

1 **SENATE FLOOR VERSION**

2 March 31, 2022

3 ENGROSSED HOUSE  
4 BILL NO. 3902

By: Kannady of the House

and

Simpson of the Senate

8 An Act relating to militia; amending 44 O.S. 2021,  
9 Sections 21, 23, 24, 25, 45, 48, 49, 235, 241, and  
10 243, which relate to the Oklahoma Military Code;  
11 clarifying personnel to staff joint forces  
12 headquarters; providing for Adjutant General to  
13 assign necessary persons to headquarters; clarifying  
14 personnel in state military forces; providing gender-  
15 neutral language; modifying eligibility criteria for  
16 Adjutant General; authorizing Governor to waive  
17 certain eligibility requirements; directing certain  
18 comparable rate of compensation for Adjutant General;  
19 providing gender-neutral language; modifying oath of  
20 office for National Guard officers; updating gender-  
21 neutral language; clarifying personnel discharge  
22 procedures by the Governor as Commander in Chief;  
23 authorizing certain personnel matters to be decided  
24 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  
Defense; striking requirement that personnel  
procedures be in conformity with certain laws, rules,

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

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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  
when not activated for federal duty under Title 10 of the United

1 States Code. There shall be assigned to the joint force  
2 headquarters, officers, enlisted personnel, and civilian employees  
3 as may be considered necessary by the Governor as Commander in Chief  
4 and ~~as may be authorized by law and Army National Guard regulations~~  
5 ~~and Air National Guard regulations~~ the Adjutant General.

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

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

1 a corps of cadets at the educational institutions, shall be  
2 permitted to bear arms without first securing permission of the  
3 Commander in Chief.

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

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

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

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

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

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

20 C. If the Oklahoma National Guard is in active federal service  
21 and no persons having the qualifications required in subsection B of  
22 this section are available within the state, then the Governor may  
23 appoint, subject to the advice and consent of the Senate, any  
24 suitably qualified person who at any time in the preceding ten (10)

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

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

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

15 B. The Governor may appoint Assistant Adjutants General for  
16 Army and Assistant Adjutants General for Air to assist the Adjutant  
17 General in the discharge and performance of his or her duties. When  
18 appointing Assistant Adjutants General, the Governor shall take into  
19 consideration the number of such positions contemplated or  
20 recommended by the National Guard Bureau for manning the joint  
21 forces headquarters of a state. Such Assistant Adjutants General  
22 shall have the qualifications prescribed by law for the Adjutant  
23 General and shall have the rank of Brigadier General. The Assistant  
24 Adjutants General appointed by the Governor shall be considered

1 staff officers and not commanders except that, in the discretion of  
2 the Adjutant General, specific command or supervisory authority may  
3 be delegated by the Adjutant General to an Assistant Adjutant  
4 General but such delegation shall be accomplished in writing and  
5 shall be considered a military publication, as defined in Section  
6 801 of this title (Article 1).

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

15 D. The Adjutant General may employ a state employee in the  
16 position of Executive Assistant and Programs Manager for the  
17 Military Department of the state. Said position shall be  
18 unclassified and exempt from the Oklahoma Personnel Act and the  
19 Merit Rules for Employment, except leave regulations.

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

22 Section 45. Oath for National Guard Officers. Each  
23 commissioned officer, before entering upon the duties of his or her  
24

1 office, shall take and subscribe to the following oath,~~or such~~  
2 ~~other oath as may be required by National Guard Regulations:~~

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

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

15 Section 48. Enlisted ~~men~~ personnel discharged from service in  
16 the Oklahoma National Guard ~~of this state~~ shall receive a discharge  
17 in writing in such form and with such classification as is or shall  
18 be prescribed by National Guard regulations, and in time of peace  
19 discharges may be given prior to the expiration of terms of  
20 enlistment in the following cases:

21 By sentence of a general court-martial; by direction of the  
22 Governor on account of disability; on account of sentence of  
23 imprisonment by a civil court whether suspended or not; on account  
24 of a bona fide permanent change of residence to another state; and

1 for the purpose of enlisting in regular Army, Air Force, Navy, or  
2 Marine Corps, and for such other causes as may be prescribed by  
3 ~~National Guard regulations or~~ the Governor as Commander in Chief;  
4 provided, that an enlisted ~~man~~ person who has not returned or  
5 accounted for all of the public property for which he or she is  
6 responsible, shall under no circumstances receive an honorable  
7 discharge.

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

10 Section 49. All matters relating to organization, commissioning  
11 and discharging of officers, enlisting and discharge of enlisted ~~men~~  
12 personnel, discipline, and government of the National Guard, not  
13 otherwise provided in this code, ~~shall~~ may be decided ~~by~~ according  
14 to the customs, regulations, and usage of the United States Army or  
15 the United States Air Force or National Guard regulations.

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

18 Section 235. A. There is hereby created the Oklahoma National  
19 Guard Museum, to be under the supervision and control of the  
20 Oklahoma National Guard Museum Board of Governors. The Oklahoma  
21 National Guard Museum Board of Governors shall consist of at least  
22 five, but no more than eleven, members all of whom shall be  
23 appointed by the Adjutant General and shall serve at the pleasure of  
24 the Adjutant General. The Adjutant General may Each member shall be



1 appointed for a term of three (3) years, and the Board of Governors  
2 shall be divided into three classes which shall be staggered in  
3 their terms. No person shall be appointed to the Board of Governors  
4 who is related by affinity or consanguinity within the third degree  
5 to any person employed by the Oklahoma National Guard Museum.  
6 Members of the Board of Governors shall continue in office until the  
7 expiration of their terms and until their successors are appointed  
8 and enter upon the duties of their offices. Any vacancy on the  
9 Board of Governors resulting from any cause shall be filled by  
10 appointment by the Adjutant General for the remainder of the term  
11 established pursuant to this subsection.

