

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1384

By: Dickerson

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 2001, Section 150.8, which relates to the Oklahoma State Bureau of Investigation; requiring resignation and reinstatement; amending 74 O.S. 2001, Section 840-1.3, which relates to the Oklahoma Personnel Act; amending definition of "lateral transfer"; amending 74 O.S. 2001, Section 840-1.6A (Section 2, Chapter 381, O.S.L. 2001), which relates to the Office of Personnel Management; allowing the Administrator to identify certain positions or job family levels for expedited recruitment; limiting expedited recruitment jobs; providing for referrals of certain applicants without examination or ranking; providing limitation; allowing Administrator to remove certain positions or job family levels from expedited recruitment; providing for adoption of rules; requiring the Administrator to establish a workforce planning function; amending 74 O.S. 2001, Sections 840-2.1, 840-2.17, and 840-2.21, which relate to the Oklahoma Personnel Act; amending date for affirmative action report; clarifying language and terms; amending references; allowing salary adjustments upon inter-agency lateral transfers; allowing for separation of service of employee on leave without pay notwithstanding the Workers' Compensation Act; amending 74 O.S. 2001, Section 840-2.23 (Section 5, Chapter 381, O.S.L. 2001), which relates to the Oklahoma Personnel Act; rearranging language; deleting redundant terminology; amending 74 O.S. 2001, Sections 840-2.27E, 840-3.4, 840-3.5, 840-3.8, 840-4.2, and 840-4.12, which relate to the Oklahoma Personnel Act; clarifying provision in severance form; deleting certain requirement for eligibility in the Carl Albert Public Internship Program; requiring agencies to make certain rating in accordance with the employee performance management system; clarifying language; allowing the Administrator to waive certain requirement; amending types of assignments of mentor executives; providing that the Administrator may intercede in certain situations; providing for treatment of certain positions; providing for discretionary probationary period for intra-agency lateral transfer; amending 74 O.S. 2001, Section 840-5.5 (Section 10, Chapter 414, O.S.L. 2001), which relates to the unclassified service; including certain positions in the unclassified service; allowing certain appointing authorities to appoint unclassified positions; providing for expiration of appointments; providing exemption; allowing certain leave of absence; providing for

benefits and reinstatement for certain employees; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 150.8, is amended to read as follows:

Section 150.8 A. The Director shall appoint as employees only persons of outstanding honesty, integrity and ability. An agent, at the time of appointment to the Bureau, shall be at least twenty-one (21) years of age and shall possess a bachelor's degree from an accredited college or university.

B. The officers and agents of the Oklahoma State Bureau of Investigation, and such other employees as the Director of the Bureau of Investigation shall designate to perform duties in the investigation and prevention of crime and the enforcement of the criminal laws of the state, shall have and exercise all the powers and authority of peace officers, including the right and power of search and seizure.

C. Any Oklahoma State Bureau of Investigation employee promoted, voluntarily demoted or transferred into an agent or criminalist position within the Bureau shall serve a twelve-month trial period. Any state employee in a classified position with an agency other than the Bureau who ~~makes an interagency transfer into~~ is selected for an agent or criminalist position within the Bureau shall ~~serve a twelve-month probationary period~~ resign his or her position and be reinstated in accordance with the merit rules.

D. Any employee in a classified position under the Merit System of Personnel Administration who is appointed Director, Deputy Director, Acting Director or Acting Deputy Director shall have a right to return to the classified service without any loss of rights, privileges or benefits immediately upon completion of the duties of the employee provided the employee is not otherwise disqualified.

E. All other employees of the State Bureau of Investigation shall be in the classified service of the state and members of the Merit System of Personnel Administration, unless otherwise provided by law.

F. Appointment to any position in the State Bureau of Investigation shall not jeopardize the rights of any person under any other system under which peace officers of this state or its subdivisions may become pensioned, provided that the individual contributions are continued as if such person were in the original organization within which the person qualified for such pension.

SECTION 2. AMENDATORY 74 O.S. 2001, 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. "Classification" means:

a. the process of placing an employee into an appropriate job family and level within the job family, consistent with the allocation of the position to which the employee is assigned, or

b. an employee's job family and the level at which work is assigned;

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

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

7. "Entrance examination" means any employment test used by the Office of Personnel Management to rank the names of applicants who possess the minimum requirements of education, experience, or licensure for a job or group of similar jobs on a register of eligibles established by the Office of Personnel Management;

8. "Job" means a position or job family level in a job family;

9. "Job family" means:

a. jobs which require similar core skills and involve similar work, and

b. a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the work to warrant similar treatment as to title, typical functions, knowledge, skills and abilities required, and education and experience requirements;

10. "Job family level" means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience;

11. "Job family descriptor" means a written document that:

a. describes a job family, including, but not limited to, the basic purpose, typical functions performed, various levels within the job family, and the knowledge, skills, abilities, education, and experience required for each level, and

b. identifies the pay band assigned for each level;

12. "Promotional examination" means any employment test designated by the Office of Personnel Management to determine

further the qualifications of a permanent classified employee of a state agency for employment in a different job for which the employee possesses the minimum qualifications of education, experience, or licensure within that agency;

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

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

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

16. "Lateral transfer" means the ~~reclassification~~ reassignment of an employee to another state job with the same pay band assignment as the job family level in which the employee ~~had been~~ was classified prior to the lateral transfer;

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

18. "Noncompetitive appointment" means the appointment of a person to a noncompetitive job level within a job family;

19. "Noncompetitive job" means an unskilled or semiskilled job designated by the Office of Personnel Management as noncompetitive. Noncompetitive jobs do not require written examinations for placement on registers of eligibles;

20. "Permanent classified employee" means a classified service employee who has acquired permanent status in accordance with the

Oklahoma Personnel Act, and rules adopted pursuant thereto, and who has the right to appeal involuntary demotion, suspension without pay, and discharge to the Commission;

