

ENROLLED HOUSE
BILL NO. 2909

By: Wells and Hamilton of
the House

and

Morgan and Rozell of the
Senate

An Act relating to public contracts and expenditures; amending 21 O.S. 1991, Section 355, as last amended by Section 2, Chapter 317, O.S.L. 1997 (21 O.S. Supp. 1997, Section 355), which relates to certain financial transactions; modifying provisions related to restricted transactions; amending 61 O.S. 1991, Sections 102, as amended by Section 5, Chapter 7, O.S.L. 1994, 107, as last amended by Section 1, Chapter 156, O.S.L. 1995, 113, as amended by Section 3, Chapter 239, O.S.L. 1992 and 131 (61 O.S. Supp. 1997, Sections 102, 107 and 113), which relate to public competitive bidding; modifying definitions; modifying dollar amount of contract for certain purposes; amending 62 O.S. 1991, Section 310.9, as last amended by Section 1, Chapter 115, O.S.L. 1997 (62 O.S. Supp. 1997, Section 310.9), which relates to sworn statements for certain invoices; limiting application of section; amending 62 O.S. 1991, Section 371, as last amended by Section 3, Chapter 317, O.S.L. 1997 (62 O.S. Supp. 1997, Section 371), which relates to certain public contracts; modifying provision related to financial interest; amending 70 O.S. 1991, Section 5-117, as last amended by Section 2 of Enrolled House Bill No. 2785 of the 2nd Session of the 46th Oklahoma Legislature, which relates to powers and duties of boards of education; modifying procedures regarding travel expenses; amending 70 O.S. 1991, Section 5-124, as last amended by Section 4, Chapter 317, O.S.L. 1997 (70 O.S. Supp. 1997, Section 5-124), which relates to school district contracts; modifying provision related to financial interest; amending 70 O.S. 1991, Section 5-135, which relates to school district accounting procedures; authorizing use of evaluated receipt settlement; prescribing requirements for system; modifying provisions related to adjustment of accounts; requiring certain invoices to have a signed and notarized statement attached; providing form and content of statement; amending 74 O.S. 1991, Sections 110.1, as last amended by Section 7, Chapter 283, O.S.L. 1994 and 3109, as last amended by Section 2, Chapter 115, O.S.L. 1997 (74 O.S. Supp. 1997, Sections 110.1 and 3109), which relate to inventory by the Department of Central Services and requirement for certain affidavits; increasing

monetary limit for maintaining certain inventory; providing exception to certain affidavit requirement; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 355, as last amended by Section 2, Chapter 317, O.S.L. 1997 (21 O.S. Supp. 1997, 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 employs the spouse of ~~the~~ a member if ~~neither~~ the member ~~nor~~ or the spouse of ~~the~~ a member has an interest in the business of five percent (5%) or less.

SECTION 2. AMENDATORY 61 O.S. 1991, Section 102, as amended by Section 5, Chapter 7, O.S.L. 1994 (61 O.S. Supp. 1997, Section 102), is amended to read as follows:

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

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

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

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

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

Twelve Thousand Five Hundred Dollars (\$12,500.00) in amount, awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to the same except where the improvements, construction of any building or repairs to the same are improvements or buildings leased to a person or other legal entity exclusively for private and not for public use and no public tax revenues shall be expended on or for said contract unless the public tax revenues used for the project are authorized by a majority of the voters of the applicable public agency voting at an election held for that purpose and the public tax revenues do not exceed twenty-five percent (25%) of the total project cost. The amount of public tax dollars committed to the project will not exceed a fixed amount established by resolution of the governing body prior to or concurrent with approval of the project;

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

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

SECTION 3. AMENDATORY 61 O.S. 1991, Section 107, as last amended by Section 1, Chapter 156, O.S.L. 1995 (61 O.S. Supp. 1997, Section 107), is amended to read as follows:

Section 107. A. Each bidder on a public construction contract exceeding ~~Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Fifteen Thousand Dollars (\$15,000.00) shall accompany his bid with:

1. A certified check, cashier's check or bid bond equal to five percent (5%) of the bid, which shall be deposited with the awarding public agency as a guaranty; or

2. An irrevocable letter of credit containing such terms as may be prescribed by the Department of Central Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in an amount equal to five percent (5%) of the bid. The awarding public agency shall deposit such irrevocable letter of credit with the Department of Central Services.

