

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1943

By: Ervin, Covey, Dunegan and
Wells of the House

and

Monson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to state government; amending Section 5, Chapter 287, O.S.L. 1997, as amended by Section 5, Chapter 410, O.S.L. 1999, 74 O.S. 1991, Section 841.14, as last renumbered by Section 20, Chapter 287, O.S.L. 1997, and as last amended by Section 6, Chapter 410, O.S.L. 1999, Section 7, Chapter 287, O.S.L. 1997, as amended by Section 3, Chapter 256, O.S.L. 1998 and Section 8, Chapter 287, O.S.L. 1997 (74 O.S. Supp. 1999, Sections 840-2.27B, 840-2.27C, 840-2.27D and 840-2.27E), which relate to the State Government Reduction-In-Force and Severance Benefits Act; adding definitions; authorizing amendment of reduction-in-force plan under certain circumstances; setting salary limitations when employee exercises a displacement privilege; modifying scope of employees eligible for severance benefits; adding requirement that severance benefits need not be repaid under certain circumstances; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 5, Chapter 287, O.S.L. 1997, as amended by Section 5, Chapter 410, O.S.L. 1999 (74 O.S. Supp. 1999, Section 840-2.27B), is amended to read as follows:

Section 840-2.27B As used in Sections 840-2.27B through 840-2.27G of this title:

1. "Affected job family levels" means those containing affected positions;
2. "Affected employees" means classified and unclassified employees in affected positions;
3. "Affected positions" means positions being abolished or positions which are subject to displacement action;

4. "Agency" means any office, department, board, commission, or institution of all branches of state government, except for institutions within The Oklahoma State System of Higher Education;

5. "Displacement" or "displace" means the process of an employee accepting an offer of employment to an occupied or funded vacant position;

6. "Displacement limit" means any area within an agency in which displacement may not occur. These areas may include, but are not limited to, job families, units, and geographic areas within an agency;

7. "Displacement opportunity" means the circumstances under which an occupied or funded vacant position is subject to displacement by an affected employee;

8. "Displacement privilege" means the privilege an affected employee has to utilize a displacement opportunity;

9. "Educational institution" means an institution within The Oklahoma State System of Higher Education, a facility under the management or control of the Oklahoma State Department of Vocational and Technical Education, or a licensed private educational institution in the State of Oklahoma;

10. "Limited-term unclassified employee" means an unclassified affected employee in an employment status in the state service whose employment status is temporary or time-limited and does not make an employee eligible for participation in a state retirement system;

11. "Personnel transaction" means the record of the separation as a result of a reduction-in-force of a classified affected employee from an agency, or the record of the transfer or demotion of a classified affected employee;

12. "Privatization" means a variety of techniques or practices which promote more involvement of the private sector in providing services that have traditionally been provided by government. These techniques or practices include methods of providing a portion or

all of select government-produced programs through the private sector;

13. "Reduction-in-force" means abolition of positions in an agency or part of an agency and the corresponding nondisciplinary removal of affected employees from such positions through separation from employment or through displacement to other positions.

Reduction-in-force may also include reorganizations;

~~13.~~ 14. "Reorganization" means the planned elimination, addition or redistribution of functions or duties either wholly within an agency or between agencies;

15. "Severance benefits" means employee benefits provided by the State Government Reduction-in-Force and Severance Benefits Act to affected employees separated through a reduction-in-force; and

~~14.~~ 16. "Years of service" means current and prior service which is creditable for the Longevity Pay Plan. An affected employee shall not be required to have been continuously employed for two (2) years to be given credit for either current or prior service pursuant to the State Government Reduction-in-Force and Severance Benefits Act.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 841.14, as last renumbered by Section 20, Chapter 287, O.S.L. 1997, and as last amended by Section 6, Chapter 410, O.S.L. 1999 (74 O.S. Supp. 1999, Section 840-2.27C), is amended to read as follows:

Section 840-2.27C A. Whenever a reduction-in-force occurs, the appointing authority shall provide a plan for such reduction-in-force at least sixty (60) days before the scheduled beginning of reduction-in-force separations or as otherwise provided by law. A reduction-in-force shall not be used as a disciplinary action. The reduction-in-force plan of an agency, except for the fiscal components of the plan as provided by paragraph 1 of this subsection, in the executive branch of state government is subject to the approval of the Administrator of the Office of Personnel

Management who shall reject any plan that is not in substantial compliance with this section and the rules promulgated hereunder.

