An Act

ENROLLED SENATE
BILL NO. 1659

By: Aldridge of the Senate

and

Wright (John) of the House

An Act relating to state government; amending 74 O.S. 2001, Sections 840-1.3, as amended by Section 3, Chapter 347, O.S.L. 2002, 840-2.15, as last amended by Section 1, Chapter 212, O.S.L. 2006 and 840-2.17, as last amended by Section 3, Chapter 12, O.S.L. 2009 (74 O.S. Supp. 2009, Sections 840-1.3, 840-2.15 and 840-2.17), which relate to the Oklahoma Personnel Act; modifying definitions; modifying compensation for overtime; modifying authorization for salary and other adjustments; providing exception; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-1.3, as amended by Section 3, Chapter 347, O.S.L. 2002 (74 O.S. Supp. 2009, Section 840-1.3), is amended to read as follows:

Section 840-1.3. As used in the Oklahoma Personnel Act, unless otherwise provided in Sections 840-1.1 through 840-6.9 of this title:

1. "Agency" means any office, department, board, commission or institution of the executive branch of state government;

2. "Employee" or "state employee" means an elected or appointed officer or employee of an agency unless otherwise indicated;

3. "Appointing authority" means the chief administrative officer of an agency;

4. "Classification" means:

a. the process of placing an employee into an appropriate job family and level within the job family, consistent with the allocation of the position to which the employee is assigned, or

b. an employee's job family and the level at which work is assigned;

5. "Classification plan" means the orderly arrangement of positions within an agency into separate and distinct job families so that each job family will contain those positions which involve similar or comparable skills, duties and responsibilities;

6. "Classified service" means state employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration;

7. "Copy" means the duplication of an original document or recording. The copy may be provided in an electronic format generated from technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

8. "Entrance examination" means any employment test used by the Office of Personnel Management to rank the names of applicants who possess the minimum requirements of education, experience, or licensure for a job or group of similar jobs on a register of eligibles established by the Office of Personnel Management;

~~8.~~ 9. "Job" means a position or job family level in a job family;

~~9.~~ 10. "Job family" means:

a. jobs which require similar core skills and involve similar work, and

b. a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the work to warrant similar treatment as to title, typical functions, knowledge, skills and abilities required, and education and experience requirements;

~~10.~~ 11. "Job family level" means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience;

~~11.~~ 12. "Job family descriptor" means a written document that:

a. describes a job family, including, but not limited to, the basic purpose, typical functions performed, various levels within the job family, and the knowledge, skills, abilities, education, and experience required for each level, and

b. identifies the pay band assigned for each level;

~~12.~~ 13. "Promotional examination" means any employment test designated by the Office of Personnel Management to determine further the qualifications of a permanent classified employee of a state agency for employment in a different job for which the employee possesses the minimum qualifications of education, experience, or licensure within that agency;

~~13.~~ 14. "Interagency transfer" means an action in which an employee leaves employment with one agency and enters employment with another agency while continuously employed with the state;

~~14.~~ 15. "Intra-agency transfer" means moving an employee from one position to another position with the same agency either with or without reclassification;

~~15.~~ 16. "Job-related organization" means a membership association which collects annual dues, conducts annual meetings and provides job-related education for its members and which includes state employees, including any association for which payroll

deductions for membership dues are authorized pursuant to paragraph 5 of subsection B of Section 7.10 of Title 62 of the Oklahoma Statutes;

~~16.~~ 17. "Lateral transfer" means the reassignment of an employee to another state job with the same pay band assignment as the job family level in which the employee was classified prior to the lateral transfer;

~~17.~~ 18. "Merit Rules" or "Merit Rules for Employment" or "Merit System of Personnel Administration Rules" means rules adopted by the Administrator of the Office of Personnel Management or the Oklahoma Merit Protection Commission pursuant to the Oklahoma Personnel Act;

~~18.~~ 19. "Noncompetitive appointment" means the appointment of a person to a noncompetitive job level within a job family;

~~19.~~ 20. "Noncompetitive job" means an unskilled or semiskilled job designated by the Office of Personnel Management as noncompetitive. Noncompetitive jobs do not require written examinations for placement on registers of eligibles;

~~20.~~ 21. "Permanent classified employee" means a classified service employee who has acquired permanent status in accordance with the Oklahoma Personnel Act, and rules adopted pursuant thereto, and who has the right to appeal involuntary demotion, suspension without pay, and discharge to the Commission;

~~21.~~ 22. "Presiding official" means a person serving the Oklahoma Merit Protection Commission in the capacity of administrative hearing officer, mediator, or other alternative dispute resolution arbitrator or facilitator;

~~22.~~ 23. "Progressive discipline" means a system designed to ensure the consistency, impartiality and predictability of discipline and the flexibility to vary penalties if justified by aggravating or mitigating conditions;

~~23.~~ 24. "Reclassification" means the process of changing a classified employee from one job family to another job family or from one job family level to another job family level in the same

job family, resulting in a change in the employee's assigned job code;

~~24.~~ 25. "Regular and consistent" means, in connection with the work assignments of an employee, the usual and normal work assignments of the employee, excluding incidental, casual, or occasional tasks and activities the employee assumes without direction to do so. Temporary work assignments of less than sixty (60) days in any twelve (12) consecutive months period shall not be considered regular and consistent;

~~25.~~ 26. "Regular unclassified service employee" means an unclassified service employee who is not on a temporary or other time-limited appointment;

~~26.~~ 27. "Supervisor" means a classified or unclassified officer or employee who has been assigned authority and responsibility for evaluating the performance of subordinates;

