

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2382

By: Burns

6 COMMITTEE SUBSTITUTE

7 An Act relating to militia; amending 44 O.S. 2021,
8 Sections 21, 23, 24, 25, 26, 27, 45, 48, 49, Section
9 1, Chapter 74, O.S.L. 2022, 241, and 243 (44 O.S.
10 Supp. 2022, Section 233.10a), which relate to The
11 Oklahoma Military Code; clarifying personnel to staff
12 joint forces headquarters; providing for Adjutant
13 General to assign necessary persons to headquarters;
14 clarifying personnel in state military forces;
15 providing gender-neutral language; establishing term
16 limit for Adjutant General upon certain date;
17 authorizing removal for cause; modifying eligibility
18 criteria for Adjutant General; authorizing Governor
19 to waive certain eligibility requirements; directing
20 certain comparable rate of compensation for Adjutant
21 General; authorizing Adjutant General to establish
22 rules allowing the Military Department to accept
23 donations to create a certain scholarship program;
24 permitting delegation of oversight to a nonprofit
public charity; providing gender-neutral language;
modifying oath of office for National Guard officers;
updating language; directing Adjutant General to
prescribe policies and regulations for personnel
compensation; preempting Military Department
personnel matters; clarifying personnel discharge
procedures by the Governor as Commander in Chief;
authorizing certain personnel matters to be decided
according to customs and state and federal
regulations; permitting Department to purchase
information technology; removing reference to certain
regulations prescribed by the Secretary of Defense;
striking requirement that personnel procedures be in
conformity with certain laws, rules, and regulations;
amending 44 O.S. 2021, Sections 821, 875, 905, and
937, which relate to the Oklahoma Uniform Code of
Military Justice; prohibiting federal officials from

1 convening certain court-martial proceedings without
2 prior consent of the Governor; requiring consent to
3 be in writing and published by Governor; authorizing
4 Governor to reappoint certain dismissed officers;
5 providing for reappointment procedures; directing
6 Governor or Adjutant General to prescribe certain
7 regulations; prohibiting act of forgery; prescribing
8 punishment for forgery; modifying timing for
9 explanation of Code; and providing an effective date.

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

11 SECTION 1. AMENDATORY 44 O.S. 2021, Section 21, is
12 amended to read as follows:

13 Section 21. The Military Department of the State of Oklahoma is
14 hereby established and shall be under the command and control of the
15 Governor as Commander in Chief, with the Adjutant General as the
16 executive and administrative head thereof. The Military Department
17 shall be constituted of the state military forces, as defined by
18 Section 801 of this title, and is hereby organized into a joint
19 headquarters which shall be identified as the joint forces
20 headquarters. The joint forces headquarters shall be jointly
21 staffed by ~~Army National Guard and Air National Guard~~ personnel of
22 the state military forces who, under the authority and direction of
23 the Adjutant General, shall support and assist the Adjutant General
24 in the exercise of command and control over state military forces
when not activated for federal duty under Title 10 of the United
States Code. There shall be assigned to the joint ~~force~~ forces

1 headquarters, officers, enlisted personnel, and civilian employees
2 as may be considered necessary by the Governor as Commander in Chief
3 and ~~as may be authorized by law and Army National Guard regulations~~
4 ~~and Air National Guard regulations~~ the Adjutant General.

5 SECTION 2. AMENDATORY 44 O.S. 2021, Section 23, is
6 amended to read as follows:

7 Section 23. The Governor of the state shall be the Commander in
8 Chief of the Militia, and, as such, shall have supreme command of
9 the military forces of the state while in the service of the state
10 or until they are ordered ~~and accepted~~ into the actual service of
11 the United States within the meaning of Clauses 15 and 16 of Section
12 8 of Article I of the United States Constitution and Section 2 of
13 Article II of the United States Constitution. While in the service
14 of the ~~state~~ State of Oklahoma, ~~he~~ the Governor shall have power to
15 muster out any organization of the state military forces, discharge
16 enlisted ~~men~~ personnel, as provided herein, and perform such other
17 acts in keeping with the laws of the Commander in Chief, ~~subject to~~
18 ~~the laws of the United States and regulations prescribed by the~~
19 ~~President of the United States.~~ No armed military force from
20 another state or territory shall be permitted to enter the state
21 without ~~his~~ permission of the Governor, unless such military force
22 be a part of the United States, or is acting under the authority of
23 the United States. No independent military organization, except as
24 a corps of cadets at the educational institutions, shall be

1 permitted to bear arms without first securing permission of the
2 Commander in Chief.

