STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 473

By: Capps of the Senate

and

Braddock of the House

COMMITTEE SUBSTITUTE

An Act relating to state personnel; amending 74 O.S. 2001, Sections 840-1.18, as last amended by Section 2, Chapter 312, O.S.L. 2004, 840-2.15, 840-2.18, as last amended by Section 6, Chapter 312, O.S.L. 2004, 840-2.26, Section 1, Chapter 62, O.S.L. 2003 and 840-5.5, as last amended by Section 132 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature (74 O.S. Supp. 2004, Sections 840-1.18, 840-2.18 and 840-5.1B), which relate to the Oklahoma Personnel Act; requiring state agencies to make payment for certain payroll services; deleting provisions relating to overtime pay and compensatory time; specifying application of certain provisions of law and Fair Labor Standards Act and regulations; clarifying availability of longevity pay; requiring certain use of compensatory time; prohibiting agencies from extending certain time limit for certain employees; modifying requirements for certifying years of service for purposes of longevity pay; modifying certain duty of Administrator of Office of Personnel Management; requiring state employees to be paid according to certain system; providing penalties; specifying duties of state agencies, Administrator and State Classification Task Force with respect to unclassified positions; modifying positions within unclassified service; modifying expiration date for certain unclassified appointments and leave; amending 75 O.S. 2001, Section 250.4, as last amended by Section 6, Chapter 157, O.S.L. 2004 (75 O.S. Supp. 2004, Section 250.4), which relates to the Administrative Procedures Act; modifying agency activities required to comply with certain provisions; providing for codification; 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 840-1.18, as last amended by Section 2, Chapter 312, O.S.L. 2004 (74 O.S. Supp. 2004, Section 840-1.18), is amended to read as follows:

Section 840-1.18 A. The administrative expenses and costs of operating the Merit System shall be paid by the various divisions of the state government included within the Merit System, and each such agency shall be authorized to include in its budget estimates its pro rata share of such costs, and shall remit such shares quarterly from departmental or agency funds to the Office of Personnel Management who shall deposit such shares to the credit of the General Revenue Fund of the State Treasury.

B. The Administrator shall maintain accurate records reflecting the costs of administering its provisions, and at the close of each quarter-year period shall summarize said costs, and shall bill each department or agency included within the terms of ~~this act~~ the Oklahoma Personnel Act with a pro rata share of the administrative costs based on the relationship between the quarterly average number of employees in the classified service of such department or agency, and the quarterly average number of employees in the classified service of the state.

C. The Administrator shall separately categorize and estimate expenditures and budget needs for other services performed which are not appropriately charged to state agencies on a pro rata basis.

D. Any state agency for which the Administrator provides payroll services shall pay for such services at a rate established by the Administrator, which shall be based upon the cost to the Administrator of providing such services. Each agency shall remit payment for such services quarterly from departmental or agency funds to the Administrator who shall deposit such payments into the Office of Personnel Management Revolving Fund created in Section 840-1.20 of this title.

E. No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the state classified service, brought under ~~this act~~ the Oklahoma Personnel Act unless the payroll voucher or account of such pay bears the certification of the appointing authority or designee, that the persons named therein have been appointed and employed in accordance with the provisions of ~~this act~~ the Oklahoma Personnel Act and the rules~~, regulations and orders~~ promulgated hereunder. The appointing authority or designee may for proper cause withhold certification from an entire payroll or from any specific item or items thereon.

Any citizen may maintain a suit to restrain a disbursing officer from making any payment in contravention of any provision of ~~this act,~~ the Oklahoma Personnel Act or rules ~~or regulations~~ promulgated hereunder. Any sum paid contrary to any provision of ~~this act~~ the Oklahoma Personnel Act or any rule~~, regulation or order~~ promulgated hereunder may be recovered in an action maintained by any citizen, from any officer who made, approved or authorized such payment or who signed or countersigned a voucher, payroll, check or warrant for such payment, or from the sureties on the official bond of any such officer. All monies recovered in any such action shall be paid into the State Treasury.

