

EHB 1755

THE STATE SENATE
Wednesday, April 13, 2005

ENGROSSED

House Bill No. 1755

As Amended

ENGROSSED HOUSE BILL NO. 1755 - By: MILLER (Doug) of the House and
NICHOLS of the Senate.

**[state government - Oklahoma Personnel Act - Oklahoma Merit
Protection Commission - modifying duties - 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~~ its jurisdiction;

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

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

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

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

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

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

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

- 1 a. the number of cases, complaints, and requests for
2 hearing filed, disposed of and pending with the
3 Commission for each month of the quarter,
4 b. a numerical breakdown of the methods of disposition of
5 such cases, complaints, and requests for hearing,
6 c. a numerical breakdown of mediations, prehearing
7 conferences, and appellate hearings, conducted, and
8 d. the date of the oldest pending case, complaint, and
9 request for hearing.

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

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

1 11. Have jurisdiction to investigate or hear appeals of
2 individual service ratings pursuant to the provisions of Section
3 840-4.17 of this title.

4 SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-4.17, as
5 last amended by Section 12, Chapter 312, O.S.L. 2004 (74 O.S. Supp.
6 2004, Section 840-4.17), is amended to read as follows:

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

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

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

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

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

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

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

9 ~~4.~~ 6. A final interview with the employee by the immediate
10 supervisor who shall provide the employee with a copy of the service
11 ratings; ~~and~~

12 ~~5.~~ 7. The opportunity for the employee to submit written
13 comments regarding the service rating; and

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

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

22 D. Any permanent classified employee who disagrees with the
23 employee's individual service rating may file a grievance pursuant

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

9 E. The agency shall use available service ratings of current or
10 former state employees in decisions regarding promotions,
11 appointments, demotions, performance pay increases and discharges.
12 Reductions-in-force shall not be considered discharges.

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

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

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

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

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

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

18 C. ~~The motion for fees and costs shall state why the prevailing~~
19 ~~party believes he or she is entitled to an award under this statute~~
20 ~~and shall be supported by evidence substantiating the amount of the~~
21 ~~request. Such evidence shall include the following:~~

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

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

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

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

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

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-6-05 - DO
16 PASS, As Amended.