

SB 404

THE STATE SENATE  
Monday, February 22, 1999

Senate Bill No. 404  
As Amended

SENATE BILL NO. 404 - By: STIPE of the Senate and MASS of the House.

[ state employees - promotional examinations - Office of  
Personnel Management - effective date ]

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 840-1.3, as  
last amended by Section 1, Chapter 256, O.S.L. 1998 (74 O.S. Supp.  
1998, Section 840-1.3), is amended to read as follows:

Section 840-1.3 As used in the Oklahoma Personnel Act, unless  
otherwise provided in Sections 840-1.1 through 840-6.9 of this  
title:

- 1. "Agency" means any office, department, board, commission or institution of the executive branch of state government;
- 2. "Employee" or "state employee" means an elected or appointed officer or employee of an agency unless otherwise indicated;
- 3. "Appointing authority" means the chief administrative officer of an agency;
- 4. "Class" or "class of positions" means positions that are sufficiently similar in duties, levels of responsibility, and requirements of the work to warrant similar treatment as to title, pay grade, and minimum qualifications;

1        5. "Class specification" means a written document that  
2 describes a class;

3        6. "Classification plan" means the orderly arrangement of  
4 positions within an agency into separate and distinct classes so  
5 that each class will contain those positions which involve similar  
6 or comparable skills, duties and responsibilities;

7        7. "Classified service" means state employees and positions  
8 under the jurisdiction of the Oklahoma Merit System of Personnel  
9 Administration;

10       8. "Entrance examination" means any employment test used by the  
11 Office of Personnel Management to rank the names of applicants who  
12 possess the minimum requirements of education, experience, or  
13 licensure for a class on a register of eligibles established by the  
14 Office of Personnel Management;

15       9. "Promotional examination" means any employment test  
16 ~~designated~~ developed and validated pursuant to Section 840-4.12 of  
17 this title by the Office of Personnel Management to determine  
18 further the qualifications of a permanent classified employee of a  
19 state agency for employment in a different class for which the  
20 employee possesses the minimum qualifications of education,  
21 experience, or licensure within that agency;

1        10. "Interagency transfer" means an action in which an employee  
2 leaves employment with one agency and enters employment with another  
3 agency while continuously employed with the state;

4        11. "Intra-agency transfer" means moving an employee from one  
5 position to another position with the same agency either with or  
6 without reclassification;

7        12. "Job-related organization" means a membership association  
8 which collects annual dues, conducts annual meetings and provides  
9 job-related education for its members and which includes state  
10 employees, including any association for which payroll deductions  
11 for membership dues are authorized pursuant to paragraph 5 of  
12 subsection B of Section 7.10 of Title 62 of the Oklahoma Statutes;

13        13. "Lateral transfer" means reclassification of an employee to  
14 another class with the same salary grade;

15        14. "Merit Rules" or "Merit Rules for Employment" or "Merit  
16 System of Personnel Administration Rules" means rules adopted by the  
17 Administrator of the Office of Personnel Management or the Oklahoma  
18 Merit Protection Commission pursuant to the Oklahoma Personnel Act;

19        15. "Noncompetitive appointment" means the appointment of a  
20 person to a noncompetitive class;

21        16. "Noncompetitive class" means a class of positions of  
22 unskilled or semiskilled labor or a similar class designated by the  
23 Office of Personnel Management as noncompetitive;

1        17. "Permanent classified employee" means a classified service  
2 employee who has acquired permanent status in accordance with the  
3 Oklahoma Personnel Act, and rules adopted pursuant thereto, and who  
4 has the right to appeal involuntary demotion, suspension without  
5 pay, and discharge to the Commission;

6        18. "Presiding official" means a person serving the Oklahoma  
7 Merit Protection Commission in the capacity of administrative  
8 hearing officer, mediator, or other alternative dispute resolution  
9 arbitrator or facilitator;

10       19. "Progressive discipline" means a system designed to ensure  
11 the consistency, impartiality and predictability of discipline and  
12 the flexibility to vary penalties if justified by aggravating or  
13 mitigating conditions;

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

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

1        22. "Unclassified service" or "exempt service" means employees  
2 and positions excluded from coverage of the Oklahoma Merit System of  
3 Personnel Administration;

4        23. "Merit System" means the Oklahoma Merit System of Personnel  
5 Administration;

6        24. "Administrator" means the appointing authority of the  
7 Office of Personnel Management;

8        25. "Executive Director" means the appointing authority of the  
9 Oklahoma Merit Protection Commission;

10       26. "Office" means the Office of Personnel Management;

11       27. "Commission" means the Oklahoma Merit Protection  
12 Commission;

13       28. "Veteran" means a person who has been honorably discharged  
14 from the Armed Forces of the United States and has been a resident  
15 of Oklahoma for at least one (1) year prior to the date of the  
16 examination; and

17       29. "Voluntary out" means the voluntary separation of employees  
18 from the state service in exchange for benefits offered by an agency  
19 in order to reduce or eliminate the adverse impact of an imminent  
20 reduction-in-force.