3 SECTION 3. AMENDATORY 44 O.S. 2021, Section 24, is
4 amended to read as follows:

5 Section 24. A. The Adjutant General shall be appointed by the
6 Governor, by and with the advice and consent of the Senate, ~~and~~
7 ~~shall serve at the pleasure of the Governor.~~ Beginning January 1,
8 2027, the appointment of the Adjutant General shall be for a term of
9 five (5) years, requiring a new reappointment process for any
10 additional term. The Adjutant General may be removed for cause by
11 the Governor during the appointed term.

12 B. To be eligible to hold the office of Adjutant General of
13 this state, at the time of appointment the appointee:

14 1. Shall be a federally recognized and currently serving
15 officer of the Oklahoma National Guard ~~and of the National Guard of~~
16 ~~the United States for~~ who is not presently retired nor has ever
17 previously retired from the Oklahoma National Guard and with no less
18 than three (3) years of service in the Oklahoma National Guard;

19 2. Shall possess at least the rank of Colonel; and

20 3. If not already a general officer, shall be eligible for a
21 Certificate of Eligibility pursuant to federal law and applicable
22 regulations issued by the Chief of the National Guard Bureau.

23 C. If the Oklahoma National Guard is in active federal service
24 and no persons having the qualifications required in subsection B of

1 this section are available within the state, then the Governor may
2 appoint, subject to the advice and consent of the Senate, any
3 suitably qualified person who at any time in the preceding ten (10)
4 years would have been qualified, ~~as above, and who has served at~~
5 ~~least two (2) years in active federal service in the grade of~~
6 ~~Colonel or higher~~ pursuant to the requirements of subsection B of
7 this section.

8 SECTION 4. AMENDATORY 44 O.S. 2021, Section 25, is
9 amended to read as follows:

10 Section 25. A. The Adjutant General shall have the rank of
11 Major General and devote full time to the duties of the office.
12 Regardless of whether or not the Adjutant General has been
13 recognized federally at the rank of Major General at the time of
14 appointment by the Governor, the Adjutant General shall be
15 compensated at the same rate of pay and allowances afforded to a
16 Major General serving on federal Title 10 active duty with the same
17 time in grade.

18 B. The Governor may appoint Assistant Adjutants General for
19 Army and Assistant Adjutants General for Air to assist the Adjutant
20 General in the discharge and performance of his or her duties. When
21 appointing Assistant Adjutants General, the Governor shall take into
22 consideration the number of such positions contemplated or
23 recommended by the National Guard Bureau for manning the joint
24 forces headquarters of a state. Such Assistant Adjutants General

1 shall have the qualifications prescribed by law for the Adjutant
2 General and shall have the rank of Brigadier General. The Assistant
3 Adjutants General appointed by the Governor shall be considered
4 staff officers and not commanders except that, in the discretion of
5 the Adjutant General, specific command or supervisory authority may
6 be delegated by the Adjutant General to an Assistant Adjutant
7 General but such delegation shall be accomplished in writing and
8 shall be considered a military publication, as defined in Section
9 801 of this title (Article 1).

10 C. Other general officers assigned to billets within the state
11 military forces, including certain billets within the joint forces
12 headquarters, shall be considered staff officers and not commanders
13 except that, in the discretion of the Adjutant General, specific
14 command or supervisory authority may be delegated by the Adjutant
15 General to such general officers, but such delegation shall be
16 accomplished in writing and shall be considered a military
17 publication, as defined in Section 801 of this title (Article 1).

18 D. The Adjutant General may employ a state employee in the
19 position of Executive Assistant and Programs Manager for the
20 Military Department of the state. Said position shall be
21 unclassified and exempt from the Oklahoma Personnel Act and the
22 Merit Rules for Employment, except leave regulations.

23 SECTION 5. AMENDATORY 44 O.S. 2021, Section 26, is
24 amended to read as follows:

1 Section 26. A. The Adjutant General shall be in control of the
2 Military Department of the State of Oklahoma, subordinate only to
3 the Governor. Within the limitations and under the provisions of
4 law, he or she shall supervise and direct the Oklahoma National
5 Guard within the service of the state and when under state control
6 in all of its organization, training and other activities; shall
7 receive and give effect to the orders of the Governor; and shall
8 perform such other military and defense duties, not otherwise
9 assigned by law, as the Governor may prescribe.