B. The cost of republication of the notice to bidders, all actual expenses incurred by reason of the bidder's default and the difference between the low bid of the defaulting bidder and the amount of the bid of the bidder to whom the contract is subsequently awarded, but not to exceed the amount of the certified check, cashier's check, bid bond or irrevocable letter of credit may, at the discretion of the awarding public agency, be forfeited to the awarding public agency in the event the apparently successful bidder fails to execute the contract or fails to provide the required bonds or irrevocable letters of credit and insurance to the awarding public agency.

C. Said certified or cashier's check, bid bond or irrevocable letter of credit shall be returned to the successful bidder on execution and delivery of the contract and required bonds or irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the proposal.

D. Nothing contained herein shall be construed so as to prevent the awarding public agency or the courts from exonerating the bidder and other parties to the bid security document from liability upon a timely showing that the bidder committed what the courts have determined under the common law to be an excusable bidding error and for that reason it would not be equitable to enforce the bid security.

SECTION 4. AMENDATORY 61 O.S. 1991, Section 113, as amended by Section 3, Chapter 239, O.S.L. 1992 (61 O.S. Supp. 1997, Section 113), is amended to read as follows:

Section 113. A. Except as otherwise provided by law, within such period of time, not to exceed sixty (60) days, as shall be specified in the bid notice by the awarding public agency, a contract embodying the terms set forth in the bidding documents shall be executed by the awarding public agency and the successful bidder. No bidder shall obtain any property right in a contract awarded under the provisions of the Public Competitive Bidding Act, ~~Section 101 et seq. of this title, of 1974~~ until the contract has been fully executed by both the bidder and the awarding public agency.

B. Except as otherwise provided by law, within said period of time, the following shall be provided by the contractor to the awarding public agency for contracts exceeding ~~Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Fifteen Thousand Dollars (\$15,000.00):

1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of ~~Title 61 of the Oklahoma Statutes~~ this title; and

2. A good and sufficient bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing such terms as may be prescribed by the Department of Central Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract and bidding documents; and

3. A good and sufficient bond in a sum equal to the contract price or an irrevocable letter of credit containing such terms as may be prescribed by the Department of Central Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to protect the awarding public agency against defective workmanship and materials for a period of one (1) year after acceptance of the project; and

4. Public liability and workers' compensation insurance during construction in reasonable amounts. A public agency may require the contractor to name said public agency and its architects and/or engineers as an additional assured under said public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

C. If the contractor needs additional time in which to obtain the bond required pursuant to subsection B of this section, he may request and the awarding agency may allow said contractor an additional sixty (60) days in which to obtain said bond.

D. Subsequent to the award of a contract, but prior to its execution, an awarding public agency, upon discovery of an administrative error in the award process that would void an otherwise valid award, may suspend the time of execution of the

contract until the next regularly scheduled public business meeting of the governing body of the agency. At the next public business meeting, the agency, upon the record, shall present to the governing body that such an error had been made in the award process and shall state the nature of the error. The governing body, upon presentation of the facts of the error, may rescind the award and readvertise for bids, or direct correction of the error and award the contract to the lowest responsible bidder, whichever shall be in the best interests of the state.

E. An awarding public agency which has entered into a public construction contract prior to the effective date of this act shall be permitted to amend such contract by change order or other lawful means to conform with the requirements of paragraph 3 of subsection B of this section.

SECTION 5. AMENDATORY 61 O.S. 1991, Section 131, is amended to read as follows:

Section 131. No contract involving sums in excess of ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be split into partial contracts involving sums of below ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Twelve Thousand Five Hundred Dollars (\$12,500.00) for the purpose of avoiding the requirements of this act. All such partial contracts involving less than ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be void.

SECTION 6. AMENDATORY 62 O.S. 1991, Section 310.9, as last amended by Section 1, Chapter 115, O.S.L. 1997 (62 O.S. Supp. 1997, Section 310.9), is amended to read as follows:

Section 310.9 A. Except as provided in subsections B, ~~and C and D~~ of this section, on every invoice submitted to any county or political subdivision of the state, for payment of an architect, contractor, engineer or supplier of materials of One Thousand Dollars (\$1,000.00) or more, the sworn statement required by Section 3109 of Title 74 of the Oklahoma Statutes shall be required.

