

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1185

By: Seikel and Johnson (Glen)
of the House

and

Fisher of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the food stamp program; amending 56 O.S. 1991, Sections 241, which relates to food stamp distribution, and 189a, which relates to certain quarters for local units of the Department of Human Services; authorizing certain contracts; specifying certain conditions and terms; clarifying and conforming language; authorizing lease purchase agreements; providing for legislative authorization; providing for legal authorization; amending 74 O.S. 1991, Section 85.34, which relates to the Risk Management Program; clarifying language; expanding program; authorizing certain community action agencies to participate in State Risk Management Program for certain purposes; providing for certain coverage by Administrator; providing for criteria and standards for participation; requiring payments; providing for procedures; amending 51 O.S. 1991, Section 152, as amended by Section 26, Chapter 69, O.S.L. 1992 (51 O.S. Supp. 1992, Section 152), which relates to governmental tort claims; adding certain community action agencies to certain definition; and declaring an emergency.

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

SECTION 1. AMENDATORY 56 O.S. 1991, Section 241, is amended to read as follows:

Section 241. ~~(a)~~ A. It shall be the mandatory duty of the board of county commissioners of any county ~~having a population in excess of three hundred thousand (300,000), as shown by the last preceding Federal Decennial Census, and having an eligible commodity distribution program caseload in excess of ten thousand (10,000) persons,~~ to participate in the food stamp program under the Food Stamp Act of ~~1964~~ 1977, as amended, and to enter into an agreement for such purpose with the ~~Oklahoma Public Welfare~~

~~Commission for Human Services. Provided, that in the event there is enacted a federal law which operates to exclude any person or families receiving public assistance from eligibility for food stamps, the board of county commissioners may discontinue its participation in the food stamp program and reenter the commodity distribution program.~~

~~(b) B. The board of county commissioners of any ~~other~~ county may have federal food stamps ~~sold and~~ issued to eligible recipients of the county in pursuance of an agreement for such purpose entered into by the board with the ~~Oklahoma Public Welfare Commission~~ for Human Services. All such counties not electing to participate in the food stamp program shall distribute donated agricultural commodities under the commodity distribution program to all eligible families as certified by the Department of Public Welfare.~~

~~(c) C. The cost of distributing the food stamps shall be paid by the county. Except as provided in subsection ~~(d)~~ D of this section, the board of county commissioners shall be required to pay the estimated cost in advance on the calendar quarter basis, with an adjustment within thirty (30) days after the end of the quarter to reflect actual cost payable by the county; ~~and if.~~ If the county fails to make such payment at least fifteen (15) days prior to the first day of the first month of a quarter, the agreement between the board of county commissioners and the ~~Oklahoma Public Welfare Commission~~ shall for Human Services may terminate and the Commission ~~shall~~ may discontinue the issuance of food stamps in the county at the beginning of such quarter.~~

~~(d) D. 1. The board of county commissioners may at its option operate the program of distributing food stamps to families, certified as eligible by the ~~Oklahoma Public Welfare Commission~~ for Human Services, within the county ~~and the agreement with the Commission will provide for such operation with the provision that the county furnish.~~~~

2. The board of county commissioners may also contract with private or public entities to provide for the distribution of food stamps.

3. Any program for food stamps or coupon distribution operated pursuant to the provisions of this subsection shall provide:

- a. adequate qualified personnel, suitable facilities for storing and issuing stamps ~~and such,~~ any bonding of personnel, and insurance that may be required by the ~~Oklahoma Public Welfare Commission;~~ for Human Services, and
- b. that such sale, distribution and accounting of food stamps shall be in compliance with all federal and state regulations applicable thereto.

~~(e)~~ E. If the ~~sale and~~ distribution of food stamps within the county is to be handled by the ~~Oklahoma Public Welfare Commission~~ for Human Services, at its election, the food stamps may be distributed through one or more issuing offices, or through local banks, or through other means. The board of county commissioners ~~may~~ shall be required to reimburse the Commission for a prorated share of the total cost of such distribution, based upon the number of persons participating in the county.

SECTION 2. AMENDATORY 56 O.S. 1991, Section 189a, is amended to read as follows:

Section 189a. ~~(a)~~ A. 1. The board of county commissioners in each county shall ~~be required to~~ furnish quarters for the local units of the Oklahoma Department of Human Services, ~~such.~~ Such quarters ~~to~~ shall be located in the county courthouse or other suitable building in the county seat; ~~to furnish and shall be~~ furnished with light, heat and water and ~~supply~~ adequate toilet facilities; ~~and it shall be the duty of the.~~ The county excise board ~~to~~ shall provide adequate appropriations to enable the county commissioners to comply with ~~this~~ the provision; ~~provided,~~ that if of this subsection.

