

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 818

By: Shurden

AS INTRODUCED

An Act relating to Oklahoma Homeland Security Act; amending Section 1, Chapter 157, O.S.L. 2004, Section 1, Senate Joint Resolution No. 42, O.S.L. 2002, as amended by Section 2, Chapter 157, O.S.L. 2004, and as renumbered by Section 8, Chapter 157, O.S.L. 2004, and Sections 3 and 4, Chapter 157, O.S.L. 2004 (74 O.S. Supp. 2004, Sections 51, 51.1, 51.2 and 51.3), which relate to the Oklahoma Homeland Security Act; modifying references; modifying language; requiring audit of all federal and grant funds by certain agencies; requiring federal homeland security funds be administered by Office of Homeland Security; providing for tracking of certain equipment by Office of Homeland Security; directing promulgation of certain rules and forms; granting audit authority over certain funds, fees, processes and information; directing deposit of certain fees, penalties and monies into certain revolving fund; creating the Oklahoma First Responder Identification Card; setting application procedure; providing minimal standards by rule; authorizing electronic or computerized information for certain purpose; requiring certain application information; requiring certain approval before completing certification process; setting time to complete certain application process; establishing certification fee and process; requiring motor license agent to process certain information and collect certain fees; authorizing retention of certain amount of certification fee by motor license agent for certain purpose; directing deposit of certain fees with State Treasurer for certain distribution; crediting certain fee amount to the Department of Public Safety Computer Imaging System and the Oklahoma Homeland Security Revolving Fund; requiring certain photo; fingerprints and signature on application; directing the Department of Public Safety to instruct on certain process and record keeping procedures; making first responder card information confidential; prohibiting release of certain information by motor license agent; requiring return of certificates of approval to Office of Homeland Security within certain time; making first responder card non-expiring; authorizing revocation and suspension of first card by rule; authorizing Office of Homeland Security to assess administration penalties and other actions by rule against certain persons for certain purposes; directing administrative penalties be paid to certain fund; setting maximum amount of administrative penalty; authorizing appeal of certain administrative actions and penalties to district court; requiring certain

proceedings and information to be kept confidential for security purposes; allowing release of certain information under certain condition; setting time for certain hearing; authorizing Office of Homeland Security to file objection to appeal; declaring certain decision a final order not subject to further appeal; directing court clerk to process certain records in certain manner; criminalizing submission false or fraudulent information on certain application; setting penalties; providing for denial or revocation of certain certification; directing suspension of certain credentials for certain period of time; prohibiting certain release of secure information; prohibiting forgery or unauthorized use of certain information; setting penalties; establishing certain database within the Computer Imaging System for certain purpose; making certain database system secure and subject to penalty for release; directing Office of Homeland Security to coordinate with Department of Public Safety for certain information included in certain database systems; exempting certain secure information for release for law enforcement purposes; prohibiting cross-reference or combination of certain information with certain database system; requiring separate numbering and identification of certain certification cards; requiring first responders to notify Office of Homeland Security of changes in application and qualification within certain time; authorizing administrative action or criminal prosecution for failure to make certain notification; requiring certain employers to report certain information under administrative penalty; exempting Office of Homeland Security operations and information from the Oklahoma Open Records Act; amending 74 O.S. 2001, Section 500.18, as last amended by Section 5, Chapter 157, O.S.L. 2004 (74 O.S. Supp. 2004, Section 500.18), which relates to travel expenses; amending 74 O.S. 2001, Section 840-5.5, as last amended by Section 7, Chapter 157, O.S.L. 2004 (74 O.S. Supp. 2004, Section 840-5.5), which relates to unclassified positions; 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 Administrative Procedures Act; modifying language; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 1, Chapter 157, O.S.L. 2004 (74 O.S. Supp. 2004, Section 51), is amended to read as follows:

Section 51. Sections ~~4~~ 51 through ~~4~~ 51.3 of this title and Section 4 of this act shall be known ~~as~~ and may be cited as the "Oklahoma Homeland Security Act".

SECTION 2. AMENDATORY Section 1, Senate Joint Resolution No. 42, O.S.L. 2002, as amended by Section 2, Chapter 157, O.S.L. 2004, and as renumbered by Section 8, Chapter 157, O.S.L. 2004 (74 O.S. Supp. 2004, Section 51.1), is amended to read as follows:

Section 51.1 A. There is hereby created the ~~Oklahoma~~ Office of Homeland Security. The Governor shall be the chief officer of the Office and shall appoint a Homeland Security Director who shall be responsible to the Governor for the operation and administration of the Office. The Governor shall determine the salary for the Director.

