

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 726

By: Henry of the Senate

and

Benson and Gray of the
House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Council on Judicial Complaints; amending 20 O.S. 1991, Sections 1651, 1652, 1653, 1655, and 1656, as amended by Sections 1, 2, 4, and 5, Chapter 368, O.S.L. 1998, 1658, as last amended by Section 7, Chapter 368, O.S.L. 1998, 1659, as amended by Section 8, Chapter 368, O.S.L. 1998, 1660, as last amended by Section 9, Chapter 368, O.S.L. 1998, and 1661 (20 O.S. Supp. 1998, Sections 1651, 1652, 1655, 1656, 1658, 1659, and 1660), which relate to the Council on Judicial Complaints; clarifying language; exempting the Council on Judicial Complaints from the provisions of the Oklahoma Open Meeting Act under certain circumstances; prohibiting election or appointment of members of Council to Judicial Nominating Commission; changing name of certain administrator; requiring Council to provide certain report to certain officials; deleting language authorizing the Council on Judicial Complaints to issue certain reprimands and admonitions; prohibiting election or appointment of counsel to Council to Judicial Nominating Commission; providing penalty for disclosure of certain information by certain complainant or witness; providing penalty for disclosure of certain information by judicial officer; modifying procedure for filing of petition invoking jurisdiction of Court on the Judiciary; modifying procedure for approval of expenses; modifying procedure for consideration of matter upon disqualification of member of Council on Judicial Complaints; amending 25 O.S. 1991, Section 304, as last amended by Section 9 of Enrolled House Bill No. 1845 of the 1st Session of the 47th Oklahoma Legislature, which relates to the Oklahoma Open Meeting Act; conforming language; amending 75 O.S. 1991, Section 250.4, as last amended by Section 42 of Enrolled House Bill No. 1845 of the 1st Session of the 47th Oklahoma Legislature, which relates to the Administrative Procedures Act; exempting the Council on Judicial Complaints from certain provisions of the Administrative Procedures Act; 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 1, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, Section 1651), is amended to read as follows:

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

1. To afford a means for efficiently and impartially investigating complaints by any person concerning the conduct of persons occupying positions subject to the jurisdiction of the Court on the Judiciary;

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 for the purpose of removal,

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

~~e. b.~~ be dismissed;

3. To provide means for procuring necessary information to enable the agency to perform its functions, including the power to issue and enforce subpoenas to testify ~~and~~ or to produce tangible evidentiary materials; and

4. To better the administration of justice in this state through the means enumerated in Sections 1651 through ~~1661~~ 1662 of this title ~~and Section 10 of this act.~~

SECTION 2. AMENDATORY 20 O.S. 1991, Section 1652, as amended by Section 2, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, Section 1652), is amended to read as follows:

Section 1652. A. ~~There is created a~~ The Council on Judicial Complaints, is 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 not be subject to the provisions of the Oklahoma Open Meeting Act, ~~except when conducting hearings~~

~~concerning complaints~~ when conducting, discussing, or deliberating any matter relating to a complaint received or 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 1653, is amended to read as follows:

Section 1653. A. The Council on Judicial Complaints shall consist of three (3) members, only two of whom shall be members of the Bar of the State of Oklahoma and only two of whom shall constitute a quorum. One member shall be appointed by the President Pro Tempore of the Senate; one member shall be appointed by the Speaker of the House of Representatives; and one member shall be appointed by the President of the Oklahoma Bar Association.

B. Members of the Council, during their terms of office, shall not be eligible for election or appointment to the Judicial Nominating Commission.

SECTION 4. AMENDATORY 20 O.S. 1991, Section 1655, as amended by Section 4, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, Section 1655), is amended to read as follows:

Section 1655. There is created the position of Administrative ~~Secretary~~ Director to the Council on Judicial Complaints who shall be a state employee hired by the Council. The Administrative ~~Secretary~~ Director 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. The Administrative ~~Secretary~~ Director shall notify the members of the Council of each complaint filed with the ~~Secretary~~ Director. The Administrative ~~Secretary~~ Director shall attend all meetings and hearings of the Council ~~and shall,~~ keep its records, prepare reports required by statute, approve claims for payment as directed by the chair, and perform ~~such~~ other tasks as the Council shall direct.

SECTION 5. AMENDATORY 20 O.S. 1991, Section 1656, as amended by Section 5, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, Section 1656), is amended to read as follows:

Section 1656. A. The members of the Council on Judicial Complaints shall qualify by taking the constitutional oath of office.

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

C. The Council shall adopt rules pursuant to the Administrative Procedures Act.

D. The Council shall provide to the President Pro Tempore of the Senate and the Speaker of the House of Representatives quarterly reports of the number of judicial complaints filed, dismissed, and referred for further disciplinary action.

SECTION 6. AMENDATORY 20 O.S. 1991, Section 1658, as last amended by Section 7, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, Section 1658), is amended to read as follows:

Section 1658. A. 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~~

B. The Council shall have power to hold hearings, administer oaths or affirmations, receive testimony and other evidence, and 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 Supreme Court, issue reprimands and admonitions.~~

C. 1. 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.

2. No person acting as counsel to the Council on Judicial Complaints shall be eligible for election or appointment to the Judicial Nominating Commission during the term of his or her employment or contract for services.

