STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2140 By: Steele

COMMITTEE SUBSTITUTE

An Act relating to state government; enacting the State Government Administrative Process Consolidation and Reorganization Reform Act of 2011; consolidating Department of Central Services, Office of Personnel Management, Oklahoma Merit Protection Commission, Oklahoma Department of Libraries, Oklahoma State Employees Benefits Council and Oklahoma State and Education Employees Group Insurance Board into Office of State Finance; providing for assumption of responsibilities; defining term; requiring Director of Office of State Finance to implement consolidation; requiring certain cost savings; requiring report; requiring recommendations to the Legislature; providing for delivery of books, papers, records and property; transferring powers, duties and responsibilities; providing for effect of administrative rules; amending 62 O.S. 2001, Sections 41.3, as renumbered by Section 64, Chapter 441, O.S.L. 2009, and as amended by Section 32, Chapter 2, O.S.L. 2010, and 41.4, as amended by Section 7, Chapter 441, O.S.L. 2009, and as renumbered by Section 64, Chapter 441, O.S.L. 2009 (62 O.S. Supp. 2010, Sections 34.3 and 34.6), which relate to the Oklahoma State Finance Act; modifying references to certain divisions within the Office of State Finance; providing for assumption of responsibilities by the Director of the Office of State Finance; amending 74 O.S. 2001, Section 61.2, which relates to the Department of Central Services; modifying references; amending 74 O.S. 2001, Sections 85.3, as amended by Section 2, Chapter 96, O.S.L. 2008 and 85.5, as last amended by Section 1, Chapter 170, O.S.L. 2010 (74 O.S. Supp. 2010, Sections 85.3 and 85.5), which

relate to the Oklahoma Central Purchasing Act; modifying references; amending 74 O.S. 2001, Section 840-1.6A, as last amended by Section 1, Chapter 312, O.S.L. 2004 (74 O.S. Supp. 2010, Section 840-1.6A), which relates to the Oklahoma Personnel Act; modifying references; amending 74 O.S. 2001, Section 840-1.8, which relates to the Oklahoma Personnel Act; modifying references; amending 65 O.S. 2001, Section 3-103, which relates to the Oklahoma Department of Libraries; modifying references; amending 74 O.S. 2001, Section 1365, as last amended by Section 1, Chapter 28, O.S.L. 2009 (74 O.S. Supp. 2010, Section 1365), which relates to the Oklahoma State Employees Benefits Council; modifying provisions related to appointment of executive director; repealing 74 O.S. 2001, Section 61.1, which relates to the Director of Public Affairs; repealing 74 O.S. 2001, Section 840-1.4, which relates to the Merit System Office and State Personnel Board; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "State Government Administrative Process Consolidation and Reorganization Reform Act of 2011".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 34.3.1 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Department of Central Services, Office of Personnel Management, Oklahoma Merit Protection Commission, Oklahoma

Department of Libraries, Oklahoma State Employees Benefits Council and the Oklahoma State and Education Employees Group Insurance Board are consolidated into the Office of State Finance. The Director of the Office of State Finance shall assume all executive-level responsibilities for each agency and shall function as and possess the powers of the agency director for each consolidated agency as enumerated by existing statute. For the purposes of this section the term consolidated agencies shall mean the Department of Central Services, Office of Personnel Management, Oklahoma Merit Protection Commission, Oklahoma Department of Libraries, Oklahoma State Employees Benefits Council and the Oklahoma State and Education Employees Group Insurance Board.

B. Not later than December 31, 2011, the Director of the Office of State Finance shall cause the administrative functions of each consolidated agency to be consolidated. The Director of the Office of State Finance shall demonstrate a fifteen-percent overall cost reduction as a result of the consolidation. The Director shall produce a report which details the source and estimated amounts of savings resulting from this consolidation.

C. Not later than December 31, 2011, the Director of the Office of State Finance shall provide recommendations to the Legislature for the streamlining, reduction or elimination of the governance structures and statutorily established positions of each of the consolidated agencies.

D. Upon request of the Director of the Office of State Finance the personnel of the consolidated agencies shall deliver to the Office of State Finance all books, papers, records and property of the consolidated agencies.

E. All functions, powers, duties and obligations previously assigned to each of the consolidated agencies are herby transferred to the Office of State Finance.

F. All rules, regulations, acts, orders, determinations and decisions of the consolidated agencies pertaining to the functions and powers herein transferred and assigned to the Office of State Finance, in force at the time of such transfer, assignment, assumption or devolution shall continue in force and effect as rules, regulations, acts, orders, determination and decisions of the consolidated agencies until duly modified or abrogated by the appropriate body.

SECTION 3. AMENDATORY 62 O.S. 2001, Section 41.3, as renumbered by Section 64, Chapter 441, O.S.L. 2009, and as last amended by Section 32, Chapter 2, O.S.L. 2010 (62 O.S. Supp. 2010, Section 34.3), is amended to read as follows:

Section 34.3 A. There is hereby created in the Executive Department, the Office of State Finance which shall consist of a Division of the Budget ~~and a~~, Division of Central Accounting and Reporting, Department of Central Services, Office of Personnel Management, Department of Merit Protection, Oklahoma Department of

Libraries, Department of State and Education Employees Group Insurance and Department of Employee Benefits, all under the administrative control of the Director of the Office of State Finance and directly responsible to the Director and an Information Services Division under the administrative control of the Chief Information Officer and directly responsible to the Officer.

