

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3902

By: Kannady

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to militia; amending 44 O.S. 2021,
10 Sections 21, 23, 24, 25, 45, 48, 49, 235, 241, and
11 243, which relate to the Oklahoma Military Code;
12 clarifying personnel to staff joint forces
13 headquarters; providing for Adjutant General to
14 assign necessary persons to headquarters; clarifying
15 personnel in state military forces; providing gender-
16 neutral language; modifying eligibility criteria for
17 Adjutant General; authorizing Governor to waive
18 certain eligibility requirements; directing certain
19 comparable rate of compensation for Adjutant General;
20 providing gender-neutral language; modifying oath of
21 office for National Guard officers; updating gender-
22 neutral language; clarifying personnel discharge
23 procedures by the Governor as Commander in Chief;
24 authorizing certain personnel matters to be decided
 according to customs and state and federal
 regulations; granting supervision and control of the
 Oklahoma National Guard Museum to the Oklahoma
 National Guard Museum Board of Governors;
 establishing membership of Board of Governors;
 providing for membership terms; prohibiting certain
 persons from appointment; providing for appointment
 of vacancies; prohibiting members from certain
 employment; directing promulgation of rules; listing
 specified powers and duties of Board of Governors;
 prescribing publication of rules and regulations for
 operation and maintenance of Oklahoma National Guard
 Museum; providing for legal counsel by the State
 Judge Advocate or designee; removing reference to
 certain regulations prescribed by the Secretary of

1 Defense; striking requirement that personnel
2 procedures be in conformity with certain laws, rules,
3 and regulations; amending 44 O.S. 2021, Sections 821,
4 875, and 905, which relate to the Oklahoma Uniform
5 Code of Military Justice; prohibiting federal
6 officials from convening certain court-martial
7 proceedings without prior consent of the Governor;
8 requiring consent to be in writing and published by
9 Governor; authorizing Governor to reappoint certain
10 dismissed officers; providing for reappointment
11 procedures; directing Governor or Adjutant General to
12 prescribe certain regulations; prohibiting act of
13 forgery; prescribing punishment for forgery; and
14 providing an effective date.

15
16
17
18
19
20
21
22
23
24
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 44 O.S. 2021, Section 21, is
amended to read as follows:

Section 21. The Military Department of the State of Oklahoma is
hereby established and shall be under the command and control of the
Governor as Commander in Chief, with the Adjutant General as the
executive and administrative head thereof. The Military Department
shall be constituted of the state military forces, as defined by
Section 801 of this title, and is hereby organized into a joint
headquarters which shall be identified as the joint forces
headquarters. The joint forces headquarters shall be jointly
staffed by ~~Army National Guard and Air National Guard~~ personnel of
the state military forces who, under the authority and direction of
the Adjutant General, shall support and assist the Adjutant General
in the exercise of command and control over state military forces

1 when not activated for federal duty under Title 10 of the United
2 States Code. There shall be assigned to the joint force
3 headquarters, officers, enlisted personnel, and civilian employees
4 as may be considered necessary by the Governor as Commander in Chief
5 and ~~as may be authorized by law and Army National Guard regulations~~
6 ~~and Air National Guard regulations~~ the Adjutant General.

7 SECTION 2. AMENDATORY 44 O.S. 2021, Section 23, is
8 amended to read as follows:

9 Section 23. The Governor of the state shall be the Commander in
10 Chief of the Militia, and as such shall have supreme command of the
11 military forces of the state while in the service of the state or
12 until they are ordered ~~and accepted~~ into the actual service of the
13 United States within the meaning of Clauses 15 and 16 of Section 8
14 of Article I of the United States Constitution and Section 2 of
15 Article II of the United States Constitution. While in the service
16 of the ~~state~~ State of Oklahoma, ~~he~~ the Governor shall have power to
17 muster out any organization of the state military forces, discharge
18 enlisted ~~men~~ personnel, as provided herein, and perform such other
19 acts in keeping with the laws of the Commander in Chief, ~~subject to~~
20 ~~the laws of the United States and regulations prescribed by the~~
21 ~~President of the United States.~~ No armed military force from
22 another state or territory shall be permitted to enter the state
23 without ~~his~~ permission of the Governor, unless such military force
24 be a part of the United States, or is acting under the authority of

1 the United States. No independent military organization, except as
2 a corps of cadets at the educational institutions, shall be
3 permitted to bear arms without first securing permission of the
4 Commander in Chief.

