

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 1851

BY: HAMILTON (Jeff)

AS INTRODUCED

AN ACT RELATING TO SCHOOLS; STATING PURPOSE; DEFINING TERMS; REQUIRING SCHOOL DISTRICTS TO COMPARE PRIVATE CONTRACTING COSTS; REQUIRING SCHOOL DISTRICTS TO ISSUE COST COMPARISON FINDING; PROVIDING FOR NOTICE AND HEARING; PROVIDING FOR RENEWAL CONTRACTS; ESTABLISHING PROCEDURES FOR HEARING; EXEMPTING CERTAIN CONTRACTS; PROVIDING A CAUSE OF ACTION; ESTABLISHING DATE OF APPLICATION; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-146 of Title 70, unless there is created a duplication in numbering, reads as follows:

It is the policy of the State of Oklahoma:

1. That quality support services for a school district should be provided in an efficient and cost-effective manner;

2. That contracts with the private sector to perform support services be entered into with full knowledge of costs and benefits to the school district and the public, and that such contracts be

subject to ongoing review to ensure that private contractors are held accountable for the quantity and quality of contracted services; and

3. That any contracting for support services shall not be based solely on the payment of lower wages or benefits to the employees of the private contractor under the service contract than is or was paid to support employees performing the same duties or services.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-146.1 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Affected employee" means an employee, or a recognized employee representative of affected employees, whose duties or services may be replaced if the school district enters into the service contract;

2. "Support employee" means a full-time employee of a school district as determined by the standard period of labor which is customarily understood to constitute full-time employment for the type of services performed by the employee, who is employed a minimum of one hundred seventy-five (175) days and who provides those services not performed by professional educators or licensed teachers which are necessary for the efficient and satisfactory functioning of a school district;

3. "Support services" means those services not performed by professional educators or licensed teachers which are necessary for the efficient and satisfactory functioning of a school district; and

4. "Service contract" means a contract, and a bid specification therefor, entered into by a school district at a cost in excess of Ten Thousand Dollars (\$10,000.00), whether negotiated or advertised, the principal purpose of which is to furnish support services to the school district that would replace duties or services currently performed or provided by support employees of the school district.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-146.2 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Before a school district enters into a service contract, the school district shall compare the cost of providing the support service with support employees or contracting with a private contractor to provide the service.

B. The school district shall issue proposed cost comparison findings that consider:

1. Direct costs, including fringe benefits;

2. Indirect overhead costs, which shall include only those costs that can be attributed solely to the work in question and that would not exist if the work were not performed by support employees. Indirect overhead costs shall include the pro rata share of existing administrative salaries and benefits, rents, equipment costs, utilities and materials attributable to the service to be contracted out;

3. Continuing costs or transitional costs that would be directly associated with contracting for the work, including unemployment compensation and the cost of transitional services;

4. Scope, frequency and quality of the services provided by the support employees and the scope, frequency and quality of the services to be provided for or proposed under the contract; and

5. Adequate contract management terms to ensure that the work is carried out as provided by the terms of the contract.

C. The school district shall:

1. Give notice that cost comparison findings, as required by subsection A of this section, have been issued by posting notices throughout the offices of the school district, by giving notice to the general public in the same manner as other legal notices and by giving notice to any affected support employee bargaining unit;

2. Provide that the cost comparison findings are open to any person for inspection, copying, or mechanical reproduction during regular business hours;

3. Allow ten (10) days from the date the notice required in this subsection is posted in which any affected employee may request a public hearing to comment on the proposed cost comparison findings. If no request is submitted to the school district, the findings are final; and

4. Conduct at least one public hearing if requested under this subsection and issue the final cost comparison findings after considering the public testimony and before entering into the contract.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-146.3 of Title 70, unless there is created a duplication in numbering, reads as follows:

Before a school district renews or extends a service contract the cost of which exceeds the cost of the prior contract by more than Fifty Thousand Dollars (\$50,000.00), the school district shall issue proposed cost comparison findings as required by subsection A of Section 3 of this act. The school district shall provide notice and, if required, hold a public hearing as described in subsection C of Section 3 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-146.4 of Title 70, unless there is created a duplication in numbering, reads as follows:

Hearings required in subsection C of Section 3 of this act shall be conducted by the local board of education of the school district, according to procedures established by the State Board of Education. Nothing in this section prevents a school district from having the hearing at a regularly scheduled public meeting of the board of education of the school district if notice is provided as described in subsection C of Section 3 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-146.5 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. This act does not apply to:

1. Any contract with a qualified nonprofit agency providing employment opportunities for the handicapped;

2. Any contract made with other public agencies or the federal government;

3. Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express railway line or oil or gas pipeline where published tariffs are in effect;

4. Any contract for the furnishing of services by radio, telephone, telegraph or cable companies, subject to the Federal Communications Act of 1934;

5. Any contract the school district is required to enter into under federal or state law;

6. Any contract entered into by a school district to replace the duties or services of a support employee or employees who are on paid or unpaid leave from the school district;

7. Any contract for public utility services, including electric light and power, water, steam and gas; or

8. Any contract a school district enters into when the school district has a collective bargaining agreement with the affected employees that contains terms which require a comparable or substantially similar cost comparison as required in subsection A of Section 3 of this act.

B. A contract is exempt from the requirements of this act if the school district finds that a nonrecurring emergency condition exists and the condition requires the prompt execution of the contract to protect the public's health and safety.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-146.6 of Title 70, unless there is created a duplication in numbering, reads as follows:

The provisions of this act are not intended to provide any person with a right to commence a civil suit, action or proceeding to challenge the authority of a school district to enter into contracts with private entities to provide support services or to challenge the adequacy of the cost comparison findings. However, if the school district fails to abide by the notice and hearing procedures established in Section 3 of this act, any person may obtain injunctive relief to require the school district to comply with the notice and hearing procedures.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-146.7 of Title 70, unless there is created a duplication in numbering, reads as follows:

This act applies to all contracts entered into pursuant to negotiations concluded or invitations for bids issued on or after July 1, 1992.

SECTION 9. This act shall become effective July 1, 1992.

SECTION 10. 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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