STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

SENATE BILL 679 By: Corn

AS INTRODUCED

An Act relating to prisons and jails; stating legislative intent; limiting the cost for certain communication services; requiring Department of Corrections to contract for certain services for certain entities; criminalizing acceptance of certain fund for certain services; providing exception; stating penalty; defining term; criminalizing receipt of certain services or equipment for private or personal use at certain rate; setting penalty; authorizing development of certain communication system; exempting certain contract provisions under certain circumstance; limiting certain rate for certain communication system; requiring lowest cost and best service for certain contracts; directing certain contracting each fiscal year; exempting certain contracts from Oklahoma Central Purchasing Act; requiring certain file for certain purpose; specifying information in certain file; allowing solicitation for public and private providers; providing procedure when few contractors are available; requiring certain notice within certain time; requiring certain response to notice; directing certain selection and approval of contractor; permitting certain consultation for contract approval; requiring certain services be uninterrupted; requiring certain maintenance; setting term of contracts; prohibiting encumbrance of certain funds; providing priority for contracts; prohibiting expenditure of state funds without approval and appropriations in advance; construing certain provision; requiring certain cooperation; criminalizing failure to cooperate; setting penalties; allowing certain report of lost revenues

by certain entities within certain time; authorizing certain grant fund disbursement for certain purpose; making grant funds subject to appropriations; allowing resubmission of certain reports; amending 74 O.S. 2001, Section 85.12, as last amended by Section 1, Chapter 80, O.S.L. 2006 (74 O.S. Supp. 2006, Section 85.12), which relates to excluded acquisitions from the Department of Central Services; exempting certain contract provisions; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 650 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature to offer fairly priced services for necessary communication between inmates, their families, and legal counsel.

B. The cost of local and long distance telephone, telecommunication and computer services and equipment available for use by, or provided to, any person held in the custody of any jail, halfway house, community correctional facility, prison or other correctional facility, whether owned or operated by any private entity, public trust, governmental agency, political subdivision of this state or this state, shall be not more than the market rate charged for comparable residential services and equipment available within the geographic area of such facility. Such services and

equipment shall be contracted on the basis of the lowest cost to users at the beginning of each fiscal year as provided in this act.

C. Except for rates authorized or regulated by law for telephone, telecommunication and communication service providers, it is unlawful for any person, private or governmental entity, organization, public trust or political subdivision of this state to receive any profit, commission, revenue or funds above the residential market rate for telephone, telecommunication or computer services or equipment for communication between persons when one person is held in any facility specified in subsection A of this section. Any violation of this provision shall be a felony, upon conviction, punishable by a fine not to exceed One Hundred Thousand Dollars ($100,000.00), or by imprisonment in the custody of the Department of Corrections for a term not more than two (2) years, or by both such fine and imprisonment. Each violation shall constitute a separate offense.

D. As used in this act, "telephone, telecommunication and computer services and equipment" means any connection, system, network, device or means of communicating to another person in a separate location utilizing telephones, computers, cell phones, pagers, cameras, land lines, electrical or electronic devices, wireless systems, satellite systems, or any connection generated via any electrical or electronic means, any computer system, computer network, the worldwide web or any software, electrical, electronic

or computer link capabilities, any automatic router, or any other communication methods or devices, and includes, but is not limited to, all billing and accounting systems relating to such services and equipment, including, but not limited to, collect billing, direct billing, automatic billing, debit cards or accounts, prepaid cards or accounts, or any other system of monitoring costs and expenses for services and equipment.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 650.1 of Title 57, unless there is created a duplication in numbering, reads as follows:

No person, private or governmental entity, organization, public trust or political subdivision of this state shall receive any telephone, telecommunication or computer services or equipment for private or personal use at below market rate from any contract provider of any service or equipment specified in this act. A violation shall be a felony, upon conviction, punishable by a fine in an amount not to exceed Twenty-five Thousand Dollars ($25,000.00), or by imprisonment in the county jail for a term not more than one (1) year, or by both such fine and imprisonment.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 650.2 of Title 57, unless there is created a duplication in numbering, reads as follows:

The Department of Corrections is authorized to develop a statewide no cost or debit or prepaid communication system for

persons held in the custody of any jail, halfway house, community correctional facility, prison or other correctional facility, whether owned or operated by any private entity, public trust, governmental agency, political subdivision of this state or this state, to facilitate necessary local and long distance communications between the person held in custody and his or her family, legal counsel, and other appropriate contacts. In the event a no cost or debit or prepaid communication system is implemented, any provision relating to contracts for telephone, telecommunication or computer services and equipment specified in this act shall not apply to the geographic area utilizing such no cost or debit or prepaid communication system. No debit or prepaid communication system authorized by this section shall charge any person held in the custody of any jail, halfway house, community correctional facility, prison or other correctional facility, whether owned or operated by any private entity, public trust, governmental agency, political subdivision of this state or this state, any rate above the residential market rate charged for comparable services or equipment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 650.3 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. The Department of Corrections is required to negotiate contracts for local and long distance telephone, telecommunication

and computer services and equipment for persons held in the custody of any jail, halfway house, community correctional facility, prison or other correctional facility, whether owned or operated by any private entity, public trust, governmental agency, political subdivision of this state or this state, on the basis of offering the lowest cost and best service to all users within the geographical residential market rate for each facility.