B. The term "state agency" or "agency", when used in the Oklahoma State Finance Act, shall mean any agency, board, bureau, commission, or other entity organized within the executive department of state government.

C. The term "authorization", when used in the Oklahoma State Finance Act, shall mean the legislative authorization for an agency to expend a certain amount of money from a specified fund or funds during a specified period of time.

SECTION 4. AMENDATORY 62 O.S. 2001, Section 41.4, as amended by Section 7, Chapter 441, O.S.L. 2009, and as renumbered by Section 64, Chapter 441, O.S.L. 2009 (62 O.S. Supp. 2010, Section 34.6), and is amended to read as follows:

Section 34.6 A. The Director of the Office of State Finance shall have the power and duty under the direction of the Governor to:

1. Prepare the budget document and assist in the drafting of legislation to make it effective;

2. Make field surveys and studies of governmental agencies, looking toward economy and greater efficiency;

3. Make allotments to control expenditures;

4. Authorize transfers of appropriation authorized by law;

5. Study accounting and other reports rendered by the Central Accounting and Reporting Division;

6. Enter into agreements with the United States Secretary of the Treasury for the purpose of implementing federal law; ~~and~~

7. Aid the Governor in the economical management of state affairs; and

8. Assume the responsibilities of the Director of the Department of Central Services, Office of Personnel Management, Oklahoma Merit Protection Commission, Oklahoma Department of Libraries, Oklahoma State Employees Benefits Council and the Oklahoma State and Education Employees Group Insurance Board.

B. In addition to other duties, the Director of the Office of State Finance shall, upon request, advise and consult with members of the Legislature and legislative committees concerning revenue and expenditures of state agencies.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 61.2, is amended to read as follows:

Section 61.2 There is hereby created ~~in~~ within the ~~Executive Department~~ Office of State Finance, a Department of Central Services, under the administrative control of the Director of

~~Central Services~~ the Office of State Finance. Whenever the terms "Board of Affairs", "State Board of Public Affairs", "Board" when used in reference to the Board Of Public Affairs or "Office of Public Affairs", appear in the Oklahoma Statutes they shall mean the Department of Central Services of the Office of State Finance. Whenever the term "Director of Public Affairs" appears in the Oklahoma Statutes it shall mean the Director of the Office of State Finance. Whenever the term "Director of Central Services" appears in the Oklahoma Statutes it shall mean the Director of the Office of State Finance or his designee.

SECTION 6. AMENDATORY 74 O.S. 2001, Section 85.3, as amended by Section 2, Chapter 96, O.S.L. 2008 (74 O.S. Supp. 2010, Section 85.3), is amended to read as follows:

Section 85.3 A. There is hereby created and established in the Department of Central Services a Purchasing Division, the administrative head of which shall be the State Purchasing Director.

B. The Director of the ~~Department of Central Services~~ Office of State Finance shall hire the State Purchasing Director. The State Purchasing Director shall:

1. Be at least twenty-eight (28) years of age;

2. Have a thorough knowledge of office practices and buying procedures in volume purchasing; and

3. Be a graduate of an accredited college or university with at least five (5) years' experience in commercial or governmental

purchasing, or, in lieu of such education, have at least ten (10) years' experience in commercial or governmental purchasing.

C. The Purchasing Division may include the following employees, and employment of such employees is hereby authorized:

1. One assistant director;

2. One qualified specifications engineer;

3. Buyers who have at least three (3) years' procurement experience for:

a. food,

b. hardware,

c. textiles,

d. petroleum,

e. office supplies,

f. building materials,

g. pharmaceutical supplies,

h. automotive equipment, parts, and accessories, and

i. any other commodity group found by the Director of the Department of Central Services to justify special purchasing attention;

4. One buyer for products and services of the severely disabled as provided in Section 3001 et seq. of this title;

5. One dietitian, who shall have the qualifications required by the State Department of Health; and

6. Such other technical and clerical personnel as shall be assigned to the Purchasing Division by the Director of the Department of Central Services.

D. All activities of any state agency, department, or institution relating to purchasing shall be under the direction of the Purchasing Division unless otherwise provided by The Oklahoma Central Purchasing Act.

E. The Purchasing Division shall provide qualified personnel to assist the purchasing activities of state agencies, departments, and institutions.

F. Each state agency, department, and institution shall designate personnel to coordinate its purchasing functions with the Purchasing Division.

G. The Purchasing Division may, if the needs of a state agency, department, or institution are such as to so require, employ, and establish a buyer within a state agency, department, or institution.

H. No state agency, department, or institution subject to The Oklahoma Central Purchasing Act shall have or maintain a purchasing section without the prior approval in writing of the Purchasing Division unless otherwise provided in The Oklahoma Central Purchasing Act.

I. The Purchasing Division shall make acquisitions from industries operated by the Department of Corrections pursuant to the provisions of Section 549.1 of Title 57 of the Oklahoma Statutes.