Any person appointed or employed in contravention of any provision of ~~this act~~ the Oklahoma Personnel Act or any rules~~, regulations~~ or orders promulgated hereunder, whose employment is brought within the terms of ~~this act~~ the Oklahoma Personnel Act, who performs service for which he or she is not paid, may maintain an action against the officer or officers who purported to appoint or employ ~~him~~ the person to recover the agreed pay for such services, or the reasonable value thereof if no pay was agreed upon. No officer shall be reimbursed by the state at any time for any sum paid to such person on account of such services.

If the appointing authority or designee wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain an action or proceeding in the courts to compel the appointing authority or designee to certify such payroll voucher or account.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-2.15, is amended to read as follows:

Section 840-2.15 A. ~~Nonexempt employees as defined by the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., working in an institutional setting shall receive overtime pay at the rate of one and one-half (1 1/2) times their regular hourly rate for each overtime hour worked. Compensatory time at the rate of one and one-half hours for each hour worked in lieu of overtime pay may be given to nonexempt employees under certain conditions as provided for and in compliance with the Fair Labor Standards Act, 29 U.S.C., Section 201, et seq.~~ The federal Fair Labor Standards Act, 29 U.S.C., Section 201, et seq., provides for minimum standards for both wages and overtime entitlement, and spells out administrative procedures by which covered work time must be compensated. This section is not a comprehensive listing of the provisions of the Fair Labor Standards Act and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations.

B. Any employee receiving compensatory time ~~under~~ consistent with the provisions of ~~subsection A of this section shall not be required to take compensatory time off unless the employee requests said leave~~ the Fair Labor Standards Act shall exhaust such compensatory time prior to the taking of annual leave, except where the employee is subject to losing such annual leave due to the application of the accumulation limits in Section 840-2.20 of this title.

C. An employee receiving compensatory time under the provisions of subsection A of this section shall be permitted to use accrued

compensatory time within one-hundred-eighty (180) days following the pay period in which it was accrued, provided the taking of compensatory time does not unduly impact agency operations or the health, safety or welfare of the public, or endanger public property. Agencies shall not be allowed to extend this one-hundred-eighty-day time period for employees in an institutional setting. The balance of any unused compensatory time received but not taken during this time period shall be paid to the employee at the employee's current regular hourly rate.

D. As used in this ~~act~~ section, "institutional setting" shall mean any agency or part of any agency where twenty-four-hour care, monitoring or supervision is required for patients, clients or inmates to protect public health, safety or property.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-2.18, as last amended by Section 6, Chapter 312, O.S.L. 2004 (74 O.S. Supp. 2004, Section 840-2.18), is amended to read as follows:

Section 840-2.18 A. A longevity pay plan is hereby adopted. This plan applies to all state classified, unclassified, and exempt employees, excluding members of boards and commissions, institutions under the administrative authority of the State Regents for Higher Education, employees of public school districts, and elected officials. The plan shall also apply to those employees of the Oklahoma School for the Blind and the Oklahoma School for the Deaf who qualify for longevity pay in accordance with subsection D of Section 1419 of Title 10 of the Oklahoma Statutes.

B. The Oklahoma Conservation Commission is hereby authorized to establish a longevity pay program for employees of the conservation districts employed under Section 3-3-103 of Title 27A of the Oklahoma Statutes. Such longevity pay program shall be consistent with the longevity pay program for state employees authorized under this title and payments shall be made in a manner consistent with procedures for reimbursement to conservation districts.

C. To be eligible for longevity pay, employees must have been continuously employed in the classified or unclassified service of the state for a minimum of two (2) years in full-time status or in part-time status working more than one thousand (1,000) hours a year.

For purposes of this section, a break in service of thirty (30) calendar days or less shall not be considered an interruption of continuous service; a break in service of more than thirty (30) calendar days shall mark an end to continuous service. The legislative session employees who have worked for two (2) years or more in part-time status and are eligible for state retirement benefits, but do not receive other longevity payments, shall be eligible and shall be considered to have been continuously employed for purposes of calculating longevity payments, notwithstanding the provisions of subsection E of this section.