~~27.~~ 28. "Unclassified service" or "exempt service" means employees and positions excluded from coverage of the Oklahoma Merit System of Personnel Administration;

~~28.~~ 29. "Merit System" means the Oklahoma Merit System of Personnel Administration;

~~29.~~ 30. "Administrator" means the appointing authority of the Office of Personnel Management;

~~30.~~ 31. "Executive Director" means the appointing authority of the Oklahoma Merit Protection Commission;

~~31.~~ 32. "Office" means the Office of Personnel Management;

~~32.~~ 33. "Commission" means the Oklahoma Merit Protection Commission;

~~33.~~ 34. "Veteran" means a person who has been honorably discharged from the Armed Forces of the United States and has been a resident of Oklahoma for at least one (1) year prior to the date of the examination; and

~~34.~~ 35. "Voluntary out" means the voluntary separation of employees from the state service in exchange for benefits offered by an agency in order to reduce or eliminate the adverse impact of an imminent reduction-in-force.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-2.15, as last amended by Section 1, Chapter 212, O.S.L. 2006 (74 O.S. Supp. 2009, Section 840-2.15), is amended to read as follows:

Section 840-2.15 A. The federal Fair Labor Standards Act, 29 U.S.C., Section 201, et seq., provides for minimum standards for ~~both wages and~~ overtime entitlement, and spells out administrative procedures by which covered work time must be compensated. This section is not a comprehensive listing of the provisions of the Fair Labor Standards Act and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations. No agency, board, commission, department, institution, bureau, executive officer or other entity of the executive branch shall exceed the minimum overtime entitlement provisions of the Fair Labor Standards Act and regulations promulgated thereunder except as herein provided.

B. Nothing in this title or the federal Fair Labor Standards Act shall be construed to prohibit an employer from paying an employee who is required to work on a holiday, as defined in Section 82.1 of Title 25 of the Oklahoma Statutes, for such work at a rate of two times the employee's regular hourly rate, or from rescheduling the holiday at the discretion of the appointing authority; provided, however, any state employee who is required to work on a holiday, as defined in Section 82.1 of Title 25 of the Oklahoma Statutes, in the performance of fire suppression duties shall receive holiday pay at a rate of two times the employee's regular hourly rate.

~~B.~~ C. Any employee receiving compensatory time consistent with the provisions of the federal Fair Labor Standards Act shall exhaust such compensatory time prior to the taking of annual leave, except where the employee is subject to losing such annual leave due to the application of the accumulation limits in Section 840-2.20 of this title.

~~C.~~ D. An employee receiving compensatory time under the provisions of subsection A of this section shall be permitted to use accrued compensatory time within one hundred eighty (180) days following the ~~pay period in~~ day on which it was accrued, provided the taking of compensatory time does not unduly impact agency operations or the health, safety or welfare of the public, or endanger public property. Agencies shall not be allowed to extend this one-hundred-eighty-day time period for employees in an institutional setting. The balance of any unused compensatory time received but not taken during this time period shall be paid to the employee at the employee's current regular hourly rate.

~~D.~~ E. As used in this section, "institutional setting" shall mean any agency or part of any agency where twenty-four-hour care, monitoring or supervision is required for patients, clients or inmates to protect public health, safety or property.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-2.17, as last amended by Section 3, Chapter 12, O.S.L. 2009 (74 O.S. Supp. 2009, Section 840-2.17), is amended to read as follows:

Section 840-2.17. A. Unless otherwise provided by the Oklahoma Constitution, language in law which authorizes the setting or fixing of compensation, pay or salary of state officers and employees shall not be construed to authorize any agency, board, commission, department, institution, bureau, executive officer or other entity of the executive branch of state government to award, grant, give, authorize, or promise any officer or employee of the State of Oklahoma a raise, including, but not limited to, a cost-of-living raise or any other type of raise that would be given to state employees on an across-the-board basis, except as herein provided. Such raises are prohibited unless authorized by the Legislature and by Merit System of Personnel Administration Rules promulgated by the Administrator. This prohibition applies to all classified and unclassified officers and employees in the executive branch of state government, excluding institutions under the administrative authority of the Oklahoma State Regents for Higher Education.

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

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

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

2. Salary adjustments resulting from a pay band change for a job family level or class adopted by the Office of Personnel Management;

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

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

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

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

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

8. Skill-based adjustments. Such adjustments, which are implemented before November 1, 2006, other than lump-sum payments, shall become permanent after twenty-four (24) months from the date such salary adjustment is implemented and may not later be removed from an employee's base salary if a furlough or reduction-in-force is implemented by the appointing authority granting such salary adjustment. Skill-based pay adjustments, which are implemented on or after November 1, 2006, and which are paid to an employee, shall be paid as long as the employee remains employed in the position and performs the skills for which the differential is due, but shall not be included as a part of the employee's base salary;

9. Equity-based adjustments;

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

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

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

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

D. The pay movement mechanisms described in paragraphs 6 through 11 in subsection B of this section shall be implemented pursuant to rules promulgated by the Administrator of the Office of Personnel Management for the classified service.

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

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

SECTION 4. This act shall become effective November 1, 2010.

Passed the Senate the 20th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 19th day of April, 2010.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 21st

day of May, **20**10,

at 10:30 **o'clock** A **M.**

By:

Approved by the Governor of the State of Oklahoma the 26th **day of**

May, **20**10, **at** 6:01 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

27th **day of** May, **20**10,

at 2:56 **o'clock** P **M.**

By: