

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 868

By: Corn of the Senate

and

Paulk of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to state employees; amending 47 O.S. 2001, Section 2-105, as last amended by Section 29 of Enrolled House Bill No. 2725 of the 2nd Session of the 49th Oklahoma Legislature, which relates to commissioned officers of the Department of Public Safety; deleting prohibition on becoming a candidate for public office; allowing certain contributions; amending Rule 257:10-1-4 of the Rules of the Ethics Commission (74 O.S. 2001, Ch. 62, App.), which relates to prohibited political activity; providing certain exception; allowing classified and unclassified employees to become candidate for elective offices; allowing for certain solicitation of contributions and funds; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 2-105, as last amended by Section 29 of Enrolled House Bill No. 2725 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 2-105. A. The Commissioner of Public Safety, subject to the Oklahoma Personnel Act, shall appoint:

1. A Chief of the Oklahoma Highway Patrol Division with the rank of Colonel, Assistant Chief of the Oklahoma Highway Patrol Division with the rank of Lieutenant Colonel, and subordinate officers and employees of the Oklahoma Highway Patrol Division, including Colonels, Lieutenant Colonels, Majors, Captains, First

Lieutenants, Supervisors with the rank of Second Lieutenant, Sergeants, and Highway Patrolmen with the rank of Trooper, who shall comprise the Oklahoma Highway Patrol Division of the Department of Public Safety; provided, any officer appointed to a commissioned position prescribed in this paragraph which is unclassified pursuant to Section 840-5.5 of Title 74 of the Oklahoma Statutes shall have a right of return to the highest previously held classified commissioned position within the Highway Patrol Division of the Department of Public Safety without any loss of rights, privileges or benefits immediately upon completion of the duties in the unclassified commissioned position;

2. A First Lieutenant, Supervisors with the rank of Second Lieutenant, Sergeants, and Patrolmen who shall comprise the Lake Patrol Section of the Oklahoma Highway Patrol Division of the Department of Public Safety;

3. A First Lieutenant, Supervisors with the rank of Second Lieutenant, Sergeants, and Patrolmen, who shall comprise the Capitol Patrol Section of the Oklahoma Highway Patrol Division of the Department of Public Safety; and

4. A Director of the Communications Division with the rank of Captain, Communications Coordinators with the rank of First Lieutenant, Communications Superintendents with the rank of Second Lieutenant, Communications Supervisors with the rank of Sergeant, Communications Dispatchers, Radio Technicians and Tower Maintenance Officers who shall comprise the Communications Division of the Department of Public Safety.

B. 1. The Commissioner, when appointing commissioned officers and employees to the positions set out in subsection A of this section, shall determine, in consultation with the Administrator of the Office of Personnel Management, minimum qualifications and shall select such officers and employees only after examinations to determine their physical and mental qualifications for such

positions. The content of the examinations shall be prescribed by the Commissioner, and all such appointees shall satisfactorily complete a course of training in operations and procedures as prescribed by the Commissioner.

2. No person shall be appointed to any position set out in subsection A of this section unless the person is a citizen of the United States of America, of good moral character, and:

a. for commissioned officer positions, shall be at least twenty-one (21) years of age but less than forty-three (43) years of age, and shall possess:

(1) an associate's degree or a minimum of sixty-two (62) successfully completed semester hours from a college or university which is recognized by and accepted by the American Association of Collegiate Registrars and Admissions Officers and whose hours are transferable between such recognized institutions, and

(2) for any person appointed to the Oklahoma Highway Patrol Division on or after July 1, 2004:

(a) a bachelor's degree from a college or university which is recognized by and accepted by the American Association of Collegiate Registrars and Admissions Officers and whose hours are transferable between such recognized institutions, or

(b) an associate's degree or a minimum of sixty-two (62) successfully completed semester hours from a college or university which is recognized by and accepted by the American Association of Collegiate Registrars and Admissions Officers and whose hours are

transferable between such recognized institutions, and:

- i. at least two (2) years' experience as a Council on Law Enforcement Education and Training (C.L.E.E.T.) certified law enforcement officer, or
- ii. at least two (2) years of military service in combat arms, military security or military rescue.

