

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1101

By: Easley

COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Personnel Act; amending 74 O.S. 2001, Sections 840-1.7, 840-6.2 and 840-6.5, which relate to the Oklahoma Merit Protection Commission; limiting years of service on the Commission; modifying appointments to the Commission; expanding duties of the Commission to include internal agency grievance actions; allowing the Commission to issue Final Petition Decisions regarding issues raised in certain petitions; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-1.7, is amended to read as follows:

Section 840-1.7 A. There is hereby created the Oklahoma Merit Protection Commission. Whenever the terms "Ethics and Merit Commission" or "Special Counsel of the Ethics and Merit Commission" appear in the Oklahoma Statutes, they shall mean the Oklahoma Merit Protection Commission or the Executive Director of the Oklahoma Merit Protection Commission as may be appropriate to the context in which they appear. The Oklahoma Merit Protection Commission shall consist of nine (9) members who shall be appointed for a term of three (3) years. Members can be reappointed, but they may serve a maximum of twelve (12) years cumulatively from the effective date of this act. The members shall be removable only for cause, as provided by law for the removal of officers not subject to impeachment. Two members of the Commission shall be appointed by the President Pro Tempore of the Senate. Two members of the Commission shall be appointed by the Speaker of the House of

Representatives. Five members of the Commission shall be appointed by the Governor. No more than four of the appointments made by the Governor shall be from the same political party. ~~Of the initial appointments made to the Commission, one member appointed by the President Pro Tempore, one member appointed by the Speaker and one member appointed by the Governor shall be for a term of three (3) years; and one member appointed by the President Pro Tempore, one member appointed by the Speaker and one member appointed by the Governor shall be for a term of two (2) years. The remaining three initial appointments by the Governor shall be designated to serve a term of one (1) year. At the expiration of the initial term, each new appointee shall serve a three-year term. All initial appointments shall be made prior to July 1, 1982~~ One appointment shall be made from a list of three nominees recommended by the chief executive officer of the organization representing the largest number of state employees. The list of nominees shall not include any active state employees or any staff members of the organization submitting the list. This provision shall not cause the removal of any members serving on the Commission on the effective date of this act before the expiration of their term of office.

B. Members of the Commission shall be entitled to reimbursement for expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act.

C. The Commission shall elect a chairman, to serve a two-year term and such other officers as deemed necessary for the performance of their duties. The Commission shall hold regular meetings not less than once a month and such additional meetings as called by the chairman as may be required for the proper discharge of its duties.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-6.2, is amended to read as follows:

Section 840-6.2 A. The Oklahoma Merit Protection Commission shall establish standard internal agency grievance resolution

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

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

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

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

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

1. Procedures encouraging resolution of disputes within the agency quickly, informally and at the lowest possible level;
2. Procedures requiring prompt resolution of the internal agency grievance within established time periods; and
3. Procedures guaranteeing the employee the right to be represented by a person of his own choosing at each step of the procedure, except the initial informal discussion with his immediate supervisor.

F. The Oklahoma Merit Protection Commission shall promulgate rules as necessary to implement the provisions of subsections A

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

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

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

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

J. The Oklahoma Merit Protection Commission shall assume jurisdiction over all internal agency grievance actions that have not been completed within the established time limit for the

grievances. A copy of all agency records related to the grievances shall be forwarded to the Commission.

K. When an employee files an appeal with the Oklahoma Merit Protection Commission, the Commission shall complete its investigation within ninety (90) calendar days from the receipt of the appeal by the Commission.

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

SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-6.5, is amended to read as follows:

Section 840-6.5 A. It is the purpose of this section to provide a system for the prompt, fair, and equitable disposition of appeals by permanent classified employees who have been demoted, suspended, or discharged. Further, it is the intent of this section that all decisions rendered as a result of this procedure shall be confined to the issues submitted for decision and consistent with the applicable laws and rules.

