

THE HOUSE OF REPRESENTATIVES  
Thursday, March 6, 2008

Committee Substitute for  
House Bill No. 3391

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3391 - By: MARTIN (SCOTT) of the House and SPARKS of the Senate.

An Act relating to state government; authorizing the Governor to designate certain state agency an enterprise agency; providing for duration of designation; stating purpose; providing for agreement to set certain goal; authorizing the Governor to pay bonus for certain purpose to certain person; authorizing the director to pay bonus for certain purpose to certain person; stating certain exception; authorizing the enterprise agency to waive certain rule concerning employees of the enterprise agency; authorizing the enterprise agency to waive provisions of the Oklahoma Central Purchasing Act and any rule of the Department of Central Services; requiring certain rules to be filed with certain agency; authorizing the enterprise agency to waive certain administrative rule regarding the acquisition and use of information technology; setting procedures for waiving certain provisions of certain rules; setting time frame for certain waiver or suspension; requiring report; establishing enterprise agency grant fund; stating purpose; providing for application; authorizing enterprise agency to keep certain funds in the enterprise agency grant fund; providing for codification; and providing an effective date.

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

- 1       SECTION 1.   NEW LAW   A new section of law to be codified in the Oklahoma
- 2 Statutes as Section 3316 of Title 74, unless there is created a duplication in numbering,
- 3 reads as follows:
- 4       The Governor may, by executive order, designate a state agency as an enterprise
- 5 agency. The designation of an enterprise agency shall be for a period of five (5) years.

1 The purpose of designating an enterprise agency is to grant the agency relief from certain  
2 statutory provisions or agency rules as provided by this act upon a prior showing of  
3 projected savings resulting from such relief.

4 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma  
5 Statutes as Section 3317 of Title 74, unless there is created a duplication in numbering,  
6 reads as follows:

7 A. Prior to each fiscal year, or as soon thereafter as possible, the Governor and each  
8 director of a designated enterprise agency shall enter into an annual enterprise  
9 agreement which shall set forth measurable organizational and budgetary goals for the  
10 director in key operational areas of the agency. The annual performance agreement shall  
11 be made public and a copy of the agreement shall be submitted to the House of  
12 Representatives and the Senate.

13 B. Except when contrary to the Oklahoma Constitution, the Governor may  
14 authorize the payment of a bonus to a director of an enterprise agency in an amount not  
15 in excess of fifteen percent (15%) of the director's annual rate of pay, based upon the  
16 Governor's evaluation of the director's performance in relation to the goals set forth in  
17 the annual performance agreement.

18 C. A director of an enterprise agency may authorize the payment of bonuses to  
19 employees of the enterprise agency in a total amount not in excess of fifteen percent  
20 (15%) of the individual employee's annual rate of pay, based upon the director's  
21 evaluation of the employees' performance.

1 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma  
2 Statutes as Section 3318 of Title 74, unless there is created a duplication in numbering,  
3 reads as follows:

4 A. Except as otherwise provided by law, proceeds from the sale or lease of capital  
5 assets that are under the control of an enterprise agency shall be retained by the  
6 enterprise agency and used for such purposes within the scope of the responsibilities of  
7 the enterprise agency.

8 B. Notwithstanding any provision of law to the contrary, one-half (1/2) of all  
9 unencumbered or unobligated balances of appropriations made for each fiscal year of that  
10 fiscal period to the enterprise agency shall not revert to the State Treasury or to the  
11 credit of the funds from which the appropriations were made.

12 SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma  
13 Statutes as Section 3319 of Title 74, unless there is created a duplication in numbering,  
14 reads as follows:

15 A. Notwithstanding any provision of law to the contrary, an enterprise agency shall  
16 not be subject to any limitation relating to the number of or pay grade assigned to its  
17 employees, including any limitation on the number of full-time-equivalent positions.

18 B. An enterprise agency may waive any personnel rule and may exercise the  
19 authority granted to the Office of Personnel Management concerning employees of the  
20 enterprise agency. The waiver of any statute or rule pursuant to this subsection shall be  
21 filed with the Office of Personnel Management and shall be available for public  
22 inspection.

1 SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma  
2 Statutes as Section 3320 of Title 74, unless there is created a duplication in numbering,  
3 reads as follows:

4 An enterprise agency may waive any provision of the Oklahoma Central Purchasing  
5 Act and any administrative rule of the Department of Central Services regarding  
6 procurement, fleet management, printing and copying, or maintenance of buildings and  
7 grounds, and may exercise the authority of the Department of Central Services as it  
8 relates to the physical resources of the state. A waiver of a statute or rule pursuant to  
9 this subsection shall be filed with the Department of Central Services and made  
10 available for public inspection.

11 SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma  
12 Statutes as Section 3321 of Title 74, unless there is created a duplication in numbering,  
13 reads as follows:

14 An enterprise agency may waive any provision of the Oklahoma Central Purchasing  
15 Act, any provision of Section 41.5a et seq. of Title 62 of the Oklahoma Statutes, and any  
16 administrative rule regarding the acquisition and use of information technology and may  
17 exercise the powers of the Department of Central Services and the Information Services  
18 Division of the Office of State Finance as it relates to information technology, except that  
19 the enterprise agency shall comply with Section 41.5e of Title 62 of the Oklahoma  
20 Statutes. A waiver of any statute or rule pursuant to this subsection shall be filed with  
21 the Department of Central Services and made available for public inspection.

