

FLOOR AMENDMENT  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB2046 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Randy Terrill

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 FLOOR SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL NO. 2046

6 By: Nichols of the Senate

7 and

8 Terrill of the House

9 FLOOR SUBSTITUTE

10 An Act relating to state government; amending 74 O.S.  
11 2001, Section 840-2.5, as last amended by Section 1,  
12 Chapter 106, O.S.L. 2003 (74 O.S. Supp. 2007, Section  
13 840-2.5), which relates to the Whistleblower Act;  
14 authorizing certain state employees to file an appeal  
15 on behalf of certain person; and providing an  
16 effective date.

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

18 SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-2.5, as  
19 last amended by Section 1, Chapter 106, O.S.L. 2003 (74 O.S. Supp.  
20 2007, Section 840-2.5), is amended to read as follows:

21 Section 840-2.5 A. This section shall be known and may be  
22 cited as the "Whistleblower Act". The purpose of the Whistleblower  
23 Act is to encourage and protect the reporting of wrongful  
24 governmental activities and to deter retaliation against state

1 employees for reporting those activities. No conviction of any  
2 person shall be required to afford protection for any employee under  
3 this section.

4 B. For purposes of this section, "agency" means any office,  
5 department, commission or institution of the state government. No  
6 officer or employee of any state agency shall prohibit or take  
7 disciplinary action against employees of such agency, whether  
8 subject to the provisions of the Merit System or in unclassified  
9 service, for:

10 1. Disclosing public information to correct what the employee  
11 reasonably believes evidences a violation of the Oklahoma  
12 Constitution or law or a rule promulgated pursuant to law;

13 2. Reporting a violation of the Oklahoma Constitution, state  
14 or federal law, rule or policy; mismanagement; a gross waste of  
15 public funds; an abuse of authority; or a substantial and specific  
16 danger to public health or safety;

17 3. Discussing the operations and functions of the agency,  
18 either specifically or generally, with the Governor, members of the  
19 Legislature, the print or electronic media or other persons in a  
20 position to investigate or initiate corrective action; or

21 4. Taking any of the above actions without giving prior notice  
22 to the employee's supervisor or anyone else in the employee's chain  
23 of command.

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1 C. Any person who has authority to take, direct others to take,  
2 recommend or approve any personnel action shall not take or fail to  
3 take any personnel action with respect to any employee for filing an  
4 appeal or testifying on behalf of any person filing an appeal with  
5 the Oklahoma Merit Protection Commission. This section shall not be  
6 construed as prohibiting disciplinary action of an employee who  
7 discloses information which the employee:

- 8 1. Knows to be false;
- 9 2. Knowingly and willfully discloses with reckless disregard  
10 for its truth or falsity; or
- 11 3. Knows to be confidential pursuant to law.

12 D. Each state agency, department, institution, board and  
13 commission in all branches of state government, including all  
14 institutions in The Oklahoma State System of Higher Education, shall  
15 prominently post or publish a copy of this section of law in  
16 locations where it can reasonably be expected to come to the  
17 attention of all employees.

18 E. As used in this section:

- 19 1. "Disciplinary action" means any direct or indirect form of  
20 discipline, any dismissal, demotion, transfer, reassignment,  
21 suspension, reprimand, admonishment, warning of possible dismissal,  
22 reduction in force, reduction in rank, reduction in status, or  
23 withholding of work;

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1        2. "Probation" means that period of time, after an officer or  
2 employee is found to have violated the provisions of this section  
3 and corrective action is ordered, during which time that officer's  
4 or employee's performance and conduct is being monitored by the  
5 employing agency for further violations of the Oklahoma Personnel  
6 Act; and

7        3. "Mismanagement" means fraudulent activity, criminal misuse  
8 of funds or abuse or violation of a well-established, articulated,  
9 clear and compelling public policy.

10        F. An appeal to the Oklahoma Merit Protection Commission must  
11 identify the person on whose behalf it is made. The person making  
12 the appeal must provide the Oklahoma Merit Protection Commission  
13 with the name, address, and telephone number of the person on whose  
14 behalf the appeal is made. The Oklahoma Merit Protection Commission  
15 personnel shall verify the authorization of such appeal by the  
16 person on whose behalf the appeal is made. The person claiming to  
17 be aggrieved has the responsibility to cooperate with the Commission  
18 in the investigation. The failure to cooperate in the investigation  
19 shall be grounds for dismissal of the appeal filed on behalf of the  
20 aggrieved party.

21        G. Any state employee or any former state employee aggrieved  
22 pursuant to this section, or any authorized third-party state  
23 employee who has actual knowledge of the discipline or retaliatory  
24 act taken against the whistleblower, may file an appeal with the

1 Oklahoma Merit Protection Commission within sixty (60) days of the  
2 alleged violation. The Oklahoma Merit Protection Commission shall  
3 promulgate rules to establish procedures for the conduct of  
4 investigations. If, after investigation, the Executive Director  
5 determines a violation of this section may have occurred, the  
6 Executive Director shall appoint ~~a hearing examiner~~ an  
7 administrative law judge to hear the case as provided for in Section  
8 840-6.6 of this title.

9 ~~G.~~ H. If, after the hearing, it is determined that a violation  
10 has occurred, the Commission or ~~hearing examiner~~ administrative law  
11 judge shall order corrective action pursuant to Section 840-6.6 of  
12 this title. Such corrective action shall include, but not be  
13 limited to, suspension without pay, demotion or discharge. Any  
14 employee found to have violated this section of law, in addition to  
15 being suspended or demoted, shall be placed on probation for six (6)  
16 months. Such probation shall commence on the date of the final  
17 decision filed by the Commission. Any employee who is determined to  
18 have violated the Oklahoma Personnel Act, Section 840-1.1 et seq. of  
19 this title, while serving said probation shall forfeit the position  
20 of the person for one (1) year. Any employee, supervisor or  
21 appointing authority of any state agency, whether subject to the  
22 provisions of the Merit System of Personnel Administration or in  
23 unclassified service, who knowingly and willfully violates the  
24 provisions of this section shall forfeit the position of the person

1 and be ineligible for appointment to or employment in a position in  
2 state service for a period of at least one (1) year and no more than  
3 five (5) years. The decision of the Commission in such cases may be  
4 appealed by any party pursuant to Article II of the Administrative  
5 Procedures Act.

6 SECTION 2. This act shall become effective November 1, 2008.

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8 51-2-11171 LRB 04/18/08

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