5 SECTION 3. AMENDATORY 44 O.S. 2021, Section 24, is
6 amended to read as follows:

7 Section 24. A. The Adjutant General shall be appointed by the
8 Governor, by and with the advice and consent of the Senate, and
9 shall serve at the pleasure of the Governor.

10 B. To be eligible to hold the office of Adjutant General of
11 this state, at the time of appointment the appointee:

12 1. Shall be a federally recognized and currently serving
13 officer of the Oklahoma National Guard ~~and of the National Guard of~~
14 ~~the United States for~~ who is not presently retired nor has ever
15 previously retired from the National Guard and with no less than
16 three (3) years of service in the Oklahoma National Guard;

17 2. Shall possess at least the rank of Colonel; and

18 3. If not already a general officer, shall be eligible for a
19 Certificate of Eligibility pursuant to federal law and applicable
20 regulations issued by the Chief of the National Guard Bureau.

21 C. If the Oklahoma National Guard is in active federal service
22 and no persons having the qualifications required in subsection B of
23 this section are available within the state, then the Governor may
24 appoint, subject to the advice and consent of the Senate, any

1 suitably qualified person who at any time in the preceding ten (10)
2 years would have been qualified, ~~as above, and who has served at~~
3 ~~least two (2) years in active federal service in the grade of~~
4 ~~Colonel or higher~~ pursuant to the requirements of subsection B of
5 this section.

6 D. The Governor may waive the requirements provided in
7 subsection B of this section so long as the officer to be appointed
8 is a currently serving officer in the Oklahoma National Guard with
9 no less than three (3) years of service in the Oklahoma National
10 Guard.

11 SECTION 4. AMENDATORY 44 O.S. 2021, Section 25, is
12 amended to read as follows:

13 Section 25. A. The Adjutant General shall have the rank of
14 Major General and devote full time to the duties of the office.
15 Regardless of whether or not the Adjutant General has been
16 recognized federally at the rank of Major General at the time of
17 appointment by the Governor, the Adjutant General shall be
18 compensated at the same rate of pay and allowances afforded to a
19 Major General serving on federal Title 10 active duty with the same
20 time in grade.

21 B. The Governor may appoint Assistant Adjutants General for
22 Army and Assistant Adjutants General for Air to assist the Adjutant
23 General in the discharge and performance of his or her duties. When
24 appointing Assistant Adjutants General, the Governor shall take into

1 consideration the number of such positions contemplated or
2 recommended by the National Guard Bureau for manning the joint
3 forces headquarters of a state. Such Assistant Adjutants General
4 shall have the qualifications prescribed by law for the Adjutant
5 General and shall have the rank of Brigadier General. The Assistant
6 Adjutants General appointed by the Governor shall be considered
7 staff officers and not commanders except that, in the discretion of
8 the Adjutant General, specific command or supervisory authority may
9 be delegated by the Adjutant General to an Assistant Adjutant
10 General but such delegation shall be accomplished in writing and
11 shall be considered a military publication, as defined in Section
12 801 of this title (Article 1).

13 C. Other general officers assigned to billets within the state
14 military forces, including certain billets within the joint forces
15 headquarters, shall be considered staff officers and not commanders
16 except that, in the discretion of the Adjutant General, specific
17 command or supervisory authority may be delegated by the Adjutant
18 General to such general officers but such delegation shall be
19 accomplished in writing and shall be considered a military
20 publication, as defined in Section 801 of this title (Article 1).

21 D. The Adjutant General may employ a state employee in the
22 position of Executive Assistant and Programs Manager for the
23 Military Department of the state. Said position shall be
24

1 unclassified and exempt from the Oklahoma Personnel Act and the
2 Merit Rules for Employment, except leave regulations.

