

SHORT TITLE: An Act relating to duplicate sections;
merging and repealing duplicate sections.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 761

By: Smith of the Senate

and

Toure of the House

AS INTRODUCED

An Act relating to duplicate sections; amending 6 O.S. 1991, Section 501.1, as last amended by Section 1 of Enrolled House Bill No. 1748 of the 1st Session of the 46th Oklahoma Legislature, which relates to branch banking; amending 6 O.S. 1991, Section 502, as last amended by Section 2 of Enrolled House Bill No. 1748 of the 1st Session of the 46th Oklahoma Legislature, which relates to bank holding companies; amending 36 O.S. 1991, Section 1254, as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.5), and as last amended by Section 2 of Enrolled Senate Bill No. 223 of the 1st Session of the 46th Oklahoma Legislature, which relates to unfair claims settlement practices; amending 63 O.S. 1991, Section 2505, as last amended by Section 2 of Enrolled Senate Bill No. 87 of the 1st Session of the 46th Oklahoma Legislature, which relates to provision of comprehensive health services; amending 74 O.S. 1991, Section 85.7, as last amended by Section 3 of Enrolled House Bill No. 2131 of the 1st Session of the 46th Oklahoma Legislature, which relates to competitive bid procedures; amending 82 O.S. 1991, Section 1324.16, as last amended by Section 2 of Enrolled Senate Bill No. 99 of the 1st Session of the 46th Oklahoma Legislature, which relates to term of office; merging and consolidating duplicate sections; repealing 6 O.S. 1991, Section 501.1, as last amended by Section 54 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, 6 O.S. 1991, Section 502, as last amended by Section 55 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, 36 O.S. 1991, Section 1254, as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.5), and as last amended by Section 3 of Enrolled House Bill No. 1806 of the 1st Session of the 46th Oklahoma Legislature, 63 O.S. 1991, Section 2505, as last amended by Section 2 of Enrolled Senate Bill No. 280 of the 1st Session of the 46th Oklahoma Legislature, 74 O.S. 1991, Section 85.7, as last amended by Section 18 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, and 82 O.S. 1991, Section 1324.16, as last amended by Section 1 of Enrolled Senate Bill No. 321 of the 1st Session of the 46th Oklahoma Legislature, which are duplicate sections; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 6 O.S. 1991, Section 501.1, as last amended by Section 1 of Enrolled House Bill No. 1748 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 501.1 A. Authorization to establish branches.

1. Any bank may establish and perform any banking function at no more than two branch banks on property owned or leased by the bank as follows:

- a. located within the corporate city limits where the main bank is located, or
- b. located within twenty-five (25) miles of the main bank if located in a city or town which has no state or national bank located in the city or town; provided however, if an application for a bank charter has been filed, the Board shall give priority to the charter application.

2. Neither the Board nor the Comptroller of the Currency shall grant a certificate for any branch bank unless it is more than three hundred thirty (330) feet from any main bank or branch bank in counties with a population of five hundred thousand (500,000) or more according to the 1980 Federal Decennial Census unless the branch bank is established with the irrevocable consent of such other bank. This distance limitation shall be determined by measuring along a straight line drawn between the nearest exterior wall of the appropriate main bank building or branch bank building and the nearest exterior wall of the branch bank or facility.

3. If at the time of acquisition of a bank pursuant to subsection C of this section no other state or national bank was located in the same city or town as the acquired bank, the Board or the Comptroller of the Currency shall not grant any other bank a certificate to establish a branch bank within such city or town for

a period of five (5) years after the acquisition and operation of the branch bank.

B. Authorization to accept deposits at institutions of higher education. Any main bank, branch bank or savings association located in a county where an institution of higher education is located may open accounts and accept deposits for not to exceed three (3) days per year on the campus of the institution of higher education at an institution-sponsored event if permission is granted by the institution. A bank or savings association may use a mobile facility for the purpose of opening accounts and accepting deposits as described in this subsection. Except as provided in this subsection, a mobile facility shall not be used for any other purpose.

C. Authorization to branch by acquisition.

1. Subject to the limitations in subsection D of this section, any bank may acquire and operate as branch banks at which any banking function may be performed an unlimited number of banks or savings associations or branch banks or savings association branches without restriction on location. Any such acquisition of a bank or savings association may include all of the assets and liabilities of the bank or savings association and all branches and facilities thereof which have been established prior to the date of the acquisition as determined by the Board or the Comptroller of the Currency.

2. If a bank or savings association acquired pursuant to this subsection had not established any or all of the outside-attached facilities or detached facilities permitted under Section 415 of this title or Section 381.24b of Title 18 of the Oklahoma Statutes at the time of acquisition, the acquiring bank may establish such facilities after the acquisition.