10 B. The Adjutant General, when absent from the state, may
11 temporarily delegate any authority vested under this title and any
12 such duties as an agency appointing authority to an Assistant
13 Adjutant General, other state officer or employee within the
14 Military Department of the State of Oklahoma. Such temporary
15 delegations of authority pursuant to this subsection shall be
16 accomplished in writing. The Adjutant General may also promulgate
17 regulations providing for the delegation of any such authority.

18 C. The Adjutant General shall develop, publish and maintain an
19 organizational chart depicting the chain of command between the
20 Adjutant General and the major commands of the Oklahoma National
21 Guard. Besides the major commands defined in Section 801 of this
22 title (Article 1), the Adjutant General, in his or her discretion,
23 may designate other military units within the Oklahoma National
24 Guard as major commands.

1 D. The organizational chart required in subsection C of this
2 section shall be updated no less than annually and shall include all
3 enlisted and officer billets assigned to joint forces headquarters
4 and shall depict all existing command relationships established by
5 the Adjutant General within joint forces headquarters. The
6 organizational chart required herein shall not be considered a
7 military publication within the meaning of Section 801 of this title
8 (Article 1).

9 E. In accordance with all relevant requirements of the United
10 States Army, the United States Air Force or the National Guard
11 Bureau, the Adjutant General shall develop, publish and maintain an
12 enlisted and officer rating scheme for all enlisted and officer
13 billets assigned to joint forces headquarters. The rating scheme
14 required herein shall not be considered a military publication
15 within the meaning of Section 801 of this title (Article 1).

16 F. Pursuant to the rules established by the Adjutant General,
17 the Military Department of the State of Oklahoma is authorized to
18 expend appropriated and nonappropriated funds to enhance recruiting
19 and retention efforts for the Oklahoma National Guard.

20 G. The Adjutant General may establish rules allowing the
21 Military Department of the State of Oklahoma to accept donations and
22 bequests to create a scholarship program for the benefit of members
23 of the Oklahoma National Guard. The Adjutant General may delegate
24 oversight of scholarship program funds to a nonprofit public charity

1 for the purpose of creating and administering an endowment fund for
2 the scholarship program.

3 SECTION 6. AMENDATORY 44 O.S. 2021, Section 27, is
4 amended to read as follows:

5 Section 27. The Adjutant General and Assistant Adjutants
6 General shall be paid a sum equivalent to the pay of ~~his/her~~ his or
7 her federally recognized rank, exclusive of allowances. Other
8 officers and enlisted men and women and employees of the Department
9 shall be paid in amounts fixed by the Adjutant General and within
10 amounts appropriated for that purpose, according to the policies and
11 regulations prescribed by the Adjutant General. Military Department
12 personnel matters shall be preempted and governed by federal law and
13 managed by the Adjutant General.

14 SECTION 7. AMENDATORY 44 O.S. 2021, Section 45, is
15 amended to read as follows:

16 Section 45. Oath for National Guard Officers. Each
17 commissioned officer, before entering upon the duties of his or her
18 office, shall take and subscribe to the following oath, ~~or such~~
19 ~~other oath as may be required by National Guard Regulations:~~

20 "I, do solemnly swear that I will support and defend
21 the Constitution of the United States and the Constitution of the
22 State of Oklahoma against all enemies, foreign and domestic; that I
23 will bear true faith and allegiance to the same; that I will obey
24 the lawful orders of the President of the United States and the

1 Governor of the State of Oklahoma; that I make this obligation
2 freely, without any mental reservation or purpose of evasion, and
3 that I will well and faithfully discharge the duties of the office
4 of, in the National Guard of the United States and the State
5 of Oklahoma upon which I am about to enter, so help me God."

6 SECTION 8. AMENDATORY 44 O.S. 2021, Section 48, is
7 amended to read as follows:

8 Section 48. Enlisted ~~men~~ personnel discharged from service in
9 the Oklahoma National Guard ~~of this state~~ shall receive a discharge
10 in writing in such form and with such classification as is or shall
11 be prescribed by National Guard regulations, and in time of peace
12 discharges may be given prior to the expiration of terms of
13 enlistment in the following cases:

14 By sentence of a general court-martial; by direction of the
15 Governor on account of disability; on account of sentence of
16 imprisonment by a civil court whether suspended or not; on account
17 of a bona fide permanent change of residence to another state; and
18 for the purpose of enlisting in regular Army, Air Force, Navy, or
19 Marine Corps, and for such other causes as may be prescribed by
20 ~~National Guard regulations or~~ the Governor as Commander in Chief;
21 provided, that an enlisted ~~man~~ person who has not returned or
22 accounted for all of the public property for which he or she is
23 responsible, shall under no circumstances receive an honorable
24 discharge.