21       SECTION 2.        AMENDATORY        74 O.S. 1991, Section 840-4.12, as  
22 last amended by Section 32, Chapter 364, O.S.L. 1998 (74 O.S. Supp.  
23 1998, Section 840-4.12), is amended to read as follows:

1           Section 840-4.12 A. The Administrator of the Office of  
2 Personnel Management shall be responsible for conducting promotional  
3 examinations and entrance examinations as required under the  
4 Oklahoma Personnel Act. Such examinations shall be of such  
5 character as to determine the qualifications, fitness and ability of  
6 the persons tested to perform the duties of the class of positions  
7 for which such tests or examinations are given. Provided, however,  
8 tests and examinations of persons with severe disabilities who have  
9 satisfactorily completed vocational and technical education courses  
10 in vocational training units or divisions approved by the Department  
11 of Rehabilitation Services shall be limited in scope so as to relate  
12 to the skill and physical capability required for a particular  
13 position. Adequate public notice shall be given of all examinations  
14 except for promotion within a department or agency.

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

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

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

6 1. Written Examination:

7 a. Upon contact by an agency pursuant to Section 840-4.15  
8 of this title, a written examination shall be  
9 developed and validated by the Office of Personnel  
10 Management (OPM), with consultation from the agency  
11 and any labor organization that holds payroll  
12 deduction rights with the State of Oklahoma.

13 b. Each participant shall be given an identical  
14 examination in the presence of other participants.

15 c. The examination questions must test the knowledge of  
16 the participants and be based on the duties of the  
17 classification for which the examination is held;  
18 material that is of reasonable current publication and  
19 that has been made reasonable available to each  
20 eligible participant; and any study course given by  
21 the agency. Further, the examination questions must  
22 be taken from the sources posted as prescribed in  
23 Section 840-4.15 of this title.

1           d.    The written examination shall be conducted at either  
2           the Office of Personnel Management in Oklahoma City or  
3           at an Oklahoma Employment Security Commission "OPEN"  
4           office in Tulsa and shall be monitored by the Office  
5           of Personnel Management.

6           e.    Grading of the written examination shall be done  
7           promptly and in the presence of the participants. The  
8           grade shall be determined entirely by the correctness  
9           of the candidate's answers to the questions. Each  
10          participant's grade shall be based upon a 100 point  
11          scale with 70 points equaling a passing grade.

12          f.    Within forty-eight (48) hours after the written  
13          examination, the Office of Personnel Management shall  
14          send a list of the grades to the agency and the agency  
15          shall post the grades conspicuously in the same  
16          location as it posted the vacancy notice pursuant to  
17          Section 840-4.15 of this title.

18          2. Oral Examination:

19          a.    Within thirty (30) days after the written examination  
20          grades have been sent to the agency, the agency shall  
21          call the participants who made a passing grade for an  
22          oral examination. The oral examination shall take  
23          place at the agency.

- 1           b. The questions for each oral examination, and the  
2           criteria for evaluating the responses, shall be  
3           developed and validated by the Office of Personnel  
4           Management with consultation from the agency and any  
5           labor organization that holds payroll deduction rights  
6           with the State of Oklahoma.
- 7           c. There shall be five interviewers to conduct the oral  
8           examination. Each interviewer shall be at least one  
9           classification above the classification of the  
10          position(s) sought to be filled and shall have served  
11          in that higher classification for a minimum of two (2)  
12          consecutive years.
- 13          d. The Office of Personnel Management shall select the  
14          interviewers from eligible candidates by a random  
15          drawing of names. The selection process may be  
16          observed by a representative of any labor organization  
17          that holds payroll deduction rights with the State of  
18          Oklahoma. Labor organizations shall be notified at  
19          least five (5) days in advance of the selection of the  
20          interviewers.
- 21          e. The interviewers shall ask all participants the same  
22          questions and shall rate the candidates' responses

1           based upon the criteria established for evaluating  
2           responses.