Provided, such years of experience or service shall have been consecutive and shall have been completed no more than two (2) years prior to application for appointment, or

- b. for any such position in the Communications Division, a person shall be at least twenty (20) years of age and shall possess a high school diploma or General Educational Development equivalency certificate; shall possess either six (6) months of previous experience as a dispatcher or fifteen (15) successfully completed semester hours from a college or university which is recognized by and accepted by the American Association of Collegiate Registrars and Admissions Officers and whose hours are transferable between such recognized institutions.

3. No commissioned officer of the Department shall, while in such position, ~~be a candidate for any political office or~~ take part in or contribute any money or other thing of value, directly or indirectly, to any political campaign or to any candidate for public office. However, no commissioned officer shall be prohibited from contributing any money or other thing of value, directly or indirectly, to his or her own campaign for political office. Anyone

convicted of violating the provisions of this paragraph shall be guilty of a misdemeanor and shall be punished as provided by law.

4. The Commissioner or any employee of the Department shall not be a candidate for any political office, or in any way be active or participate in any political contest of any Primary, General, or Special Election, except to cast a ballot. No commissioned officer of the Department, while in the performance of the officer's assigned duty of providing security and protection, shall be considered as participating in a political campaign. The provisions of this paragraph shall not be construed to preclude a commissioned officer of the Oklahoma Highway Patrol Division of the Department of Public Safety from being a candidate for a position on a local board of education.

5. Drunkenness or being under the influence of intoxicating substances shall be sufficient grounds for the removal of any commissioned officer of the Department, in and by the manner provided for in this section.

C. 1. Upon initial appointment to the position of Highway Patrolman, Patrolman or Communications Dispatcher, the appointed employee shall be required to serve an initial probationary period of twelve (12) months. The Commissioner may extend the probationary period for up to three (3) additional months provided that the employee and the Office of Personnel Management are notified in writing as to such action and the reasons therefor. During such probationary period, the employee may be terminated at any time and for any reason at the discretion of the Commissioner. Retention in the service after expiration of the initial probationary period shall entitle such employee to be classified as a permanent employee and the employee shall be so classified. No permanent employee may be discharged or removed except as provided for in this section.

2. A commissioned officer of the Oklahoma Highway Patrol Division may be promoted during the initial probationary period if

such officer satisfactorily completes all training requirements prescribed by the Commissioner.

D. 1. No permanent employee, as provided for in this section, who is a commissioned officer of the Department, may be suspended without pay or dismissed unless the employee has been notified in writing by the Commissioner of such intended action and the reasons therefor. No such notice shall be given by the Commissioner unless sworn charges or statements have been obtained to justify the action.

2. Whenever such charges are preferred, the Commissioner may suspend the accused pending the hearing and final determination of such charges. If the charges are not sustained in whole or in part, the accused shall be entitled to pay during the period of such suspension. If the charges are sustained in whole or in part, the accused shall not receive any pay for the period of such suspension.

3. Commissioned officers of the Department of Public Safety are not entitled to appeal intra-agency transfer to the Oklahoma Merit Protection Commission pursuant to the Oklahoma Personnel Act unless transfer is in violation of Section 840-2.5 or 840-2.9 of Title 74 of the Oklahoma Statutes.

4. The Department of Public Safety shall follow the uniform grievance procedure established and adopted by the Office of Personnel Management for permanent classified employees, except for those employees who are commissioned officers of the Department. The Department of Public Safety shall establish and adopt a proprietary grievance procedure for commissioned officers of the Department which is otherwise in compliance with the provisions of Section 840-6.2 of Title 74 of the Oklahoma Statutes.

