THE STATE SENATE
Monday, February 28, 2005

Senate Bill No. 941

As Amended

SENATE BILL NO. 941 - By: MONSON of the Senate and SMALIGO of the House.

[municipal fire protection districts – codification – conditional effective date]

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

SB 941

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-201 of Title 11, unless there is created a duplication in numbering, reads as follows:

Whenever twenty-five percent (25%) of the holders of title to lands inside of the corporate limits of any incorporated city or town shall petition the municipal governing body of the city or town in which such area owned by them is located for the formation of a fire protection district, and compliance is had with the provisions of this act, or if a municipal governing body proposes a resolution for a fire protection district and approves the resolution by a majority vote, the municipal governing body shall enter its order organizing such district, and when so organized, the district shall have the powers conferred herein or such as hereafter may be conferred by law upon such fire protection districts.

(Bold face denotes Committee Amendments)

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-202 of Title 11, unless there is created a duplication in numbering, reads as follows:

The petition or resolution shall set forth and particularly describe the proposed boundaries of the district and shall be accompanied by a map of the proposed district, drawn to a scale of not less than one (1) inch to the mile. The petitioners shall accompany the petition with a good and sufficient bond, the amount and sureties of which shall be approved by the municipal governing body. The sum of the bond shall be sufficient to cover the costs of the publications and of the election for the organization of the district. The costs shall be paid in the event that the organization is not authorized or effected.

The petition or resolution shall be filed with the city clerk of the city or town who shall present it to the municipal governing body at their next regular or special meeting. Upon the presentation of the petition or resolution, the municipal governing body shall set the same for hearing at a time not less than twenty (20) days nor more than forty (40) days from the date of presentation and shall direct the city clerk to give notice of the hearing by publication in a newspaper of general circulation in the county in which the proposed district is located. The notice shall be published for two (2) consecutive weeks next preceding the date

of the hearing. The notice shall describe the boundaries of the proposed district, shall state the time and place of the hearing, and shall state that any person may appear and protest the organization of the district or the proposed boundaries.

The municipal governing body shall hold the hearing described in the notice, and it shall have jurisdiction to hear and determine all protests to the creation of the district and all matters pertaining to the same. All lands inside the municipal boundaries and any lands within five (5) miles of any municipal boundary, if the land is not incorporated by another city or fire district, shall be eligible for a proposed district. The municipal governing body may amend the plan of the district by excluding from within its boundaries any lands which it may deem will not be benefited by the formation of a district, or by including other lands as a part thereof upon application of the owners of the land; provided, however, it shall not exclude from a district any lands which are completely surrounded by lands which are included in the proposed district.

At the conclusion of the hearing, the municipal governing body shall make an order determining the boundaries of the proposed district, particularly describing them, and shall determine whether the formation of a district will be conducive to the public safety of the area incorporated therein. If the municipal governing body

determines that a district will be conducive to the public safety of the area incorporated therein, then the municipal governing body shall give the proposed district a name and shall call an election of the qualified electors in the territory comprising the proposed district on the question of whether the district shall be organized.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-203 of Title 11, unless there is created a duplication in numbering, reads as follows:

The city clerk shall cause notice of the election to be given by publication once a week for two (2) successive weeks in a newspaper of general circulation in the territory comprising the proposed district. The notice shall state the time and place of holding the election and set forth the description of the boundaries of the proposed district and its general purpose and intention. The notice shall require the electors to cast ballots which contain the words: "Fire Protection District - Yes", and "Fire Protection District - No", or words equivalent thereto. All persons who are residents of the proposed district, who are qualified electors in their respective precincts, shall be qualified to vote on such proposition.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-204 of Title 11, unless there is created a duplication in numbering, reads as follows:

The elections shall be conducted in accordance with the general election laws of the state and the regular election officials shall be in charge at the usual polling place of each regular precinct, or part of a precinct, which shall include lands within the boundaries of the proposed district. The returns of the election shall be made direct to the municipal governing body which shall meet on the second Monday next following the election and proceed to canvass the vote cast.

If, upon such canvass, it appears that at least fifty percent (50%) plus one (1) of all the votes cast are "Fire Protection District - Yes", the municipal governing body shall by order transfer all fire department equipment, supplies and facilities to the district and declare the territory duly organized as a fire protection district under the name designated. The order shall be filed for record in the office of the city clerk by the municipal governing body and from that date the district shall be complete.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-205 of Title 11, unless there is created a duplication in numbering, reads as follows:

Directors of a fire protection district shall be the elected municipal governing body of the city or town of the district. This body conducting such necessary business of the district shall be known as the board of directors.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-206 of Title 11, unless there is created a duplication in numbering, reads as follows:

The municipal governing body shall act as the board of directors of the district. The mayor shall serve as chairperson. The chair and members of the board shall serve without additional compensation.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-207 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. The board of directors shall have the power and duty to:

1. Appoint a fire chief as prescribed in the current charter or ordinances of the municipality;

2. Take by grant, purchase, condemnation, gift, devise or lease, and to dispose of, real or personal property of every kind necessary for the operation of the district;