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

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

23. "Reclassification" means the process of changing a classified employee from one job family to another job family or from one job family level to another job family level in the same job family, resulting in a change in the employee's assigned job code;

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

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

26. "Supervisor" means a classified or unclassified officer or employee who has been assigned authority and responsibility for evaluating the performance of subordinates;

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

28. "Merit System" means the Oklahoma Merit System of Personnel Administration;

29. "Administrator" means the appointing authority of the Office of Personnel Management;

30. "Executive Director" means the appointing authority of the Oklahoma Merit Protection Commission;

31. "Office" means the Office of Personnel Management;

32. "Commission" means the Oklahoma Merit Protection Commission;

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

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

SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-1.6A (Section 2, Chapter 381, O.S.L. 2001), is amended to read as follows:

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

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

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

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

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

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

6. Develop a program for the recruitment of qualified persons, including the administration of valid job-related nondiscriminatory selection procedures providing for competitive examinations when practical and for reasonable selection criteria when competitive examinations are not practical. As part of the recruitment program established by this section, the Administrator may identify positions or job family levels for expedited recruitment. Such expedited recruitment jobs may include only those jobs where education, experience or certification requirements substantially limit the pool of available applicants. Applicants who have been certified by the Office of Personnel Management as meeting the minimum qualifications for such jobs may be referred to agencies with vacancies in such jobs without examination or ranking, and may

be eligible for appointment upon referral. However, a referral may not occur until the register for the job has been publicly announced for at least fourteen (14) calendar days. The Administrator may remove positions or job family levels from expedited recruitment at any time. The Administrator shall adopt rules to implement expedited recruitment;

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

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

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

10. Develop, in cooperation with appointing authorities, employee training programs, management training programs, a certified public manager program, a recruiting program, and a system of performance appraisals, and assist appointing authorities in the setting of productivity goals. The Administrator may establish and collect fees for participation in training programs. The Administrator is authorized to purchase awards for presentation to state employees as part of employee recognition activities sponsored by the Office of Personnel Management;

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

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

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

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

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

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

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

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

Management Revolving Fund. Expenditure of such funds collected for the training shall be exempt from any expenditure limit on the Office of Personnel Management established by law;

19. Effective on or after November 1, 1999, implement a new classification and compensation system for classified employees that converts classes into job families and salary grades into pay bands. All classified employees shall be converted into the new job families and pay bands at the time the new classification and compensation system is implemented without loss of pay or status, and shall not have the right to appeal such conversion. The Administrator of the Office of Personnel Management shall adopt rules pursuant to Section 840-4.3 of this title which shall include a process for review by the Office of Personnel Management of internal classification grievances of job family level assignments which cannot be resolved at the agency level;

20. Conduct a study identifying the following, by job family descriptor(s):

- a. selected job family levels with a turnover rate in excess of ten percent (10%),
- b. selected job family levels identified by the Administrator of the Office of Personnel Management with salaries and benefits that are ten percent (10%) or more below the market for such position(s), and
- c. selected job family levels identified by the Administrator of the Office of Personnel Management in which recruitment efforts have yielded a low number of qualified applicants.

The initial study shall be conducted by December 1, 2001, and every two (2) years thereafter; ~~and~~

21. Issue orders directing agencies to:

- a. conform and comply with the provisions of the Oklahoma Personnel Act, the Merit Rules of Personnel

Administration, and all memoranda or other written communications issued to agencies explaining the Oklahoma Personnel Act, the Rules, and any other matter relating to the Merit System of Personnel Administration or under the jurisdiction of the Administrator of the Office of Personnel Management, and

- b. take action pursuant to Section 840-6.9 of this title for failure to implement those orders; and

22. Establish a workforce planning function within the Office of Personnel Management to assist state agencies in analyzing the current workforce, determining future workforce needs, and implementing solutions so that agencies may accomplish their missions.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 840-2.1, is amended to read as follows:

Section 840-2.1 A. All agencies, boards, commissions, departments, and offices of each branch of state government, except institutions within The Oklahoma State System of Higher Education, shall submit an affirmative action plan to the Office of Personnel Management annually by September 1 following the end of the fiscal year ending June 30. Institutions within The Oklahoma State System of Higher Education shall submit an affirmative action plan to the Oklahoma State Regents for Higher Education in accordance with standards established by the Oklahoma State Regents for Higher Education.

B. Said plan for agencies of the executive branch, except institutions within The Oklahoma State System of Higher Education, is subject to the approval of the Administrator of the Office of Personnel Management.

C. The Administrator of the Office of Personnel Management shall analyze the affirmative action plans of executive branch

agencies and Equal Employment Opportunity Commission reports prepared by such agencies, except institutions within The Oklahoma State System of Higher Education, and, on or before ~~January 1~~ March 1 of each year, shall submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor. Said report shall state the efforts and progress made by governmental entities in the area of affirmative action, including the status of recruitment, hiring, and promotion of women, men and minorities within job categories.

D. The provisions of this section shall not require an agency, board, commission, department, or office of state government to grant preferential treatment to an individual or group because of race, color, religion, sex, national origin, age, or handicap because of an imbalance which may exist in comparison with the employment statistics of the area involved.

E. It is not a discriminatory practice for the appointing authority of an entity subject to the provisions of this title to adopt and implement an affirmative action plan to eliminate or reduce imbalances with respect to women and minorities if the plan has been approved by the Office of Personnel Management in accordance with rules and guidelines adopted by the Office of Personnel Management. For affirmative action purposes, any person who lists American Indian as his race or national origin shall, within thirty (30) days of his appointment, verify his tribal affiliation by providing a certificate of Degree of Indian Blood from the U.S. Department of Interior, Bureau of Indian Affairs, or by providing the name and address of tribal officials who can verify his tribal affiliation.

