

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 1020

BY: WILLIAMS (Don)

AS INTRODUCED

AN ACT RELATING TO PUBLIC BUILDINGS AND PUBLIC WORKS, PUBLIC FINANCE, AND SCHOOLS; AMENDING 61 O.S. 1991, SECTIONS 102 AND 130, WHICH RELATE TO THE PUBLIC COMPETITIVE BIDDING ACT OF 1974, 62 O.S. 1991, SECTION 371, WHICH RELATES TO CONTRACTS WITH PUBLIC OFFICERS, AND 70 O.S. 1991, SECTIONS 5-107A, 5-113, 5-119, 5-124 AND 9-105, WHICH RELATE TO DISTRICT BOARDS OF EDUCATION, NEPOTISM IN EMPLOYMENT BY DISTRICT BOARDS OF EDUCATION, OFFICERS OF DISTRICT BOARDS OF EDUCATION, CONTRACTS WITH DISTRICT BOARDS OF EDUCATION, AND PUBLIC SCHOOL TRANSPORTATION AREAS; MODIFYING DEFINITION OF PUBLIC CONSTRUCTION CONTRACT; INCREASING AMOUNT OF CERTAIN PUBLIC CONSTRUCTION CONTRACTS FOR CERTAIN PURPOSES; ALLOWING EXCEPTIONS TO PROHIBITIONS ON CERTAIN CONTRACTS WITH GOVERNING BOARDS OF AREA VOCATIONAL-TECHNICAL SCHOOL DISTRICTS; MODIFYING TERMS OF MEMBERS AND OFFICERS OF DISTRICT BOARDS OF EDUCATION; PROHIBITING PERSONS WITHIN CERTAIN DEGREE OF RELATION TO MEMBERS AND EMPLOYEES OF DISTRICT BOARD OF EDUCATION FROM SERVING ON DISTRICT BOARD OF EDUCATION; PROVIDING PENALTIES; SPECIFYING CERTAIN AGENDA ITEMS FOR CERTAIN MEETINGS OF DISTRICT BOARD OF EDUCATION; PERMITTING

AGREEMENTS BETWEEN CERTAIN SCHOOL DISTRICTS FOR  
TRANSPORTATION OF CERTAIN STUDENTS; DIRECTING  
PROMULGATION OF RULES; REPEALING 70 O.S. 1991,  
SECTION 5-113.1, WHICH RELATES TO NEPOTISM IN  
EMPLOYMENT BY DISTRICT BOARDS OF EDUCATION; AND  
DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 61 O.S. 1991, Section 102, is  
amended to read as follows:

Section 102. When used in this act, unless the context clearly  
indicates otherwise, the following words and terms shall be  
construed as having the meanings ascribed to them in this section:

1. "Awarding public agency" means the public agency which  
solicits and receives sealed bids on a particular public  
construction contract;

2. "Bidding documents" means the bid notice, plans and  
specifications, bidding form, bidding instructions, special  
provisions and all other written instruments prepared by or on  
behalf of an awarding public agency for use by prospective bidders  
on a public construction contract;

3. "Public agency" means the State of Oklahoma, and any county,  
city, town, school district or other political subdivision of the  
state, any public trust, any public entity specifically created by  
the statutes of the State of Oklahoma or as a result of statutory  
authorization therefor, and any department, agency, board, bureau,  
commission, committee or authority of any of the foregoing public  
entities;

4. "Public construction contract" or "contract" means any  
contract, exceeding Seven Thousand Five Hundred Dollars (\$7,500.00)

in amount, awarded by any public agency, except a public school district, an area vocational-technical school district, or an institution that is a member of The Oklahoma State System of Higher Education, or exceeding Twenty-five Thousand Dollars (\$25,000.00) in amount awarded by any public school district, area vocational-technical school district, or an institution that is a member of The Oklahoma State System of Higher Education, for the purpose of making any public improvements or constructing any public building or making repairs to the same except where the improvements, construction of any building or repairs to the same are improvements or buildings leased to a person or other legal entity for private and not for public use and no public tax revenues shall be expended on or for said public construction contract;

5. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, equipment or supplies by a public agency; and

6. "Retainage" means the difference between the amount earned by the contractor on a public construction contract, with the work being accepted by the public agency, and the amount paid on said contract by the public agency.

