

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend House Bill No. 3293, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Jolley

Jolley-MJM-FS-Req#3640
4/14/2014 4:49 PM

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

FLOOR SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 3293

By: Osborn, McCall, Ownbey,
McBride, Walker and Billy
of the House

and

Jolley of the Senate

FLOOR SUBSTITUTE

[state employee compensation - Oklahoma Personnel
Act - pay bands - repealer - codification -
effective date

- emergency]

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 840-2.15A of Title 74, unless
there is created a duplication in numbering, reads as follows:

A. There is hereby established the "State Employee Compensation
Program" within the executive branch. The State Employee
Compensation Program will attract, retain and reward quality
employees with competitive total compensation based on relevant
labor markets. The Office of Management and Enterprise Services
will be responsible for implementing the compensation program. The
compensation program will establish pay structures with a goal of

1 working toward a ninety percent (90%) of the market compensation
2 philosophy. The compensation program will reinforce a productive
3 work climate and culture of accountability and make the State of
4 Oklahoma an employer of choice. Pay structures will be implemented
5 with fairness and equity throughout the executive branch. Pay
6 delivery mechanisms will be based on a combination of establishing
7 and maintaining relativity to market, achievement of performance
8 objectives, recognition of differences in job content, acquisition
9 and application of further skill and education. The Legislature
10 will be accountable for the funding of the pay structures
11 established pursuant to the compensation program.

12 B. Subject to the availability of funds, an annual
13 appropriation equal to three percent (3%) of the previous fiscal
14 year's total payroll cost for state employees within the executive
15 branch shall be made to the Human Capital Management Revolving Fund
16 for the purpose of state employee compensation adjustments. The
17 Office of Management and Enterprise Services shall make allocations
18 from the Human Capital Management Revolving Fund to executive branch
19 state agencies for employee salary market adjustments, targeted
20 performance adjustments and equity adjustments pursuant to the
21 recommendations of the 2013 State Employee Total Remuneration Study.

22 SECTION 2. AMENDATORY 74 O.S. 2011, Section 840-2.17, as
23 amended by Section 876, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
24 2013, Section 840-2.17), is amended to read as follows:

1 Section 840-2.17 A. Unless otherwise provided by the Oklahoma
2 Constitution, language in law which authorizes the setting or fixing
3 of compensation, pay or salary of state officers and employees shall
4 not be construed to authorize any agency, board, commission,
5 department, institution, bureau, executive officer or other entity
6 of the executive branch of state government to award, grant, give,
7 authorize, or promise any officer or employee of the State of
8 Oklahoma a raise that is inconsistent with the pay structures
9 established by the Office of Management and Enterprise Services for
10 all state officers and employees in the executive branch pursuant to
11 Section 840-4.6 of this title, including, but not limited to, a
12 cost-of-living raise or any other type of raise that would be given
13 to state employees on an across-the-board basis, except as herein
14 provided. Such raises are prohibited unless authorized by the
15 Legislature and by ~~Merit System of Personnel Administration~~ Career
16 Service Rules for Employment promulgated by the Director. This
17 prohibition applies to all ~~classified and unclassified~~ career and
18 executive service officers and employees in the executive branch of
19 state government, excluding institutions under the administrative
20 authority of the Oklahoma State Regents for Higher Education.

21 B. However, nothing in this section shall be construed to
22 prohibit the following actions if the action is made in good faith
23 and not for the purpose of circumventing subsection A of this
24 section, and if the appointing authority certifies that the action

1 can be implemented for the current fiscal year and the subsequent
2 fiscal year without the need for additional funding to increase the
3 personal services budget of the agency:

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

6 2. Salary adjustments resulting from a pay band change for a
7 job family level or class adopted by the Office of Management and
8 Enterprise Services;

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

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

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

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

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

20 8. Skill-based adjustments. Such adjustments, which are
21 implemented before November 1, 2006, other than lump-sum payments,
22 shall become permanent after twenty-four (24) months from the date
23 such salary adjustment is implemented and may not later be removed
24 from an employee's base salary if a furlough or reduction-in-force

1 is implemented by the appointing authority granting such salary
2 adjustment. Skill-based pay adjustments, which are implemented on
3 or after November 1, 2006, and which are paid to an employee, shall
4 be paid as long as the employee remains employed in the position and
5 performs the skills for which the differential is due, but shall not
6 be included as a part of the employee's base salary;

7 9. Equity-based adjustments;

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

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

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

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

23 D. The pay movement mechanisms described in paragraphs 6
24 through 11 in subsection B of this section shall be implemented

1 pursuant to rules promulgated by the Director of the Office of
2 Management and Enterprise Services for the ~~classified~~ career
3 service.

