

**EHB 1101**

**THE STATE SENATE**  
**Wednesday, March 26, 2003**

**ENGROSSED**

**House Bill No. 1101**

ENGROSSED HOUSE BILL NO. 1101 - By: EASLEY of the House and CORN of the Senate.

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; 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

1 this act. The members shall be removable only for cause, as  
2 provided by law for the removal of officers not subject to  
3 impeachment. Two members of the Commission shall be appointed by  
4 the President Pro Tempore of the Senate. Two members of the  
5 Commission shall be appointed by the Speaker of the House of  
6 Representatives. Five members of the Commission shall be appointed  
7 by the Governor. No more than four of the appointments made by the  
8 Governor shall be from the same political party. ~~Of the initial~~  
9 ~~appointments made to the Commission, one member appointed by the~~  
10 ~~President Pro Tempore, one member appointed by the Speaker and one~~  
11 ~~member appointed by the Governor shall be for a term of three (3)~~  
12 ~~years; and one member appointed by the President Pro Tempore, one~~  
13 ~~member appointed by the Speaker and one member appointed by the~~  
14 ~~Governor shall be for a term of two (2) years. The remaining three~~  
15 ~~initial appointments by the Governor shall be designated to serve a~~  
16 ~~term of one (1) year. At the expiration of the initial term, each~~  
17 ~~new appointee shall serve a three-year term. All initial~~  
18 ~~appointments shall be made prior to July 1, 1982.~~

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

22 C. The Commission shall elect a chairman, to serve a two-year  
23 term and such other officers as deemed necessary for the performance

1 of their duties. The Commission shall hold regular meetings not  
2 less than once a month and such additional meetings as called by the  
3 chairman as may be required for the proper discharge of its duties.

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

6 Section 840-6.2 A. The Oklahoma Merit Protection Commission  
7 shall establish standard internal agency grievance resolution  
8 procedures for classified state employees. The procedures shall  
9 encourage prompt and equitable resolution of grievances at the  
10 lowest possible level within the employing agency. Each appointing  
11 authority shall either use the procedures established by the  
12 Commission or adopt other procedures which address the specific  
13 needs of their agencies. All procedures shall contain the minimum  
14 requirements established pursuant to this section.

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

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

21 D. Internal agency grievances may include, but are not limited  
22 to, any direct or indirect form of discipline, reduction-in-force,  
23 work assignments, withholding of work, classification,

1 reclassification, promotion, leave, performance appraisal, length of  
2 service, overtime, compensatory time, transfers, or any alleged  
3 violation of the Oklahoma Personnel Act or merit rules.

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

7 1. Procedures encouraging resolution of disputes within the  
8 agency quickly, informally and at the lowest possible level;

9 2. Procedures requiring prompt resolution of the internal  
10 agency grievance within established time periods; and

11 3. Procedures guaranteeing the employee the right to be  
12 represented by a person of his own choosing at each step of the  
13 procedure, except the initial informal discussion with his immediate  
14 supervisor.

15 F. The Oklahoma Merit Protection Commission shall promulgate  
16 rules as necessary to implement the provisions of subsections A  
17 through I of this section to establish internal agency grievance  
18 resolution procedures, provided that such rules previously  
19 promulgated by the Administrator of the Office of Personnel  
20 Management shall be transferred to the Oklahoma Merit Protection  
21 Commission and shall remain in effect until duly modified by the  
22 Commission.

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

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

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

1 J. The Oklahoma Merit Protection Commission shall assume  
2 jurisdiction over all internal agency grievance actions that have  
3 not been resolved within forty-five (45) calendar days. The  
4 Commission shall complete its investigation within ninety (90)  
5 calendar days from the receipt of the appeal by the Commission.

