

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

CONFERENCE COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 1236

By: McCall, Roberts (Dustin),  
Sims, Luttrell, Russ,  
Manger, Worthen, Lepak,  
Roberts (Eric), Gann,  
Sterling, Roe, Kendrix,  
Hilbert, Davis, West  
(Josh), Bashore, West  
(Kevin), Cornwell, Lowe  
(Dick), Moore, West (Rick),  
Grego, May, Townley,  
Stearman, Olsen, Wolfley,  
Stark, Dobrinski,  
Patzkowsky, Talley, Newton,  
Williams, Miller, West  
(Tammy), Lawson, Mize,  
Hill, Hardin (David),  
Steagall, Fetgatter,  
Vancuren, Boatman,  
Hasenbeck, Martinez,  
Dempsey, Phillips,  
McEntire, Kerbs, Boles,  
Dills, Hardin (Tommy),  
Sneed, Johns, Osburn,  
Marti, Frix, Crosswhite  
Hader, Baker, Conley,  
Strom, Caldwell (Trey),  
Caldwell (Chad), Burns,  
Ford, McDugle, Wallace,  
Culver, Smith, Echols,  
Roberts (Sean), McBride and  
Pfeiffer of the House

and

Treat, Daniels, Bullard,  
Hamilton, Quinn, Stephens,  
Standridge, Pemberton,  
Rogers, Newhouse, Haste,  
Weaver, David, Leewright,  
Thompson, Montgomery, Hall,

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Attorney General; amending 74 O.S. 2011, Section 18b, as last amended by Section 1, Chapter 444, O.S.L. 2019 (74 O.S. Supp. 2020, Section 18b), which relates to duties of the Attorney General; requiring Attorney General to evaluate certain actions of the federal government; establishing the State Reserved Powers Protection Unit of the Office of the Attorney General; stating duties of Unit; requiring Attorney General to take certain actions under certain circumstances; providing for review of Presidential executive orders and federal actions; prohibiting implementation of unconstitutional actions; 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 74 O.S. 2011, Section 18b, as last amended by Section 1, Chapter 444, O.S.L. 2019 (74 O.S. Supp. 2020, Section 18b), is amended to read as follows:

Section 18b. A. The duties of the Attorney General as the chief law officer of the state shall be:

1. To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court and Court of Criminal Appeals in which the state is interested as a party;

1        2. To appear for the state and prosecute and defend all actions  
2 and proceedings in any of the federal courts in which the state is  
3 interested as a party;

4        3. To initiate or appear in any action in which the interests  
5 of the state or the people of the state are at issue, or to appear  
6 at the request of the Governor, the Legislature, or either branch  
7 thereof, and prosecute and defend in any court or before any  
8 commission, board or officers any cause or proceeding, civil or  
9 criminal, in which the state may be a party or interested; and when  
10 so appearing in any such cause or proceeding, the Attorney General  
11 may, if the Attorney General deems it advisable and to the best  
12 interest of the state, take and assume control of the prosecution or  
13 defense of the state's interest therein;

14        4. To consult with and advise district attorneys, when  
15 requested by them, in all matters pertaining to the duties of their  
16 offices, when the district attorneys shall furnish the Attorney  
17 General with a written opinion supported by citation of authorities  
18 upon the matter submitted;

19        5. To give an opinion in writing upon all questions of law  
20 submitted to the Attorney General by the Legislature or either  
21 branch thereof, or by any state officer, board, commission or  
22 department, provided, that the Attorney General shall not furnish  
23 opinions to any but district attorneys, the Legislature or either  
24 branch thereof, or any other state official, board, commission or

1 department, and to them only upon matters in which they are  
2 officially interested;

3 6. At the request of the Governor, State Auditor and Inspector,  
4 State Treasurer, or either branch of the Legislature, to prosecute  
5 any official bond or any contract in which the state is interested,  
6 upon a breach thereof, and to prosecute or defend for the state all  
7 actions, civil or criminal, relating to any matter connected with  
8 either of their Departments;

9 7. Whenever requested by any state officer, board or  
10 commission, to prepare proper drafts for contracts, forms and other  
11 writing which may be wanted for the use of the state;

12 8. To prepare drafts of bills and resolutions for individual  
13 members of the Legislature upon their written request stating the  
14 gist of the bill or resolution desired;

15 9. To enforce the proper application of monies appropriated by  
16 the Legislature and to prosecute breaches of trust in the  
17 administration of such funds;

18 10. To institute actions to recover state monies illegally  
19 expended, to recover state property and to prevent the illegal use  
20 of any state property, upon the request of the Governor or the  
21 Legislature;

22 11. To pay into the State Treasury, immediately upon its  
23 receipt, all monies received by the Attorney General belonging to  
24 the state;

1       12. To settle, compromise and dispose of an action in which the  
2 Attorney General represents the interests of the state, so long as  
3 the consideration negotiated for such settlement, compromise or  
4 disposition is payable to the state or one of its agencies which is  
5 a named party of the action and any monies, any property or other  
6 item of value is paid first to the State Treasury;

7       13. To keep and file copies of all opinions, contracts, forms  
8 and letters of the office, and to keep an index of all opinions,  
9 contracts and forms according to subject and section of the law  
10 construed or applied;

11       14. To keep a register or docket of all actions, demands and  
12 investigations prosecuted, defended or conducted by the Attorney  
13 General in behalf of the state. The register or docket shall give  
14 the style of the case or investigation, where pending, court number,  
15 office number, the gist of the matter, result and the names of the  
16 assistants who handled the matter;

17       15. To keep a complete office file of all cases and  
18 investigations handled by the Attorney General on behalf of the  
19 state;

20       16. To report to the Legislature or either branch thereof  
21 whenever requested upon any business relating to the duties of the  
22 Attorney General's office;

