

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 1500

By: Balkman of the House

and

Nichols of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to state government; amending 74 O.S. 2001, Sections 840-1.6, 840-2.27C, as last amended by Section 130 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature, 840-6.5, as amended by Section 5, Chapter 353, O.S.L. 2003 and Section 4, Chapter 453, O.S.L. 2003, as amended by Section 1, Chapter 110, O.S.L. 2004 (74 O.S. Supp. 2004, Sections 840-6.5 and 841.30), which relate to the Oklahoma Personnel Act; updating citations; requiring reduction-in-force implementation plan to be submitted to certain entities; requiring certain notice in demotion action; providing exception; modifying name and duties of the Oklahoma Biennial Compensation Review Board; repealing Section 1, Chapter 62, O.S.L. 2003 (74 O.S. Supp. 2004, Section 840-5.1B), as amended by Section 6 of Enrolled Senate Bill No. 473 of the 1st Session of the 50th Oklahoma Legislature, which relates to the State Classification Task Force; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-1.6, is amended to read as follows:

Section 840-1.6 A. The internal administrative organization of the Office of Personnel Management shall be determined by the Administrator in such a manner as to promote the efficient and effective enforcement of ~~this act~~ the Oklahoma Personnel Act.

B. The Administrator may employ attorneys, accountants and other personnel as he deems necessary to carry out the duties imposed upon the Office.

C. Employees of the Office shall be subject to the Merit System of Personnel Administration, unless otherwise exempted by Section 840-5.5 of this ~~act~~ title.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-2.27C, as last amended by Section 130 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature, is amended to read as follows:

Section 840-2.27C. A. At least sixty (60) days before the scheduled beginning of reduction-in-force separations or as otherwise provided by law, the appointing authority shall post in each office of executive branch agencies affected by the proposed reduction-in-force notice that a reduction-in-force will be conducted in accordance with the Oklahoma Personnel Act and Merit rules. The reduction-in-force implementation plan shall be provided to the Director of State Finance and any state employee association representing state employees at such time. The notice shall not be posted unless approved by the cabinet secretary for the agency conducting the reduction-in-force. If there is no incumbent cabinet secretary for the agency, the cabinet-secretary-notice-approval requirement shall not be applicable. The approved notice shall be posted in each office affected by the proposed plan for five (5) days. The appointing authority shall provide a copy of the notice to the Administrator. A reduction-in-force shall not be used as a disciplinary action.

B. The reduction-in-force implementation plan and subsequent personnel transactions directly related to the reduction-in-force in executive branch agencies shall be in compliance with rules adopted by the Administrator. The reduction-in-force implementation plan, including the description of and reasons for displacement limits and protections from displacement actions, and severance benefits that will be offered pursuant to Section 840-2.27D of this title shall be posted in each office affected by the plan within five (5) business

days after posting of the reduction-in-force notice. The reduction-in-force implementation plan shall:

1. Provide for the appointing authority to determine the specific position or positions to be abolished within specified units, divisions, facilities, agency-wide or any parts thereof;

2. Provide for retention of affected employees based on type of appointment;

3. Require the separation of probationary classified affected employees in affected job family levels, except those affected employees on probationary status after reinstatement from permanent classified status without a break in service, prior to the separation or displacement of any permanent classified affected employee in an affected job family level;

4. Provide for retention of permanent classified affected employees in affected job family levels and those affected employees on probationary status after reinstatement from permanent classified status without a break in service based upon consideration of years of service;

5. Provide for exercise of displacement opportunities by permanent classified affected employees and those affected employees on probationary status after reinstatement from permanent classified status without a break in service if any displacement opportunities exist; and

6. Provide outplacement assistance and employment counseling from the Oklahoma Employment Security Commission and any other outplacement assistance and employment counseling made available by the agency to affected employees regarding the options available pursuant to the State Government Reduction-in-Force and Severance Benefits Act prior to the date that a reduction-in-force is implemented.

C. If an agency implements a reduction-in-force then it shall give a veteran's preference over affected nonveterans who have equal retention points to the affected veteran.