D. 1. ~~Longevity~~ Except in the years when there is a downturn of revenue available for appropriation by the state government, longevity pay for the first twenty (20) years of service shall be determined pursuant to the following schedule:

Years of Service	Annual Longevity Payment
At least 2 years but less than 4 years	$250.00
At least 4 years but less than 6 years	$426.00
At least 6 years but less than 8 years	$626.00
At least 8 years but less than 10 years	$850.00
At least 10 years but less than 12 years	$1,062.00
At least 12 years but less than 14 years	$1,250.00

At least 14 years but less than 16 years	$1,500.00
At least 16 years but less than 18 years	$1,688.00
At least 18 years but less than 20 years	$1,900.00
At least 20 years	$2,000.00

2. For each additional two (2) years of service after the first twenty (20) years an additional Two Hundred Dollars ($200.00) shall be added to the amount stated above for twenty (20) years of service.

The total amount of the annual longevity payment made to an employee by any and all state agencies in any year shall not exceed the amount shown on the table corresponding to that employee's years of service with the state, except as otherwise provided by Sections 840-2.27D and 840-2.28 of this title. Further, no employee shall receive duplicating longevity payments for the same periods of service with any and all agencies, except as otherwise provided by Sections 840-2.27D and 840-2.28 of this title.

E. To determine years of service, cumulative periods of full-time employment or part-time employment working more than one hundred fifty (150) hours per month with the state excluding service as specified in subsection A of this section are applicable. Part-time employment, working one hundred fifty (150) hours per month or less for the state, excluding service as specified in subsection A of this section, shall be counted only if:

1. The period of employment was continuous for at least five (5) months; and

2. The person worked more than two-fifths (2/5) time.

Other employment shall not be counted as service for purposes of longevity payments. Further, no period of employment with the

state, whether with one or more than one agency, shall be counted as more than full-time service.

F. Years of service under the administrative authority of the State Regents for Higher Education or the administrative authority of the Oklahoma Department of Career and Technology Education of any employee who is now employed in a job classification which is eligible for longevity pay shall be included in years of service for purposes of determining longevity pay.

G. Years of service shall be certified through the current employing agency by the appointing authority on a form approved by the Office of Personnel Management. Said form shall be ~~filed with the Office of Personnel Management~~ completed and posted as directed by the Administrator of the Office of Personnel Management by the current employing agency ~~within sixty (60) calendar days before an employee becomes eligible for longevity payments~~ when the employee initially enters on duty with the agency and thereafter whenever the employee's anniversary date is changed.

H. Eligible employees, in full-time status or in part-time status working more than one hundred fifty (150) hours per month, shall receive one (1) lump-sum annual payment, in the amount provided on the preceding schedule, during the month following the anniversary date of the employee's most recent enter-on-duty day with the state. Upon implementation of the statewide information systems project, the lump-sum annual payment may be paid concurrent with the final payroll of the month of the employee's anniversary date. Eligible part-time employees who work one hundred fifty (150) hours per month or less shall receive one (1) lump-sum annual payment, based on the formula in subsection L of this section, during the month following the anniversary date of the employee's most recent enter-on-duty day with the state. To receive longevity pay an employee must be in pay status on or after his or her anniversary date.

Eligible employees who would not otherwise receive annual longevity payments because their employment includes regular periods of leave without pay in excess of thirty (30) calendar days shall receive one (1) lump-sum annual payment, based on the formula in subsection L of this section, during:

1. The month of August if the employee is in pay status on July 1; or

2. During the month following the employee's first return to duty that fiscal year if the employee is not in pay status on July 1.

Except as otherwise provided by Sections 840-2.27D and 840-2.28 of this title, employees terminated as a result of a reduction-in-force or retiring from state employment shall receive upon said termination or retirement the proportionate share of any longevity payment which may have accrued as of the date of termination or retirement. Provided further that, the proportionate share of any longevity payment which may have accrued as of the date of death of an employee shall be made to the surviving spouse of the employee or if there is no surviving spouse to the estate of the employee.

I. Periods of leave without pay taken in accordance with Section 840-2.21 of this title shall be counted as service. Other periods of nonpaid leave status in excess of thirty (30) calendar days shall not mark a break in service; however, they shall:

1. Not be used in calculating total months of service for longevity pay purposes; and

2. Extend the anniversary date for longevity pay by the total period of time on nonpaid leave status except as provided in subsection H of this section for employees whose conditions of employment include regular periods of leave without pay.

J. Employees currently receiving longevity pay who work for the judicial branch of state government or who work for the Oklahoma

Department of Career and Technology Education shall not be eligible for the longevity pay plan provided for in this section.