1. The Director of the Office of State Finance shall review the fiscal components of the plan and reject any plan that does not:

- a. demonstrate that funds are available to cover projected costs,
- b. contain an estimate of the number of affected employees likely to participate in the education voucher program established in Section 840-2.27D of this title, and
- c. contain an estimate of the cost savings or reduced expenditures likely to be achieved by the agency.

2. If the reduction-in-force is conducted pursuant to a reorganization, the fiscal components of the reduction-in-force plan shall contain reasons for the reorganization, which may include, but not be limited to, increased efficiency, improved service delivery, or enhanced quality of service.

B. The reduction-in-force plan and subsequent personnel transactions directly related to the reduction-in-force shall be in compliance with rules adopted by the Administrator. The appointing authority shall post in each office of executive branch agencies affected by the proposed reduction-in-force plan a copy of the plan five (5) days prior to the submission of the proposed plan to the Administrator and the Director of State Finance. An approved reduction-in-force plan, the description of and reasons for displacement limits and protections from displacement actions, severance benefits that will be offered pursuant to Section 840-2.27D of this title, and the implementation schedule shall be posted in each office affected by the plan within two (2) business days after approval of the plan by the Administrator for executive branch agencies or appointing authorities in the legislative and judicial departments. The plan shall:

1. Provide for the appointing authority to determine the specific position or positions to be abolished within specified units, divisions, facilities, agency-wide or any parts thereof;

2. Provide for retention of affected employees based on classification and type of appointment. If an agency has both classified and unclassified positions in affected job family levels, the appointing authority shall not reduce a higher percentage of occupied classified positions than occupied unclassified positions;

3. Require the separation of probationary classified affected employees in affected job family levels, except those affected employees on probationary status after reinstatement from permanent classified status without a break in service, prior to the separation or displacement of any permanent classified affected employee in an affected job family level;

4. Require the separation of limited term unclassified affected employees and regular unclassified affected employees with less than six (6) months continuous service in affected classes or job family levels prior to the separation or displacement of regular unclassified affected employees with six (6) months or more of continuous service in an affected class or job family level;

5. Provide for retention of permanent classified affected employees in affected job family levels and those affected employees on probationary status after reinstatement from permanent classified status without a break in service based upon consideration of years of service;

6. Provide for exercise of displacement opportunities by permanent classified affected employees and those affected employees on probationary status after reinstatement from permanent classified status without a break in service if any displacement opportunities exist; and

7. Provide outplacement assistance and employment counseling from the Oklahoma Employment Security Commission and any other

outplacement assistance and employment counseling made available by the agency to affected employees regarding the options available pursuant to the State Government Reduction-in-Force and Severance Benefits Act prior to the date that a reduction-in-force is implemented.

Upon approval of the Administrator of the Office of Personnel Management, an appointing authority may amend the plan if the appointing authority determines that some or all of the affected employees will be needed past the scheduled date for implementing the reduction-in-force; provided that, the reduction-in-force must be completed no longer than ninety (90) calendar days from the original implementation date.

C. The appointing authority may limit displacement of affected employees at the time of a reduction-in-force. Displacement limits shall not be subject to the approval of the Administrator. Any limitation shall be based upon reasonable, written, articulated criteria as certified by the appointing authority. If displacement is limited, the appointing authority shall take action to avoid or minimize any adverse impact on minorities or women. However, if an appointing authority does not limit displacement, the appointing authority shall explain in writing the reasons displacement was not limited.