B. Any county, municipality or school district executing a contract with any architect, contractor, supplier or engineer for work, services or materials which are needed on a continual basis from such architect, contractor, supplier or engineer under the terms of such contract, or executing more than one contract during the fiscal year with such architect, contractor, supplier or engineer, may require that the architect, contractor, supplier or engineer complete a signed and notarized affidavit in substantial form as provided by subsection A of this section which shall apply to all work, services or materials completed or supplied under the terms of the contract or contracts and shall be in lieu of all individual affidavits for each invoice submitted in relation to such contract or contracts as required in subsection A of this section.

C. ~~The sworn statement required by Section 3109 of Title 74 of the Oklahoma Statutes shall be required on every invoice submitted to a school district in the state, for payment of an architect, contractor, engineer or supplier of materials of Two Thousand Dollars (\$2,000.00) or more.~~

~~D.~~ In lieu of the affidavit required in subsection A of this section, the following procedures may be used:

1. A purchase order issued by a county or a political subdivision of the state shall require the signature of the vendor and include a notice to the vendor that the vendor's submission of the signed invoice or acceptance of payment pursuant to the purchase constitutes a statement by the vendor that:

a. the invoice or claim is true and correct,

- b. the work, services or materials as shown by the invoice or claim have been completed or supplied in accordance with the plans, specifications, orders or requests furnished the vendor, and
- c. the vendor has made no payment, directly or indirectly, to any elected official, officer or employee of this state or any county or political subdivision of the state, of money or any other thing of value to obtain payment;

2. Any vendor who submits the signed invoice or accepts payment pursuant to a purchase order containing the notice provided for in paragraph 1 of this subsection shall be deemed to adopt and affirm the statement contained in the notice unless the vendor states on the invoice that the statement is incorrect in whole or in part; and

3. The county or political subdivision may recover from the vendor the full amount paid pursuant to the purchase order if the statement adopted and affirmed by the vendor is false.

SECTION 7. AMENDATORY 62 O.S. 1991, Section 371, as last amended by Section 3, Chapter 317, O.S.L. 1997 (62 O.S. Supp. 1997, Section 371), 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~~ if the member ~~nor~~ or the spouse of the member has an interest in the employing entity of five percent (5%) or less.

SECTION 8. AMENDATORY 70 O.S. 1991, Section 5-117, as last amended by Section 2 of Enrolled House Bill No. 2785 of the 2nd Session of the 46th Oklahoma Legislature, 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;
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. Have school district property insured;

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 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 ~~and pay their necessary itemized and documented travel expenses, and pay necessary itemized and documented travel expenses of members of the board of education. The board of education of a school district may develop a policy allowing for payment of meal expenses incurred by employees of the district or members of the board during authorized travel on a per diem allowance basis rather than requiring meal expenses to be itemized and documented provided, however, no board of education of any school district may establish any per diem greater than the per diem allowance authorized.~~ The board of education shall establish a written policy for reimbursement of necessary travel expenses of employees and members of the board. The written policy shall specify procedures containing documentation requirements equal to or greater than the requirements specified by law for state employees in Section 500.8 of Title 74 of the Oklahoma Statutes the State Travel Reimbursement Act;

15. Pay necessary ~~itemized and documented~~ 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;

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

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

18. 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;

19. 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; and

20. 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.

B. The board of education of any school district may rent, on a monthly basis, equipment and furniture, if such items are necessary for the operation of the school, and pay the rental charges for said usage during any fiscal year, or portion thereof, out of appropriations made and approved for current expense purposes during said 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 agreement entered into by any board of education shall state the purchase price of equipment or furniture so leased. The lease shall not be extended so as to cause payment of more than the original purchase price of said equipment or furniture, plus interest not to exceed the legal rate. When said 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 said property to the lessee. When any equipment or furniture 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 said fiscal year unless the board of education renting or leasing the same certifies by proper resolution entered in the minutes of said 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. 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.