F. 1. The Administrator of the Office of Personnel Management shall establish qualification requirements for personnel serving as agency civil rights or affirmative action administrators, officers, coordinators and other personnel responsible for civil rights

compliance or affirmative action for executive branch agencies. Such qualification requirements shall include, but not be limited to, knowledge of federal and state civil rights, affirmative action, and equal employment laws and regulations. Such personnel shall be subject to the training requirements specified by the Office of Personnel Management. The Administrator shall be authorized to bill agencies for the training of personnel professionals pursuant to this paragraph to recover reasonable costs associated with the training. Monies received for such training shall be deposited in the Office of Personnel Management Revolving Fund. Expenditure of such funds collected for the training shall be exempt from any expenditure limit for the Office of Personnel Management established by law. Effective December 1, 1995, complaints of alleged illegal discrimination shall be investigated only by personnel trained pursuant to the requirements of the Administrator, unless otherwise provided by federal or state law. This paragraph shall not apply to such personnel of the Oklahoma Merit Protection Commission or the Oklahoma Human Rights Commission.

2. If, after notice, administrative hearing and determination, pursuant to Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes, the Administrator finds that an appointing authority of any executive branch agency has failed to make significant progress toward affirmative action goals, or has failed to appoint a civil rights administrator without justifiable reasons, the Administrator may begin requiring remedies as allowed by subsection G of this section and rules promulgated thereto and appropriate to making progress toward affirmative action goals. Such action shall remain in effect until the Administrator determines that significant progress toward affirmative action goals is being made. The provisions of law pertaining to the duties and powers of any agency shall not be construed to deny the Administrator the authority provided for in this paragraph, unless

the agency is specifically excluded by law from the provisions of this paragraph.

G. 1. The Administrator of the Office of Personnel Management shall develop rules for the imposition of appropriate remedies for agencies in the executive branch of state government, excluding The Oklahoma State System of Higher Education, when an agency has failed to make significant progress toward affirmative action goals or has been found to have a pattern of noncompliance with affirmative action goals. If, pursuant to Article II of the Administrative Procedures Act, the Administrator finds that an agency has failed to make significant progress toward affirmative action goals or is found to have a pattern of noncompliance with affirmative action goals, remedies that the Administrator may impose shall include:

- a. requiring noncomplying appointing authorities to participate in programs for special recruiting efforts,
- b. development of training programs to enhance promotability of minorities within agencies and supervisory training in equal opportunity employment, affirmative action, managing workplace diversity, and
- c. mandatory review and approval of all hiring and promotion decisions by an appointing authority by the Administrator if the Administrator can document a pattern of noncompliance in previous remedial actions pursuant to this subsection or appointment of a full-time affirmative action officer to any agency in noncompliance with affirmative action remedies.

2. Effective July 1, 1995, if the Administrator determines that a pattern of noncompliance with affirmative action goals exists at an agency and that none of the remedies provided by paragraph 1 of this subsection are appropriate and the Administrator determines the Office of Personnel Management has sufficient resources, the

Administrator shall be empowered to remove personnel function(s) relating to recruitment, hiring or promotion from the appointing authority and to place that function with the Administrator of the Office of Personnel Management as provided by this paragraph.

Removal of personnel function(s) shall occur only when a pattern of noncompliance with the affirmative action plan can be documented and a vote by two-thirds (2/3) of the Affirmative Action Council recommends to the Administrator to remove personnel function(s).

Removal of personnel function(s) shall terminate one (1) calendar year after the Administrator removes such function(s) unless the Administrator is able to demonstrate that the restoration of personnel function(s) to the appointing authority will result in further noncompliance with this section. A vote of two-thirds (2/3) of the Council shall be necessary to continue the removal of personnel function(s) by the Administrator for each additional year.

The Administrator must receive approval from the Director of the Office of State Finance to develop recruitment, hiring and promotion actions within budgetary constraints for the affected agencies. The Administrator shall consult with the appointing authority about personnel plans and actions, but the Administrator shall retain final authority for personnel decisions within the scope of the Administrator's authority for the period an agency is operating under removal of the personnel function(s). Nothing in this section shall prohibit the removal of a personnel function(s) remedy at any time if the Administrator determines the appointing authority and agency have the capability of reassuming the authority that was removed. The provisions of law pertaining to the duties and powers of any agency shall not be construed to deny the Administrator the authority provided for in this paragraph, unless the agency is specifically excluded by law from the provisions of this paragraph.

Upon removal of an agency's personnel function(s), the Administrator

may employ employees at the Office of Personnel Management to assume the personnel function(s) of the agency as provided by this section.

H. 1. There is hereby created the Affirmative Action Review Council to assist in the implementation of the state's equal employment opportunity and affirmative action efforts mandated by this section. The Administrator of the Office of Personnel Management shall consult with and request the assistance of the Council in developing standards that executive branch agencies shall follow in adopting their affirmative action plans. The Council shall review agency affirmative action plans and assist the Administrator in preparing the annual status report for agencies on equal employment opportunity and affirmative action required by this section. Staff for the Council shall be provided by the Office of Personnel Management.

2. The Affirmative Action Review Council shall consist of six (6) members. The individuals making the appointment shall consider experience in the field, theory, and application of human resources management and affirmative action in making their appointments. Members of the Council shall serve at the pleasure of the respective individuals making the appointments. Two members of the Council shall be appointed by the Governor, two members shall be appointed by the Speaker of the House of Representatives, and two members shall be appointed by the President Pro Tempore of the Senate. Nothing shall preclude the appointment of members of the Legislature. Each individual making appointments shall give consideration to the diversity of the Council's membership when making the appointments and shall not appoint more than one individual who is an employee of the executive branch, excluding The Oklahoma State System of Higher Education. The Governor shall appoint the initial chair from among the Council's membership to serve a two-year term. Thereafter, the chair shall be selected by the Council from among its membership. The Council shall select a

vice-chair from among its membership. All members shall serve two-year terms, unless removed prior to the expiration of a term by the respective individual making the appointment. Any vacancy on the Council shall be filled by the individual who made the original appointment.