1. The appointing authority may protect from displacement action up to twenty percent (20%) of projected post-reduction-in-force employees in affected positions within displacement limits; provided, that any fractional number resulting from the final mathematical calculation of the number of those positions shall be rounded to the next higher whole number. The appointing authority must explain why affected employees are being protected, which explanation shall not be subject to the approval of the Administrator.

2. If the affected employee has not held within the last five (5) years a position in the job family level or predecessor class in which the affected employee is otherwise eligible for a displacement opportunity, the appointing authority may determine that the affected employee does not possess the recent relevant experience for the position and deny in writing the displacement opportunity.

3. An affected permanent classified employee may exercise a displacement privilege, if one exists, if the affected employee has received an overall rating of at least "satisfactory", or its equivalent, on the most recent annual service rating. If an affected employee has not been rated in accordance with the time limits established in Section 840-4.17 of this title, the employee shall be deemed to have received an overall rating of at least "satisfactory" or its equivalent on the most recent service rating. An affected employee who exercises a displacement privilege pursuant to this section shall:

- a. be required, as a condition of continued employment by the agency, to sign an agreement, in a form to be prescribed by the Administrator of the Office of Personnel Management, acknowledging that the employee had an opportunity to receive severance benefits and affirmatively elected to exercise a displacement privilege and to forego such benefits. An affected employee who signs the agreement required by this subparagraph waives any privilege which might otherwise have been available to the affected employee pursuant to the agreement for the provision of severance benefits, and
- b. not have the right to exercise any subsequent right to receive severance benefits from the agency for which the affected employee performs services on the date that the employee exercises a displacement privilege.

The provisions of this section shall not prohibit any person from exercising a displacement privilege in, or accepting severance benefits from, more than one agency during employment with the State of Oklahoma or from the agency which the affected employee exercised a displacement privilege in any future reduction-in-force.

4. An affected employee who exercises a displacement privilege that results in taking a demotion to a position in a job family in which the affected employee had been assigned previously shall not be compensated less than when the employee was last assigned to the previously assigned job family. An affected employee who exercises a displacement privilege that results in taking a lower job title in the job family in which affected employment was assigned prior to the exercising the displacement privilege shall not receive a salary reduction greater than ten percent (10%).

D. An affected employee who does not agree pursuant to Section 840-2.27E of this title to accept severance benefits and who does not have a displacement opportunity or does not accept a displacement opportunity shall be separated by the reduction-in-force and shall not receive any severance benefits that would have otherwise been provided pursuant to Section 840-2.27D of this title.

E. Permanent classified affected employees and those affected employees on probationary status after reinstatement from permanent classified status without a break in service removed from a job family level by taking a position in another job family level through displacement or separated after foregoing severance benefits shall be recalled by the agency to the job family level from which removed in inverse order of removal before the agency may appoint other persons to the job family level, from the employment register, by internal action or from Priority Reemployment Consideration Rosters as provided by this section. Upon declination of an offer

of reappointment to the job family level from which removed or eighteen (18) months after the date of removal from the job family level, whichever is first, this right to be recalled shall expire.

F. The names of permanent classified affected employees, those affected employees on probationary status after reinstatement from permanent classified status without a break in service and regular unclassified affected employees with six (6) months or more continuous service who have been separated pursuant to the State Government Reduction-in-Force and Severance Benefits Act, who apply and meet all requirements for state jobs in the classified service shall be placed on Priority Reemployment Consideration Rosters in accordance with their individual final earned ratings for a maximum of eighteen (18) months after the date of separation. Before any vacant position is filled by any individual eligible for initial appointment from the employment register, individuals on the Priority Reemployment Consideration Rosters shall be given priority consideration for reemployment by any state agency within eighteen (18) months after the date of the reduction-in-force. Upon declination of an offer of reemployment to a job family level having the same or higher pay band than the job family level from which removed, or eighteen (18) months after the date of separation, whichever is first, this priority consideration for reemployment shall expire. If an agency, including but not limited to the University Hospitals Authority, has posted a reduction-in-force plan and implementation schedule, all affected employees in positions covered by the plan and any within the displacement limits established by the appointing authority of the agency who have been separated shall be eligible for priority reemployment consideration.