E. 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 9. AMENDATORY 70 O.S. 1991, Section 5-124, as last amended by Section 4, Chapter 317, O.S.L. 1997 (70 O.S. Supp. 1997, 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~~ if the board member ~~nor~~ or the spouse of the board member has an interest of five percent (5%) or less in the company, individual, or business concern.

SECTION 10. AMENDATORY 70 O.S. 1991, Section 5-135, is amended to read as follows:

Section 5-135. A. The board of education of each school district shall use the following system of initiating, recording and paying for all purchases, salaries, wages or contractual obligations due from any of the funds under the control of such board of education. However, a school district board of education may use the procedures outlined in Section 304.1 of Title 62 of the Oklahoma Statutes for the payment of salaries and wages only if the board so votes. The provisions contained herein shall not apply to the sinking fund and school activity fund.

B. The encumbrance clerk and treasurer of the school district shall each enter the authorized amounts in the various appropriation accounts of the funds to which this system is applied. The authorized amounts of appropriations shall be the general fund and building fund appropriations approved by the county excise board and such additional amounts as may be applied in the manner provided by law, the amount received for deposit in a special cash fund where such special cash fund is authorized by law or required by the person or agency providing such funds, or the amount of the net proceeds realized from the sale of bonds of the school district and any other income due such fund.

C. It shall be the duty and responsibility of the board of education of the school district to prescribe and administer adequate business procedures and controls governing the purchase or confirmation of purchase and delivery of goods or services. Such procedures shall include the designation of authorized persons to purchase goods or services for the district and the method of determining the school employee receiving delivery of each purchase.

D. Prior to the issuance of a purchase order, the encumbrance clerk must first determine that the encumbrance will not exceed the balance of the appropriation to be charged. The encumbrance clerk shall charge the appropriate appropriation accounts and credit the affected encumbrances outstanding accounts with the encumbrances. A copy of the encumbrance or purchase order may be used as the authority for the designated school personnel to complete the purchasing process. Encumbrances must be submitted to the board of education in the order of their issuance on a monthly basis, subject to a monthly business cycle cut-off date determined by the board of education. Approved encumbrances shall be listed in the minutes by the minute clerk.

E. After satisfactory receipt of the goods or services, the employee designated by the board of education to be responsible for the transaction shall certify the bill to the encumbrance clerk for payment. The encumbrance clerk, however, shall not pay any bill unless it is, or is properly supported by, an itemized invoice clearly describing each item purchased, the quantity of each item, its unit price, and its total cost. The bill and/or invoice shall be filed in the encumbrance clerk's official records. If a district has the ability to electronically utilize evaluated receipt settlement (ERS), the district may remit to vendors on that basis if the requirements of this subsection are fulfilled. In the event a district is establishing electronic data interchange, electronic entries will suffice in lieu of paper documents. In order for a district to be authorized to utilize an evaluated receipt settlement system:

1. The ERS must have received the prior approval of the State Auditor and Inspector as conforming to industry standards governing ERS systems;

2. The ERS must result in payment by the district from vendor receipts that have been matched to the purchase order date;

3. The ERS may only be used when there is an agreement between the district and the vendor for use of an ERS; and

4. The ERS must be included in the district's journal ledger/accounts payable/purchase order software.

F. The encumbrance clerk shall debit the encumbrances outstanding account and credit the accounts payable account for the amount of the approved bill. ~~If there is a minor adjustment in the total cost as compared to the encumbrance authorized by the board of education, the appropriation and encumbrances outstanding accounts shall be adjusted to reflect the actual cost.~~ The board of education shall determine the extent such costs may fluctuate without additional board action. Minor adjustments not requiring additional board approval shall be referenced to the original encumbrance.

G. After ascertaining that proper accounting of the purchase has been made and that the files contain sufficient information to justify the expenditure of public funds, the encumbrance clerk shall pay the approved bill by issuing a warrant against the designated fund, except as otherwise provided in subsection I of this section. The warrants so issued shall be consecutively numbered in the order of their issuance. The encumbrance clerk shall charge the warrant

against the accounts payable account and credit it to the warrants issued account. Provided, if payment is to be made immediately and the board of education deems it advisable, the postings to the accounts payable account may be omitted and the payment of the approved bill may be credited directly to the warrants issued account. The warrant shall show on its face the name of the school district, the date of issue, the payee, the amount, the expenditure classification code, and such other information as may be necessary or desirable. The president and clerk of the board of education shall each sign the warrant, thereby denoting to the public that the warrant is for the purpose and within the amount of the appropriation charged.

