging to each of the said agricultural colleges or universities within the State of Oklahoma before the last Monday in December, next preceding each biennial session of the State Legislature, and accompanying said inventories shall be a

financial statement showing in detail the condition of all funds appropriated for the use of said agricultural colleges and experimental stations, also the money expended and the purposes for which the same were expended and the condition of the institution; and, the results of experiments carried on, together with their recommendations concerning remedial legislation or ~~regulations~~ rules for the betterment of said institution. ~~A copy of said inventories and reports shall be filed, one with the Governor, one with the Secretary of State and sufficient copies for the members of the Legislature.~~;

~~(m)~~ 13. The ~~said~~ Board shall audit all accounts against the funds appropriated for the use and maintenance of the Oklahoma State University and the other state agricultural colleges, including experimental stations, and the State Treasurer shall issue his warrant for the amount of all accounts, including salaries and expenses.;

~~(n)~~ 14. Provide penalties and forfeitures by way of damages and otherwise for the violation of rules and regulations of the Board, which may be sued for and collected in the name of the Board before any court having jurisdiction of such actions.;

~~(o)~~ 15. The Legislature further recognizes and confirms, that the Oklahoma State University is an institution corporate under the constitution and statutes of Oklahoma with full power and authority, acting through its constitutional Board of Regents, to do all things necessary or convenient to accomplish the corporate objects of said institution, and said institution, acting through its said constitutional Board of Regents, is hereby recognized to be such public corporation and to have such powers.

Without limiting the generality of the foregoing, the powers of said board of regents to control and use monies accruing to the institutions under their jurisdiction and control, from nontax sources, including institutional earnings, and proceeds of sales of

surplus properties heretofore authorized to be sold, and revenues derived by way of bonuses and rentals from oil and gas leases, for any lawful institutional purpose, is hereby specifically confirmed.

The enumeration herein of certain powers and immunities of the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges shall not be construed as in derogation or as a limitation of other powers and immunities properly belonging to said Board by virtue of any provisions of the Constitution of Oklahoma or of any provision of law. Said Board, is hereby, expressly granted every power necessary or convenient to make institutions under its jurisdiction effective for the purposes for which they were created and are maintained and operated.

Nothing in this section shall be construed as in derogation of the constitutional powers and responsibilities of said Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, acting as the Board of Regents for Connors State College of Agriculture and Applied Science, Northeastern Oklahoma Agricultural and Mechanical College, Panhandle State University, and Langston University.

SECTION 16. AMENDATORY 72 O.S. 1991, Section 404, is amended to read as follows:

Section 404. Names of special disabled veterans employed by state agencies pursuant to this act shall be reported to the Office of Personnel Management who shall record the names and report the total number of such veterans so employed ~~to the Director of the War Veterans Commission of Oklahoma~~ in the annual report for the Office of Personnel Management required by Section 840-1.6A of Title 74 of the Oklahoma Statutes.

SECTION 17. AMENDATORY 74 O.S. 1991, Section 85.43, is amended to read as follows:

Section 85.43 A. Each chief administrative officer of an agency, whether or not such agency is subject to the Oklahoma

Central Purchasing Act, shall be required to ~~prepare~~ submit to the Department of Central Services within ten (10) calendar days, after a legislative session commences, a report listing the following contracts over Seven Hundred Fifty Dollars (\$750.00) entered into by the agency for the preceding fiscal year:

1. Open market contracts;
2. Professional services contracts;
3. Nonprofessional services contracts; and
4. Contracts for the leasing of property including real property contracts and any lease agreements for products or equipment.

B. The report shall contain:

1. The name of the vendor or service provider;
2. A description of service or item;
3. The total amount of the contract; and
4. The total amount expended to date for the preceding fiscal year.

C. The report shall specifically identify sole source contracts.

D. ~~This report~~ The report shall be ~~submitted to the Legislative Service Bureau and the Office of Public Affairs if requested by the Legislative Service Bureau or the Office of Public Affairs.~~ ~~In addition, the report~~ compiled by the Department of Central Services and shall be submitted to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and any member of the House or Senate Appropriation Committee Committees if requested by such member.