D. Deposit limitation.

1. It shall be unlawful for any bank or out-of-state bank which has direct or indirect control of more than fifteen percent (15%) of the total amount of deposits of insured depository institutions located in Oklahoma as determined by the Commissioner on the basis of the most recent reports of such institutions to their supervisory authorities to acquire any other bank or savings association in this state.

2. The deposit limitation provided for in this subsection shall not apply to disallow an acquisition of a bank or savings association if control results only by reason of ownership or control of shares of a bank or savings association acquired directly or indirectly:

- a. in a good faith fiduciary capacity, except when such shares are held for the benefit of the acquiring bank's shareholders, or
- b. by a bank in the regular course of securing or collecting a debt previously contracted in good faith, or
- c. at the request of or in connection with the exercise of regulatory authority for the purpose of preventing imminent failure of the bank or savings association or to protect the depositors thereof as determined by the principal supervisory agency in its sole discretion.

Provided, however, at the end of a period of five (5) years from the date of acquisition, for the circumstances set forth in subparagraphs b and c of this paragraph, the deposits of the acquired bank or savings association shall be included in computing the deposit limitation and if deposits are in excess, appropriate reductions and disposition shall be made within six (6) months to meet such limitations. Further, in the circumstances set forth in subparagraph c of this paragraph, the Commissioner and the Federal Deposit Insurance Corporation shall give priority in authorizing any

such acquisition to any acquiring bank whose total deposits do not exceed the deposit limitation.

E. Authorized acquisitions. Subject to the limitations in subsection D of this section, a bank or savings association shall not be acquired by a bank and operated as a branch bank until the bank or savings association to be acquired has been in existence and continuous operation for a period of five (5) years. Subject to the limitations in subsection D of this section, after January 1, 1997, a branch bank or savings association branch shall not be acquired by a bank and operated as a branch bank until the branch bank or savings association branch to be acquired has been in existence and continuous operation for a period of five (5) years. The provisions of this subsection shall not prevent a bank from acquiring a bank to be operated as a branch bank whose charter was granted for the purpose of:

1. Purchasing the assets and assuming the liabilities of a bank closed by the Commissioner or the Comptroller of the Currency due to insolvency or impairment of capital; or

2. Acquiring or merging with an existing bank with an interim bank charter in accordance with the laws of this state or of the United States.

F. Certificate to establish and operate a branch bank.

1. No bank shall be permitted to establish or operate a branch bank except upon certificate issued by the Board or Comptroller of the Currency.

2. The application for a certificate to establish or operate a branch bank of a state bank shall comply with the regulations of the Board. Within thirty (30) days after receipt of the application, the Commissioner shall report the results of the investigation of the Commissioner to the Board. Notice of hearing on the application shall be given as required by any rule by the Board. Within twenty (20) days after the conclusion of the hearing, the Board, in its

sole discretion, shall approve or deny the application and shall notify the applicant of its decision. An application fee may be assessed in an amount set by rule of the Board.

G. Right to operate and maintain facilities. The provisions of this section shall not be construed in derogation or denial of the right to operate and maintain facilities as provided for in Sections 421 and 422 of this title.

H. Branch relocations. It is the policy of the Legislature of Oklahoma that branches, whether de novo or by acquisition, or main offices of banks state or national, not be permitted to be relocated in such a manner which would result in one or more branches in locations which could not have been lawfully established there to begin with, except as specifically permitted herein. A branch may be relocated:

1. De novo. For a branch which was established as a de novo branch and not a branch by acquisition, on property owned or leased by the bank:

- a. within the corporate city limits where the main bank is located, or
- b. within twenty-five (25) miles of the main bank if the branch will be located in a city or town which has no state or national bank located in the city or town. However, if an application for a bank charter has been filed, the Board or the Office of the Comptroller of the Currency shall give priority to the charter application if filed prior to the filing of the branch application;

2. By acquisition. A branch which resulted from the acquisition of a branch from another bank or savings and loan or of a main office or branch thereof, which was converted to a branch, hereinafter referred to as the "acquired branch". Application may

be made to relocate the acquired branch to a location on property owned or leased by the bank:

- a. within the corporate city limits where the acquired branch is located, or
- b. to a location within twenty-five (25) miles of the acquired branch if the relocation is to be in a city or town in which no state or national bank is located. however, if an application for a bank charter has been filed, the Board or the Office of the Comptroller of the Currency shall give priority to the charter application if filed prior to the branch application; or

3. By relocation of a main office.

- a. De novo branches of a main office may not remain or be established in locations or numbers which are not within the requirements of subsection A of this section by reason of relocation of the main office.
- b. Relocation of a main office which would result in one or more de novo branches no longer being within the requirements of subsection A of this section, will require with regard to any such branch:
 - (1) relocation of any such branch to a location within the requirements of subsection A of this section for the newly relocated main office,
 - (2) divestiture of any such branch, or
 - (3) closing of any such branch.