23       17. To institute civil actions against members of any state  
24 board or commission for failure of such members to perform their

1 duties as prescribed by the statutes and the Constitution and to  
2 prosecute members of any state board or commission for violation of  
3 the criminal laws of this state where such violations have occurred  
4 in connection with the performance of such members' official duties;

5 18. To respond to any request for an opinion of the Attorney  
6 General's office, submitted by a member of the Legislature,  
7 regardless of subject matter, by written opinion determinative of  
8 the law regarding such subject matter;

9 19. To convene multicounty grand juries in such manner and for  
10 such purposes as provided by law; provided, such grand juries are  
11 composed of citizens from each of the counties on a pro rata basis  
12 by county;

13 20. To investigate any report by the State Auditor and  
14 Inspector filed with the Attorney General pursuant to Section 223 of  
15 this title and prosecute all actions, civil or criminal, relating to  
16 such reports or any irregularities or derelictions in the management  
17 of public funds or property which are violations of the laws of this  
18 state;

19 21. To represent and protect the collective interests of all  
20 utility consumers of this state in rate-related proceedings before  
21 the Corporation Commission or in any other state or federal judicial  
22 or administrative proceeding;

23 22. To represent and protect the collective interests of  
24 insurance consumers of this state in rate-related proceedings before

1 the Insurance Commissioner or in any other state or federal judicial  
2 or administrative proceeding; ~~and~~

3 23. To investigate and prosecute any criminal action relating  
4 to insurance fraud, if in the opinion of the Attorney General a  
5 criminal prosecution is warranted, or to refer such matters to the  
6 appropriate district attorney; and

7 24. To monitor and evaluate any action by the federal  
8 government including, but not limited to, executive orders by the  
9 President of the United States, rules or regulations promulgated by  
10 an agency of the federal government or acts of Congress to determine  
11 if such actions are in violation of the Tenth Amendment to the  
12 Constitution of the United States.

13 B. Nothing in this section shall be construed as requiring the  
14 Attorney General to appear and defend or prosecute in any court any  
15 cause or proceeding for or on behalf of the Oklahoma Tax Commission,  
16 the Board of Managers of the State Insurance Fund, or the  
17 Commissioners of the Land Office.

18 C. In all appeals from the Corporation Commission to the  
19 Supreme Court of Oklahoma in which the state is a party, the  
20 Attorney General shall have the right to designate counsel of the  
21 Corporation Commission as the Attorney General's legally appointed  
22 representative in such appeals, and it shall be the duty of the  
23 Corporation Commission counsel to act when so designated and to  
24

1 consult and advise with the Attorney General regarding such appeals  
2 prior to taking action therein.

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 18q of Title 74, unless there is  
5 created a duplication in numbering, reads as follows:

6 There is hereby created within the Office of the Attorney  
7 General a State Reserved Powers Protection Unit to monitor and  
8 evaluate any action by the federal government including, but not  
9 limited to, executive orders by the President of the United States,  
10 rules or regulations promulgated by an agency of the federal  
11 government or acts of Congress to determine if such actions are in  
12 violation of the Tenth Amendment to the Constitution of the United  
13 States. If review by the Unit of any such action by the federal  
14 government concludes that the action is an infringement on state  
15 authority under the Tenth Amendment, the Attorney General shall  
16 determine whether the state should seek an exemption from the  
17 application of the action or seek to have the action declared  
18 unconstitutional.

19 SECTION 3. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 101 of Title 80, unless there is  
21 created a duplication in numbering, reads as follows:

22 A. The Legislature may review any executive order issued by the  
23 President of the United States, federal agency rule or federal  
24 congressional action to determine the constitutionality of such



1 action. Upon recommendation from the Legislature, the Attorney  
2 General, through the State Reserved Powers Protection Unit, shall  
3 review such action by the federal government to determine the  
4 constitutionality of the action and whether the state should seek an  
5 exemption from the application of the action or seek to have the  
6 action declared unconstitutional by a court of competent  
7 jurisdiction and prevent, prohibit or enjoin enforcement of the  
8 unconstitutional order, rule or action.

9 B. Should the Attorney General decline to pursue action based  
10 upon the determination of the Legislature, the Legislature may by a  
11 majority vote initiate an action to seek an exemption from the  
12 application of the action or seek to have the action declared  
13 unconstitutional by a court of competent jurisdiction and prevent,  
14 prohibit or enjoin enforcement of the unconstitutional order, rule  
15 or action.

16 C. Notwithstanding any other provision of law, the state,  
17 county, political subdivision or any other publicly funded  
18 organization shall not implement, adopt or enforce any order,  
19 federal agency rule or federal congressional action declared  
20 unconstitutional by a court of competent jurisdiction under  
21 subsection A or B of this section including, but not limited to:

- 22 1. Pandemics or other health emergencies;
- 23 2. The regulation of natural resources, including oil and  
24 natural gas;

1           3. The regulation of the agriculture industry;

2           4. The use of land;

3           5. The regulation of the financial sector as it relates to  
4 environmental, social or governance standards;

5           6. The regulation of the constitutional right to keep and bear  
6 arms;

7           7. The regulation of education;

8           8. The regulation of interscholastic, intramural or other  
9 extracurricular sports sponsored by an institution of higher  
10 education, a school district or a charter school; or

11          9. Any other powers reserved by the State of Oklahoma or the  
12 people of Oklahoma.

13          SECTION 4. This act shall become effective July 1, 2021.

14          SECTION 5. It being immediately necessary for the preservation  
15 of the public peace, health or safety, an emergency is hereby  
16 declared to exist, by reason whereof this act shall take effect and  
17 be in full force from and after its passage and approval.

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19          58-1-8268           LRB          05/11/21  
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