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

14 F. The provisions in subsection B of this section shall not
15 apply to chief executive officers of any agency, board, commission,
16 department or program except for paragraphs 3 and 5 of subsection B
17 of this section.

18 SECTION 3. AMENDATORY 74 O.S. 2011, Section 840-2.23, is
19 amended to read as follows:

20 Section 840-2.23 A. There is hereby created the state leave
21 sharing program. The purpose of the state leave sharing program is
22 to permit state employees to donate annual or sick leave to a fellow
23 state employee who has exhausted, or will exhaust, all types of paid
24 leave and:

1 1. Who is eligible for and requires family leave pursuant to
2 the provisions of the Family and Leave Medical Act of 1993, 29
3 U.S.C., 2601 et seq.; or

4 2. Who is suffering from or has a relative or household member
5 suffering from an extraordinary or severe illness, injury,
6 impairment, or physical or mental condition which has caused or is
7 likely to cause the employee to take leave without pay or terminate
8 employment;

9 3. Immediately after the death of a relative or household
10 member, provided that the total leave received for this purpose
11 shall not exceed five (5) days in any calendar year; or

12 4. Who is affected by a presidentially declared national
13 disaster in Oklahoma after May 1, 1999, for a period of eighteen
14 (18) months after the date of the presidentially declared national
15 disaster if:

- 16 a. the employee suffered a physical injury as a result of
- 17 the disaster,
- 18 b. the spouse, relative, or household member of the
- 19 employee suffered a physical injury or died as a
- 20 result of the disaster, or
- 21 c. the domicile of the employee or the home of a relative
- 22 of the employee was damaged or destroyed as a result
- 23 of the disaster.

24 B. As used in this section:

1 1. "Relative of the employee" shall be limited to the spouse,
2 child, stepchild, grandchild, grandparent, stepparent, or parent of
3 the employee;

4 2. "Household members" means those persons who reside in the
5 same home, who have reciprocal duties to and do provide financial
6 support for one another. This term shall include foster children
7 and legal wards even if they do not live in the household. The term
8 does not include persons sharing the same general house, when the
9 living style is primarily that of a dormitory or commune;

10 3. "Severe" or "extraordinary" means extreme or life
11 threatening;

12 4. "State employee" means a ~~permanent classified~~ career service
13 employee or a ~~regular unclassified~~ an executive service employee
14 ~~with one (1) year or more continuous service~~ with the state. The
15 term "state employee" does not include ~~classified~~ career service
16 employees ~~in probationary status~~ or ~~unclassified~~ executive service
17 employees on temporary or other limited term appointments, except
18 that those employees are eligible to receive shared leave as
19 provided in paragraph 4 of subsection A of this section and the
20 leave with pay authorized by Section 840-2.23A of this title related
21 to a presidentially declared national disaster; and

22 5. "Terminal" means likely to result in death within two (2)
23 calendar years.

1 C. An employee may be eligible to receive shared leave pursuant
2 to the following conditions:

3 1. The chief administrative officer of the employee determines
4 that the employee meets the criteria described in this section; and

5 2. The employee has abided by state policies regarding the use
6 of leave.

7 D. An employee may not donate annual or sick leave to an
8 eligible employee without the permission of the chief administrative
9 officer of the donating employee's agency.

10 E. An employee may donate annual or sick leave to another
11 employee provided the donation does not cause the annual leave
12 balance of the employee to fall below eighty (80) hours and provided
13 the donation does not cause the sick leave balance of the employee
14 to fall below eighty (80) hours.

15 F. Except as otherwise provided for in this subsection, the
16 chief administrative officer of the employee shall determine the
17 amount of donated leave an employee may receive and may authorize an
18 employee to use up to a maximum of two hundred sixty-one (261) days
19 of donated leave during total state employment. If the employee is
20 suffering from an illness which has been certified in writing by a
21 licensed physician or health care practitioner as being terminal and
22 the employee who either has reached or shall reach in the near
23 future the maximum amount as set out in this subsection, the chief
24

1 administrative officer of the employee may approve additional
2 donated leave upon written request of the employee.