J. None of the personnel authorized by this section shall:

1. Sell to or otherwise provide acquisitions to any state agency subject to The Oklahoma Central Purchasing Act;

2. Be employees, partners, associates, officers, or stockholders in or with any business entity that sells to or otherwise provides acquisitions to any agency subject to The Oklahoma Central Purchasing Act;

3. Be employed in any of the positions authorized by this section if a spouse or child owns any stock in any business entity which sells to or otherwise provides acquisitions to any agency subject to The Oklahoma Central Purchasing Act; or

4. Be employed in any of the positions authorized by this section if a relative within the third degree of consanguinity or affinity sells to or otherwise provides acquisitions to any agency subject to The Oklahoma Central Purchasing Act or is interested in any business entity which does so, except that such relative, excluding a spouse or child, may own Five Thousand Dollars ($5,000.00) worth or less, or one percent (1%) or less, whichever amount is the lesser amount, of the stock of a corporation or any business entity which sells to or otherwise provides acquisitions to any state agency subject to The Oklahoma Central Purchasing Act.

SECTION 7. AMENDATORY 74 O.S. 2001, Section 85.5, as last amended by Section 1, Chapter 170, O.S.L. 2010 (74 O.S. Supp. 2010, Section 85.5), is amended to read as follows:

Section 85.5 A. Except as otherwise provided in this section, pursuant to the provisions of Section 85.4 of this title, the State Purchasing Director, under the supervision of the Director of the Department of Central Services, shall have sole and exclusive authority and responsibility for all acquisitions used or consumed by state agencies. In order to carry out the powers and duties established in Section 34.11.1 of Title 62 of the Oklahoma Statutes, the Chief Information Officer shall have sole and exclusive authority and responsibility for all acquisitions of information and telecommunications technology, equipment, software, products and related peripherals and services used or consumed by state agencies.

B. The State Purchasing Director, after consultation with the requisitioning state agency, shall have authority to determine the particular brand, model, or other specific classification of each acquisition and to draft or invoke pursuant to The Oklahoma Central Purchasing Act specifications establishing the requirements for all necessary contracts or purchase orders.

C. The Director of the ~~Department of Central Services~~ Office of State Finance shall have authority and responsibility to promulgate rules pursuant to provisions of The Oklahoma Central Purchasing Act governing, providing for, prescribing, or authorizing any act, practice, or requirement for which regulatory power is delegated for:

1. The time, manner, authentication, and form of making requisitions for acquisitions;

2. Inspection, analysis, and testing of acquisitions or samples suppliers submit prior to contract award;

3. The form and manner of submission for bids or proposals a supplier submits and the manner of accepting and opening bids or proposals;

4. The conditions under which the Department of Central Services shall require written contracts for acquisitions, the conditions under which acquisitions may be made on an open account basis, and the conditions and manner of negotiating such contracts;

5. Obtaining acquisitions produced by state institutions;

6. Conditions under which any of the rules herein authorized may be waived;

7. The amounts of and deposits on any bond or other surety required to be submitted with a bid or contract for the furnishing of acquisitions and the conditions under which such bond or other surety shall be required;

8. Storage and storage facilities necessary to accomplish responsibilities of the Director of the Department of Central Services;

9. The manner and conditions of delivery, which shall include the designation of the common carrier of property to be used to transport acquisitions whenever a common carrier is used, and the

acceptance, or rejection, including check of quantities, of any acquisitions;

10. The form of any estimate, order, or other document the Director of the Department of Central Services requires;

11. State agency acquisitions not exceeding the acquisition purchase amount requiring competitive bid pursuant to Section 85.7 of this title to ensure competitiveness, fairness, compliance with provisions of all sections of The Oklahoma Central Purchasing Act, and compliance with provisions of Section 3001 et seq. of this title, which relate to the State Use Committee. The rules shall include separate provisions based on acquisition purchase price as follows:

a. state agencies shall make acquisitions not exceeding Five Thousand Dollars ($5,000.00), provided the acquisition process is fair and reasonable and is conducted pursuant to rules authorized pursuant to this section, and

b. state agencies with certified procurement officers and internal purchasing procedures found compliant by the Director of the Department of Central Services pursuant to this section may make acquisitions in excess of Five Thousand Dollars ($5,000.00) and not exceeding One Hundred Thousand Dollars ($100,000.00), pursuant to rules authorized by this section;

12. Training by the State Purchasing Director of state agency procurement officers;

13. Review and audit by the State Purchasing Director of state agency acquisitions;

14. The conditions for increasing acquisition limits for state agencies which have had a prior reduction in acquisition limit by the Director of the Department of Central Services;

15. Use of a state purchase card to make acquisitions;

16. Any other matter or practice which relates to the responsibilities of the Director of the Department of Central Services;

17. Conditions for determination and authorization of acquisition limits of state agencies pursuant to Section 85.7 of this title; and

18. The form and manner of verification by suppliers that the supplier is eligible to do business in the State of Oklahoma and has obtained all necessary permits and licenses, pursuant to applicable provisions of law.

D. The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff. The training shall include principles of state procurement practices, basic contracting, provisions of The Oklahoma Central Purchasing Act, rules promulgated pursuant to The Oklahoma Central Purchasing Act, provisions of Section 3001 et seq. of this title, which relate

to the State Use Committee, and any other matters related to state procurement practices. State agency purchasing officials that demonstrate proficiency shall be certified as "certified procurement officers" or “certified procurement analysts” by the State Purchasing Director and shall be authorized to make acquisitions pursuant to provisions of The Oklahoma Central Purchasing Act and rules authorized by this section. The State Purchasing Director shall assess a fee to state agencies for the training that does not exceed each state agency’s pro rata share of the costs the State Purchasing Director incurs to provide the training.

