

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2296

By: Sweeden of the House

and

Leftwich of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to counties and county officers; amending 19 O.S. 1991, Section 744, which relates to use of private prison contractors; authorizing certain contracts upon recommendation by County Jail Trust Authority; permitting contracts to be for certain time period; providing for certain immunity for board of county commissioners, county sheriff and County Jail Trust Authority; stating that certain contract contain certain provisions; requiring certain notice of termination of contract; prohibiting impairment of certain contracts; providing exception; amending Section 1, Chapter 237, O.S.L. 1994 (19 O.S. Supp. 1999, Section 904.1), which relates to creation of County Jail Trust Authority; requiring board of county commissioners to call a certain election; amending Section 2, Chapter 237, O.S.L. 1994 (19 O.S. Supp. 1999, Section 904.2), which relates to board of directors for County Jail Trust Authority; modifying membership of County Jail Trust Authority; amending 19 O.S. 1991, Section 339, as last amended by Section 1 of Enrolled House Bill No. 2560 of the 2nd Session of the 47th Oklahoma Legislature, which relates to general powers of the board of county commissioners; modifying powers; amending 68 O.S. 1991, Sections 53002, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 11, Chapter 1, O.S.L. 1999 and 53005, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 12, Chapter 314, O.S.L. 1998, (27A O.S. Supp. 1999, Sections 2-11-402 and 2-11-405), which relate to the Waste Tire Recycling Indemnity Fund; modifying definitions; authorizing employment of additional persons; providing for compensation; authorizing use of certain remaining funds for certain purposes; providing for permits for baling waste tires; prohibiting use of tires by certain persons or entities; requiring promulgation of rules; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 19 O.S. 1991, Section 744, is amended to read as follows:

Section 744. A. ~~Each~~ Upon the recommendation of the County Jail Trust Authority formed pursuant to Section 904.1 of this title, ~~the board of county commissioners is hereby authorized to~~ of each county may enter into contracts with private contractors for the management and operation of any jail owned by the county or for the incarceration of inmates in jail facilities owned and operated by private contractors. Such services shall meet any standards prescribed and established for county jails, including but not limited to standards concerning internal and perimeter security, discipline of inmates, employment of inmates, and proper food, clothing, housing, and medical care. ~~Said~~ The contracts ~~shall~~ may be ~~entered into~~ for a period not to exceed fifty (50) years subject to annual appropriations by the county excise board. ~~Said~~ The contracts shall be valid for a fiscal year only if the county excise board provides an appropriation for the contract for that fiscal year.

B. A comprehensive file for all private contractors interested in and capable of managing or operating a county jail or incarcerating inmates in a facility owned and operated by the contractor shall be maintained by the county. These files shall include a completed application form, a resume of the contractor's staff and capability, completed performance evaluation form for past projects on which the contractor has provided jail services to the county, a list of past contracts with the county, and a list of contracts to provide similar services to other political subdivisions of this state or other states.

The file shall include the mailing address of each private contractor.

Any contractor may request at any time to be included in the comprehensive file, and shall be so included within twenty (20) days of the request.

The ~~county~~ board of county commissioners may solicit evaluation of work done by contractors from the state, other political subdivisions, or members of the private sector, which evaluation shall be part of the comprehensive file.

C. The ~~county~~ board of county commissioners shall define the scope of a proposed project, determine the various project components, phases and timetables, and prepare detailed project descriptions to guide prospective contractors.

D. If the county intends to secure the services of private contractors, all contractors included in the file shall be notified through the mail of such intent. Such notification shall contain the following information:

1. Description and scope of the project or projects;
2. Estimated cost and time schedule for project;
3. Funds available, including federal, state or other participation;
4. Last date for submitting notice of interest in performing services to the board of county commissioners; and
5. Other pertinent data.

Private contractors desiring consideration shall meet the requirements of this section and to be considered shall submit a letter expressing interest in the project to the board of county commissioners within thirty (30) days of the postmark date of the letter of notification mailed by the board. Contractors shall have on file an application form not over twelve (12) months old.

