STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 385 By: Gumm

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 2001, Sections 840-1.6, 840-1.9, 840-2.27C, as last amended by Section 1, Chapter 277, O.S.L. 2004, 840-4.17, as last amended by Section 12, Chapter 312, O.S.L. 2004, 840-5.1, 840-5.5, as last amended by Section 28, Chapter 418, O.S.L. 2004 and 6.5, as amended by Section 5, Chapter 353, O.S.L. 2003 (74 O.S. Supp. 2004, Sections 840-2.27C, 840-4.17, 840-5.5 and 840-6.5), which relate to the Oklahoma Personnel Act; requiring Administrator of Office of Personnel Management to employ Workforce Planning Director; modifying powers and duties of Merit Protection Commission; deleting obsolete language; requiring reduction-in-force implementation plan to be submitted to certain entities; requiring Administrator to conduct certain audits to determine compliance with certain provisions; providing procedures in cases of noncompliance; requiring Office of Personnel Management to promulgate certain rules; providing for employment preferences for certain persons with respect to unclassified positions; providing procedures therefor; requiring Office of Personnel Management to establish certain system; requiring certain notice in demotion actions; specifying certain duties of Office of Personnel Management; creating Task Force for the Study of Classified and Unclassified Positions in State Government; providing for membership, purpose, duties, recommendations, organization, meetings, votes, travel reimbursement, staffing and report of Task Force; defining terms; subjecting Task Force to certain provisions of law; specifying certain duties of Office of Personnel Management; amending Section 1, Chapter 376, O.S.L. 2003 (68 O.S. Supp. 2004, Section 238.2), which relates to compliance of state employees with state income tax laws; modifying contents of certain statement; providing that certain disciplinary actions be subject to procedures of Oklahoma Personnel Act; providing for noncodification; 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 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.

The Administrator may employ attorneys, accountants and other personnel as he or she deems necessary to carry out the duties imposed upon the Office. Employees of the Office shall be subject to the Merit System of Personnel Administration, unless otherwise exempted by Section ~~8~~ 5.5 of this ~~act~~ title.

The Administrator shall employ a Workforce Planning Director.

SECTION 2. 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;

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, including, but not limited to, rules to monitor state agency grievance processes to insure

fairness and balance. The Commission shall also recommend any changes it deems necessary to improve such grievance processes to the appropriate state agency;

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.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-2.27C, as last amended by Section 1, Chapter 277, O.S.L. 2004 (74 O.S. Supp. 2004, Section 840-2.27C), 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 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. <u>The reduction-in-force implementation plan shall be provided to the Director of State Finance and any labor organization representing state</u>

employees at such time. 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 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 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 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 removed, or eighteen (18) months after the date of separation, whichever is first, this priority consideration for reemployment shall expire. If an agency, including but not limited to the University Hospitals Authority, 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, including but not limited to the University Hospitals Authority, 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 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.

N. Except as otherwise provided, the University Hospitals Authority shall not be subject to the provisions of this section. Beginning August 25, 1995, the provisions of subsection G of this section regarding priority reemployment consideration shall apply to any employee of the University Hospitals Authority who was employed on or became employed after February 1, 1995, and who is separated from state service as a result of a reduction-in-force. The University Hospitals Authority shall conduct a reduction-in-force to terminate employees, regardless of status, whose positions are eliminated because of a contract with a private nongovernmental entity for the lease and operations of the University Hospitals pursuant to the University Hospitals Authority Act.

SECTION 4. 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. Corrective actions, if necessary, to correct deficiencies;

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

5. The opportunity for the employee to submit written comments regarding the service rating.

C. Each employee shall be rated at least thirty (30) days prior to the end of the probationary period. Thereafter, each employee shall be rated no less than once each year.

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~~ regular audits of state agencies to determine whether they are in compliance with this section. Any agency deemed to be out of compliance shall submit a written plan to the Administrator detailing the efforts the agency will make to come into compliance at the earliest possible date.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 840-5.1, is amended to read as follows:

Section 840-5.1 A. Unless otherwise provided, offices and positions in the unclassified service are in no way subject to any of the provisions of ~~this act~~ the Oklahoma Personnel Act or of the rules and regulations promulgated hereunder except leave regulations. Provided, offices and positions of the State Senate

and House of Representatives shall not be subject to regulations of the Office of Personnel Management on involuntary leave without pay or furlough but shall be subject to any involuntary leave without pay or furlough plan adopted by the President Pro Tempore of the Senate or the Speaker of the House of Representatives. No person chosen by election or appointment to fill an elective office shall be subject to any leave plan or regulation or shall such person be eligible for accrual of any leave benefits.

