

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1066

By: Herbert

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 1991, Sections 841.19, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as amended by Section 17, Chapter 410, O.S.L. 1999, 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 1, Chapter 375, O.S.L. 1999, Section 9, Chapter 242, O.S.L. 1994, Section 10, Chapter 242, O.S.L. 1994, as last amended by Section 4, Chapter 388, O.S.L. 1998, Section 13, Chapter 242, O.S.L. 1994, as last amended by Section 5, Chapter 388, O.S.L. 1998, Section 15, Chapter 242, O.S.L. 1994, as amended by Section 4, Chapter 327, O.S.L. 1996, Section 196, Chapter 352, O.S.L. 1995, Section 9, Chapter 388, O.S.L. 1998, 841.15, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 18, Chapter 310, O.S.L. 1995, 841.15A, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as amended by Section 20, Chapter 310, O.S.L. 1995 (74 O.S. Supp. 1999, Sections 840-4.15, 840-5.5, 840-5.7, 840-5.8, 840-5.11, 840-5.13, 840-5.15, 840-5.21, 840-6.6 and 840-6.8), which relate to the Oklahoma Personnel Act; limiting how state agencies contract with staffing agencies; defining term; providing how appointments shall be funded; removing positions from the unclassified service; placing certain unclassified positions within the classified service; updating references; requiring the Office of Personnel Management to reclassify certain positions; requiring cooperation from affected state agencies; providing for no reduction in compensation for certain employees; allowing an appeal to the Oklahoma Merit Protection Commission for certain Department of Corrections employees; requiring payment of attorney fees to a prevailing employee at formal grievance and pretermination hearings; requiring motion to be made and providing procedure thereto; providing how motion shall be made; requiring the Oklahoma Merit Protection Commission to make final determination on reasonableness of attorney's fees; specifying how payment of attorney's fees shall be made; defining term; repealing 74 O.S. 1991, Section 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 6, Chapter 372, O.S.L. 1999 (74 O.S. Supp. 1999, Section 840-5.5), which is a duplicate section and which relates to the unclassified catalog; repealing 74 O.S. 1991, Section 840.8b, as renumbered by Section 54, Chapter 242 O.S.L. 1994 (74 O.S. Supp. 1999, Section 840-5.6), which relates to unclassified employees of the Corporation Commission; providing for codification;

providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 841.19, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as amended by Section 17, Chapter 410, O.S.L. 1999 (74 O.S. Supp. 1999, Section 840-4.15), is amended to read as follows:

Section 840-4.15 A. The appointing authority shall post announcements of a vacancy or vacancies in accordance with a promotional plan filed by the agency with the Office of Personnel Management. In order to give qualified employees an opportunity to apply for and be considered for possible promotions, the vacancy notices shall be posted conspicuously in transparent, secured enclosures situated in prominent locations throughout the agency, at least five (5) working days prior to the closing date for the receipt of applications by the appointing authority. Promotional posting shall be required for initial entry into a job family at any level. Promotional posting shall also be required for entry into any vacant supervisory position. Each agency's promotional posting plan shall describe where promotional notices will be posted and require that all vacancy or promotional notices be posted conspicuously in transparent, secured enclosures. Notices must be posted throughout the agency. However, an agency's plan may limit the posting of notices for a vacancy in a work unit, local office or administrative area to within that location, if the vacancy is to be filled by an employee from the same location. The posting shall include:

1. A copy of the job family descriptor;
2. Identification of the job family level of the vacancy or vacancies;
3. The pay band and range;
4. The anticipated number of vacancies;

5. The specific location of work;

6. The time limits and procedure for filing an application with the appointing authority; and

7. Any additional factors which the appointing authority will consider in filling the vacancy.

B. The appointing authority may elect to post general promotional opportunities in accordance with the provisions of this section in cases where there are usually continuous multiple vacant positions within a given job family; provided the appointing authority maintains a promotional applicant list for each job family which is posted on the basis of general promotional opportunities. In such cases, the posting must include the length of time and conditions under which the promotional application of the candidate will remain available for active consideration by the appointing authority.

