ENGROSSED HOUSE
BILL NO. 1755

By: Miller (Doug) of the House

and

Nichols of the Senate

An Act relating to state government; amending 74 O.S. 2001, Sections 840-1.9, 840-4.17, as last amended by Section 12, Chapter 312, O.S.L. 2004 and 840-6.8 (74 O.S. Supp. 2004, Section 840-4.17), which relate to the Oklahoma Personnel Act; modifying duties of the Oklahoma Merit Protection Commission; modifying criteria for employee performance management system; modifying rating requirements; expanding jurisdiction of the Oklahoma Merit Protection Commission; deleting certain procedures for payment of attorney fees; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-1.9 is amended to read as follows:

Section 840-1.9 In addition to any other duties expressly set forth by law, the Oklahoma Merit Protection Commission shall:

1. Receive and act on complaints, counsel persons and groups on their rights and duties and take action designed to obtain voluntary compliance with the provisions of the Oklahoma Personnel Act;

2. Investigate allegations of violations of the provisions of the Oklahoma Personnel Act within ~~their~~ <u>its</u> jurisdiction;

3. Investigate allegations of abuses in the employment practices of the Administrator of the Office of Personnel Management or of any state agency;

4. Investigate allegations of violations of the rules of the Merit System of Personnel Administration and prohibited activities in the classified service;

5. Establish and maintain a statewide Alternative Dispute Resolution Program to provide dispute resolution services for state agencies and employees;

6. Establish rules and regulations, pursuant to the Administrative Procedures Act as may be necessary to perform the duties and functions of the Commission;

7. Establish guidelines for the qualifications, duties, responsibilities, authority, power, and continued employment of the Executive Director, Administrative Hearing Officers, mediators, and other resolution arbitrators or facilitators;

8. Prepare and preserve an audio tape of all proceedings of all hearings conducted by the Commission and furnish transcripts of such tapes upon payment of the costs of such transcripts by the party requesting the transcripts;

9. Submit quarterly, fiscal year reports on workload statistics to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate containing the following information:

a. the number of cases, complaints, and requests for hearing filed, disposed of and pending with the Commission for each month of the quarter,

b. a numerical breakdown of the methods of disposition of such cases, complaints, and requests for hearing,

c. a numerical breakdown of mediations, prehearing conferences, and appellate hearings, conducted, and

d. the date of the oldest pending case, complaint, and request for hearing.

~~The report for the first quarter of fiscal year 1989 shall be submitted on or before October 31, 1988.~~ Quarterly reports ~~thereafter~~ shall be submitted within thirty (30) days following the last day of the month of the appropriate quarter; ~~and~~

10. Make all records of the Commission, except those made confidential by law, available for public inspection, copying and mechanical reproduction, or either of them, in accordance with the Oklahoma Open Records Act and charge a fee not to exceed twenty-five cents ($0.25) per page as the direct costs of document copying or mechanical reproduction. All fees collected pursuant to the provisions of this paragraph shall be deposited in the Oklahoma Merit Protection Commission Revolving Fund; and

11. Have jurisdiction to investigate or hear appeals of individual service ratings pursuant to the provisions of Section 840-4.17 of this title.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-4.17, as last amended by Section 12, Chapter 312, O.S.L. 2004 (74 O.S. Supp. 2004, Section 840-4.17), is amended to read as follows:

Section 840-4.17 A. The Office of Personnel Management shall make available one standard performance management system that shall be used by all agencies for completing employee service ratings. The purpose of this employee performance management system is to evaluate the performance of each regular classified, unclassified and exempt employee in the executive branch of state government except those in the exempt unclassified service as specified in paragraphs 1 and 2 of subsection A of Section 840-5.5 of this title and those employees employed by the institutions under the administrative authority of The Oklahoma State System of Higher Education.

B. The employee performance management system shall provide for the following:

1. An objective evaluation of the employee, by the immediate supervisor, of the performance of the employee within the assigned duties of the job;

2. The identification of the strengths and deficiencies of the employee;

3. The identification by the immediate supervisor of accountabilities upon which the employee will be evaluated;

4. A mid-term interview with the immediate supervisor for the purpose of discussing the progress of the employee in meeting the accountabilities upon which the employee will be evaluated;

5. Corrective actions, if necessary, to correct deficiencies;

~~4. An~~ 6. A final interview with the employee by the immediate supervisor who shall provide the employee with a copy of the service ratings; ~~and~~

~~5.~~ 7. The opportunity for the employee to submit written comments regarding the service rating; and

8. The opportunity for the employee to appeal the evaluation to the Oklahoma Merit Protection Commission.

C. Each employee shall be rated at least thirty (30) days prior to the end of the probationary period. ~~Thereafter~~ Except as may otherwise be provided by rules promulgated by the Administrator of the Office of Personnel Management, after the end of the probation period, each employee shall be rated ~~no less than once each year~~ annually on a twelve-month period.

D. Any permanent classified employee who disagrees with the employee's individual service rating may file a grievance pursuant to Section 840-6.2 of this title. Any employee, regardless of status, who is required to be rated pursuant to this section and who disagrees with the individual service rating of the employee may file a complaint through any other dispute resolution process made available through the employing agency or the Oklahoma Merit Protection Commission. ~~The Oklahoma Merit Protection Commission shall not have jurisdiction to investigate or hear appeals of individual service ratings.~~

E. The agency shall use available service ratings of current or former state employees in decisions regarding promotions,

appointments, demotions, performance pay increases and discharges. Reductions-in-force shall not be considered discharges.

F. The agency shall retain a copy of the service rating for each employee of the agency. A copy of the service rating shall be retained in the employee's personnel file.

G. Each appointing authority shall annually report ~~their~~ its compliance with the provisions of this section in writing to the Administrator of the Office of Personnel Management. The Administrator shall prescribe a form for such reporting.

H. The Administrator of the Office of Personnel Management shall conduct an annual random audit of state agencies in compliance with this section.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-6.8, is amended to read as follows:

Section 840-6.8 A. The presiding officer of any hearing or Alternative Dispute Resolution Program proceeding before the Oklahoma Merit Protection Commission may require payment of reasonable attorney fees and costs to the prevailing party if the position of the nonprevailing party was without reasonable basis or was frivolous.

B. ~~Requests by prevailing parties for payment of attorney fees and costs shall be filed by motion with a copy served on other parties within ten (10) days of the date that the decision is issued. A responsive pleading may be filed within ten (10) days of the date the motion is filed with the Oklahoma Merit Protection Commission. The motion shall be filed at the office of the Oklahoma Merit Protection Commission to the attention of the presiding officer and the ruling on the motion shall be made in an addendum decision.~~

~~C. The motion for fees and costs shall state why the prevailing party believes he or she is entitled to an award under this statute~~

~~and shall be supported by evidence substantiating the amount of the request. Such evidence shall include the following:~~

~~1. Accurate and current time records;~~

~~2. A copy of the terms of any fee agreement between the party and the attorney;~~

~~3. The attorney's customary billing rate for similar work, provided the attorney has a billing practice to report; and~~

~~4. Evidence of the prevailing community rate sufficient to establish a market value for the services rendered.~~

~~D.~~ If the Oklahoma Merit Protection Commission determines that the appeal is frivolous, any party may be assessed attorney fees and costs of the action.

~~E.~~ C. A petition for judicial review by the Oklahoma Merit Protection Commission of the addendum decision shall be filed in accordance with Article II of the Administrative Procedures Act, within ten (10) days of the issue date of said decision.

SECTION 4. This act shall become effective November 1, 2005.

Passed the House of Representatives the 15th day of March, 2005.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2005.

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Presiding Officer of the Senate