

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2989

By: Ritze

4
5 AS INTRODUCED

6 An Act relating to schools; amending 70 O.S. 2011,
7 Section 5-117, which relates to the powers and duties
8 of a board of education; modifying power to contract
9 with an attorney; enacting the School District
10 Private Attorney Retention Act; requiring request for
11 proposal process for retention of lawyer or law firm
12 on behalf of school district; requiring Internet
13 website to contain conspicuous statement; requiring
14 school district to maintain list of persons and
15 entities receiving requests for proposals;
16 authorizing school district to provide Internet
17 website access to request for proposals; prescribing
18 period of time to maintain access; requiring website
19 to contain information regarding vendor to which
20 contract awarded; imposing requirement with respect
21 to documents accessible through website; requiring
22 review of certain contracts; requiring filing of
23 proposed contract and written statement with Attorney
24 General; providing requirements of written statement;
providing time period for review; requiring report
from the Attorney General; allowing school district
to enter into certain proposed contract if the
Attorney General makes no changes; requiring school
district to revise and file revised contract in
certain circumstances; providing for expedited review
of proposed contract; requiring certain statement
from retained outside counsel at conclusion of legal
proceeding; providing maximum amount of fees and
expenses to be incurred; providing for reduction in
fee; defining terms; providing for codification; and
providing an effective date.

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

1 SECTION 1. AMENDATORY 70 O.S. 2011, Section 5-117, is
2 amended to read as follows:

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

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

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

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

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

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

20 6. Provide informational material concerning school bond
21 elections and millage elections, including but not limited to all
22 pertinent financial information relative to the bond issue, a
23 statement of revenue sources necessary to retire proposed bonds, a
24 statement of current bonded indebtedness of the school district, and

1 a statement of proposed use of funds to be generated by the proposed
2 bond issue. The informational material shall not contain the words
3 "vote yes" or "vote no" or any similar words or statement any place
4 on such informational material;

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

10 8. a. Insure the school district or its employees against
11 any loss, damage or liability as defined by Sections
12 702 through 708 of Title 36 of the Oklahoma Statutes,
13 or other forms of insurance provided for in Title 36
14 of the Oklahoma Statutes.

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

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

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

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

4 c. As used in this subsection, "employee" means any
5 person who has acted in behalf of a school district,
6 whether that person is acting on a permanent or
7 temporary basis with or without being compensated or
8 on a full-time or part-time basis. Employee also
9 includes all elected or appointed officers, members of
10 governing bodies of a school district, and persons
11 appointed, and other persons designated by a school
12 district to act in its behalf.

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

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

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

- 1 (2) insurance in any insurer authorized to transact
2 insurance in this state,
3 (3) insurance secured in accordance with any other
4 method provided by law, or
5 (4) any combination of insurance authorized by this
6 section.

7 f. Two or more school districts or public agencies, by
8 interlocal agreement made pursuant to the Interlocal
9 Cooperation Act, may provide insurance for any purpose
10 by any one or more of the methods specified in this
11 section. The pooling of self-insured reserves, claims
12 or losses among governments as authorized in this
13 section shall not be construed to be transacting
14 insurance nor otherwise subject to the provisions of
15 the laws of this state regulating insurance or
16 insurance companies. Two or more school districts may
17 also be insured under a master policy or contract of
18 insurance. Premium costs may be set individually for
19 each school district or apportioned among
20 participating school districts as provided by the
21 master policy or contract;

22 9. Acquire property by condemnation proceedings in the same
23 manner as land is condemned for railroad purposes. School district
24 funds may be used to erect buildings on leased land on which other

1 buildings have been erected prior to April 3, 1969, or on land which
2 is leased from a governmental entity;

