

ENROLLED SENATE
BILL NO. 626

By: Brogdon of the Senate

and

Denney of the House

An Act relating to state employees; amending 74 O.S. 2001, Sections 840-1.20, 840-2.17, as last amended by Section 1, Chapter 240, O.S.L. 2006, 840-2.27C, as last amended by Section 2, Chapter 453, O.S.L. 2005, 840-4.15, as last amended by Section 96, Chapter 5, O.S.L. 2004, 840-5.16 and 4121, as amended by Section 1, Chapter 325, O.S.L. 2002 (74 O.S. Supp. 2006, Sections 840-2.17, 840-2.27C, 840-4.15 and 4121), which relate to the Office of Personnel Management Revolving Fund, raises, reduction in force plan, posting vacancies and promotional opportunities, State Work Incentive Program, and on-the-job employee performance recognition program; creating a petty cash fund for OPM; changing the pay movement mechanism report from a calendar year to a fiscal year; modifying certain reason for displacement; reinstating posting requirement for vacancy notices; deleting certain requirement for testing for the State Work Incentive Program; modifying types of recognition awards; increasing the maximum cash award for the state employee performance recognition award; 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 840-1.20, is amended to read as follows:

Section 840-1.20 A. There is hereby created in the State Treasury a revolving fund for the Office of Personnel Management to be designated the "Office of Personnel Management Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fees received by the Office of Personnel Management for providing training for a certified public managers program and all other monies received by the Office of Personnel Management, except for appropriated monies, monies received as payment for administrative expenses under Section ~~840-14~~ 840-1.18 of Title 74 of the Oklahoma Statutes this title, monies placed in the Employee Benefits Revolving Fund, monies placed in the Benefits Council Administration Revolving Fund, and any monies in revolving funds established by the Office of State Finance to support the operation of the Oklahoma Employees Benefits Council or to reimburse the Office of Personnel Management for services the Office provides to the Council. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Office of Personnel Management for defraying the costs incurred in performing the duties and functions of the Office. Expenditures from said 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.

B. There is hereby created a petty cash fund not to exceed Two Hundred Fifty Dollars (\$250.00) for the Office of Personnel Management. The Director of State Finance shall prescribe the rules and procedures for the administration of the petty cash fund.

C. Any monies in or obligations against the Certified Public Managers Revolving Fund upon the effective date of this act shall be transferred to the Office of Personnel Management Revolving Fund.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-2.17, as last amended by Section 1, Chapter 240, O.S.L. 2006 (74 O.S. Supp. 2006, Section 840-2.17), is amended to read as follows:

Section 840-2.17 A. Unless otherwise provided by the Oklahoma Constitution, language in law which authorizes the setting or fixing of compensation, pay or salary of state officers and employees shall

not be construed to authorize any agency, board, commission, department, institution, bureau, executive officer or other entity of the executive branch of state government to award, grant, give, authorize, or promise any officer or employee of the State of Oklahoma a raise, including, but not limited to, a cost-of-living raise or any other type of raise that would be given to state employees on an across-the-board basis, except as herein provided. Such raises are prohibited unless authorized by the Legislature and by Merit System of Personnel Administration Rules promulgated by the Administrator. This prohibition applies to all classified and unclassified officers and employees in the executive branch of state government, excluding institutions under the administrative authority of the Oklahoma State Regents for Higher Education.

B. However, nothing in this section shall be construed to prohibit the following actions if the action is made in good faith and not for the purpose of circumventing subsection A of this section, and if the appointing authority certifies that the action can be implemented for the current fiscal year and the subsequent fiscal year without the need for additional funding to increase the personal services budget of the agency:

1. Salary advancements on promotion or direct reclassification to a job family level or class with a higher salary band;

2. Salary adjustments resulting from a pay band change for a job family level or class adopted by the Office of Personnel Management;

3. Increases in longevity payments pursuant to Section 840-2.18 of this title;

4. Payment of overtime, special entrance rates, pay differentials;

5. Payment of wages, salaries, or rates of pay established and mandated by law;

6. Market adjustments for job family levels tied to market competitiveness;

7. Intra-agency lateral transfers, provided that the adjustment does not exceed five percent (5%) and the adjustment is based on the needs of the agency;

8. Skill-based adjustments. Such adjustments, which are implemented before November 1, 2006, other than lump-sum payments, shall become permanent after twenty-four (24) months from the date such salary adjustment is implemented and may not later be removed from an employee's base salary if a furlough or reduction-in-force is implemented by the appointing authority granting such salary adjustment. Skill-based pay adjustments, which are implemented on or after November 1, 2006, and which are paid to an employee, shall be paid as long as the employee remains employed in the position and performs the skills for which the differential is due, but shall not be included as a part of the employee's base salary;

9. Equity-based adjustments;

10. Performance-based adjustments for employees who received at least a "meets standards" rating on their most current performance rating;

11. Career progression increases as an employee advances through job family levels; or

12. Salary adjustments not to exceed five percent (5%) for probationary classified employees achieving permanent status following the initial probationary period and permanent classified employees successfully completing trial periods after intra-agency lateral transfer or promotion to a different job family level or following career progression to a different job family level.