Except as provided in subparagraph b of paragraph 4 of this subsection, a majority of the members of the Council shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining members to exercise all of the powers of the Council and every act of a majority of the members present shall be deemed the act of the Council.

3. Members of the Council shall receive no compensation for serving on the Council, but shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act. Any member who is employed in state government shall receive the reimbursement from their employing entity. Any member who is not an employee of state government shall receive the reimbursement from the Office of Personnel Management.

4. a. The Council shall make any recommendations to the Administrator, the Governor, the Speaker of the House of Representatives or the President Pro Tempore of the Senate the Council deems will assist in the attaining of affirmative action goals for state government.
- b. The Council shall review agency affirmative action plans for compliance with the standards adopted by the Administrator. The Council shall recommend that the Administrator reject any agency plans which it finds in noncompliance.
- c. The Council shall request the Administrator to investigate any agency that the Council believes has violated equal employment opportunity or affirmative

action provisions of this section and to conduct hearings to determine if such violations have occurred. If the Administrator finds that an agency is not in compliance with such law and the Council believes that the noncompliance indicates a pattern of noncompliance, the Council, upon a two-thirds vote of its members, may recommend to the Administrator to act in accordance with this section to compel the agency to comply with equal employment opportunity and affirmative action laws. If the Administrator decides not to act on the Council's recommendation, the Administrator shall respond in writing within thirty (30) days of the Council's recommendation setting forth the reasons why the Administrator has decided not to act in accordance with said recommendation.

- d. Any member who is an employee of an agency that is subject to investigation pursuant to subparagraph b of this paragraph shall disqualify himself or herself from voting on the matter.
- e. This paragraph applies to review of issues related to affirmative action. This paragraph does not apply to prohibited discrimination that is within the jurisdiction of the Oklahoma Merit Protection Commission or the Oklahoma Human Rights Commission.

5. The Council shall not have authority to adopt rules pursuant to the Administrative Procedures Act.

I. Affirmative action plans for the judicial branch of government, except the Court of Criminal Appeals and the Workers' Compensation Court, shall be prepared by the Administrative Director of the Courts. The Court of Criminal Appeals shall prepare affirmative action plans for the Court of Criminal Appeals. The

Administrator of the Workers' Compensation Court shall prepare affirmative action plans for the Workers' Compensation Court.

J. The Administrator of the Office of Personnel Management is hereby directed to adopt rules necessary to implement the provisions of this section. Such rules regarding affirmative action plans shall include, but not be limited to, a set of specific and result-oriented programs to which an appointing authority commits himself or herself to apply every good faith effort to achieve prompt and full utilization of women and minorities at all levels and in all segments of the work force where deficiencies exist. Such rules shall also include separate provisions for affirmative plans for agencies with fewer than fifteen full-time-equivalent employees.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 840-2.17, is amended to read as follows:

Section 840-2.17 A. Unless otherwise provided by the Oklahoma Constitution, language in law which authorizes the setting or fixing of compensation, pay or salary of state officers and employees shall not be construed to authorize any agency, board, commission, department, institution, bureau, executive officer or other entity of the executive branch of state government to award, grant, give, authorize, or promise any officer or employee of the State of Oklahoma a raise, including but not limited to, a cost-of-living raise or any other type of raise that would be given to state employees on an across-the-board basis, except as herein provided. Such raises are prohibited unless authorized by the Legislature and by Merit System of Personnel Administration Rules promulgated by the Administrator. This prohibition applies to all classified, and unclassified ~~and exempt~~ officers and employees in the executive branch of state government, excluding institutions under the administrative authority of the State Regents for Higher Education, and all employees in the University Hospitals Authority Model

Personnel System created pursuant to Section 3211 of Title 63 of the Oklahoma Statutes.

B. However, nothing in this section shall be construed to prohibit the following actions if the action is made in good faith and not for the purpose of circumventing subsection A of this section, and if the appointing authority certifies that the action can be implemented for the current fiscal year and the subsequent fiscal year without the need for additional funding to increase the personal services budget of the agency:

1. Salary advancements on promotion or direct reclassification to a job family level or class with a higher salary band;

2. Salary adjustments resulting from a pay band change for a job family level or class adopted by the Office of Personnel Management;

3. Increases in longevity payments pursuant to Section 840-2.18 of this title;

4. Payment of overtime, special entrance rates, pay differentials;

5. Payment of wages, salaries, or rates of pay established and mandated by law;

6. Market adjustments for job family levels tied to market competitiveness;

7. ~~Lateral~~ Intra-agency lateral transfers ~~within the same job family or to another job family and level assigned the same salary band~~, provided that the adjustment does not exceed five percent (5%) and the adjustment is based on the needs of the agency;

8. Skill-based adjustments;

9. Equity-based adjustments;

10. Performance-based adjustments for employees who received at least a "meets standards" rating on their most current performance rating;

11. Career progression increases as an employee advances through job family levels; or

12. Salary adjustments not to exceed five percent (5%) for probationary classified employees achieving permanent status following the initial probationary period and permanent classified employees successfully completing trial periods after inter-agency lateral transfer or promotion to a different job family level or following career progression to a different job family level.

C. Provided, however, any reclassification for one of the purposes provided in subsection B of this section that would require additional funding by the Legislature shall not be implemented without approval of the Legislature.

D. The pay movement mechanisms described in paragraphs 6 through 11 in subsection B of this section shall be implemented pursuant to rules promulgated by the Administrator of the Office of Personnel Management for the classified service.

E. Appointing authorities may implement the pay movement mechanisms in paragraphs 6 through 12 in subsection B of this section subject to the availability of funds within the agency's budget for the current fiscal year and subsequent fiscal year without the need for additional funding to increase the personal services budget of the agency. Failure by the appointing authority to follow the provisions of this subsection may cause the withdrawal of the use of the pay movement mechanisms provided in paragraphs 6, 7, 9, 10, and 11 of subsection B of this section within the agency during the next appropriations cycle.

