

ENROLLED SENATE
BILL NO. 633

By: Sykes of the Senate

and

Jordan of the House

An Act relating to the Oklahoma Military Code; amending 44 O.S. 2001, Section 21.1, which relates to Military Department personnel; requiring state employees employed by the Military department to be in the unclassified service; deleting certain exemptions to classified status; deleting certain provisions related to employment discretion of Adjutant General; deleting certain provisions related to treatment of certain employees; authorizing the Adjutant General to grant leave to state civilian employees under the rules governing federal employees; amending 44 O.S. 2001, Section 26, which relates to the duties of the Adjutant General; removing the requirement that the Adjutant General is the military advisor for the Governor of the State of Oklahoma; amending 44 O.S. 2001, Section 43, which relates to eligibility of commissioned officers; removing preferences for prior military service when selecting and appointing commissioned officers; amending 44 O.S. 2001, Section 208, which relates to discrimination against officers or enlisted member; providing gender neutral language; amending 44 O.S. 2001, Section 227, which relates to selection of an architect; clarifying language; amending 44 O.S. 2001, Section 232.1, as amended by Section 2, Chapter 130, O.S.L. 2005 (44 O.S. Supp. 2010, Section 232.1), which relates to operations and control of armories; authorizing the Adjutant General to enter into contracts to lease or rent facilities; amending 44 O.S. 2001, Section 232.2, which relates to use and operation of armories; clarifying language; amending 44 O.S. 2001, Section 232.4, as amended by Section 3,

Chapter 254, O.S.L. 2006 (44 O.S. Supp. 2010, Section 232.4), which relates to duties and responsibilities of the Adjutant General; allowing the Adjutant General to establish rules and regulations for the use and operations of facilities owned and operated by the Military Department; amending 44 O.S. 2001, Section 233.2, which relates to agreements with the United States for operations of facilities; deleting obsolete language; amending 44 O.S. 2001, Section 233.3, as last amended by Section 4, Chapter 172, O.S.L. 2008 (44 O.S. Supp. 2010, Section 233.3), which relates to the sale and disposition of property; authorizing the Adjutant General to sell, dispose, demolish or transfer title of property owned or controlled by the Military Department; exempting the Military Department from the Oklahoma Surplus Property Act for certain purposes; requiring the Adjutant General to execute certain deeds and conveyances; removing certain restrictions on construction of new armories; amending 44 O.S. 2001, Section 233.5, as amended by Section 161, Chapter 86, O.S.L. 2007 (44 O.S. Supp. 2010, Section 233.5), which relates to the conveyance of property; allowing conveyances of property by individuals or corporations without the approval of the Governor and acceptance by the Adjutant General; removing certain authorization concerning expenditure of fund on certain conveyances; amending 44 O.S. 2001, Section 233.11, which relates to contracts for professional services; removing contract limits for professional services; repealing 44 O.S. 2001, Sections 2, 30, 31, 32, 42, 214, 226, 231.11, 232.5, 232.6, as last amended by Section 4, Chapter 254, O.S.L. 2006, 232.7, as last amended by Section 7, Chapter 212, O.S.L. 2010, 233.4, 233.6, 233.8 and 236 (44 O.S. Supp. 2010, Sections 232.6 and 232.7), which relate to the Oklahoma Military Advisory Commission, the organization of the Oklahoma National Guard, punishment for destruction of military property, location of National Guard armory, obsolete language, assignment of military organizations to armories, leasing and hiring out of armories or facilities,

armory board funds, control and operation of buildings, transfer of powers and duties of Special Armory Construction Board, petty cash fund, and acquisition of certain real property in Pontotoc County; and providing an effective date.

SUBJECT: Oklahoma Military Code

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

SECTION 1. AMENDATORY 44 O.S. 2001, Section 21.1, is amended to read as follows:

Section 21.1 Personnel appointed as state employees in the Military Department shall be in the ~~classified~~ unclassified service of the state, ~~except as otherwise provided by law, and shall be subject to the provisions of the Oklahoma Personnel Act concerning appointments, promotions, adverse actions, and all other personnel matters. However, the Adjutant General may establish a requirement for membership in the National Guard as a special requirement for appointment to, and continued employment in, certain positions in the classified service which require special military training, exercise of command authority, direct specified military programs, or perform other functions directly related to administration and training of the National Guard or the maintenance or repair of National Guard facilities, equipment, or supplies. Such designated positions shall include the specified military grade or grades authorized by the Adjutant General for appointment to the position and continued employment therein. An employee in a designated position who is separated from the National Guard or who does not hold the specified military grade for the position will be reclassified, promoted, demoted, transferred or separated in accordance with the provisions of the Oklahoma Personnel Act and the Merit Rules for Employment. The Adjutant General may grant leave to state civilian employees consistent with the rules governing the federal workforce in support of the National Guard.~~