G. If an agency or any part thereof is scheduled to be closed or abolished as a result of legislation or a court order, the affected employees, who would be eligible for Priority Reemployment Consideration after their separation in accordance with subsection F

of this section, may apply and, if qualified and eligible, shall be accorded Priority Reemployment Consideration not to exceed twelve (12) months before the scheduled date of separation. If an agency, including but not limited to the University Hospitals Authority, has posted a reduction-in-force plan and implementation schedule, all affected employees in positions covered by the plan and any within the displacement limits established by the appointing authority of the agency shall be eligible for Priority Reemployment Consideration beginning with the date the schedule is posted, not to exceed twelve (12) months before the scheduled date of separation.

H. When the Legislature is not in session, the Contingency Review Board may, upon the request of the Governor, direct agencies, boards and commissions to reduce the number of employees working for said agency, board or commission whenever it is deemed necessary and proper. Such reduction shall be made pursuant to reduction-in-force plans as provided in this section.

I. 1. When the Legislature is not in session, the Contingency Review Board may, upon the request of the Governor, direct and require mandatory furloughs for all state employees whenever it is deemed necessary and proper. The Contingency Review Board shall specify the effective dates for furloughs and shall note any exceptions to state employees affected by same. All classified, unclassified, exempt or nonmerit employees, including those employees of agencies or offices established by statute or the Constitution, shall be affected by such actions.

2. Mandatory furlough means the involuntary temporary reduction of work hours or the placement of an employee on involuntary leave without pay. Rules governing leave regulations, longevity pay and participation in the State Employees Group Health, Dental, Disability, and Life Insurance program shall not be affected by mandatory furloughs. Furlough, as provided for in this section or by rules adopted by the Administrator of the Office of Personnel

Management, shall not be appealable under the provisions of the Oklahoma Personnel Act.

3. Notwithstanding existing laws or provisions to the contrary, members of state boards and commissions shall not receive per diem expenses during periods of mandatory furlough. The Contingency Review Board shall additionally call upon elected officials, members of the judiciary, and other public officers whose salary or emoluments cannot be altered during current terms of office, to voluntarily donate to the General Revenue Fund any portion of their salary which would otherwise have been affected by a mandatory furlough.

J. All agencies directed by the Contingency Review Board to terminate or furlough employees, shall report the cumulative cost savings achieved by the reductions-in-force or furloughs to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives on a quarterly basis for one (1) year following the effective date of the action.

K. The appointing authority of an agency which has an approved reduction-in-force plan pursuant to the State Government Reduction-in-Force and Severance Benefits Act may request the Administrator of the Office of Personnel Management to appoint an interagency advisory task force for the purpose of assisting the agency and its employees with the implementation of the reduction-in-force. The appointing authority of state agencies requested by the Administrator to participate on a task force shall assign appropriate administrative personnel necessary to facilitate the necessary assistance required for the efficient implementation of the approved reduction-in-force.

L. Except as otherwise provided, the University Hospitals Authority shall not be subject to the provisions of this section. Beginning August 25, 1995, the provisions of subsection E of this section regarding priority reemployment consideration shall apply to

any employee of the University Hospitals Authority who was employed on or became employed after February 1, 1995, and who is separated from state service as a result of a reduction-in-force. The University Hospitals Authority shall conduct a reduction-in-force to terminate employees, regardless of status, whose positions are eliminated because of a contract with a private nongovernmental entity for the lease and operations of the University Hospitals pursuant to the University Hospitals Authority Act.