F. All agencies, boards, and commissions shall report to the Office of Personnel Management on an annual basis the pay movement mechanisms utilized in paragraphs 6 through 12 in subsection B of this section. The report shall include the pay movement mechanisms type, frequency, amounts provided, affected classifications and job families, and other information as prescribed by the Administrator

of the Office of Personnel Management. Agencies shall report this information for the twelve-month period ending December 31 for classified and unclassified employees. Agencies must also report projected pay movement mechanisms and costs anticipated for the balance of the fiscal year. The Office of Personnel Management shall forward the report, which will include findings and recommendations, to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives no later than February 1 of each year.

SECTION 6. AMENDATORY 74 O.S. 2001, Section 840-2.21, is amended to read as follows:

Section 840-2.21 A. If a state employee, whether in the classified, or unclassified ~~or exempt~~ service, is absent because of an illness or injury arising out of and sustained in the course of his or her employment with the state, and for which workers' compensation benefits have been filed, the employing agency shall place the employee on leave without pay if the employee so requests; provided, leave without pay pursuant to this section shall not for any purpose be considered a break in service.

B. An employee who sustains an illness or injury arising out of and sustained in the course of employment with the State of Oklahoma shall not be required to use either accumulated sick or annual leave during such period prior to being placed on leave without pay pursuant to this section.

C. An employee placed on leave without pay pursuant to the provisions of this section shall continue receiving basic plan insurance coverage as defined in Section 1363 of this title and dependent insurance benefit allowance pursuant to paragraph 2 of subsection D of Section 1370 of this title paid by the agency during the leave without pay.

D. An employee on leave without pay pursuant to the provisions of this section shall have the right to be returned to his or her

original position in accordance with rules promulgated by the Office of Personnel Management. If it is found necessary for the good of the state to fill the position during the period the employee is on leave without pay the employee filling the position shall vacate the position upon the return of the employee on leave without pay, subject to layoff, transfer or demotion rights earned under the Oklahoma Personnel Act, Section 840.1 et seq. of Title 74 of the Oklahoma Statutes and rules of the Office of Personnel Management. The right to return to the original position shall expire one (1) year from the date of the start of leave without pay. ~~if~~

Notwithstanding the provisions of Section 1 et seq. of Title 85 of the Oklahoma Statutes, the employee may be separated in accordance with the Oklahoma Personnel Act and Merit Rules, if the employee has not returned to the original position of the employee or some other position within the agency within one (1) year from the date of the start of leave without pay, the employee may be separated in accordance with the Oklahoma Personnel Act and rules of the Office of Personnel Management.

E. An employee on leave without pay pursuant to the provisions of this section shall provide a medical statement as to his or her ability to perform the duties of the position to the appointing authority at least every three (3) months.

F. If the employee becomes medically able with reasonable accommodation to perform the duties of his or her original position, the employee shall be returned to such position. If the employee is unable to perform the duties of the original position with reasonable accommodation, but is medically able with reasonable accommodation to perform the duties of any other position within the agency for which the employee is qualified, and appointment to such other position does not constitute a promotion, the employee shall have first preference for any such position which becomes vacant within the agency, notwithstanding any other preference provisions

of the Oklahoma Personnel Act or of other laws of the State of Oklahoma. An employee accepting another position pursuant to this subsection shall not forfeit his or her right to be returned to the original position within twelve (12) months after the start of leave without pay pursuant to the provisions of subsection D of this section.

G. An ill or injured employee shall be eligible to participate in the Disability Insurance Program established pursuant to the provisions of Section 1331 et seq. of Title 74 of the Oklahoma Statutes in accordance with rules promulgated by the State Employees Group Insurance Board.

H. All benefits, rights, and obligations contained in this section shall continue during the time the employee remains on leave without pay status, for a continuous period not to exceed twelve (12) months. However, if a workers' compensation claim based on such illness or injury is denied during the twelve-month period, all benefits, rights and obligations conferred upon an employee pursuant to this section shall cease and be discontinued immediately.

I. A classified employee who is separated pursuant to subsection D of this section shall be eligible for reinstatement to employment with any state agency for twelve (12) months after the date of separation whether in the classified or unclassified service in accordance with rules adopted by the Administrator of the Office of Personnel Management provided the employee is qualified for the position to which reinstated. An unclassified employee who is separated pursuant to subsection D of this section shall be eligible for reinstatement to unclassified employment with any state agency for twelve (12) months after the date of separation in accordance with rules promulgated by the Administrator of the Office of Personnel Management provided the employee is qualified for the position to which reinstated. Nothing in this subsection shall be construed to compel or require any agency of the state to reinstate

a former employee who is separated pursuant to subsection D of this section. Further, nothing in this subsection shall be construed as limiting or reducing a former employee's eligibility for reinstatement pursuant to other general reinstatement or reemployment provisions in rules promulgated by the Administrator.

J. The University Hospitals Authority Model Personnel System shall be exempt from the provisions of this section.

SECTION 7. AMENDATORY 74 O.S. 2001, Section 840-2.23 (Section 5, Chapter 381, O.S.L. 2001), is amended to read as follows:

Section 840-2.23 A. There is hereby created the state leave sharing program. The purpose of the state leave sharing program is to permit state employees to donate annual or sick leave to a fellow state employee:

1. Who is eligible for and requires family leave ~~or~~ or

~~2. Who~~ who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition which has caused or is likely to cause the employee to take leave without pay or terminate employment ~~or~~, if:

a. the receiving employee has exhausted, or will exhaust, all annual leave and sick leave due to an extraordinary or severe illness, injury, impairment, or physical or mental condition, which involves the employee, a relative of the employee or household member, and

b. the condition has caused, or is likely to cause, the employee to go on leave without pay or terminate employment; or

~~3.~~ 2. Immediately after the death of a relative or household member, provided that the total leave received for this purpose shall not exceed five (5) days in any calendar year; or

~~4.~~ 3. Who is affected by a presidentially declared national disaster in Oklahoma after May 1, 1999, for a period of eighteen (18) months after the date of the presidentially declared national disaster if:

- a. the employee suffered a physical injury as a result of the disaster,
- b. the spouse, relative, or household member of the employee suffered a physical injury or died as a result of the disaster, or
- c. the domicile of the employee or the home of a relative of the employee was damaged or destroyed as a result of the disaster.