D. The Director of the Office of State Finance shall review the fiscal components of the reduction-in-force implementation plan and within five (5) business days of receipt reject any plan that does not:

1. Demonstrate that funds are available to cover projected costs;

2. Contain an estimate of the number of affected employees likely to participate in the education voucher program established in Section 840-2.27D of this title; and

3. Contain an estimate of the cost savings or reduced expenditures likely to be achieved by the agency.

If the reduction-in-force is conducted pursuant to a reorganization, the fiscal components of the reduction-in-force implementation plan shall contain reasons for the reorganization, which may include, but not be limited to, increased efficiency, improved service delivery, or enhanced quality of service.

E. The appointing authority may limit displacement of affected employees at the time of a reduction-in-force. Displacement limits shall not be subject to the approval of the Administrator. Any limitation shall be based upon reasonable, written, articulated criteria as certified by the appointing authority. If displacement is limited, the appointing authority shall take action to avoid or minimize any adverse impact on minorities or women.

1. The appointing authority may protect from displacement action up to twenty percent (20%) of projected post-reduction-in-force employees in affected positions within displacement limits; provided, that any fractional number resulting from the final mathematical calculation of the number of those positions shall be

rounded to the next higher whole number. The appointing authority must explain why affected employees are being protected.

2. If the affected employee has not held within the last five (5) years a position in the job family level or predecessor class in which the affected employee is otherwise eligible for a displacement opportunity, the appointing authority may determine that the affected employee does not possess the recent relevant experience for the position and deny in writing the displacement opportunity.

3. An affected permanent classified employee may exercise a displacement privilege, if one exists, if the affected employee has received an overall rating of at least "satisfactory", or its equivalent, on the most recent annual service rating. If an affected employee has not been rated in accordance with the time limits established in Section 840-4.17 of this title, the employee shall be deemed to have received an overall rating of at least "satisfactory" or its equivalent on the most recent service rating.

4. An affected employee who exercises a displacement privilege pursuant to this section shall:

- a. be required, as a condition of continued employment by the agency, to sign an agreement, in a form to be prescribed by the Administrator of the Office of Personnel Management, acknowledging that the employee had an opportunity to receive severance benefits and affirmatively elected to exercise a displacement privilege and to forego such benefits. An affected employee who signs the agreement required by this subparagraph waives any privilege which might otherwise have been available to the affected employee pursuant to the agreement for the provision of severance benefits, and
- b. not have the right to exercise any subsequent right to receive severance benefits from the agency for which

the affected employee performs services on the date that the employee exercises a displacement privilege. The provisions of this section shall not prohibit any person from exercising a displacement privilege in, or accepting severance benefits from, more than one agency during employment with the State of Oklahoma or from the agency which the affected employee exercised a displacement privilege in any future reduction-in-force.

F. An affected employee who does not agree pursuant to Section 840-2.27E of this title to accept severance benefits and who does not have a displacement opportunity or does not accept a displacement opportunity shall be separated by the reduction-in-force and shall not receive any severance benefits that would have otherwise been provided pursuant to Section 840-2.27D of this title.

G. Permanent classified affected employees and those affected employees on probationary status after reinstatement from permanent classified status without a break in service who were removed from a job family level by taking a position in another job family level through displacement or separated after foregoing severance benefits shall be recalled by the agency to the job family level from which they were removed in inverse order of removal before the agency may appoint other persons to the job family level, from the employment register, by internal action or from Priority Reemployment Consideration Rosters as provided by this section. Upon declination of an offer of reappointment to the job family level from which the employee was removed or eighteen (18) months after the date of removal from the job family level, whichever is first, this right to be recalled shall expire.

H. The names of permanent classified affected employees and those affected employees on probationary status after reinstatement from permanent classified status without a break in service who have

been separated pursuant to the State Government Reduction-in-Force and Severance Benefits Act, who apply and meet all requirements for state jobs in the classified service shall be placed on Priority Reemployment Consideration Rosters in accordance with their individual final earned ratings for a maximum of eighteen (18) months after the date of separation. Before any vacant position is filled by any individual eligible for initial appointment from the employment register, individuals on the Priority Reemployment Consideration Rosters shall be given priority consideration for reemployment by any state agency within eighteen (18) months after the date of the reduction-in-force. Upon declination of an offer of reemployment to a job family level having the same or higher pay band than the job family level from which the employee was removed, or eighteen (18) months after the date of separation, whichever is first, this priority consideration for reemployment shall expire. If an agency has posted a reduction-in-force plan and implementation schedule, all affected employees in positions covered by the plan and any within the displacement limits established by the appointing authority of the agency who have been separated shall be eligible for priority reemployment consideration.