E. 1. The Commissioner is hereby authorized to purchase and issue uniforms and necessary equipment for all commissioned officers of the Highway Patrol Division of the Department. All uniforms and equipment shall be used only in the performance of the official

duties of such officers and shall remain the property of the Department, except as provided in Section 2-150 of this title.

2. Each commissioned officer of the Highway Patrol Division of the Department of Public Safety shall be entitled to reimbursement of expenses pursuant to the State Travel Reimbursement Act while away from the assigned area of the officer as designated by the Chief of the Oklahoma Highway Patrol Division, when such expense is incurred in the service of the state.

F. The position of Colonel, Lieutenant Colonel, and Major of the Oklahoma Highway Patrol Division shall be filled from the body of commissioned officers of the Oklahoma Highway Patrol Division and appointment to said position shall be based on qualifications, previous record as a commissioned officer of the Oklahoma Highway Patrol Division, length of service, and efficiency of service performed.

1. The position of Chief of the Oklahoma Highway Patrol Division shall be filled from the body of commissioned officers of the Oklahoma Highway Patrol Division and appointment to said position shall be based on qualifications, previous record as a commissioned officer of the Oklahoma Highway Patrol Division, length of service, efficiency of service performed, and one of the following:

- a. one (1) year of experience in any combination as Assistant Commissioner of Public Safety or Assistant Chief of the Oklahoma Highway Patrol Division,
- b. two (2) years of experience in any combination as Major or higher rank of the Oklahoma Highway Patrol Division,
- c. four (4) years of experience in any combination as Captain or higher rank of the Oklahoma Highway Patrol Division, or

- d. six (6) years of experience in any combination as First Lieutenant or higher rank of the Oklahoma Highway Patrol Division.

2. The position of Assistant Chief of the Oklahoma Highway Patrol Division shall be filled from the body of commissioned officers of the Oklahoma Highway Patrol Division and appointment to said position shall be based on qualifications, previous record as a commissioned officer of the Oklahoma Highway Patrol Division, length of service, efficiency of service performed, and one of the following:

- a. one (1) year of experience in any combination as Assistant Commissioner of Public Safety or Major of the Oklahoma Highway Patrol Division,
- b. two (2) years of experience in any combination as Captain or higher rank of the Oklahoma Highway Patrol Division, or
- c. four (4) years of experience in any combination as First Lieutenant or higher rank of the Oklahoma Highway Patrol Division.

3. The position of Major of the Oklahoma Highway Patrol Division shall be filled from the body of commissioned officers of the Oklahoma Highway Patrol Division and appointment to said position shall be based on qualifications, previous record as a commissioned officer of the Oklahoma Highway Patrol Division, length of service, efficiency of service performed, and one of the following:

- a. one (1) year of experience in any combination as Assistant Commissioner of Public Safety or Captain of the Oklahoma Highway Patrol Division, or
- b. three (3) years of experience in any combination as Highway Patrol First Lieutenant or higher rank of the Oklahoma Highway Patrol Division.

G. The Commissioner of Public Safety is hereby authorized to send employees of the Department of Public Safety to such schools as Northwestern University Traffic Institute, Northwestern University Police Administrator's Institute, the National Police Academy conducted by the Federal Bureau of Investigation, or to any other such schools of similar training which would be conducive to improving the efficiency of the Oklahoma Highway Patrol Division and the Department of Public Safety.

H. 1. Any former commissioned officer of the Department whose separation from the Department was at such officer's own request and not a result of such officer's own actions contrary to the policy of the Department or was not as a result of the retirement of that officer from the Department may make application for reinstatement as a commissioned officer of the division or section of the Department in which such officer was previously employed, provided such reinstated officer will be able to complete twenty (20) years of credited service by the time the reinstated officer reaches fifty-seven (57) years of age. The Commissioner may waive the requirements of possessing the number of semester hours or degree as required in subsection B of this section for any former commissioned officer making application for reinstatement as a commissioned officer of the Department. The Commissioner may require the applicant for reinstatement to attend selected courses of instruction, as prescribed by the Commissioner.