C. If an employee still feels that the employee has not been treated fairly with regard to a promotional action pursuant to this section after such complaint has been reviewed in a formal grievance procedure conducted in accordance with the provisions of Section 840-6.2 of this title, the employee may seek a remedy through the procedures established in the Oklahoma Personnel Act. If a violation of Section 840-2.9 of this title has been committed, the Oklahoma Merit Protection Commission may declare a position open.

D. A state agency shall not contract with a staffing agency to fill a classified position once a vacancy has occurred. For purposes of this subsection, "staffing agency" means a company, corporation, or individual that contracts with one or more state agencies for the purpose of providing temporary or contract employees.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last

amended by Section 1, Chapter 375, O.S.L. 1999 (74 O.S. Supp. 1999, Section 840-5.5), is amended to read as follows:

Section 840-5.5 A. The following offices, positions, and personnel shall be in the unclassified service and shall not be placed under the classified service:

1. Persons chosen by popular vote or appointment to fill an elective office, and their employees, except the employees of the Corporation Commission, the State Department of Education and the Department of Labor;

2. Members of boards and commissions, and heads of agencies; also one principal assistant or deputy and one executive secretary for each state agency;

3. All judges, elected or appointed, and their employees;

4. Persons employed with one-time, limited duration, federal or other grant funding that is not continuing or indefinitely renewable. The length of the unclassified employment shall not exceed the period of time for which that specific federal funding is provided;

5. All officers and employees of The Oklahoma State System of Higher Education, State Board of Education and State Department of Vocational and Technical Education;

6. Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee thereof or by authority of the Governor. These appointments and authorizations shall terminate on the first day of the regular legislative session immediately following the appointment, if not terminated earlier. However, nothing in this paragraph shall prevent the reauthorization and reappointment of any such person. Any such appointment shall be funded from the budget of the appointing authority;

7. Election officials and employees;

8. Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period and seasonal employees employed pursuant to Section 1806.1 of this title who work less than one thousand two hundred (1,200) hours in any twelve-month period. This category of employees may include persons employed on an intermittent, provisional, seasonal, temporary or emergency basis;

9. Department of Public Safety employees occupying the following offices or positions:

- a. two administrative aides to the Commissioner, and
- b. the Governor's representative of the Oklahoma Highway Safety Office who shall be appointed by the Governor;

10. Professional trainees only during the prescribed length of their course of training or extension study;

11. Students who are employed on a part-time basis, which shall be seventy-five percent (75%) of a normal forty-hour work week or thirty (30) hours per week, or less, or on a full-time basis if the employment is pursuant to a cooperative education program such as that provided for under Title I IV-D of the Higher Education Act of 1965 (20 U.S.C. 1087a-1087c), as amended, and who are regularly enrolled in:

- a. an institution of higher learning within The Oklahoma State System of Higher Education,
- b. an institution of higher learning qualified to become coordinated with The Oklahoma State System of Higher Education. For purposes of this section, a student shall be considered a regularly enrolled student if the student is enrolled in a minimum of five (5) hours of accredited graduate courses or a minimum of ten (10) hours of accredited undergraduate courses, provided, however, the student shall only be required to be enrolled in a minimum of six (6) hours of accredited undergraduate courses during the summer, or

c. high school students regularly enrolled in a high school in Oklahoma and regularly attending classes during such time of enrollment;

12. The spouses of personnel who are employed on a part-time basis to assist or work as a relief for their spouses in the Oklahoma Tourism and Recreation Department;

13. Service substitute attendants who are needed to replace museum and site attendants who are unavoidably absent. Service substitutes may work as part-time or full-time relief for absentees for a period of not more than four (4) weeks per year in the Oklahoma Historical Society sites and museums; such substitutes will not count towards the agency's full-time-equivalent (FTE) employee limit;

14. Employees of the House of Representatives, the State Senate, or the Legislative Service Bureau;

15. Corporation Commission personnel occupying the ~~following offices and positions:~~
a. ~~Administrative of administrative aides,~~
and executive secretaries to the Commissioners,