3 SECTION 5. AMENDATORY 44 O.S. 2021, Section 45, is
4 amended to read as follows:

5 Section 45. Oath for National Guard Officers. Each
6 commissioned officer, before entering upon the duties of his or her
7 office, shall take and subscribe to the following oath,~~or such~~
8 ~~other oath as may be required by National Guard Regulations:~~

9 "I, do solemnly swear that I will support and defend
10 the Constitution of the United States and the Constitution of the
11 State of Oklahoma against all enemies, foreign and domestic; that I
12 will bear true faith and allegiance to the same; that I will obey
13 the lawful orders of the President of the United States and the
14 Governor of the State of Oklahoma; that I make this obligation
15 freely, without any mental reservation or purpose of evasion, and
16 that I will well and faithfully discharge the duties of the office
17 of, in the National Guard of the United States and the State
18 of Oklahoma upon which I am about to enter, so help me God."

19 SECTION 6. AMENDATORY 44 O.S. 2021, Section 48, is
20 amended to read as follows:

21 Section 48. Enlisted ~~men~~ personnel discharged from service in
22 the Oklahoma National Guard ~~of this state~~ shall receive a discharge
23 in writing in such form and with such classification as is or shall
24 be prescribed by National Guard regulations, and in time of peace

1 discharges may be given prior to the expiration of terms of
2 enlistment in the following cases:

3 By sentence of a general court-martial; by direction of the
4 Governor on account of disability; on account of sentence of
5 imprisonment by a civil court whether suspended or not; on account
6 of a bona fide permanent change of residence to another state; and
7 for the purpose of enlisting in regular Army, Air Force, Navy, or
8 Marine Corps, and for such other causes as may be prescribed by
9 ~~National Guard regulations or~~ the Governor as Commander in Chief;
10 provided, that an enlisted ~~man~~ person who has not returned or
11 accounted for all of the public property for which he or she is
12 responsible, shall under no circumstances receive an honorable
13 discharge.

14 SECTION 7. AMENDATORY 44 O.S. 2021, Section 49, is
15 amended to read as follows:

16 Section 49. All matters relating to organization, commissioning
17 and discharging of officers, enlisting and discharge of enlisted ~~men~~
18 personnel, discipline, and government of the National Guard, not
19 otherwise provided in this code, ~~shall~~ may be decided ~~by~~ according
20 to the customs, regulations, and usage of the United States Army or
21 the United States Air Force or National Guard regulations.

22 SECTION 8. AMENDATORY 44 O.S. 2021, Section 235, is
23 amended to read as follows:

1 Section 235. A. There is hereby created the Oklahoma National
2 Guard Museum, to be under the supervision and control of the
3 Oklahoma National Guard Museum Board of Governors. The Oklahoma
4 National Guard Museum Board of Governors shall consist of at least
5 five, but no more than eleven, members all of whom shall be
6 appointed by the Adjutant General and shall serve at the pleasure of
7 the Adjutant General. ~~The Adjutant General may~~ Each member shall be
8 appointed for a term of three (3) years, and the Board of Governors
9 shall be divided into three (3) classes which shall be staggered in
10 their terms. No person shall be appointed to the Board of Governors
11 who is related by affinity or consanguinity within the third degree
12 to any person employed by the Oklahoma National Guard Museum.
13 Members of the Board of Governors shall continue in office until the
14 expiration of their terms and until their successors are appointed
15 and enter upon the duties of their offices. Any vacancy on the
16 Board of Governors resulting from any cause shall be filled by
17 appointment by the Adjutant General for the remainder of the term
18 established pursuant to this subsection.

19 B. No member of the Board of Governors shall be employed by the
20 Oklahoma National Guard Museum during the time of his or her service
21 on the Board of Governors nor shall any person who served as a
22 member of the Board of Governors be employed by the Oklahoma
23 National Guard Museum subsequent to his or her service on the Board
24 of Governors for a period of two (2) years. Members of the Board of

1 Governors may also serve simultaneously on the Board of the Oklahoma
2 National Guard Museum Foundation.

3 C. The Board of Governors shall promulgate rules and
4 regulations as necessary for the operation and maintenance of the
5 Oklahoma National Guard Museum. In addition to its other powers and
6 duties as herein provided, the Board of Governors shall have the
7 following specific powers and duties which shall, however, not be
8 deemed to be exclusive:

9 1. To organize itself by the election of a Chair, Vice Chair,
10 and Secretary, who shall perform the duties required of them by the
11 rules and regulations, but shall not receive compensation, and to
12 provide for the time and place of meetings of the Board of Governors
13 at least four (4) times annually;