B. The Office of Personnel Management shall promulgate rules requiring all state agencies to submit policies and procedures governing the employment, compensation, administration, discipline and other human resource functions relating to unclassified employees. Such policies and procedures shall be submitted no later than October 1, 2005, and whenever they are revised thereafter and shall be available for public inspection at the Office of Personnel Management.

C. In establishing employment lists of eligible persons for employment in the state service as unclassified employees, all state agencies shall provide preferences for honorably discharged veterans as defined by Sections 67.13a and 67.13b of Title 72 of the Oklahoma Statutes. Preferences shall be provided to the following persons in order:

1. Any war veteran as defined in Section 67.13a of Title 72 of the Oklahoma Statutes who has met any and all qualifications and passed any examinations and who has submitted proof of having a service-connected disability as certified by the United States Veterans Administration or agency of the United States Department of Defense within six (6) months of the date of application. Such veterans shall not be denied employment or passed over for other veterans or nonveterans, without showing cause. Acceptable cause shall include a reasonable expectation of the inability of the preferenced applicant to satisfactorily perform at the required

level of the position and shall be reviewed in each instance by the Administrator of the Office of Personnel Management. If the Administrator finds that acceptable cause for the denial of employment to the preferenced applicant does not exist, the appointing authority shall be required to hire the preferenced applicant. The position shall not be permanently filled until the Administrator has issued findings;

2. Any person who has met any and all qualifications and passed any examinations and who has submitted proof of having status as a veteran or unremarried surviving spouse of a veteran; and

3. Any person who has met any and all qualifications and passed any examinations and who has submitted proof of having status as a spouse of a veterans who is unemployable due to a service-connected disability as certified by the United States Veterans Administration or agency of the United States Department of Defense within six (6) months of the date of application.

SECTION 6. AMENDATORY 74 O.S. 2001, Section 840-5.5, as last amended by Section 28, Chapter 418, O.S.L. 2004 (74 O.S. Supp. 2004, Section 840-5.5), 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. Law Enforcement Highway Patrol Administrator,

s. Director of Safety Compliance, and

t. 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. Bill Willis Community Mental Health and Substance Abuse Center personnel occupying the following offices and positions:

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. Information Services Division Manager,

c. Network Manager,

d. Network Technician,

e. Employees of the Budget Division, and

f. Employees of the Research Division;

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;

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, and

c. one Administrative Assistant;

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, and

k. one State Use Contracting Officer;

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, and

x. one Mammal Control Officer;

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; and

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

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~~ 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, 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. 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.

E. The Office of Personnel Management shall establish a regulatory system to approve and monitor the addition of unclassified positions to state government.

SECTION 7. 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 review the findings of the agency prior to such demotion occurring.

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 8. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. There is hereby created the Task Force for the Study of Classified and Unclassified Positions in State Government.

B. The Task Force shall consist of eight (8) members to be selected as follows:

1. One member to be appointed by the Governor;

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

3. Two members to be appointed by the President Pro Tempore of the State Senate;

4. A person selected by the governing board of a statewide nonprofit membership organization formed for the benefit of active state employees with at least two thousand five hundred (2,500) members;

5. The Administrator of the Office of Personnel Management or designee; and

6. The Executive Director of the Oklahoma Merit Protection Commission or designee.

C. As used in this section, "classified" and "unclassified" positions shall mean, respectively, those positions which are and are not included in the Merit Protection System.

D. The purpose of the Task Force shall be to study the nature, status, functions, and composition of the classified and unclassified services of the state, to review reasons for unclassifying positions, and to make recommendations to the Governor, the Oklahoma House of Representatives and the Oklahoma State Senate for reclassifying positions.

E. In making recommendations based on this study, the Task Force shall include recommendations regarding:

1. Appropriate conditions and provisions for employment in the classified and unclassified services;

2. The types of offices, positions, and personnel that should comprise the classified service and the unclassified services, including recommendations for the transfer of positions from the classified service to the unclassified and vice versa; and

3. Such other matters relevant to a thorough study and analysis of the classified and unclassified services as the Task Force may select.

F. The Task Force shall select from among its membership a chair and vice chair.

G. The Task Force shall be authorized to meet as required in order to perform the duties imposed upon it. The business of the Task Force may be conducted by an affirmative vote of a simple majority of the members in attendance.

