

ENROLLED SENATE  
BILL NO. 372

By: Henry of the Senate

and

Blackburn of the House

An Act relating to higher education; amending Section 4, Chapter 366, O.S.L. 1998 and Section 5, Chapter 366, O.S.L. 1998 (70 O.S. Supp. 1998, Sections 3970.4 and 3970.5), which relate to the Oklahoma College Savings Plan Act; prescribing terms for members of certain Board; deleting redundant words; exempting certain Board from Oklahoma Central Purchasing Act; requiring certain Board to develop competitive process for selection of certain institutions and managers; requiring Board to develop certain policies; requiring certain public notice and hearing; amending 74 O.S. 1991, Section 85.7, as last amended by Section 31 of Enrolled House Bill No. 1845 of the 1st Session of the 47th Oklahoma Legislature, which relates to the Oklahoma Central Purchasing Act; providing an exemption for certain contracts; amending 75 O.S. 1991, Section 250.4, as last amended by Section 42 of Enrolled House Bill No. 1845 of the 1st Session of the 47th Oklahoma Legislature, which relates to the Administrative Procedures Act; exempting certain entities from compliance with the Administrative Procedures Act; and declaring an emergency.

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

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

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

1. The State Treasurer;
2. The State Auditor and Inspector;
3. The State Superintendent of Public Instruction;
4. The Chancellor of the Oklahoma State Regents for Higher Education; and

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 House of Representatives, and one by the President Pro Tempore of the Senate. The initial appointee of the Governor shall serve a term of two (2) years. The initial appointee of the President Pro Tempore of the Senate shall serve a term of three (3) years. The initial appointee of the Speaker of the House of Representatives shall serve a term of four (4) years. Upon expiration of the initial terms, subsequent terms shall be for four (4) years.

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Interpret, in ~~rules~~, policies, guidelines and procedures, the provisions of ~~this act~~ the Oklahoma College Savings Plan Act broadly in light of its purpose and objectives;

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

7. Select the financial institution or institutions to act as the depositories and managers of the program accounts in accordance with this act. For purposes of selecting such institutions and managers, the Board shall be exempt from the Oklahoma Central Purchasing Act. The Board shall develop a competitive process by which the institutions and managers will be selected; and

8. ~~Adopt rules~~ Develop procedures to assist in the administration and implementation of this act. Any guidelines or procedures affecting existing or potential participants in the Oklahoma College Savings Plan may only be implemented after reasonable notice to the public and a public hearing in a manner similar to requirements of the Administrative Procedures Act.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 85.7, as last amended by Section 31 of Enrolled House Bill No. 1845 of the 1st Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 85.7 A. Except as otherwise provided by the Oklahoma Central Purchasing Act, no acquisition or contract shall be made without the submission of competitive bids to the State Purchasing Director.

1. Any acquisition or contract for an amount of Twenty-five Thousand Dollars (\$25,000.00) or less shall be exempted from processing by the Purchasing Division, but subject to the Oklahoma Central Purchasing Act and rules promulgated pursuant thereto. 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 twenty-five-thousand-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 twenty-five-thousand-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. Contracts with financial institutions to act as depositories and managers of the Oklahoma College Savings Plan accounts shall be exempt from competitive bidding procedures. The Department of Central Services shall send a copy of such contracts or a list of the exempt contracts to any member of the Appropriations and Budget Committee of the House of Representatives or of the Appropriations Committee of the Senate, if requested by the member.

3. Competitive bids shall not be required for any emergency acquisitions or contracts involving Thirty-five Thousand Dollars (\$35,000.00) 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 Chair 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 for acquisitions requested by a state agency 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 state 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 Director of 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 by the state agency.
- 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 acquisitions for individuals with disabilities who are clients of the State Department of Rehabilitation Services and which 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 acquisitions shall not be subject to the competitive bid requirements of this section. The Commission for Rehabilitation Services shall develop standards for the purchase of such acquisitions and may elect to utilize the Purchasing Division when appropriate. The standards shall foster economy, short response time, and shall include appropriate safeguards and written records to ensure 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 the acquisition purchase amount requiring competitive bid pursuant to this section 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 the Purchasing Division 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 the Department 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 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.

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

B. Acquisitions or contracts shall be awarded to the lowest and best, or best value 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 state agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best, or best value bid. Further, the state 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 state 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 4. AMENDATORY 75 O.S. 1991, Section 250.4, as last amended by Section 42 of Enrolled House Bill No. 1845 of the 1st Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 250.4 A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act.