H. The warrant shall then be delivered to the treasurer of the school district who shall register the same in the warrant register, charging the appropriation account and crediting the warrants outstanding account of the designated fund. Provided, no warrant shall be registered in excess of the appropriation account's balance. All warrants shall be registered in the order of their issuance number. Voided warrants shall be registered and filed with the treasurer. The warrants against each fund shall be payable in the order of their issue. The treasurer shall sign each warrant showing its registration date and stating whether the warrant is payable or nonpayable. When funds become available, nonpayable warrants shall be called in the same manner as that now provided by law. When a properly payable warrant is presented to the treasurer, the treasurer shall issue a check in payment thereof. The payment shall be charged to the warrants payable account and credited to the cash account of the fund involved.

I. In lieu of issuing such warrant as provided for in subsection G of this section, the treasurer of any school district may, upon notification from the encumbrance clerk that the bill is approved for payment, enter the warrant on the warrant register and record payment of the warrant by check, wire transfer, direct payroll deposit, or other instrument or method of disbursement through the Federal Reserve System.

J. School districts complying with the provisions of this act shall use only those forms and accounting systems approved by the State Board of Education. Such forms and systems shall be considered in substantial compliance with this act if they are sufficient to convey the meaning and sequence of transactions contained herein. Provided, nothing contained herein shall be construed to limit or prevent the use of additional or subsidiary accounts, forms, or files which may be deemed necessary or advisable by the board of education of the district or the State Board of Education.

K. Any school district desiring to utilize the services of a data processing center to furnish any or all of the records herein required may do so if the center and its system complies with this act and the rules and regulations of the State Board of Education. Such center shall furnish an honesty bond in an amount to be set by the board of education but not less than Ten Thousand Dollars (\$10,000.00).

L. The State Board of Education shall notify the board of education of the school district of the tentative amount said district is to receive from state and federal aid funds or allocations, and the board of education of the school district may include such tentative estimate as an item of probable income in the preparation of the school district's Estimate of Needs and Financial Statement; provided, no such federal aid estimate shall be used in any way to reduce the State Foundation Aid or Incentive Aid for such

school district or sustain a protest for the reduction of a tax levy.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-135.3 of Title 70, unless there is created a duplication in numbering, reads as follows:

The following signed and notarized statement shall be required on an invoice submitted to any school district or area vocational-technical school district in the state, for payment to an architect, contractor, engineer or supplier of material of Two Thousand Dollars (\$2,000.00) or more:

STATE OF OKLAHOMA)
) ss
COUNTY OF _____)

The undersigned (architect, contractor, supplier or engineer), of lawful age, being first duly sworn, on oath says that this invoice or claim is true and correct. Affiant further states that the (work, services or materials) as shown by this invoice or claim have been (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the school district or area vocational-technical school district, of money or any other thing of value to obtain payment of the invoice or procure the contract or purchase order pursuant to which an invoice is submitted.

(Contractor, supplier, engineer or architect)

Subscribed and sworn to before me this __ day of ____, 19__.

Notary Public (or Officer having Power to Administer Oaths)

SECTION 12. AMENDATORY 74 O.S. 1991, Section 110.1, as last amended by Section 7, Chapter 283, O.S.L. 1994 (74 O.S. Supp. 1997, Section 110.1), is amended to read as follows:

Section 110.1 A. ~~The Office of Public Affairs~~ Department of Central Services shall maintain a current inventory of all equipment owned by state departments, boards, commissions, institutions, or agencies of the state except equipment used in medical education and research costing less than ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00).

B. Except for the institutions comprising The Oklahoma State System of Higher Education, and the University Hospitals, the ~~Office of Public Affairs~~ Department of Central Services inventory shall consist of machinery, implements, tools, furniture, livestock, vehicles, and other apparatus that may be used repeatedly without material impairment of its physical condition and which has a calculable period of service and a value of over ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00).