K. A break in service with the state in excess of thirty (30) days but which does not exceed two (2) years which was caused by a reduction-in-force shall be treated as if it were a period of nonpaid leave status as provided for in subsection I of this section for the purpose of calculating total months of service for longevity pay. This subsection shall only apply to state employees laid off after June 30, 1982.

L. Eligible part-time employees working less than one hundred fifty (150) hours per month and other eligible employees with regular annual periods of leave without pay of more than thirty (30) calendar days will receive a prorated share of the "Annual Longevity Payment" authorized in subsection D of this section. The prorated amount of payment will be based on actual hours worked in the immediately preceding twelve (12) months.

M. An employee shall not be entitled to retroactive longevity payments as a result of amendments to this section unless specifically authorized by law.

N. The Administrator of the Office of Personnel Management is authorized to promulgate such Longevity Pay Plan Rules as he or she finds necessary to carry out the provisions of this section.

O. As of July 1, 1998, years of service with a city-county health department for employees who left a city-county health department for employment with the Department of Environmental Quality or the State Department of Agriculture, between July 1, 1993 and July 1, 1998, and who are now employed in a job classification that is eligible for longevity pay pursuant to this section, shall be included in years of service for purposes of determining longevity pay subsequent to July 1, 1998.

P. As of July 1, 2003, years of service with a local conservation district shall be included in years of service for

purposes of determining longevity pay for local conservation district employees transferred to the Oklahoma Conservation Commission pursuant to ~~this act~~ the provisions of Enrolled Senate Bill No. 149 of the 1st Session of the 49th Legislature.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 840-2.26, is amended to read as follows:

Section 840-2.26 A. In order to provide increased services to the public, to assist state employees in meeting the needs of their families, improve employee morale and productivity, appointing authorities are encouraged to consider the adoption of flextime attendance policies and alternative work schedules.

B. For purposes of this section, "flextime" means a regular, eight-hour-day work schedule that permits the use of alternative starting and ending times within limits set by the appointing authority and that includes a common work period during which all employees are expected to be present.

C. The Administrator of the Office of Personnel Management shall provide technical assistance to agencies in developing flextime policies and alternative work schedules and shall promulgate rules pursuant to the Administrative Procedures Act as necessary for such policies.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840-2.30 of Title 74, unless there is created a duplication in numbering, reads as follows:

It is the policy of the State of Oklahoma to be accountable to state taxpayers for the expenditure of public funds. To this end, all state employees shall be paid according to a pay system established pursuant to the principles of public accountability that prohibits payment to any state employee for time not worked unless the time not worked is covered by available paid leave. Violation of this provision may result in disciplinary action and criminal prosecution under Oklahoma law.

SECTION 6. AMENDATORY Section 1, Chapter 62, O.S.L. 2003 (74 O.S. Supp. 2004, Section 840-5.1B), is amended to read as follows:

Section 840-5.1B A. There is hereby created the State Classification Task Force for the purpose of reviewing unclassified positions in the executive branch of state government, excluding The Oklahoma State System of Higher Education, and making recommendations to the Legislature concerning the current unclassified service and the feasibility of proposals to add positions to or remove positions from the unclassified service.

B. The Task Force shall consist of ten (10) members of the Oklahoma Legislature, five members of the House of Representatives appointed by the Speaker of the House of Representatives and five members of the Senate appointed by the President Pro Tempore of the Senate. Members shall serve at the pleasure of their appointing authority.

C. ~~Beginning on the effective date of this act and for~~ For the Forty-ninth Oklahoma Legislature, the Speaker of the House of Representatives shall select the chair of the Task Force and the President Pro Tempore of the Senate shall select the ~~vice-chair~~ vice chair of the Task Force. Thereafter, the chair and ~~vice-chair~~ vice chair shall rotate between the House of Representatives and Senate with the President Pro Tempore of the Senate and the Speaker of the House of Representatives making the respective appointments.

D. Staffing for the Task Force shall be provided by the legislative staff of the House of Representatives and the Senate, and the Administrator of the Office of Personnel Management.

E. Members of the Task Force shall receive no compensation for serving on the Task Force but shall receive travel reimbursement for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes from the legislative body in which they serve.

F. 1. State agencies subject to the provisions of the Merit System of Personnel Administration shall submit requests for authorizations for unclassified positions and employees to the Administrator of the Office of Personnel Management who shall forward such requests to the Task Force. The Administrator shall review, analyze, and provide recommendations to the Task Force regarding such requests.