3           f. Each participant's grade shall be based upon a 30  
4           point scale. The highest and lowest scores of the  
5           interviewers shall be discarded, and the average of  
6           the scores of the other three interviewers shall be  
7           the participant's grade for the oral examination.

8           g. Any participant may review the scores of his or her  
9           oral examination. The names of the interviewers shall  
10           be redacted for such review.

11           h. Within forty-eight (48) hours after the oral  
12           examination has been completed, the Office of  
13           Personnel Management shall tabulate the participants'  
14           final score based upon the requirements in this  
15           section, and post the final score with the agency.

16           3. Selection:

17           a. The written and oral examination scores shall be added  
18           to together for a composite score.

19           b. The agency shall give each participant one point for  
20           every year of service with the agency, up to a maximum  
21           of ten (10) points. The seniority points shall then  
22           be added to the composite score, and such score shall  
23           be the participant's final score.

1           c. A list of participants shall be established by the  
2           agency, ranking such participants from highest to  
3           lowest composite scores, including seniority points.  
4           The list shall be valid for the current vacancy or any  
5           other vacancy thereafter for that classification for  
6           one year from the date of the posting of the list, or  
7           until the list is exhausted, whichever comes first.  
8           For any vacancy in a classification for which a list  
9           has been posted, the agency may select any of the top  
10           three persons on the list. In the event that the  
11           agency passes over any participant to promote another  
12           participant with a lower combination of composite  
13           score and seniority points, the agency must show cause  
14           for the pass over. A participant who is passed over  
15           may appeal the pass over to the Merit Protection  
16           Commission pursuant to Section 840-6.6 of this title.  
17           If a violation of Section 840-2.9 of this title has  
18           been committed, the Oklahoma Merit Protection  
19           Commission may declare a position open.  
20           d. The Office of Personnel Management shall be  
21           responsible for the security of each promotional  
22           examination.

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

5           F. The Office of Personnel Management shall certify that a  
6 candidate meets the necessary job qualifications of a classification  
7 in the classified service for the purpose of allowing that candidate  
8 to be appointed to a position in that class. The Administrator of  
9 the Office of Personnel Management may delegate the certification  
10 function provided by this section to an agency pursuant to  
11 subsection E of Section 840-1.15 of this title. Any statute which  
12 creates any position or qualifications for any position in the  
13 classified service shall not be construed to limit the power of the  
14 Administrator to interpret or add to those qualifications in a  
15 reasonable manner consistent with the intent of the Legislature and  
16 the duties of that position. Any statute which empowers any agency  
17 head or other employer to hire or nominate persons for employment  
18 within the classified service shall not be construed to empower that  
19 agency head or other employer to waive or modify any qualification  
20 or rule for employment established by the Administrator. The  
21 Administrator shall not be construed to have the authority to limit  
22 or reduce any qualification established by statute for any position.  
23 The constructions established herein shall apply to any statutes or

1 positions heretofore or hereafter created unless that statute  
2 clearly and specifically states that such constructions do not  
3 apply.

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

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

16 1. As used in this subsection "persons with severe  
17 disabilities" means persons certified as having disabilities  
18 according to standards and procedures established by the  
19 Administrator. Said standards and procedures shall be developed by  
20 the Administrator of the Office of Personnel Management with the  
21 assistance of the Office of Handicapped Concerns, and the Department  
22 of Rehabilitation Services.

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

9           3. Persons with severe disabilities hired pursuant to this  
10 subsection shall be appointed for a probationary period of six (6)  
11 months. At the end of the probationary period if the work of said  
12 person with severe disabilities is satisfactorily performed, the  
13 person with a severe disability shall acquire permanent status.

14           4. Persons with severe disabilities hired pursuant to this  
15 subsection shall be subject to the rules of the Administrator of the  
16 Office of Personnel Management.

17           5. The Office of Personnel Management shall maintain records  
18 regarding the employment of persons with severe disabilities by  
19 state agencies and shall report the number of persons so employed in  
20 its annual report for the Office of Personnel Management required by  
21 Section 840-1.6A of this title.

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

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

1 considered by the employing agency before a nonveteran is appointed  
2 pursuant to this subsection.

