

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2382

By: Burns

7                                   COMMITTEE SUBSTITUTE

8                   An Act relating to militia; amending 44 O.S. 2021,  
9                   Sections 21, 23, 24, 25, 26, 27, 45, 48, 49, Section  
10                   1, Chapter 74, O.S.L. 2022, 241, and 243 (44 O.S.  
11                   Supp. 2022, Section 233.10a), which relate to The  
12                   Oklahoma Military Code; clarifying personnel to staff  
13                   joint forces headquarters; providing for Adjutant  
14                   General to assign necessary persons to headquarters;  
15                   clarifying personnel in state military forces;  
16                   providing gender-neutral language; establishing term  
17                   limit for Adjutant General upon certain date;  
18                   authorizing removal for cause; modifying eligibility  
19                   criteria for Adjutant General; authorizing Governor  
20                   to waive certain eligibility requirements; directing  
21                   certain comparable rate of compensation for Adjutant  
22                   General; authorizing Adjutant General to establish  
23                   rules allowing the Military Department to accept  
24                   donations to create a certain scholarship program;  
                  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

1 937, which relate to the Oklahoma Uniform Code of  
2 Military Justice; prohibiting federal officials from  
3 convening certain court-martial proceedings without  
4 prior consent of the Governor; requiring consent to  
5 be in writing and published by Governor; authorizing  
6 Governor to reappoint certain dismissed officers;  
7 providing for reappointment procedures; directing  
8 Governor or Adjutant General to prescribe certain  
9 regulations; prohibiting act of forgery; prescribing  
10 punishment for forgery; modifying timing for  
11 explanation of Code; and providing an effective date.

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

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

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

1 States Code. There shall be assigned to the joint ~~force~~ forces  
2 headquarters, officers, enlisted personnel, and civilian employees  
3 as may be considered necessary by the Governor as Commander in Chief  
4 and ~~as may be authorized by law and Army National Guard regulations~~  
5 ~~and Air National Guard regulations~~ the Adjutant General.

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

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

1 a corps of cadets at the educational institutions, shall be  
2 permitted to bear arms without first securing permission of the  
3 Commander in Chief.

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

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

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

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

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

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

24

1 C. If the Oklahoma National Guard is in active federal service  
2 and no persons having the qualifications required in subsection B of  
3 this section are available within the state, then the Governor may  
4 appoint, subject to the advice and consent of the Senate, any  
5 suitably qualified person who at any time in the preceding ten (10)  
6 years would have been qualified, ~~as above, and who has served at~~  
7 ~~least two (2) years in active federal service in the grade of~~  
8 ~~Colonel or higher~~ pursuant to the requirements of subsection B of  
9 this section.

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

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

20 B. The Governor may appoint Assistant Adjutants General for  
21 Army and Assistant Adjutants General for Air to assist the Adjutant  
22 General in the discharge and performance of his or her duties. When  
23 appointing Assistant Adjutants General, the Governor shall take into  
24 consideration the number of such positions contemplated or

1 recommended by the National Guard Bureau for manning the joint  
2 forces headquarters of a state. Such Assistant Adjutants General  
3 shall have the qualifications prescribed by law for the Adjutant  
4 General and shall have the rank of Brigadier General. The Assistant  
5 Adjutants General appointed by the Governor shall be considered  
6 staff officers and not commanders except that, in the discretion of  
7 the Adjutant General, specific command or supervisory authority may  
8 be delegated by the Adjutant General to an Assistant Adjutant  
9 General but such delegation shall be accomplished in writing and  
10 shall be considered a military publication, as defined in Section  
11 801 of this title (Article 1).

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

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

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

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

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

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

1 may designate other military units within the Oklahoma National  
2 Guard as major commands.

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

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

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

22 G. The Adjutant General may establish rules allowing the  
23 Military Department of the State of Oklahoma to accept donations and  
24 bequests to create a scholarship program for the benefit of members



1 of the Oklahoma National Guard. The Adjutant General may delegate  
2 oversight of scholarship program funds to a nonprofit public charity  
3 for the purpose of creating and administering an endowment fund for  
4 the scholarship program.

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

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

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

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

22 "I ....., do solemnly swear that I will support and defend  
23 the Constitution of the United States and the Constitution of the  
24 State of Oklahoma against all enemies, foreign and domestic; that I

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

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

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

16 By sentence of a general court-martial; by direction of the  
17 Governor on account of disability; on account of sentence of  
18 imprisonment by a civil court whether suspended or not; on account  
19 of a bona fide permanent change of residence to another state; and  
20 for the purpose of enlisting in regular Army, Air Force, Navy, or  
21 Marine Corps, and for such other causes as may be prescribed by  
22 ~~National Guard regulations or~~ the Governor as Commander in Chief;  
23 provided, that an enlisted ~~man~~ person who has not returned or  
24 accounted for all of the public property for which he or she is

1 responsible, shall under no circumstances receive an honorable  
2 discharge.

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

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

12 SECTION 10. AMENDATORY Section 1, Chapter 74, O.S.L.  
13 2022 (44 O.S. Supp. 2022, Section 233.10a), is amended to read as  
14 follows:

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

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

1       Section 241. The Governor, pursuant to the authority granted  
2 the states by Section 109 of Title 32 of the United States Code or a  
3 successor provision, ~~and under such regulations as the Secretary of~~  
4 ~~Defense may prescribe for discipline in training,~~ is hereby  
5 authorized to enlist, organize, maintain, equip and discipline such  
6 military forces other than the Oklahoma National Guard as he or she  
7 may deem necessary to defend the state. Such forces shall be  
8 uniformed and subject to Sections 1 through 117, Sections 208  
9 through 237, and Sections 800 through 946 of this title, insofar as  
10 such sections do not conflict with Sections 241 through 250 of this  
11 title.

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

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

1 ~~enlistment, organization, pay, maintenance, equipment and~~  
2 ~~disciplining of such forces shall be in conformity with the law and~~  
3 ~~the rules and regulations governing and pertaining to the National~~  
4 ~~Guard; provided, that the officers~~ Officers and enlisted personnel  
5 in the Oklahoma ~~State~~ National Guard shall not receive any  
6 compensation or monetary allowances from the state except when  
7 activated for state active duty, as defined in Section 801 of this  
8 title, by order of the Governor.

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

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

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

1 Section 821. ~~RESERVED.~~ ARTICLE 21. Convening of court-martial  
2 by federal officials.

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

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

13 Section 875. ARTICLE 75. Restoration.

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

21 B. If a previously executed sentence of dishonorable or bad-  
22 conduct discharge is not imposed on a new trial, the Adjutant  
23 General shall substitute therefor a form of discharge authorized for  
24

1 administrative issuance unless the accused is to serve out the  
2 remainder of his or her enlistment.

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

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

24

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

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

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

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

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

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

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

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

23 2. Such articles shall be explained again:  
24



- 1 a. after the enlisted member has completed basic or  
2 recruit training, and  
3 b. ~~at the time when the enlisted member reenlists~~ within  
4 ninety (90) days of each re-enlistment.

5 3. This subsection applies with respect to Sections 802, 803,  
6 807-815, 825, 827, 831, 837, 838, 855, 877-934, and 937-939 of this  
7 title (Articles 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 77-134, and 137-  
8 139).

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

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

18  
19 COMMITTEE REPORT BY: COMMITTEE ON VETERANS AND MILITARY AFFAIRS,  
20 dated 02/23/2023 - DO PASS, As Amended.  
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