1 SECTION 9. AMENDATORY 44 O.S. 2021, Section 49, is
2 amended to read as follows:

3 Section 49. All matters relating to organization, commissioning
4 and discharging of officers, enlisting and discharge of enlisted ~~men~~
5 personnel, discipline, and government of the Oklahoma National
6 Guard, not otherwise provided in this code, ~~shall~~ may be decided ~~by~~
7 according to the customs, regulations, and usage of the United
8 States Army or the United States Air Force or National Guard
9 regulations.

10 SECTION 10. AMENDATORY Section 1, Chapter 74, O.S.L.
11 2022 (44 O.S. Supp. 2022, Section 233.10a), is amended to read as
12 follows:

13 Section 233.10a The Military Department of the State of
14 Oklahoma may purchase information technology including, but not
15 limited to, computer hardware or software, or any services related
16 to software development, software modifications, or any other
17 services related to the operation and maintenance of computer
18 hardware or software or both, independently and without prior
19 approval from the Office of Management and Enterprise Services
20 Information Services Division.

21 SECTION 11. AMENDATORY 44 O.S. 2021, Section 241, is
22 amended to read as follows:

23 Section 241. The Governor, pursuant to the authority granted
24 the states by Section 109 of Title 32 of the United States Code or a

1 successor provision, ~~and under such regulations as the Secretary of~~
2 ~~Defense may prescribe for discipline in training,~~ is hereby
3 authorized to enlist, organize, maintain, equip and discipline such
4 military forces other than the Oklahoma National Guard as he or she
5 may deem necessary to defend the state. Such forces shall be
6 uniformed and subject to Sections 1 through 117, Sections 208
7 through 237, and Sections 800 through 946 of this title, insofar as
8 such sections do not conflict with Sections 241 through 250 of this
9 title.

10 SECTION 12. AMENDATORY 44 O.S. 2021, Section 243, is
11 amended to read as follows:

12 Section 243. A. The Governor is hereby authorized to prescribe
13 rules and regulations governing the enlistment, organization,
14 administration, equipment, discipline and discharge of the personnel
15 of such military forces; to requisition from the Secretary of
16 Defense such arms and equipment as may be in the possession of and
17 can be spared by the Department of Defense and to extend thereto the
18 facilities of state armories, Armed Forces Reserve Centers,
19 readiness centers, logistics, aviation, and training facilities,
20 warehouses and their equipment and such other state premises and
21 property as may be available for the purpose of drill and
22 instruction. ~~Insofar as applicable the procedure for the~~
23 ~~enlistment, organization, pay, maintenance, equipment and~~
24 ~~disciplining of such forces shall be in conformity with the law and~~

1 ~~the rules and regulations governing and pertaining to the National~~
2 ~~Guard; provided, that the officers~~ Officers and enlisted personnel
3 in the Oklahoma ~~State~~ National Guard shall not receive any
4 compensation or monetary allowances from the state except when
5 activated for state active duty, as defined in Section 801 of this
6 title, by order of the Governor.

7 B. Members of the Oklahoma ~~State~~ National Guard shall be
8 considered part of state military forces as defined in Section 801
9 of this title and shall be subject to the Oklahoma Uniform Code of
10 Military Justice.

11 C. When prescribing the rules and regulations governing
12 enlistment, organization, administration, equipment, discipline and
13 discharge of the personnel of the Oklahoma ~~State~~ National Guard, the
14 Governor shall issue such rules and regulations in the form of an
15 executive order or in a series of such orders. An executive order
16 or a series of such orders prescribing the rules and regulations
17 governing enlistment, organization, administration, equipment,
18 discipline and discharge of the personnel of the Oklahoma ~~State~~
19 National Guard shall also be published by the Adjutant General as a
20 military publication.