2. If no suitable quarters or adequate facilities are available in the county courthouse or in the county seat, ~~the same~~ facilities shall be furnished and supplied in the city or town in the county, but not the county seat thereof, having the greatest population. ~~Provided, that the~~

3. The Department may enter into an agreement with the board of county commissioners for financial participation, by the Department, in the payment of rent on space leased for use by the Department, or in the cost of repairs of buildings or space used by the Department, or the cost of janitorial services and utility services, if the Oklahoma Commission for Human Services determines that such payment is necessary for adequate space for units of the Department and that monies for such purpose are available without detriment to programs administered by the Department.

~~(b)~~ B. 1. If the Commission for Human Services determines that adequate or suitable quarters, office space or facilities for the local units of the Department are not obtainable, the Department may enter into an agreement with the board of county commissioners of the county, or with any state agency or public trust, for the construction or renovation of a building or buildings where local units of the Department may have quarters, office space or facilities; or may enter into a lease agreement for the rental of space and facilities in a building or buildings constructed or renovated by the county, or a state agency, public trust or building authority, for the purpose of providing office space to the Department or any other public agency or agencies.

2. The Department shall not enter into any agreement under the provisions of this subsection unless federal financial participation is obtainable. All such agreements shall contain provisions as to financial participation therein by the parties to the agreement, payments to be made for the use or occupancy of the office space and facilities, and ownership of the building or buildings after payment of the cost of construction or renovation thereof has been completed, consistent with the requirements necessary for the Department to obtain or receive federal funds for such purpose.

~~(c)~~ C. If the Commission for Human Services determines that adequate or suitable quarters, office space or facilities for local units of the Department are not obtainable from the board of county commissioners of the county, or from any state agency or public trust or building authority pursuant to the provisions of

subsection ~~(b)~~ B of this section, the Commission may enter into a lease agreement for the rental of space and facilities in a building or buildings owned or operated by a private vendor for the purpose of providing such quarters, office space or facilities.

~~(d) D. Notwithstanding the provisions of Section 94 of Title 74 of the Oklahoma Statutes, the~~ The Commission for Human Services is authorized to enter into agreements necessary to establish and determine the location of a North Tulsa field office if the Commission determines that state office space available through the ~~Office of Public Affairs~~ Department of Central Services in Tulsa County is not appropriate and adequate to offer accessible and comprehensive services to clients of the Department of Human Services from North Tulsa County and Southern Osage County communities.

E. If the Commission for Human Services determines that adequate or suitable quarters, office space or facilities for local units of the Department are not obtainable by lease agreement from the board of county commissioners of the county, from any state agency or public trust or building authority, or from a private vendor, the Commission for Human Services may acquire real property for such local units by lease-purchase agreement. Any such lease-purchase shall be explicitly authorized by the Legislature by concurrent resolution. Legislative authorization shall constitute legal authorization for this state to enter into such lease-purchase agreements.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 85.34, is amended to read as follows:

Section 85.34 A. ~~The Purchasing Division of the Office of Public Affairs~~ Department of Central Services is hereby directed to establish for all state agencies, whether or not subject to the Central Purchasing Act, ~~Section 85.1 et seq. of this title, and~~ for such other entities as provided by law a comprehensive professional risk management program which shall:

1. Identify and evaluate ~~tort liability risks for state agencies; and~~

~~2. After October 1, 1986, identify and evaluate all risks for state agencies and such other entities as provided by law; and~~

~~3. 2. Eliminate, reduce, or minimize ~~tort liability~~ all risks through a continuous effective loss-prevention and loss-control program; and~~

~~4. After October 1, 1986, eliminate, reduce, or minimize all risks through a continuous effective loss-prevention and loss-control program; and~~

~~5. 3. Transfer risks if it is economically advantageous to the state to do so, by acquiring commercial insurance, or by contractual pass-off of liability, or by other means; and~~

~~6. 4. Consolidate and administer all plans and programs pertaining to risk management including self-insurance programs, except Workers' Compensation Insurance and State Employees Group Insurance; and~~

~~7. 5. Determine feasibility of self-insurance programs; and~~

~~8. 6. Establish, if feasible, such self-insurance programs; and~~

~~9. 7. Require payment by agencies for insurance provided by the risk management program; and~~

~~10. 8. When requested by a state retirement system, the State Insurance Fund or the State and Education Employees Group Insurance Board, assist the state retirement system, the Fund or the Board in obtaining indemnity insurance authorized by law or when requested by the Oklahoma State Regents for Higher Education, assist trust funds for which the State Regents serve as trustees in obtaining indemnity insurance authorized by law; and~~

~~11. 9. Assist any state agency, board, commission, or department, and any officers, employees, and members thereof, charged with any type of licensing authority in obtaining indemnity insurance for liability for judgments based on the licensing authority rendered by any court pursuant to federal law.~~

B. The Director of the ~~Office of Public Affairs~~ Department of Central Services is authorized to hire or contract for the services of a Risk Management Administrator who shall supervise

the purchase of property and casualty insurance for all state-owned real and personal property.

