

An Act

ENROLLED HOUSE
BILL NO. 1146

By: Osburn and Crosswhite Hader
of the House

and

Treat of the Senate

An Act relating to state employees; creating the Civil Service and Human Capital Modernization Act; directing Office of Management and Enterprise Services to establish and maintain a State Employee Dispute Resolution Program; providing for review of certain complaints; authorizing promulgation of rules; providing for filing of claim by certain time; providing for attorney fees and costs; defining term; providing exceptions; placing state employee positions under the Human Capital Management Division on certain date; amending 74 O.S. 2011, Section 840-1.7, which relates to the Oklahoma Merit Protection Commission; providing termination date; providing for codification; and providing an effective date.

SUBJECT: State employees

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 34.301 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Civil Service and Human Capital Modernization Act".

B. The Human Capital Management Division of the Office of Management and Enterprise Services shall:

1. Establish and maintain a State Employee Dispute Resolution Program, which may include mediation, to provide dispute resolution services for state agencies and state employees. Actions agreed to through the State Employee Dispute Resolution Program shall be consistent with applicable laws and rules and shall not alter, reduce or modify any existing right or authority as provided by statute or rule;

2. Establish rules pursuant to the Administrative Procedures Act as may be necessary to perform the duties and functions of this act, including creating an Office of Veterans Placement to offer counseling, assessment and assistance to veterans seeking state employment;

3. Receive and only act on complaints by state employees arising from disciplinary action;

4. Use administrative law judges as independent contractors to exercise the provisions of this act;

5. Submit quarterly reports on workload statistics to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma State Senate containing the following information:

- a. the number of cases, complaints and requests for hearings filed, disposed of and pending with the Division for each month of the quarter, and
- b. a numerical breakdown of the methods of disposition of such cases, complaints and requests for hearing.

Quarterly reports shall be submitted within thirty (30) days following the last day of the month of the appropriate quarter; and

6. Create a confidential whistleblower program and serve as the chief administrator of such program whereby a state employee may confidentially report claims of agency or employee mismanagement as well as misuse of state funds or property.

C. Complaints shall be filed with the Human Capital Management Division within five (5) business days of the date of when such action occurred and hearings shall take place within twenty-five (25) business days of the action.

D. Employees filing a complaint with the Human Capital Management Division shall prove that there was no reasonable basis for the disciplinary action by the state agency. The review of the merits of the complaint shall be limited to the employee disciplinary file directly at issue. Complaints relating to punitive transfers or written reprimands shall be administered through mediation. Mediation may also be available for other disciplinary actions.

E. Claimants shall be permitted to secure and utilize representation during the adverse action process.

F. The presiding officer of any proceeding before the Human Capital Management Division may require payment of reasonable attorney fees and costs to the prevailing party if the position of the nonprevailing party was without reasonable basis or was frivolous.

G. For purposes of this section, "disciplinary actions" means termination, suspension without pay, involuntary demotion, punitive transfers or written reprimand.

H. Nothing in this section shall apply to:

1. Persons employed by the Governor, Lieutenant Governor, Oklahoma House of Representatives, Oklahoma State Senate, Legislative Service Bureau, or the Legislative Office of Fiscal Transparency;

2. Elected officials;

3. Political appointees;

4. District attorneys, assistant district attorneys or other employees of the district attorney's office;

5. The state judiciary or persons employed by the state judiciary; or

6. Not more than five percent (5%) of an agency's employees designated as executive management as determined by the agency director.

I. Except as provided by subsection H of this section, effective January 1, 2022, all state employee positions shall be

administered by the Human Capital Management Division of the Office of Management and Enterprise Services, without reference to prior classified or unclassified status.

J. Under the administration and oversight of the Human Capital Management Division as set forth in subsection I of this section, state agencies shall continue to be responsible for developing and conducting policies and procedures for human resource activities, including, but not limited to, recruitment, retention, promotion, market-based pay analysis, training and development. In addition, state agencies shall develop procedures for screening, hiring and disciplinary actions of state employees subject to guidance and approval by the Division.

SECTION 2. AMENDATORY 74 O.S. 2011, Section 840-1.7, is amended to read as follows:

Section 840-1.7 A. There is hereby created the Oklahoma Merit Protection Commission, to continue until December 31, 2022. Whenever the terms "Ethics and Merit Commission" or "Special Counsel of the Ethics and Merit Commission" appear in the Oklahoma Statutes, they shall mean the Oklahoma Merit Protection Commission or the Executive Director of the Oklahoma Merit Protection Commission as may be appropriate to the context in which they appear. The Oklahoma Merit Protection Commission shall consist of nine (9) members who shall be appointed for a term of three (3) years. The members shall be removable only for cause, as provided by law for the removal of officers not subject to impeachment. Two members of the Commission shall be appointed by the President Pro Tempore of the Senate. Two members of the Commission shall be appointed by the Speaker of the House of Representatives. Five members of the Commission shall be appointed by the Governor. No more than four of the appointments made by the Governor shall be from the same political party. Of the initial appointments made to the Commission, one member appointed by the President Pro Tempore, one member appointed by the Speaker and one member appointed by the Governor shall be for a term of three (3) years; and one member appointed by the President Pro Tempore, one member appointed by the Speaker and one member appointed by the Governor shall be for a term of two (2) years. The remaining three initial appointments by the Governor shall be designated to serve a term of one (1) year. At the expiration of the initial term, each new appointee shall serve a three-year term. All initial appointments shall be made prior to July 1, 1982.

B. Members of the Commission shall be entitled to reimbursement for expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act.

C. The Commission shall elect a chairman~~7~~ to serve a two-year term and such other officers as deemed necessary for the performance of their duties. The Commission shall hold regular meetings not less than once a month and such additional meetings as called by the chairman as may be required for the proper discharge of its duties.

SECTION 3. This act shall become effective January 1, 2022.

Passed the House of Representatives the 9th day of March, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 21st day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____