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

9 11. Dispose of personal or real property no longer needed by
10 the district by sale, exchange, lease, lease-purchase, sale and
11 partial lease back, or otherwise. Real property shall be conveyed
12 pursuant to a public sale, public bid, or private sale; provided
13 however, unless otherwise prohibited by law, the board of education
14 of a consolidated or annexed school district or any other school
15 district may convey real property to a local political subdivision
16 or to an educational institution within The Oklahoma State System of
17 Higher Education without consideration. Prior to the sale of any
18 real property, the board of education shall have the real property
19 appraised. The appraisal shall be confidential until the real
20 property is sold. When the real property is sold, the board of
21 education shall make the appraisal available for public inspection.
22 Prior to the conveyance of any real property by private sale, the
23 board of education shall have offered the real property for sale by
24 public sale or public bid. Any conveyance of real property by

1 private sale to a nonprofit organization, association, or
2 corporation to be used for public purposes, unless for exchange,
3 shall contain a reversionary clause which returns the real property
4 to the board of education upon the cessation of the use without
5 profit or for public purposes by the purchaser or the assigns of the
6 purchaser;

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

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

13 14. Contract with and fix the duties and compensation of
14 physicians, dentists, optometrists, nurses, attorneys,
15 superintendents, principals, teachers, bus drivers, janitors, and
16 other necessary employees of the district. Any contract with an
17 attorney or group of attorneys shall be subject to approval as
18 provided for in the School District Private Attorney Retention Act;

19 15. Establish a written policy for reimbursement of necessary
20 travel expenses of employees and members of the board. The policy
21 may include in-district travel from the site of employment
22 assignment which is necessary in the performance of employment
23 duties. The written policy shall specify procedures, contain
24 documentation requirements, and may include payment of meal expenses

1 during authorized travel on a per diem allowance basis rather than
2 itemized documentation;

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

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

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

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

19 20. Enter into contractual agreements with the board of
20 trustees of a multicounty library system, as defined in Section 4-
21 103 of Title 65 of the Oklahoma Statutes, a city-county library
22 commission, as defined in Section 152 of Title 65 of the Oklahoma
23 Statutes, or a rural single county library system, as defined in
24 Section 1-104 of Title 65 of the Oklahoma Statutes, on such terms as

1 may be mutually agreed, except no district board of education may
2 enter into any agreement under which the library services for the
3 school would be provided at any site other than the school site or
4 which would result in library services that do not meet
5 accreditation standards as required by law or rule;

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

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

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

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

1 B. The board of education of any school district may rent real
2 and personal property, if such items are necessary for the operation
3 of the school, and pay the rental charges for the usage during any
4 fiscal year, or portion thereof, out of appropriations made and
5 approved for current expense purposes during the fiscal year. Any
6 rental contract extending beyond June 30 of the fiscal year shall be
7 void unless it contains provisions for mutual ratification of
8 renewal pursuant to the conditions provided for in this subsection.
9 It is the intent of this subsection to authorize boards of education
10 to enter into lease contracts but not to incur any obligation
11 against the school district in excess of the income and revenue
12 provided for such purposes for the fiscal year in which the lease
13 contract is operative. Any lease or lease-purchase agreement
14 entered into by any board of education shall state the purchase
15 price of real or personal property so leased. The lease or lease-
16 purchase shall not be extended so as to cause payment of more than
17 the original purchase price of the real or personal property, plus
18 interest not to exceed the legal rate. When the purchase price plus
19 interest has been paid, the property shall belong to the lessee and
20 the lessor shall deliver a deed or bill of sale to the property to
21 the lessee. When any real or personal property has been leased or
22 rented during any fiscal year pursuant to the provisions of any
23 contract which permits continuance of the rental for the remainder
24 of the fiscal year, the renting or leasing of the property shall be

1 continued for the remainder of the fiscal year unless the board of
2 education renting or leasing the same certifies by proper resolution
3 entered in the minutes of the board of education that the
4 continuance of the rental is unnecessary and contrary to the public
5 interest. Any lease-purchase agreement entered into shall include
6 the right of a school district to acquire buildings, equipment or
7 other facilities or discrete components thereof or improve school
8 sites through a lease-purchase agreement. A school district may use
9 proceeds derived from the sale of bonds as authorized by Section 26
10 of Article X of the Oklahoma Constitution to make lease-purchase
11 payments, including interest, under a lease-purchase agreement. For
12 purposes of this subsection, the term "acquired" as used in Section
13 26 of Article X of the Oklahoma Constitution shall mean the
14 possession, control, or power to dispose of personal or real
15 property.