~~b. Directors of all the divisions, personnel managers and comptrollers,~~

~~c. General Counsel,~~

~~d. Public Utility Division Chief Engineer,~~

~~e. Public Utility Division Chief Accountant,~~

~~f. Public Utility Division Chief Economist,~~

~~g. Public Utility Division Deputy Director,~~

~~h. Secretary of the Commission,~~

~~i. Deputy Conservation Director,~~

~~j. Manager of Pollution Abatement,~~

~~k. Manager of Field Operations,~~

~~l. Manager of Technical Services,~~

~~m. Public Utility Division Chief of Telecommunications,~~
and

~~n. Director of Information Services;~~

16. At the option of the employing agency, the Supervisor, Director, or Educational Coordinator in any other state agency having a primary responsibility to coordinate educational programs operated for children in state institutions;

17. Bill Willis Community Mental Health and Substance Abuse Center personnel occupying the following offices and positions:

- a. Director of Facility,
- b. Deputy Director for Administration,
- c. Clinical Services Director,
- d. Executive Secretary to Director, and
- e. Directors or Heads of Departments or Services;

18. Office of State Finance personnel occupying the ~~following offices~~ office and ~~positions:~~ a. position of State Comptroller,

- ~~b. Information Services Division Manager,~~
- ~~c. Network Manager, and~~
- ~~d. Network Technician;~~

19. Employees of the Oklahoma Development Finance Authority;

20. Those positions so specified in the annual business plan of the Oklahoma Department of Commerce;

21. Those positions so specified in the annual business plan of the Oklahoma Center for the Advancement of Science and Technology;

22. The following positions and employees of the Oklahoma School of Science and Mathematics:

- a. positions for which the annual salary is Twenty-four Thousand One Hundred Ninety-three Dollars (\$24,193.00) or more, as determined by the Office of Personnel Management, provided no position shall become unclassified because of any change in salary or grade while it is occupied by a classified employee,
- b. positions requiring certification by the State Department of Education, and

- c. positions and employees authorized to be in the unclassified service of the state elsewhere in this section or in subsection B of this section;

~~23. Office of Personnel Management employees occupying the following positions:~~

- ~~a. the Carl Albert Internship Program Coordinator, and~~
- ~~b. one Administrative Assistant;~~

~~24. Department of Labor personnel occupying the following offices and positions:~~

- a. two Deputy Commissioners, and
- b. Executive Secretary to the Commissioner,
- ~~c. Chief of Staff, and~~
- ~~d. two Administrative Assistants;~~

~~25. 24.~~ The State Bond Advisor and his employees;

~~26. 25.~~ The Oklahoma Employment Security Commission employees occupying the following positions:

- a. Associate Director,
- b. Secretary to the Associate Director, and
- c. Assistant to the Executive Director;

~~27. Oklahoma Human Rights Commission personnel occupying the position of Administrative Assistant;~~

~~28. 26.~~ The officers and employees of the State Banking Department;

~~29. 27.~~ Officers and employees of the University Hospitals Authority except personnel in the state classified service pursuant to Section 3211 of Title 63 of the Oklahoma Statutes and members of the University Hospitals Authority Model Personnel System created pursuant to subsection E of Section 3211 of Title 63 of the Oklahoma Statutes or as otherwise provided for in Section 3213.2 of Title 63 of the Oklahoma Statutes;

~~30.~~ 28. Alcoholic Beverage Laws Enforcement Commission employees occupying the three Administrative Service Assistant positions;

~~31.~~ 29. The Oklahoma State Bureau of Investigation employees occupying the following positions:

- ~~a. two special investigators,~~
- ~~b. one information representative,~~
- ~~c. one federally funded physical evidence technician, and~~
- ~~d. b. four federally funded laboratory analysts,~~
- ~~e. one Data Base Administrator,~~
- ~~f. two Data Processing Branch Managers,~~
- ~~g. four Senior Data Processing Applications Specialists,~~
- ~~h. a total of three positions from the following classes:
Senior Data Processing Systems Specialists, Data Processing Applications Specialists, or Data Processing Systems Specialists,~~
- ~~i. one Senior Computer Services Technician, or Computer Services Technician,~~
- ~~j. one Senior Computer Services Coordinator, or Computer Services Coordinator, and~~
- ~~k. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;~~

~~32.~~ 30. The Department of Transportation, the following positions:

- a. Director of the Oklahoma Aeronautics and Space Commission,
- b. four Department of Transportation Assistant Director positions,
- c. eight field division engineer positions, and
- d. one pilot position;

~~33.~~ 31. Commissioners of the Land Office employees occupying the following positions: position of