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1           SECTION 7.   NEW LAW   A new section of law to be codified in the Oklahoma  
2 Statutes as Section 3322 of Title 74, unless there is created a duplication in numbering,  
3 reads as follows:

4           A. An enterprise agency may temporarily waive or suspend the provisions of any  
5 administrative rule if strict compliance with the rule impacts the ability of the enterprise  
6 agency to perform its duties in a more cost-efficient manner and the requirements of this  
7 subsection are met.

8           B. The procedure for granting a temporary waiver or suspension of any  
9 administrative rule shall be as follows:

10          1. The enterprise agency may waive or suspend a rule if the agency finds, based on  
11 clear and convincing evidence, all of the following:

- 12           a.     the application of the rule poses an undue financial hardship on the  
13                 agency,  
14           b.     the waiver or suspension from the requirements of a rule in the specific  
15                 case would not prejudice the substantial legal rights of any person,  
16           c.     substantially equal protection of public health, safety, and welfare will  
17                 be afforded by a means other than that prescribed in the particular  
18                 rule for which the waiver or suspension is requested, and  
19           d.     the waiver or suspension would not result in a violation of due process,  
20                 a violation of state or federal law, or a violation of the state or federal  
21                 constitution;

1           2. If an enterprise agency proposes to grant a waiver or suspension, the enterprise  
2 agency shall draft the waiver or suspension so as to provide the narrowest exception  
3 possible to the provisions of the rule and may place any condition on the waiver or  
4 suspension that the enterprise agency finds desirable to protect the public health, safety,  
5 and welfare. The enterprise agency shall then submit the waiver or suspension to the  
6 Governor;

7           3. The Governor shall review the proposed waiver or suspension and may either  
8 take no action, affirmatively approve the waiver or suspension, delay the effective date of  
9 the waiver or suspension or reject the waiver or suspension.

10           a.       The waiver or suspension shall become effective within ninety (90)  
11                    days from the date of submission if the Governor approves or takes no  
12                    action concerning the proposed waiver or suspension.

13           b.       If the Governor delays the effective date of the waiver or suspension,  
14                    but takes no further action to rescind the waiver or suspension, the  
15                    proposed waiver or suspension shall become effective on the date to  
16                    which the waiver or suspension was delayed.

17           c.       The Governor shall notify the enterprise agency in writing of the action  
18                    concerning the proposed waiver or suspension.

19           d.       Rejection of the waiver or suspension by the Governor shall require  
20                    that the enterprise agency fully comply with the rule; and

21           4. Copies of the grant or denial of a waiver or suspension under this subsection  
22 shall be filed and made available to the public by the agency.

1 C. A waiver or suspension granted pursuant to this section shall be for a period of  
2 time not to exceed twelve (12) months, and as determined by the applicable enterprise  
3 agency. A renewal of a temporary waiver or suspension granted pursuant to this section  
4 shall be granted or denied in the same manner as the initial waiver or suspension.

5 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma  
6 Statutes as Section 3323 of Title 74, unless there is created a duplication in numbering,  
7 reads as follows:

8 Each enterprise agency shall submit a written report to the Governor and the  
9 Legislature by December 31 of each year summarizing the activities of the enterprise  
10 agency for the preceding fiscal year. The report shall include information concerning the  
11 expenditures of the agency and the number of filled full-time-equivalent positions during  
12 the preceding fiscal year. The report shall include information relating to the actions  
13 taken by the agency pursuant to the authority granted by this act.

14 SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma  
15 Statutes as Section 3324 of Title 74, unless there is created a duplication in numbering,  
16 reads as follows:

17 A. An enterprise agency grant fund is created in the State Treasury under the  
18 control of the State Treasurer for the purpose of providing funding to support innovation  
19 by those state agencies designated as enterprise agencies in accordance with this act.  
20 Innovation purposes shall include but are not limited to training, development of  
21 outcome measurement systems, management system modifications, and other  
22 modifications associated with transition of operations to enterprise agency status.

1 Moneys in the fund are appropriated to the Office of State Finance for the purposes  
2 described in this subsection.

3 B. An enterprise agency requesting a grant from the fund shall complete an  
4 application process designated by the Director of the Office of State Finance.

5 C. Notwithstanding any provision of law to the contrary, interest or earnings on  
6 moneys deposited in the enterprise agency grant fund shall be credited to the enterprise  
7 agency grant fund. Notwithstanding any provision of law to the contrary, moneys  
8 credited to the enterprise agency grant fund shall not revert to the fund from which they  
9 were appropriated at the close of a fiscal year.

10 SECTION 10. This act shall become effective November 1, 2008.

11 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT AND  
12 TRANSPORTATION, dated 03-05-08 - DO PASS, As Amended and Coauthored.