C. Provided, however, any reclassification for one of the purposes provided in subsection B of this section that would require additional funding by the Legislature shall not be implemented without approval of the Legislature.

D. The pay movement mechanisms described in paragraphs 6 through 11 in subsection B of this section shall be implemented pursuant to rules promulgated by the Administrator of the Office of Personnel Management for the classified service.

E. Appointing authorities may implement the pay movement mechanisms in paragraphs 6 through 12 in subsection B of this section subject to the availability of funds within the agency's budget for the current fiscal year and subsequent fiscal year without the need for additional funding to increase the personal services budget of the agency. Failure by the appointing authority to follow the provisions of this subsection may cause the withdrawal of the use of the pay movement mechanisms provided in paragraphs 6, 7, 9, 10, and 11 of subsection B of this section within the agency during the next appropriations cycle.

F. All agencies, boards, and commissions shall report to the Office of Personnel Management on ~~an annual~~ a fiscal-year basis the pay movement mechanisms utilized in paragraphs 6 through 12 in subsection B of this section. The report shall include the pay movement mechanisms type, frequency, amounts provided, affected classifications and job families, and other information as prescribed by the Administrator of the Office of Personnel Management. Agencies shall report this information for the twelve-month period ending ~~December 31~~ June 30 for classified and unclassified employees. ~~Agencies must also report projected pay movement mechanisms and costs anticipated for the balance of the fiscal year.~~ The Office of Personnel Management shall forward the report, which will include findings and recommendations, to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives no later than February 1 of each year.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-2.27C, as last amended by Section 2, Chapter 453, O.S.L. 2005 (74 O.S. Supp. 2006, 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 reduction-in-force implementation plan shall be provided to the Director of State Finance and any state employee association representing state employees at such time. 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. 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"~~ "meets standards", 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"~~ "meets standards" 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 who were 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 they were 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 the employee was 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 the employee was removed, or eighteen (18) months after the date of separation, whichever is first, this priority consideration for reemployment shall expire. If an agency 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 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 the 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, 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.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 840-4.15, as last amended by Section 96, Chapter 5, O.S.L. 2004 (74 O.S. Supp. 2006, Section 840-4.15), is amended to read as follows:

Section 840-4.15 A. The appointing authority shall post announcements of a vacancy or vacancies in accordance with a promotional plan filed by the agency with the Office of Personnel Management. In order to give qualified employees an opportunity to apply for and be considered for possible promotions, the vacancy notices shall be posted at least five (5) working days prior to the closing date for the receipt of applications by the appointing authority. Promotional posting shall be required for initial entry into a job family at any level. Promotional posting shall also be required for entry into any supervisory position or level. Each agency's promotional posting plan shall describe the method by which all agency employees will be notified of vacancy announcements. The posting shall include:

1. Identification of the job family level of the vacancy or vacancies;
2. A listing of job title, major work duties and minimum qualifications;
3. The pay band and range;
4. The anticipated number of vacancies;
5. The specific location of work;
6. The time limits and procedure for filing an application with the appointing authority; and
7. Any additional factors which the appointing authority will consider in filling the vacancy.

B. The appointing authority may elect to post general promotional opportunities in accordance with the provisions of this

section in cases where there are usually continuous multiple vacant positions within a given job family; provided the appointing authority maintains a promotional applicant list for each job family which is posted on the basis of general promotional opportunities. In such cases, the posting must include the length of time and conditions under which the promotional application of the candidate will remain available for active consideration by the appointing authority.

C. If an employee still feels that the employee has not been treated fairly with regard to a promotional action pursuant to this section after such complaint has been reviewed in a formal grievance procedure conducted in accordance with the provisions of Section 840-6.2 of this title, the employee may seek a remedy through the procedures established in the Oklahoma Personnel Act. If a violation of Section 840-2.9 of this title has been committed, the Oklahoma Merit Protection Commission may declare a position open.