B. As used in this section:

1. "Relative of the employee" shall be limited to the spouse, child, stepchild, grandchild, grandparent, stepparent, or parent of the employee;

2. "Household members" means those persons who reside in the same home, who have reciprocal duties to and do provide financial support for one another. This term shall include foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house, when the living style is primarily that of a dormitory or commune;

3. "Severe" or "extraordinary" means ~~serious,~~ extreme or life threatening;

4. "State employee" means a permanent classified employee or a regular unclassified employee with ~~over~~ one (1) year or more continuous service with the state. The term "state employee" does not include classified employees in probationary status or unclassified employees on temporary or other limited term appointments, except that those employees are eligible to receive shared leave as provided in subsection A of this section and the

leave with pay authorized by Section 840-2.23A of this title related to a presidentially declared national disaster; and

5. "Terminal" means likely to result in death within two (2) calendar years.

C. An employee may be eligible to receive shared leave pursuant to the following conditions:

1. The chief administrative officer of the employee determines that the employee meets the criteria described in this section; and

2. The employee has abided by state policies regarding the use of leave.

D. An employee may not donate annual or sick leave to an eligible employee without the permission of the chief administrative officer of the donating employee's agency.

E. An employee may donate annual or sick leave to another employee ~~only pursuant to the following conditions:~~

~~1. a. The receiving employee has exhausted, or will exhaust, all annual leave and sick leave due to an illness, injury, impairment, or physical or mental condition, which is of an extraordinary or severe nature, and involves the employee, a relative of the employee or household member, and~~

~~b. The condition has caused, or is likely to cause, the employee to go on leave without pay or terminate employment;~~

~~2. The donating employee may donate any amount of annual or sick leave provided the donation does not cause the annual leave balance of the employee to fall below eighty (80) hours and provided the donation does not cause the sick leave balance of the employee to fall below eighty (80) hours; and~~

~~3. Employees may not donate excess annual or sick leave that the donor would not be able to otherwise take.~~

F. Except as otherwise provided for in this subsection, the chief administrative officer of the employee shall determine the amount of donated leave an employee may receive and may only authorize an employee to use up to a maximum of two hundred sixty-one (261) days of donated leave during total state employment. An employee may receive and use up to a maximum of three hundred sixty-five (365) days of donated leave during total state employment, if the employee is suffering from an illness which has been certified in writing by a licensed physician or health care practitioner as being terminal.

G. The chief administrative officer of the employee shall require the employee to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the need for the leave and expected duration of the illness, injury, impairment, or physical or mental condition for which the leave is donated.

H. Donated annual or sick leave is transferable between employees in different state entities with the agreement of both chief administrative officers of the entities.

I. The receiving employee shall be paid his or her regular rate of pay; therefore, one hour of donated leave may cover more or less than one hour of the salary of the recipient. The calculation of the leave value of the recipient shall be in accordance with Office of Personnel Management policies, regulations, and procedures. The dollar value of the leave is converted from the donor to the recipient. The leave received will be designated as donated leave and be maintained separately from all other leave balances.

J. Any donated leave may only be used by the recipient for the purposes specified in this section.

K. All forms of paid leave available for use by the recipient must be used prior to using donated leave.

L. Any donated leave not used by the recipient during each occurrence as determined by the chief administrative officer of the employee shall be returned to the donor. The donated leave remaining will be divided among the donors on a prorated basis based on the original donated value and returned at its original donor value and reinstated to the original leave balance of each donor.

M. All donated leave must be given voluntarily. No employee shall be coerced, threatened, intimidated, or financially induced into donating annual or sick leave for purposes of the leave sharing program.

N. Employees may not donate excess annual or sick leave that the donor would not be able to otherwise take.

SECTION 8. AMENDATORY 74 O.S. 2001, Section 840-2.27E, is amended to read as follows:

Section 840-2.27E 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 from which separated 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.

SECTION 9. AMENDATORY 74 O.S. 2001, Section 840-3.4, is amended to read as follows:

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

1. An Undergraduate Internship Program consisting of a temporary position for students enrolled in an institution of higher

education ~~within the state~~ and working toward an undergraduate degree;

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

- a. successfully completed a baccalaureate degree and at least six (6) semester hours of approved graduate level work with at least a three point zero (3.0) grade point average calculated on a four point zero (4.0) scale in all graduate coursework,
- b. demonstrated a substantial interest in public sector management,
- c. been recommended by the institution of higher education at which they are enrolled, and
- d. such additional requirements as determined by the Office of Personnel Management; ~~and.~~

B. Employing agencies shall rate the performance of participants in the Executive Fellows Program in accordance with section 840-4.17 of this title.

~~3.~~ C. State employees, who otherwise meet the qualifications of the program, shall be eligible to participate in the ~~program~~ Carl Albert Public Internship Program upon the written recommendation of the chief administrative officer of the applicant's agency.