E. The State Purchasing Director shall review state agency acquisitions for the purposes of:

1. Ensuring state agency compliance with provisions of The Oklahoma Central Purchasing Act;

2. Ensuring state agency compliance with rules promulgated by the Department of Central Services pursuant to The Oklahoma Central Purchasing Act;

3. Ensuring state agency compliance with provisions of Section 3001 et seq. of this title pertaining to the State Use Committee;

4. Reporting any acquisition by any state agency found not to be in compliance with those sections or rules to the Director of the Department of Central Services; and

5. Recommending that the Director of the Department of Central Services reduce the acquisition competitive bid limit amount for any

state agency found not to be in compliance with The Oklahoma Central Purchasing Act or rules promulgated pursuant thereto.

F. When recommended by the State Purchasing Director, based on written findings by the State Purchasing Director, the Director of the Department of Central Services may:

1. Require retraining of state agency procurement officials and other purchasing staff found not to be in compliance with provisions of The Oklahoma Central Purchasing Act, or rules promulgated pursuant to The Oklahoma Central Purchasing Act;

2. Reduce the acquisition competitive bid limit for any state agency found not to be in compliance with provisions of The Oklahoma Central Purchasing Act or rules promulgated pursuant to The Oklahoma Central Purchasing Act;

3. Transmit written findings by the State Purchasing Director to the State Auditor and Inspector for further investigation, indicating purchasing procedures that do not conform to provisions pursuant to The Oklahoma Central Purchasing Act or rules promulgated pursuant to The Oklahoma Central Purchasing Act;

4. Transmit to the Attorney General or the State Auditor and Inspector for further investigation a report made by the State Purchasing Director that the Director of the Department of Central Services reasonably believes indicates that an action that constitutes a criminal violation pursuant to The Oklahoma Central

Purchasing Act or other laws has been taken by any state agency, state agency official, bidder, or supplier; or

5. Increase the state agency acquisition purchase amount requiring competitive bid, not to exceed the acquisition purchase amount requiring competitive bid, pursuant to Section 85.7 of this title.

G. 1. Pursuant to the requirements of The Oklahoma Central Purchasing Act, the State Purchasing Director shall have authority to enter into any statewide, multistate or multigovernmental contract. The state entity designated by law, as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes, shall participate in the purchase of pharmaceuticals available through such multistate or multigovernmental contracts entered into by the State Purchasing Director.

2. The State Purchasing Director may utilize contracts awarded by other governmental agencies, including agencies of the United States of America.

3. The State Purchasing Director may designate contracts described in this subsection for use by state agencies.

4. Prior to exercising the authority to cancel a contract, the State Purchasing Director may authorize renegotiation of an existing contract with an incumbent supplier for the purposes of obtaining more favorable terms for the state provided the State Purchasing Director shall not renegotiate the term of the contract.

5. In order to carry out the powers and duties established in Section 34.11.1 of Title 62 of the Oklahoma Statutes, the Chief Information Officer shall have the authority to designate certain information technology and telecommunication contracts for state agencies as statewide contracts and mandatory statewide contracts.

H. The State Purchasing Director may develop and test new contracting policies and procedures that hold potential for making the Purchasing Division more effective and efficient.

I. The State Purchasing Director shall endeavor to satisfy state agencies in terms of cost, quality, and timeliness of the delivery of acquisitions by using bidders who have a record of successful past performance, promoting competition, minimizing administrative operating costs, and conducting business with integrity, fairness, and openness.

J. The State Purchasing Director shall undertake the following:

1. The use of electronic commerce pursuant to the Oklahoma Online Bidding Act for solicitation, notification, and other purchasing processes;

2. Monitoring rules promulgated pursuant to The Oklahoma Central Purchasing Act to ensure that the rules, satisfy the interests of the state, are clear and succinct, and encourage efficiency in purchasing processes;

3. A program to identify vendors with poor delivery and performance records;

4. Development of criteria for the use of sealed bid contracting procedures, negotiated contracting procedures, selection of types of contracts, postaward administration of purchase orders and contracts, contract modifications, termination of contracts, and contract pricing;

5. Continual improvement in the quality of the performance of the Purchasing Division through training programs, management seminars, development of benchmarks and key management indicators, and development of standard provisions, clauses and forms;

6. Development of electronic means of making state agencies aware of office furniture, equipment, machinery, tools, and hardware available for purchase from the surplus property programs;

7. Development of programs to improve customer relations through training, improved communications, and appointment of technical representatives;

8. In cooperation with the Office of State Finance and the State Treasurer, develop an electronic payment mechanism for use in the settlement of accounts payable invoices, with no limit, to make payment for products or services acquired in accordance with The Oklahoma Central Purchasing Act and any rules promulgated pursuant thereto; and

9. Implement a policy to approve the ability of the department, agencies, boards, commissions and trusts to accept the terms of service for usage of social media services and contract for

technology products and services provided the terms of service or contract contains standard language including a liability agreement which is considered customary or largely similar to terms of service agreed to or contracts entered into by other government entities and private sector enterprises.