C. The Risk Management Administrator shall also be responsible for the continuing evaluation of the insurance coverage needed by the state and the insurance coverage in force. All state agencies shall submit to the Risk Management Administrator any information which the Risk Management Administrator deems necessary to perform this duty.

D. The school districts of this state are authorized to request the Risk Management Administrator to supervise the purchase of insurance coverage for the school districts.

E. Prior to purchase of property and casualty insurance by any state agency, details of the proposed purchase shall be submitted to the Risk Management Administrator for approval or disapproval.

F. Any state agency, board, commission, or department, and any officers, employees, and members thereof, charged with any type of licensing authority may obtain indemnity insurance for liability for judgments based on any action taken pursuant to the licensing authority rendered by any court pursuant to federal law. Prior to purchase of said insurance, details of the proposed purchase shall be submitted to the Risk Management Administrator for approval or disapproval.

G. The Director of the ~~Office of Public Affairs~~ Department of Central Services shall promulgate ~~and adopt~~ rules and regulations necessary to effect the provisions of this risk management program.

H. 1. Any community action agency established pursuant to Sections 5035 through 5040 of this title when distributing food stamps and otherwise participating in the food stamp program pursuant to a contract entered into pursuant to Section 241 of Title 56 of the Oklahoma Statutes shall be eligible to participate in the comprehensive professional risk management program established pursuant to this section.

2. The Risk Management Administrator shall obtain or provide for insurance coverage for a community action agency or bonding

for agency employees for risks incurred as a result of distribution of food stamps or coupons including but not limited to losses of food stamps by theft or embezzlement.

3. The Risk Management Administrator shall determine criteria for participation in the risk management program by such community action agencies. In addition, the Risk Management Administrator may require each community action agency to provide adequate qualified personnel, and suitable facilities for storing and issuing food stamps or coupons, and comply with such other standards that are necessary for the protection of the food stamps or coupons when in the care, custody and control of the community action agencies.

4. To receive coverage pursuant to this section, a community action agency shall be required to make payments for any insurance coverage and shall otherwise comply with the provisions of this section and rules promulgated by the Department pursuant to the provisions of this section.

5. Requests for the insurance coverage provided pursuant to the provisions of this section shall be submitted in writing to the Risk Management Administrator by the community action agencies.

SECTION 4. AMENDATORY 51 O.S. 1991, Section 152, as amended by Section 26, Chapter 69, O.S.L. 1992 (51 O.S. Supp. 1992, Section 152), is amended to read as follows:

Section 152. As used in the Governmental Tort Claims Act:

1. "Action" means a proceeding in a court of competent jurisdiction by which one party brings a suit against another-i

2. "Agency" means any board, commission, committee, department or other instrumentality or entity designated to act in behalf of the state or a political subdivision-i

3. "Claim" means any written demand presented by a claimant or his authorized representative in accordance with this act to recover money from the state or political subdivision as compensation for an act or omission of a political subdivision or the state or an employee-i

4. "Claimant" means the person or his authorized representative who files notice of a claim in accordance with this act. Only the following persons and no others may be claimants:

- a. any person holding an interest in real or personal property which suffers a loss, provided that the claim of said person shall be aggregated with claims of all other persons holding an interest in the property and the claims of all other persons which are derivative of the loss, and that multiple claimants shall be considered a single claimant,
- b. the individual actually involved in the accident or occurrence who suffers a loss, provided that he shall aggregate in his claim the losses of all other persons which are derivative of his loss, or
- c. in the case of death, an administrator, special administrator or a personal representative who shall aggregate in his claim all losses of all persons which are derivative of the death;i

5. "Employee" means any person who is authorized to act in behalf of a political subdivision or the state 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;i

- a. Employee also includes:
 - (1) all elected or appointed officers, members of governing bodies and other persons designated to act for an agency or political subdivision, but the term does not mean a person or other legal entity while acting in the capacity of an independent contractor or an employee of an independent contractor, and
 - (2) from September 1, 1991, through June 30, 1996, licensed physicians, licensed osteopathic physicians and certified nurse-midwives providing prenatal, delivery or infant care services to State Department of Health clients pursuant to a contract entered into with the

State Department of Health in accordance with paragraph (3) of subsection (b) of Section 1-106 of Title 63 of the Oklahoma Statutes but only insofar as services authorized by and in conformity with the terms of the contract and the requirements of Section 1-233 of Title 63 of the Oklahoma Statutes.

