

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1482

By: Blackburn

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to schools; amending Sections 4 and
9 5, Chapter 366, O.S.L. 1998 (70 O.S.Supp. 1998,
10 Sections 3970.4 and 3970.5), which relate to the
11 Oklahoma College Savings Plan Act; establishing terms
12 for members of the Board of Trustees; providing for
13 competitive selection process of certain
14 institutions; exempting selection process from the
15 Oklahoma Central Purchasing Act; amending 74 O.S.
16 1991, Section 85.7, as last amended by Section 1,
17 Chapter 384, O.S.L. 1998 (74 O.S. Supp. 1998, Section
18 85.7), which relates to the Oklahoma Central
19 Purchasing Act; providing an exemption from
20 competitive bidding procedures; providing an
21 effective date; and declaring an emergency.

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

23 SECTION 1. AMENDATORY Section 4, Chapter 366, O.S.L.
24 1998 (70 O.S. Supp. 1998, Section 3970.4), is amended to read as
25 follows:

26 Section 3970.4 A. There is hereby created the Board of
27 Trustees of the Oklahoma College Savings Plan program composed of
28 seven (7) members as follows:

- 29 1. The State Treasurer;
- 30 2. The State Auditor and Inspector;
- 31 3. The State Superintendent of Public Instruction;
- 32 4. The Chancellor of the Oklahoma State Regents for Higher

Education;

5. Three members, from the general public, each of whom
possesses knowledge, skill and experience in accounting, risk
management, investments, financial management, or actuarial science,
one of whom is appointed by the Governor, one by the Speaker of the

1 House, and one by the President Pro Tempore of the Senate. Each
2 member shall serve a term of four (4) years. The initial appointee
3 of the Governor shall serve a term of two (2) years. The initial
4 appointee of the President Pro Tempore shall serve a term of three
5 (3) years. The initial appointee of the Speaker shall serve a term
6 of four (4) years.

7 B. The State Treasurer shall serve as chair of the Board. The
8 Board shall select a vice-chair.

9 C. Members of the Board may designate members of their
10 respective staffs to attend meetings of the Board and to vote in
11 their absence. Such designations shall be in writing to the chair
12 of the Board and filed with the Secretary of State.

13 D. Members of the Board shall serve without compensation but
14 shall receive reasonable reimbursement from their respective office
15 or agency or in the case of appointed members from the appointing
16 authority for actual and necessary travel expenses in accordance
17 with the State Travel Reimbursement Act.

18 E. A majority of the members of the Board serving shall
19 constitute a quorum for the transaction of business at a meeting of
20 the Board. Voting upon action to be taken by the Board shall be
21 conducted by a majority vote of the members present at the meeting
22 of the Board.

23 F. The business of the Board shall be conducted at meetings of
24 the Board held in compliance with the Oklahoma Open Meeting Act.
25 The Board shall make available to the public records as required by
26 the Oklahoma Open Records Act.

27 G. The Board may delegate to the Oklahoma State Regents for
28 Higher Education some or all of the duties to carry out the day-to-
29 day operations and responsibilities of the program. The Regents
30 shall provide staff for the Board. In exercising such delegation,
31 the Regents shall be authorized to exercise such powers as are
32 vested in the Board which are necessary to fulfill the delegated

1 duties and responsibilities, and may assign any such duties and
2 responsibilities to the staff as the Regents deem necessary and
3 proper.

4 H. The members of the Board are immune from personal liability
5 with respect to all actions that are taken in good faith and within
6 the scope of the Board's authority.

7 SECTION 2. AMENDATORY Section 5, Chapter 366, O.S.L.
8 1998 (70 O.S. Supp. 1998, Section 3970.5), is amended to read as
9 follows:

10 Section 3970.5 The Board of Trustees of the Oklahoma College
11 Savings Plan shall:

12 1. Develop and implement the program in a manner consistent
13 with this act through the adoption of rules, guidelines and
14 procedures;

15 2. Retain professional services, if necessary, including
16 accountants, auditors, consultants and other experts;

17 3. Seek rulings and other guidance, if necessary, from the
18 United States Department of the Treasury, the Internal Revenue
19 Service, and the Oklahoma Attorney General relating to the program;

20 4. Make changes to the program required for the participants in
21 the program to obtain the federal income tax benefits or treatment
22 provided by Section 529 of the Internal Revenue Code;

23 5. Interpret, in rules, policies, guidelines and procedures,
24 the provisions of this act broadly in light of its purpose and
25 objectives;

26 6. Develop a schedule of application fees and other necessary
27 fees and charges in connection with any agreement, contract or
28 transaction relating to the program that are sufficient to offset
29 the administrative and staffing costs associated with the
30 implementation and administration of this program;

31 7. Select the financial institution or institutions to act as
32 the depositories and managers of the program accounts in accordance

1 with this act. The institutions shall be selected through a
2 competitive selection process, but shall be exempt from the
3 competitive bidding procedures under the Oklahoma Central Purchasing
4 Act; and

5 8. Adopt rules to assist in the administration and
6 implementation of this act.