12 B. No member of the Board of Governors shall be employed by the  
13 Oklahoma National Guard Museum during the time of his or her service  
14 on the Board of Governors nor shall any person who served as a  
15 member of the Board of Governors be employed by the Oklahoma  
16 National Guard Museum subsequent to his or her service on the Board  
17 of Governors for a period of two (2) years. Members of the Board of  
18 Governors may also serve simultaneously on the Board of the Oklahoma  
19 National Guard Museum Foundation.

20 C. The Board of Governors shall promulgate rules and  
21 regulations as necessary for the operation and maintenance of the  
22 Oklahoma National Guard Museum. In addition to its other powers and  
23 duties as herein provided, the Board of Governors shall have the  
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1 following specific powers and duties which shall, however, not be  
2 deemed to be exclusive:

3 1. To organize itself by the election of a chair, vice-chair,  
4 and secretary, who shall perform the duties required of them by the  
5 rules and regulations, but shall not receive compensation, and to  
6 provide for the time and place of meetings of the Board of Governors  
7 at least four times annually;

8 2. To appoint an Executive Director ~~to oversee~~ of the Oklahoma  
9 National Guard Museum and provide for the employment of personnel as  
10 may be necessary to carry out the daily operations and maintenance  
11 of the ~~museum and perform other duties as requested by the Adjutant~~  
12 ~~General~~ Oklahoma National Guard Museum. ~~Appropriate state agencies~~  
13 ~~are directed to make available, for display of items of historical~~  
14 ~~significance and necessary space for administration, the buildings~~  
15 ~~presently occupied by the Oklahoma Military Department, located in~~  
16 ~~the vicinity of 36th Street and North Eastern in Oklahoma City,~~  
17 ~~Oklahoma. The building herein referred to shall be made available~~  
18 ~~by the Adjutant General as soon as same is no longer needed by and~~  
19 ~~is vacated by the Oklahoma Military Department. The salary and~~  
20 tenure of the Executive Director shall be established by the Board  
21 of Governors. The salaries and tenure of all other personnel may be  
22 established by the Board of Governors or delegated to the Executive  
23 Director for his or her determination;  
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1       3. To establish a budget annually, or more often if needed, for  
2 the Oklahoma National Guard Museum; and

3       4. To approve all claims and expenditures arising from the  
4 operations and maintenance of the Oklahoma National Guard Museum,  
5 prior to the payment thereof, from appropriations made directly to  
6 the Oklahoma National Guard Museum or from funds provided by the  
7 Oklahoma Military Department or from funds provided by the Oklahoma  
8 National Guard Museum Foundation.

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

17       E. The Adjutant General shall cause the rules and regulations  
18 promulgated pursuant to subsection C of this section to be published  
19 as military publications as defined in Section 801 of this title.  
20 The State Judge Advocate or his or her designee shall provide legal  
21 counsel and support to the Board of Governors.

22       SECTION 9.       AMENDATORY       44 O.S. 2021, Section 241, is  
23 amended to read as follows:  
24

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

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

13       Section 243. A. The Governor is hereby authorized to prescribe  
14 rules and regulations governing the enlistment, organization,  
15 administration, equipment, discipline and discharge of the personnel  
16 of such military forces; to requisition from the Secretary of  
17 Defense such arms and equipment as may be in the possession of and  
18 can be spared by the Department of Defense and to extend thereto the  
19 facilities of state armories, Armed Forces Reserve Centers,  
20 readiness centers, logistics, aviation, and training facilities,  
21 warehouses and their equipment and such other state premises and  
22 property as may be available for the purpose of drill and  
23 instruction. ~~Insofar as applicable the procedure for the~~  
24 ~~enlistment, organization, pay, maintenance, equipment and~~

1 ~~disciplining of such forces shall be in conformity with the law and~~  
2 ~~the rules and regulations governing and pertaining to the National~~  
3 ~~Guard; provided, that the officers~~ Officers and enlisted personnel  
4 in the Oklahoma State Guard shall not receive any compensation or  
5 monetary allowances from the state except when activated for state  
6 active duty, as defined in Section 801 of this title, by order of  
7 the Governor.

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

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

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

22 Section 821. ~~RESERVED.~~ ARTICLE 21. Convening of court-martial  
23 by federal officials.  
24

1       In no case shall the President of the United States, the  
2       Secretary of Defense, the Secretary of a military department, a  
3       military officer serving on active duty within the meaning of Title  
4       10 of the United States Code, or any other federal official convene  
5       a court-martial proceeding pursuant to the Oklahoma Military Code  
6       unless prior consent has been granted by the Governor. Such  
7       consent, if granted by the Governor, shall be accomplished in  
8       writing and shall be published by the Governor.

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

11       Section 875.   ARTICLE 75.   Restoration.

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

19       B.   If a previously executed sentence of dishonorable or bad-  
20      conduct discharge is not imposed on a new trial, the Adjutant  
21      General shall substitute therefor a form of discharge authorized for  
22      administrative issuance unless the accused is to serve out the  
23      remainder of his or her enlistment.

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

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

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

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

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

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

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

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

12     COMMITTEE REPORT BY: COMMITTEE ON VETERANS AND MILITARY AFFAIRS  
13     March 31, 2022 - DO PASS  
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