K. The State Purchasing Director shall, in cooperation with the Oklahoma Department of Agriculture, Food, and Forestry, identify the needs of state agencies and institutions for agricultural products grown and produced in Oklahoma.

L. The State Purchasing Director may authorize the use of a state purchase card for acquisitions within the following parameters:

1. No limit on the amount of the transaction for the following:

a. purchases from statewide contracts issued by the State Purchasing Director, and

b. regulated utilities; and

2. For any other transaction with a state purchase card, the transaction shall not exceed Five Thousand Dollars ($5,000.00).

M. The State Purchasing Director may utilize and authorize state agencies to utilize reverse auctions to obtain acquisitions.

N. Prior to the award of a contract to a supplier, the State Purchasing Director shall verify, pursuant to applicable provisions of law, that the supplier is eligible to do business in the State of Oklahoma by confirming registration with the Secretary of State and

franchise tax payment status pursuant to Sections 1203 and 1204 of Title 68 of the Oklahoma Statutes. The provisions of this subsection shall be applicable only if the contract amount is Twenty-five Thousand Dollars ($25,000.00) or greater.

O. As a condition of awarding a contract in excess of the dollar amount prescribed by subparagraph 11 of subsection C of this section pursuant to The Oklahoma Central Purchasing Act, the State Purchasing Director shall verify with the Oklahoma Tax Commission that the business entity to which the state contract is to be awarded, whether subject to the procedures required by Section 85.7 of this title or not, has obtained a sales tax permit pursuant to the provisions of Section 1364 of Title 68 of the Oklahoma Statutes if such entity is required to do so.

P. The State Purchasing Director is hereby authorized to explore and investigate cost savings in energy, resource usage, and maintenance contracts and to identify and negotiate contract solutions including, but not limited to, pilot projects to achieve cost savings for the State of Oklahoma.

Q. The Office of State Finance, with input from the State Purchasing Director, shall promulgate payment procedure rules for state agencies to adhere to regarding statewide contracts issued by the State Purchasing Director.

R. The Office of State Finance along with the Department of Central Services, Central Purchasing Division, shall promulgate

payment procedure rules for agencies to adhere to regarding statewide contracts issued by the Division.

S. On an annual basis, the State Purchasing Director shall transmit to the Governor, Speaker of the House of Representatives and President Pro Tempore of the State Senate a report documenting the savings realized by each agency through the application of best spend practices including the collection and tracking of spend data, strategic sourcing programs, and implementation of managed and mandatory statewide contracts. The report shall document the reasons for the failure to issue a mandatory statewide contract for any items comprising total statewide spend in the amount of Five Million Dollars ($5,000,000.00) or greater.

T. The acquisition limitations provided for in subparagraph b of paragraph 11 of subsection C of this section and paragraph 1 of subsection A of Section 85.7 of this title shall not apply to agency purchases provided the agency has subject matter experts on staff having the specialized expertise to purchase said goods or services, the agency possesses the necessary legal and procurement staff to procure and monitor the contracts and provided the Director of Central Services shall certify that the proposed purchase does not conflict with consolidated statewide spend initiatives.

1. Nothing in this subsection shall give an agency authority to issue statewide, multistate, or multigovernmental contracts.

2. Agencies making purchases pursuant to this subsection shall:

a. be responsible for contracts awarded pursuant to this subsection, which includes, but may not be limited to, contract management, all costs connected with or incurred as a result of the contract, including legal representation,

b. comply with rules and policies of the Department of Central Services, and

c. report contracts issued pursuant to this subsection to the Department of Central Services, Central Purchasing Division, on a quarterly basis.

3. Purchases made in accordance with this subsection shall be made pursuant to rules authorized by this section.

SECTION 8. AMENDATORY 74 O.S. 2001, Section 840-1.6A, as last amended by Section 1, Chapter 312, O.S.L. 2004 (74 O.S. Supp. 2010, Section 840-1.6A), is amended to read as follows:

Section 840-1.6A There is hereby created the Office of Personnel Management Division of the Office of State Finance. The chief administrative officer of said Office of Personnel Management shall be the ~~Administrator~~ designee of the Director of the Office of State Finance who shall be experienced in the field, theory, and application of personnel administration. ~~The Administrator shall be appointed by the Governor with the confirmation of the Senate, and serve at the Governor's pleasure.~~ In addition to the other duties imposed by law, the Administrator shall:

1. Be responsible for the development of an efficient and effective system of personnel administration that meets the management needs of the various agencies;

2. Effective July 1, 1995, organize the Office to provide both service and regulatory functions that are effective and efficient in meeting the management needs of various state agencies. The Administrator is directed to establish an agency service function to assist agencies with human resource needs based upon the administrative capacity and resources of the various agencies;

3. Prepare, maintain, and revise a classified system of employment designed to assure the impartial consideration of applicants for employment and to protect state employees from arbitrary dismissal or unfair treatment;

4. Develop and maintain a classification and compensation system for all classified positions in the executive branch of state government including those established by the Oklahoma Constitution;