SECTION 2. AMENDATORY 44 O.S. 2001, Section 26, is amended to read as follows:

Section 26. The Adjutant General shall be in control of the Military Department of the state, subordinate only to the Governor, ~~whose military adviser he shall be.~~ Within the limitations and under the provisions of law, he or she shall supervise and direct the National Guard within the service of the state and when under state control in all of its organization, training and other activities; shall receive and give effect to the orders of the Governor; and shall perform such other military and defense duties, not otherwise assigned by law, as the Governor may prescribe.

SECTION 3. AMENDATORY 44 O.S. 2001, Section 43, is amended to read as follows:

Section 43. No person shall be commissioned as an officer of the National Guard who is under the age of eighteen (18) years and is not temperate and of good morals, and unless he or she shall have successfully passed such tests as to his or her physical, mental, and professional fitness as may be prescribed by the laws and regulations applicable to the federally recognized National Guard. ~~In the selection and appointment of commissioned officers, preference shall be given to persons with prior active military service, enlisted men of the National Guard, and graduates of schools wherein Military Science is taught.~~

SECTION 4. AMENDATORY 44 O.S. 2001, Section 208, is amended to read as follows:

Section 208. No person shall discriminate against any officer or enlisted ~~man~~ member of the National Guard because of his or her membership therein. No person shall prohibit or refuse entrance to any officer or enlisted ~~man~~ member ~~of the Army or Navy~~ of the United States Armed Forces, or of the military forces of this state, into any public entertainment or place of amusement because such officer or enlisted ~~man~~ member is wearing a uniform of the organization to which he or she belongs. No employer, officer or agent of any corporation, company, firm or other person, shall discharge any person from employment because of being an officer, warrant officer or enlisted ~~man~~ member of the military forces of the state, or hinder or prevent him or her from performing any military service he or she may be called upon to perform by proper authority, in respect to his or her employment, trade or business. Any person violating

any of the provisions of this section, shall be punished by a fine of not to exceed One Hundred Dollars (\$100.00), or by imprisonment in the county jail for a period of not to exceed thirty (30) days, or by both such fine and imprisonment.

SECTION 5. AMENDATORY 44 O.S. 2001, Section 227, is amended to read as follows:

Section 227. The architect for the construction of the ~~armory facilities of building for the housing, occupancy, or quartering of the officers, personnel, and equipment of~~ the National Guard of the State of Oklahoma shall be selected by a board appointed by the Adjutant General of the State of Oklahoma ~~and~~ to be named the Architect Selection Board. The Architect Selection Board shall be comprised of three (3) members from the Oklahoma National Guard Directorate of Engineering Office. The Adjutant General shall enter into contracts in the name of the State of Oklahoma for the construction of such ~~armory building~~ buildings. The Oklahoma Military Department may use federal contracting procedures for construction of such ~~armory building~~ facilities.

SECTION 6. AMENDATORY 44 O.S. 2001, Section 232.1, as amended by Section 2, Chapter 130, O.S.L. 2005 (44 O.S. Supp. 2010, Section 232.1), is amended to read as follows:

Section 232.1 A. ~~All armories, vehicle storage buildings, warehouses, and other buildings and facilities, real and personal property in connection therewith, state or federally owned, procured, leased, or constructed from federal or state funds, occupied or used by the Militia, National Guard, or other authorized military organizations under state control, shall be operated, maintained, altered, repaired, and controlled by the Military Department. When existing armories or facilities are not available at any station to which an organization of the National Guard has been assigned, then, the~~ The Adjutant General is authorized to enter into contracts to lease or hire buildings and rent facilities and to pay reasonable rental from any funds appropriated for operating and maintenance expenses of the Military Department or the Adjutant General.

B. "Military reservations", without limitation, include military installations, armories, air bases, and facilities owned or controlled by the state for military purposes.

C. The Adjutant General shall have charge of military reservations of the state and shall be responsible for the protection and safety of those military reservations, and promulgate rules for the maintenance of order thereon, for the enforcement of traffic rules and for all other lawful rules as may be ordered for the operation, care, and preservation of existing facilities and installations on all state military reservations.

SECTION 7. AMENDATORY 44 O.S. 2001, Section 232.2, is amended to read as follows:

Section 232.2 The Adjutant General shall promulgate rules and regulations for the use and operation of armories, buildings, and other facilities under control of the Military Department. The Adjutant General is authorized to expend monies ~~appropriated for operating and maintenance expenses to the Military Department or to the Adjutant General for the purpose of improvements, including street for improvements, repair repairs, alterations, and maintaining of armories and facilities enumerated in Section 1 of this act~~ maintenance of facilities.

SECTION 8. AMENDATORY 44 O.S. 2001, Section 232.4, as amended by Section 3, Chapter 254, O.S.L. 2006 (44 O.S. Supp. 2010, Section 232.4), is amended to read as follows:

Section 232.4 ~~The armory boards are appointed to assist the Adjutant General and are responsible to him for the use, care and maintenance of the armories, in accordance with~~ or a representative may establish and proscribe by policy the applicable rules and regulations promulgated by the Adjutant General. The boards shall have the general supervision and authority over the armory building, the grounds, approaches, and other facilities for the use and operation, management, rental, and fiscal oversight for facilities owned or controlled by the Military Department.

SECTION 9. AMENDATORY 44 O.S. 2001, Section 233.2, is amended to read as follows:

~~Section 233.2 The Oklahoma Military Department, with the approval of the Governor, attested by the Secretary of State thereon, Adjutant General is hereby authorized and directed to enter into, in the name of the state, and to take all actions necessary to execute the terms of a National Guard armory building construction or expansion, rehabilitation or conversion of existing building agreements with the United States of America, by and through the Department of the Army or other representative federal agency, under the provisions of Public Law 783, 81st Congress, and amendments thereto, under which agreements the United States of America will contribute a sum not in excess of seventy five percent (75%) and the state will contribute a sum not in excess of twenty five percent (25%) of the cost of constructing, erecting and completing of each armory building constructed by virtue hereof or the expansion, rehabilitation, or conversion of existing armory buildings; and any money so granted by the United States of America, in carrying out the objects of Sections 232.1 through 232.5 of this title, shall be used and expended in accordance with the requirements of the Department of the Army or other representative federal agency; provided, that the state, in addition to such contribution of twenty five percent (25%), shall pay without federal participation or contribution, such sums as are necessary for the purpose of providing workable public utility lines, connections and installations for each of such armory buildings; provided, further, that the Oklahoma Military Department may pay from funds heretofore or hereafter appropriated for the purposes of carrying out the provisions of Section 233.2 et seq. of this title, without federal participation, all such capital improvements, construction costs or expenses as may be reasonably and necessarily included in connection with such projects, where federal laws or regulations do not permit federal participation in payment of such capital improvements, construction costs or expenses and even though such capital improvements, construction costs or expenses exceed twenty five percent (25%) of the total cost of the project.~~

SECTION 10. AMENDATORY 44 O.S. 2001, Section 233.3, as last amended by Section 4, Chapter 172, O.S.L. 2008 (44 O.S. Supp. 2010, Section 233.3), is amended to read as follows:

~~Section 233.3 A. The Oklahoma Military Department, with the approval of the Governor, attested by the Secretary of State thereon, Adjutant General or a representative of the State of~~

Oklahoma is hereby authorized and directed to enter into contracts in the name of the ~~State of Oklahoma~~ state for the purpose of ~~carrying out the provisions of Section 233.2 et seq. of this title, provided that the contracting method selected by the Department for the construction, erection and completion of any armory buildings hereby authorized~~ this title and shall:

1. Result in contracts awarded to the lowest and best bidder, approved by the Department of the Army or other representative federal agency, and that any contractor, to whom a contract may be awarded hereunder, shall execute with a qualified surety company, doing business in this state, as surety, bonds in such amounts and with such conditions as prescribed by law and by the Department of the Army or other representative federal agency. Such bonds shall be upon a form with such conditions and in such amounts as may meet the requirements of the representative federal agency and in such further amounts as willfully protect and cover the construction contributions of the state;

2. Assure that any contracts requiring federal funds are awarded in the same federal fiscal year of appropriation by Congress;