B. The ~~Oklahoma~~ Homeland Security Director shall possess or obtain a federally recognized Top Secret Level Clearance.

1. Any employee of state government appointed to the position of ~~Oklahoma~~ Homeland Security Director shall have a right to return to the previously held classified position of the employee without any loss of rights, privileges, or benefits immediately upon completion of the duties as ~~Oklahoma~~ Homeland Security Director, provided the employee is not otherwise disqualified.

2. Any person appointed to the position of ~~Oklahoma~~ Homeland Security Director, if already a member of a state retirement system, shall be eligible to continue participation in that system. If not a member of a state retirement system, the Homeland Security Director shall be eligible to participate in the Oklahoma Public Employees Retirement System. The ~~Oklahoma~~ Homeland Security Director shall be eligible for participation in only one retirement system and shall elect in writing the system in which the Director intends to participate.

3. The Commissioner of the Department of Public Safety may commission the ~~Director of~~ Homeland Security Director as a peace

officer, if at the time of appointment the Director is certified as a law enforcement officer by the Council on Law Enforcement Education and Training (CLEET) or as a state trooper, if at the time of appointment the Director is a CLEET-certified officer of the Oklahoma Highway Patrol.

C. The ~~Oklahoma~~ Office of Homeland Security shall consist of at least three divisions:

1. Prevention and Intelligence;
2. Response and Recovery Planning; and
3. Awareness and Preparedness.

D. The Homeland Security Director shall be authorized to employ personnel necessary to achieve the mission and responsibilities of the Office. Other federal, state, and local personnel may be assigned to the Office of Homeland Security pursuant to an interagency agreement. The Governor shall designate at which appropriate state agency the ~~Oklahoma~~ Office of Homeland Security shall be located. ~~That~~ The designated agency shall provide housing, administrative staff and other support to the ~~Oklahoma~~ Office of Homeland Security. All positions and personnel of the Office of Homeland Security shall be exempt from the full-time-employee limit of the state agency where the Office of Homeland Security is located.

E. The ~~Oklahoma~~ Homeland Security Director shall have the duty and responsibility to develop and coordinate the implementation and administration of a comprehensive statewide strategy to secure the State of Oklahoma from the results of acts of terrorism, from a public health emergency, from cyberterrorism, and from weapons of mass destruction as that term is defined in 18 U.S.C., Section 2332a, and to perform other duties assigned by the Governor. These duties shall include but not be limited to:

1. Representing the State of Oklahoma with federal agencies as the state homeland security director for purposes of accessing

federal funds and cooperating with federal agencies in the development and implementation of a nationwide homeland security plan of response; and

2. Coordinating ~~the Homeland Security~~ all homeland security plans and efforts within the State of Oklahoma, including working with the Governor and Legislature, state agencies, and local elected officials and local governments, emergency responder groups, private-sector businesses, educational institutions, volunteer organizations, and the general public. State agencies receiving federal funding for homeland security purposes shall report the amount and intended use of those funds to the ~~Oklahoma~~ Homeland Security Director to ensure efficient use of funds and to avoid duplication of efforts. All federal funds and grants from any source used for homeland security and equipment shall be audited by the Office of Homeland Security with the assistance of the State Auditor and Inspector pursuant to law or rules established for such purpose. The Office of Homeland Security shall be the grant administrator for all federal homeland security funds awarded to any agency in this state and all funds shall pass through the Office. Any equipment purchased for or to be used to assist in homeland security shall be identified and tracked by the Office of Homeland Security.

F. Included in the comprehensive statewide strategy and consistent with the National Strategy for Homeland Security, as promulgated by the Office of the President of the United States, or its successor plan or plans, the ~~Oklahoma~~ Homeland Security Director shall establish the following strategic objectives for Oklahoma:

1. To prevent terrorist attacks;
2. To reduce vulnerability to terrorism;
3. To minimize the damage from and to recover from terrorist attacks; and
4. Such other duties as the Governor may prescribe.

G. The ~~Oklahoma~~ Office of Homeland Security shall have the following duties:

1. Establish a plan for the effective implementation of a statewide emergency All-Hazards response system, including the duties and responsibilities of regional emergency response teams;

2. Create, implement, and administer an advisory system;

3. Coordinate and prepare applications for federal funds related to homeland security and accessing and, distributing, auditing, and tracking the federal funds, and any equipment purchased by such funds; and

4. Cooperate with federal agencies in the development and implementation of a nationwide homeland security plan or response.