B. Any employee in the classified service may be discharged, suspended without pay for not to exceed sixty (60) calendar days, or demoted by the agency, department, institution, or officer by whom employed for misconduct, insubordination, inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or of the rules prescribed by the Office of Personnel Management or by the Oklahoma Merit Protection Commission, conduct unbecoming a public employee, conviction of a crime involving moral turpitude, or any other just cause. Employees in the classified service, upon final conviction of, or pleading guilty or nolo contendere to, a felony shall be discharged if the felony is job-related pursuant to Section 24.1 of Title 51 of the Oklahoma Statutes. Before any such

action is taken against a permanent classified employee, the employing agency, department, institution or officer shall provide the employee with a written statement of the specific acts or omissions that are causes or reasons for the proposed action, an explanation of the agency's evidence, and an opportunity to present reasons why the proposed action is improper.

Within ten (10) business days after such discharge, suspension, or demotion, the appointing authority shall notify the employee by certified mail or personal service of the action taken and the specific cause for which said appointing authority has so acted. Within twenty (20) calendar days after receiving the written notification provided for in this section, the employee may file a written request for appeal with the Oklahoma Merit Protection Commission. The Executive Director shall determine if the jurisdictional requirements provided for in this section have been met. If the jurisdictional requirements are not met, the Executive Director shall notify both the employee and the agency within five (5) calendar days after the receipt of a written appeal request. Such notice shall specifically describe the requirements that were not met. If said requirements have been met, the Executive Director shall refer the appeal request to an administrative hearing officer for a hearing on said discharge, suspension, or demotion, or refer the appeal request to the Alternative Dispute Resolution Program.

If the case is not referred to the Alternative Dispute Resolution Program, then within five (5) calendar days after receipt of said properly executed appeal request, the Executive Director shall provide said employee and the appointing authority with a written notice of (1) a prehearing conference to be held at least five (5) working days, but not more than ten (10) working days, before the date of the hearing; and (2) the appeal hearing date which shall be no later than thirty-five (35) calendar days after the receipt of the appeal request, unless continued for good cause.

Any continuances shall not exceed a combined total of sixty (60) calendar days except for good cause shown. Both the prehearing conference and the hearing shall be conducted in accordance with the provisions of Section 840-6.7 of this title. The notice shall be in the following form:

Notice of Hearing

Oklahoma Merit Protection Commission to _____. You are hereby notified that pursuant to your request an appeal hearing on your (discharge), (suspension), (demotion), from the position of _____ has been set for the _____ day of _____ at _____ M. at _____ in _____, a copy of said cause for your (discharge), (suspension), (demotion), being hereto attached.

Dated this _____ day of _____ City of _____ By _____
Special Counsel of the Oklahoma Merit Protection Commission.

In appeals from demotion, suspension, or discharge, the burden of proof shall rest with the appointing authority, and decisions shall be made based on the rule of preponderance of evidence. The employee shall be sustained or not sustained. If the employee is not sustained in the appeal, the employee shall be discharged, or suspended without pay for not to exceed sixty (60) calendar days, or demoted. If sustained in the appeal, in whole or in part, the presiding official may either adjudge a forfeiture of pay not in excess of sixty (60) calendar days without loss of other rights and benefits or order reinstatement of appellant to the class previously held with full rights and without loss of pay or other benefits; provided that the decision will not result in an employee working out of proper classification as determined by the Office of Personnel Management.

The findings of the presiding officials shall be final and conclusive upon all questions within their jurisdiction between the parties except as provided for in Sections 317 and 318 of Title 75 of the Oklahoma Statutes. ~~Such decisions~~ Upon the timely filing of

a petition to rehear, reopen, or reconsider, the Oklahoma Merit Protection Commission shall schedule the matter for consideration by the Commissioners on the earliest possible date. The Commission shall rule on petitions by a majority vote of a quorum of the Commissioners. Based on the Commission review of the petition, the Commission shall issue a Final Petition Decision thirty (30) days after the petition is heard. The Final Petition Decision shall address the issues raised in the petition and the Decision shall be written in clear and concise language. Final Petition Decisions are subject to judicial review if appealed to the district court within thirty (30) calendar days. The State of Oklahoma or any agency of the state shall not be allowed to appeal to the district court unless the employee is continued on full pay in the same status of employment existing prior to suspension or discharge.

SECTION 4. This act shall become effective November 1, 2003.

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