5. Conduct an analysis of the rates of pay prevailing in the state in the public and private sectors for comparable jobs and report the findings to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than December 1 of each year. Such analysis shall include all forms of compensation including fringe benefits. Information solicited by the Office of Personnel Management from public and private sector employers for such analysis, including but not limited to salaries,

benefits, and compensation policies and procedures, shall be confidential and shall not be subject to disclosure under the Oklahoma Open Records Act;

6. Develop a program for the recruitment of qualified persons, including the administration of valid job-related nondiscriminatory selection procedures providing for competitive examinations when practical and for reasonable selection criteria when competitive examinations are not practical. As part of the recruitment program established by this section, the Administrator may identify positions or job family levels for expedited recruitment. Such expedited recruitment jobs may include only those jobs where education, experience or certification requirements substantially limit the pool of available applicants. Applicants who have been certified by the Office of Personnel Management as meeting the minimum qualifications for such jobs may be referred to agencies with vacancies in such jobs without examination or ranking, and may be eligible for appointment upon referral. However, a referral may not occur until the register for the job has been publicly announced for at least fourteen (14) calendar days. The Administrator may remove positions or job family levels from expedited recruitment at any time. The Administrator shall adopt rules to implement expedited recruitment;

7. Implement state affirmative action policies, and assure equal employment opportunity;

8. Develop and implement a reasonable and expeditious method for referral of capable candidates for vacancies, probationary periods of employment, and the employment of individuals on other types of appointments as necessary;

9. Assist state agencies in implementing their duties and obligations pursuant to the Oklahoma Personnel Act, Section 840-1.1 et seq. of this title, and provide standard forms to the agencies if necessary;

10. Develop, in cooperation with appointing authorities, employee training programs, management training programs, a certified public manager program, a recruiting program, and a system of performance appraisals, and assist appointing authorities in the setting of productivity goals. The Administrator may establish and collect fees for participation in training programs. The Administrator is authorized to purchase awards for presentation to state employees as part of employee recognition activities sponsored by the Office of Personnel Management;

11. Establish rules for leave and pay including, but not limited to, rules for leave, furloughs, performance pay increases, rates for pay differentials, on-call pay, and other types of pay incentives and salary adjustments consistent with the Oklahoma Personnel Act;

12. Prepare and submit an annual budget covering the costs of administering the personnel program;

13. Make an annual report regarding the work of the Office of Personnel Management;

14. Adopt and implement rules necessary to perform the duties imposed by law on the Office of Personnel Management in accordance with the provisions of the Administrative Procedures Act. All rules adopted by the Oklahoma Merit Protection Commission shall remain in full force and effect until modified by the appropriate authority;

15. Assist the Oklahoma Merit Protection Commission and the Executive Director in effectuating their duties, enforcement of the rules of the Merit System of Personnel Administration, and implementation of corrective action issued by the Commission;

16. Be responsible for the development and maintenance of a uniform occupation code system, grouped by job titles or duties, for all classified and unclassified state positions. Said responsibility shall include the establishment of rules governing the identification, tracking, and reporting of all state positions as provided in Section 840-2.13 of this title;

17. Be responsible for advising state agencies on personnel policy and administration;

18. Establish standards for continuing training, including affirmative action, and certification of personnel professionals in the executive branch of state government, excluding institutions within The Oklahoma State System of Higher Education. Employees appointed to professional personnel positions shall complete an

initial training program within six (6) months after assuming the professional personnel position. Thereafter, they shall complete annual training requirements. Each appointing authority shall ensure that all professional personnel employees are notified of, and scheduled to attend, required training programs and shall make time available for employees to complete the programs. The Administrator shall be authorized to bill agencies for the training of personnel professionals pursuant to this paragraph to recover reasonable costs associated with the training. Monies received for such training shall be deposited in the Office of Personnel Management Revolving Fund. Expenditure of such funds collected for the training shall be exempt from any expenditure limit on the Office of Personnel Management established by law;

19. Conduct a study identifying the following, by job family descriptor(s):

a. selected job family levels with a turnover rate in excess of ten percent (10%),

b. selected job family levels identified by the Administrator of the Office of Personnel Management with salaries and benefits that are ten percent (10%) or more below the market for such position(s), and

c. selected job family levels identified by the Administrator of the Office of Personnel Management in

which recruitment efforts have yielded a low number of qualified applicants.

The initial study shall be conducted by December 1, 2001, and every two (2) years thereafter;

20. Issue orders directing agencies to:

a. conform and comply with the provisions of the Oklahoma Personnel Act, the Merit Rules of Personnel Administration, and all memoranda or other written communications issued to agencies explaining the Oklahoma Personnel Act, the Rules, and any other matter relating to the Merit System of Personnel Administration or under the jurisdiction of the Administrator of the Office of Personnel Management, and

b. take action pursuant to Section 840-6.9 of this title for failure to implement those orders;

21. Establish a workforce planning function within the Office of Personnel Management to assist state agencies in analyzing the current workforce, determining future workforce needs, and implementing solutions so that agencies may accomplish their missions; and

22. Establish a quality management function within the Office of Personnel Management to assist state agencies in fully integrating quality management concepts and models into their

business practices for the purpose of improving the overall efficiency and effectiveness of state government.