H. The ~~Oklahoma~~ Office of Homeland Security and any local government may enter into contracts with each other for equipment and personnel, or both. The contract may include any provisions agreed upon by the parties and as required by any federal or state grant, if applicable.

I. All state agencies and political subdivisions of this state and all officers and employees of those agencies and political subdivisions are hereby directed to cooperate with and lend assistance to the ~~Oklahoma~~ Homeland Security Director.

J. The Office of Homeland Security shall promulgate rules and develop forms necessary to implement the duties and responsibilities of the Office.

K. The Office of Homeland Security shall have authority to audit all grants related to homeland security and equipment, records pertaining to collection of certification fees, issuance of OFR-ID certification cards, and to verify the veracity and validity of any individual application, including employment, education, certification, registration, license and any other supporting information or documentation to the application.

SECTION 3. AMENDATORY Section 3, Chapter 157, O.S.L. 2004 (74 O.S. Supp. 2004, Section 51.2), is amended to read as follows:

Section 51.2 A. There is hereby created in the State Treasury a revolving fund for the ~~Oklahoma~~ Office of Homeland Security to be designated the "Oklahoma Homeland Security Revolving Fund". The Oklahoma Homeland Security Revolving Fund shall be a continuing fund, not subject to fiscal year limitations and shall consist of monies received by the ~~Oklahoma~~ Office of Homeland Security or the Department of Public Safety from:

1. Reimbursements from responsible parties for reasonable actions taken and costs incurred by a regional team in response to an incident or event involving a dangerous substance;

2. Reimbursements, grants, or other monies received from other state agencies and entities of state government;

3. Reimbursements, grants, or other monies received by the ~~Oklahoma~~ Office of Homeland Security or the Department of Public Safety from the United States government or pursuant to proceedings in district court to enforce claims initiated pursuant to the Oklahoma Homeland Security Act or the Oklahoma Emergency Response Act;

4. Gifts, donations, and bequests;

5. Monies appropriated or apportioned by the state; ~~and~~

6. Receipts from other ancillary services related to incidents or events related to dangerous substances, not otherwise provided by law; and

7. First responder application fees as provided by law, administrative penalties assessed and collected pursuant to the rules promulgated by the Office of Homeland Security and as provided by law, and other monies directed by law to be deposited in this revolving fund.

B. All monies accruing to the credit of the Oklahoma Homeland Security Revolving Fund are hereby appropriated and may be budgeted and expended by the ~~Oklahoma~~ Office of Homeland Security for:

1. Operating expenses;
2. Administrative duties; and
3. Education and reimbursement for expenses of regional teams, including maintenance of equipment.

C. Expenditures from the Oklahoma Homeland Security Revolving Fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 4. AMENDATORY Section 4, Chapter 157, O.S.L. 2004 (74 O.S. Supp. 2004, Section 51.3), is amended to read as follows:

Section 51.3 A. There are hereby created regional planning and coordination advisory councils ~~for homeland security~~ to assist the Office of Homeland Security. The ~~Oklahoma~~ Homeland Security Director shall designate the geographical boundaries for each regional advisory council within the state.

B. Each regional advisory council shall be composed of the following members:

1. A chief of a paid fire department;
2. A chief of a volunteer fire department;
3. A county sheriff;
4. A chief of a police department;
5. A physician or hospital administrator;
6. An emergency management coordinator;
7. An emergency medical services provider;
8. A veterinarian;
9. A representative of a state or local disaster relief agency;
10. A city manager or mayor;
11. A county commissioner; and

12. A public health representative.

The members of the regional advisory councils shall be appointed by the ~~Oklahoma~~ Homeland Security Director. The Director shall appoint from a list of nominees provided to the Director from statewide associations or entities that represent the disciplines to be represented on the advisory councils. All members can be removed for cause by the Director.

C. Each member of a regional advisory council shall reside in or have employment duties within the region to be served by the regional advisory council. Regional advisory council members shall have staggered terms of office not exceeding three (3) years and may be reappointed upon the expiration of a term.

D. Each regional advisory council shall meet at least quarterly or more frequently at the discretion of the Director. The Director or designee from the ~~Oklahoma~~ Office of Homeland Security shall attend the meetings of the regional advisory councils. A majority of the members of the regional advisory council shall constitute a quorum. The Office of Homeland Security shall establish policies and procedures regarding the operation of the regional advisory councils.