D. 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.

E. In the event of contemptuous refusal to obey its lawful orders, ~~it~~ the Council 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~~ which shall assign the case for trial and appropriate disposition to a judge of a district court.

In ~~such~~ a contempt proceeding in district court, the counsel for the Council on Judicial Complaints shall act as prosecutor against the alleged contemnor.

F. 1. 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.~~

2. A complainant or a witness appearing before the Council who reveals or causes to be revealed to the public any information about a proposed or pending judicial complaint shall be subject to a fine not to exceed One Thousand Dollars (\$1,000.00). The Council on Judicial Complaints shall promulgate rules pursuant to the Administrative Procedures Act governing proceedings under this subsection.

3. In addition to the fine provided for in paragraph 2 of this subsection, any judicial officer who reveals or causes to be revealed any information about a proposed or pending judicial complaint shall be subject to public reprimand by the Court on the Judiciary.

SECTION 7. AMENDATORY 20 O.S. 1991, Section 1659, as amended by Section 8, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, 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 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 Executive Secretary of the Board of Governors of the Oklahoma Bar Association, or the House of

Representatives, 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 of Article 7-A of the Constitution of Oklahoma; provided, however, filing by the Executive Secretary of the Oklahoma Bar Association shall be at the direction of the majority of the members of the Executive Council or by resolution of the House of Delegates of the Oklahoma Bar Association. Thereafter, the matter shall proceed in accordance with the applicable constitutional provisions, statutes, and rules of the ~~said~~ Court on the Judiciary.

SECTION 8. AMENDATORY 20 O.S. 1991, Section 1660, as last amended by Section 9, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, 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, by the Council on Judicial Complaints upon a majority vote of its members, or by the Administrative Director as directed by the chair.~~

SECTION 9. AMENDATORY 20 O.S. 1991, Section 1661, is amended to read as follows:

Section 1661. If, in any matter pending before the Council, a council member is disqualified to act for ~~the same reasons~~ a reason that would disqualify a judicial officer from sitting in a matter, the Council ~~shall so~~ may proceed to consider the matter, if a quorum is present, or may certify to the officer having the appointment of that member, who shall thereupon immediately appoint a special member to sit in that case, only. If the appointing officer makes no ~~such~~ appointment within ten (10) days after the mailing of the

certification of disqualification to ~~him~~ the appointing officer, the Council shall appoint a special member.

SECTION 10. AMENDATORY 25 O.S. 1991, Section 304, as last amended by Section 9 of Enrolled House Bill No. 1845 of the 1st Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 304. As used in the Oklahoma Open Meeting Act:

1. "Public body" means the governing bodies of all municipalities located within this state, boards of county commissioners of the counties in this state, boards of public and higher education in this state and all boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts or any entity created by a public trust, task forces or study groups in this state supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property, and shall include all committees or subcommittees of any public body. It shall not mean the state judiciary ~~or~~, the Council on Judicial Complaints when conducting, discussing, or deliberating any matter relating to a complaint received or filed with the Council, the Legislature, or administrative staffs of public bodies, including, but not limited to, faculty meetings and athletic staff meetings of institutions of higher education when those staffs are not meeting with the public body, or entry-year assistance committees. Furthermore, it shall not mean the multidisciplinary team provided for in subsection C of Section 1-502.2 of Title 63 of the Oklahoma Statutes or any school board meeting for the sole purpose of considering recommendations of ~~said~~ a multidisciplinary team and deciding the placement of any child who is the subject of such recommendations. Furthermore, it shall not mean meetings conducted by stewards designated by the Oklahoma Horse Racing Commission pursuant to Section 203.4 of Title 3A of the

Oklahoma Statutes when the stewards are officiating at races or otherwise enforcing rules of the Commission;

2. "Meeting" means the conduct of business of a public body by a majority of its members being personally together or, as authorized by Section 307.1 of this title, together pursuant to a teleconference;

3. "Regularly scheduled meeting" means a meeting at which the regular business of the public body is conducted;

4. "Special meeting" means any meeting of a public body other than a regularly scheduled meeting or emergency meeting;

5. "Emergency meeting" means any meeting called for the purpose of dealing with an emergency. For purposes of this act, an emergency is defined as a situation involving injury to persons or injury and damage to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damage or immediate financial loss;

6. "Continued or reconvened meeting" means a meeting which is assembled for the purpose of finishing business appearing on an agenda of a previous meeting. For the purposes of this act, only matters on the agenda of the previous meeting at which the announcement of the continuance is made may be discussed at a continued or reconvened meeting; and

7. "Teleconference" means a conference among members of a public body remote from one another who are linked by interactive telecommunication devices permitting both visual and auditory communication between and among members of the public body and members of the public.

SECTION 11. AMENDATORY 75 O.S. 1991, Section 250.4, as last amended by Section 42 of Enrolled House Bill No. 1845 of the 1st Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 250.4 A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act.