SECTION 3. AMENDATORY Section 7, Chapter 287, O.S.L. 1997, as amended by Section 3, Chapter 256, O.S.L. 1998 (74 O.S. Supp. 1999, Section 840-2.27D), is amended to read as follows:

Section 840-2.27D A. Agencies shall provide severance benefits to ~~the following categories of~~ affected employees who are separated from the state service as a result of a reduction-in-force due to a reorganization, privatization, or any other action by an agency which results in affected positions being abolished and affected employees being severed from the state service. Severance benefits shall be given to the following categories of affected employees: permanent classified affected employees, affected employees on probationary status after reinstatement from permanent classified status without a break in service, and regular unclassified affected employees with six (6) months or more continuous state service; provided, however, affected employees of the University Hospitals Authority must have been continuously employed in the state service since on or before January 1, 1995, to receive severance benefits. Affected employees who qualify for severance benefits pursuant to this section, in addition to the payment of any compensable accrued leave or other benefits an affected employee is eligible to receive upon separation from the state service, shall receive severance benefits consisting of the following elements:

1. All agency severance benefits shall provide the following:

- a. payment equal to the affected employee's current health insurance premium for the affected employee only for eighteen (18) months based on the cost of the premium at the time of the reduction-in-force. The appointing authority of the agency can ask the Director of the Office of State Finance to waive the severance benefit provision in this subparagraph or to reduce the length of coverage or subsequent severance benefit payment upon demonstration of the agency's inability to fund the full benefit,
- b. a longevity payment, as prescribed by Section 840-2.18 of this title, in the amount which would otherwise be paid to the affected employee on the affected employee's next anniversary date. For the purposes of this subparagraph, the University Hospitals Authority shall calculate longevity for affected employees who were members of the University Hospitals Authority Model Personnel System pursuant to Section 3211 of Title 63 of the Oklahoma Statutes for all state service as would otherwise be determined by Section 840-2.18 of this title, and
- c. outplacement assistance and employment counseling prior to and after the reduction-in-force from the Oklahoma Employment Security Commission and other state or private entities that the entity may contract with to assist individuals who may be impacted by a reduction-in-force;

2. In addition to the severance benefits provided by paragraph 1 of this subsection, agencies may give affected employees, except as otherwise provided by paragraph 3 of this subsection, severance benefit packages based on any combination of the following options, provided that all affected employees who receive severance benefits

in the reduction-in-force shall be accorded uniform treatment pursuant to the State Government Reduction-in-Force and Severance Benefits Act:

- a. up to one (1) week of pay, calculated by dividing the affected employee's current annual salary by the whole number fifty-two (52), for each year of service,
- b. a maximum lump-sum payment of Five Thousand Dollars (\$5,000.00), and
- c. payment for accumulated sick leave or extended illness benefits at up to one-half of the affected employee's hourly rate not otherwise used pursuant to law for conversion to credited retirement credit; and

3. An affected employee may direct payment of all or a portion of the affected employee's severance benefits to the options authorized by this paragraph by exercising an option to receive education vouchers for use in connection with the Reduction-in-Force Education Voucher Action Fund subject to the following requirements and rules of the Administrator of the Office of Personnel Management, provided that the agency offers to match employee severance funds pursuant to this paragraph. In such case:

- a. the affected employee may purchase One Dollar (\$1.00) in voucher credit for each One Dollar (\$1.00) contributed by the affected employee to the fund subject to a maximum affected employee contribution of Three Thousand Dollars (\$3,000.00) which may be matched by a maximum agency contribution of Three Thousand Dollars (\$3,000.00); provided, that the agency contribution shall not exceed the contribution of the affected employee,
- b. the affected employee may pay the cost for the voucher program directly, subject to the requirements of subparagraph a of this paragraph, or the employing

agency of the affected employee may pay the cost of the voucher from funds which would otherwise have been used to make payments to the displaced affected employee pursuant to an election by the affected employee to receive severance benefits,

c. no voucher issued pursuant to the provisions of this paragraph shall:

(1) be redeemed by the affected employee for cash or anything of value other than the cost of tuition and fees at a public or private educational institution within the State of Oklahoma, or

(2) be valid longer than a period of four (4) years from the date upon which the voucher is issued to the affected employee,

d. the Administrator of the Office of Personnel

Management shall pay tuition and fees directly to the educational institution and shall receive any refunds for payment of tuition and fees from the educational institution which shall be credited to the affected employee's account, and

e. the Administrator of the Office of Personnel

Management shall distribute to the affected employee and the agency any monies remaining in the affected employee's account after the voucher credit has expired. The distribution shall be based on the proportional share of contributions made by the affected employee and the agency.