The preceding requirements must be accomplished before the date the relocated main office opens for business.

I. The Board may by rule establish a procedure whereby the Commissioner may grant approval and issue the certificate to establish and operate or relocate a branch without a hearing before the Board. The procedure shall include criteria set by the Board to

be applied by the Commissioner in the consideration of the application. An application fee may be charged in an amount provided by rule of the Board.

J. No out-of-state bank shall be permitted to establish a de novo branch in this state.

K. Beginning May 31, 1997, a bank, branch bank, savings association or savings association branch which has been in existence for five (5) years or more may be acquired by and engage in an interstate merger transaction with any out-of-state bank in accordance with applicable laws and rules of the Department and the state in which the main office of the out-of-state bank is located. If the out-of-state bank does not have a branch bank or savings association branch in this state at the time the interstate merger application is filed with the appropriate regulatory authority, then the out-of-state bank must acquire the bank or the savings association, and may not acquire just a branch thereof. An interstate merger transaction will not be permitted if it will result in a violation of the fifteen percent (15%) deposit limitation contained in subsection D of this section. If the result of an interstate merger transaction is that the bank or savings association which is acquired is converted to a branch bank of an out-of-state bank, it shall have all the powers and be subject to the same limitations as any other branch bank located in this state. All branch banks of an out-of-state bank shall be regulated by the Commissioner as if the branch banks comprised an Oklahoma bank and the branch banks shall comply with applicable Oklahoma laws and rules in the conduct of their business in this state to the maximum extent authorized under federal law. No branch bank of an out-of-state bank shall be permitted to establish separate branch banks or limited service facilities, or to engage in any activity not permissible for a bank in this state.

L. Beginning May 31, 1997, a bank may establish a branch bank in any other state, or may acquire branch banks of an out-of-state bank which are located in any other state in accordance with the laws of the other state. The bank shall be required to follow all procedures and to obtain all approvals necessary to establish or acquire a branch bank under applicable Oklahoma law and any applicable rules as may be established by the Board. The bank shall file with the Department a copy of each application or notice filed with federal or other state regulatory authorities relating to the transaction at the same time the application or notice is filed with the federal or other state regulatory authorities. Upon consummation of the transaction, the bank shall have all of the powers under the applicable laws and regulations of the state in which each branch bank is located, subject to the duties and restrictions thereof. In addition to any regulation by bank and regulatory authorities in the state where a branch bank is located, each branch bank located outside of this state shall be subject to regulation by the Department as if the branch bank were located in this state and shall comply with the law of this state in the conduct of its banking business in such other state.

M. The provisions of this section shall not be construed as permitting branches established pursuant to this section through an interstate merger transaction to be taxed at a rate which is different from or discriminates in any way against a bank, savings association, or branch of either, which is chartered in this state. The Oklahoma Tax Commission is hereby authorized to adopt policies and procedures consistent with the provisions of this subsection.

N. An operating subsidiary of a bank which engages in the business of owner-occupied home mortgage lending shall not be considered a branch under this section in order to conduct such lending operation at any location.

SECTION 2. AMENDATORY 6 O.S. 1991, Section 502, as last amended by Section 2 of Enrolled House Bill No. 1748 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 502. A. Citation - Purpose. This section may be cited as the "Bank Holding Company Section" and shall have for its purpose the maintenance of competitive services between banks by limiting the expansion of bank holding companies and similar organizations. It is deemed to be in the public interest that competition prevail in the banking system in the State of Oklahoma and to that end that the independence of unit banks be preserved. Further, it shall be the policy of the State of Oklahoma to oppose any attempt by any bank holding company to acquire control of any bank located in this state if such acquisition would result in a monopoly or in an attempt to monopolize the business of banking in this state.

B. Multibank holding companies authorized. A company may be a multibank holding company and have direct or indirect ownership or control of two or more banks or bank holding companies, subject to the deposit limitation provided for in subsection C of this section; provided that except as specifically permitted in this Code, all forms of direct or indirect ownership or control of banks, bank holding companies, and multibank holding companies by any out-of-state bank or out-of-state bank holding company shall be prohibited.

