STATE OF OKLAHOMA

2nd Session of the 51st Legislature (2008)

SENATE BILL 2126 By: Johnson (Constance)

AS INTRODUCED

An Act relating to schools; amending 70 O.S. 2001, Sections 5-107A, 5-117, as last amended by Section 6, Chapter 472, O.S.L. 2005 and 5-119 (70 O.S. Supp. 2007, Section 5-117), which relate to school district boards of education; deleting references to an elected chair of a board of education; providing for continuation of service of incumbent chair until expiration of term; adding procedure for replacing board of education chairs; amending 26 O.S. 2001, Section 13A-110, which relates to filling vacancies on boards of education; deleting procedure for filling a vacancy for the chair of a board of education; repealing 70 O.S. 2001, Section 5-107B, which relates to expansion of a board of education; and declaring an emergency.

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

SECTION 1. AMENDATORY 70 O.S. 2001, Section 5-107A, is amended to read as follows:

Section 5-107A. The following provisions and the provisions of Section 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. For purposes of this section, temporary positions added to a board of education pursuant to Section 7-101 or 7-105 of this title ~~and the chair of the board of education elected pursuant to Section~~

~~1 of this act~~ shall not be considered in determining the size of the board. 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	5	5
2. Districts having a seven-member board unless an election is conducted pursuant to subsection C of this section	7	4

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 eight hundred (1,800) 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; and

3. In a school district having more than ten thousand (10,000) children in average daily membership, the following provision and the provisions of 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 an election in which the electors of each board district in which a term is expiring or in which a vacancy exists shall select two candidates from among the candidates for board member to represent the board district,

b. If, in the election, one candidate has a majority of all votes cast, then a run-off 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 candidates for the board district in the general election, and

c. At the run-off election, all of the electors of the board district shall select one of the two candidates as the member of the board of education representing the board district.

C. Any seven-member board shall have the option of reducing its board to a five-member board either 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. The election pursuant to a vote of the electors of the school district shall be called upon the submission of a petition requesting the election signed by ten percent (10%) of the school district electors in the school district, the percentage being applied to the highest number of voters voting in a regular school district election in the district in the preceding five (5) years as determined by the secretary of the county election board, who shall certify the adequacy of the number of signatures on the petition. 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 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 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. ~~Except for the chair of the board of education elected pursuant to Section 1 of this act,~~ The offices of members of the board of education shall be designated by consecutive numbers and shall correspond with board districts when applicable.

E. Except for those members elected prior to July 1, 1992, the terms of office of the members of a five-member board of education shall commence on the first regular, special or emergency school board meeting after the date of the annual school election and after the member has been certified as elected:

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 school board meeting after the date of the annual school election and after the member has been certified as elected; 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, or upon annexation pursuant to Section 7-101 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.

Upon reduction of a seven-member board pursuant to subsection C of this section, the terms of the five-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 school board meeting after the member has been certified as elected.

F. The term of office of each board member elected after July 1, 1992, shall commence on the first regular, special or emergency school board meeting after the date of the annual school election and after the member has been certified as elected. Board members elected prior to July 1, 1992, 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 to serve until the successor of the member takes office on the first regular, special or emergency school board meeting after the successor has been certified as elected, shall be filled by appointment by the remaining members of the board of education.

SECTION 2. AMENDATORY 70 O.S. 2001, Section 5-117, as last amended by Section 6, Chapter 472, O.S.L. 2005 (70 O.S. Supp. 2007, Section 5-117), is amended to read as follows:

Section 5-117. A. The board of education of each school district shall have power to:

1. Elect its own officers~~; provided that the chair of the board authorized in Section 5-107B of this title shall be elected by the electors of the school district~~;

2. Make rules, not inconsistent with the law or rules of the State Board of Education, governing the board and the school system of the district;

3. Maintain and operate a complete public school system of such character as the board of education shall deem best suited to the needs of the school district;

4. Designate the schools to be attended by the children of the district;

5. Provide and operate, when deemed advisable, cafeterias or other eating accommodations, thrift banks or other facilities for the teaching and practice of thrift and economy, bookstores, print shops, and vocational and other shops;