3 G. The chief administrative officer of the employee shall
4 require the employee to submit, prior to approval or disapproval of
5 shared leave pursuant to paragraph 1 of subsection A of this
6 section, a medical certificate from a licensed physician or health
7 care practitioner verifying the need for the leave and expected
8 duration of the illness, injury, impairment, or physical or mental
9 condition for which the leave is donated.

10 H. Donated annual or sick leave is transferable between
11 employees in different state entities with the agreement of both
12 chief administrative officers of the entities.

13 I. Donated annual or sick leave is transferable between
14 employees on an hour-to-hour basis irrespective of the hourly wage
15 of the donating or receiving employee.

16 J. Any donated leave may only be used by the recipient for the
17 purposes specified in this section.

18 K. All forms of paid leave available for use by the recipient
19 must be used prior to using donated leave.

20 L. Any donated leave not used by the recipient during each
21 occurrence as determined by the chief administrative officer of the
22 employee shall be returned to the donor. The donated leave
23 remaining will be divided among the donors on a prorated basis based
24

1 on the original donated value and returned at its original donor
2 value and reinstated to the original leave balance of each donor.

3 M. All donated leave must be given voluntarily. No employee
4 shall be coerced, threatened, intimidated, or financially induced
5 into donating annual or sick leave for purposes of the leave sharing
6 program.

7 N. Employees may not donate excess annual or sick leave that
8 the donor would not be able to otherwise take.

9 SECTION 4. AMENDATORY 74 O.S. 2011, Section 840-4.6, as
10 amended by Section 902, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
11 2013, Section 840-4.6), is amended to read as follows:

12 Section 840-4.6 A. The State of Oklahoma, to recruit, retain
13 and motivate a quality workforce for the purpose of providing
14 quality services to the citizens of Oklahoma, shall provide a pay
15 structure based on internal equity and external competitiveness
16 balanced by the state's fiscal conditions. The state's goal shall
17 be to provide a flexible and adaptable state employee pay system
18 based on the market data found in relevant public and private sector
19 markets.

20 B. The Director of the Office of Management and Enterprise
21 Services shall ~~develop a salary schedule for the classified service~~
22 ~~and pay lines as appropriate to meet the needs of agencies~~ study,
23 establish, assign and may make adjustments to pay structures for all
24 career and executive service positions within the executive branch,

1 excluding institutions under the administrative authority of the
2 Oklahoma State Regents for Higher Education. The Office may develop
3 market-based occupational pay structures. The pay structures
4 established pursuant to this section for all career and executive
5 service positions shall be initially established and published by
6 January 1, 2015, and shall thereafter be reviewed for revision
7 annually. The provisions of this section are not subject to the
8 provisions of Article I of the Administrative Procedures Act.

9 C. The Director shall design a compensation system for all
10 classified state employees. The compensation system, except for
11 performance based adjustments, developed pursuant to this subsection
12 shall be consistent with but not limited to the recommendations
13 contained in the Classification and Compensation Reform Report from
14 the Director, dated December 1998 and submitted to the Governor,
15 President Pro Tempore of the Senate and Speaker of the House of
16 Representatives.

17 ~~D. All executive branch state agencies who employ personnel in~~
18 ~~the unclassified service of the state, whose salaries are not~~
19 ~~prescribed by law, shall establish salary schedules for such~~
20 ~~employees.~~

21 SECTION 5. AMENDATORY 74 O.S. 2011, Section 840-4.17, as
22 amended by Section 911, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
23 2013, Section 840-4.17), is amended to read as follows:
24

1 Section 840-4.17 A. The Office of Management and Enterprise
2 Services ~~shall make available one standard~~ study and establish a
3 performance management evaluation system that shall be used by all
4 agencies for completing employee performance evaluations and making
5 salary and performance-based pay decisions. The purpose of ~~this~~
6 ~~employee performance management~~ the established system is to
7 ~~evaluate the performance of each regular classified, unclassified~~
8 ~~and exempt employee in the executive branch of state government~~
9 ~~except those in the exempt unclassified service as specified in~~
10 ~~paragraphs 1 and 2 of subsection A of Section 840-5.5 of this title~~
11 ~~and those employees employed by the institutions under the~~
12 ~~administrative authority of The Oklahoma State System of Higher~~
13 ~~Education~~ effectively link pay and performance while taking into
14 consideration both the relativity of the position to market and the
15 performance of the employee. The Office of Management and
16 Enterprise Services may promulgate rules to implement the provisions
17 of this section.