7 SECTION 3. AMENDATORY 74 O.S. 1991, Section 85.7, as
8 last amended by Section 1, Chapter 384, O.S.L. 1998 (74 O.S. Supp.
9 1998, Section 85.7), is amended to read as follows:

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

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

31 2. Contracts for master custodian banks or trust companies,
32 investment managers and investment consultants for state retirement

1 systems, the State Insurance Fund, and the State and Education
2 Employees Group Insurance Board, the pension fund management
3 consultants of the Oklahoma State Pension Commission, the
4 Commissioners of the Land Office and actuarial, architectural,
5 engineering, legal, or other professional services as such term is
6 defined in Section 803 of Title 18 of the Oklahoma Statutes shall be
7 exempt from competitive bidding procedures. Contracts with
8 financial institutions to act as depositories and managers of the
9 Oklahoma College Savings Plan accounts shall be exempt from
10 competitive bidding procedures. The Department of Central Services
11 shall send a copy of such contracts or a list of such contracts to
12 any member of the House or Senate Appropriations Committee, if
13 requested by the member.

14 3. Competitive bids shall not be required for any emergency
15 acquisitions or contracts involving Five Thousand Dollars
16 (\$5,000.00) or less, when, upon written request of the State
17 Purchasing Director specifying the facts and circumstances giving
18 rise thereto, the Governor certifies in writing the existence of an
19 emergency authorizing the acquisition or contract.

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

27 a. in which serious damage to the environment will
28 quickly occur if immediate action is not taken, and
29 the damage will be so significant that the urgent need
30 for action outweighs the public policy strongly
31 favoring competitive bids, or
32

1 b. a situation in which human life or safety is in
2 imminent danger or significant property interests are
3 threatened with imminent destruction.

4 5. Purchases or acquisitions for repairs of equipment and
5 machinery in emergencies, or of livestock through a market agency,
6 dealer, commission house, or livestock auction market bonded or
7 licensed under federal or state law or the purchase or collection of
8 semen or embryos and the placement of embryos into recipient
9 livestock shall not be subject to the competitive bid requirements
10 of this section or any other provisions of the Oklahoma Central
11 Purchasing Act.

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

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

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

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

30 10. Contracts for the design, development, communication or
31 implementation of the state employees flexible benefits plan shall
32 not be subject to the requirements of this section; provided, that

1 the Flexible Benefits Advisory Council shall use procedures
2 consistent with the competitive bid requirements of the Oklahoma
3 Central Purchasing Act.

4 11. a. Any contract for a service for which the Department of
5 Central Services has approved as qualifying for a
6 fixed and uniform rate shall not be subject to
7 competitive bid procedures.

8 b. The Department of Central Services shall establish
9 criteria and guidelines for those services which may
10 be qualified for a fixed and uniform rate.

11 c. The exception to competitive bid procedures authorized
12 by this paragraph shall be limited to contracts for
13 those services furnished to persons directly
14 benefiting from such services and shall not be used by
15 any agency to employ consultants or to purchase
16 products.

17 d. Any agency desiring to have a service qualified for a
18 fixed and uniform rate shall make a request for such
19 qualification to the Department of Central Services
20 and shall submit any documentation necessary to
21 support such request. The Department of Central
22 Services shall either approve or deny the request. If
23 the Department of Central Services qualifies such
24 services for a fixed and uniform rate, the agency
25 requesting such qualification shall establish a fixed
26 and uniform rate for such service, provided no
27 contracts shall be entered into by the agency until
28 such rate has been approved by the agency in a public
29 hearing. Prior to approval, the proposed rate shall
30 be clearly and separately identified in the agenda of
31 the agency for the hearing and shall be openly and
32 separately discussed during such hearing. In