I. If an agency or any part thereof is scheduled to be closed or abolished as a result of legislation or a court order, the affected employees, who would be eligible for Priority Reemployment Consideration after their separation in accordance with subsection H of this section, may apply and, if qualified and eligible, shall be accorded Priority Reemployment Consideration not to exceed twelve (12) months before the scheduled date of separation. If an agency has posted a reduction-in-force plan and implementation schedule, all affected employees in positions covered by the plan and any within the displacement limits established by the appointing authority of the agency shall be eligible for Priority Reemployment

Consideration beginning with the date the schedule is posted, not to exceed twelve (12) months before the scheduled date of separation.

J. When the Legislature is not in session, the Contingency Review Board may, upon the request of the Governor, direct agencies, boards and commissions to reduce the number of employees working for ~~said~~ the agency, board or commission whenever it is deemed necessary and proper. Such reduction shall be made pursuant to reduction-in-force plans as provided in this section.

K. 1. When the Legislature is not in session, the Contingency Review Board may, upon the request of the Governor, direct and require mandatory furloughs for all state employees whenever it is deemed necessary and proper. The Contingency Review Board shall specify the effective dates for furloughs and shall note any exceptions to state employees affected by same. All classified, unclassified, exempt or nonmerit employees, including those employees of agencies or offices established by statute or the Constitution, shall be affected by such actions.

2. Mandatory furlough means the involuntary temporary reduction of work hours or the placement of an employee on involuntary leave without pay. Rules governing leave ~~regulations~~, longevity pay and participation in the State Employees Group Health, Dental, Disability, and Life Insurance program shall not be affected by mandatory furloughs. Furlough, as provided for in this section or by rules adopted by the Administrator of the Office of Personnel Management, shall not be appealable under the provisions of the Oklahoma Personnel Act.

3. Notwithstanding existing laws or provisions to the contrary, members of state boards and commissions shall not receive per diem expenses during periods of mandatory furlough. The Contingency Review Board shall additionally call upon elected officials, members of the judiciary, and other public officers whose salary or emoluments cannot be altered during current terms of office, to

voluntarily donate to the General Revenue Fund any portion of their salary which would otherwise have been affected by a mandatory furlough.

L. All agencies directed by the Contingency Review Board to terminate or furlough employees, shall report the cumulative cost savings achieved by the reductions-in-force or furloughs to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives on a quarterly basis for one (1) year following the effective date of the action.

M. The appointing authority of an agency which has an approved reduction-in-force plan pursuant to the State Government Reduction-in-Force and Severance Benefits Act may request the Administrator of the Office of Personnel Management to appoint an interagency advisory task force for the purpose of assisting the agency and its employees with the implementation of the reduction-in-force. The appointing authority of state agencies requested by the Administrator to participate on a task force shall assign appropriate administrative personnel necessary to facilitate the necessary assistance required for the efficient implementation of the approved reduction-in-force.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-6.5, as amended by Section 5, Chapter 353, O.S.L. 2003 (74 O.S. Supp. 2004, 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. If an employee in the classified service is demoted as a result of a position audit or reclassification, the agency shall

provide notice of such demotion to the Office of Personnel Management, which shall review the findings of the agency prior to such demotion occurring, to ensure compliance with the law. The Office of Personnel Management shall complete the review and respond within ten (10) business days of receipt of notice. The provisions of this subsection shall not apply to demotions that are a result of a position audit or reclassification performed by the Office of Personnel Management.

C. 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. 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 within thirty (30) days after the petition is heard. The Final Petition Decision shall address the issues which are within the jurisdiction of the Commission 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. AMENDATORY Section 4, Chapter 453, O.S.L. 2003, as amended by Section 1, Chapter 110, O.S.L. 2004 (74 O.S. Supp. 2004, Section 841.30), is amended to read as follows:

Section 841.30 A. There is hereby created the Oklahoma ~~Biennial~~ Compensation and Unclassified Positions Review Board.