2. The Task Force shall meet in November 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.

~~2.~~ 3. The Task Force 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 Task Force. The Task Force may request the presence of state agency representatives to provide information concerning such positions.

~~3.~~ 4. On or before February 1 of each year, the Task Force shall present any recommendations to the Speaker of the House of Representatives and the President Pro Tempore of the Senate concerning current positions in the unclassified service and agency proposals to add unclassified positions.

~~4.~~ 5. The Task Force 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.

SECTION 7. AMENDATORY 74 O.S. 2001, Section 840-5.5, as last amended by Section 132 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature, 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 Oklahoma Department of Career and Technology 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. administrative aides to the Commissioner,

b. executive secretaries to the Commissioner,

c. the Governor's representative of the Oklahoma Highway Safety Office who shall be appointed by the Governor,

d. Highway Patrol Colonel,

e. Highway Patrol Lieutenant Colonel,

f. Highway Patrol Major,

g. Director of Finance,

h. noncommissioned pilots,

i. Information Systems Administrator,

j. Law Enforcement Telecommunications System Specialist,

k. Director of Driver License Administration,

l. Director of Transportation Division,

m. Director of the Alcohol and Drug Countermeasures Unit,

n. Director of the Oklahoma Highway Safety Office,

o. Civil Rights Administrator,

p. Budget Analyst,

q. Comptroller,

r. Chaplain,

s. Helicopter Mechanic,

t. Director of Safety Compliance, and

u. 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; provided, any person appointed to a position prescribed in subparagraphs d, e, f or o of this paragraph shall have a right of return to the classified commissioned position without any loss of rights, privileges or benefits immediately upon completion of the duties in the unclassified commissioned position, and any person appointed to a position prescribed in subparagraph i, j, k, l, m or n of this paragraph shall have a right of return to the previously held vacant classified position within the Department of Public Safety without any loss of rights, privileges or benefits immediately upon completion of the duties in the unclassified commissioned position;

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. Department of Mental Health and Substance Abuse Services personnel occupying the following offices and positions at each facility:

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. Administrative Officer,

c. Alternator Claims Auditor,

d. Employees hired to fulfill state compliance agency requirements under Model Tribal Gaming Compacts,

e. Employees of the Budget Division,

f. Employees of the Fiscal and Research Division, and

g. Information Services Division:

(1) Information Services Division Manager,

(2) Network Manager,

(3) Network Technician,

(4) Security Manager,

(5) Contracts/Purchasing Manager,

(6) Operating and Applications Manager,

(7) Project Manager,

(8) Help Desk Manager,

(9) Help Desk Technician,

(10) Quality Assurance Manager,

(11) ISD Analysts,

(12) CORE Manager,

(13) Enterprise System/Database Software Manager,

(14) Data Center Operations and Production Manager,

(15) Voice Communications Manager,

(16) Applications Development Manager,

(17) Projects Manager,

(18) PC's Manager,

(19) Servers Manager, and

(20) Portal Manager;

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, and

c. one Workforce Planning Manager;

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, however, employees in such positions who are in the unclassified service on ~~the effective date of this act~~

June 4, 2003, may make an election to be in the classified service without a loss in salary by September 1, 2003, 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. five assistant directors,

b. two special investigators,

c. one information representative,

d. one federally funded physical evidence technician,

e. four federally funded laboratory analysts,

f. one Data Base Administrator,

g. two Data Processing Branch Managers,

h. four Senior Data Processing Applications Specialists,

i. a total of three positions from the following classes: Senior Data Processing Systems Specialists, Data Processing Applications Specialists, or Data Processing Systems Specialists,

j. one Senior Computer Services Technician, or Computer Services Technician,

k. one Senior Computer Services Coordinator, or Computer Services Coordinator, and

l. 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 Commission,

b. five 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,

c. one Administrative Assistant,

d. one Audit Tech position,

e. one Auditor I position,

f. two Accounting Tech I positions,

g. two Administrative Assistant I positions,

h. two Imaging Specialist positions, and

i. one Information Systems Specialist position;

