

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1902

By: Duncan

4
5 AS INTRODUCED

6 An Act relating to state government; amending 74 O.S.
7 2001, Section 840-2.1, as amended by Section 5,
8 Chapter 347, O.S.L. 2002 (74 O.S. Supp. 2008, Section
9 840-2.1), which relates to the Oklahoma Personnel
10 Act; abolishing the Affirmative Action Review
11 Council; providing an effective date; and declaring
12 an emergency.

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

14 SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-2.1, as
15 amended by Section 5, Chapter 347, O.S.L. 2002 (74 O.S. Supp. 2008,
16 Section 840-2.1), is amended to read as follows:

17 Section 840-2.1 A. All agencies, boards, commissions,
18 departments, and offices of each branch of state government, except
19 institutions within The Oklahoma State System of Higher Education,
20 shall submit an affirmative action plan to the Office of Personnel
21 Management annually by September 1 following the end of the fiscal
22 year ending June 30. Institutions within The Oklahoma State System
23 of Higher Education shall submit an affirmative action plan to the
24 Oklahoma State Regents for Higher Education in accordance with

1 standards established by the Oklahoma State Regents for Higher
2 Education.

3 B. Said plan for agencies of the executive branch, except
4 institutions within The Oklahoma State System of Higher Education,
5 is subject to the approval of the Administrator of the Office of
6 Personnel Management.

7 C. The Administrator of the Office of Personnel Management
8 shall analyze the affirmative action plans of executive branch
9 agencies and Equal Employment Opportunity Commission reports
10 prepared by such agencies, except institutions within The Oklahoma
11 State System of Higher Education, and, on or before March 1 of each
12 year, shall submit a report to the Speaker of the House of
13 Representatives, the President Pro Tempore of the Senate, and the
14 Governor. Said report shall state the efforts and progress made by
15 governmental entities in the area of affirmative action, including
16 the status of recruitment, hiring, and promotion of women, men and
17 minorities within job categories.

18 D. The provisions of this section shall not require an agency,
19 board, commission, department, or office of state government to
20 grant preferential treatment to an individual or group because of
21 race, color, religion, sex, national origin, age, or handicap
22 because of an imbalance which may exist in comparison with the
23 employment statistics of the area involved.

24

1 E. It is not a discriminatory practice for the appointing
2 authority of an entity subject to the provisions of this title to
3 adopt and implement an affirmative action plan to eliminate or
4 reduce imbalances with respect to women and minorities if the plan
5 has been approved by the Office of Personnel Management in
6 accordance with rules and guidelines adopted by the Office of
7 Personnel Management. For affirmative action purposes, any person
8 who lists American Indian as his race or national origin shall,
9 within thirty (30) days of his appointment, verify his tribal
10 affiliation by providing a certificate of Degree of Indian Blood
11 from the U.S. Department of Interior, Bureau of Indian Affairs, or
12 by providing the name and address of tribal officials who can verify
13 his tribal affiliation.

14 F. 1. The Administrator of the Office of Personnel Management
15 shall establish qualification requirements for personnel serving as
16 agency civil rights or affirmative action administrators, officers,
17 coordinators and other personnel responsible for civil rights
18 compliance or affirmative action for executive branch agencies.
19 Such qualification requirements shall include, but not be limited
20 to, knowledge of federal and state civil rights, affirmative action,
21 and equal employment laws and regulations. Such personnel shall be
22 subject to the training requirements specified by the Office of
23 Personnel Management. The Administrator shall be authorized to bill
24 agencies for the training of personnel professionals pursuant to

1 this paragraph to recover reasonable costs associated with the
2 training. Monies received for such training shall be deposited in
3 the Office of Personnel Management Revolving Fund. Expenditure of
4 such funds collected for the training shall be exempt from any
5 expenditure limit for the Office of Personnel Management established
6 by law. Effective December 1, 1995, complaints of alleged illegal
7 discrimination shall be investigated only by personnel trained
8 pursuant to the requirements of the Administrator, unless otherwise
9 provided by federal or state law. This paragraph shall not apply to
10 such personnel of the Oklahoma Merit Protection Commission or the
11 Oklahoma Human Rights Commission.

12 2. If, after notice, administrative hearing and determination,
13 pursuant to Article II of the Administrative Procedures Act, Section
14 308a et seq. of Title 75 of the Oklahoma Statutes, the Administrator
15 finds that an appointing authority of any executive branch agency
16 has failed to make significant progress toward affirmative action
17 goals, or has failed to appoint a civil rights administrator without
18 justifiable reasons, the Administrator may begin requiring remedies
19 as allowed by subsection G of this section and rules promulgated
20 thereto and appropriate to making progress toward affirmative action
21 goals. Such action shall remain in effect until the Administrator
22 determines that significant progress toward affirmative action goals
23 is being made. The provisions of law pertaining to the duties and
24 powers of any agency shall not be construed to deny the

1 Administrator the authority provided for in this paragraph, unless
2 the agency is specifically excluded by law from the provisions of
3 this paragraph.

