

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 3063

By: Hamilton and Settle of
the House

and

Haney and Hobson of the
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to courts; amending 20 O.S. 1991, Sections 1651, as amended by Section 9, Chapter 239, O.S.L. 1997, 1652, 1654, 1655, as amended by Section 2, Chapter 338, O.S.L. 1992, 1656, 1657, 1658, as amended by Section 10, Chapter 239, O.S.L. 1997, 1659, and 1660, as amended by Section 12, Chapter 225, O.S.L. 1994 (20 O.S. Supp. 1997, Sections 1651, 1655, 1658, and 1660), which relate to the Council on Judicial Complaints; clarifying declaration of public policy; deleting authority to designate complaining authority; exempting the Council from the Oklahoma Sunset Law, the Records Management Act, and the rules of the Archives and Records Commission; limiting application of the Oklahoma Open Records Act and the Oklahoma Open Meeting Act to the Council; placing employees in the classified service; providing for employee benefits and continuation of benefits; changing name of position; requiring adoption of rules pursuant to the Administrative Procedures Act; modifying per diem of members of the Council; expanding circumstances under which compensation may be paid; modifying procedure for issuing reprimands and admonitions; modifying powers of the Council; clarifying services available to the Council; modifying prosecutor for certain proceedings; modifying filing procedure for certain complaints; modifying procedure for paying expenses of the Council under certain circumstances; providing for office space for the Council; transferring certain property; amending 51 O.S. 1991, Section 24A.3, as last amended by Section 4 of Enrolled Senate Bill No. 996 of the 2nd Session of the 46th Oklahoma Legislature, which relates to definitions for the Oklahoma Open Records Act; making certain records of the Council subject to the Oklahoma Open Records Act; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 20 O.S. 1991, Section 1651, as amended by Section 9, Chapter 239, O.S.L. 1997 (20 O.S. Supp. 1997, Section 1651), is amended to read as follows:

Section 1651. It hereby is declared to be the public policy of ~~the State of Oklahoma to~~ this state:

1. To afford a means whereby for efficiently and impartially investigating complaints by any person concerning the conduct of persons occupying positions ~~in the judicial department of government and~~ subject to the jurisdiction of the Court on the Judiciary ~~may be efficiently and impartially investigated; to~~

2. To provide an agency which can determine whether such complaints should:

a. be made the subject of action before the Court on the Judiciary,

b. warrant a reprimand or admonition, or ~~should~~

c. be dismissed; ~~to~~

3. To provide means for procuring necessary information to enable ~~such~~ the agency to perform its functions, including the power to issue and enforce subpoenas to testify and to produce tangible evidentiary materials; to provide for the designation of complaining authorities in those cases which should be prosecuted before the Court on the Judiciary; to and

4. To better the administration of justice in this state through the means enumerated in Sections 1651 through 1661 of this title and Section 10 of this act.

SECTION 2. AMENDATORY 20 O.S. 1991, Section 1652, is amended to read as follows:

Section 1652. A. There is created a Council on Judicial Complaints, hereinafter referred to as the Council, to carry into effect the public policy established in Section 1 of this act an agency in the Executive Department.

B. The Council shall not be subject to the provisions of the Oklahoma Sunset Law.

C. The Council shall be subject to the provisions of the Oklahoma Open Meeting Act, except when conducting hearings concerning complaints received and filed with the Council.

D. The Council shall be subject to the provisions of the Oklahoma Open Records Act to the extent provided in paragraph 2 of Section 24A.3 of Title 51 of the Oklahoma Statutes.

E. 1. Employees of the Council shall be in the unclassified service for the purposes of the Oklahoma Personnel Act.

2. Employees shall be members of the Oklahoma Public Employees Retirement System and shall be eligible to participate in employee benefit programs administered by the Oklahoma State and Education Employees Group Insurance Board.

3. Any person who is employed by the Council who is a state employee at the time he or she is hired by the Council shall retain and continue to accrue all state employee benefits without a break in service.

F. The Council shall not be subject to the provisions of the Records Management Act nor to the rules of the Archives and Records Commission.

SECTION 3. AMENDATORY 20 O.S. 1991, Section 1654, is amended to read as follows:

Section 1654. Of the members first appointed to the Council on Judicial Complaints, one shall serve for three (3) years and until ~~his~~ a successor shall be appointed and qualified; one shall serve for four (4) years and until ~~his~~ a successor shall be appointed and qualified; and one shall serve for five (5) years and until ~~his~~ a successor shall be appointed and qualified. The respective terms of the first members shall be determined by lot at the first meeting of the Council, and the results thereof shall be certified to the Secretary of State and to the appointing authority for each individual member. Thereafter, each appointee shall serve for a term of five (5) years and until ~~his~~ a successor is selected and qualified. No person shall be eligible to serve more than two terms on the Council.

SECTION 4. AMENDATORY 20 O.S. 1991, Section 1655, as amended by Section 2, Chapter 338, O.S.L. 1992 (20 O.S. Supp. 1997, Section 1655), is amended to read as follows:

Section 1655. There is created the position of Administrative Secretary to the Council on Judicial Complaints who shall be a

state employee hired by the Council. ~~He~~ The Administrative Secretary shall receive and file all complaints received concerning the conduct of persons occupying positions in the judicial department of the government and subject to the jurisdiction of the Court on the Judiciary. ~~He~~ The Administrative Secretary shall notify the members of the Council of each complaint filed with ~~him~~ the Secretary. ~~He~~ The Administrative Secretary shall attend all meetings and hearings of the Council and shall keep its ~~minutes~~ records and perform such other tasks as the Council shall direct.

