An Act

ENROLLED HOUSE
BILL NO. 2363

By: Miller, Martin (Scott) and Wright (John) of the House

and

Johnson (Mike) and Myers of the Senate

An Act relating to voluntary buyout agreements; stating legislative intent; defining terms; authorizing certain agencies to obtain reimbursement for eligible voluntary buyout expenditures; requiring application to the Office of State Finance; requiring contingent agreements; requiring certain disclosure; prescribing content of disclosure; providing for finality of contingent agreement based upon certain confirmation; prescribing procedures for notifications to the Office of State Finance; requiring Office of State Finance to develop system for receipt of communications and confirmations; prescribing requirements related to processing of applications; imposing limitations upon reimbursement based upon available funds; prohibiting pro rata payments; imposing limitation with respect to reimbursed expenditures; imposing requirement on agency related to full-time-equivalent positions; requiring report to the Office of State Finance; requiring repayment of reimbursed amounts under certain circumstances; imposing duty on agency with respect to performance of agency duties; authorizing voluntary buyout expenditures pursuant to certain statutory provision; imposing prohibition on certain employees with respect to employment by state government entities based upon acceptance of voluntary buyout payments; prescribing period of time during which employment prohibited; imposing limitation with respect to certain contracts; prescribing period of time during which contract prohibited; creating the Voluntary Buyout Agency

Reimbursement Revolving Fund; providing for receipt of certain monies; providing for authority of the Office of State Finance with respect to fund; authorizing expenditures from fund; prescribing procedures for payment of monies from fund; amending 40 O.S. 2001, Section 2-411, as amended by Section 4, Chapter 354, O.S.L. 2007 (40 O.S. Supp. 2009, Section 2-411), which relates to retirement payments; modifying provisions related to effect of certain retirement payments on unemployment benefits; providing for contingent effect based upon enactment of Enrolled Senate Bill No. 1442 of the 2nd Session of the 52nd Oklahoma Legislature; providing for codification; providing for noncodification; 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:

It is the intent of the Legislature to provide state agencies with meaningful managerial flexibility in developing strategies to reduce costs in addressing severe budgetary constraints resulting from the current economic downturn. The provisions of this act are designed to provide such flexibility and afford state agencies the opportunity to supplement reimbursable expenditures as authorized by this act with additional cash payments to eligible state employees based on length of service and other incentives available pursuant to Section 840-2.28 of Title 74 of the Oklahoma Statutes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840-2.28A of Title 74, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Agency" means any state governmental entity, excluding institutions within The Oklahoma State System of Higher Education, making payments to a person accepting a voluntary buyout pursuant to the provisions of Section 840-2.28 of Title 74 of the Oklahoma Statutes;

2. "Eligible employee" means a person who, as of the date the voluntary buyout payment is made by an agency, is eligible for a normal retirement, without any reduction in retirement benefits based on an early retirement, from the public retirement system in which the employee is a participant as of the last day of employment with the agency;

3. "Eligible voluntary buyout expenditures" means with respect to any voluntary buyout agreement entered into on or after the effective date of this act for which the agency is able to seek reimbursement from the Voluntary Buyout Agency Reimbursement Revolving Fund:

a. the cost of health care insurance premium amounts pursuant to subparagraph a of paragraph 1 of subsection A of Section 840-2.28 of Title 74 of the Oklahoma Statutes,

b. the cost of the longevity pay amount pursuant to subparagraph b of paragraph 1 of subsection A of Section 840-2.28 of Title 74 of the Oklahoma Statutes, and

c. a maximum of Five Thousand Dollars ($5,000.00) for payments made pursuant to subparagraph b of paragraph 2 of subsection A of Section 840-2.28 of Title 74 of the Oklahoma Statutes; and

4. "Normal retirement" means the date upon which an employee may retire with an unreduced benefit from a public retirement system based upon the age of the employee or a combination of the age of the employee and the number of years of service accrued by the employee in the applicable retirement system.