18 B. ~~The employee performance management system shall provide for~~
19 ~~the following:~~

20 1. ~~An objective evaluation by the immediate supervisor of the~~
21 ~~performance of the employee within the assigned duties of the job.~~
22 ~~The evaluation shall contain the agency number, date of review, and~~
23 ~~employee identification number;~~

1 ~~2. The identification by the immediate supervisor of~~
2 ~~accountabilities and behaviors upon which the employee will be~~
3 ~~evaluated;~~

4 ~~3. A mid-term interview with the immediate supervisor for the~~
5 ~~purpose of discussing the progress of the employee in meeting the~~
6 ~~accountabilities and behaviors upon which the employee will be~~
7 ~~evaluated;~~

8 ~~4. Identification of performance strengths and performance~~
9 ~~areas for development;~~

10 ~~5. A final interview with the employee by the immediate~~
11 ~~supervisor who shall provide the employee with a copy of the~~
12 ~~performance evaluation; and~~

13 ~~6. The opportunity for the employee to submit written comments~~
14 ~~regarding the performance evaluation.~~

15 ~~C. Each employee shall be rated at least thirty (30) days prior~~
16 ~~to the end of the probationary period. Except as may otherwise be~~
17 ~~provided by rules promulgated by the Director of the Office of~~
18 ~~Management and Enterprise Services, after the end of the probation~~
19 ~~period, each employee shall be evaluated at least annually on a~~
20 ~~twelve-month period.~~

21 ~~D. Any permanent classified employee who disagrees with the~~
22 ~~employee's performance evaluation may file a grievance pursuant to~~
23 ~~Section 840-6.2 of this title.~~

1 ~~E. Any employee, regardless of status, who is required to be~~
2 ~~evaluated pursuant to this section and who believes that the~~
3 ~~employing agency has not complied with the requirements of~~
4 ~~subsection B of this section may file a complaint through any~~
5 ~~dispute resolution process made available through the employing~~
6 ~~agency or, if there is no internal agency dispute resolution~~
7 ~~process, through the Oklahoma Merit Protection Commission. The~~
8 ~~Oklahoma Merit Protection Commission shall have jurisdiction to~~
9 ~~investigate or hear appeals of the failure of an agency to comply~~
10 ~~with the provisions of subsection B of this section.~~

11 ~~F. The agency shall use employee evaluations of current or~~
12 ~~former state employees in decisions regarding promotions,~~
13 ~~appointments, demotions, performance pay increases and discharges.~~
14 ~~Reductions-in-force shall not be considered discharges.~~

15 ~~G.~~ The agency shall retain a copy of the performance evaluation
16 for each employee of the agency. A copy of the performance
17 evaluation shall be retained in the employee's personnel file.

18 ~~H. Each appointing authority shall annually report its~~
19 ~~compliance with the provisions of this section in writing to the~~
20 ~~Director of the Office of Management and Enterprise Services. The~~
21 ~~Director shall prescribe a form for such reporting.~~

22 ~~I. The Director of the Office of Management and Enterprise~~
23 ~~Services shall conduct an annual random audit of state agencies to~~
24 ~~determine whether they are in compliance with this section. Any~~

1 ~~agency deemed to be out of compliance shall submit a written plan to~~
2 ~~the Director detailing the efforts the agency will make to come into~~
3 ~~compliance at the earliest possible date.~~

4 SECTION 6. REPEALER 63 O.S. 2011, Section 2-103a, is
5 hereby repealed.

6 SECTION 7. REPEALER 74 O.S. 2011, Section 840-4.7, as
7 amended by Section 903, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
8 2013, Section 840-4.7), is hereby repealed.

9 SECTION 8. This act shall become effective July 1, 2014.

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

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