SECTION 2. AMENDATORY 61 O.S. 1991, Section 130, is amended to read as follows:

Section 130. A. The provisions of the Public Competitive Bidding Act, Section 101 et seq. of this title, with reference to notice and bids shall not apply whenever the governing body of a public agency declares by a two-thirds (2/3) vote of all of the members of the governing body that an emergency exists; provided, the Oklahoma Transportation Commission and the Oklahoma Tourism and Recreation Commission may, by majority vote of all the members of

each Commission, declare that an emergency exists. The governing bodies of all public agencies are further authorized, upon approval of two-thirds (2/3) of all of the members of the governing body, to delegate to the chief administrative officer of a public agency the authority to declare an emergency situation, in which event the provisions of the Public Competitive Bidding Act with reference to notice and bids shall not apply, but such authority shall not extend to any contract exceeding Twenty-five Thousand Dollars (\$25,000.00) in amount awarded by a public agency, except a public school district, an area vocational-technical school district, or an institution that is a member of The Oklahoma State System of Higher Education, or to a contract exceeding Seventy-five Thousand Dollars (\$75,000.00) in amount awarded by a public school district, an area vocational-technical school district, or an institution that is a member of The Oklahoma State System of Higher Education; provided, such authority of the Oklahoma Department of Transportation shall not extend to any contract exceeding One Hundred Fifty Thousand Dollars (\$150,000.00) in amount. Whenever said chief administrative officer shall declare such an emergency he shall notify the governing body, the President Pro Tempore of the State Senate and Speaker of the House of Representatives of such action within ten (10) days. Such notification shall contain a statement of the reasons for his action, and shall be recorded in the official minutes of said governing body.

B. Emergency as used in this section shall be limited to conditions resulting from a sudden unexpected happening or unforeseen occurrence or condition and situation wherein the public health or safety is endangered.

C. The reasons for declaring an emergency and not complying with the provisions of the Public Competitive Bidding Act shall be entered into the official minutes of the governing body of the public agency. Copies of said minutes shall be submitted to the

President Pro Tempore of the State Senate and Speaker of the House of Representatives.

SECTION 3. AMENDATORY 62 O.S. 1991, Section 371, is amended to read as follows:

Section 371. A. ~~No~~ Except as otherwise provided in this section, no board of county commissioners, nor city council, nor board of trustees of any town, nor any district board of any school district in this state, nor any board of any local subdivision of this state shall make any contract with any of its members, or in which any of its members shall be directly or indirectly interested; and all contracts made in violation of this section shall be wholly void.

Provided that for the purposes of this section the depositing of any funds in a bank or other depository shall not be considered the making of a contract. Provided that for purposes of this section any contract with a qualified nonprofit Internal Revenue Code Section 501(c)(3) organization, except for contracts paying salaries or expenses or except a contract entered into by a school district involving the counseling or instruction of students or staff, shall not be considered the making of a contract. Provided further that for the purposes of this section monthly billings submitted to any county or local subdivision of the state for public utility companies, electric cooperatives or telephone companies, whose services are regulated by the Oklahoma Corporation Commission, or billings of said utility companies, electric cooperatives or telephone companies pertaining to installations or changes in service, where tariffs for such charges or billings by said companies are on file with the Oklahoma Corporation Commission, shall not be considered the making of a contract. Provided further that the governing board of an area vocational-technical school district may enter into a contract for the area vocational-technical school district to provide training for a company, individual, or

business concern by which a member of the board is employed. A board member shall abstain from voting on any such contract between the area vocational-technical school district board and the company, individual, or business concern by which the member is employed.