D. Prior to re-posting a notice of vacancy for a position that was not filled after the first notice was posted, the appointing authority must receive approval from the Administrator of the Office of Personnel Management prior to making any qualification changes to the position to be filled.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 840-5.16, is amended to read as follows:

Section 840-5.16 A. There is hereby created the State Work Incentive Program aimed at employing participants in the Temporary Assistance for Needy Families Program in Oklahoma and vocational rehabilitation clients of the State Department of Rehabilitation Services in the state service. The program shall focus on placement of persons in entry-level positions. The Department of Human Services and the State Department of Rehabilitation Services shall notify agencies in all branches of state government of this program and shall certify to appointing authorities and the Administrator of the Office of Personnel Management that a person is a participant in the Temporary Assistance for Needy Families Program or is a vocational rehabilitation client of the State Department of Rehabilitation Services before the person is eligible to be employed under the State Work Incentive Program by a state agency. Agencies shall cooperate with the Department of Human Services and the State

Department of Rehabilitation Services in seeking to provide employment opportunities to persons who are participants in the Temporary Assistance for Needy Families Program or who are vocational rehabilitation clients of the State Department of Rehabilitation Services. The Department of Human Services, the State Department of Rehabilitation Services and the Office of Personnel Management shall coordinate with agencies to facilitate the transition of participants in the Temporary Assistance for Needy Families Program and vocational rehabilitation clients of the State Department of Rehabilitation Services into the State Work Incentive Program.

B. Agencies employing eligible persons in the State Work Incentive Program shall employ them in unclassified status for up to two (2) years in full-time or part-time capacity. State Work Incentive Program positions shall not be included within any limitation on full-time-equivalent employee positions for any agency. The service of participants shall be rated pursuant to Section 840-4.17 of this title.

C. Employees hired under the State Work Incentive Program are eligible for leave benefits and other benefits available to state employees, subject to other eligibility requirements, and may be reassigned or promoted while they are participating in the program.

D. Employees hired under the State Work Incentive Program shall be eligible for conversion to permanent classified status after two (2) years of continuous participation in the program. Such employee shall be exempt from probationary hiring procedures including, but not limited to, placement on hiring lists and certification from registers, provided the employee:

1. Has had satisfactory performance as evidenced by service ratings conducted pursuant to Section 840-4.17 of this title; and

2. Possesses the minimum requirements specified for an applicable job; ~~and~~

- ~~3. Passes any entrance examination required for the applicable job by the Office of Personnel Management, or a person with severe disabilities and is eligible to be hired pursuant to Section 840-4.12 of this title.~~

The Administrator of the Office of Personnel Management shall promulgate such rules as are necessary for the implementation of the State Work Incentive Program.

SECTION 6. AMENDATORY 74 O.S. 2001, Section 4121, as amended by Section 1, Chapter 325, O.S.L. 2002 (74 O.S. Supp. 2006, Section 4121), is amended to read as follows:

Section 4121. A. In order to establish a public employee benefit program to encourage outstanding performance in the workplace, the Administrator of the Office of Personnel Management is hereby directed to establish an on-the-job employee performance recognition program which encourages outstanding job performance and productivity.

B. In order to promote excellence in job performance and provide recognition for work units with exceptional performance, state agencies are authorized to expend from monies available in the agency's operating funds so much thereof as may be necessary for the purchase of recognition awards for presentation to the members of work units or individual employees with exceptional job performance records or for other significant contributions to the operation of the agency. State agencies may also provide for such recognition awards to be cash awards.

C. Recognition awards may be presented to members of work units or individual employees having exceptional job performance records or other significant contributions and such awards may be presented at a formal or informal ceremony, banquet or reception, the cost of which may be expended from monies available in the agency's operating funds.

D. 1. Recognition awards may consist of distinctive wearing apparel, service pins, plaques, writing pens, or other distinguished awards of a value not exceeding One Hundred Fifty Dollars (\$150.00) per recognized employee each fiscal year to recognize the achievement of the work unit or individual employee.

2. In addition to recognition awards listed in paragraph 1 of this subsection, the agency may establish an employee performance ~~and conduct~~ cash recognition program not to exceed ~~Two Hundred Fifty~~

~~Dollars (\$250.00)~~ Five Hundred Dollars (\$500.00) per recognized employee each fiscal year ~~for cash awards to recognize outstanding performance in the workplace by the employees of the agency.~~

SECTION 7. This act shall become effective July 1, 2007.

SECTION 8. 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.

Passed the Senate the 24th day of May, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2007.

Presiding Officer of the House
of Representatives