E. The board shall review the files of the private contractors desiring consideration for the project, and shall select no ~~less~~ fewer than three and no more than five contractors for more detailed consideration. This initial screening should consider the

requirements of the project and the bid received, as well as the following factors to be determined from the file, and replies to inquiries to former clients:

1. Specialized experience in the type of work contemplated;
2. Capacity of the contractor to accomplish the work in the required time; and
3. Past performance, from the performance evaluation form.

The board shall award the contract to the contractor whose qualifications and project proposal most substantially meet the criteria of the project description.

F. The board shall negotiate the contract with the selected contractor, which contract shall include a fair and reasonable fee. If the board and the first-choice contractor cannot reach an agreement, their negotiations shall be terminated and negotiations with the second-choice contractor shall commence. If the board and the second-choice contractor cannot reach an agreement, their negotiations shall be terminated and negotiations with the third-choice contractor shall commence. If the board and the third-choice contractor cannot reach an agreement, then all negotiations shall be terminated. Should the board be unable to negotiate a satisfactory contract with any of the three selected contractors, the board shall select additional contractors in order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

G. Should there be an inadequate expression of interest in the project, the board of county commissioners shall confer to add additional contractors for consideration which are known to be appropriate for the project.

H. No contract authorized by the provisions of this section shall be awarded until the private contractor demonstrates to the satisfaction of the board of county commissioners:

1. That the contractor has the necessary qualifications and experience to provide the services specified in the contract;

2. That the contractor has the necessary qualified personnel to implement the terms of the contract;

3. That the financial condition of the contractor is such that the terms of the contract can be fulfilled;

4. That the ability of the contractor to obtain insurance or provide self-insurance to:

a. indemnify the county against possible lawsuits arising from the operation of jail facilities by the contractor, and

b. compensate the county for any property damage or expenses incurred due to the operation of jail facilities; and

5. That the contractor has the ability to comply with applicable court orders and jail standards.

I. The sheriff of the county or a person designated by the board of county commissioners shall monitor and report to the board of county commissioners on the implementation of the contract. The board of county commissioners, the county sheriff and the County Jail Authority shall be immune from liability for the acts or omissions of the private contractor.

J. A private contractor, in implementing a contract pursuant to the provisions of this section, shall not be bound by state laws or other legislative enactments which govern the appointment, qualifications, duties, salaries or benefits of jailers or other employees of the jail facilities, except that any personnel authorized to carry and use firearms shall comply with the certification standards required by the provisions of Section 3311 of Title 70 of the Oklahoma Statutes and be authorized to use firearms only to prevent the commission of a felony, to prevent

escape from custody, or to prevent an act which would cause death or serious bodily injury to the personnel or to another person.

K. A county is authorized to lease real property and improvements thereon to a private contractor in conjunction with a contract for private management of a jail facility located or to be built on the property. ~~Said~~ The lease may be entered into for periods up to fifty (50) years.

L. Any contract between a county and a private contractor, whereby the contractor provides for the housing, care, and control of inmates in a facility owned and operated by the contractor, shall contain provisions granting the county the option at the beginning of each fiscal year to purchase, at a predetermined price any such facility.

M. Any contract between a county and a private prison contractor for jail management or housing shall contain provisions granting the county the right to terminate such contract for cause upon giving a thirty-day written notice.

N. The provisions of this section shall not impair any contract between a County Jail Trust Authority and a private contractor for the management and operation of any county jail entered into prior to November 1, 2000, or the renewal, extension, or continuation of such contract. Despite any provision to the contrary in this section, each County Jail Trust Authority which has entered into a contract with a private contractor for the management and operation of any county jail prior to November 1, 2000, may enter into an additional contract or contracts with a private contractor for the management and operation of its county jail. Each contract may be for a period not to exceed fifty (50) years, and the services pursuant to each contract shall meet any standards prescribed and established for county jails, including, but not limited to, standards concerning internal and perimeter security, discipline of

inmates, employment of inmates, and proper food, clothing, housing and medical care.