B. For eligible voluntary buyout expenditures paid by agencies not later than June 30, 2011, pursuant to a voluntary buyout agreement authorized by paragraph 1 of subsection A of Section 840-2.28 of Title 74 of the Oklahoma Statutes and entered into on or after the effective date of this act, but not later than June 30, 2011, the paying agency shall be eligible to be reimbursed the amount of the eligible voluntary buyout expenditures from the Voluntary Buyout Agency Reimbursement Revolving Fund created pursuant to Section 3 of this act.

C. An agency seeking reimbursement pursuant to the provisions of this section shall make application to the Office of State Finance on such form as may be prescribed by the Office of State Finance for that purpose.

D. Before an agency makes a request for reimbursement pursuant to the provisions of this section, the agency shall enter into a contingent agreement with the employee to whom the voluntary buyout payments will be paid. The agreement shall contain the following language which shall be placed at the beginning of the terms of the agreement following any recitations which are not in the nature of a contractual promise to be printed in a font at least as large as the other terms of the agreement and not less than 14-point type regardless of the font size used in other parts of the agreement:

"PAYMENT OF FUNDS PURSUANT TO THIS AGREEMENT IS CONTINGENT UPON CONFIRMATION BY THE OFFICE OF STATE FINANCE THAT FUNDS TO REIMBURSE THE AGENCY ENTERING INTO THIS AGREEMENT ARE AVAILABLE. IF THE AGENCY DOES NOT OBTAIN THE REQUIRED CONFIRMATION OR IF THE OFFICE OF STATE FINANCE COMMUNICATES TO THE AGENCY THAT THE FUNDS TO REIMBURSE THE AGENCY ARE NOT AVAILABLE, THIS AGREEMENT SHALL NOT BE ENFORCEABLE AGAINST THE EMPLOYEE BY THE AGENCY OR BY ANY OTHER ENTITY AND SHALL NOT BE ENFORCEABLE BY THE EMPLOYEE OR ANY PERSON OR ENTITY REPRESENTING THE INTEREST OF THE EMPLOYEE AGAINST THE AGENCY."

E. If an agency receives the confirmation from the Office of State Finance that the funds for reimbursement are available, the terms of the voluntary buyout agreement executed pursuant to the provisions of this section shall become final and the agreement may be enforced according to its terms.

F. An agency which has entered into a contingent agreement as provided by subsection D of this section to make payment to an employee for which the agency is eligible to obtain reimbursement from the Voluntary Buyout Agency Reimbursement Revolving Fund shall notify the Office of State Finance by the fastest method available to the agency, whether by telephone, electronic mail or other form of communication, of the exact amount of funds for which the agency will seek reimbursement based upon payment of eligible voluntary buyout expenses. The Office of State Finance shall develop a system for the receipt of the communications required by this subsection and shall provide a confirmation to the agency of the sufficiency of funds for reimbursement to the agency based upon the total amount of available funds using the fastest method available to the Office of

State Finance, whether by telephone, electronic mail or other form of communication. Responses to agency requests shall be made by the Office of State Finance in the order in which the requests were received.

G. Applications for reimbursement shall be processed by the Office of State Finance according to the order in which confirmations were provided to agencies and any reimbursement from the Voluntary Buyout Agency Reimbursement Revolving Fund shall be subject to the available balance of the fund. Reimbursement shall be made in the full amount requested, subject to verification of eligibility for the expended amount, unless the balance of the fund is insufficient to make full reimbursement. No payments from the fund shall be made on a pro rata basis and if an agency application for reimbursement cannot be made in the full amount requested based upon the unavailability of funds, the application shall be denied.

H. Only payments of eligible voluntary buyout expenditures made to an eligible employee, as defined by paragraph 3 of subsection A of this section, shall be eligible for reimbursement. Any payment of eligible voluntary buyout expenditures made to a person who is not an eligible employee as defined by paragraph 2 of subsection A of this section shall not be eligible for reimbursement.