2. In the event of future hostilities wherein the Congress of the United States declares this nation in a state of war with a foreign nation, including military service brought about by the Vietnam War, any period of military service served by a commissioned officer of the Department shall be considered as continued service with such Department, provided such commissioned officer returns to duty with the Department within sixty (60) days after release from military service.

SECTION 2. AMENDATORY Rule 257:10-1-4 of the Rules of the Ethics Commission (74 O.S. 2001, Ch. 62, App.), is amended to read as follows:

Section 257:10-1-4. (a) Classified employees. No classified employee shall:

(1) use his official authority or influence for the purpose of interfering with an election to or a nomination for office, or affecting the result thereof;

(2) become a candidate for an elective office in a partisan election, except as otherwise provided in subsection (f) of this section;

(3) directly or indirectly solicit contributions or other funds for a partisan political candidate or party committee;

(4) directly or indirectly solicit, accept, collect, handle, disburse or account for assessments, contributions or other funds for a partisan political purpose, except as otherwise provided in subsection (f) of this section; or

(5) organize, sell tickets to, promote or actively participate in a fundraising activity of a candidate in a partisan election or of a party committee, except as otherwise provided in subsection (f) of this section.

(b) O.S.B.I. and O.S.B.N.D.D.C. classified employees. In addition to those prohibitions specified in Subsection (a) of this section, no classified employee of the Oklahoma State Bureau of Investigation or the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control who has the power of a peace officer shall:

(1) serve as an officer of a party committee at the national, state or local level;

(2) organize or reorganize a party committee;

(3) solicit votes in support of or in opposition to a candidate for state office in a partisan election or a candidate for party committee office;

(4) act as a watcher at the polls in behalf of a party committee or a candidate in a partisan election;

(5) drive voters to the polls on behalf of a party committee or a candidate in a partisan election;

(6) endorse or oppose a candidate for state office in a partisan election or a candidate for party committee office in a political advertisement, broadcast, campaign, literature or similar material;

(7) serve as a delegate, alternate or proxy to a party committee convention;

(8) address a convention, caucus, rally or similar gathering of a party committee in support of or in opposition to a partisan candidate for state office or party committee office;

(9) initiate or circulate a partisan nominating petition; or

(10) take any active part in political organization management.

(c) Retained rights. Except as otherwise prohibited in Subsection (b), a classified employee shall retain the right to:

(1) register and vote in any election;

(2) express his opinion as an individual privately and publicly on political subjects and candidates;

(3) display a political picture, sticker, badge or button;

(4) serve as an officer of a party committee at the national, state or local level;

(5) participate in the activities of a civic, community, social, labor or professional organization or of a similar organization;

(6) be a member of a party committee or other political action committee and participate in its activities consistent with Subsections (a) and (b) of this section;

(7) attend a political convention, rally, fundraising function or other political gathering;

(8) sign a political petition as an individual;

(9) make a voluntary financial contribution to a committee;

(10) be politically active in connection with a question, such as an amendment to the State Constitution, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(11) serve as an election judge or clerk, or in a similar position to perform duties as prescribed by state or local law; and

(12) otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the neutrality, efficiency or integrity of his administration of state functions.

(d) During work status. Subsection (c) of this section shall not authorize a classified employee to engage in political activity, while on duty, or while in a uniform that identifies him as a state employee. Nor shall a classified state employee be permitted to engage in political activities in the assigned work areas of a state agency.

(e) Unclassified or classified state employees. No unclassified or classified state employee, with the exception of elective officers, shall wear a campaign button, hat, badge or other campaign paraphernalia during the hours that the employee is officially in work status for a governmental entity.

(f) Notwithstanding any other provision of law to the contrary, a classified or unclassified employee may become a candidate for an elective office in a partisan election, during which time the employee may directly or indirectly solicit contributions or other funds solely for that employee's own partisan political candidacy.

SECTION 3. This act shall become effective November 1, 2004.