SECTION 9. AMENDATORY 74 O.S. 2001, Section 840-1.8, is amended to read as follows:

Section 840-1.8 The appointing authority of the Oklahoma Merit Protection Commission shall be the Executive Director. The Executive Director shall be appointed by the ~~Commission to serve at its pleasure~~ Director of the Office of State Finance. The Executive Director, with the approval of the Commission, may employ and compensate an attorney and shall select, compensate and employ such administrative hearing officers and other personnel as deemed necessary for the proper administration of the duties and functions of the Commission. Effective September 1, 1994, employees of the Commission shall become classified employees, except those employees with less than six (6) months of service from their enter-on-duty date will remain in probationary status until obtaining permanent status in accordance with applicable rules of the Administrator of the Office of Personnel Management or as provided in Section ~~8~~ 840-5.5 of this ~~act~~ title.

SECTION 10. AMENDATORY 65 O.S. 2001, Section 3-103, is amended to read as follows:

Section 3-103. The offices of Director and Assistant Director are hereby created. ~~The~~ Subject to the confirmation of the Director of the Office of State Finance, the Director shall be appointed by

the Board on the basis of merit and appropriate experience, shall possess a library degree from a library school accredited by the American Library Association and shall serve at the pleasure of the ~~Board~~ Director of the Office of State Finance. The Assistant Director shall be appointed by the Director, with the approval of the Board, and shall be subject to the same qualifications as herein specified for the Director. The Director shall be the State Librarian and the State Archivist, which offices are hereby created.

SECTION 11. AMENDATORY 74 O.S. 2001, Section 1365, as last amended by Section 1, Chapter 28, O.S.L. 2009 (74 O.S. Supp. 2010, Section 1365), is amended to read as follows:

Section 1365. A. The Oklahoma State Employees Benefits Council shall have the following duties, responsibilities and authority with respect to the administration of the plan:

1. To construe and interpret the plan, and decide all questions of eligibility in accordance with the Oklahoma State Employees Benefits Act and 26 U.S.C.A., Section 1 et seq.;

2. To select those benefits which shall be made available to participants under the plan, according to the Oklahoma State Employees Benefits Act, and other applicable laws and rules;

3. To retain or employ qualified agencies, persons or entities to design, develop, communicate, implement or administer the plan;

4. To prescribe procedures to be followed by participants in making elections and filing claims under the plan;

5. To prepare and distribute information communicating and explaining the plan to participating employers and participants. The State and Education Employees Group Insurance Board, Health Maintenance Organizations, or other third-party insurance vendors may be directly or indirectly involved in the distribution of communicated information to participating state agency employers and state employee participants subject to the following conditions:

a. the Council shall verify all marketing and communications information for factual accuracy prior to distribution,

b. the Board or vendors shall provide timely notice of any marketing, communications, or distribution plans to the Council and shall coordinate the scheduling of any group presentations with the Council, and

c. the Board or vendors shall file a brief summary with the Council outlining the results following any marketing and communications activities;

6. To receive from participating employers and participants such information as shall be necessary for the proper administration of the plan, and any of the benefits offered thereunder;

7. To furnish the participating employers and participants such annual reports with respect to the administration of the plan as are reasonable and appropriate;

8. To keep reports of benefit elections, claims and disbursements for claims under the plan;

9. To appoint an executive director, subject to the confirmation of the Director of the Office of State Finance, who shall serve at the pleasure of the ~~Council~~ Director of the Office of State Finance. The executive director shall employ or retain such persons in accordance with the Oklahoma State Employees Benefits Act and the requirements of other applicable law, including but not limited to actuaries and certified public accountants, as he or she deems appropriate to perform such duties as may from time to time be required under the Oklahoma State Employees Benefits Act and to render advice upon request with regard to any matters arising under the plan subject to the approval of the Council. The executive director shall have not less than seven (7) years of group insurance administration experience on a senior managerial level or not less than three (3) years of flexible benefits experience on a senior managerial level. Any actuary or certified public accountant employed or retained under contract by the Council shall have not less than three (3) years' experience in group insurance or employee benefits administration. The compensation of all persons employed or retained by the Council and all other expenses of the Council shall be paid at such rates and in such amounts as the Council shall approve, subject to the provisions of applicable law;

10. To negotiate for best and final offer through competitive negotiation and contract with federally qualified health maintenance organizations under the provisions of 42 U.S.C., Section 300e et seq., or with Health Maintenance Organizations granted a certificate of authority by the Insurance Commissioner pursuant to Sections 6901 through 6951 of Title 36 of the Oklahoma Statutes for consideration by participants as an alternative to the health plans offered by the Board, and to transfer to the health maintenance organizations such funds as may be approved for a participant electing health maintenance organization alternative services. The Council may also select and contract with a vendor to offer a point-of-service plan. An HMO may offer coverage through a point-of-service plan, subject to the guidelines established by the Council. However, if the Council chooses to offer a point-of-service plan, then a vendor that offers both an HMO plan and a point-of-service plan may choose to offer only its point-of-service plan in lieu of offering its HMO plan.