SECTION 18. AMENDATORY 74 O.S. 1991, Section 840.5, as last renumbered by Section 24, Chapter 310, O.S.L. 1995, and as last amended by Section 2, Chapter 320, O.S.L. 1996 (74 O.S. Supp. 1997, Section 840-1.6A), is amended to read as follows:

Section 840-1.6A There is hereby created the Office of Personnel Management. The chief administrative officer of said Office of Personnel Management shall be the Administrator who shall be experienced in the field, theory, and application of personnel administration. The Administrator shall be appointed by the Governor with the confirmation of the Senate, and serve at the Governor's pleasure. In addition to the other duties imposed by law, the Administrator shall:

1. Be responsible for the development of an efficient and effective system of personnel administration that meets the management needs of the various agencies;

2. ~~Effective July 1, 1995, organize~~ Organize the Office to provide both service and regulatory functions that are effective and efficient in meeting the management needs of various state agencies. The Administrator is directed to establish an agency service function to assist agencies with human resource needs based upon the administrative capacity and resources of the various agencies;

3. Prepare, maintain, and revise a classified system of employment designed to assure the impartial consideration of applicants for employment and to protect state employees from arbitrary dismissal or unfair treatment;

4. Develop and maintain a classification and compensation system for all classified positions in the executive branch of state government including those established by the Oklahoma Constitution;

5. Conduct an analysis of the rates of pay prevailing in the state in the public and private sectors for comparable jobs and report the findings to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than November 1 of each year. Such analysis shall include all forms of compensation including fringe benefits;

6. Develop a program for the recruitment of qualified persons, including the administration of valid job-related nondiscriminatory

selection procedures providing for competitive examinations when practical and for reasonable selection criteria when competitive examinations are not practical;

7. Implement state affirmative action policies, and assure equal employment opportunity;

8. Develop and implement a reasonable and expeditious method for referral of capable candidates for vacancies, probationary periods of employment, and the employment of individuals on other types of appointments as necessary;

9. Assist state agencies in implementing their duties and obligations pursuant to the Oklahoma Personnel Act, ~~Section 840-1.1 et seq. of this title,~~ and provide standard forms to the agencies if necessary;

10. Develop, in cooperation with appointing authorities, employee training programs, management training programs, a certified public manager program, a recruiting program, and a system of performance appraisals, and assist appointing authorities in the setting of productivity goals. The Administrator may establish and collect fees for participation in training programs;

11. Establish leave and pay regulations, regulations for performance pay increases, rates for pay differentials, on-call pay, and other types of pay incentives and salary adjustments;

12. Prepare and submit an annual budget covering the costs of administering the personnel program;

13. Make an annual report regarding the work of the Office of Personnel Management;

14. Adopt and implement rules and regulations necessary to perform the duties imposed by law on the Office of Personnel Management in accordance with the provisions of the Administrative Procedures Act. All rules adopted by the Oklahoma Merit Protection Commission shall remain in full force and effect until modified by the appropriate authority;

15. Assist the Oklahoma Merit Protection Commission and the Executive Director in effectuating their duties, enforcement of the rules of the Merit System of Personnel Administration, and implementation of corrective action issued by the Commission;

16. Be responsible for the development and maintenance of a uniform occupation code system, grouped by job titles or duties, for all classified, unclassified, and exempt state positions. Said responsibility shall include the establishment of rules governing the identification, tracking, and reporting of all state positions as provided in Section 840-2.13 of this title;

17. Be responsible for advising state agencies on personnel policy and administration; and

18. Establish standards for continuing training, including affirmative action, and certification of personnel professionals in the executive branch of state government, excluding institutions within The Oklahoma State System of Higher Education. Employees appointed to professional personnel positions shall complete an initial training program within six (6) months after assuming the professional personnel position. Thereafter, they shall complete annual training requirements. Each appointing authority shall ensure that all professional personnel employees are notified of, and scheduled to attend, required training programs and shall make time available for employees to complete the programs. The Administrator shall be authorized to bill agencies for the training of personnel professionals pursuant to this paragraph to recover reasonable costs associated with the training. Monies received for such training shall be deposited in the Office of Personnel Management Revolving Fund. Expenditure of such funds collected for the training shall be exempt from any expenditure limit on the Office of Personnel Management established by law.