C. Limitation. It shall be unlawful for a multibank holding company or an out-of-state bank or bank holding company to acquire direct or indirect ownership or control of any insured depository institution located in this state if the acquisition results in any such holding company or bank having direct or indirect ownership or control of insured depository institutions located in this state, the total deposits of which at the time of the acquisition exceed fifteen percent (15%) of the total amount of deposits of insured depository institutions located in this state as determined by the

Commissioner on the basis of the most recent reports of such institutions to their supervisory authorities which are available at the time of the proposed acquisition or to acquire direct or indirect control of any insured depository institution in this state after such multibank holding company or an out-of-state bank or bank holding company has reached or exceeded the fifteen percent (15%) threshold as provided in this subsection. Acquisitions of other multibank holding companies shall not be exempt from this limitation.

D. Board of Directors requirements. The Board of Directors of each bank acquired by a multibank holding company shall have no less than a majority of the total membership of the Board of Directors of the bank from the local area in which the bank is located.

E. Exceptions to deposit limitation. The deposit limitation provided for in subsection C of this section shall not apply in the following circumstances:

1. Control of a bank by reason of ownership or control of shares acquired by a bank or by a bank holding company in good faith in a fiduciary capacity, except where such shares are held for the benefit of the shareholders of such bank or such bank holding company; or

2. Control of a bank by reason of ownership or control of shares acquired by a bank or by a bank holding company in the regular course of securing or collecting a debt previously contracted in good faith.

F. Limitation on acquisitions. A bank, branch bank, savings association or savings association branch shall not be acquired by a bank holding company or a multibank holding company for a period of five (5) years after the bank, branch bank, savings association or savings association branch was granted its charter by the appropriate authorizing agency. However, the provisions of this subsection shall not prevent a bank holding company or a multibank

holding company from directly or indirectly acquiring a bank whose charter was granted for the purpose of:

1. Purchasing the assets and assuming the liabilities of a bank closed by the Commissioner or the Comptroller of the Currency due to insolvency or impairment of capital; or

2. Acquiring or merging an existing bank with an interim bank charter in accordance with the laws of this state or of the United States.

Nothing in this subsection shall be construed to preclude the acquisition of a bank that has been chartered for less than five (5) years by a newly formed bank holding company which does not own or control, directly or indirectly, another bank.

G. De novo charter prohibition. A bank holding company or a multibank holding company shall not apply for or obtain a de novo charter except for the following purposes:

1. Purchasing the assets and assuming the liabilities of a bank closed by the Commissioner or the Comptroller of the Currency due to insolvency or impairment of capital; or

2. In the case of a bank holding company, merging with an existing bank subsidiary or subsidiaries of the bank holding company in accordance with the laws of this state or of the United States and subject to the following provisions:

- a. a bank holding company may apply for and obtain only one de novo charter for the purpose of merging with an existing bank subsidiary or subsidiaries pursuant to this subsection, and
- b. the de novo chartered bank shall be the survivor of any such merger, and
- c. the de novo chartered bank shall be the main banking office of the merged banks, and
- d. the deposit limitations provided for in subsection C of this section and paragraph 1 of subsection D of

Section 501.1 of this title shall be applicable to any such merger, and

- e. the de novo chartered bank shall have branching authority under subsections A and C of Section 501.1 of this title.

A company shall not be deemed to be a bank holding company for purposes of this section until it owns or controls a bank which has received a charter from the Board of this state, the Comptroller of the Currency or a foreign country.

H. Interim charters. A bank holding company or a multibank holding company may apply for and obtain an interim charter to organize an interim state bank for the purpose of facilitating the creation of a bank holding company, or acquiring or merging with an existing bank in accordance with the provisions of Section 502.1 of this title or the laws of the United States.

I. Acquisition approval - Reports. A national bank in this state, bank holding company, or multibank holding company seeking to acquire a state bank or national bank in this state, or a nonbanking company that submits an application for approval of such acquisition to the Board of Governors of the Federal Reserve System pursuant to the provisions of Sections 1841 et seq. of Title 12 of the United States Code Annotated shall also submit a copy of such application to the Board.

J. Jurisdiction - Appeals. The district court shall have jurisdiction to determine all questions of compliance with the provisions of this section, except such jurisdiction shall not apply to actions of the Board or proceedings before the Board conducted pursuant to the Banking Code. The decision of the district court shall be appealable to the Supreme Court in the same manner as in other civil cases.

K. ~~1.~~ Reports and examinations.

1. Each bank holding company, multibank holding company and out-of-state bank holding company which directly or indirectly owns, controls, or has power to vote twenty-five percent (25%) or more of the voting shares of one or more banks shall furnish a copy of the annual report of the operations of the holding company which is submitted to the Federal Reserve Bank for each fiscal year to the Commissioner.