16 C. The boards of education of two or more school districts may
17 enter into cooperative agreements and maintain joint programs
18 including, but not limited to, courses of instruction for
19 handicapped children, courses of instruction in music and other
20 subjects, practical instruction for trades and vocations, practical
21 instruction in driver training courses, and health programs
22 including visual care by persons legally licensed for such purpose,
23 without favoritism as to either profession. The revenues necessary
24 to operate a joint program approved in cooperative agreements,

1 whether from federal, state or local sources, including the
2 individual contributions of participating school districts, shall be
3 deposited into a fund separate from all other appropriated funds.
4 The beginning fund balance each year, combined with all actual
5 revenues, including collected and estimated revenues, must be
6 appropriated before being expended. Purchase orders shall be issued
7 against available appropriations and, once goods or services have
8 been received, either payable or nonpayable warrants shall be issued
9 in payment of all purchase orders. The fund shall be reported as a
10 separate appropriated fund in all the financial reports of the
11 school district which is chosen by the other school districts to
12 keep the accounting records of the joint program.

13 D. The boards of education of two or more school districts may
14 enter into a mutual contract or separate contracts with a
15 superintendent, administrator, or teacher or with a person to
16 provide support services, to serve as superintendent, administrator,
17 or teacher, as appropriately qualified, or to provide support
18 services, for each contracting district upon such terms and
19 conditions as the parties may agree. Nothing in this act shall be
20 construed to authorize or require annexation or consolidation of any
21 school districts or the closing of any school site except pursuant
22 to law as set forth in Section 7-101 et seq. of this title.

23 E. Any school district may operate or maintain a school or
24 schools on any military reservation which is within the boundaries

1 of the school district or which is adjacent to the school district,
2 and provide the instruction in the school or schools to children of
3 personnel on the military reservation and, in doing so, shall
4 conform to all federal laws and requirements.

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

9 SECTION 2. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 5-191 of Title 70, unless there
11 is created a duplication in numbering, reads as follows:

12 Sections 2 through 6 of this act shall be known and may be cited
13 as the "School District Private Attorney Retention Act".

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 5-192 of Title 70, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Any school district that wishes to retain a lawyer or law
18 firm to perform legal services on behalf of the school district,
19 where the fees and expenses for the services will exceed or can be
20 reasonably expected to exceed Five Thousand Dollars (\$5,000.00),
21 shall not do so until a request for proposal process has been
22 undertaken.

23 B. The contracting school district shall cause an Internet
24 website controlled by or on behalf of the school district to contain

1 a conspicuous statement, visible from the main webpage or equivalent
2 segment of the website, that after one hundred twenty (120) days
3 after the contract for which the request for proposals has been
4 awarded, any person may obtain a copy of the request for proposal
5 from the school district which prepared it and the identity of all
6 persons or entities to whom the request for proposal was
7 transmitted.

8 C. Each school district shall maintain a list of the persons
9 and entities to whom a request for proposal has been transmitted,
10 including the mailing address to which the proposal was mailed, and
11 shall make such information available for inspection within one
12 hundred twenty (120) days after the contract has been awarded.

13 D. The request for proposal required by this section and all
14 responses submitted to the request for proposals may be made
15 accessible through an Internet website maintained by or on behalf of
16 the school district.

17 E. The identity of a vendor to whom or to which a school
18 district has awarded a contract in response to a request for
19 proposals, a brief description of the services to be performed under
20 the contract, the projected total payments to be made under the
21 contract, the actual payments made under the contract, once made,
22 and the date the contract was awarded shall be accessible on the
23 Internet website for a period of three (3) years from the date the
24 contract is awarded.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 5-193 of Title 70, unless there
3 is created a duplication in numbering, reads as follows:

4 A. No school district shall enter into a contract for legal
5 services exceeding One Hundred Thousand Dollars (\$100,000.00)
6 without a review of the terms of the contract in accordance with
7 this section.