SECTION 5. AMENDATORY 20 O.S. 1991, Section 1656, is amended to read as follows:

Section 1656. ~~The Council shall meet promptly after its appointment.~~ A. The members of the Council on Judicial Complaints shall qualify by taking the constitutional oath of office. They

B. The Council shall elect a ~~chairman~~ chair and ~~vice-chairman~~ vice-chair. The ~~chairman~~ chair and ~~vice-chairman~~ vice-chair shall serve for such terms as the Council shall specify, not exceeding their terms as members of the Council.

C. The Council shall ~~make~~ adopt rules ~~governing the transaction of business and the performance of their functions in accordance with this act, and subject to the provisions of the act pursuant to the Administrative Procedures Act.~~

SECTION 6. AMENDATORY 20 O.S. 1991, Section 1657, is amended to read as follows:

Section 1657. The members of the Council on Judicial Complaints shall receive for their services the sum of ~~Twenty-five Dollars (\$25.00)~~ Thirty-five Dollars (\$35.00) for each day, or fraction thereof, of attendance at its session or other official business of the Council, and ~~the statutory allowances for travel reimbursement within the state~~ for travel expenses pursuant to the State Travel Reimbursement Act.

SECTION 7. AMENDATORY 20 O.S. 1991, Section 1658, as amended by Section 10, Chapter 239, O.S.L. 1997 (20 O.S. Supp. 1997, Section 1658), is amended to read as follows:

Section 1658. The Council on Judicial Complaints shall promptly investigate all complaints received by it, and shall determine the proper disposition thereof, as provided in Sections 1651 through 1661 of this title. To that end, it shall have power to hold hearings, administer oaths or affirmations, receive testimony and other evidence, issue and serve or cause to be served subpoenas requiring testimony or the production of books, records, papers or other tangible evidence and, if approved by the ~~Chief Justice of the~~ Supreme Court, issue reprimands and admonitions. Subject to funding limitations provided by law, the Council, as needed, may retain, by contract, a court reporter and, as needed, may retain an attorney by contract with either the Office of the Attorney General or other counsel. The Council is hereby authorized to require in aid of its investigatory functions the services of the Oklahoma State Bureau of Investigation as provided for in Section 150.34 of Title 74 of the Oklahoma Statutes or of any governmentally supported investigatory agency or, upon authorization of the Board of Governors of the Oklahoma Bar Association, of the services of the Oklahoma Bar Association. In the event of contemptuous refusal to obey its lawful orders, it may take such steps as are necessary to maintain order in its session; as to contempts not affecting the maintenance of order, it shall certify the matter to the Chief Justice of the Supreme Court, who shall assign the case for trial and appropriate disposition to a judge of a district court. In such proceeding, the ~~General Counsel of~~ counsel for the ~~Oklahoma Bar Association~~ Council on Judicial Complaints shall act as prosecutor against the alleged contemnor. All proceedings under this section shall be held in secrecy to the same extent as proceedings before a grand jury; provided however, a reprimand or admonition to a judge who shall have previously received a reprimand or admonition shall, at the discretion of the Council, be made public.

SECTION 8. AMENDATORY 20 O.S. 1991, Section 1659, is amended to read as follows:

Section 1659. In the event the Council on Judicial Complaints finds that the complaint should be made the subject of proceedings

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before the Court on the Judiciary, it shall forward all papers concerning the same, together with its findings, to either the Supreme Court or the Chief Justice thereof, the Governor, the Attorney General, or the Board of Governors of the Oklahoma Bar Association who shall promptly file a petition invoking the jurisdiction of the trial division of the Court on the Judiciary in accordance with subsection (a) of Section 4(a) 4 of Article 7-A of the Constitution of Oklahoma. Thereafter, the matter shall proceed in accordance with the applicable constitutional provisions, statutes and rules of the said Court on the Judiciary.

SECTION 9. AMENDATORY 20 O.S. 1991, Section 1660, as amended by Section 12, Chapter 225, O.S.L. 1994 (20 O.S. Supp. 1997, Section 1660), is amended to read as follows:

Section 1660. All expenses of the Council on Judicial Complaints incurred under the provisions of this act shall be paid out of the Supreme Court Revolving Fund upon a claim approved by the Administrative Director of the Courts until annual appropriations for such purpose are provided by the Legislature, after which claims shall be approved by the chair of the Council on Judicial Complaints.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1662 of Title 20, unless there is created a duplication in numbering, reads as follows:

A. The Council on Judicial Complaints may rent office space from the Oklahoma Bar Association or shall be assigned office space by the Department of Central Services pursuant to Section 94 of Title 74 of the Oklahoma Statutes.

B. All records, furnishings, equipment, and supplies of the Supreme Court used by the Council on Judicial Complaints are hereby transferred to the Council on Judicial Complaints.

SECTION 11. AMENDATORY 51 O.S. 1991, Section 24A.3, as last amended by Section 4 of Enrolled Senate Bill No. 996 of the 2nd Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 24A.3 Definitions. As used in this act:

1. "Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. "Record" does not mean computer software, nongovernment personal effects or, unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Turnpike Authority obtained in connection with the Authority's electronic toll collection system, personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body;

2. "Public body" shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust or any entity created by a trust, county, city, village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by Section 24A.4 of this title, "public body" does not mean judges, justices, the Council on Judicial Complaints, the Legislature, or legislators;

3. "Public office" means the physical location where public bodies conduct business or keep records;

4. "Public official" means any official or employee of any public body as defined herein; and

5. "Law enforcement agency" means any public body charged with enforcing state or local criminal laws and initiating

criminal prosecutions, including, but not limited to, police departments, county sheriffs, the Department of Public Safety, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, and the Oklahoma State Bureau of Investigation.

SECTION 12. This act shall become effective July 1, 1998.

SECTION 13. 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.

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