3. Construct or otherwise acquire suitable firehouses and other buildings or structures suitable for the housing of equipment and supplies of the district, or for carrying on its own business and affairs;

4. Employ such officers, firefighters and employees as may be required, fix their compensation and prescribe their duties. All

employees of the municipal fire districts shall retain their collective bargaining rights as provided by law;

5. Establish rules for the district and for the preservation of life and for the prevention of fires and conflagrations within the district and for the protection of life and property at and during any fire or emergency;

6. Prepare an annual budget and follow existing laws pertaining to the budget process such as public notices, public hearings, protest periods and filing requirements in the same manner as they apply to other forms of government in this state;

7. Determine vacancies of the board of directors, fill vacancies and conduct board elections under existing rules and ordinances in the event of a vacancy on the board of directors;

8. Develop bylaws for the due and orderly administration of the affairs of the board of directors and for its responsibilities specified pursuant to this section, and may compel the attendance of absent members in the manner and under penalties as the board may prescribe; and

9. Do any and all other things necessary and proper in the management and operation of the district for the purpose of protecting life and property within its boundaries from fire.

B. The fire chief shall have the power and duty to:

1. Manage and conduct the business affairs of the district;

2. Make and execute all necessary contracts;

3. Purchase or lease-purchase and maintain all necessary and convenient engines, ladders, hoses, hose carts or other appliances and supplies for the full equipping of a fire company, ambulance or department; and

4. Appoint fire company officers and sworn and nonsworn employees in accordance with the current municipal charter or ordinances and as otherwise provided by law, sufficient to maintain and operate the equipment owned by the district.

C. A fire protection district, created pursuant to this act, shall be deemed a political subdivision of this state. The board shall include the existing firefighters of the municipality in the district and submit an application for membership all existing and new hires in the Oklahoma Firefighters Pension and Retirement System. The application for affiliation shall be submitted in accordance with subsection A of Section 49-105.2 of Title 11 of the Oklahoma Statutes.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-208 of Title 11, unless there is created a duplication in numbering, reads as follows:

The board of directors shall establish a time and place for regular meetings, and in addition shall hold special meetings as may be required for the proper transaction of business. A quorum for

the transaction of business shall be the same as required by the municipal governing body for the transaction of all other municipal business. The board of directors and the fire protection district shall operate pursuant to the provisions of the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.

The board shall have the power by general regulation, published in the manner provided for the publication of ordinances in incorporated towns, to regulate the construction of and order the suspension, discontinuance, removal, repair or cleaning of fire places, chimneys, stoves, stove pipes, flues, ovens, boilers or any other apparatus used in any building, factory, or business which might be dangerous in causing or promoting fires, and prescribe limits within which no business dangerous in causing or promoting fires may be carried on. In similar manner it may order the clearing of litter or removal of dry brush and rubbish or other inflammable material endangering the public safety by creating a fire hazard within the district, and provide for action on the part of the State Fire Marshal or the sheriff, or by civil action, for the prevention of hazards as provided by law.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-209 of Title 11, unless there is created a duplication in numbering, reads as follows:

The board of directors is authorized and empowered to institute and maintain, or appear and defend, any and all actions and proceedings, suits at law or in equity, necessary or proper to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any and all rights or privileges conferred hereby, or acquired in pursuance hereof. Actions and proceedings shall be prosecuted and defended in the corporate name of the district, and the board is empowered to employ attorneys to represent the district in any such actions or proceedings, or to advise the board in respect of its duties under this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-210 of Title 11, unless there is created a duplication in numbering, reads as follows:

As soon as practicable after organization of a district, the board of directors shall, by resolution entered on its record, formulate a general plan of proposed operation for the district in which shall be stated the cost of operation and maintenance of the district, what property, real or personal, is proposed to be purchased and the cost of purchasing the same, and what amount of construction is proposed to be done and the cost of doing the same.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-211 of Title 11, unless there is created a duplication in numbering, reads as follows:

The evidence of indebtedness and the interest thereon shall be paid by revenue derived from an annual assessment upon the ad valorem taxed property of the district pursuant to Section 10C of Article X of the Constitution of the State of Oklahoma, and all the ad valorem taxed property of the district, including the ad valorem taxed property of public service corporations, shall be and remain liable to be assessed for such payments as herein provided.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-212 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund to be known as the "Municipal Fire District Pooling Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies contributed to the fund from any source. All monies accruing to the credit of the fund shall be appropriated and expended pursuant to subsection B of this section.