E. The duties and responsibilities of each regional advisory council shall be:

1. Assessing and documenting the needs of the region related to homeland security;

2. Coordinating and cooperating with the ~~Oklahoma~~ Office of Homeland Security to achieve the strategic objectives prescribed in ~~this act~~ the Oklahoma Homeland Security Act; and

3. Other duties and responsibilities as determined by the ~~Oklahoma~~ Homeland Security Director.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51.4 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Office of Homeland Security shall develop an identification card for every person certified to participate on an emergency response team as a first responder pursuant to the Oklahoma Homeland Security Act. Such identification shall be known as the Oklahoma First Responder Identification Card, hereinafter referred to as OFR-ID.

B. Every person qualified and desiring to be a first responder shall make application to the Office of Homeland Security upon such forms developed and approved by the Office. All first responders shall meet at least minimal standards established by the Office by rule. The Office is authorized to use electronic, computerized or other means to distribute, collect, submit and approve applications and information and to verify any information necessary to process persons for an OFR-ID card.

C. The OFR-ID application shall contain the following information, including, but not limited to:

1. Full name;
2. Residential address, including house or apartment number, street, city, county, state and zip code information;
3. Date and place of birth;
4. Social security number;
5. Driver license number, issuing state, and expiration date;
6. Military identification number, if applicable;
7. Current employer or employing agency within the city, county or State of Oklahoma, including employment address, current position and title;
8. Listing of education and specific qualifications and training, including but not limited to: degrees, certifications, registrations and licenses by providing the date issued or received, identification number, if applicable, and institution or issuing authority by name and address;

9. Other information specifically required by the Office of Homeland Security or necessary for the specific type of first responder; and

10. In addition to the above-stated information, the person shall submit to a current passport-type photo, a complete set of fingerprints, and an original signature of the applicant.

D. 1. Upon verification of information and approval of the OFR-ID application by the Office of Homeland Security, the person shall be deemed to meet the required standards for a first responder, and may thereafter complete the OFR-ID certification process. If approved, the person shall receive a certificate of approval from the Office of Homeland Security either by mail, electronic or computerized means. Anytime within thirty (30) days after the receipt of such certificate of approval, the person shall complete the OFR-ID certification process by paying a certification fee of Ten Dollars (\$10.00) to any motor license agent and submitting the original certificate of approval to such motor license agent for processing.

2. Each motor license agent collecting certification fees for processing OFR-ID applicants shall retain Three Dollars (\$3.00) of the total certification fee collected from each OFR-ID applicant. The three-dollar fee retained by the motor license agent shall be used for operating expenses. The balance of the fee collected from OFR-ID applicants shall be transmitted to the Office of the State Treasurer to be deposited as follows:

- a. Five Dollars (\$5.00) credited to the Department of Public Safety Computer Imaging System Revolving Fund in a separate account established for OFR-ID certification fees, and
- b. Two Dollars (\$2.00) credited to the Oklahoma Homeland Security Revolving Fund.

3. After receiving the required certification fee and the original certificate of approval from the OFR-ID applicant, the motor license agent shall make a digital image photo, take the applicant's fingerprints, and secure an original signature of the person before processing the OFR-ID certification card. Every motor license agent shall receive instruction from the Department of Public Safety on the proper utilization of the digital image driver license equipment for processing OFR-ID certification cards and record keeping procedures. All OFR-ID information shall be confidential as provided in this act. No motor license agent shall release any OFR-ID information to any person or the public, except as specifically required or allowed by law. All certificates of approval shall be returned monthly to the Office of Homeland Security after processing the OFR-ID certification card.

4. All OFR-ID cards shall be non-expiring, but may be revoked or suspended pursuant to rule. The Office of Homeland Security shall have authority to assess administrative penalties and take other administrative actions against an OFR-ID card holder for violation of any rule or failure to perform any imposed duty or responsibility of a first responder or emergency response team member and against any persons required to verify or submit information as established by rule or this act. All administrative penalties shall be paid to the Office of Homeland Security Revolving Fund when collected. Administrative penalties shall not exceed Five Thousand Dollars (\$5,000.00). All administrative actions, including penalties imposed, may be appealed to the district court in the county where the Office of Homeland Security is located. Such court proceedings, and all related dockets, documents, minutes, and other information and records shall be kept confidential from the public for security purposes. Provided, however, the court may subsequently order the release of any proceeding or information when the information is not determined to be a security risk to the

Office of Homeland Security, the federal government, this state, any political subdivision of this state, or any person or agency. The court shall set a confidential hearing within fifteen (15) judicial days of notice of appeal and notify the Office of Homeland Security. The Office of Homeland Security may file a written objection. At the hearing, the judge shall review any documents and take testimony to determine whether the administrative action or penalty was appropriate pursuant to law or rule. The decision of the judge shall be a final order not subject to further appeal. The court clerk shall process such confidential records, information, proceedings and dockets as provided for other confidential records handled by the court clerk.