SECTION 19. AMENDATORY 74 O.S. 1991, Section 840.23, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1997, Section 840-2.19), is amended to read as follows:

Section 840-2.19 A. The Director of State Finance shall not approve any payroll claim for payment for any agency unless said claim contains or is accompanied by the certification by the administrative head of said agency or an authorized employee of said agency that the persons named in said claim have been appointed and employed in accordance with the provisions of the Oklahoma Personnel Act and the rules and regulations and orders promulgated pursuant to the provisions of the Oklahoma Personnel Act. For purposes of this section, "payroll claim" shall also include longevity payments made pursuant to Section 805.2 of this title.

B. If, as a result of a payroll audit, the Office of Personnel Management finds that an agency has made payments of salaries or wages contrary to the provisions of the Oklahoma Personnel Act and the rules and regulations promulgated pursuant to the provisions of the Oklahoma Personnel Act:

1. Audit findings shall be promptly transmitted to the appointing authority of the agency certifying the payroll claim or claims involved; and

2. An audit conference with said agency shall be scheduled within fifteen (15) days, at which time the audit exceptions will be resolved or become a determination of error unless the parties to the conference agree to a further review; and

3. If underpayments or overpayments made by said agency are deemed to be the result of administrative error, the agency which certified the payroll claim or claims in error shall refund to the employee the balance of the actual amounts due and owing to the payee or shall seek repayment from the payee of any amount paid in excess of the actual amount due and owing the payee; and

4. If an agency neglects or refuses to seek repayment after a determination that an error in payroll amount or amounts has been made, or to properly adjust a then current salary or wage, the Office of Personnel Management shall notify the Director of State Finance of an unresolved audit exception stating the agency involved and the person to whom said exception refers; and

5. Upon receipt of notification that a procedure to initiate repayment has been instituted by the certifying agency or that a protest has been filed with the Oklahoma Merit Protection Commission, said notice shall be withdrawn or waived by the Office of Personnel Management, in writing, to the Director of State Finance. Implementation of procedures provided in this section shall not operate to deny or delay payment of proper salaries or wages to any employee of this state; and

6. The provisions of this section regarding collections of any overpayment of salaries or wages by any agency to any state employee or officer shall not include any such overpayment made prior to July 1, 1983;

7. Recovery of overpayments from an employee shall include all overpayments occurring within one (1) year prior to the determination of error. Disbursement of underpayments to an employee shall include all underpayments made within a period of two (2) years prior to the determination of error; and

8. If an agency discovers overpayment or underpayment errors through an internal audit, the agency shall recover overpayments from the employee or disburse underpayment amounts in accordance with this section. Prior to initiation of recovery of overpayments from an employee, the agency shall provide the employee with adequate notice and an opportunity to respond.

C. The Director of State Finance shall not approve any payroll claim for payment for any agency for which the Office of Personnel Management has filed with the Director of State Finance a

notification of unresolved audit exception pursuant to this section, unless the person named in the audit exception has been removed from the payroll by the certifying agency, the overpayment has been converted by the agency, or the exception has been withdrawn or waived in writing by the Office of Personnel Management.

D. Any sum on a payroll claim found to have been paid in excess of the actual amount due and owing may be recovered from the payee through the following procedures:

1. Upon the determination that an error in payroll amount has been made, the agency which certified the claim or claims shall notify the payee in writing within ten (10) days from said determination. The notice to the payee shall contain:

- a. the amounts paid in error; and
- b. the dates of said payments; and
- c. the options available for repayment; and
- d. the right of the payee to protest the findings.

Said notice shall also provide space for the payee to indicate an election of a repayment option or to protest the findings. Said election shall be required within thirty (30) days after the notification. A copy of said notice shall be forwarded to the Office of Personnel Management.

2. If the payee is, at the time of said notification, an officer or employee of the agency seeking repayment, options available for repayment shall be by:

- a. lump-sum cash repayment; or
- b. reduction of the corrected current salary or miscellaneous payroll deduction in a lump sum or in installments over a term not to exceed the term in which the erroneous payments were made; or
- c. reduction in accrued annual leave by an amount of time at the then current correct salary level equal in

value to the total of the amount or amounts to be repaid; or

d. any combination thereof.