6. Provide informational material concerning school bond elections and millage elections, including but not limited to all pertinent financial information relative to the bond issue, a statement of revenue sources necessary to retire proposed bonds, a statement of current bonded indebtedness of the school district, and a statement of proposed use of funds to be generated by the proposed bond issue. The informational material shall not contain the words "vote yes" or "vote no" or any similar words or statement any place on such informational material;

7. Purchase, construct or rent, and operate and maintain, classrooms, libraries, auditoriums, gymnasiums, stadiums, recreation places and playgrounds, teacherages, school bus garages, laboratories, administration buildings, and other schoolhouses and school buildings, and acquire sites and equipment therefor;

8. a. Insure the school district or its employees against any loss, damage or liability as defined by Sections 702 through 708 of Title 36 of the Oklahoma Statutes, or other forms of insurance provided for in Title 36 of the Oklahoma Statutes.

b. Subject to the restrictions of liability in the Governmental Tort Claims Act:

(1) insure the school district against all or any part of any liability it may incur for death, injury or disability of any person, or for damage to property, either real or personal,

(2) insure any employee of the school district against all or any part of the employee's liability for injury or damage resulting from an act or omission in the scope of employment, or

(3) insure against the expense of defending a claim against the school district or its employee, whether or not liability exists on such claim.

c. As used in this subsection, "employee" means any person who has acted in behalf of a school district, whether that person is acting on a permanent or temporary basis with or without being compensated or on a full-time or part-time basis. Employee also includes all elected or appointed officers, members of

governing bodies of a school district, and persons appointed, and other persons designated by a school district to act in its behalf.

d. The cost or premium of any such insurance is a proper expenditure of the school district.

e. Any insurance authorized by law to be purchased, obtained or provided by a school district may be provided by:

(1) self-insurance, which may be, but is not required to be, funded by appropriations to establish or maintain reserves for self-insurance purposes. Any self-insurance reserve fund shall be nonfiscal and shall not be considered in computing any levy when the school district makes its annual estimate for needed appropriations,

(2) insurance in any insurer authorized to transact insurance in this state,

(3) insurance secured in accordance with any other method provided by law, or

(4) any combination of insurance authorized by this section.

f. Two or more school districts or public agencies, by interlocal agreement made pursuant to the Interlocal Cooperation Act, may provide insurance for any purpose

by any one or more of the methods specified in this section. The pooling of self-insured reserves, claims or losses among governments as authorized in this section shall not be construed to be transacting insurance nor otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies. Two or more school districts may also be insured under a master policy or contract of insurance. Premium costs may be set individually for each school district or apportioned among participating school districts as provided by the master policy or contract;

9. Acquire property by condemnation proceedings in the same manner as land is condemned for railroad purposes. School district funds may be used to erect buildings on leased land on which other buildings have been erected prior to April 3, 1969, or on land which is leased from a governmental entity;

10. Lease real or personal property to the state or any political subdivision thereof or a not-for-profit entity operating pursuant to Section 868 of Title 18 of the Oklahoma Statutes for nominal cash consideration for so long as the use of the property by the lessee substantially benefits, in whole or in part, the same public served by the school district;

11. Dispose of personal or real property no longer needed by the district by sale, exchange, lease, lease-purchase, sale and partial lease back, or otherwise. Real property shall be conveyed pursuant to a public sale, public bid, or private sale; provided however, unless otherwise prohibited by law, the board of education of a consolidated or annexed school district may convey real property to a local political subdivision without consideration. Prior to the sale of any real property, the board of education shall have the real property appraised. The appraisal shall be confidential until the real property is sold. When the real property is sold, the board of education shall make the appraisal available for public inspection. Prior to the conveyance of any real property by private sale, the board of education shall have offered the real property for sale by public sale or public bid. Any conveyance of real property by private sale to a nonprofit organization, association, or corporation to be used for public purposes, unless for exchange, shall contain a reversionary clause which returns the real property to the board of education upon the cessation of the use without profit or for public purposes by the purchaser or the assigns of the purchaser;

12. Purchase necessary property, equipment, furniture, and supplies necessary to maintain and operate an adequate school system;