2. The books and records of each bank holding company of state-chartered banks are subject to inspection and examination by the Commissioner.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 1254, as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.5), and as last amended by Section 2 of Enrolled Senate Bill No. 223 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1250.5 Any of the following acts by an insurer, if committed in violation of Section 1250.3 of this title, constitutes an unfair claim settlement practice:

1. Failing to fully disclose to first party claimants, benefits, coverages, or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim;

2. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;

3. Failing to adopt and implement reasonable standards for prompt investigations of claims arising under its insurance policies or insurance contracts;

4. Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;

5. Failing to comply with the provisions of Section 1219 of this title;

6. Denying a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so;

7. Except where there is a time limit specified in the policy, making statements, written or otherwise, which require a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's rights;

8. Requesting a claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment;

9. Issuing checks or drafts in partial settlement of a loss or claim under a specified coverage which contain language which releases an insurer or its insured from its total liability;

10. Denying payment to a claimant on the grounds that services, procedures, or supplies provided by a treating physician or a hospital were not medically necessary unless the health insurer or administrator, as defined in Section 1442 of this title, first obtains an opinion from any provider of health care licensed by law and preceded by a medical examination or claim review, to the effect that the services, procedures or supplies for which payment is being denied were not medically necessary. Upon written request of a claimant, treating physician, or hospital, such opinion shall be set forth in a written report, prepared and signed by the reviewing physician. The report shall detail which specific services, procedures, or supplies were not medically necessary, in the opinion of the reviewing physician, and an explanation of that conclusion. A copy of each report of a reviewing physician shall be mailed by the health insurer, or administrator, postage prepaid, to the claimant, treating physician or hospital requesting same within fifteen (15) days after receipt of such written request. As used in this paragraph, "physician" means a person holding a valid license to practice medicine and surgery, osteopathic medicine, podiatric

medicine, dentistry, chiropractic, or optometry, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes;

11. Compensating a reviewing physician, as defined in paragraph 10 of this subsection, on the basis of a percentage of the amount by which a claim is reduced for payment;

12. Compelling, without just cause, policyholders to institute suits to recover amounts due under its insurance policies or insurance contracts by offering substantially less than the amounts ultimately recovered in suits brought by them, when such policyholders have made claims for amounts reasonably similar to the amounts ultimately recovered; or

13. Failing to maintain a complete record of all complaints which it has received during the preceding three (3) years or since the date of its last examination by the Commissioner, whichever time is shorter. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For the purposes of this paragraph, "complaint" means any written communication primarily expressing a grievance.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 2505, as last amended by Section 2 of Enrolled Senate Bill No. 87 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 2505. A. Health maintenance organizations and prepaid health plans shall provide comprehensive health services directly or by contract or agreement with other persons, corporations, institutions, associations, foundations or other legal entities, public or private, in accordance with Section 2501 et seq. of this title and the laws governing such professions and services. With respect to chiropractic services, such covered services shall be provided on a referral basis within the network at the request of an

enrollee who has a condition of an orthopedic or neurological nature if:

1. A referral is necessitated in the judgment of the primary care physician; and

2. Treatment for the condition falls within the licensed scope of practice of a chiropractic physician.

B. Such organizations and plans may contract or agree with other persons to provide actuarial, underwriting, marketing, billing, fiscal, and other services as may be required for the operation of a health maintenance organization or prepaid health plan.

C. Health maintenance organizations and prepaid health plans may contract to provide certain selected comprehensive health services for organizations or corporations which provide certain other comprehensive health services to their members or employees through alternative health care plans.

D. 1. A health maintenance organization or prepaid health plan shall not:

a. engage in the practice of medicine or any other profession except as provided by law, or

b. prohibit or restrict a primary care physician from referring a patient to a specialist within the network if such referral is deemed medically necessary in the judgment of the primary care physician.

2. A health maintenance organization or prepaid health plan shall provide comprehensive health services in a manner that is reasonably geographically convenient to residents of the service area for which it seeks a license.

E. A health maintenance organization or prepaid health plan may adjust its prepaid premium to permit financial risk-sharing with other organizations or corporations which contract with the health

maintenance organization or prepaid health plan to provide such selected services.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 85.7, as last amended by Section 3 of Enrolled House Bill No. 2131 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 85.7 A. No acquisition or contract shall be made without the submission of competitive bids by the State Purchasing Director, except as provided in this section.