- b. For the purpose of this act, the following are employees of this state, regardless of the place in this state where duties as employees are performed:
- (1) physicians acting in an administrative capacity,
 - (2) resident physicians and resident interns participating in a graduate medical education program of the University of Oklahoma Health Sciences Center or the College of Osteopathic Medicine of Oklahoma State University, and
 - (3) faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University, while engaged in teaching duties.

Physician faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University not acting in an administrative capacity or engaged in teaching duties are not employees or agents of the state. However, in no event shall the state be held liable for the tortious conduct of any physician, resident physician or intern while practicing medicine or providing medical treatment to patients-i

6. "Loss" means death or injury to the body or rights of a person or damage to real or personal property or rights therein-i

7. "Municipality" means any incorporated city or town, and all institutions, agencies or instrumentalities of a municipality-i

8. "Political subdivision" means:

- a. a municipality,
- b. a school district,

- c. a county,
- d. a public trust where the sole beneficiary or beneficiaries are a city, town, school district or county. For purposes of the Governmental Tort Claims Act, a public trust shall include a municipal hospital created pursuant to Section 30-101 et seq. of Title 11 of the Oklahoma Statutes, a county hospital created pursuant to Section 781 et seq. of Title 19 of the Oklahoma Statutes, or is created pursuant to a joint agreement between such governing authorities, that is operated for the public benefit by a public trust created pursuant to Section 176 et seq. of Title 60 of the Oklahoma Statutes and managed by a governing board appointed or elected by the municipality, county, or both, who exercises control of the hospital, subject to the approval of the governing body of the municipality, county, or both, provided, this subparagraph shall not apply to hospitals or trusts which purchase advertising or which belong to organizations which purchase advertising, in which public funds have been used, in any media the purpose of which is to influence legislation on the civil justice system or to advocate support for or opposition to a candidate for public office,
- e. for the purposes of the Governmental Tort Claims Act only, a housing authority created pursuant to the provisions of the Oklahoma Housing Authority Act, ~~Section 1051 et seq. of Title 63 of the Oklahoma Statutes,~~
- f. for the purposes of the Governmental Tort Claims Act only, corporations organized not for profit pursuant to the provisions of the Oklahoma General Corporation Act for the primary purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents,

- g. for the purposes of the Governmental Tort Claims Act only, districts formed pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act,
- h. for the purposes of the Governmental Tort Claims Act, ~~Section 151 et seq. of this title,~~ only, a fire protection district created pursuant to the provisions of Section 901.1 et seq. of Title 19 of the Oklahoma Statutes,
- i. for the purposes of the Governmental Tort Claims Act only, a benevolent or charitable corporate volunteer or full-time fire department for an unincorporated area created pursuant to the provisions of Section 592 et seq. of Title 18 of the Oklahoma Statutes,
- j. for purposes of the Governmental Tort Claims Act only, an Emergency Services Provider rendering services within the boundaries of a Supplemental Emergency Services District pursuant to an existing contract between the Emergency Services Provider and the Oklahoma State Department of Health. Provided, however, that the acquisition of commercial liability insurance covering the activities of such Emergency Services Provider performed within the State of Oklahoma shall not operate as a waiver of any of the limitations, immunities or defenses provided for political subdivisions pursuant to the terms of the Governmental Tort Claims Act,
- k. for purposes of the Governmental Tort Claims Act only, a conservation district created pursuant to the provisions of Section 1501-101 of Title 82 of the Oklahoma Statutes,
- l. for purposes of the Governmental Tort Claims Act, districts formed pursuant to the Oklahoma Irrigation District Act, and
- m. for purposes of the Governmental Tort Claims Act only, any community action agency established pursuant to Sections 5035 through 5040 of Title 74

of the Oklahoma Statutes when storing, issuing or distributing food stamps or coupons and otherwise participating in the food stamp program pursuant to a contract entered into pursuant to Section 241 of Title 56 of the Oklahoma Statutes,

and all their institutions, instrumentalities or agencies-i

9. "Scope of employment" means performance by an employee acting in good faith within the duties of his office or employment or of tasks lawfully assigned by a competent authority including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the employee, but shall not include corruption or fraud-i

10. "State" means the State of Oklahoma or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof-i
and

11. "Tort" means a legal wrong, independent of contract, involving violation of a duty imposed by general law or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment.

SECTION 5. 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.

44-1-7003

KSM