- ~~a. Director of the Investments Division,~~
- ~~b. Assistant Director of the Investments Division, and~~
- ~~c. one Administrative Assistant;~~

~~34.~~ 32. Within the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission, ~~the following positions:~~

- a. two Narcotics Agent positions, provided, authorization for such positions shall be terminated when federal support for the positions by the Gang Intelligence/Enforcement Program is discontinued,
- ~~b. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection, and~~
- ~~c. one fiscal officer;~~

~~35.~~ 33. The Oklahoma Military Department of the State of Oklahoma is authorized such unclassified employees within full-time employee limitations to work in any of the Department of Defense directed youth programs, the State of Oklahoma Juvenile Justice youth programs, those persons reimbursed from Armory Board or Billeting Fund accounts, and skilled trade positions;

~~36.~~ 34. Within the Oklahoma Commission on Children and Youth the following unclassified positions:

- a. one Oversight Specialist and one Community Development Planner, and
- b. one State Plan Grant Coordinator, provided authorization for the position shall be terminated when federal support for the position by the United States Department of Education Early Intervention Program is discontinued, ~~and~~
- ~~c. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;~~

~~37.~~ 35. The following positions and employees of the Department of Central Services:

- ~~a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,~~
- ~~b. the Director of Central Purchasing, and~~
- ~~c. one Alternate Fuels Administrator,~~
- ~~d. one Director of Special Projects,~~
- ~~e. three postauditors,~~
- ~~f. b. four high-technology contracting officers,~~
- ~~g. one Executive Assistant to the Purchasing Director,~~
- ~~h. one Contracts Manager,~~
- ~~i. one Associate Director, and~~
- ~~j. one specialized HiTech/Food Contracting Officer;~~

~~38.~~ 36. One Environmental Specialist I, three Water Quality Specialists, and four Water Resources Division Chiefs within the Oklahoma Water Resources Board;

~~39.~~ ~~J.D. McCarty Center for Children with Developmental Disabilities personnel occupying the following offices and positions:~~

- ~~a. Physical Therapists,~~
- ~~b. Physical Therapist Assistants,~~
- ~~c. Occupational Therapists,~~
- ~~d. Certified Occupational Therapist Aides, and~~
- ~~e. Speech Pathologists;~~

~~40.~~ 37. The Development Officer and the Director of the State Museum of History within the Oklahoma Historical Society;

~~41.~~ 38. State Department of Agriculture personnel occupying the following positions: position of

- ~~a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,~~
- ~~b. Agricultural Marketing Coordinator III,~~

~~e.~~ temporary fire suppression personnel, regardless of the number of hours worked, who are employed by the State Department of Agriculture during the period of October 1 through May 31 in any fiscal year; provided, however, notwithstanding the provisions of any other section of law, the hours worked by such employees shall not entitle such employees to any benefits received by full-time employees,

~~d.~~ one Administrator for Human Resources,

~~e.~~ one Director of Administrative Services,

~~f.~~ one Water Quality Consumer Complaint Coordinator,

~~g.~~ one hydrologist position,

~~h.~~ Public Information Office Director,

~~i.~~ Market Development Services Director,

~~j.~~ Legal Services Director,

~~k.~~ Animal Industry Services Director,

~~l.~~ Water Quality Services Director,

~~m.~~ Forestry Services Director,

~~n.~~ Plant Industry and Consumer Services Director, and

~~o.~~ one Grants Administrator position;

~~42.~~ 39. The Contracts Administrator within the Oklahoma State Employees Benefits Council;

~~43.~~ 40. All positions and personnel of the Criminal Justice Resource Center within the Department of Public Safety;

~~44.~~ 41. The Development Officer within the Oklahoma Department of Libraries;

~~45.~~ 42. Oklahoma Real Estate Commission personnel occupying the following offices and positions:

a. Educational Program Director, and

b. Data Processing Manager;

~~46.~~ 43. A Chief Consumer Credit Examiner for the Department of Consumer Credit; and

~~47.~~ 44. All officers and employees of the Oklahoma Capitol Complex and Centennial Commemoration Commission.