1. Any acquisition or contract for an amount of Two Thousand Five Hundred Dollars (\$2,500.00) or less shall be exempted from competitive bidding procedures. Separate contracts or acquisitions for the individual components of a total project or service or split purchasing for the purpose of evading the requirement of competitive bidding shall be deemed a felony. The State Purchasing Director may waive or increase the two-thousand-five-hundred-dollar limit up to, but not to exceed, a contract or purchase price of ten percent (10%) above the open market limit to perfect an otherwise valid acquisition or contract inadvertently exceeding the two-thousand-five-hundred-dollar limit due to administrative error or unforeseeable circumstances. Requests for such waiver or increase shall be promptly submitted upon the discovery of such error or circumstance to the State Purchasing Director in a form prescribed by said Director setting forth the facts. All requests for such waiver or increase in amount, whether granted or denied, shall be reported monthly to the offices of the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives.

2. Contracts for master custodian banks or trust companies, investment managers and investment consultants for state retirement systems, the State Insurance Fund, and the State and Education Employees Group Insurance Board, the pension fund management consultants of the Oklahoma State Pension Commission, the

Commissioners of the Land Office and actuarial, architectural, engineering, legal, or other professional services as such term is defined in Section 803 of Title 18 of the Oklahoma Statutes shall be exempt from competitive bidding procedures. The Department of Central Services shall send a copy of such contracts or a list of such contracts to any member of the House or Senate Appropriations Committee, if requested by the member.

3. Competitive bids shall not be required for any emergency acquisitions or contracts involving Five Thousand Dollars (\$5,000.00) or less, when, upon written request of the State Purchasing Director specifying the facts and circumstances giving rise thereto, the Governor certifies in writing the existence of an emergency authorizing the acquisition or contract.

4. Competitive bids for services to alleviate a serious environmental emergency shall not be required if, upon the request of the Chairman of the Corporation Commission and after having examined the facts and circumstances of the case, the Governor certifies in writing the existence of a serious environmental emergency. A serious environmental emergency for the purpose of this section means a situation within the jurisdiction of the Commission:

- a. in which serious damage to the environment will quickly occur if immediate action is not taken, and the damage will be so significant that the urgent need for action outweighs the public policy strongly favoring competitive bids, or
- b. a situation in which human life or safety is in imminent danger or significant property interests are threatened with imminent destruction.

5. Purchases or acquisitions for repairs of equipment and machinery in emergencies, or of livestock through a market agency, dealer, commission house, or livestock auction market bonded or

licensed under federal or state law or the purchase or collection of semen or embryos and the placement of embryos into recipient livestock shall not be subject to the competitive bid requirements of this section or any other provisions of the Oklahoma Central Purchasing Act.

6. Purchases or acquisitions of human organs and internal prostheses for the Oklahoma Medical Center, shall not be subject to the competitive bid requirements of this section or any other provisions of the Oklahoma Central Purchasing Act.

7. Any contract for the restoration of historical sites and museums shall not be subject to the competitive bid requirements of this section or any other provision of the Oklahoma Central Purchasing Act. The procedures will be followed except contractor and bid selection will be the prerogative of the Oklahoma Historical Society Board and selection will be based on contractors' documented qualifications and experience.

8. Purchases of postage by state agencies shall be made in accordance with the provisions of Sections 90.1 through 90.4 of this title.

9. Any sole source contract shall not be subject to competitive bidding procedures. Any agency requesting products or services pursuant to a sole source contract shall comply with Section 89 of this title.

10. Contracts for the design, development, communication or implementation of the state employees flexible benefits plan shall not be subject to the requirements of this section; provided, that the Flexible Benefits Advisory Council shall use procedures consistent with the competitive bid requirements of the Oklahoma Central Purchasing Act.

11. a. Any contract for a service for which the Department of Central Services has approved as qualifying for a

fixed and uniform rate shall not be subject to competitive bid procedures.

- b. The Department of Central Services shall establish criteria and guidelines for those services which may be qualified for a fixed and uniform rate.
- c. The exception to competitive bid procedures authorized by this paragraph shall be limited to contracts for those services furnished to persons directly benefiting from such services and shall not be used by any agency to employ consultants or to purchase products.
- d. Any agency desiring to have a service qualified for a fixed and uniform rate shall make a request for such qualification to the Department of Central Services and shall submit any documentation necessary to support such request. The Department of Central Services shall either approve or deny the request. If the Department of Central Services qualifies such services for a fixed and uniform rate, the agency requesting such qualification shall establish a fixed and uniform rate for such service, provided no contracts shall be entered into by the agency until such rate has been approved by the agency in a public hearing. Prior to approval, the proposed rate shall be clearly and separately identified in the agenda of the agency for the hearing and shall be openly and separately discussed during such hearing. In addition, the agency shall notify the Director of the Department of Central Services of its pending consideration of the proposed rate at least thirty (30) days before the agency is to meet on the proposed rate. Along with such notice, the agency shall

deliver to the Department of Central Services a copy of the agenda items concerning the proposed rate with all supporting documentation and materials. The Director of the Department of Central Services shall communicate any observation, reservation, criticism or recommendation to the agency, either in person at the time of the hearing or in writing delivered to the agency before or at the time of the hearing. The Director of the Department of Central Services shall specifically note in such written communications if the Director of the Department of Central Services has determined the rate to be excessive. Any such written communication presented in the absence of the Director of the Department of Central Services shall be presented orally during the public hearing. Whether made in person or in writing any comment made by the Director of the Department of Central Services shall be made a part of the minutes of the hearing in full.