C. For the institutions comprising The Oklahoma State System of Higher Education and the University Hospitals, the ~~Office of Public Affairs~~ Department of Central Services inventory shall consist of machinery, implements, tools, furniture, livestock, vehicles and other apparatus that may be used repeatedly without material impairment of its physical condition and has a calculable period of service and a value of over Five Hundred Dollars (\$500.00).

D. The ~~Office of Public Affairs~~ Department of Central Services shall cause all such articles to be properly coded, tagged, or marked in such a manner that they may be readily identified as property of the State of Oklahoma and that statistical records may

be maintained thereof. All state departments, boards, commissions, institutions, or agencies of the State of Oklahoma will make available to the ~~Office of Public Affairs~~ Department of Central Services, support personnel to check inventories.

SECTION 13. AMENDATORY 74 O.S. 1991, Section 3109, as last amended by Section 2, Chapter 115, O.S.L. 1997 (74 O.S. Supp. 1997, Section 3109), is amended to read as follows:

Section 3109. A. Except as provided in subsections B, ~~C and D~~ and C of this section, on every invoice submitted to any county or local subdivision of the state, for payment to an architect, contractor, engineer or supplier of material of One Thousand Dollars (\$1,000.00) or more, shall be the following signed and notarized statement:

STATE OF OKLAHOMA)
) ss.
COUNTY OF)

The undersigned (architect, contractor, supplier or engineer), of lawful age, being first duly sworn, on oath says that this invoice or claim is true and correct. Affiant further states that the (work, services or materials) as shown by this invoice or claim have been (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the State of Oklahoma, any county or local subdivision of the state, of money or any other thing of value to obtain payment of the invoice or procure the contract or purchase order pursuant to which an invoice is required.

(Contractor, supplier or engineer)
Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public (or Clerk or Judge)

Architect
Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public (or Clerk or Judge)

A notarized statement of noncollusion shall not be required on purchase orders to procure materials and equipment, ~~and~~ provided, this provision shall not exempt the requirement for a notarized statement of noncollusion on invoices for services or materials and equipment.

B. Any municipality or school district executing a contract with any architect, contractor, supplier or engineer for work, services or materials which are needed on a continual basis from such architect, contractor, supplier or engineer under the terms of such contract, may require that the architect, contractor, supplier or engineer complete a signed and notarized affidavit in substantial form as provided by subsection A of this section which shall apply to all work, services or materials completed or supplied under the terms of the contract and shall be in lieu of all individual affidavits for each invoice submitted in relation to such contract as required in subsection A of this section.

~~C. The sworn statement required in subsection A of this section shall be on every invoice submitted to a school district in the state, for payment to an architect, contractor, engineer or supplier of material of Two Thousand Dollars (\$2,000.00) or more.~~

~~D.~~ In lieu of the affidavit required in subsection A of this section, the following procedures may be used:

1. A purchase order issued by a county or a local subdivision of the state shall require the signature of the vendor and include a notice to the vendor that the vendor's submission of the signed invoice or acceptance of payment pursuant to the purchase constitutes a statement by the vendor that:

- a. the invoice or claim is true and correct,
- b. the work, services or materials as shown by the invoice or claim have been completed or supplied in accordance with the plans, specifications, orders or requests furnished the vendor, and
- c. the vendor has made no payment, directly or indirectly, to any elected official, officer or employee of this state or any county or local subdivision of the state, of money or any other thing of value to obtain payment;

2. Any vendor who submits the signed invoice or accepts payment pursuant to a purchase order containing the notice provided for in paragraph 1 of this subsection shall be deemed to adopt and affirm the statement contained in the notice unless the vendor states on the invoice that the statement is incorrect in whole or in part; and

3. The county or local subdivision may recover from the vendor the full amount paid pursuant to the purchase order if the statement adopted and affirmed by the vendor is false.

SECTION 14. This act shall become effective July 1, 1998.

SECTION 15. 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.

Passed the House of Representatives the 28th day of May, 1998.

Speaker of the House of
Representatives

Passed the Senate the 28th day of May, 1998.

President of the Senate