B. If an agency has the authority to employ personnel in the following offices and positions, the appointing authority shall have the discretion to appoint personnel to the unclassified service:

1. Licensed medical doctors, osteopathic physicians, dentists, and psychologists;
2. Certified public accountants;
3. Licensed attorneys;
4. Licensed veterinarians; and
5. Licensed pharmacists.

C. Effective July 1, 1996, authorization for unclassified offices, positions, or personnel contained in a bill or joint resolution shall terminate June 30 of the ensuing fiscal year after the authorization unless the authorization is codified in the Oklahoma Statutes or the termination is otherwise provided in the legislation.

D. Agencies having a need to convert and test databases to accommodate the change of the millennium may appoint unclassified programmers, programmer analysts, and systems analysts to perform the work. Appointments so made shall expire not later than June 30, 2000, shall not be included within any limitation on full-time-equivalent (FTE) employee positions for the agency, and shall not be counted against authorized limits for unclassified appointments. Permanent classified employees may request a leave of absence from classified status and accept an unclassified appointment and compensation with the same agency under the provisions of this subsection; provided, the leave shall expire not later than June 30, 2000. Employees accepting the appointment and compensation shall be entitled to participate without interruption in any benefit programs available to classified employees, including retirement and insurance programs. Immediately upon termination of unclassified

appointment pursuant to this subsection, an employee on assignment from the classified service shall have a right to be restored to the classified service and reinstated to the former job classification and compensation plus any adjustments and increases in salary or benefits which the employee would have received but for the leave of absence.

SECTION 3. AMENDATORY Section 9, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1999, Section 840-5.7), is amended to read as follows:

Section 840-5.7 A. The Grand River Dam Authority shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to this act to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section § 840-5.5 of this ~~act~~ title, the following offices, positions and personnel shall be in the unclassified service:

1. The general manager, assistant general managers, secretaries to the general manager, and assistant general managers; and

~~2. The chief engineer and the engineers, superintendents, and assistant superintendents;~~

~~3. The general counsel and the attorneys on the general counsel's staff;~~

~~4. The secretary;~~

~~5. The treasurer;~~

~~6. Rate analysts; and~~

~~7. Unclassified employees hired prior to May 1, 1989, who hold engineering job titles but who are not registered engineers,~~

provided said persons are reassigned nonengineering job titles. At such time as the positions occupied by said unclassified employees are vacated, the positions shall revert to the classified service.

SECTION 4. AMENDATORY Section 10, Chapter 242, O.S.L. 1994, as last amended by Section 4, Chapter 388, O.S.L. 1998 (74 O.S. Supp. 1999, Section 840-5.8), is amended to read as follows:

Section 840-5.8 ~~A.~~ The Oklahoma Tax Commission shall be under the Merit System. ~~Except as otherwise provided in subsection B of this section, all~~ All offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to the Oklahoma Personnel Act to place the agency or its predecessors under the Merit System.

~~B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the following offices, positions and personnel shall be in the unclassified service:~~

~~1. One private secretary for each Tax Commissioner; all revenue administrators, the budget officer and the comptroller of the Tax Commission;~~

~~2. All revenue unit managers;~~

~~3. All Computer Programming Systems Specialist positions;~~

~~4. All Data Processing Programmer Analyst Supervisor and Data Processing Programmer Analyst III positions;~~

~~5. All Public Affairs Officer and Assistant Public Affairs Officer positions;~~

~~6. The Public Information Officer; and~~

~~7. All Tax Economist and Tax Policy Analyst positions.~~

SECTION 5. AMENDATORY Section 13, Chapter 242, O.S.L. 1994, as last amended by Section 5, Chapter 388, O.S.L. 1998 (74 O.S. Supp. 1999, Section 840-5.11), is amended to read as follows:

Section 840-5.11 A. The Department of Corrections shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to this act to place the agency or its predecessors under the Merit System.