I. As a condition of receiving reimbursement from the Voluntary Buyout Agency Reimbursement Revolving Fund for one or more particular positions, the agency shall agree that its number of full-time-equivalent employees shall be reduced by the number of such positions for a period of not less than thirty-six (36) months. The agency shall report such information to the Office of State Finance as may be necessary for the Office of State Finance to ensure that the provisions of this subsection are enforced. If the Office of State Finance determines that the agency is not substantially in compliance with the provisions of this subsection, the agency shall repay the amount of reimbursement received.

J. Notwithstanding the loss of specific employees resulting from a voluntary buyout pursuant to this section, an agency shall preserve such full-time-equivalent positions as may be required in order to perform the duties imposed upon the agency by law and may, subject to the applicable provisions of the Oklahoma Personnel Act, provide for the performance of the duties formerly performed by an employee accepting a voluntary buyout.

K. The provisions of this section shall not preclude an agency from entering into a voluntary buyout agreement pursuant to Section 840-2.28 of Title 74 of the Oklahoma Statutes which does not provide for any reimbursement of funds.

L. Any employee who accepts a voluntary buyout pursuant to the provisions of this section shall be prohibited from being employed by the entity of state government making payment to the employee pursuant to this section for a period of three (3) years from the date as of which the employee is last employed by the state governmental entity making payment to the employee pursuant to the provisions of this section. After the expiration of the three-year period prescribed by this subsection, the former employee may be hired by the state governmental entity which made payment to the employee pursuant to this section. The provisions of this subsection shall also be applicable to a contract for the performance of services by a former employee of the state governmental entity which made payment pursuant to this section for a period of three (3) years from the date as of which the employee is last employed by the state governmental entity making payment to the employee pursuant to the provisions of this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840-2.28B of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Office of State Finance to be designated the "Voluntary Buyout Agency Reimbursement Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Office of State Finance from such sources as may be designated by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Office of State Finance for the purpose of making reimbursement payments to agencies as provided by Section 2 of this act for eligible voluntary buyout expenditures. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of State Finance for approval and payment.

SECTION 4. AMENDATORY 40 O.S. 2001, Section 2-411, as amended by Section 4, Chapter 354, O.S.L. 2007 (40 O.S. Supp. 2009, Section 2-411), is amended to read as follows:

Section 2-411. RETIREMENT PAYMENTS.

1. Except for any payment or benefit payment made pursuant to the federal Social Security Act ~~or as otherwise provided in subparagraph 3 of this section~~, an individual shall be disqualified for benefits for any week which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity or any other similar periodic retirement payment which is based on the previous work of such individual if:

a. such pension, retirement or retired pay, annuity or similar payment is under a plan maintained, or contributed to, by a base period or chargeable employer; and

b. in the case of such a payment not made under the Railroad Retirement Act of 1974, 45 U.S.C., Section 231 et seq., services performed for such employer by the individual after the beginning of the base period, or remuneration for such services, affect eligibility for or increase the amount of, such pension, retirement or retired pay, annuity or similar payment.

2. If the total of such remuneration is less than the benefits which would otherwise be due under the Employment Security Act of 1980, Section 1-101 et seq. of this title, the individual shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

3. If payments referred to in this section are being received by an individual under the federal Social Security Act ~~or are being received by an individual under a pension, retirement or retired pay, annuity or other similar payment plan that the employee contributed to in any amount~~, the Commission shall take into account the individual's contribution to social security ~~or the pension, retirement or annuity plan~~ and make no reduction in the weekly benefit amount.

SECTION 5. The provisions of this act shall not become effective as law unless Enrolled Senate Bill No. 1442 of the 2nd Session of the 52nd Oklahoma Legislature becomes effective as law.

SECTION 6. 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.

Passed the House of Representatives the 20th day of April, 2010.

Presiding Officer of the House of Representatives

Passed the Senate the 21st day of April, 2010.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 26th

day of April, **20**10,

at 1:55 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 28th **day of** April, **20**10, **at** 5:18 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

29th **day of** April, **20**10,

at 2:30 **o'clock** P **M.**

By: Michelle Waddell