B. The provisions of this section shall not apply to those municipal officers who are subject to Section 8-113 of Title 11 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 70 O.S. 1991, Section 5-107A, is amended to read as follows:

Section 5-107A. The following provisions and the provisions of Sections 13A-101 et seq. of Title 26 of the Oklahoma Statutes shall govern the election of members of the board of education for a school district:

A. The number and term of each board of education shall be as follows:

District	Members	Term (Years)
Elementary	3	3
Independent		
1. districts having a five-member board on January 1, 1989	5	5
2. districts having a seven-member board on January 1, 1989, or forming a seven-member board pursuant to Sections 7-101 and 7-105 of this title	7	4
3. districts having a nine-member board on January 1, 1989 unless an election is		

conducted pursuant to  
subsection C of this  
section

9

3

B. In all school districts, the members of the board of education shall be elected as follows:

1. a. Between August 1 and December 31 of the year following the submission by the United States Department of Commerce to the President of the United States of the official Federal Decennial Census, the board of education shall reapportion the territory of the school district into board districts. Beginning with the reapportionment following the 1990 Federal Decennial Census, all boundaries of board districts shall follow clearly visible, definable and observable physical boundaries which are based upon criteria established and recognized by the Bureau of the Census of the United States Department of Commerce for purposes of defining census blocks for its decennial census and shall follow, as much as is possible, precinct boundaries. Board districts shall be compact, contiguous and shall be as equal in population as practical with not more than a ten percent (10%) variance between the most populous and least populous board districts.
- b. School districts having fewer than one thousand (1,000) students in average daily membership during the preceding school year may choose not to establish board districts and may nominate and elect all board members at large.
- c. Elementary school districts shall have board members elected at large.

d. A city located in an independent school district having four or more wards and an outlying area with such outlying area comprising no more than twenty percent (20%) of the population of such independent school district, then such independent school district may adopt such wards and outlying area in lieu of the board districts provided for in subparagraph a of this paragraph, and at least one member of the board of education of such independent school district shall be a member of each ward; and

2. One member of the board of education shall be elected by the electors of the school district to represent each such board district. Provided, however, that in any school district where the electors of each board district, rather than the electors of the entire school district, elect board members to represent that board district, that district shall elect board members in that manner.

If during the term of office to which a person was elected, that member ceases to be a resident of the board district for which the person was elected, the office shall become vacant and such vacancy shall be filled as provided in Section 13A-110 of Title 26 of the Oklahoma Statutes; provided, if the member still resides within the school district to which board that person was elected, the office shall not become vacant and the member may serve the remainder of the term to which the person was elected; and

3. In school districts having more than ten thousand (10,000) children in average daily membership, the following provision and the provisions of ~~Sections~~ Section 13A-101 et seq. of Title 26 of the Oklahoma Statutes shall control as to election of the members of the school district's board of education:

a. there shall be held a nomination election in which the electors of each board district in which a term is expiring or in which a vacancy exists shall select two

(2) nominees from among the candidates for board member to represent the board district,

- b. if, in the nominating election, one candidate has a majority of all votes cast, then a general election is not required. If no candidate receives a majority of all votes cast, then the two candidates receiving the greatest number of votes shall become the nominees for the board district in the general election, and
- c. at the general election, all of the electors of the board district shall select one of the two nominees as the member of the board of education representing the board district.

C. Until January 1, 1993, any nine-member board shall have the option of reducing its board to a seven- or five-member board after approval of a board resolution or a vote of the electors of the school district to take such action pursuant to Section 13A-109 of Title 26 of the Oklahoma Statutes. If the question is put before the voters of the district, such election shall be held along with and at the same time and place as the next school election if all requirements of ~~Sections~~ Section 13A-101 et seq. of Title 26 of the Oklahoma Statutes for such election are met.

After such resolution or election, the board shall reapportion the district, determining by resolution or by lot which board member offices shall be abolished at the end of the current board member's term and which shall become one of the offices of the new board.

Election of the resulting board members shall be carried out according to procedures stated in this section and ~~Sections~~ Section 13A-101 et seq. of Title 26 of the Oklahoma Statutes.

School board members currently serving in offices abolished pursuant to this subsection shall continue serving until the end of their current terms as at-large members.

D. The offices of members of the board of education shall be designated by consecutive numbers and shall correspond with board districts when applicable.