21 SECTION 13. AMENDATORY 44 O.S. 2021, Section 821, is
22 amended to read as follows:

23 Section 821. ~~RESERVED.~~ ARTICLE 21. Convening of court-martial
24 by federal officials.

1 In no case shall the President of the United States, the
2 Secretary of Defense, the Secretary of a military department, a
3 military officer serving on active duty within the meaning of Title
4 10 of the United States Code, or any other federal official convene
5 a court-martial proceeding pursuant to The Oklahoma Military Code
6 unless prior consent has been granted by the Governor. Such
7 consent, if granted by the Governor, shall be accomplished in
8 writing and shall be published by the Governor.

9 SECTION 14. AMENDATORY 44 O.S. 2021, Section 875, is
10 amended to read as follows:

11 Section 875. ARTICLE 75. Restoration.

12 A. Under such regulations as the Adjutant General may
13 promulgate, all rights, privileges, and property affected by an
14 executed part of a court-martial sentence which has been set aside
15 or disapproved, except an executed dismissal or discharge, shall be
16 restored unless a new trial or rehearing is ordered and such
17 executed part is included in a sentence imposed upon the new trial
18 or rehearing.

19 B. If a previously executed sentence of dishonorable or bad-
20 conduct discharge is not imposed on a new trial, the Adjutant
21 General shall substitute therefor a form of discharge authorized for
22 administrative issuance unless the accused is to serve out the
23 remainder of his or her enlistment.

24

1 C. If a previously executed sentence of dismissal is not
2 imposed on a new trial, the Adjutant General shall substitute
3 therefor a form of discharge authorized for administrative issue,
4 and the commissioned officer dismissed by that sentence may be
5 reappointed ~~pursuant to Sections 875 and 12203 of Title 10 of the~~
6 ~~United States Code and any applicable regulations prescribed~~
7 ~~thereunder by the President of the United States or the Secretary~~
8 concerned solely by the Governor to such commissioned grade and with
9 such rank as in the opinion of the Governor that former officer
10 would have attained had he or she not been dismissed. The
11 reappointment of such a former officer shall be without regard to
12 the existence of a vacancy and shall affect the promotion status of
13 other officers only insofar as the Governor may direct. All time
14 between the dismissal and the reappointment shall be considered as
15 actual service for all purposes, including the right to pay and
16 allowances.

17 D. The Governor or Adjutant General shall prescribe
18 regulations, with such limitations as the Governor or Adjutant
19 General considers appropriate, governing eligibility for pay and
20 allowances for the period after the date on which an executed part
21 of a court-martial sentence is set aside.

22 SECTION 15. AMENDATORY 44 O.S. 2021, Section 905, is
23 amended to read as follows:

24 Section 905. ~~RESERVED.~~ ARTICLE 105. Forgery.

1 Any person subject to the Oklahoma Uniform Code of Military
2 Justice who, with intent to defraud:

3 1. Falsely makes or alters any signature to, or any part of,
4 any writing which would, if genuine, apparently impose a legal
5 liability on another or change his or her legal right or liability
6 to his or her prejudice; or

7 2. Utters, offers, issues, or transfers such a writing, known
8 by him or her to be so made or altered,
9 is guilty of forgery and shall be punished as a court-martial may
10 direct.

11 SECTION 16. AMENDATORY 44 O.S. 2021, Section 937, is
12 amended to read as follows:

13 Section 937. ARTICLE 137. Articles to be explained.

14 A. 1. The sections of the Oklahoma Uniform Code of Military
15 Justice specified in paragraph 3 of this subsection shall be
16 carefully explained, either orally or in writing, to each officer
17 and enlisted member at the time of, or within one hundred twenty
18 (120) days after, the officer's or enlisted member's initial
19 entrance into a duty status with the state military forces.

20 2. Such articles shall be explained again:

21 a. after the enlisted member has completed basic or
22 recruit training, and

23 b. ~~at the time when the enlisted member reenlists~~ within
24 ninety (90) days of each re-enlistment.

1 3. This subsection applies with respect to Sections 802, 803,
2 807-815, 825, 827, 831, 837, 838, 855, 877-934, and 937-939 of this
3 title (Articles 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 77-134, and 137-
4 139).

5 B. The text of the Code and of the regulations prescribed
6 pursuant to the Code shall be made available to an officer or
7 enlisted member of the state military forces, upon request, for the
8 officer's or enlisted member's personal examination. Electronic or
9 online availability of the Code and of the regulations prescribed
10 pursuant to the Code shall constitute availability for purposes of
11 personal examination by officers or enlisted members of the state
12 military forces.

13 SECTION 17. This act shall become effective November 1, 2023.

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