8 B. Any school district proposing to enter into a contract for
9 legal services exceeding One Hundred Thousand Dollars (\$100,000.00)
10 shall file a copy of the proposed contract with the Attorney General
11 and shall also accompany the proposed contract with a written
12 statement that identifies the following:

13 1. The reasons the school district should retain private
14 counsel and the consideration of alternatives;

15 2 The request for proposal process that has been undertaken
16 with respect to the proposed legal services;

17 3. The reasons for the selection of the lawyer or law firm that
18 is the proposed contracting party;

19 4 The past or present relationship, if any, between the lawyer,
20 law firm, or any partner or other principal in the law firm and the
21 school district proposing to enter into the contract; and

22 5. If the contract contemplates that all or part of the fee is
23 contingent on the outcome of the legal proceeding, the reasons the
24 contingent fee arrangement is believed to be in the interest of the

1 school district and any efforts undertaken to obtain private counsel
2 on a noncontingent-fee basis.

3 C. Except as provided in subsection E of this section, the
4 Attorney General shall review the proposed contract and written
5 statement within thirty (30) days of receipt.

6 D. The Attorney General shall issue a report to the referring
7 school district. The report shall include any changes to the
8 proposed contract approved by the Attorney General. If the Attorney
9 General makes no changes to the proposed contract within thirty (30)
10 days of the receipt, the referring school district may enter into
11 the proposed contract. If the report of the Attorney General makes
12 changes to the proposed contract in accordance with this subsection,
13 the school district shall review the report and prepare a revised
14 contract as deemed appropriate in view of the report and shall file
15 with the Attorney General a copy of the revised contract. Upon
16 submission of the revised contract with the Attorney General, the
17 referring school district may enter into the revised contract.

18 E. In the event the school district in a writing filed with the
19 Attorney General states that time exigencies require that the school
20 district retain counsel before the periods provided in subsections C
21 and D of this section have elapsed, and provides the reasons
22 therefor, the Attorney General shall consult with the school
23 district to establish an expedited schedule for review of the
24 proposed contract.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 5-194 of Title 70, unless there
3 is created a duplication in numbering, reads as follows:

4 A. At the conclusion of any legal proceeding for which a school
5 district retained outside counsel on a contingency-fee basis, the
6 school district shall receive from counsel a statement of the hours
7 worked on the case, expenses incurred, the aggregate fee amount, and
8 a breakdown as to the hourly rate based on hours worked divided into
9 fee recovered, less expenses.

10 B. In no case shall the school district incur fees and expenses
11 in excess of One Thousand Dollars (\$1,000.00) per hour for legal
12 services. In cases where a disclosure submitted in accordance with
13 subsection A of this section indicates an hourly rate in excess of
14 One Thousand Dollars (\$1,000.00) per hour, the fee amount shall be
15 reduced to an amount equivalent to One Thousand Dollars (\$1,000.00)
16 per hour.

17 SECTION 6. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 5-195 of Title 70, unless there
19 is created a duplication in numbering, reads as follows:

20 A. For purposes of the School District Private Attorney
21 Retention Act, a contract in excess of One Hundred Thousand Dollars
22 (\$100,000.00) is one in which the fee paid to an attorney or group
23 of attorneys, either in the form of a flat, hourly, or contingent
24 fee, and expenses of the attorney or group of attorneys exceeds or

1 can be reasonably expected to exceed One Hundred Thousand Dollars
2 (\$100,000.00).

3 B. As used in the School District Private Attorney Retention
4 Act, "fees" shall include, but not be limited to, any compensation
5 for legal services however measured, including but not limited to
6 flat, hourly, and contingent fees.

7 SECTION 7. This act shall become effective November 1, 2012.

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