

1 **SENATE FLOOR VERSION**

2 March 31, 2021

3 ENGROSSED HOUSE  
4 BILL NO. 1146

By: Osburn and Crosswhite Hader  
of the House

5 and

6 Treat of the Senate

7  
8  
9 An Act relating to state employees; creating the  
10 Civil Service and Human Capital Modernization Act;  
11 directing Office of Management and Enterprise  
12 Services to establish and maintain a State Employee  
13 Dispute Resolution Program; providing for review of  
14 certain complaints; authorizing promulgation of  
15 rules; providing for filing of claim by certain time;  
16 providing for attorney fees and costs; defining term;  
17 providing exceptions; placing state employee  
18 positions under the Human Capital Management Division  
19 on certain date; amending 74 O.S. 2011, Section 840-  
20 1.7, which relates to the Oklahoma Merit Protection  
21 Commission; providing termination date; providing for  
22 codification; and providing an effective date.

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

24 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".

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

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

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

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

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

19 5. Submit quarterly reports on workload statistics to the  
20 Governor, the Speaker of the House of Representatives and the  
21 President Pro Tempore of the Senate containing the following  
22 information:  
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1 a. the number of cases, complaints and requests for  
2 hearings filed, disposed of and pending with the  
3 Division for each month of the quarter, and

4 b. a numerical breakdown of the methods of disposition of  
5 such cases, complaints and requests for hearing.

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

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

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

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

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

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

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

11 H. Nothing in this section shall apply to:

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

16 2. Elected officials;

17 3. Political appointees;

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

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

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

1 I. Except as provided by subsection H of this section,  
2 effective January 1, 2022, all state employee positions shall be  
3 administered by the Human Capital Management Division of the Office  
4 of Management and Enterprise Services, without reference to prior  
5 classified or unclassified status.

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

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

17 Section 840-1.7. A. There is hereby created the Oklahoma Merit  
18 Protection Commission, to continue until December 31, 2022.  
19 Whenever the terms "Ethics and Merit Commission" or "Special Counsel  
20 of the Ethics and Merit Commission" appear in the Oklahoma Statutes,  
21 they shall mean the Oklahoma Merit Protection Commission or the  
22 Executive Director of the Oklahoma Merit Protection Commission as  
23 may be appropriate to the context in which they appear. The  
24 Oklahoma Merit Protection Commission shall consist of nine (9)

1 members who shall be appointed for a term of three (3) years. The  
2 members shall be removable only for cause, as provided by law for  
3 the removal of officers not subject to impeachment. Two members of  
4 the Commission shall be appointed by the President Pro Tempore of  
5 the Senate. Two members of the Commission shall be appointed by the  
6 Speaker of the House of Representatives. Five members of the  
7 Commission shall be appointed by the Governor. No more than four of  
8 the appointments made by the Governor shall be from the same  
9 political party. Of the initial appointments made to the  
10 Commission, one member appointed by the President Pro Tempore, one  
11 member appointed by the Speaker and one member appointed by the  
12 Governor shall be for a term of three (3) years; and one member  
13 appointed by the President Pro Tempore, one member appointed by the  
14 Speaker and one member appointed by the Governor shall be for a term  
15 of two (2) years. The remaining three initial appointments by the  
16 Governor shall be designated to serve a term of one (1) year. At  
17 the expiration of the initial term, each new appointee shall serve a  
18 three-year term. All initial appointments shall be made prior to  
19 July 1, 1982.

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

23 C. The Commission shall elect a chairman, to serve a two-year  
24 term and such other officers as deemed necessary for the performance

1 of their duties. The Commission shall hold regular meetings not  
2 less than once a month and such additional meetings as called by the  
3 chairman as may be required for the proper discharge of its duties.

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

5 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
6 March 31, 2021 - DO PASS  
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