13. Incur all expenses, within the limitations provided for by law, necessary to perform all powers granted by the provisions of this section;

14. Contract with and fix the duties and compensation of physicians, dentists, optometrists, nurses, attorneys, superintendents, principals, teachers, bus drivers, janitors, and other necessary employees of the district;

15. Establish a written policy for reimbursement of necessary travel expenses of employees and members of the board. The policy may include in-district travel from the site of employment assignment which is necessary in the performance of employment duties. The written policy shall specify procedures, contain documentation requirements, and may include payment of meal expenses during authorized travel on a per diem allowance basis rather than itemized documentation;

16. Pay necessary travel expenses and other related expenses of prospective employees for sponsored visits to the school district pursuant to a written policy specifying procedures containing documentation requirements equal to or greater than the requirements specified by law for state employees in the State Travel Reimbursement Act;

17. Provide for employees' leaves of absence without pay;

18. Exercise sole control over all the schools and property of the district, subject to other provisions of the Oklahoma School Code;

19. Allow district-owned school buses to be used for transportation of students from other districts or educational institutions while within the district on educational tours. This shall not restrict the authority of the board to authorize any other use of such buses which may now be permitted by law or rule of the State Board of Education;

20. Enter into contractual agreements with the board of trustees of a multicounty library system, as defined in Section 4-103 of Title 65 of the Oklahoma Statutes, a city-county library commission, as defined in Section 152 of Title 65 of the Oklahoma Statutes, or a rural single county library system, as defined in Section 1-104 of Title 65 of the Oklahoma Statutes, on such terms as may be mutually agreed, except no district board of education may enter into any agreement under which the library services for the school would be provided at any site other than the school site or which would result in library services that do not meet accreditation standards as required by law or rule;

21. Perform all functions necessary to the administration of a school district in Oklahoma as specified in the Oklahoma School Code, and in addition thereto, those powers necessarily implied but not delegated by law to any other agency or official;

22. Prepare and distribute at the expense of the school district any and all material which has the purpose of informing the public about district activities;

23. Solicit and accept any gift, grant, or donation of money or property for the use of the school district. Any gift, grant, or donation of money may be deposited in the general fund or building fund of the school district; and

24. Pay necessary meal and lodging expenses of school district students and sponsors involved in authorized school-sponsored cocurricular activities. The board of education shall establish a written policy for reimbursement of necessary meal and lodging expenses of school district students and sponsors. The written policy shall specify procedures, contain documentation requirements, and designate the funds from which reimbursement may be made. Reimbursement may be made from the General Fund.

B. The board of education of any school district may rent, on a monthly basis, real and personal property, if such items are necessary for the operation of the school, and pay the rental charges for the usage during any fiscal year, or portion thereof, out of appropriations made and approved for current expense purposes during the fiscal year. Any such rental contract extending beyond June 30 of such fiscal year shall be void unless it contains provisions for mutual ratification of renewal pursuant to the conditions provided for in this subsection. It is the intent of

this subsection to authorize boards of education to enter into lease contracts but not to incur any obligation against the school district in excess of the income and revenue provided for such purposes for the fiscal year in which such lease contract is operative. Any lease or lease-purchase agreement entered into by any board of education shall state the purchase price of real or personal property so leased. The lease or lease-purchase shall not be extended so as to cause payment of more than the original purchase price of the real or personal property, plus interest not to exceed the legal rate. When the purchase price plus interest has been paid, the property shall belong to the lessee and the lessor shall deliver a deed or bill of sale to the property to the lessee. When any real or personal property has been leased or rented during any fiscal year pursuant to the provisions of any contract which permits continuance of such rental for the remainder of such fiscal year, the renting or leasing thereof must be continued for the remainder of the fiscal year unless the board of education renting or leasing the same certifies by proper resolution entered in the minutes of the board of education that the continuance of such rental is unnecessary and contrary to the public interest.