14 2. To appoint an Executive Director ~~to oversee~~ of the Oklahoma
15 National Guard Museum and provide for the employment of personnel as
16 may be necessary to carry out the daily operations and maintenance
17 of the ~~museum and perform other duties as requested by the Adjutant~~
18 ~~General~~ Oklahoma National Guard Museum. ~~Appropriate state agencies~~
19 ~~are directed to make available, for display of items of historical~~
20 ~~significance and necessary space for administration, the buildings~~
21 ~~presently occupied by the Oklahoma Military Department, located in~~
22 ~~the vicinity of 36th Street and North Eastern in Oklahoma City,~~
23 ~~Oklahoma. The building herein referred to shall be made available~~
24 ~~by the Adjutant General as soon as same is no longer needed by and~~

1 ~~is vacated by the Oklahoma Military Department.~~ The salary and
2 tenure of the Executive Director shall be established by the Board
3 of Governors. The salaries and tenure of all other personnel may be
4 established by the Board of Governors or delegated to the Executive
5 Director for his or her determination;

6 3. To establish a budget annually or more often if needed for
7 the Oklahoma National Guard Museum; and

8 4. To approve all claims and expenditures arising from the
9 operations and maintenance of the Oklahoma National Guard Museum,
10 prior to the payment thereof, from appropriations made directly to
11 the Oklahoma National Guard Museum or from funds provided by the
12 Oklahoma Military Department or from funds provided by the Oklahoma
13 National Guard Museum Foundation.

14 D. The Executive Director, subject to the approval of the
15 ~~Adjutant General~~ Board of Governors, may lease to the 45th Infantry
16 Division Association, for periods not exceeding one (1) year and
17 with provisions for renewal from year to year, an area to be used as
18 a gift shop, if the lease does not interfere with its use by the
19 Oklahoma National Guard Museum. The proceeds of the sales from the
20 gift shop shall remain with the 45th Infantry Division Association
21 for operating purposes.

22 E. The Adjutant General shall cause the rules and regulations
23 promulgated pursuant to subsection C of this section to be published
24 as military publications as defined in Section 801 of this title.

1 The State Judge Advocate or his or her designee shall provide legal
2 counsel and support to the Board of Governors.

3 SECTION 9. AMENDATORY 44 O.S. 2021, Section 241, is
4 amended to read as follows:

5 Section 241. The Governor, pursuant to the authority granted
6 the states by Section 109 of Title 32 of the United States Code or a
7 successor provision, ~~and under such regulations as the Secretary of~~
8 ~~Defense may prescribe for discipline in training,~~ is hereby
9 authorized to enlist, organize, maintain, equip and discipline such
10 military forces other than the National Guard as he or she may deem
11 necessary to defend the state. Such forces shall be uniformed and
12 subject to Sections 1 through 117, Sections 208 through 237, and
13 Sections 800 through 946 of this title, insofar as such sections do
14 not conflict with Sections 241 through 250 of this title.

15 SECTION 10. AMENDATORY 44 O.S. 2021, Section 243, is
16 amended to read as follows:

17 Section 243. A. The Governor is hereby authorized to prescribe
18 rules and regulations governing the enlistment, organization,
19 administration, equipment, discipline and discharge of the personnel
20 of such military forces; to requisition from the Secretary of
21 Defense such arms and equipment as may be in the possession of and
22 can be spared by the Department of Defense and to extend thereto the
23 facilities of state armories, Armed Forces Reserve Centers,
24 readiness centers, logistics, aviation, and training facilities,

1 warehouses and their equipment and such other state premises and
2 property as may be available for the purpose of drill and
3 instruction. ~~Insofar as applicable the procedure for the~~
4 ~~enlistment, organization, pay, maintenance, equipment and~~
5 ~~disciplining of such forces shall be in conformity with the law and~~
6 ~~the rules and regulations governing and pertaining to the National~~
7 ~~Guard; provided, that the officers~~ Officers and enlisted personnel
8 in the Oklahoma State Guard shall not receive any compensation or
9 monetary allowances from the state except when activated for state
10 active duty, as defined in Section 801 of this title, by order of
11 the Governor.

12 B. Members of the Oklahoma State Guard shall be considered part
13 of state military forces as defined in Section 801 of this title and
14 shall be subject to the Oklahoma Uniform Code of Military Justice.

15 C. When prescribing the rules and regulations governing
16 enlistment, organization, administration, equipment, discipline and
17 discharge of the personnel of the Oklahoma State Guard, the Governor
18 shall issue such rules and regulations in the form of an executive
19 order or in a series of such orders. An executive order or a series
20 of such orders prescribing the rules and regulations governing
21 enlistment, organization, administration, equipment, discipline and
22 discharge of the personnel of the Oklahoma State Guard shall also be
23 published by the Adjutant General as a military publication.

24

1 SECTION 11. AMENDATORY 44 O.S. 2021, Section 821, is
2 amended to read as follows:

3 Section 821. ~~RESERVED.~~ ARTICLE 21. Convening of court-martial
4 by federal officials.

5 In no case shall the President of the United States, the
6 Secretary of Defense, the Secretary of a military department, a
7 military officer serving on active duty within the meaning of Title
8 10 of the United States Code, or any other federal official convene
9 a court-martial proceeding pursuant to the Oklahoma Military Code
10 unless prior consent has been granted by the Governor. Such
11 consent, if granted by the Governor, shall be accomplished in
12 writing and shall be published by the Governor.

13 SECTION 12. AMENDATORY 44 O.S. 2021, Section 875, is
14 amended to read as follows:

15 Section 875. ARTICLE 75. Restoration.

16 A. Under such regulations as the Adjutant General may
17 promulgate, all rights, privileges, and property affected by an
18 executed part of a court-martial sentence which has been set aside
19 or disapproved, except an executed dismissal or discharge, shall be
20 restored unless a new trial or rehearing is ordered and such
21 executed part is included in a sentence imposed upon the new trial
22 or rehearing.

23 B. If a previously executed sentence of dishonorable or bad-
24 conduct discharge is not imposed on a new trial, the Adjutant

1 General shall substitute therefor a form of discharge authorized for
2 administrative issuance unless the accused is to serve out the
3 remainder of his or her enlistment.

4 C. If a previously executed sentence of dismissal is not
5 imposed on a new trial, the Adjutant General shall substitute
6 therefor a form of discharge authorized for administrative issue,
7 and the commissioned officer dismissed by that sentence may be
8 reappointed ~~pursuant to Sections 875 and 12203 of Title 10 of the~~
9 ~~United States Code and any applicable regulations prescribed~~
10 ~~thereunder by the President of the United States or the Secretary~~
11 concerned solely by the Governor to such commissioned grade and with
12 such rank as in the opinion of the Governor that former officer
13 would have attained had he or she not been dismissed. The
14 reappointment of such a former officer shall be without regard to
15 the existence of a vacancy and shall affect the promotion status of
16 other officers only insofar as the Governor may direct. All time
17 between the dismissal and the reappointment shall be considered as
18 actual service for all purposes, including the right to pay and
19 allowances.

20 D. The Governor or Adjutant General shall prescribe
21 regulations, with such limitations as the Governor or Adjutant
22 General considers appropriate, governing eligibility for pay and
23 allowances for the period after the date on which an executed part
24 of a court-martial sentence is set aside.

1 SECTION 13. AMENDATORY 44 O.S. 2021, Section 905, is
2 amended to read as follows:

3 Section 905. ~~RESERVED.~~ ARTICLE 105. Forgery.

4 Any person subject to the Oklahoma Uniform Code of Military
5 Justice who, with intent to defraud:

6 1. Falsely makes or alters any signature to, or any part of,
7 any writing which would, if genuine, apparently impose a legal
8 liability on another or change his or her legal right or liability
9 to his or her prejudice; or

10 2. Utters, offers, issues, or transfers such a writing, known
11 by him or her to be so made or altered is guilty of forgery and
12 shall be punished as a court-martial may direct.

13 SECTION 14. This act shall become effective November 1, 2022.

14
15 COMMITTEE REPORT BY: COMMITTEE ON VETERANS AND MILITARY AFFAIRS,
16 dated 02/14/2022 - DO PASS, As Amended.
17
18
19
20
21
22
23
24