3. If the payee is, at the time of said notification, an officer or employee of an agency of the state other than the agency seeking repayment, the options provided by paragraph 2 of this subsection may be exercised by the payee with the approval of the then current employing agency. Payment of amounts deducted or charged against annual leave shall be paid to the agency seeking repayment by an appropriate miscellaneous claim for interagency payment. If a payroll deduction is elected pursuant to the provisions of this paragraph and employment is subsequently terminated, any balance remaining shall be deducted from any final payment otherwise due to the employee.

4. If a payee who is, at the time of said notification, a permanent classified officer or employee of any agency of this state protests the determination of the error or the amount of said determination, the agency seeking repayment shall present, within five (5) days of the return of said protest, the facts in writing, the notice, and the protest of the payee, to the Oklahoma Merit Protection Commission and shall send copies to the Office of Personnel Management. The Oklahoma Merit Protection Commission shall treat any such protest as a complaint pursuant to Section 841.3 of this title. The Commission and Executive Director, after investigation and hearing, shall make a determination which shall be binding on the agency. The salary or wages of any payee exercising the right to the protest shall not be suspended or reduced until a determination has been issued by the Oklahoma Merit Protection Commission and Executive Director.

5. If the payee is no longer an employee of the state but agrees to repay the amount or amounts paid in error, repayment may be accepted:

- a. by lump-sum cash repayment; or
- b. in installments over a period not to exceed twelve (12) months.

6. If the payee is no longer an employee of the state, and does not respond or cannot be located within ten (10) days after mailing of the determination of error, or refuses repayment, the agency seeking repayment shall present the facts in writing to the Attorney General and shall send a copy to the Office of Personnel Management. The Attorney General shall determine what action may be taken to recover said amount.

7. Repayments other than by reduction in present salary or reduction in accrued annual leave for a payee currently employed by the agency seeking repayment shall be deposited in the General Revenue Fund unless the fund to which the amount in error was originally charged can be identified and was other than a General Revenue Fund appropriation. Said deposits shall be treated as nonrevenue receipts.

8. The agency seeking repayment shall report monthly to the Office of Personnel Management the results of the procedures and amounts recovered pursuant to the provisions of this section.

The Office of Personnel Management shall ~~file a quarterly report with the Offices of the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives, summarizing, by agency, report~~ all actions and recoveries pursuant to the provisions of this section in the annual report for the Office of Personnel Management required by Section 840-1.6A of this title.

SECTION 20. 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 of the Office of Personnel Management 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 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 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 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 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.

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~~ The Office of Personnel Management ~~which~~ shall maintain records regarding the employment of persons with severe disabilities by state agencies and shall report the ~~total~~ number of ~~such persons with severe disabilities~~ so employed ~~to the Director of the Office of Handicapped Concerns~~ in its annual report for the Office of Personnel Management required by Section 840-1.6A of this title.

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~~ The Office of Personnel Management ~~which~~ shall maintain records regarding the employment of persons by state agencies pursuant to this subsection and annually shall 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~~ in its annual report for the Office of Personnel Management required by Section 840-1.6A of this title.

SECTION 21. AMENDATORY 74 O.S. 1991, Section 841.9, as last amended by Section 33, Chapter 242, O.S.L. 1994, and as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1997, Section 840-6.2), is amended to read as follows:

Section 840-6.2 A. The Oklahoma Merit Protection Commission shall establish standard internal agency grievance resolution procedures for classified state employees. The procedures shall

encourage prompt and equitable resolution of grievances at the lowest possible level within the employing agency. Each appointing authority shall either use the procedures established by the Commission or adopt other procedures which address the specific needs of their agencies. All procedures shall contain the minimum requirements established pursuant to this section.

B. The appointing authority of each agency shall furnish to each classified employee a copy of the internal agency grievance resolution procedure utilized by the agency.

C. No employee shall be disciplined or otherwise prejudiced in his or her employment for exercising his or her rights under the internal agency grievance resolution procedure.

D. Internal agency grievances may include, but are not limited to, any direct or indirect form of discipline, reduction-in-force, work assignments, withholding of work, classification, reclassification, promotion, leave, performance appraisal, length of service, overtime, compensatory time, transfers, or any alleged violation of the Oklahoma Personnel Act or merit rules.