3. Result in full compliance with federal military construction standards; and

4. Result in full compliance with all state building codes.

~~B. The Oklahoma Military Department shall from time to time, as the occasion therefore arises, determine whether any real estate, armory or building belonging to the State of Oklahoma and under the control of the Oklahoma Military Department is needed by the Oklahoma Military Department. If the Adjutant General determines that there is no need, the Adjutant General shall so declare and sell or dispose of the same in such manner and upon such terms as approved by the Department of Central Services and the Governor. If the Adjutant General determines that the structure endangers the public health or safety, the Adjutant General may, in the manner provided by law, order the immediate demolition of the structure. If the Adjutant General determines that a municipality, county, state agency, or other public entity can use the real estate, armory, or building for a public purpose, the Adjutant General may~~

~~transfer the property to the municipality, county, state agency, or other public entity. For purposes of transferring real estate, armories, or buildings to a municipality, the Oklahoma Military Department shall be exempt from the Oklahoma Surplus Property Act for purposes of selling surplus property. If the municipality, county, state agency, or other public entity does not use the real estate, armory, or building for public purposes, the property shall revert back to the Oklahoma Military Department on behalf of the State of Oklahoma. Necessary deeds and other conveyances shall be executed by the Adjutant General in the name of the State of Oklahoma.~~ The Adjutant General is authorized to sell or dispose of property and improvements thereon. The Adjutant General is authorized to demolish structures owned or controlled by the Military Department. The Adjutant General may transfer title to any property and improvements thereon to a municipality, county, state agency, or other public or non-profit entity. The Oklahoma Military Department shall be exempt from the Oklahoma Surplus Property Act for purposes of selling surplus property. Necessary deeds and other conveyances shall be executed by the Adjutant General in the name of the State of Oklahoma.

Proceeds of the sale or other disposition of such property shall be deposited in a revolving fund in the State Treasury designated as the Surplus Property Revolving Fund of the Oklahoma Military Department. Monies deposited in such revolving fund may be expended by the Adjutant General, for construction, repairs, and maintenance, or equipment for facilities of the Oklahoma National Guard. ~~No new armory shall be constructed unless authorized by the Legislature.~~

SECTION 11. AMENDATORY 44 O.S. 2001, Section 233.5, as amended by Section 161, Chapter 86, O.S.L. 2007 (44 O.S. Supp. 2010, Section 233.5), is amended to read as follows:

Section 233.5 The governing body of any school district, town, city, county or any other political subdivision of state government is hereby authorized to convey to this state, title or other adequate property interest to acceptable and suitable real estate under its control and proper jurisdiction as sites for the construction, erection and completion of ~~armory buildings~~ facilities under ~~this act~~ Section 233.2 et seq. of this title, and any individual and any corporation is authorized to convey by deed to this state, any of his, her or its lands, situated in the state for

~~such purpose and use, provided, each such conveyance shall be subject to acceptance by the Adjutant General, on behalf of the state, and provided further that the Adjutant General shall not accept any such deed unless the approval of the Governor of the acceptance be endorsed thereon, attested by the Secretary of State. After such deed or other conveyance has been delivered and accepted, the Adjutant General shall be authorized to expend funds appropriated to the Military Department of the state for the maintenance, repair and improvement of the armory buildings and appurtenances erected on such lands.~~

SECTION 12. AMENDATORY 44 O.S. 2001, Section 233.11, is amended to read as follows:

Section 233.11 The Oklahoma Military Department is hereby authorized to enter into agreements and contracts with licensed individuals, partnerships, corporations or firms for professional services for the development of designs, plans, and specifications, and further, the construction, renovation, and remodeling of buildings, structures, or ~~appurtenances~~ equipment deemed necessary and appropriate by the Adjutant General ~~for the conduct of Oklahoma National Guard activities in accordance with rules and procedures for the administration of such professional services by the Office of Public Affairs. Said contractual agreements shall not exceed One Hundred Seventy five Thousand Dollars (\$175,000.00) per year, exclusive of funds being specifically appropriated by the Legislature for specific projects of new construction, appropriated for this purpose or allocated from other operating, revolving or capital funds of the Oklahoma Military Department.~~

SECTION 13. REPEALER 44 O.S. 2001, Sections 2, 30, 31, 32, 42, 214, 226, 231.11, 232.5, 232.6, as last amended by Section 4, Chapter 254, O.S.L. 2006, 232.7, as last amended by Section 7, Chapter 212, O.S.L. 2010, 233.4, 233.6, 233.8 and 236 (44 O.S. Supp. 2010, Sections 232.6 and 232.7), are hereby repealed.

SECTION 14. This act shall become effective November 1, 2011.

Passed the Senate the 15th day of March, 2011.

Presiding Officer of the Senate

Passed the House of Representatives the 19th day of April, 2011.

Presiding Officer of the House
of Representatives