E. The terms of office of the members of a five-member board of education shall commence on the first ~~Monday in~~ regular, special, or emergency meeting held on or after July 1 of the year indicated:

Office No. 1	1991
Office No. 2	1992
Office No. 3	1993
Office No. 4	1994
Office No. 5	1995

The terms of office of the members of a seven-member board of education shall be staggered, with one member being elected in 1991, two members being elected in 1992, two members being elected in 1993 and two members being elected in 1994 and shall commence on the first regular, special, or emergency meeting ~~in~~ held on or after July 1 following an election; provided, in districts needing to elect two members in 1991 to maintain a full complement of board members, two members shall be elected in 1991, one for a full term and one for a one-year term, as determined by the local board. If a seven-member board is formed upon consolidation pursuant to Section 7-105 of this title, the formation agreement shall specify initial short terms as necessary to extend until the beginning of the regular terms for seven-member boards established herein.

The terms of office of the members of a nine-member board of education shall be staggered, with three members being elected in 1991, three members being elected in 1992 and three members being elected in 1993, and shall commence on the first regular, special, or emergency meeting ~~in~~ held on or after July 1 following an election. Upon reduction of a nine-member board pursuant to subsection C of this section, the terms of the five-member or seven-member board shall be staggered pursuant to this subsection.

One member of a three-member board of education shall be elected each year, and the terms of office shall commence on the first regular, special, or emergency meeting ~~in~~ held on or after July 1 following an election.

F. The term of office of each board member elected after May 31, 1990, shall commence on the first regular, special, or emergency meeting ~~in~~ held on or after July 1 following the election of the member. Board members elected prior to June 1, 1990, may remain in office until their successor is elected and seated pursuant to Sections 13A-101 through 13A-111 of Title 26 of the Oklahoma Statutes. The remaining term of any member who completes the term for which the member was elected but ~~not wishing~~ who does not wish to serve until ~~the~~ his or her successor ~~of the member~~ takes office ~~on the first regular meeting in July following the election of the successor~~ as provided in this section, shall be filled by appointment by the remaining members of the board of education.

SECTION 5. AMENDATORY 70 O.S. 1991, Section 5-113, is amended to read as follows:

Section 5-113. No person shall be eligible to serve on a board of education if he or she is related within the ~~third~~ second degree by affinity or consanguinity to any other member of the board of education or to any employee of the school district governed by the board of education to which such ineligible person is elected or appointed, it being the purpose of this section both to prohibit persons who are related within the ~~third~~ second degree by affinity or consanguinity from serving simultaneously on the same board of education of any school district of this state and to prohibit persons who are related within the second degree of consanguinity or affinity to an employee of a board of education from serving on the board of education governing the school district by which such relative is employed. These prohibitions shall not apply to current members of boards of education.

Any member of a board of education who violates the provisions of this section shall be subject to the penalties prescribed by Sections 485 and 486 of Title 21 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 70 O.S. 1991, Section 5-119, is amended to read as follows:

Section 5-119. A. The board of education of each school district shall elect from its membership at the first regular, special, or emergency meeting held on or after the annual school election July 1, a president and vice president, each of whom shall serve for a term of one (1) year and until a successor is elected and qualified. The agenda of the first meeting on or after July 1 shall include as the first agenda item the seating of newly elected and re-elected board members, and the reorganization of the board of education for the current fiscal year shall be the second agenda item. The board shall also elect a clerk and, in its discretion, a deputy clerk, either of whom may be one of the members of the board, and each of whom shall hold office during the pleasure of the board and each of whom shall receive such compensation for services as the board may allow. If the board elects a board clerk who is not one of the members of the board, the board clerk may also be employed as the encumbrance clerk and minute clerk. Provided, no superintendent, principal, treasurer or assistant treasurer, instructor, or teacher employed by such board shall be elected or serve as clerk or deputy clerk of the board nor as encumbrance clerk or minute clerk except that a treasurer or assistant treasurer may serve as a minute clerk. No board member shall serve as encumbrance clerk or minute clerk. The deputy clerk may perform any of the duties and exercise any of the powers of the clerk with the same force and effect as if the same were done or performed by the clerk. Before entering upon the discharge of the duties of the deputy clerk, the deputy clerk shall give a bond in a sum of not less than One Thousand Dollars (\$1,000.00) with good and sufficient sureties

to be approved by the board conditioned for the faithful performance of the duties of the deputy clerk.