2. The Corporation Commission shall be required to comply with the provisions of Article I of the Administrative Procedures Act except for subsections A, B, C and E of Section 303 of this title and Section 306 of this title. To the extent of any conflict or inconsistency with Article I of the Administrative Procedures Act, pursuant to Section 35 of Article IX of the Oklahoma Constitution, it is expressly declared that Article I of the Administrative Procedures Act is an amendment to and alteration of Sections 18 through 34 of Article IX of the Oklahoma Constitution.

3. The Oklahoma Military Department shall be exempt from the provisions of Article I of the Administrative Procedures Act to the extent it exercises its responsibility for military affairs.

4. The Oklahoma Ordnance Works Authority and the Northeast Oklahoma Public Facilities Authority shall be exempt from Article I of the Administrative Procedures Act.

5. The Oklahoma Transportation Commission and the Oklahoma Department of Transportation shall be exempt from Article I of the Administrative Procedures Act to the extent they exercise their authority in adopting standard specifications, special provisions, plans, design standards, testing procedures, federally imposed requirements and generally recognized standards, project planning and programming, and the operation and control of the State Highway System.

6. The Oklahoma State Regents for Higher Education shall be exempt from Article I of the Administrative Procedures Act with respect to:

- a. prescribing standards of higher education,
- b. prescribing functions and courses of study in each institution to conform to the standards,

- c. granting of degrees and other forms of academic recognition for completion of the prescribed courses,
- d. allocation of state-appropriated funds, and
- e. fees within the limits prescribed by the Legislature.

7. Institutional governing boards within The Oklahoma State System of Higher Education shall be exempt from Article I of the Administrative Procedures Act.

8. a. The Commissioner of Public Safety shall be exempt from Sections 303.1, 303.2, 307.1, 308 and 308.1 of this title insofar as it is necessary to promulgate rules pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations for which the Commissioner has no discretion when the state is mandated to promulgate rules identical to federal rules and regulations.
- b. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after notice of adoption is published in "The Oklahoma Register". Such publication need not set forth the full text of the rule but may incorporate the federal rules and regulations by reference.
- c. Such copies of promulgated rules shall be filed with the Secretary as required by Section 251 of this title.
- d. For any rules for which the Commissioner has discretion to allow variances, tolerances or modifications from the federal rules and regulations, the Commissioner shall fully comply with Article I of the Administrative Procedures Act.

9. The Council on Judicial Complaints shall be exempt from

Section 306 of Article I of the Administrative Procedures Act, with respect to review of the validity or applicability of a rule by an action for declaratory judgment, or any other relief based upon the validity or applicability of a rule, in the district court or by an appellate court. A party aggrieved by the validity or applicability of a rule made by the Council on Judicial Complaints may petition the Court on the Judiciary to review the rules and issue opinions based upon them.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:

1. The Oklahoma Tax Commission;
2. The Commission for Human Services;
3. The Oklahoma Ordnance Works Authority;
4. The Oklahoma Corporation Commission;
5. The Pardon and Parole Board;
6. The Midwestern Oklahoma Development Authority;
7. The Grand River Dam Authority;
8. The Northeast Oklahoma Public Facilities Authority;
9. The Council on Judicial Complaints;

10. The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, only with respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein; provided, that the provisions of Article II shall apply to and govern all administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;

~~10.~~ 11. The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons; provided, that upon any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion, such

student shall be entitled to such due process, including notice and hearing, as may be otherwise required by law, and the following grounds of misconduct, if properly alleged in disciplinary proceedings against a student, shall be cause to be barred from the campus and be removed from any college or university-owned housing, upon conviction in a court of law:

- a. participation in a riot as defined by the penal code,
- b. possession or sale of any drugs or narcotics prohibited by the penal code, Section 1 et seq. of Title 21 of the Oklahoma Statutes, or
- c. willful destruction of or willful damage to state property;

~~11.~~ 12. The Oklahoma Horse Racing Commission, its employees or agents only with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:

- a. any rule regarding the running of a race,
- b. any violation of medication laws and rules,
- c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,
- d. any assault or other destructive acts within Commission-licensed premises,
- e. any violation of prohibited devices, laws and rules,
- f. any filing of false information;

~~12.~~ 13. The Commissioner of Public Safety only with respect to drivers' license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

~~13.~~ 14. The Administrator of the Department of Securities only with respect to hearings conducted pursuant to provisions of the Oklahoma Take-over Disclosure Act of 1985;

~~14.~~ 15. Hearings conducted by a public agency pursuant to

Section 962 of Title 47 of the Oklahoma Statutes;

~~15.~~ 16. The Oklahoma Military Department;

~~16.~~ 17. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority;

~~17.~~ 18. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority; and

~~18.~~ 19. The position audit procedure, including the impartial review process, of the Office of Personnel Management pursuant to Section 840-4.3 of Title 74 of the Oklahoma Statutes. Provided, that any appeal from an impartial review determination to a court of competent jurisdiction shall be confined to the record in accordance with the provisions of Article II of the Administrative Procedures Act.

SECTION 12. 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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