E. Every person who intentionally makes any false or fraudulent statement or provides any false or misleading information on an application for a first responder certification shall be denied or revoked certification and, upon conviction, shall be guilty of a felony punishable by a fine not more than Five Thousand Dollars (\$5,000.00), by a term of imprisonment not exceeding one (1) year, or by both such fine and imprisonment. In addition, the violator shall have any applicable certifications, registrations and licenses suspended for two (2) years, unless another provision of law suspending or terminating such credential for a longer period of time is applicable.

F. Every person who without permission releases, discloses, distributes, reproduces, replicates or duplicates any information submitted to or generated by the Office of Homeland Security when such information is deemed confidential by rule or by any provision of law, or any person who willfully forges, alters, or uses for any illegal or unauthorized purpose, any document, data, database, or information submitted to or generated by the Office of Homeland Security, including but not limited to, any application, document, data, database, computer image, photograph, printed material,

investigation report, written notes, certificate of approval, employment or qualification verification, security or emergency plan, tactical information, implementation schedule, or any electronic or computer-generated information, shall be guilty of a breach of homeland security, upon conviction. Breach of homeland security is a felony punishable by a fine in an amount not more than Ten Thousand Dollars (\$10,000.00), by a term of imprisonment not exceeding ten (10) years, or by both such fine and imprisonment.

G. The Department of Public Safety shall establish a secure OFR-ID database within the Computer Imaging System for the purpose of processing and maintaining individual first responder and emergency response team information, and may establish other secure database systems as necessary for the Office of Homeland Security operations. The OFR-ID database shall be a secure system not subject to the Oklahoma Open Records Act and any disclosure, release or distribution to the public is prohibited under penalty of law as provided in this act. The Office of Homeland Security shall coordinate with the Department of Public Safety to determine the extent of the information to be maintained in the secure database system. The Director of the Office of Homeland Security may allow all original applications, investigative reports, certificates of approval, certification cards, letters of denial, revocations or suspensions, employment and qualification verifications, and other pertinent information relating to first responders and emergency response teams to be included and maintained in the secure database created within the Computer Imaging System or any other secure database system created for the Office. For law enforcement purposes and investigations, such secure information may be made available upon permission from the Director of the Office of Homeland Security. The OFR-ID secure database shall not be cross-referenced or combined in any manner with the digital driver license database system and shall utilize a separate numbering and

identification method for each OFR-ID certification card to identify the individual to whom such first responder credential is issued and approved.

H. Every person issued an OFR-ID certification card is required to notify the Office of Homeland Security upon any change in the original application or when additional training is obtained. Such notification shall be transmitted in writing or by electronic or computerized means within thirty (30) days of such change. Failure to report any employment change, change in address, or other changes or additions to any qualification is cause for administrative action, or, if applicable, criminal prosecution for false or misleading information as provided in this act.

I. All employers shall verify annually the continued employment and qualifications of any currently employed OFR-ID card holders. All employers shall report to the Office of Homeland Security any change in an OFR-ID card holder's employment or ability to serve as a first responder, and any termination, suspension or revocation of any license, registration, certificate or other qualification pertaining to such person. Failure to report a change in employment, ability to serve, or change in license, registration, certification or other qualification shall subject the employer to administrative action as specified by the rules of the Office of Homeland Security.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24A.29 of Title 51, unless there is created a duplication in numbering, reads as follows:

Unless otherwise specifically provided by law, the Office of Homeland Security shall be exempt from any requirement to disclose information pursuant to any provision of the Oklahoma Open Records Act and shall keep all reports, records, materials, data, database and information confidential, unless specifically ordered by a court of competent jurisdiction to disclose certain specific information.