~~B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the Director of the Department of Corrections may establish positions in the unclassified service and place employees in those positions provided the total number of unclassified positions does not exceed six percent (6%) of the total full-time equivalent employee limit established for the Department of Corrections. Any unclassified positions established for the Oklahoma State Industries shall be funded from the Department of Corrections Industries' Revolving Fund only.~~ In addition to the regular salary, any unclassified employee of the Oklahoma State Industries of the Department of Corrections who is responsible for obtaining a contract for products manufactured or services provided by prison industries may, at the discretion of the Director of the Department of Corrections, be awarded additional compensation of not more than five percent (5%) of the total amount of said contracts but not more than Five Thousand Dollars (\$5,000.00) per year. This compensation may be in addition to the salary of the employee and may be paid in one lump sum from any funds available to the Department of Corrections. No such compensation shall be made unless funds are available. Funds for payment of any compensation awards shall be encumbered to the extent of the awards.

~~Incumbents who were classified under the Merit System of Personnel Administration on the effective date the position they~~

~~occupy became part of the unclassified service shall have the option of remaining in their classified service status. Incumbents who choose to accept unclassified service appointments shall so signify in writing. All future appointees to these positions shall be in the unclassified service. Incumbents who choose to remain in the classified service shall be subject to all rules and procedures of the Merit System.~~

SECTION 6. AMENDATORY Section 15, Chapter 242, O.S.L. 1994, as amended by Section 4, Chapter 327, O.S.L. 1996 (74 O.S. Supp. 1999, Section 840-5.13), is amended to read as follows:

Section 840-5.13 A. The Department of Environmental Quality shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to this act to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the following offices, positions and personnel shall be in the unclassified service:

1. Division Directors;
2. General Counsel; and
3. Attorneys;
4. ~~Director of Public Information and Education;~~
5. ~~Customer Service Specialists;~~
6. ~~Senior Coordinator of Rural Solid Waste Systems Development;~~
7. ~~Director of Support Services; and~~
8. ~~Director of the Office of Waste Planning and Systems~~

~~Development.~~

SECTION 7. AMENDATORY Section 196, Chapter 352, O.S.L. 1995 (74 O.S. Supp. 1999, Section 840-5.15), is amended to read as follows:

Section 840-5.15 ~~A.~~ The Office of Juvenile Affairs shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated pursuant thereto. This section shall supersede and repeal any and all executive orders issued pursuant to the Oklahoma Personnel Act to place the agency or its predecessors under the Merit System.

~~B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the Office of Juvenile Affairs may place a maximum of thirty-five (35) employees in the unclassified service.~~

SECTION 8. AMENDATORY Section 9, Chapter 388, O.S.L. 1998 (74 O.S. Supp. 1999, Section 840-5.21), is amended to read as follows:

Section 840-5.21 ~~A.~~ All offices, positions, and personnel of the Oklahoma Turnpike Authority shall be classified and subject to the provisions of the Merit System of Personnel Administration as provided in the Oklahoma Personnel Act. This section shall supersede and repeal any and all Executive Orders issued pursuant to the Oklahoma Personnel Act to place the Authority under the Merit System.

~~B. In addition to offices, positions, and personnel that are unclassified pursuant to Section 840-5.5 of this title, the following positions and personnel shall be in the unclassified service:~~

- ~~1. Information Technology Analysts;~~
- ~~2. Process Integration Specialists;~~
- ~~3. Project Managers;~~

~~4. System Integration Specialists; and~~

~~5. One Administrative Assistant.~~

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840-5.23 of Title 74, unless there is created a duplication in numbering, reads as follows:

The unclassified positions that have been removed in Sections 2 through 8 of this act shall be in the classified service. The Office of Personnel Management shall reclassify, as necessary, such positions and the employees in these positions. Affected state agencies shall cooperate with the Office of Personnel Management to establish and/or assign appropriate job families and pay bands to these positions, as necessary. No state employee who is employed in one of the positions removed from the unclassified service pursuant to this act shall receive any reduction in compensation regardless of whether the employee's salary is greater than the pay band he or she is assigned.

SECTION 10. AMENDATORY 74 O.S. 1991, Section 841.15, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 18, Chapter 310, O.S.L. 1995 (74 O.S. Supp. 1999, Section 840-6.6), is amended to read as follows:

Section 840-6.6 A. Any person who believes that his or her rights under the Oklahoma Personnel Act, Section 840-1.1 et seq. of this title, have been violated or any employee of the Department of Corrections who has been accused of committing a crime while on the job may appeal to the Oklahoma Merit Protection Commission for corrective action.