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

a. six Narcotics Agent positions and three Typist Clerk/Spanish transcriptionists, including a Typist Clerk Supervisor/Spanish transcriptionist, provided, authorization for such positions shall be terminated if the federal funding for the positions is discontinued,

b. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection,

c. one fiscal officer,

d. one full-time Programmer, and

e. one full-time Network Engineer;

35. The 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,

j. one specialized HiTech/Food Contracting Officer,

k. one State Use Contracting Officer, and

l. one Property Distribution Administrator;

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. Oklahoma Department of Agriculture, Food, and Forestry personnel occupying the following positions:

a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection and one Executive Assistant,

b. eighteen Agricultural Marketing Coordinator III positions,

c. temporary fire suppression personnel, regardless of the number of hours worked, who are employed by the Oklahoma Department of Agriculture, Food, and Forestry 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,

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 warehouses. All other Agriculture Field Inspector positions and employees of the Oklahoma Department of Agriculture, Food, and Forestry shall be classified and subject to the provisions of the Merit System of Personnel Administration. On November 1, 2002, 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 Coordinator,

v. Poultry Coordinator,

w. Food Safety Division Director,

x. one Mammal Control Officer,

y. Two Scale Technicians, and

z. Two Plant Protection Specialists;

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;

46. All officers and employees of the Oklahoma Capitol Complex and Centennial Commemoration Commission;

47. All officers and employees of the Oklahoma Motor Vehicle Commission;

48. One Museum Archivist of The Will Rogers Memorial Commission;

49. One Fire Protection Engineer of the Office of the State Fire Marshal;

50. Acting incumbents employed pursuant to Section 209 of Title 44 or Section 48 of Title 72 of the Oklahoma Statutes who shall not be included in any limitation on full-time equivalency imposed by law on an agency. Permanent classified employees may request a leave of absence from classified status and accept an unclassified appointment and compensation as an acting incumbent with the same agency; provided, the leave shall expire no later than two (2) years from the date of the acting incumbent appointment. An appointing authority may establish unclassified positions and appoint unclassified employees to perform the duties of a permanent classified employee who is on leave of absence from a classified position to serve as an acting incumbent. All unclassified appointments created pursuant to this paragraph shall expire no later than two (2) years from the date of appointment. Classified employees accepting unclassified appointments and compensation pursuant to this paragraph 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 paragraph, 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;

51. The Oklahoma Homeland Security Director and all other positions assigned the responsibilities of working in the Oklahoma Office of Homeland Security; and

52. The following eighteen (18) positions in the State Department of Health:

a. one surveillance supervisor,

b. one surveillance project monitor,

c. two bilingual interviewers,

d. eight senior interviewers, and

e. six interviewers.

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, psychologists, and nurses;

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 December 31, ~~2005~~ 2007, 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 December 31, ~~2005~~ 2007. 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 8. AMENDATORY 75 O.S. 2001, Section 250.4, as last amended by Section 6, Chapter 157, O.S.L. 2004 (75 O.S. Supp. 2004, Section 250.4), is amended to read as follows:

Section 250.4 A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act.

2. The Corporation Commission shall be required to comply with the provisions of Article I of the Administrative Procedures Act except for subsections A, B, C and E of Section 303 of this title and Section 306 of this title. To the extent of any conflict or inconsistency with Article I of the Administrative Procedures Act, pursuant to Section 35 of Article IX of the Oklahoma Constitution,

it is expressly declared that Article I of the Administrative Procedures Act is an amendment to and alteration of Sections 18 through 34 of Article IX of the Oklahoma Constitution.

3. The Oklahoma Military Department shall be exempt from the provisions of Article I of the Administrative Procedures Act to the extent it exercises its responsibility for military affairs.

4. The Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Office of Homeland Security and the Board of Trustees of the Oklahoma College Savings Plan shall be exempt from Article I of the Administrative Procedures Act.

5. The Transportation Commission and the Department of Transportation shall be exempt from Article I of the Administrative Procedures Act to the extent they exercise their authority in adopting standard specifications, special provisions, plans, design standards, testing procedures, federally imposed requirements and generally recognized standards, project planning and programming, and the operation and control of the State Highway System.

6. The Oklahoma State Regents for Higher Education shall be exempt from Article I of the Administrative Procedures Act with respect to:

a. prescribing standards of higher education,

b. prescribing functions and courses of study in each institution to conform to the standards,

c. granting of degrees and other forms of academic recognition for completion of the prescribed courses,

d. allocation of state-appropriated funds, and

e. fees within the limits prescribed by the Legislature.