B. Each affected employee who is separated from state service as a result of a reduction-in-force after July 1, 1998, besides being eligible for the eighteen (18) months of continuation coverages provided by the Public Health Service Act, 42 U.S.C., Section 30066-1 et seq., i.e., health, dental, vision and healthcare

reimbursement account options, under this severance benefit, shall also be eligible to elect additional continuation coverage for any life insurance, in twenty-thousand-dollar units, on self or five-thousand-dollar units, on dependents, and to continue participation in the dependent care reimbursement account provided that these additional coverages were in effect immediately prior to the effective date of the reduction-in-force, the date of which shall serve as the qualifying event date. Provided, that no coverage elected for continuation through the Public Health Service Act for the full eighteen-month period is allowed to lapse, then that affected employee may elect to continue those same coverages for an additional eighteen (18) months at whatever rate is then in effect. This additional eighteen-month continuation period of coverage shall be administered by the Oklahoma State Employees Benefits Council following the initial eighteen-month period of continuation which shall be administered by the COBRA office at the State and Education Employees Group Insurance Board.

C. Part-time affected employees shall receive benefits pursuant to this section on a prorated basis. Part-time employees shall have been compensated for at least one thousand (1,000) hours during the twelve (12) months immediately preceding the effective date of the reduction-in-force to be eligible for severance benefits pursuant to the State Government Reduction-in-Force and Severance Benefits Act.

D. No appointing authority shall grant affected employees in a reduction-in-force severance benefits except as provided in this section.

SECTION 4. AMENDATORY Section 8, Chapter 287, O.S.L. 1997 (74 O.S. Supp. 1999, Section 840-2.27E), is amended to read as follows:

Section 840-2.27E A. Any affected employee who receives severance benefits pursuant to the State Government Reduction-in-Force and Severance Benefits Act shall execute a separation

agreement with the employing agency, on forms to be prescribed by the Administrator of the Office of Personnel Management. The forms shall comply with applicable federal laws and may include but not be limited to the following elements:

1. Agreement by the affected employee that the receipt of the benefits is in lieu of continued employment with the agency or other severance benefits related to the current reduction-in-force;

2. Agreement by the affected employee that, to the extent allowed by federal or state law, respectively, the affected employee releases the State of Oklahoma and the agency from all claims, liabilities, demands and causes of action known or unknown, fixed or contingent, equitable, legal or administrative, except unemployment insurance;

3. Agreement by the affected employee that, to the extent allowed by federal or state law, respectively, the affected employee releases the State of Oklahoma and the agency from any claim or cause of action which might arise under federal or state laws governing the employment relationship; and

4. Agreement by the affected employee that the affected employee knows and understands that the receipt of severance benefits is in exchange, to the extent allowed by federal or state law, for any rights the affected employee may have had to:

- a. continued employment with any agency, and
- b. future employment with the agency for a period of one (1) year from the date of the agreement, provided that nothing in this subparagraph shall prohibit an appointing authority of any agency from employing an affected employee who has received a severance benefit if the affected employee repays all severance benefits received pursuant to the State Government Reduction-in-Force and Severance Benefits Act on a proportional basis. The repayment amount of the severance benefits

received by or paid on behalf of the affected employee shall be reduced one-three-hundred-sixty-fifths (1/365) for each day after the separation of the affected employee, provided that any education voucher credit benefits shall not include agency contributions.

The provisions of this section shall not prohibit any affected employee from accepting severance benefits from more than one agency during employment with the State of Oklahoma.

B. If a former affected employee who was terminated due to a reduction-in-force resulting from a privatization action returns to the state service due to a state action to restart state delivery of services, the former affected employee shall not be required to repay any severance benefits pursuant to this section.

SECTION 5. 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.

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