E. The internal agency grievance resolution procedures established by the Oklahoma Merit Protection Commission shall contain the following minimum requirements:

1. Procedures encouraging resolution of disputes within the agency quickly, informally and at the lowest possible level;

2. Procedures requiring prompt resolution of the internal agency grievance within established time periods; and

3. Procedures guaranteeing the employee the right to be represented by a person of his own choosing at each step of the procedure, except the initial informal discussion with his immediate supervisor.

F. The Oklahoma Merit Protection Commission shall promulgate rules as necessary to implement the provisions of subsections A through I of this section to establish internal agency grievance

resolution procedures, provided that such rules previously promulgated by the Administrator of the Office of Personnel Management shall be transferred to the Oklahoma Merit Protection Commission and shall remain in effect until duly modified by the Commission.

G. The appointing authority of each classified agency shall designate employees of the agency to receive and process internal agency grievances. Within six (6) months after designation to serve in this capacity, these employees shall complete the training programs established by the Commission. Upon successful completion, such employees shall be certified to perform the duties associated with receiving and processing internal agency grievances.

H. The appointing authority of each classified agency shall ensure that employees designated to receive and process internal agency grievances are scheduled to attend and notified of the required training and shall make time available for employees to complete the training.

I. Each agency shall maintain records of each grievance filed as well as summary information about the number, nature and outcome of all grievances filed. Agencies shall keep records of grievances separate and apart from other individual employee personnel files. Agencies shall annually report grievance information and related statistical data to the Oklahoma Merit Protection Commission pursuant to rules adopted by the Commission. An employee or former employee shall have a right of access to the grievance record of grievances he or she filed after the grievance procedure has been completed.

J. Employees may only appeal a reduction-in-force action to the Oklahoma Merit Protection Commission on the basis of procedural errors in the application of the reduction-in-force plan of the employing agency, board, or commission.

SECTION 22. AMENDATORY 74 O.S. 1991, Section 3106.1, is amended to read as follows:

Section 3106.1 A. Every state agency shall designate one of its employees as the publications officer for the agency and shall notify the Publications Clearinghouse of the Department of Libraries of the name of the publications officer and of the name of any new publications officer should a change occur.

B. Each publications officer of a state agency shall have the duty to provide the Publications Clearinghouse with copies of all state publications of the agency, to compile and forward to the Publications Clearinghouse required lists of the state publications of the agency, and to provide other related information which may be requested by the Publications Clearinghouse for the collection of state publications and the depository library system.

C. Upon release of a state publication by an agency, the publications officer shall deposit a maximum of twenty-five copies of the publication with the Publications Clearinghouse for record and depository system purposes.

D. The publications officer shall notify the Publications Clearinghouse of the production of audiotapes, videotapes, films, filmstrips, slides, or other audiovisual publications. Every state agency shall preserve one copy of each audiovisual publication or the publications officer shall deposit one copy of each audiovisual publication with the Publications Clearinghouse for preservation.

E. Every state agency including all institutions of higher education shall annually provide to the Publications Clearinghouse a complete list of its state publications in accordance with the rules ~~and regulations~~ of the Publications Clearinghouse.

SECTION 23. AMENDATORY 74 O.S. 1991, Section 4120, is amended to read as follows:

Section 4120. The Administrator of the Office of Personnel Management shall ~~cause to be prepared and submitted to the Governor,~~

~~Speaker of the House of Representatives, and the President Pro  
Tempore of the Senate a comprehensive annual include a status report  
on the activities, decisions, awards, and recommendations of the  
Committee with respect to the employee incentive award program in  
the annual report for the Office of Personnel Management required by  
Section 840-1.6A of this title.~~

SECTION 24. REPEALER 45 O.S. 1991, Section 395, 47 O.S.  
1991, Section 230.16, 63 O.S. 1991, Section 2809, 68 O.S. 1991,  
Sections 2352.1 and 2357.9, 74 O.S. 1991, Section 20a, and 82 O.S.  
1991, Section 1085.6, are hereby repealed.

SECTION 25. 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.

46-2-8626

KSM