SECTION 10. AMENDATORY 74 O.S. 2001, Section 840-3.5, is amended to read as follows:

Section 840-3.5 The Office of Personnel Management shall promulgate rules to provide that:

1. Upon successful completion of a two-year internship in the Executive Fellows Program, a participant who has met all requirements of education and experience shall be eligible for appointment to a position in the classified or unclassified service

of the state and shall be deemed as meeting all other statutory requirements;

2. Persons leaving classified or ~~exempt~~ unclassified positions in state government in order to take an internship shall:

- a. have the right to return to the previous position at any time during the internship or upon completion of the internship, and
- b. continue to receive all fringe benefits they would have received in their previous classified or exempt unclassified positions;

3. Participants in the Undergraduate Internship Program who were not public employees prior to accepting a position in the program shall be employed in accordance with paragraph 8 of subsection A of Section 840-5.5 of this title;

4. Participants in the Executive Fellows Program who were not public employees prior to accepting a position in the program shall be appointed in accordance with paragraph 10 of subsection A of Section 840-5.5 of this title, except that they shall be granted leave benefits commensurate with regular state employees;

5. Selection of interns shall be coordinated by the Office of Personnel Management, but shall permit appropriate involvement by institutions of higher education and state agencies in order to ensure the integrity of the program, permit the appropriate match between interns and agency assignments, and to benefit the employing agency;

6. The Administrator of the Office of Personnel Management may waive the completion of six (6) semester hours of approved graduate level work required by Section 840-3.4 of this title for participation in the Executive Fellows Program for an undergraduate intern enrolled in six (6) semester hours of approved graduate level work and currently employed by a state agency;

~~6.~~ 7. Establish compensation plans for interns; and

~~7.~~ 8. Empower the Office of Personnel Management to intercede in an internship when the Office determines, at the request of the intern, the agency, or the institution of higher education at which the intern is enrolled, that an internship is not functioning in accordance with guidelines established for the program and that are necessary for the efficiency and integrity of the program.

SECTION 11. AMENDATORY 74 O.S. 2001, Section 840-3.8, is amended to read as follows:

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

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

Any state employee may nominate another state employee for the mentor program. The Mentor Selection Advisory Committee shall select candidates for the mentor program and recommend those candidates to the Administrator for approval. The Advisory Committee shall select candidates from those employees nominated for participation in the program. The Mentor Selection Advisory Committee may recommend to the Administrator up to five candidates during a two-year period for participation in the mentor program.

Selection criteria shall include, but not be limited to:

1. Demonstrated leadership qualities;
2. Outstanding achievement record;
3. Outstanding recommendations by supervisors or peers;
4. Special knowledge of state systems; and
5. Completion of the Certified Public Manager Program or similar achievement.

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

Rotation assignments shall be accomplished through the State Personnel Interchange Program, Section 840-3.9 et seq. of this title. Each mentor executive shall be considered an employee of the sending agency for all purposes other than supervision. The Administrator shall establish minimum compensation for mentor executives and shall adopt rules as the Administrator finds necessary for the administration of the State Mentor Program. Such rules shall provide for the sending agency and the agency in which

the mentor executive is completing his or her management rotation to share the compensation of the mentor executive or for either agency to pay the total amount. A state employee's salary may be increased during the period of his or her participation in the State Mentor Program, but shall not be reduced during such period. Each agency participating in the mentor program shall assign an executive-level manager to serve as the mentor for the period the mentor executive is completing the mentor executive's management rotation in that agency.

The mentor's duties are to instill in the mentor executive knowledge of the agency's purpose and functions, and a sense of professionalism and public service. Mentors will further serve as a source of career guidance and reference after the management rotation is finished. The employees participating in the mentor program shall be exempt from any full-time-equivalent limitations established by law.

The Administrator of the Office of Personnel Management may intercede in mentor executive rotational assignments if the Administrator determines that the assignments are not functioning in accordance with guidelines established for the state mentor program. The result of the intercession may include, but is not limited to, reassignment or removal from the program.

SECTION 12. AMENDATORY 74 O.S. 2001, Section 840-4.2, is amended to read as follows:

Section 840-4.2 A. Except as otherwise provided by law, effective on the date an unclassified employee is made subject to the Merit System of Personnel Administration by virtue of an Executive Order issued pursuant to Section 840-4.1 of this title or legislation, the employee shall be given status in the job family level to which the position occupied by the employee is initially allocated by the Office of Personnel Management. The employee shall not be required to take any examination or qualify for the job

family level, and the salary of the employee shall not be reduced as a result of such initial allocation. The status of the employee shall be determined as follows:

1. An employee who has been continuously employed by the agency for a minimum of twelve (12) months immediately preceding the date on which the employee is made subject to the provisions of the Merit System shall be given permanent status in the classified service.

2. An employee who has been continuously employed by the agency for less than twelve (12) months on the date the employee is made subject to the provisions of the Merit System shall be given probationary status in the classified service. Such employee may obtain permanent status in the classified service twelve (12) months after the employee's entry-on-duty date with the agency pursuant to the provisions of the Merit System.

B. Persons appointed to the classified service of any agency under the Merit System shall achieve classified status only in accordance with the Merit System of Personnel Administration Rules promulgated pursuant to the Oklahoma Personnel Act.

C. Any classified employee who is serving in a position on the effective date of the removal of the position from the classified service and placement into the unclassified service shall have the option of retaining the employee's classified status. Any such employee who elects to change from classified to unclassified status shall so indicate in writing. If the employee chooses to remain in the classified service, the position occupied by the employee shall remain in the classified service until the employee either vacates the position or elects unclassified status. All future appointees to such positions shall be in the unclassified service.

SECTION 13. AMENDATORY 74 O.S. 2001, Section 840-4.12, is amended to read as follows:

Section 840-4.12 A. The Administrator of the Office of Personnel Management shall be responsible for conducting promotional

examinations and entrance examinations as required under the Oklahoma Personnel Act. Such examinations shall be of such character as to determine the qualifications, fitness and ability of the persons tested to perform the duties of the job family or job family level for which such tests or examinations are given. Provided, however, tests and examinations of persons with severe disabilities who have satisfactorily completed vocational and technical education courses in vocational training units or divisions approved by the State Department of Rehabilitation Services shall be limited in scope so as to relate to the skill and physical capability required for a particular position. Adequate public notice shall be given of all examinations except for promotion within a department or agency. Notwithstanding any other provision of law, the Administrator may keep confidential all promotional examinations, entrance examinations, and any other testing materials, but the Administrator shall be required to disclose them pursuant to a valid order from a court of competent jurisdiction and establishment of a protective order prohibiting public disclosure of the examinations and materials.