- e. Within two (2) weeks after the convening of the Legislature, the administrative officer of each state agency shall furnish to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and to any member of the House or Senate, if requested by such member, a complete list of all of the types of services paid for by uniform fixed rates, the amount of the rate last approved by the agency for the service, and the number of contracts then in existence for each type of service. Any rate which has been determined to be excessive by the Director of the Department of Central Services shall be specifically identified in such list.

f. At any time, the Director of the Department of Central Services is authorized to review, suspend, or terminate a contract entered into pursuant to the provisions of this paragraph if the Director of the Department of Central Services determines the contract is not necessary, is excessive, or is not justified.

12. Purchases of or contracts for specifically prescribed nonmedical adaptive technology-related items for individuals with disabilities who are clients of the Department of Rehabilitation Services and which ~~item is~~ are prescribed by a physician, rehabilitation engineer, qualified rehabilitation technician, speech therapist, speech pathologist, occupational therapist, physical therapist or qualified sensory aids specialist and other client goods and services shall not be subject to the competitive bid requirements of this section. The Commission for Rehabilitation Services shall develop standards for the ~~acquisition~~ purchase of such ~~nonmedical adaptive technology-related items~~ goods and services and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and shall include appropriate safeguards and written records to assure appropriate competition and economical and efficient purchasing and shall be approved by the Director of Central Purchasing.

13. Purchases of or contracts for specifically prescribed nonmedical assistive technology-related items not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) for individuals under sixteen (16) years of age who are recipients of Supplemental Security Income and which are prescribed by a physician, qualified sensory aids specialists or qualified special education instructors shall not be subject to the competitive bid requirements. The Department of Human Services shall develop standards for the acquisition of such nonmedical assistive technology-related items and may elect to utilize Central Purchasing when appropriate. Such

standards shall foster economy, short response time, and shall include appropriate safeguards and written records to assure appropriate competition and economical and efficient purchasing and shall be approved by the Director of Central Purchasing.

14. a. Structured settlement agreements entered into by the Attorney General's office in order to settle any lawsuit involving the state, the Legislature, any state board, agency, commission, or any employee or official of the state shall not be subject to the competitive bidding requirements of this section if:
 - (1) prior to entering into any contract for the services of an entity to administer a structured settlement agreement, the Attorney General receives proposals from at least three entities engaged in providing such services, and
 - (2) the selection of a particular entity is made on the basis of the response to the request which is the most economical and provides the most competent service which furthers the best interests of the state.
- b. A list of any such structured settlement agreements entered into by the Attorney General with summary thereon for the previous calendar year shall be submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on January 31 of each year.

15. Purchases available pursuant to a multistate or multigovernmental contract through the Central Purchasing Division, if the terms of the contract are more favorable to or will result in more favorable terms, conditions, accessibility, prices, control, or efficiency for the state than purchasing from a company distributing

to state agencies through a statewide contract or other contract shall be exempt from competitive bidding procedures.

16. The Commission on Marginally Producing Oil and Gas Wells shall be exempt from the competitive bid requirements of this section for contracts with local vendors for the purpose of holding special events and exhibitions throughout the state.

B. Acquisitions or contracts shall be awarded to the lowest and best bidder therefor at a specified time and place, which shall be open to the public, with such preference between bidders offering substantially the same products or services at substantially the same prices, as may be set under the authority of Section 85.5 of this title.

C. Bids for professional service contracts shall be evaluated by the State Purchasing Director and the agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best bid. Further, such agency shall present its evaluation and recommendation to the State Purchasing Director. A documented evaluation report containing the evaluations of the State Purchasing Director and the agency contracting for such service shall be completed prior to the awarding of a professional service contract and such report shall be a matter of public record.

D. When requested by the governing body of a state retirement system, the State Insurance Fund or the State and Education Employees Group Insurance Board which are authorized to hire investment managers, the Department of Central Services shall assist the governing body of a state retirement system, the Fund or the Board in the process of selecting investment managers. When requested by the Flexible Benefits Advisory Council, the Department of Central Services shall assist the Council in the process of selecting contracts for the design, development, communication or implementation of the state employees flexible benefits plan.