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

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

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

19 B. Any employee in the classified service may be discharged,  
20 suspended without pay for not to exceed sixty (60) calendar days, or  
21 demoted by the agency, department, institution, or officer by whom  
22 employed for misconduct, insubordination, inefficiency, habitual  
23 drunkenness, inability to perform the duties of the position in

1 which employed, willful violation of the Oklahoma Personnel Act or  
2 of the rules prescribed by the Office of Personnel Management or by  
3 the Oklahoma Merit Protection Commission, conduct unbecoming a  
4 public employee, conviction of a crime involving moral turpitude, or  
5 any other just cause. Employees in the classified service, upon  
6 final conviction of, or pleading guilty or nolo contendere to, a  
7 felony shall be discharged if the felony is job-related pursuant to  
8 Section 24.1 of Title 51 of the Oklahoma Statutes. Before any such  
9 action is taken against a permanent classified employee, the  
10 employing agency, department, institution or officer shall provide  
11 the employee with a written statement of the specific acts or  
12 omissions that are causes or reasons for the proposed action, an  
13 explanation of the agency's evidence, and an opportunity to present  
14 reasons why the proposed action is improper.

15       Within ten (10) business days after such discharge, suspension,  
16 or demotion, the appointing authority shall notify the employee by  
17 certified mail or personal service of the action taken and the  
18 specific cause for which said appointing authority has so acted.  
19 Within twenty (20) calendar days after receiving the written  
20 notification provided for in this section, the employee may file a  
21 written request for appeal with the Oklahoma Merit Protection  
22 Commission. The Executive Director shall determine if the  
23 jurisdictional requirements provided for in this section have been

1 met. If the jurisdictional requirements are not met, the Executive  
2 Director shall notify both the employee and the agency within five  
3 (5) calendar days after the receipt of a written appeal request.  
4 Such notice shall specifically describe the requirements that were  
5 not met. If said requirements have been met, the Executive Director  
6 shall refer the appeal request to an administrative hearing officer  
7 for a hearing on said discharge, suspension, or demotion, or refer  
8 the appeal request to the Alternative Dispute Resolution Program.

9 If the case is not referred to the Alternative Dispute  
10 Resolution Program, then within five (5) calendar days after receipt  
11 of said properly executed appeal request, the Executive Director  
12 shall provide said employee and the appointing authority with a  
13 written notice of (1) a prehearing conference to be held at least  
14 five (5) working days, but not more than ten (10) working days,  
15 before the date of the hearing; and (2) the appeal hearing date  
16 which shall be no later than thirty-five (35) calendar days after  
17 the receipt of the appeal request, unless continued for good cause.  
18 Any continuances shall not exceed a combined total of sixty (60)  
19 calendar days except for good cause shown. Both the prehearing  
20 conference and the hearing shall be conducted in accordance with the  
21 provisions of Section 840-6.7 of this title. The notice shall be in  
22 the following form:

23 Notice of Hearing

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

7 Dated this \_\_\_\_\_ day of \_\_\_\_\_ City of \_\_\_\_\_ By \_\_\_\_\_  
8 Special Counsel of the Oklahoma Merit Protection Commission.

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

1       The findings of the presiding officials shall be final and  
2       conclusive upon all questions within their jurisdiction between the  
3       parties except as provided for in Sections 317 and 318 of Title 75  
4       of the Oklahoma Statutes. ~~Such decisions~~ Upon the timely filing of  
5       a petition to rehear, reopen, or reconsider, the Oklahoma Merit  
6       Protection Commission shall schedule the matter for consideration by  
7       the Commissioners on the earliest possible date. The Commission  
8       shall rule on petitions by a majority vote of a quorum of the  
9       Commissioners. Based on the Commission review of the petition, the  
10      Commission shall issue a Final Petition Decision within thirty (30)  
11      days after the petition is heard. The Final Petition Decision shall  
12      address the issues which are within the jurisdiction of the  
13      Commission raised in the petition and the Decision shall be written  
14      in clear and concise language. Final Petition Decisions are subject  
15      to judicial review if appealed to the district court within thirty  
16      (30) calendar days. The State of Oklahoma or any agency of the  
17      state shall not be allowed to appeal to the district court unless  
18      the employee is continued on full pay in the same status of  
19      employment existing prior to suspension or discharge.

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

21      COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 3-24-03  
22      - DO PASS.