

By: Coffee of the Senate  
and  
Perry of the House

[ public finance - contract for acquisition of  
computer software - modifying -  
effective date ]

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

SECTION 1. AMENDATORY Section 4, Chapter 391, O.S.L.  
2005 (62 O.S. Supp. 2005, Section 41.5u), is amended to read as  
follows:

Section 41.5u A. No state agency, as defined by Section 250.3  
of Title 75 of the Oklahoma Statutes, nor the Purchasing Division of  
the Department of Central Services, unless otherwise provided by  
federal law, shall enter into a contract for the acquisition of  
customized computer software developed or modified exclusively for  
the agency or the state, unless the vendor agrees to ~~provide to the  
agency or the state~~ place into escrow with an independent third  
party the source code for the software and/or modifications.

B. ~~The State Purchasing Director or the procurement officers of  
the state agencies not subject to the Central Purchasing Act shall  
not process any state agency request for the custom modernization or  
development of computer software unless the proposed vendor provides  
documentation that complies with subsection A of this section~~ The  
vendor must agree to place the source code for the software and any  
upgrades supplied to an agency in escrow with a third party  
acceptable to the agency and to enter into a customary source code  
escrow agreement which includes a provision that entitles the agency

to receive everything held in escrow upon the occurrence of any of the following:

1. A bona fide material default of the obligations of the vendor under the agreement with the agency;

2. An assignment by the vendor for the benefit of its creditors;

3. A failure by the vendor to pay, or an admission by the vendor of its inability to pay, its debts as they mature;

4. The filing of a petition in bankruptcy by or against the vendor when such petition is not dismissed within sixty (60) days of the filing date;

5. The appointment of a receiver, liquidator or trustee appointed for any substantial part of the vendor's property;

6. The inability or unwillingness of the vendor to provide the maintenance and support services in accordance with the agreement with the agency; or

7. The ceasing of a vendor of maintenance and support of the software.

The fees of any third-party escrow agent subject to this section shall be borne by the vendor.

C. The State Purchasing Director or a procurement officer of a state agency not subject to the Central Purchasing Act shall not process any state agency request for the customization, modernization or development of computer software unless the proposed vendor provides documentation that complies with subsections A and B of this section.

D. The State Purchasing Director shall provide advice and assistance, as may be required, in order for state agencies to comply with the provisions of this section.

~~D.~~ E. As used in this section:

1. "State agency" shall include all state agencies, whether subject to the Central Purchasing Act or not, except the Oklahoma Lottery Commission; and

2. "Source code" means the programming instruction for a computer program in its original form, created by a programmer with a text editor or a visual programming tool and saved in a file.

SECTION 2. This act shall become effective November 1, 2006.

Passed the Senate the 1st day of March, 2006.

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Presiding Officer of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
2006.

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Presiding Officer of the House  
of Representatives