

ENROLLED SENATE  
BILL NO. 331

By: Easley of the Senate

and

Boyd (Betty) and Steidley  
of the House

An Act relating to officers, crimes and punishments, public finance, and schools; amending 51 O.S. 1991, Section 6, as last amended by Section 5, Chapter 24, O.S.L. 1996 (51 O.S. Supp. 1996, Section 6), which relates to holding of other offices; making exception for county employees elected to certain councils; making exception for persons who serve on school boards and also on municipal planning commissions; amending 21 O.S. 1991, Section 355, as amended by Section 2, Chapter 341, O.S.L. 1996 (21 O.S. Supp. 1996, Section 355), which relates to members of governing bodies and purchasing; declaring certain purchases not unlawful; amending 62 O.S. 1991, Section 371, as last amended by Section 1 of Enrolled House Bill No. 1154 of the 1st Session of the 46th Oklahoma Legislature, which relates to counties and county officers; declaring certain officers not to have certain interest in certain contracts; amending 70 O.S. 1991, Section 5-124, as last amended by Section 4, Chapter 341, O.S.L. 1996 (70 O.S. Supp. 1996, Section 5-124), which relates to certain contracts; declaring certain parties not to have certain interest in certain contracts; amending 51 O.S. 1991, Section 158, which relates to claims and insurance; making certain judgments, orders, and settlements open

public records; providing exception; amending 51 O.S. 1991, Section 162, as amended by Section 4, Chapter 371, O.S.L. 1992 (51 O.S. Supp. 1996, Section 162), which relates to defense of employees; providing for certain bond; eliminating gender distinctions; conforming usage and punctuation; and declaring an emergency.

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

SECTION 1. AMENDATORY 51 O.S. 1991, Section 6, as last amended by Section 5, Chapter 24, O.S.L. 1996 (51 O.S. Supp. 1996, Section 6), is amended to read as follows:

Section 6. A. Except as may be otherwise provided, no person holding an office under the laws of the state and no deputy of any officer so holding any office shall, during the person's term of office, hold any other office or be the deputy of any officer holding any office, under the laws of the state. The provisions of this section shall not apply to:

1. Notaries public;
2. Members of the State Textbook Committee;
3. County free fair board members;
4. Municipal and county law enforcement officers serving in positions as law enforcement officers of both such governmental entities upon such terms and conditions as are mutually approved by resolutions adopted by the board of county commissioners and governing body of the municipality employing such officers;
5. Any person holding a county or municipal office or position, or membership on any public trust authority, who is a member of a board or commission that relates to federal, state, county or municipal government and is created by the United States Government, the State of Oklahoma or a political subdivision of the state, except where the duties of the offices or positions conflict;
6. Any elected municipal officers and school board members who are appointed to a state board, commission, or similar entity if there is no compensation for such services other than reimbursement for necessary travel expenses pursuant to the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes;
7. Any trustee of a public trust, who is appointed as a trustee of a different public trust or any trustee of the Tulsa County Public Facilities Authority who may also be employed by the Department of Transportation;
8. Law enforcement officers employed by municipal or county law enforcement departments or agencies, other than those law enforcement officers elected or appointed as sheriff, chief of police or some similar position in which they are the head of a county or municipal law enforcement agency, who are elected to local boards of education; provided, the provisions of this paragraph shall not prohibit any law enforcement officer employed by a municipality having a population of ten thousand (10,000) or fewer people from serving as a member of a local board of education;

9. Any member of the Oklahoma Highway Patrol Division of the Department of Public Safety who is elected to a local board of education;

10. Any District Supervisor, Assistant District Supervisor, Team Supervisor, Parole Officer 1 or Parole Officer 2 of the Department of Corrections who is elected or appointed to a city council;

11. Any trustee or director of a rural electric cooperative, or port authority who is appointed or elected to a state, county or municipal board, commission or similar entity;