SECTION 2. AMENDATORY Section 1, Chapter 237, O.S.L. 1994 (19 O.S. Supp. 1999, Section 904.1), is amended to read as follows:

Section 904.1 A. The board of county commissioners of any county, if the board determines that such would be conducive to the promotion and preservation of the public safety of the county, ~~may~~ shall call an election at which shall be submitted to the qualified voters of the county the question of whether to create a County Jail Trust Authority.

B. Notice of the election shall be given by publication in some newspaper of general circulation in the county once a week for two (2) consecutive weeks next preceding the date of the election. The notice shall specify the date of the election. The election shall be conducted in accordance with the general election laws of this state. If a majority of the qualified voters of the county voting on the question at an election called for such purpose by the board of county commissioners approve, the County Jail Trust Authority shall be created.

SECTION 3. AMENDATORY Section 2, Chapter 237, O.S.L. 1994 (19 O.S. Supp. 1999, Section 904.2), is amended to read as follows:

Section 904.2 A. The directors of the authority so created shall consist of five (5) members and include the ~~chairman~~ chairperson of the board of county commissioners, the county sheriff ~~and three appointed members who are~~, the presiding district court judge, one member appointed by the board of county commissioners, and one member appointed by the county sheriff. The appointed members shall be residents of the county and ~~who are~~ shall not be elected officials. ~~Each of the county commissioners shall appoint one of the three appointed members.~~

B. The county sheriff shall serve as ~~chairman~~ chairperson of the board of directors. The board of directors of the authority shall appoint a clerk and a treasurer. The board of directors shall fix the term and duties of the clerk and treasurer. The ~~chairman~~ chairperson and members of the board shall serve without compensation. The treasurer shall give an official bond, in an amount fixed with sureties approved by the board of directors, conditioned upon faithful accounting for all money pertaining to the authority and coming into ~~his~~ the hands of the treasurer.

SECTION 4. AMENDATORY 19 O.S. 1991, Section 339, as last amended by Section 1 of Enrolled House Bill No. 2560 of the 2nd Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 339. A. The county commissioners shall have power:

1. To make all orders respecting the real property of the county, to sell the public grounds of the county and to purchase other grounds in lieu thereof; and for the purpose of carrying out the provisions of this section it shall be sufficient to convey all the interests of the county in such grounds when an order made for the sale and a deed is executed in the name of the county by the chair of the board of county commissioners, reciting the order, and signed by the chair and acknowledged by the county clerk for and on behalf of the county;

2. To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated for its benefit;

3. To construct and repair bridges and to open, lay out and vacate highways: Provided, however, that when any state institution, school or department shall own, lease or otherwise control land on both sides of any established highway, the governing board or body of the same shall have the power to vacate, alter or relocate the highway adjoining the property in the following manner:

If it should appear that it would be to the best use and interest of such institution, school or department to vacate, alter or relocate such highway, the governing board or body shall notify the board of county commissioners, in writing, of their intention to hold a public hearing and determine whether to vacate, alter or relocate such highway, setting forth the location and terminals of the road, and all data concerning the proposed right-of-way if changed or relocated, and shall give fifteen (15) days' notice of such hearing by publication in some newspaper in the county or counties in which the road is located, and such hearing shall be held at the county seat of the county in which the road is located, and if a county line road, may be heard in either county. At such hearing testimony may be taken, and any protests or suggestions shall be received as to the proposed measure, and at the conclusion thereof if the governing board or body shall find that it would be to the best use and interest of such institution, school or department, and the public generally, they may make an appropriate order either vacating, altering or relocating the highway, which order shall be final if approved by the board of county commissioners. Such institution, school or department may by agreement share the cost of changing any such road. No property owner shall be denied access to a public highway by such order;