B. The Oklahoma ~~Biennial~~ Compensation and Unclassified Positions Review Board shall be composed of the following seven (7) members:

1. Two members of the Oklahoma Senate appointed by the President Pro Tempore of the Senate;

2. Two members of the Oklahoma House of Representatives appointed by the Speaker of the House of Representatives;

3. Two members appointed by the Governor, one to be from a state agency with five hundred (500) or more employees and the other to be from a state agency with fewer than five hundred (500) employees; and

4. The chief executive officer of the largest organization in the state that represents state employees, or a designee.

C. After the initial appointments, the members shall serve four-year terms, and the appointing authorities may fill any vacancies as they occur. The term of the members appointed by the President Pro Tempore of the Senate shall expire July 1, 2004. The term of the members appointed by the Speaker of the House of Representatives shall expire July 1, 2005. The term of the members appointed by the Governor shall expire July 1, 2006. The term of the members appointed by the largest organization in the state that represents state employees shall expire July 1, 2007.

D. The Board shall elect one of its members as chair.

E. The Board shall review the study of the Office of Personnel Management, as required by paragraph 20 of Section 840-1.6A of this title, and make recommendations which may include compensation adjustments, pay band adjustments, targeted salary increases, and other recommendations related to turnover, fringe benefits and other compensation issues concerning state employees, but excluding retirement issues. The recommendations shall be made to the President Pro Tempore of the Senate, Speaker of the House of Representatives, and Governor on or before February 1 of the year following each biennial meeting.

F. ~~The first biennial meeting of the Board shall be in September 2003,~~ meet in December 2005 and ~~subsequent meetings shall be in December of every two (2) years~~ odd-numbered year thereafter to consider compensation recommendations. The Board shall meet every year to consider unclassified positions recommendations. Any additional meetings ~~after each biennial meeting~~ shall be at the call of the chair.

G. The Board shall review and make recommendations concerning the unclassified service as follows:

1. State agencies subject to the provisions of the Merit System of Personnel Administration shall submit requests to the Administrator of the Office of Personnel Management for authorizations for unclassified positions and employees that are in addition to unclassified positions already authorized by law. The Administrator shall forward the requests to the Board. The Administrator shall review, analyze, and provide recommendations to the Board regarding the requests. The Board shall meet in December of each year and shall review any agency proposals to add unclassified positions to the state service. A representative from each appointing authority of a state agency that desires to add unclassified positions shall attend the meeting and present the

proposal of the agency. The Board shall also review positions currently in the unclassified service. The Administrator of the Office of Personnel Management shall review and analyze such positions and provide recommendations to the Board. The Board may request the presence of state agency representatives to provide information concerning such positions.

2. On or before February 1 of each year, the Board shall present any recommendations to the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate concerning current positions in the unclassified service and agency proposals to add unclassified positions.

3. The Board may also meet during the regular session of the Legislature to consider any additional requests to add unclassified positions to the state service submitted pursuant to this subsection.

H. A majority of the members of the Board shall constitute a quorum for the transaction of business. Each Board member shall be entitled to one vote on the Board. Any official action of the Board must have a majority of the votes of the members present.

~~H.~~ I. Each member of the Board shall serve without compensation except that each legislative member of the Board shall receive reimbursement for travel expenses in accordance with Section 456 of this title and each nonlegislative member of the Board shall receive reimbursement for travel expenses in accordance with the State Travel Reimbursement Act by the Office of Personnel Management.

~~I.~~ J. Staffing for the Board shall be composed of the Office of Personnel Management, Oklahoma Senate staff, and Oklahoma House of Representatives staff as needed.

SECTION 5. REPEALER Section 1, Chapter 62, O.S.L. 2003 (74 O.S. Supp. 2004, Section 840-5.1B), as amended by Section 6 of Enrolled Senate Bill No. 473 of the 1st Session of the 50th Oklahoma Legislature, is hereby repealed.

SECTION 6. This act shall become effective July 1, 2005.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

50-1-7502            SCE            05/17/05