B. No person shall be required to take an entrance examination for an appointment to a job family level requiring licensing by a state agency if that person has been previously tested and is currently licensed by the State of Oklahoma.

C. Promotional examinations for promotion within an agency, unless requested by the agency, shall not be required; provided that the promotion is in accordance with a plan adopted by the Administrator and is in accordance with a plan adopted by the promoting agency. Every employee promoted within an agency or following an intra-agency lateral transfer shall serve a six-month trial period in the job level to which the employee is promoted or transferred, unless the trial period is waived, in writing, by the appointing authority. At any time during a trial period, the

appointing authority may return the employee to the level from which the employee was promoted upon written notification by the appointing authority to the employee as to such action and the reason therefor, and the employee shall not have the right to appeal.

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

E. The Office of Personnel Management shall certify that a candidate meets the necessary job qualifications for a job family level in the classified service for the purpose of allowing that candidate to be appointed to a job. The Administrator of the Office of Personnel Management may delegate the certification function provided by this section to an agency pursuant to subsection E of Section 840-1.15 of this title. Any statute which creates any position or qualifications for any position in the classified service shall not be construed to limit the power of the Administrator to interpret or add to those qualifications in a reasonable manner consistent with the intent of the Legislature and the duties of that position. Any statute which empowers any agency head or other employer to hire or nominate persons for employment within the classified service shall not be construed to empower that agency head or other employer to waive or modify any qualification or rule for employment established by the Administrator. The Administrator shall not be construed to have the authority to limit or reduce any qualification established by statute for any position. The constructions established herein shall apply to any statutes or positions heretofore or hereafter created unless that statute clearly and specifically states that such constructions do not apply.

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

G. Subsections A through E of this section shall not apply to persons with severe disabilities who are considered for employment under the provisions of this subsection. Provided, said persons may elect instead to be considered for employment according to the procedures set out in subsections A through E of this section.

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

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

3. Persons with severe disabilities hired pursuant to this subsection shall be appointed for a probationary period pursuant to Section 840-4.13 of this title.

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

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

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

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

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

4. Persons hired pursuant to this subsection shall be appointed for a probationary period pursuant to Section 840-4.13 of this title.

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

6. The authority for an agency to make appointments pursuant to this subsection shall be temporary and shall cease when the appointing authority of an agency can no longer justify remedial action pursuant to this subsection.

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

SECTION 14. AMENDATORY 74 O.S. 2001, Section 840-5.5 (Section 10, Chapter 414, O.S.L. 2001), 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,

- b. the Governor's representative of the Oklahoma Highway Safety Office who shall be appointed by the Governor, and
- c. a maximum of seven positions for the purpose of administering the Oklahoma Police Corps Program, within full-time employee limitations of the Department, employed with federal funding that is continuing or indefinitely renewable. The authorization for such positions shall be terminated if the federal funding for positions is discontinued;

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 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 and positions:

a. State Comptroller,

b. Information Services Division Manager,

c. Network Manager,

d. Network Technician,

e. Employees of the Budget Division, and

f. Employees of the Research Division;

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

25. The State Bond Advisor and his or her employees;

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

29. 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. Alcoholic Beverage Laws Enforcement Commission employees occupying the following positions:

- a. three Administrative Service Assistant positions, and
- b. the Deputy Director position in addition to the one authorized by paragraph 2 of this subsection;

31. 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,
- d. 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. 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. Commissioners of the Land Office employees occupying the following positions:

a. Director of the Investments Division,

b. Assistant Director of the Investments Division, and

c. one Administrative Assistant;

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

a. one Oversight Specialist and one Community Development Planner,

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. 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,
- c. one Alternate Fuels Administrator,
- d. one Director of Special Projects,
- e. three postauditors,
- f. 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. Four 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. The Development Officer and the Director of the State Museum of History within the Oklahoma Historical Society;

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

- a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,
- b. Agricultural Marketing Coordinator III,
- c. 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,
- o. one Grants Administrator position, ~~and~~
- p. Director of Laboratory Services,
- q. Chief of Communications,
- r. Public Information Manager,
- s. Inventory/Supply Officer,
- t. Five Agriculture Field Inspector positions assigned the responsibility for conducting inspections and audits of agricultural grain storage warehouse. All other Agriculture Field Inspector positions and

employees of the State Department of Agriculture shall be classified and subject to the provisions of the Merit System of Personnel Administration. On the effective date of this Act, all other unclassified Agriculture Field Inspectors shall be given status in the classified service as provided in section 840-4.2 of this title,

- u. Rural Fire Coordinators,
- v. Poultry Coordinator, and
- w. Food Safety Division Director;

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

43. The Development Officer within the Oklahoma Department of Libraries;

44. Oklahoma Real Estate Commission personnel occupying the following offices and positions:

- a. Educational Program Director, and
- b. Data Processing Manager;

45. A Chief Consumer Credit Examiner for the Department of Consumer Credit; and

46. 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. The appointing authority of agencies participating in the statewide information systems project may establish unclassified positions and appoint unclassified employees to the project as needed. Additional unclassified positions may be established, if required, to appoint an unclassified employee to perform the duties of a permanent classified employee who is temporarily absent from a classified position as a result of assignment to this project. All unclassified appointments under this authority shall expire no later than June 30, 2004, and all unclassified positions established to support the project shall be abolished. Both the positions and appointments resulting from this authority shall be exempt from any agency FTE limitations and any limits imposed on the number of unclassified positions authorized. 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 no later than June 30, 2004. 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 an 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 family level and compensation plus any adjustments and increases in salary or benefits which the employee would have received but for the leave of absence.

SECTION 15. This act shall become effective November 1, 2002.

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