C. The boards of education of two or more school districts may enter into cooperative agreements and maintain joint programs including, but not limited to, courses of instruction for handicapped children, courses of instruction in music and other

subjects, practical instruction for trades and vocations, practical instruction in driver training courses, and health programs including visual care by persons legally licensed for such purpose, without favoritism as to either profession. The revenues necessary to operate a joint program approved in cooperative agreements, whether from federal, state or local sources, including the individual contributions of participating school districts, shall be deposited into a fund separate from all other appropriated funds. The beginning fund balance each year, combined with all actual revenues, including collected and estimated revenues, must be appropriated before being expended. Purchase orders shall be issued against available appropriations and, once goods or services have been received, either payable or nonpayable warrants shall be issued in payment of all purchase orders. The fund shall be reported as a separate appropriated fund in all the financial reports of the school district which is chosen by the other school districts to keep the accounting records of the joint program.

D. The boards of education of two or more school districts may enter into a mutual contract or separate contracts with a superintendent, administrator, or teacher or with a person to provide support services, to serve as superintendent, administrator, or teacher, as appropriately qualified, or to provide support services, for each contracting district upon such terms and conditions as the parties may agree. Nothing in this act shall be

construed to authorize or require annexation or consolidation of any school districts or the closing of any school site except pursuant to law as set forth in Section 7-101 et seq. of this title.

E. Any school district may operate or maintain a school or schools on any military reservation which is within the boundaries of the school district or which is adjacent to the school district, and provide the instruction in the school or schools to children of personnel on the military reservation and, in doing so, shall conform to all federal laws and requirements.

F. The board of education of each school district shall adopt and maintain on file in the office of the superintendent of schools appropriate personnel policy and sick leave guide. The guide shall be made available to the public.

SECTION 3. AMENDATORY 70 O.S. 2001, Section 5-119, is amended to read as follows:

Section 5-119. A. ~~Except for districts that elect a chair of the board pursuant to Section 1 of this act, the~~ The board of education of each school district shall elect from its membership at the first regular, special or emergency meeting following the annual school election and certification of election of new members, 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 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.

C. Any incumbent chair of a board of education elected pursuant to the provisions of Section 5-107B of this title shall continue to serve in such capacity until expiration of the term of office to which elected. If an incumbent chair resigns prior to the expiration of the term of office, the board shall elect a president as provided for in Section 5-119 of this title.

SECTION 4. AMENDATORY 26 O.S. 2001, Section 13A-110, is amended to read as follows:

Section 13A-110. A. ~~Except for a vacancy in the position of the chair of the board elected pursuant to Section 1 of this act, vacancies~~ Vacancies for members of the board of education of every school district or technology center school district shall be filled by appointment by the board. Persons appointed to fill such vacancies in the first half of the term of office for the board position shall serve only until the next succeeding election, at which time the office which they hold shall be placed on the ballot for the balance of the unexpired term. Vacancies filled by appointment following the delivery of the resolution calling for regular elections to the secretary of the county election board shall be filled until the regular elections the following year. Persons elected to fill unexpired terms shall begin those terms at the next regular meeting of the board of education following the election. Persons appointed to fill such vacancies after the first half of the term of office for the board position shall serve for the balance of the unexpired term. No person shall be appointed to a board of education who does not meet the eligibility qualifications needed to be a candidate for such position as provided for in Sections 13A-106 of this title and Sections 5-110, 5-110.1 and 5-113 of Title 70 of the Oklahoma Statutes.

B. If the board of education does not fill the vacancy by appointment within sixty (60) days of the date the board declared the seat vacant, the board of education shall call a special election to fill the vacancy for the unexpired term.

~~C. In districts having a chair of the board elected by the electors of the district, a vacancy in the office of the chair of the board shall be filled by the vice-chair who shall continue to serve as the board member for the board district for which elected. The board shall call a special election to elect a chair of the board to serve the remainder of the unexpired term. The special election shall be held in conjunction with the next regular, district wide school election, conducted pursuant to Section 13A-103 of this title, that is held more than ninety (90) days after the vacancy occurs. The successful candidate in the special election shall assume office as provided for district board of education members and shall serve the remainder of the unexpired term.~~

SECTION 5. REPEALER 70 O.S. 2001, Section 5-107B, is hereby repealed.

SECTION 6. 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.

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