12. County employees who are elected as members of town or city councils;

13. Municipal, county, state or tribal law enforcement or peace officers operating under cross-deputization agreements with an Indian tribe or branch of the federal government;

14. Municipal or county law enforcement or peace officers serving in positions as campus police officers or campus public safety officers pursuant to the provisions of the Oklahoma Campus Security Act, upon such terms and conditions as are mutually approved by resolution adopted by the governing body of the municipality or county and the governing board of the institution of higher education;

15. State law enforcement or peace officers serving in positions as campus police officers or campus public safety officers pursuant to the provisions of the Oklahoma Campus Security Act, upon such terms and conditions as are mutually approved by written agreement between the Commissioner of Public Safety and the governing board of the institution of higher education;

16. Municipal and county law enforcement officers serving in positions as part-time rangers under the Oklahoma Tourism and Recreation Department;

17. The Administrator of a Scenic Rivers Commission serving in the position of a park ranger under the Oklahoma Tourism and Recreation Department;

18. Members of the University Hospitals Authority;

19. Any person holding a state office or position who is a noncompensated reserve force deputy sheriff or a noncompensated reserve municipal police officer;

20. Any person holding a state office or position who serves as a special assistant district attorney without compensation; and

21. Any elected or appointed member of a local school board who is a member of a municipal planning commission.

The provisions of this section shall not prohibit any person holding an office under the laws of the state or any deputy of any officer so holding any office from serving upon the board of Oklahoma Futures or upon the board of directors of the Oklahoma Center for the Advancement of Science and Technology. The provisions of this section shall not prohibit a member of the board of directors of the Oklahoma Center for the Advancement of Science and Technology from serving upon the board of Oklahoma Futures.

B. Any salaries, emoluments or benefits that would otherwise be paid by the agency or political subdivision to a loaned employee or officer shall instead be paid to the regular employer of such employee. The loaned employee shall in turn be paid regular salary and benefits the same as if continuing regular employment with the permanent employer.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 355, as amended by Section 2, Chapter 341, O.S.L. 1996 (21 O.S. Supp. 1996, Section 355), is amended to read as follows:

Section 355. A. It shall be unlawful for any member of any board of county commissioners, city council or other governing body of any city, board of trustees of any town, board of directors of any township, board of education of any city or school district, to

furnish, for a consideration any material or supplies for the use of the county, city, town, township, or school district.

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 or to a member of any board of education of a school district in this state which does not include any part of a municipality with a population greater than two thousand five hundred (2,500) according to the latest Federal Decennial Census when the board member is the only person who furnishes the material or supplies within ten (10) miles of the corporate limits of the municipality. However, any activities permitted by this subsection shall not exceed Five Hundred Dollars (\$500.00) for any single activity and shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) for all activities in any calendar year.

C. It shall not be unlawful for any member of any board of county commissioners, city council or other governing body of any city, board of trustees of any town, board of directors of any township, or board of education of any school district to vote to purchase materials or supplies from a business that employs a member of the governing body or the spouse of the member if neither the member nor the spouse of the member has an interest in the business of five percent (5%) or less.

SECTION 3. AMENDATORY 62 O.S. 1991, Section 371, as last amended by Section 1 of Enrolled House Bill No. 1154 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 371. A. 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. All contracts made in violation of this section shall be wholly void.

However, for the purposes of this section, the following shall not be considered the making of a contract:

1. The depositing of any funds in a bank or other depository;
2. 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; and

3. 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 the utility companies, electric cooperatives or telephone companies pertaining to installations or changes in service, where tariffs for the charges or billings by the companies are on file with the Oklahoma Corporation Commission.

In addition, 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 or to a member of any board of education of a school district in this state which does not include any part of a municipality with a population greater than two thousand five hundred (2,500) according to the latest Federal Decennial Census

when the board member is the only person who owns or operates a business which is the only business of that type within ten (10) miles of the corporate limits of the municipality. However, any activities permitted by this subsection shall not exceed Five Hundred Dollars (\$500.00) for any single activity and shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) for all activities in any calendar year.