4 G. 1. The Administrator of the Office of Personnel Management
5 shall develop rules for the imposition of appropriate remedies for
6 agencies in the executive branch of state government, excluding The
7 Oklahoma State System of Higher Education, when an agency has failed
8 to make significant progress toward affirmative action goals or has
9 been found to have a pattern of noncompliance with affirmative
10 action goals. If, pursuant to Article II of the Administrative
11 Procedures Act, the Administrator finds that an agency has failed to
12 make significant progress toward affirmative action goals or is
13 found to have a pattern of noncompliance with affirmative action
14 goals, remedies that the Administrator may impose shall include:

- 15 a. requiring noncomplying appointing authorities to
16 participate in programs for special recruiting
17 efforts,
- 18 b. development of training programs to enhance
19 promotability of minorities within agencies and
20 supervisory training in equal opportunity employment,
21 affirmative action, managing workplace diversity, and
- 22 c. mandatory review and approval of all hiring and
23 promotion decisions by an appointing authority by the
24 Administrator if the Administrator can document a

1 pattern of noncompliance in previous remedial actions
2 pursuant to this subsection or appointment of a full-
3 time affirmative action officer to any agency in
4 noncompliance with affirmative action remedies.

5 2. Effective July 1, 1995, if the Administrator determines that
6 a pattern of noncompliance with affirmative action goals exists at
7 an agency and that none of the remedies provided by paragraph 1 of
8 this subsection are appropriate and the Administrator determines the
9 Office of Personnel Management has sufficient resources, the
10 Administrator shall be empowered to remove personnel function(s)
11 relating to recruitment, hiring or promotion from the appointing
12 authority and to place that function with the Administrator of the
13 Office of Personnel Management as provided by this paragraph.
14 Removal of personnel function(s) shall occur only when a pattern of
15 noncompliance with the affirmative action plan can be documented and
16 a vote by two-thirds (2/3) of the Affirmative Action Council
17 recommends to the Administrator to remove personnel function(s).
18 Removal of personnel function(s) shall terminate one (1) calendar
19 year after the Administrator removes such function(s) unless the
20 Administrator is able to demonstrate that the restoration of
21 personnel function(s) to the appointing authority will result in
22 further noncompliance with this section. A vote of two-thirds (2/3)
23 of the Council shall be necessary to continue the removal of
24 personnel function(s) by the Administrator for each additional year.

1 The Administrator must receive approval from the Director of the
2 Office of State Finance to develop recruitment, hiring and promotion
3 actions within budgetary constraints for the affected agencies. The
4 Administrator shall consult with the appointing authority about
5 personnel plans and actions, but the Administrator shall retain
6 final authority for personnel decisions within the scope of the
7 Administrator's authority for the period an agency is operating
8 under removal of the personnel function(s). Nothing in this section
9 shall prohibit the removal of a personnel function(s) remedy at any
10 time if the Administrator determines the appointing authority and
11 agency have the capability of reassuming the authority that was
12 removed. The provisions of law pertaining to the duties and powers
13 of any agency shall not be construed to deny the Administrator the
14 authority provided for in this paragraph, unless the agency is
15 specifically excluded by law from the provisions of this paragraph.
16 Upon removal of an agency's personnel function(s), the Administrator
17 may employ employees at the Office of Personnel Management to assume
18 the personnel function(s) of the agency as provided by this section.

19 H. ~~1. There is hereby created the Affirmative Action Review~~
20 ~~Council to assist in the implementation of the state's equal~~
21 ~~employment opportunity and affirmative action efforts mandated by~~
22 ~~this section. The Administrator of the Office of Personnel~~
23 ~~Management shall consult with and request the assistance of the~~
24 ~~Council in developing standards that executive branch agencies shall~~

1 ~~follow in adopting their affirmative action plans. The Council~~
2 ~~shall review agency affirmative action plans and assist the~~
3 ~~Administrator in preparing the annual status report for agencies on~~
4 ~~equal employment opportunity and affirmative action required by this~~
5 ~~section. Staff for the Council shall be provided by the Office of~~
6 ~~Personnel Management.~~

7 2. ~~The Affirmative Action Review Council shall consist of six~~
8 ~~(6) members. The individuals making the appointment shall consider~~
9 ~~experience in the field, theory, and application of human resources~~
10 ~~management and affirmative action in making their appointments.~~
11 ~~Members of the Council shall serve at the pleasure of the respective~~
12 ~~individuals making the appointments. Two members of the Council~~
13 ~~shall be appointed by the Governor, two members shall be appointed~~
14 ~~by the Speaker of the House of Representatives, and two members~~
15 ~~shall be appointed by the President Pro Tempore of the Senate.~~
16 ~~Nothing shall preclude the appointment of members of the~~
17 ~~Legislature. Each individual making appointments shall give~~
18 ~~consideration to the diversity of the Council's membership when~~
19 ~~making the appointments and shall not appoint more than one~~
20 ~~individual who is an employee of the executive branch, excluding The~~
21 ~~Oklahoma State System of Higher Education. The Governor shall~~
22 ~~appoint the initial chair from among the Council's membership to~~
23 ~~serve a two-year term. Thereafter, the chair shall be selected by~~
24 ~~the Council from among its membership. The Council shall select a~~