The Oklahoma State Employees Benefits Council may, however, renegotiate rates with successful bidders after contracts have been awarded if there is an extraordinary circumstance. An extraordinary circumstance shall be limited to insolvency of a participating health maintenance organization or point-of-service plan, dissolution of a participating health maintenance organization or point-of-service plan or withdrawal of another participating health

maintenance organization or point-of-service plan at any time during the calendar year. Nothing in this section of law shall be construed to permit either party to unilaterally alter the terms of the contract;

11. To retain as confidential information the initial Request For Proposal offers as well as any subsequent bid offers made by the health plans prior to final contract awards as a part of the best and final offer negotiations process for the benefit plan;

12. To promulgate administrative rules for the competitive negotiation process;

13. To require vendors offering coverage through the Council, including the Board, to provide such enrollment and claims data as is determined by the Council. The Oklahoma State Employees Benefits Council with the cooperation of the Department of Central Services acting pursuant to Section 85.1 et seq. of this title, shall be authorized to retain as confidential, any proprietary information submitted in response to the Council's Request For Proposal. Provided, however, that any such information requested by the Council from the vendors shall only be subject to the confidentiality provision of this paragraph if it is clearly designated in the Request For Proposal as being protected under this provision. All requested information lacking such a designation in the Request For Proposal shall be subject to Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes. From health maintenance

organizations, data provided shall include the current Health Plan Employer Data and Information Set (HEDIS);

14. To purchase any insurance deemed necessary for providing benefits under the plan including indemnity dental plans, provided that the only indemnity health plan selected by the Council shall be the indemnity plan offered by the Board, and to transfer to the Board such funds as may be approved for a participant electing a benefit plan offered by the Board. All indemnity dental plans, including the one offered by the Oklahoma State and Education Employees Group Insurance Board, must meet or exceed the following requirements:

a. they shall have a statewide provider network,

b. they shall provide benefits which shall reimburse the expense for the following types of dental procedures:

(1) diagnostic,

(2) preventative,

(3) restorative,

(4) endodontic,

(5) periodontic,

(6) prosthodontics,

(7) oral surgery,

(8) dental implants,

(9) dental prosthetics, and

(10) orthodontics, and

c. they shall provide an annual benefit of not less than One Thousand Five Hundred Dollars ($1,500.00) for all services other than orthodontic services, and a lifetime benefit of not less than One Thousand Five Hundred Dollars ($1,500.00) for orthodontic services;

15. To communicate deferred compensation programs as provided in Section 1701 of this title;

16. To assess and collect reasonable fees from the Board, and from such contracted health maintenance organizations and third-party insurance vendors to offset the costs of administration as determined by the Council. The Council shall have the authority to transfer income received pursuant to this subsection to the Board for services provided by the Board;

17. To accept, modify or reject elections under the plan in accordance with the Oklahoma State Employees Benefits Act and 26 U.S.C.A., Section 1 et seq.;

18. To promulgate election and claim forms to be used by participants;

19. To take all steps deemed necessary to properly administer the plan in accordance with the Oklahoma State Employees Benefits Act and the requirements of other applicable law; and

20. To manage, license or sell software developed for and acquired by the Council, whether or not such software is patented or copyrighted. The Council shall have the authority to license and

sell such software or any rights to such software without declaring such property to be surplus. All proceeds from any such sale shall be deposited in the Benefits Council Administration Revolving Fund and used to defray the costs of administration.

B. The Council members shall discharge their duties as fiduciaries with respect to the participants and their dependents of the plan, and all fiduciaries shall be subject to the following definitions and provisions:

1. A person or organization is a fiduciary with respect to the Council to the extent that the person or organization:

a. exercises any discretionary authority or discretionary control respecting administration or management of the Council,

b. exercises any authority or control respecting disposition of the assets of the Council,

c. renders advice for a fee or other compensation, direct or indirect, with respect to any participant or dependent benefits, monies or other property of the Council, or has any authority or responsibility to do so, or

d. has any discretionary authority or discretionary responsibility in the administration of the Council;

2. The Council may procure insurance indemnifying the members of the Council from personal loss or accountability from liability

resulting from a member's action or inaction as a member of the Council;

3. Except for a breach of fiduciary obligation, a Council member shall not be individually or personally responsible for any action of the Council;

4. Any person who is a fiduciary with respect to the Council shall be entitled to rely on representations made by participants, participating employers, third-party administrators and beneficiaries with respect to age and other personal facts concerning a participant or beneficiaries, unless the fiduciary knows the representations to be false;

5. Each fiduciary shall discharge his or her duties and responsibilities with respect to the Council and the plan solely in the interest of the participants and beneficiaries of the plan according to the terms hereof, for the exclusive purpose of providing benefits to participants and their beneficiaries, with the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; and

6. The duties and responsibilities allocated to each fiduciary by the Oklahoma State Employees Benefits Act or by the Council shall be the several and not joint responsibility of each, and no

fiduciary shall be liable for the act or omission of any other fiduciary unless:

a. by his or her failure to properly administer his or her specific responsibility he or she enabled such other person or organization to commit a breach of fiduciary responsibility, or

b. he or she knowingly participates in, or knowingly undertakes to conceal, an act or omission of another person or organization, knowing such act or omission to be a breach, or

c. having knowledge of the breach of another person or organization, he or she fails to make reasonable efforts under the circumstances to remedy said breach.

SECTION 12. REPEALER 74 O.S. 2001, Section 61.1, is hereby repealed.

SECTION 13. REPEALER 74 O.S. 2001, Section 840-1.4, is hereby repealed.

SECTION 14. This act shall become effective July 1, 2011.

SECTION 15. 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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