B. All funds collected for the operation of a municipal fire protection district shall be pooled for the purpose of reducing investment cost and shall be invested by a separate board administered by the State Finance Director in a manner consistent with the state pension funds. The Board shall consist of the Governor or a designee, the Speaker of the Oklahoma House of

Representatives or designee, the President Pro Tempore of the State Senate or designee, the Oklahoma State Insurance Commissioner or designee, three members of the Oklahoma State Firefighters Association, three members of the Professional Firefighters Association, and three representatives of the Oklahoma Municipal League. Each fund of each district shall be separately accounted for and only the interest earned from the funds collected by each district as actuarially calculated over a thirty-year period shall be spent annually. Nothing herein shall prevent municipalities from funding the remainder of the fire districts needs from existing revenues.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-213 of Title 11, unless there is created a duplication in numbering, reads as follows:

No claims shall be paid by the treasurer of the district until the same shall have been presented and allowed by the board of directors and only warrants signed by the president and countersigned by the clerk, and if the district treasurer has not sufficient money on hand to pay the warrants when presented, the treasurer shall endorse thereon "not paid for want of funds" and endorse thereon the date presented, over the signature, and from the time of such presentation until paid the warrant shall draw interest at the rate of eleven percent (11%) per annum. All claims against

the district shall be verified the same as is required in the case of claims filed against the counties in this state, and the clerk of the district is authorized and empowered to administer oaths to the parties verifying such claims the same as a county clerk or a notary public might do. The district treasurer shall keep a register in which the treasurer shall enter each warrant presented for payment, showing the date and amount of the warrant, to whom payable, the date of the presentation for payment, the date of payment, and the amount paid in redemption thereof, and all warrants shall be paid in the order of their presentation for payment to the district treasurer. All warrants shall be drawn and payable to the claimant or an assignee of the claimant only.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-214 of Title 11, unless there is created a duplication in numbering, reads as follows:

In the event of the dissolution of a district, the board of directors of the district shall be trustees for the disposition of the property and the proceeds of the disposition of the property and all funds remaining on hand shall be deposited with the county treasurer who shall thereupon succeed to the powers and duties of the district treasurer and who shall annually collect from all of the property which shall have been in the district at the time of the authorization of any bond, an annual assessment sufficient to

pay the interest and amount necessary to retire the outstanding bonds as the same may become due. The annual assessment shall be based upon the district appraisal record at the time of dissolution. When all of the property of the district has been disposed of and the funds of the district deposited with the county treasurer, the powers and functions of the district board, as trustees for dissolution, shall cease and the municipal governing body of the city or town in which a district is located shall succeed to all of the powers and duties of the district insofar as it shall be necessary for them to wind up and conclude the affairs of the district.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-215 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. Owners or occupants of property in the vicinity of the district, not included within the territory of any city or town or other fire protection district, and such district may contract, for one (1) year or more, for fire protection service by the district for the property described in the contract, which such contract shall provide for a fixed annual payment of an agreed amount by the owner or occupant of the property to the district to be paid annually in advance at the date of the making of such contract, and

on the even date thereof for each subsequent year covered by the contract.

B. The contract shall be in writing and shall be set forth in full in the minutes of the respective governing bodies of the contracting parties and a duplicate original shall be filed with the records of the district in the office of the city clerk.

C. Upon the filing of the contract, the district shall be an independent contractor.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-216 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. The board of directors of each fire protection district with revenues of Fifty Thousand Dollars ($50,000.00) or more to its general fund during a fiscal year shall cause an audit to be made, including, but not limited to, the funds, accounts and fiscal affairs of such district. The audit shall be ordered within thirty (30) days of the close of each fiscal year of the district which shall commence July 1 and end on June 30.

B. Provided, any fire protection district may have its books audited and examined by the State Auditor and Inspector, upon petition signed by a number of registered voters, each registered at an address within the geographical boundaries of the fire protection district, equal to twenty-five percent (25%) of the number of

persons voting for the office or question receiving the highest number of votes in the last annual election of the district according to certification from the county election board of the county wherein supervision of the district is located. The petition must be submitted to the Office of the State Auditor and Inspector prior to the audit and examination. The cost of said audit or examination, which shall be borne by the district, shall be ascertained prior to the petitioning for the audit and shall be stated in the petition prior to the collection of any signatures.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-217 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. The audits required by Section 16 of this act shall be prepared by a certified public accountant or a licensed public accountant. The required audit shall adhere to standards set by the State Auditor and Inspector. One copy of the annual audit shall be filed with the State Auditor and Inspector, and one copy shall be filed with the appropriate county clerk not more than one hundred twenty (120) days following the close of each fiscal year of the district.

B. In the event that a copy of the audit as required by this section is not filed with the State Auditor and Inspector within the time herein provided or for any other reason deemed expedient, the

State Auditor and Inspector is authorized to either commence an audit or employ a certified public accountant or licensed public accountant to make the audit herein required at the cost and expense of the fire protection district.

C. Within one hundred eighty (180) days after the effective date of this act or within one hundred eighty (180) days after creation, whichever is first, each fire protection district organized pursuant to the provisions of Sections 1 through 4 of this act shall certify to the State Auditor and Inspector the date it was created.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 40-218 of Title 11, unless there is created a duplication in numbering, reads as follows:

The necessary expense of audits required by Section 16 of this act shall be paid from funds of the fire protection district.

SECTION 19. This act shall become effective upon certification of election returns favoring passage of the Constitutional Amendment proposed in Senate Joint Resolution No. ____ of the 1st Session of the 50th Oklahoma Legislature.

COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 2-21-05 - DO PASS, As Amended and Coauthored.