H. The Task Force shall be subject to the provisions of the Oklahoma Open Meeting Act and the Oklahoma Open Records Act. Travel reimbursement for members of the Task Force shall be paid by the appointing authority pursuant to the provisions of the State Travel

Reimbursement Act. Legislators appointed to serve on the Task Force shall be reimbursed as provided by Section 456 of Title 74 of the Oklahoma Statutes.

I. Staffing for the Task Force shall be provided by the Oklahoma House of Representatives and the Oklahoma State Senate. Additional assistance shall be provided by the Office of Personnel Management and the Oklahoma Merit Protection Commission.

J. The Task Force shall summarize the information required by the provisions of subsection E of this section in a final report. The Task Force may disclose possible inequities between classified and unclassified positions performing the same tasks, and make recommendations for reclassifying identified job classes across state government.

K. The final report of the Task Force shall be submitted to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate not later than January 31, 2006.

L. The Office of Personnel Management shall establish a regulatory system to approve and monitor the addition of unclassified positions to state government based on the recommendations of the Task Force.

SECTION 9. AMENDATORY Section 1, Chapter 376, O.S.L. 2003 (68 O.S. Supp. 2004, Section 238.2), is amended to read as follows:

Section 238.2 A. It is the intent of the Legislature that the provisions of this section operate to provide for the collection of income taxes due to the State of Oklahoma by state employees in a manner that will maximize flexibility for state employees to pay any such taxes due while minimizing disruption to operations of state agencies. It is the further intent of the Legislature that the Oklahoma Tax Commission provide notice to state employees pursuant to the provisions of subsection C of this section.

B. The Office of State Finance shall, not later than August 1, 2003, and August 1 of each year thereafter, provide to the Tax Commission a list of all state employees as of the preceding July 1 and such identifying information as may be required by the Tax Commission. Such list and information shall be used by the Tax Commission exclusively for the purpose of collection of income taxes due to the State of Oklahoma. The provisions of any laws making information confidential shall not apply with respect to information supplied to the Tax Commission pursuant to the provisions of this section; provided, such information shall be subject to the provisions of Section 205 of Title 68 of the Oklahoma Statutes.

C. The Tax Commission shall, not later than November 1, 2003, and November 1 of each year thereafter, notify any state employee who is not in compliance with the income tax laws of this state. Such notification shall include:

1. A statement that the employee will be subject to disciplinary action by the appointing authority, subject to the procedures of the Oklahoma Personnel Act, unless the taxpayer is deemed by the Tax Commission to be in compliance with the income tax laws of this state;

2. The reasons that the taxpayer is considered to be out of compliance with the income tax laws of this state, including a statement of the amount of any tax, penalties and interest due or a list of the tax years for which income tax returns have not been filed as required by law;

3. An explanation of the rights of the taxpayer and the procedures which must be followed by the taxpayer in order to come into compliance with the income tax laws of this state; and

4. Such other information as may be deemed necessary by the Tax Commission.

D. A state employee who has entered into and is abiding by a payment agreement, or who has requested relief as an innocent spouse

which is pending or has been granted, shall be deemed to be in compliance with the state income tax laws for purposes of this section.

E. If the Tax Commission notifies a state employee who is not in compliance with the income tax laws of this state as required in this section and such state employee does not respond to such notification or fails to come into compliance with the income tax laws of this state after an assessment has been made final or after the Tax Commission determines that every reasonable effort has been made to assist the state employee to come into compliance with the income tax laws of this state, the Tax Commission, notwithstanding the provisions of Section 205 of Title 68 of the Oklahoma Statutes, shall so notify the appointing authority, which shall commence disciplinary action with respect to the state employee, subject to the procedures of the Oklahoma Personnel Act, and shall notify the state employee of the reason for such action; provided, if a state agency receives notification with respect to a state employee who has been subject to disciplinary action pursuant to the provisions of this section two or more times in the previous three (3) calendar years, such employee shall be terminated by the state agency according to the procedures provided by law. If a state employee who has been previously reported by the Tax Commission to a state agency as being out of compliance comes into compliance, the Tax Commission shall immediately notify the appointing authority. Neither a state agency nor an appointing authority shall be held liable for any action with respect to a state employee pursuant to the provisions of this section.

F. The Tax Commission shall promulgate rules for the implementation of the provisions of this section.

G. As used in this section:

1. “State agency” means any office, department, board, commission or institution of the executive, legislative or judicial branch of state government;

2. “Employee” or “state employee” means an appointed officer or employee of a state agency; provided, the term employee or state employee shall not include an elected official or an employee of a local governmental entity; and

3. “Appointing authority” means the chief administrative officer of a state agency.

SECTION 10. This act shall become effective July 1, 2005.

SECTION 11. 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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