C. Notwithstanding the provisions of this section, any officer, director or employee of a financial institution may serve on a board of a public body. Provided, the member shall abstain from voting on any matter relating to a transaction between or involving the financial institution in which they are associated and the public body in which they serve.

D. The provisions of this section shall not apply to any board of county commissioners purchasing motor fuel for exclusive use by the county from a cooperative agricultural association in which a member of the board of county commissioners has a financial or proprietary interest. The county commissioner having a financial or proprietary interest in the cooperative agricultural association shall abstain from voting on any such purchase or contract between the county and the cooperative agricultural association. Except as provided in this subsection, the purchasing procedures required by law for counties and county officers shall not otherwise be modified.

E. A member of a board of county commissioners, city council, board of trustees of any town, district board of any school district in this state, or of any board of any local subdivision of this state shall not be considered to be directly or indirectly interested in any contract with a person or entity that employs such member or the spouse of the member, provided that neither the member nor the spouse of the member has an interest in the employing entity of five percent (5%) or less.

SECTION 4. AMENDATORY 70 O.S. 1991, Section 5-124, as last amended by Section 4, Chapter 341, O.S.L. 1996 (70 O.S. Supp. 1996, Section 5-124), is amended to read as follows:

Section 5-124. A. 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 the member of the board of education or any member of the immediate family of the member owns any substantial interest in same.

B. For purposes of this section, the following shall not be considered the making of a contract:

1. Any contract with a qualified nonprofit Internal Revenue Code 501(c)(3) organization, except for contracts paying salaries or expenses or except a contract involving the counseling or instruction of students or staff;

2. Monthly billings submitted to any school district for public utility companies, electric cooperatives or telephone companies, whose services are regulated by the Oklahoma Corporation Commission, or billings of the utility companies, electric cooperatives or telephone companies pertaining to installations or changes in service, where tariffs for the charges or billings by the companies are on file with the Oklahoma Corporation Commission; and

3. The depositing of any funds in a bank or other depository.

C. 1. 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.

2. A board of education may enter into a contract with a company, individual, or business concern in which a board member or a member's spouse is employed by or has a substantial interest if the company, individual, or business concern is the only supplier having a place of business located within the school district or within ten (10) miles of the needed services or materials. The board member shall abstain from voting on any such contract between the company, individual, or business concern in which that member has a substantial interest, and the minutes of the board meeting at which the contract is approved shall state that the contract is being made because of the lack of another supplier with a place of business located within the school district.

3. A board of education which has entered into a lease-purchase agreement, prior to the time a board member which has a substantial interest in the company, individual, or business concern became a member of the board of education, may, after the member becomes a board member, continue to exercise any fiscal year options in the lease-purchase agreement for renewal of the lease-purchase for the balance of the contract term. The affected board member shall abstain from voting on such fiscal year renewal of the continuation of the lease-purchase agreement.

4. A board of education may enter into a contract with a company, individual or business concern in which a board member or a spouse of a member is employed and has no substantial interest if the school district does not include any part of a municipality with a population greater than two thousand five hundred (2,500) according to the latest Federal Decennial Census and the company, individual or business concern is located in the corporate limits of a municipality which is in the boundaries of the school district.

D. A board member shall not be considered to be directly or indirectly interested in any contract with a company, individual or business concern that employs such board member or the spouse of the board member provided that neither the board member nor the spouse of the board member has an interest of five percent (5%) or less in the company, individual, or business concern.

SECTION 5. AMENDATORY 51 O.S. 1991, Section 158, is amended to read as follows:

Section 158. A. The state or a political subdivision, after conferring with authorized legal counsel, may settle or defend against a claim or suit brought against it or its employee under this act subject to any procedural requirements imposed by statute, ordinance, resolution or written policy, and may appropriate money for the payment of amounts agreed upon. When the amount of any settlement exceeds Ten Thousand Dollars (\$10,000.00), and any payment required by the settlement will not be paid through an applicable contract or policy of insurance, the settlement shall not be effective until approved by the district court and entered as a judgment as provided by law.