B. The board of education shall employ an encumbrance clerk and minute clerk, both functions of which may be performed by the same employee. The encumbrance clerk shall keep the books and documents of the school district and perform such other duties as the board of education or its committees may require. The minute clerk shall keep an accurate journal of the proceedings of the board of education and perform such other duties as the board of education or its committees may require. The board of education may designate a deputy minute clerk. The deputy minute clerk may perform any of the duties and exercise any of the powers of the minute clerk with the same force and effect as if the same were done or performed by the minute clerk. Before entering upon the discharge of the duties of the deputy minute clerk, the deputy minute clerk shall give a bond in a sum of not less than One Thousand Dollars (\$1,000.00) with good and sufficient sureties to be approved by the board conditioned for the faithful performance of the duties of the deputy minute clerk. Before entering upon the discharge of their duties, the encumbrance clerk and minute clerk shall each give a bond in a sum of not less than One Thousand Dollars (\$1,000.00) with good and sufficient sureties to be approved by the board conditioned for the faithful performance of their duties. If both functions are performed by the same person only one bond in a sum of not less than One Thousand Dollars (\$1,000.00) shall be required.

SECTION 7. AMENDATORY 70 O.S. 1991, Section 5-124, is amended to read as follows:

Section 5-124. ~~No~~ Except as otherwise provided in this section, no board of education of any school district in this state shall make any contract with any of its members or with any company, individual or business concern in which any of its members shall be directly or indirectly interested. All contracts made in violation

of this section shall be wholly void. A member of a board of education shall be considered to be interested in any contract made with any company, individual, or any business concern if such member of the board of education or any member of his immediate family owns any substantial interest in same. Provided that for purposes of this section any contract with a qualified nonprofit Internal Revenue Code Section 501(c)(3) organization, except for contracts paying salaries or expenses or except a contract involving the counseling or instruction of students or staff, shall not be considered the making of a contract. Provided that for the purposes of this section monthly billings submitted to any school district in the state for public utility companies, electric cooperatives or telephone companies, whose services are regulated by the Oklahoma Corporation Commission, or billings of said utility companies, electric cooperatives or telephone companies pertaining to installations or changes in service, where tariffs for such charges or billings by said companies are on file with the Oklahoma Corporation Commission, shall not be considered the making of a contract. Provided further, that the governing board of an area vocational-technical school district may enter into a contract for the area vocational-technical school district to provide training for a company, individual, or business concern by which a member of the board is employed. A board member shall abstain from voting on any such contract between the area vocational-technical school district board and the company, individual, or business concern by which the member is employed.

SECTION 8. AMENDATORY 70 O.S. 1991, Section 9-105, is amended to read as follows:

Section 9-105. A. It is hereby made the duty of the State Board of Education to determine and fix definite boundaries of the area in which each school district shall provide transportation for each school. When an elementary school district is surrounded by

another independent school district, that district must be designated as the transportation area for the high school students.

B. The State Board of Education is ~~also~~ authorized to establish definite routes in each transportation area, and it shall be the further duty of said Board to make rules and regulations as to the manner in which said area and routes may be established or changed. ~~State~~ Except as otherwise provided in this section, state funds payable to a district shall be withheld for a failure or refusal to confine its transportation to the area and routes designated by the State Board of Education or to comply with the rules and regulations of the State Board of Education. ~~Provided that state~~ State funds payable to a school district shall not be withheld where in the following circumstances:

1. When, based upon the mutual agreement of the two participating school districts, a school district offering special education classes extends its transportation program to include the transportation of students qualifying for special education in an adjacent school district which does not offer special education classes, for the purpose of offering its special education classes to said students. ~~The State Board of Education shall promulgate such rules and regulations as are necessary to allow said transportation of special education students to an adjacent school district; or~~

2. When, by resolutions of the boards of education of the two participating districts, the districts agree that one of the districts may extend its transportation program into the other participating district to provide transportation for students who reside in such other participating district and who, by agreement of the participating districts, are, or will be, attending school in the district that has agreed to furnish transportation for the students.

C. The State Board shall promulgate rules as are necessary to implement the provisions of this section.

SECTION 9. REPEALER 70 O.S. 1991, Section 5-113.1, is hereby repealed.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-2-1580

SB