SECTION 7. AMENDATORY 74 O.S. 2001, Section 500.18, as last amended by Section 5, Chapter 157, O.S.L. 2004 (74 O.S. Supp. 2004, Section 500.18), is amended to read as follows:

Section 500.18 A. Except for members of the Legislature, the Governor and the Lieutenant Governor, the provisions of Sections 500.1 through 500.18 of this title shall be mandatory for all officials and employees of all departments, boards, commissions and institutions of the state, regardless of the provisions of any other act of the Legislature, except as provided by this section. The enactment of any measure in the future providing for travel reimbursement of state officers and employees on the basis of "actual and necessary" expenses or in any other manner inconsistent with Sections 500.1 through 500.18 of this title shall be deemed to provide for reimbursement in accordance with Sections 500.1 through 500.18 of this title, unless a contrary intent is explicitly expressed in this section. Sections 500.1 through 500.18 of this title shall not apply, however, to travel reimbursements made by political subdivisions of this state, except as otherwise provided by law.

B. The agencies listed below are authorized certain exceptions and/or exemptions to the provisions of Sections 500.1 through 500.18 of this title to the extent specified:

1. Oklahoma Department of Agriculture, Food, and Forestry:

- a. The actual and reasonable expenses of travel and subsistence in pursuing and developing markets for Oklahoma agricultural products incurred by the Commissioner, Deputy Commissioner and such employees designated by the State Board of Agriculture within the marketing development programs of the Oklahoma Department of Agriculture, Food, and Forestry shall be reimbursed to the employee incurring such expenses. Reimbursement of such expenses shall be in accordance

with rules adopted by the Board. Expenses claimed shall, prior to reimbursement, be reviewed by the Board at a regular meeting and individually approved or disapproved.

- b. The actual and necessary expenses of out-of-state travel and subsistence incurred by employees of the Forestry Division authorized to evaluate and acquire federal excess property or surplus property in other states for use in its fire protection program, shall be reimbursed to the employee incurring such expenses.

2. Wheat Utilization, Research and Market Development

Commission:

The actual and reasonable expenses of travel, lodging and subsistence in pursuing and developing markets for Oklahoma wheat and wheat products incurred by the Commission, staff and such persons authorized by the Commission shall be reimbursed to the person incurring such expenses. Expenses of wheat trade officials on wheat trade missions from foreign countries and from other states can be reimbursed to the person previously authorized by the Commission to incur the expense. No actual and reasonable expenses shall be paid except for time spent working with wheat trade officials on wheat trade missions. Reimbursement of such expenses shall be made in accordance with rules adopted by the Commission. Expenses claimed shall, prior to reimbursement, be reviewed by the Commission at each regular meeting and individually approved or disapproved.

3. Department of Public Safety:

When traveling with the Governor or at the Governor's request, personnel assigned by the Commissioner for executive security and pilots on executive assignment shall be allowed their actual and necessary traveling expenses, upon claims approved by the Commissioner.

4. Department of Corrections:

The Department of Corrections shall be exempt from limitations of reimbursement for rented automobiles, as set forth in Section 500.5 of this title, when the rental is by a Correctional Officer or Transportation Officer for the limited purpose of transporting inmates. Reimbursement for the expense shall be on the basis of actual cost.

5. Oklahoma Tourism and Recreation Department:

The Oklahoma Tourism and Recreation Commission and Department staff who promote in-state and out-of-state business for Oklahoma's state-operated or state-owned parks, lodges, and golf courses and the tourism and recreation industry, may be reimbursed for the actual and necessary expense of travel, subsistence and entertainment for this purpose. The Director of the Oklahoma Tourism and Recreation Department may reimburse the Publisher of Oklahoma Today magazine and its staff for expenses for meals and other entertainment in order to gain advertising and promotion for Oklahoma Today magazine. The Oklahoma Tourism and Recreation Department may reimburse the Director of the Office of the Oklahoma Film and Music Commission and staff for the actual and necessary expenses for meals and other entertainment in order to promote the film and music industries in this state. Reimbursement of all actual and necessary expenses shall be in accordance with rules adopted by the Oklahoma Tourism and Recreation Commission.

6. Oklahoma Department of Commerce:

- a. The actual and necessary expenses incurred by the Director and other employees of the Department authorized by the Director for the purpose of business recruitment shall be reimbursed. Reimbursement of expenses shall be in accordance with rules adopted by the Director of the Oklahoma Department of Commerce. Expenses claimed shall, prior to reimbursement, be

reviewed by the Director and individually approved or disapproved.

- b. The Department, at the discretion of the Director, may charter aircraft for the purposes of carrying out its duties and responsibilities related to business recruitment and performing the duties of the Director. The cost of such charter shall be exempt from the provisions of Section 500.6 of this title. Claims filed with the Office of State Finance shall bear the following certification:

The best interests of the citizens of Oklahoma were better served in that conventional ground transportation was not practical or feasible for this trip, aircraft from the Department of Public Safety were not available for this trip, and no other claim has been or will be filed as a payment for the cost of transportation in connection with this trip.