B. If a policy or contract of liability insurance covering the state or political subdivision or its employees is applicable, the terms of the policy govern the rights and obligations of the state or political subdivision and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state or political subdivision or its employees covered by the policy. However, the insurer may not enter into a settlement for an amount which exceeds the insurance coverage without the approval of the governing body of the state or political subdivision or its designated representative if the state or political subdivision is insured.

C. Nothing in this section shall be construed to repeal or modify Sections 361 through 365.6 and 435 of Title 62 of the Oklahoma Statutes and it is intended that this section be construed in conformance with those sections.

D. The state or a political subdivision shall not be liable for any costs, judgments or settlements paid through an applicable contract or policy of insurance but shall be entitled to set off those payments against liability arising from the same occurrence.

E. The state or a political subdivision shall have the right of subrogation against the insurer issuing any applicable contractor policy of insurance to the monetary limit of said policy of insurance or contract, if judgment or settlement of any claim arising pursuant to this act results in the imposition of monetary liability upon the state or the political subdivision.

F. Judgments, orders, and settlements of claims shall be open public records unless sealed by the court for good cause shown.

SECTION 6. AMENDATORY 51 O.S. 1991, Section 162, as amended by Section 4, Chapter 371, O.S.L. 1992 (51 O.S. Supp. 1996, Section 162), is amended to read as follows:

Section 162. A. The state or any political subdivision, subject to procedural requirements imposed by this section, other applicable statute, ordinance, resolution or written policy, shall:

1. Provide a defense for any employee as defined in Section 152 of this title when liability is sought for any violation of property rights or any rights, privileges, or immunities secured by the Constitution or laws of the United States when alleged to have been committed by the employee while acting within the scope of employment;

2. Pay or cause to be paid any judgment entered in the courts of the United States, the State of Oklahoma or any other state against any employee or political subdivision or settlement agreed to by the political subdivision entered against any employee, and any costs or fees, for a violation of property rights or any rights, privileges or immunities secured by the Constitution or laws of the United States which occurred while the employee was acting within the scope of employment. The maximum aggregate amount of indemnification paid directly from funds of the state or any political subdivision to or on behalf of any employee pursuant to this section shall not exceed the maximum figures authorized by the provisions of Section 154 of this title, regardless of the number of persons who suffer damage, injury or death as a result of the occurrence, unless, in the case of a political subdivision, the political subdivision establishes higher limits by ordinance, if a municipality, or, as to other political subdivisions, by resolution, published as required by law; and

3. For any cause of action filed against an employee on or after January 1, 1990, post or cause to be posted any supersedeas or other bond ordered by the court.

B. 1. The state or a political subdivision shall not be required to indemnify any employee of the state or a political subdivision under the provisions of this section, unless the employee is judicially determined to be entitled to such indemnification and a final judgment therefor is entered. The exclusive means of recovering indemnification from the state shall be by filing an application for indemnification in the district court of the county where venue is proper as provided for in paragraph 2 of this subsection. The exclusive means of recovering indemnification from a political subdivision shall be by filing an application for indemnification in the trial court where the judgment was entered. If the federal trial court cannot hear the action, such application shall be filed in the district court of the county where the situs of the municipality is located. Actions to

determine entitlement to indemnification shall be tried to the court, sitting without a jury.

2. Venue for actions to determine entitlement to indemnification from the state shall be in Oklahoma County, except that a constitutional state agency, board or commission may, upon a resolution being filed with the Secretary of State, designate another situs for venue in lieu of Oklahoma County.

3. All applications for indemnification from the state or a political subdivision shall be filed in the name of the real party or parties in interest, and in no event shall any application be presented nor recovery made under the right of subrogation. Indemnification from the state as provided for in this subsection shall extend only to acts or omissions occurring on or after January 1, 1984. The employee of the state or a political subdivision must file an application for indemnification within thirty (30) days of final judgment, or the right to seek indemnification shall be lost forever.