1 ~~vice chair from among its membership. All members shall serve two-~~
2 ~~year terms, unless removed prior to the expiration of a term by the~~
3 ~~respective individual making the appointment. Any vacancy on the~~
4 ~~Council shall be filled by the individual who made the original~~
5 ~~appointment.~~

6 ~~Except as provided in subparagraph b of paragraph 4 of this~~
7 ~~subsection, a majority of the members of the Council shall~~
8 ~~constitute a quorum to transact business, but no vacancy shall~~
9 ~~impair the right of the remaining members to exercise all of the~~
10 ~~powers of the Council and every act of a majority of the members~~
11 ~~present shall be deemed the act of the Council.~~

12 ~~3. Members of the Council shall receive no compensation for~~
13 ~~servng on the Council, but shall be reimbursed for their necessary~~
14 ~~travel expenses incurred in the performance of their duties in~~
15 ~~accordance with the State Travel Reimbursement Act. Any member who~~
16 ~~is employed in state government shall receive the reimbursement from~~
17 ~~their employing entity. Any member who is not an employee of state~~
18 ~~government shall receive the reimbursement from the Office of~~
19 ~~Personnel Management.~~

20 ~~4. a. The Council shall make any recommendations to the~~
21 ~~Administrator, the Governor, the Speaker of the House~~
22 ~~of Representatives or the President Pro Tempore of the~~
23 ~~Senate the Council deems will assist in the attaining~~
24 ~~of affirmative action goals for state government.~~

1 ~~b. The Council shall review agency affirmative action~~
2 ~~plans for compliance with the standards adopted by the~~
3 ~~Administrator. The Council shall recommend that the~~
4 ~~Administrator reject any agency plans which it finds~~
5 ~~in noncompliance.~~

6 ~~e. The Council shall request the Administrator to~~
7 ~~investigate any agency that the Council believes has~~
8 ~~violated equal employment opportunity or affirmative~~
9 ~~action provisions of this section and to conduct~~
10 ~~hearings to determine if such violations have~~
11 ~~occurred. If the Administrator finds that an agency~~
12 ~~is not in compliance with such law and the Council~~
13 ~~believes that the noncompliance indicates a pattern of~~
14 ~~noncompliance, the Council, upon a two thirds vote of~~
15 ~~its members, may recommend to the Administrator to act~~
16 ~~in accordance with this section to compel the agency~~
17 ~~to comply with equal employment opportunity and~~
18 ~~affirmative action laws. If the Administrator decides~~
19 ~~not to act on the Council's recommendation, the~~
20 ~~Administrator shall respond in writing within thirty~~
21 ~~(30) days of the Council's recommendation setting~~
22 ~~forth the reasons why the Administrator has decided~~
23 ~~not to act in accordance with said recommendation.~~

1 d. ~~Any member who is an employee of an agency that is~~
2 ~~subject to investigation pursuant to subparagraph b of~~
3 ~~this paragraph shall disqualify himself or herself~~
4 ~~from voting on the matter.~~

5 e. ~~This paragraph applies to review of issues related to~~
6 ~~affirmative action. This paragraph does not apply to~~
7 ~~prohibited discrimination that is within the~~
8 ~~jurisdiction of the Oklahoma Merit Protection~~
9 ~~Commission or the Oklahoma Human Rights Commission.~~

10 5. ~~The Council shall not have authority to adopt rules pursuant~~
11 ~~to the Administrative Procedures Act.~~

12 I. ~~Affirmative action plans for the judicial branch of~~
13 ~~government, except the Court of Criminal Appeals and the Workers'~~
14 ~~Compensation Court, shall be prepared by the Administrative Director~~
15 ~~of the Courts. The Court of Criminal Appeals shall prepare~~
16 ~~affirmative action plans for the Court of Criminal Appeals. The~~
17 ~~Administrator of the Workers' Compensation Court shall prepare~~
18 ~~affirmative action plans for the Workers' Compensation Court.~~

19 J. ~~The Administrator of the Office of Personnel Management is~~
20 ~~hereby directed to adopt rules necessary to implement the provisions~~
21 ~~of this section. Such rules regarding affirmative action plans~~
22 ~~shall include, but not be limited to, a set of specific and result-~~
23 ~~oriented programs to which an appointing authority commits himself~~
24 ~~or herself to apply every good faith effort to achieve prompt and~~

1 ~~full utilization of women and minorities at all levels and in all~~
2 ~~segments of the work force where deficiencies exist. Such rules~~
3 ~~shall also include separate provisions for affirmative plans for~~
4 ~~agencies with fewer than fifteen full time equivalent employees~~ The
5 Affirmative Action Review Council is hereby abolished.

6 SECTION 2. This act shall become effective July 1, 2009.

7 SECTION 3. It being immediately necessary for the preservation
8 of the public peace, health and safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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12 52-1-5049 LRB 11/17/08

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