2. The Corporation Commission shall be required to comply with the provisions of Article I of the Administrative Procedures Act except for subsections A, B, C and E of Section 303 of this title and Section 306 of this title. To the extent of any conflict or inconsistency with Article I of the Administrative Procedures Act, pursuant to Section 35 of Article IX of the Oklahoma Constitution, it is expressly declared that Article I of the Administrative Procedures Act is an amendment to and alteration of Sections 18 through 34 of Article IX of the Oklahoma Constitution.

3. The Oklahoma Military Department shall be exempt from the provisions of Article I of the Administrative Procedures Act to the extent it exercises its responsibility for military affairs.

4. The Oklahoma Ordnance Works Authority ~~and~~, the Northeast Oklahoma Public Facilities Authority and the Board of Trustees of the Oklahoma College Savings Plan shall be exempt from Article I of the Administrative Procedures Act.

5. The Oklahoma Transportation Commission and the Oklahoma Department of Transportation shall be exempt from Article I of the Administrative Procedures Act to the extent they exercise their authority in adopting standard specifications, special provisions, plans, design standards, testing procedures, federally imposed requirements and generally recognized standards, project planning and programming, and the operation and control of the State Highway System.

6. The Oklahoma State Regents for Higher Education shall be exempt from Article I of the Administrative Procedures Act with respect to:

- a. prescribing standards of higher education,
- b. prescribing functions and courses of study in each institution to conform to the standards,
- c. granting of degrees and other forms of academic recognition for completion of the prescribed courses,
- d. allocation of state-appropriated funds, and
- e. fees within the limits prescribed by the Legislature.

7. Institutional governing boards within The Oklahoma State System of Higher Education shall be exempt from Article I of the Administrative Procedures Act.

8. a. The Commissioner of Public Safety shall be exempt from Sections 303.1, 303.2, 307.1, 308 and 308.1 of this title insofar as it is necessary to promulgate rules pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations for which the Commissioner has no discretion when the state is mandated to promulgate rules identical to federal rules and regulations.
- b. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after notice of adoption is published in "The Oklahoma Register". Such publication need not set forth the full text of the rule but may incorporate the federal rules and regulations by reference.
- c. Such copies of promulgated rules shall be filed with the Secretary as required by Section 251 of this title.
- d. For any rules for which the Commissioner has discretion to allow variances, tolerances or modifications from the federal rules and regulations, the Commissioner shall fully comply with Article I of the Administrative Procedures Act.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:

1. The Oklahoma Tax Commission;
2. The Commission for Human Services;
3. The Oklahoma Ordnance Works Authority;
4. The Oklahoma Corporation Commission;
5. The Pardon and Parole Board;
6. The Midwestern Oklahoma Development Authority;
7. The Grand River Dam Authority;
8. The Northeast Oklahoma Public Facilities Authority;
9. The Board of Trustees of the Oklahoma College Savings Plan;
10. The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, only with respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein; provided, that the provisions of Article II shall apply to and govern all

administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;

~~10.~~ 11. The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons; provided, that upon any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion, such student shall be entitled to such due process, including notice and hearing, as may be otherwise required by law, and the following grounds of misconduct, if properly alleged in disciplinary proceedings against a student, shall be cause to be barred from the campus and be removed from any college or university-owned housing, upon conviction in a court of law:

- a. participation in a riot as defined by the penal code,
- b. possession or sale of any drugs or narcotics prohibited by the penal code, Section 1 et seq. of Title 21 of the Oklahoma Statutes, or
- c. willful destruction of or willful damage to state property;

~~11.~~ 12. The Oklahoma Horse Racing Commission, its employees or agents only with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:

- a. any rule regarding the running of a race,
- b. any violation of medication laws and rules,
- c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,
- d. any assault or other destructive acts within Commission-licensed premises,
- e. any violation of prohibited devices, laws and rules, or
- f. any filing of false information;

~~12.~~ 13. The Commissioner of Public Safety only with respect to drivers' license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

~~13.~~ 14. The Administrator of the Department of Securities only with respect to hearings conducted pursuant to provisions of the Oklahoma Take-over Disclosure Act of 1985;

~~14.~~ 15. Hearings conducted by a public agency pursuant to Section 962 of Title 47 of the Oklahoma Statutes;

~~15.~~ 16. The Oklahoma Military Department;

~~16.~~ 17. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority;

~~17.~~ 18. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority; and

~~18.~~ 19. The position audit procedure, including the impartial review process, of the Office of Personnel Management pursuant to Section 840-4.3 of Title 74 of the Oklahoma Statutes. Provided, that any appeal from an impartial review determination to a court of competent jurisdiction shall be confined to the record in accordance with the provisions of Article II of the Administrative Procedures Act.

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

Passed the Senate the 27th day of April, 1999.

\_\_\_\_\_  
President of the Senate

Passed the House of Representatives the 30th day of March, 1999.

\_\_\_\_\_  
Speaker of the House of Representatives