7. Department of Central Services:

The actual and necessary expenses of travel and subsistence incurred by the Director, any state employee approved by his or her appointing authority, or state officials, for travel outside the state in performance of duties related to bond financing shall be reimbursed to the employee or state official incurring such expenses. Reimbursement for lodging expenses shall be supported by three telephone bids from hotels within a reasonable distance of the activity for which the travel was approved.

8. Oklahoma Futures:

The actual and necessary expenses incurred by the members of Oklahoma Futures in the performance of their duties shall be reimbursed to the members incurring such expenses. Reimbursement of all actual and necessary expenses shall be in accordance with rules adopted by Oklahoma Futures.

9. Oklahoma Development Finance Authority:

The actual and necessary expenses incurred by the members and employees of the Oklahoma Development Finance Authority in the performance of their duties shall be reimbursed to the person incurring such expenses. Reimbursement of all actual and necessary expenses shall be in accordance with the bylaws of the Authority.

10. Oklahoma Center for the Advancement of Science and Technology:

The actual and necessary expenses incurred by the members and employees of the Oklahoma Center for the Advancement of Science and Technology in the performance of their duties shall be reimbursed to the person incurring such expenses. Reimbursement of all actual and necessary expenses shall be in accordance with the bylaws of the Center.

11. Center for International Trade Development:

The actual and necessary expenses of travel, lodging and subsistence incurred by the Director and authorized employees of the Center for International Trade Development for performance of their duties for the purpose of business recruitment and assistance shall be reimbursed to the person incurring such expenses. Reimbursement of such expenses shall be in accordance with the rules adopted by the Director of the Center for International Trade Development. Expenses claimed shall be reviewed and individually approved or disapproved, prior to reimbursement, first by the Director, and finally by either the Vice President, Business and Finance of Oklahoma State University or the President of Oklahoma State University.

12. Oklahoma State Bureau of Investigation:

The actual and necessary expenses incurred by the Director and other employees of the Bureau authorized by the Director as a result of conducting investigations shall be reimbursed to each such employee incurring the expenses. Reimbursement of the expenses

shall be in accordance with rules adopted by the Director of the Oklahoma State Bureau of Investigation. Prior to reimbursement, expenses claimed shall be reviewed by the Director and individually approved or disapproved.

13. Department of Human Services:

- a. The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Legal Division in the performance of their duties for the purpose of representing the Department of Human Services or any of its officials, employees, institutions or hospitals at any proceeding, including depositions, held before any court, administrative body or representative thereof, shall be reimbursed to the employee incurring such expenses. Expenses claimed shall be approved by the General Counsel and the Director of Human Services prior to reimbursement.
- b. The Department, at the discretion of the Director, may charter aircraft when determined by the Director such charter would be more practical or less expensive than normal modes of transportation and when aircraft of the Department of Public Safety are unavailable. The costs of such charter shall be exempt from the provisions of Section 500.6 of this title.

14. Oklahoma Health Care Authority:

The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Legal Division in the performance of their duties for the purpose of representing the Authority or any of its officials or employees, at any proceeding, including depositions, held before any court, administrative body or representative thereof, shall be reimbursed to the employee incurring such expenses. Expenses claimed shall be approved by the Administrator prior to reimbursement.

15. Oklahoma State Bureau of Narcotics and Dangerous Drugs Control:

The actual and necessary expenses incurred by the Director and other employees of the Bureau authorized by the Director as a result of conducting investigations shall be reimbursed to each employee incurring the expenses. Reimbursement of the expenses shall be in accordance with rules adopted by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. Prior to reimbursement, expenses claimed shall be reviewed by the Director and individually approved or disapproved.

16. University Hospitals:

The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Legal Office in the performance of their duties for the purpose of representing the University Hospitals or any of its officials, employees, institutions or hospitals at any proceeding, including depositions, held before any court, administrative body or representative thereof, shall be reimbursed to the employee incurring such expenses. Expenses shall be approved by the Chief Executive Officer of the University Hospitals or by the University Hospitals Authority.