1 addition, the agency shall notify the Director of the
2 Department of Central Services of its pending
3 consideration of the proposed rate at least thirty
4 (30) days before the agency is to meet on the proposed
5 rate. Along with such notice, the agency shall
6 deliver to the Department of Central Services a copy
7 of the agenda items concerning the proposed rate with
8 all supporting documentation and materials. The
9 Director of the Department of Central Services shall
10 communicate any observation, reservation, criticism or
11 recommendation to the agency, either in person at the
12 time of the hearing or in writing delivered to the
13 agency before or at the time of the hearing. The
14 Director of the Department of Central Services shall
15 specifically note in such written communications if
16 the Director of the Department of Central Services has
17 determined the rate to be excessive. Any such written
18 communication presented in the absence of the Director
19 of the Department of Central Services shall be
20 presented orally during the public hearing. Whether
21 made in person or in writing any comment made by the
22 Director of the Department of Central Services shall
23 be made a part of the minutes of the hearing in full.

24 e. Within two (2) weeks after the convening of the
25 Legislature, the administrative officer of each state
26 agency shall furnish to the Speaker of the House of
27 Representatives, the President Pro Tempore of the
28 Senate and to any member of the House or Senate, if
29 requested by such member, a complete list of all of
30 the types of services paid for by uniform fixed rates,
31 the amount of the rate last approved by the agency for
32 the service, and the number of contracts then in

1 existence for each type of service. Any rate which
2 has been determined to be excessive by the Director of
3 the Department of Central Services shall be
4 specifically identified in such list.

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

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

26 13. Purchases of or contracts for specifically prescribed
27 nonmedical assistive technology-related items not exceeding Two
28 Thousand Five Hundred Dollars (\$2,500.00) for individuals under
29 sixteen (16) years of age who are recipients of Supplemental
30 Security Income and which are prescribed by a physician, qualified
31 sensory aids specialists or qualified special education instructors
32 shall not be subject to the competitive bid requirements. The

1 Department of Human Services shall develop standards for the
2 acquisition of such nonmedical assistive technology-related items
3 and may elect to utilize Central Purchasing when appropriate. Such
4 standards shall foster economy, short response time, and shall
5 include appropriate safeguards and written records to assure
6 appropriate competition and economical and efficient purchasing and
7 shall be approved by the Director of Central Purchasing.

8 14. a. Structured settlement agreements entered into by the
9 Attorney General's office in order to settle any
10 lawsuit involving the state, the Legislature, any
11 state board, agency, commission, or any employee or
12 official of the state shall not be subject to the
13 competitive bidding requirements of this section if:

14 (1) prior to entering into any contract for the
15 services of an entity to administer a structured
16 settlement agreement, the Attorney General
17 receives proposals from at least three entities
18 engaged in providing such services, and

19 (2) the selection of a particular entity is made on
20 the basis of the response to the request which is
21 the most economical and provides the most
22 competent service which furthers the best
23 interests of the state.

24 b. A list of any such structured settlement agreements
25 entered into by the Attorney General with summary
26 thereon for the previous calendar year shall be
27 submitted to the Speaker of the House of
28 Representatives and the President Pro Tempore of the
29 Senate on January 31 of each year.

30 15. Purchases available pursuant to a multistate or
31 multigovernmental contract through the Central Purchasing Division,
32 if the terms of the contract are more favorable to or will result in

1 more favorable terms, conditions, accessibility, prices, control, or
2 efficiency for the state than purchasing from a company distributing
3 to state agencies through a statewide contract or other contract
4 shall be exempt from competitive bidding procedures.

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

9 17. Until June 30, 1999, contracts for the provision of
10 substance abuse services; mental health services; community-based
11 treatment, education, or prevention services; and domestic violence
12 and sexual assault services to clients of the Department of Mental
13 Health and Substance Abuse Services shall be exempt from the
14 competitive bidding requirements of this act.

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

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

30 D. When requested by the governing body of a state retirement
31 system, the State Insurance Fund or the State and Education
32 Employees Group Insurance Board which are authorized to hire

1 investment managers, the Department of Central Services shall assist
2 the governing body of a state retirement system, the Fund or the
3 Board in the process of selecting investment managers. When
4 requested by the Flexible Benefits Advisory Council, the Department
5 of Central Services shall assist the Council in the process of
6 selecting contracts for the design, development, communication or
7 implementation of the state employees flexible benefits plan.

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

13 SECTION 4. This act shall become effective July 1, 1999.

14 SECTION 5. It being immediately necessary for the preservation
15 of the public peace, health and safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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