B. Excluding the procedures set forth in Section 840-6.5 of this title, the Executive Director shall conduct preliminary investigations of possible violations of the Oklahoma Personnel Act. The Executive Director shall prepare a report of each such investigation stating the issues and findings of fact. If it is the determination of the Executive Director that a violation of the

Oklahoma Personnel Act or the Merit System of Personnel Administration Rules may have occurred, the Executive Director shall, within ten (10) calendar days after the date of the report, appoint an administrative hearing officer to hear the case or refer the case to the Alternative Dispute Resolution Program, as appropriate and provided for by law. If the appeal is to be heard by an administrative hearing officer, the Executive Director shall notify the appellant and the appointing authority of the date, time, and place of the hearing in accordance with the provisions of Section 840-6.7 of this title. Such hearing shall be conducted within thirty-five (35) calendar days of the date of the investigative report unless continued for good cause. Any continuances shall not exceed a combined total of sixty (60) calendar days except for good cause shown.

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

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

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

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

1. When a hearing or Alternative Dispute Resolution Program proceeding is convened, the record will close at the conclusion of

the hearing or Alternative Dispute Resolution Program proceeding unless otherwise specified by the presiding official;

2. When a hearing or Alternative Dispute Resolution Program proceeding is not convened, the record will close on the date set by the presiding official as the final date for the receipt of submissions of the parties; and

3. Once the record is closed, no additional evidence or argument shall be considered except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record.

SECTION 11. AMENDATORY 74 O.S. 1991, Section 841.15A, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as amended by Section 20, Chapter 310, O.S.L. 1995 (74 O.S. Supp. 1999, Section 840-6.8), is amended to read as follows:

Section 840-6.8 A. The presiding officer of any hearing, including the presiding officer(s) at a formal grievance proceeding, or Alternative Dispute Resolution Program proceeding before the Oklahoma Merit Protection Commission ~~may~~ shall require payment of reasonable attorney fees and costs be paid by the appointing authority to the prevailing party if the position of the nonprevailing party was without reasonable basis or was frivolous employee upon motion by the prevailing employee.

B. ~~Requests by prevailing parties for payment of attorney fees and costs shall be filed by motion with a copy served on other parties~~ In order to receive attorney fees, the prevailing employee shall request attorney fees by motion filed with the Oklahoma Merit Protection Commission within ten (10) days of the date that the decision is issued. A responsive pleading may be filed within ten (10) days of the date the motion is filed with the Oklahoma Merit Protection Commission. The motion shall be filed at the office of the Oklahoma Merit Protection Commission to the attention of the presiding officer and the ruling on the motion shall be made in an

~~addendum decision~~ to the presiding officer(s) in the case of a formal grievance proceeding.

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

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

D. ~~If the Oklahoma Merit Protection Commission determines that the appeal is frivolous, any party may be assessed attorney fees and costs of the action~~ The Oklahoma Merit Protection Commission shall determine the reasonableness of the claim for attorney's fees and shall make a final determination as to amount of attorney's fees within thirty (30) days from the filing of the motion or, if a responsive pleading is filed, thirty (30) days from the filing of the responsive pleading.

~~E.~~ A petition for judicial review by the Oklahoma Merit Protection Commission of the ~~addendum~~ attorney's fee decision shall be filed in accordance with Article II of the Administrative Procedures Act, within ten (10) days of the issue date of said decision.

E. The appointing authority shall pay the prevailing employee his or her awarded attorney's fees within sixty (60) days of a final determination on attorney's fees. Final determination shall mean the decision of the Oklahoma Merit Protection Commission or, if a

petition for judicial review is made, the decision of the reviewing court.

SECTION 12. REPEALER 74 O.S. 1991, Section 840.8, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 6, Chapter 372, O.S.L. 1999 (74 O.S. Supp. 1999, Section 840-5.5), is hereby repealed.

SECTION 13. REPEALER 74 O.S. 1991, Section 840.8b, as renumbered by Section 54, Chapter 242, O.S.L. 1994 (74 O.S. Supp. 1999, Section 840-5.6), is hereby repealed.

SECTION 14. Sections 1 and 10 through 13 of this act shall become effective July 1, 2000.

SECTION 15. Sections 2 through 9 of this act shall become effective November 1, 2000.

SECTION 16. 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.

47-2-2319

SJ

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