4. In order to recover indemnification from the state or a political subdivision pursuant to this subsection, the court shall determine by a preponderance of the evidence that:

- a. the employee reasonably cooperated in good faith in the defense of the action upon which the judgment or settlement was awarded and for which indemnification is sought;
- b. the actions or omissions upon which such a judgment or settlement has been rendered were not the result of fraudulent conduct or corruption by the employee;
- c. the employee, in committing the acts or omissions upon which a judgment or settlement has been rendered was acting in good faith and within any applicable written administrative policies known to the employee at the time of the omissions or acts alleged;
- d. the employee was acting within the scope of employment at the time that the acts or omissions upon which a judgment or settlement has been rendered were committed by the employee;
- e. the acts or omissions of the employee upon which a judgment or settlement has been rendered were not motivated by invidious discriminatory animus directed toward race, sex, or national origin; and
- f. when punitive or exemplary damages are included in the total award rendered against the employee of a political subdivision, the indemnification amount sought for fees and costs does not include amounts attributable to the employee's defense against the punitive or exemplary damages in accordance with paragraph D of this section.

5.
  - a. Any indemnification judgment against the state under this section shall be an encumbrance against otherwise available unencumbered monies and unallocated unencumbered monies in the appropriations of the agency on whose behalf the employee to be indemnified was acting at the time of the act or omission upon which the judgment or settlement was awarded and for which indemnification was sought.
  - b. If sufficient unencumbered monies or unallocated unencumbered monies do not exist in the agency's appropriations to pay the indemnification, the agency shall make application to the Risk Management Division of the Office of Public Affairs for full payment of the indemnification out of the Tort Claims Liability Revolving Fund established pursuant to Section 85.35 of Title 74 of the Oklahoma Statutes. Payment out of

this fund shall be authorized if there are sufficient monies greater than the sum total of the then pending fund indemnification judgment requests, and the reserves for future tort claims as certified by the Director of Risk Management.

- c. If sufficient monies do not exist in the Tort Claims Liability Revolving Fund, the agency shall request the Legislature to make an appropriation sufficient to pay the indemnification.
- d. Any indemnification judgment against a political subdivision shall be paid as provided in Sections 361 through 365.6 of Title 62 of the Oklahoma Statutes and Section 159 of this title.

C. The state or political subdivision shall have the right to recover from an employee the amount expended by the state or political subdivision to provide a defense, or pay a settlement agreed to by the employee and the state or political subdivision, or pay the final judgment, if it is shown that the employee's conduct which gave rise to the action was fraudulent or corrupt or if the employee fails to reasonably cooperate in good faith in defense of the action.

D. The state or a political subdivision shall not, under any circumstances, be responsible to pay or indemnify any employee for any punitive or exemplary damages rendered against the employee, nor to pay for any defense, judgment, settlement, costs, or fees which are paid or covered by any applicable policy or contract of insurance. Where any civil rights judgment upon which indemnification under subsection B of this section is applied for by an employee of the state includes an award for both actual and punitive or exemplary damages, the total amount of fees and costs for which indemnification may be allowed shall be limited to the percentage of fees and costs in the total award that the percentage of the award of actual damages bears to the total judgment awarded. It is the public policy of the State of Oklahoma that the state or a political subdivision may indemnify its employee for actual damages, fees, and costs as provided herein in any case in which the findings set out in paragraph B of this section have been determined.

E. Nothing in this section shall be construed to waive any immunities available to the state under the terms of the Eleventh Amendment to the Constitution of the United States. Any immunity or other bar to a civil lawsuit under state or federal law shall remain in effect. The fact that the state or a political subdivision may relieve an employee from all judgments, settlements, costs, or fees arising from the civil lawsuit shall not, under any circumstances, be communicated to any trier of fact in the case of any trial by jury.

SECTION 7. 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.