7. Institutional governing boards within The Oklahoma State System of Higher Education shall be exempt from Article I of the Administrative Procedures Act.

8. a. The Commissioner of Public Safety shall be exempt from Sections 303.1, 303.2, 304, 307.1, 308 and 308.1 of this title insofar as it is necessary to promulgate rules pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations, or pursuant to Chapter 6 of Title 47 of the Oklahoma Statutes, to maintain a current incorporation of federal commercial driver license regulations, for which the Commissioner has no discretion when the state is mandated to promulgate rules identical to federal rules and regulations.

b. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after notice of adoption is published in "The Oklahoma Register". Such publication need not set forth the full text of the rule but may incorporate the federal rules and regulations by reference.

c. Such copies of promulgated rules shall be filed with the Secretary as required by Section 251 of this title.

d. For any rules for which the Commissioner has discretion to allow variances, tolerances or modifications from the federal rules and regulations, the Commissioner shall fully comply with Article I of the Administrative Procedures Act.

9. The Council on Judicial Complaints shall be exempt from Section 306 of Article I of the Administrative Procedures Act, with respect to review of the validity or applicability of a rule by an action for declaratory judgment, or any other relief based upon the validity or applicability of a rule, in the district court or by an

appellate court. A party aggrieved by the validity or applicability of a rule made by the Council on Judicial Complaints may petition the Court on the Judiciary to review the rules and issue opinions based upon them.

10. The Department of Corrections, State Board of Corrections, county sheriffs and managers of city jails shall be exempt from Article I of the Administrative Procedures Act with respect to:

a. prescribing internal management procedures for the management of the state prisons, county jails and city jails and for the management, supervision and control of all incarcerated prisoners, and

b. prescribing internal management procedures for the management of the probation and parole unit of the Department of Corrections and for the supervision of probationers and parolees.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:

1. The Oklahoma Tax Commission;

2. The Commission for Human Services;

3. The Oklahoma Ordnance Works Authority;

4. The Corporation Commission;

5. The Pardon and Parole Board;

6. The Midwestern Oklahoma Development Authority;

7. The Grand River Dam Authority;

8. The Northeast Oklahoma Public Facilities Authority;

9. The Council on Judicial Complaints;

10. The Board of Trustees of the Oklahoma College Savings Plan;

11. The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, only with respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein; provided, that the

provisions of Article II shall apply to and govern all administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;

12. The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons; provided, that upon any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion, such student shall be entitled to such due process, including notice and hearing, as may be otherwise required by law, and the following grounds of misconduct, if properly alleged in disciplinary proceedings against a student, shall be cause to be barred from the campus and be removed from any college or university-owned housing, upon conviction in a court of law:

a. participation in a riot as defined by the penal code,

b. possession or sale of any drugs or narcotics prohibited by the penal code, Section 1 et seq. of Title 21 of the Oklahoma Statutes, or

c. willful destruction of or willful damage to state property;

13. The Oklahoma Horse Racing Commission, its employees or agents only with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:

a. any rule regarding the running of a race,

b. any violation of medication laws and rules,

c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,

d. any assault or other destructive acts within Commission-licensed premises,

e. any violation of prohibited devices, laws and rules, or

f. any filing of false information;

14. The Commissioner of Public Safety only with respect to driver license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

15. The Administrator of the Department of Securities only with respect to hearings conducted pursuant to provisions of the Oklahoma Take-over Disclosure Act of 1985;

16. Hearings conducted by a public agency pursuant to Section 962 of Title 47 of the Oklahoma Statutes;

17. The Oklahoma Military Department;

18. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority;

19. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority; and

20. ~~The position audit procedure, including the impartial review process, of the Office of Personnel Management pursuant to Section 840-4.3 of Title 74 of the Oklahoma Statutes. Provided, that any appeal from an impartial review determination to a court of competent jurisdiction shall be confined to the record in accordance with the provisions of Article II of the Administrative Procedures Act; and~~

~~21.~~ The Oklahoma Office of Homeland Security.

SECTION 9. This act shall become effective July 1, 2005.

SECTION 10. 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.

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