17. Oklahoma Historical Society:

The actual and necessary expenses of travel, subsistence and entertainment incurred by the Executive Director, Deputy Director and any employees designated by the Executive Committee of the Oklahoma Historical Society Board of Directors in pursuing and developing programs and projects for the preservation and marketing of Oklahoma history shall be reimbursed to the person incurring the expenses. Reimbursement of expenses shall be in accordance with rules adopted by the Oklahoma Historical Society Board of Directors. Prior to reimbursement, expenses claimed shall be reviewed by the

Executive Committee at a regularly scheduled meeting and each claim shall be individually approved or disapproved.

18. The Oklahoma Department of Mines:

The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Department in the performance of their duties for the purpose of representing the Department or any of its officials or employees, at any proceeding, hearing or meeting with federal agencies, boards, commissions, congressional representatives, congressional committees or staff, shall be reimbursed to the employee incurring such expenses. Expenses claimed shall be approved by the Executive Director prior to reimbursement.

19. The Office of Attorney General:

The actual and necessary expenses of travel, lodging and subsistence incurred by its employees in the performance of their duties for the purpose of representing the state, the Legislature, any state board, agency or commission, or any employee or official of the state entitled to representation, at any proceeding, including depositions, held before any court, administrative body or any representative thereof, and the actual and necessary expenses incurred by employees as a result of conducting investigations shall be reimbursed to the employee incurring the expenses. The expenses shall be approved by the Attorney General prior to reimbursement.

20. District Attorneys Council:

The actual and necessary expenses of travel, lodging and subsistence incurred by each district attorney and other employees of the district attorney authorized by the district attorney in the performance of their duties for any district other than the district for which they are employed for the purpose of representing the state, any county, or any employee or official of the state entitled to representation at any proceeding, including depositions held before any court, administrative body or any representative of a

court or administrative body, and the actual and necessary expenses incurred as a result of conducting investigations shall be reimbursed to each employee incurring the expenses. Reimbursement of the expenses shall be in accordance with rules adopted by the District Attorneys Council. Prior to reimbursement, expenses claimed shall be reviewed by the Council and individually approved or disapproved.

21. The Department of Securities:

The actual and necessary expenses of travel, lodging and subsistence incurred by the Administrator and other employees of the Department of Securities in the performance of their duties for the purpose of representing the Department of Securities, at any proceeding, including depositions, held before any court, administrative body or any representative thereof, conducting on-site examinations, or conducting investigations, shall be reimbursed to each employee incurring the expenses. The expenses shall be approved by the Administrator of the Department of Securities prior to reimbursement.

22. Corporation Commission:

The actual and necessary travel expenses incurred by the staff of the Public Utility Division as a result of conducting audits and/or reviews of utility service providers shall be reimbursed to each such employee incurring the expense. Reimbursement of the expenses shall be as set forth in procedures established by the appointing authority.

23. The Department of Human Services:

Employees of the Department of Human Services shall be reimbursed for their actual and necessary expenses of travel, lodging and subsistence incurred in the performance of their duties for the purpose of escorting and transporting children or adults in the care or custody of the Department:

- a. for out-of-state visitation, care, treatment and placement of a child welfare client,
- b. for out-of-state treatment for or placement of an adult protective services client,
- c. for out-of-state treatment for or placement of a resident of a state resource center, or
- d. for out-of-state treatment for or placement of an individual with a developmental disability who is living in the community in community residential services.

Expenses claimed shall be approved by the appropriate Division Administrator or Associate Director prior to reimbursement.

24. The Banking Department:

The actual and necessary expenses of travel and lodging incurred by the Commissioner and other employees of the Banking Department in the performance of their duties for the Banking Department shall be paid or reimbursed by the Banking Department to each employee incurring the expenses. The expenses shall be approved by the Banking Commissioner prior to payment or reimbursement.

25. ~~Oklahoma~~ Office of Homeland Security:

The actual and necessary expenses of travel, lodging, and subsistence incurred by the ~~Oklahoma~~ Homeland Security Director, as a result of the duties and responsibilities of the Director, shall be paid or reimbursed by the ~~Oklahoma~~ Office of Homeland Security.

C. The agencies listed in subsection B of this section shall be required to report annually the actual expenses excepted or exempted from Sections 500.1 through 500.18 of this title to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The report shall be submitted no later than the first day of September following the end of each fiscal year.

SECTION 8. AMENDATORY 74 O.S. 2001, Section 840-5.5, as last amended by Section 7, Chapter 157, 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. two 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, and
- s. 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 of the State Bond Advisor;

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 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

1. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

32. ~~The~~ Within 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 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.

SECTION 9. 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~~ 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~~ The 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~~ The 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~~ such rules.

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;

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 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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