4. Until January 1, 1983, to furnish necessary blank books, plats, blanks and stationery for the clerk of the district court, county clerk, register of deeds, county treasurer and county judge, sheriff, county surveyor and county attorney, justices of the peace, and constables, to be paid for out of the county treasury; also a fireproof vault sufficient in which to keep all the books, records, vouchers and papers pertaining to the business of the county;

5. To set off, organize and change the boundaries of townships and to designate and give names therefor: Provided, that the

boundaries of no township shall be changed within six (6) months next preceding a general election;

6. To lease tools, apparatus, machinery or equipment of the county to another political subdivision or a state agency. The Association of County Commissioners of Oklahoma, the Oklahoma State University Center for Local Government Technology and the Office of the State Auditor and Inspector, together, shall establish a system of uniform rates for the leasing of such tools, apparatus, machinery and equipment;

7. To jointly, with other counties, buy heavy equipment and to loan or lease such equipment across county lines;

8. To develop minimum personnel policies for the county with the approval of a majority of all county elected officers;

9. To purchase, rent, or lease-purchase uniforms, safety devices and equipment for the officers and employees of the county and, provide incentive awards for safety related job performance. However, no employee shall be recognized more than once per calendar year and the award shall not exceed the value of One Hundred Dollars (\$100.00). The county commissioners may pay for any safety training or safety devices and safety equipment out of the general county funds or any county highway funds available to the county commissioners;

10. To provide for payment of notary commissions, filing fees, and the cost of notary seals and bonds;

11. To do and perform such other duties and acts that the board of county commissioners may be required by law to do and perform;

12. To make purchases at a public auction pursuant to the county purchasing procedures in subsection D of Section 1505 of this title;

13. To deposit interest income from highway funds in the general fund of the county;

14. To submit sealed bids for the purchase of equipment from this state, or any agency or political subdivision of this state;

15. To utilize county owned equipment, labor and supplies at their disposal on property owned by the county, public schools, state and unincorporated towns and cities with populations less than two thousand five hundred (2,500), the county may be reimbursed expenses related to any particular project upon the development and agreement of the work order;

16. To enter into intergovernmental cooperative agreements with the federally recognized Indian tribes within this state to address issues of construction and maintenance of streets, roads, bridges and highways exclusive of the provisions of Section 1221 of Title 74 of the Oklahoma Statutes; ~~and~~

17. To execute hold harmless agreements with the lessor in the manner provided by subsection B of Section 636.5 of Title 69 of the Oklahoma Statutes when leasing or lease-purchasing equipment; and

18. To apply to the Department of Environmental Quality for a waste tire permit to bale waste tires for use in approved engineering projects.

B. The county commissioners of a county or, in counties where there is a county budget board, the county budget board may designate money from general county funds for the designated purpose of drug enforcement and drug abuse prevention programs within the county.

C. When any lease or lease purchase is made on behalf of the county by the board pursuant to the provisions of this section, the county shall be allowed to have trade in values for transactions involving the Oklahoma Central Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes.

D. In order to timely comply with the Oklahoma Vehicle License and Registration Act with regard to county vehicles, the board of county commissioners may, by resolution, create a petty cash

account. The board of county commissioners may request a purchase order for petty cash in an amount necessary to pay the expense of license and registration fees for county motor vehicles. Any balance in the petty cash account after the license and registration fees have been paid shall be returned to the account or fund from which the funds originated. The county purchasing agent shall be the custodian of the petty cash account, and the petty cash account shall be subject to audit.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 53002, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 11, Chapter 1, O.S.L. 1999 (27A O.S. Supp. 1999, Section 2-11-402), is amended to read as follows:

Section 2-11-402. As used in the Oklahoma Waste Tire Recycling Act:

1. "Department" means the Department of Environmental Quality;
2. "Priority cleanup list" means a list of unpermitted waste dumps which:
 - a. did not exist when the owner took possession of the property where the tires are located, and were created without the consent of or benefit to the owner of the property, and
 - b. such other tire dumps designated by the Department pursuant to Section 2-11-406 of this title;
3. "Tire" means any solid or air-filled covering for motor vehicle wheels;
4. "Tire dealer" means any person engaged in the business of selling new and used tires to final consumers, not for resale;
5. "Waste tire facility" means any place which is permitted as a solid waste disposal site, in accordance with the Oklahoma Solid Waste Management Act, at which waste tires are collected or deposited for waste tire processing by shredding or other technology, ~~except~~ including baling as provided for in paragraph 6

of this section, which alters the form of at least one-half of the tires collected, for the purpose of facilitating the future extraction of useful materials for recycling, reuse or energy recovery; and

6. "Waste tire processing" means the ~~preparation of waste tires to facilitate use for recycling, reuse or energy recovery~~ proper installation or baling of tires in a project as authorized by Section 2-11-407.1 of this title or by Section 7 of this act.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 53005, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 12, Chapter 314, O.S.L. 1998 (27A O.S. Supp. 1999, Section 2-11-405), is amended to read as follows:

Section 2-11-405. A. Of the monies accruing annually to the Waste Tire Recycling Indemnity Fund, four percent (4%) thereof shall be available to the Oklahoma Tax Commission and four percent (4%) thereof shall be available to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma Waste Tire Recycling Act. In addition, an amount not to exceed Fifty Thousand Dollars (\$50,000.00) per required audit shall be available to the State Auditor and Inspector for the purpose of conducting audits of the Oklahoma Waste Tire Recycling Program pursuant to Section 2-11-411 of this title.

B. Of the ninety-two percent (92%) of the remaining monies in the Waste Tire Recycling Indemnity Fund, ten percent (10%) shall be allocated to businesses located in Oklahoma who manufacture new products or derive energy benefits from waste tires which have been processed according to the requirements of the Oklahoma Waste Tire Recycling Act. Such businesses shall be eligible for compensation in a total amount not to exceed one hundred percent (100%) of their capital investment in equipment necessary to utilize processed waste tires purchased on or after January 1, 1995, at a rate of Twenty Dollars (\$20.00) per ton of processed waste tires consumed in the

manufacturing or energy recovery process. Funds shall be awarded based on a proportionate share of the funds available and based on the relative amount of each capital investment. Such businesses may apply for compensation monthly to the Oklahoma Tax Commission, and shall supply any information required by the Commission to document compliance with the provisions of the Oklahoma Waste Tire Recycling Indemnity Act.

C. The balance of the monies remaining in the Waste Tire Recycling Indemnity Fund shall be allocated pursuant to the provisions of the Oklahoma Waste Tire Recycling Act to waste tire facilities or persons, corporations or other legal entities authorized by the provisions of the Oklahoma Waste Tire Recycling Act to receive reimbursement which, through the filing of appropriate applications, reports, and other documentation that may be required by the Department of Environmental Quality pursuant to the Oklahoma Waste Tire Recycling Act, demonstrate that such facilities or legal entities have successfully processed discarded vehicle tires pursuant to the Oklahoma Waste Tire Recycling Act.

D. From funds authorized pursuant to subsection A of this section, the Department of Environmental Quality shall employ additional persons, as authorized by the Legislature, to carry out its authority and duties under the Oklahoma Waste Tire Recycling Act. Such employees shall be in the unclassified service of this state.

E. To the extent that monies accruing to the Waste Tire Recycling Indemnity Fund exceeds the monies needed for the purposes previously specified in this section, the Department of Environmental Quality may utilize the remaining funds for remediation of sites at which waste tires or other wastes present a threat to human health or the environment, if a responsible party cannot be timely identified or compelled to take such action.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-407.2 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Any unit of local or county government may apply to the Department of Environmental Quality for a waste tire processing permit to bale waste tires for use in approved engineering projects.

B. Waste tires processed by baling pursuant to this section cannot be obtained from tire manufacturers, retailers, wholesalers, retreaders, or parts dismantlers.

C. The Board of Environmental Quality shall promulgate rules necessary to implement the use of baled tires in accordance with the provisions of this section.

SECTION 8. This act shall become effective November 1, 2000.

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