E. Except as otherwise specifically provided by law, the acquisition of food items or food products by a state public agency from a public trust created pursuant to Sections 176 through 180.56 of Title 60 of the Oklahoma Statutes shall comply with competitive bidding procedures pursuant to the provisions of this section.

SECTION 6. AMENDATORY 82 O.S. 1991, Section 1324.16, as last amended by Section 2 of Enrolled Senate Bill No. 99 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1324.16 A. Except as otherwise provided by law:

1. The term of office of every member elected to an original board shall be until the date of the annual meeting of the participating members of either the first, second or third year following the year of the incorporation of the district and until their successors are elected and have qualified, and as nearly as possible the terms of an equal number of directors on any such board shall expire on each of said dates;

2. At the annual meeting of each year after the year of the election of the original board members, elections shall be held to elect directors to fill any position on the board, the term of office of which has expired, and any director so elected shall hold office for a term of three (3) years and until his or her successor is elected and has qualified; and

3. For the purpose of election of board members and for such other purposes as the bylaws may prescribe, annual meetings of participating members shall be held by each district each year following the year of incorporation of such district. The board of directors shall cause notice of the time and place of each annual meeting and the purpose thereof to be given to each of its participating members. Each participating member shall be entitled to a single vote, regardless of the number of benefit units to which ~~he~~ the member has subscribed.

B. 1. ~~Beginning January 1, 1995, a~~ A requirement for qualification to serve as a board member for a rural water district or a nonprofit rural water corporation shall be a written pledge that upon election such board member shall attend a minimum of six (6) hours of workshop training to be offered periodically on a regional basis within twelve (12) months following election of such board member, and to be organized by the Oklahoma Water Resources Board in cooperation with the Oklahoma Rural Water Association with the purpose of study and instruction in areas of district financing, law, and the ethics, duties and responsibilities of district board members. Such requirement shall not apply to any board member who has had at least one (1) year of experience prior to the date of the board election as a member of the district board or nonprofit rural water corporation to which membership is sought.

2. The district or corporation shall reimburse all reasonable expenses incurred by any board member for attending such training workshop.

3. To avoid members having to interfere with their jobs or employment, such training sessions may be divided into three-hour segments, and insofar as possible be scheduled for evening sessions. Vocational-technical facilities, college facilities or other public facilities may be utilized in all parts of the state for convenience of the members. Such workshops must be offered within seventy-five (75) miles of the members' residences.

C. Should any pledging board member fail to attend the workshop training as required in subsection B of this section, he or she shall be deemed ineligible to serve as a board member commencing at the next regularly scheduled meeting of the board following the twelve-month period. The remaining board members shall select from the membership, as provided by the district or corporation bylaws, another qualified member to fill the vacancy and that person shall pledge to attend the workshop training provided for in this section.

The appointed member shall only serve until the next regularly scheduled election of board members and an election shall be held to fill the unexpired term of the vacated position.

D. Upon the election of a board member, the provisions of Sections 481 through 487 of Title 21 of the Oklahoma Statutes relating to nepotism shall not prohibit any employee already in the service of the district from continuing in such service or from promotion therein. Provided, however, the board member related to the employee shall excuse himself from the board meeting during any discussion of or action taken on any matter that could affect the employment or compensation for employment of such employee.

SECTION 7. REPEALER 74 O.S. 1991, Section 85.7, as last amended by Section 18 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, is hereby repealed.

SECTION 8. REPEALER 36 O.S. 1991, Section 1254, as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.5), and as last amended by Section 3 of Enrolled House Bill No. 1806 of the 1st Session of the 46th Oklahoma Legislature, and 63 O.S. 1991, Section 2505, as last amended by Section 2 of Enrolled Senate Bill No. 280 of the 1st Session of the 46th Oklahoma Legislature, are hereby repealed.

SECTION 9. REPEALER 82 O.S. 1991, Section 1324.16, as last amended by Section 1 of Enrolled Senate Bill No. 321 of the 1st Session of the 46th Oklahoma Legislature, is hereby repealed.

SECTION 10. REPEALER 6 O.S. 1991, Section 501.1, as last amended by Section 54 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, and 6 O.S. 1991, Section 502, as last amended by Section 55 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, are hereby repealed.

SECTION 11. Sections 5 and 7 of this act shall become effective July 1, 1997.

SECTION 12. Sections 1, 2 and 10 of this act shall become effective August 29, 1997.

SECTION 13. Sections 3, 4 and 8 of this act shall become effective November 1, 1997.

SECTION 14. 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.

46-1-1584

BP