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

7 4. Persons hired pursuant to this subsection shall be appointed  
8 for a probationary period of six (6) months, except that the  
9 appointing authority may extend a probationary period, not to exceed  
10 a total of nine (9) months for an individual, provided, however,  
11 that the employee and the Administrator of the Office of Personnel  
12 Management shall be notified in writing as to such action and the  
13 reason therefor. At the end of the probationary period if the work  
14 of such person is satisfactorily performed as reflected in a service  
15 rating made pursuant to Section 840-4.17 of this title, such person  
16 shall acquire permanent status.

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

21 6. The authority for an agency to make appointments pursuant to  
22 this subsection shall be temporary and shall cease when the

1 appointing authority of an agency can no longer justify remedial  
2 action pursuant to this subsection.

3 7. The Office of Personnel Management shall maintain records  
4 regarding the employment of persons by state agencies pursuant to  
5 this subsection and shall report the number of persons so employed  
6 in its annual report for the Office of Personnel Management required  
7 by Section 840-1.6A of this title.

8 SECTION 3. AMENDATORY 74 O.S. 1991, Section 841.19, as  
9 renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp.  
10 1998, Section 840-4.15), is amended to read as follows:

11 Section 840-4.15 ~~A.~~ An agency shall contact the Office of  
12 Personnel Management when it seeks to fill a classified position  
13 vacancy. The Office of Personnel Management shall develop a written  
14 and oral examination pursuant to Section 840-4.12 of this title.

15 The appointing authority shall post vacancy or vacancies notice(s)  
16 ~~in a~~ for the particular class of positions position(s) it seeks to  
17 fill in accordance with a promotional plan filed by the agency with  
18 ~~the Office of Personnel Management.~~ In order to give qualified  
19 employees an opportunity to ~~apply~~ sit for the written examination  
20 and be considered for possible promotions, the vacancy notices shall  
21 be posted conspicuously in transparent, secured enclosures situated  
22 in prominent locations throughout the agency, at least ~~five (5)~~  
23 thirty (30) working days prior to the ~~closing date for the receipt~~

1 ~~of applications by the appointing authority. Each agency's~~  
2 ~~promotional posting plan shall describe where promotional notices~~  
3 ~~will be posted and require that all vacancy or promotional notices~~  
4 ~~be posted conspicuously in transparent, secured enclosures~~ written  
5 examination. Notices must be posted throughout the agency.  
6 However, an ~~agency's plan~~ agency may limit the posting of notices  
7 for a vacancy in a work unit, local office or administrative area to  
8 within that location, if the vacancy is to be filled by an employee  
9 from the same location. The ~~posting~~ notice shall include:  
10 1. A copy of the class specification;  
11 2. The salary grade and range;  
12 3. The anticipated number of vacancies;  
13 4. The specific location of work;  
14 5. The time limits and procedure for filing an application with  
15 the appointing authority; ~~and~~  
16 6. Any additional factors which the appointing authority will  
17 consider in filling the vacancy;  
18 7. The time, date, and place where the written examination  
19 shall be held; and  
20 8. A list of sources from which the examination questions will  
21 be taken.  
22 ~~B. The appointing authority may elect to post general~~  
23 ~~promotional opportunities in accordance with the provisions of this~~

1 ~~section in cases where there are usually continuous multiple vacant~~  
2 ~~positions within a given class of positions; provided the appointing~~  
3 ~~authority maintains a promotional applicant list for each class of~~  
4 ~~positions which is posted on the basis of general promotional~~  
5 ~~opportunities. In such cases, the posting must include the length~~  
6 ~~of time and conditions under which the promotional application of~~  
7 ~~the candidate will remain available for active consideration by the~~  
8 ~~appointing authority.~~

9 C. ~~If an employee still feels that he or she has not been~~  
10 ~~treated fairly with regard to a promotional action after such~~  
11 ~~complaint has been reviewed in a formal grievance procedure~~  
12 ~~conducted in accordance with the provisions of Section 841.9 of this~~  
13 ~~title, the employee may seek a remedy through the procedures~~  
14 ~~established in this act. If a violation of Section 841.10 of this~~  
15 ~~title has been committed, the Oklahoma Merit Protection Commission~~  
16 ~~may declare a position open.~~

17 SECTION 4. This act shall become effective November 1, 1999.

18 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT OPERATIONS & AGENCY  
19 OVERSIGHT, dated 2-17-99 - DO PASS, As Amended and Coauthored.