B. The Department of Corrections is hereby directed to contract at the beginning of each fiscal year for telephone, telecommunication and computer services and equipment for persons held in the custody of any jail, halfway house, community correctional facility, prison or other correctional facility, whether owned or operated by any private entity, public trust, governmental agency, political subdivision of this state or this state, pursuant to the provisions of this act. The contracts authorized by this act shall be exempt from the provisions of the Oklahoma Central Purchasing Act.

C. The Department shall maintain a comprehensive file of all telephone, telecommunication and computer service and equipment providers operating within the geographical area of each facility specified in this act, who have expressed an interest in and are capable of providing services necessary to meet the communication needs of this act. Additional service providers may be added at any

time prior to approving a contract for services and equipment. The provider file shall include, but not be limited to:

1. A completed application form, including the name of the contact person, mailing address, and other information required by the Department;

2. A list of past contracts for services or equipment, if any; and

3. A rate structure, including current residential market rates and any additional fees or costs for equipment.

D. The Department may solicit telephone, telecommunication and computer service and equipment providers from the public and private sector to meet the needs of this act. If there is only one service provider in the geographic area, the Department shall contract with the available service provider without soliciting additional providers; provided, however, this shall not prohibit any other service provider from requesting to be notified or allowed to express interest in providing contract services to the area not currently served by such provider. In such case, the Department shall analyze the capability of the out-of-area service provider to adequately provide services before selecting a contract provider.

E. Each year the Department shall notify all telephone, telecommunication and computer service and equipment providers in the file of intent to contract for services in a specific geographic area. The notice shall contain the description of the services and

equipment and other pertinent data to meet the needs of this act. The notice shall be mailed at least thirty (30) days prior to selecting a contractor. Providers must respond to the notice for contract services by submitting a letter of interest to the Department as specified in the notice. The Department shall select the provider whose qualifications and rates best meet the needs of the geographic area and the lowest cost and best service requirements of this act. The Department shall submit the contract with a fully disclosed rate schedule to the Board of Corrections for approval. The Board may consult with any person from any agency, organization, political subdivision, public trust or entity affected by the contract before approving the contract. When a contract is approved by the Board, the contract shall be executed by the Department and awarded to the approved provider. Services shall be delivered without interruption. All contracts shall provide for continuing maintenance of equipment and other service agreements required by the department and specified in the contract.

F. Contracts shall be entered into for a period specified in the contract, subject to annual review and rate negotiation to keep within market rates or below. No contract awarded shall encumber any funds beyond the amount available for a fiscal year. The Department shall not be authorized to contract for any services or equipment that encumbers any funds belonging to, or creates any liability for, any person, agency, political subdivision,

organization or entity other than the Department. Priority in awarding contracts shall be given to those service providers who have previously had a contract for services to the facility; provided, such services were effectively delivered, and unless another service provider can provide services at a lower cost.

G. Nothing in this act shall authorize the expenditure of state funds without legislative approval and appropriations in advance of such expenditure.

H. Nothing in this act shall be construed to be price or rate fixing or any regulation contrary to any other provision of law on telephone, telecommunication or communication service providers or equipment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 650.4 of Title 57, unless there is created a duplication in numbering, reads as follows:

Every jail, halfway house, community correctional facility, prison or other correctional facility, whether owned or operated by any private entity, public trust, governmental agency, political subdivision of this state or this state shall permit the Department of Corrections to contract for telephone, telecommunication and computer services and equipment for such facility as provided in this act, and shall further agree to allow the approved contract provider access to install, operate and maintain equipment and services within such facility as specified in the contract

provisions. Every entity receiving contract services and equipment specified in this act shall participate in the selection and approval of the contract provider based upon previous contracts and communication with the Department of Corrections and the Board of Corrections in the selection and approval process specified in this act. Failure of any entity specified in this act to permit the Department to contract for required services or to allow access by the approved contract provider to deliver services and equipment as contracted and specified in this act, shall be a misdemeanor on a first offense, and a felony upon any second or subsequent offense. Any elected official convicted of a violation of this section, shall be removed from office for failure to provide fair and adequate services to persons held in custody. Upon any third violation, if the violator is a county jail, the Department of Corrections shall be prohibited from reimbursing the county jail or sheriff pursuant to Section 38 of Title 57 of the Oklahoma Statutes or Section 991a-4.1 of Title 22 of the Oklahoma Statutes, or continuing any contract for services for state inmates, until there is compliance with the provisions of this act, and, if the violator is a private prison contractor, the Department of Corrections shall be prohibited from continuing any contract for services for state inmates or other services, until there is compliance with the provisions of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 650.5 of Title 57, unless there is created a duplication in numbering, reads as follows:

Every state and local agency, private organization, public trust and political subdivision of this state receiving any revenue from inmate telephone contract services on the effective date of this act, which revenue is interrupted due to the enactment of this act, may submit a detailed verified accounting of such revenue sources, amounts and uses to the Legislature within six (6) months of the effective date of this act. The accounting report must be submitted in writing signed by the preparer to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Legislature shall disburse grant funds to affected entities reporting interrupted revenue sources from previous inmate telephone contracts. Such grant funds are intended to offset significant revenues lost as a result of the enactment of this act; provided, such lost revenues must be deemed by the Legislature to be critical to the purposes of the agencies and organizations operating in this state. All grant funds are subject to fiscal year appropriations. Reports of lost revenue from inmate telephone contracts may be resubmitted each year with updated information on the use of any grant funds provided by the Legislature in the previous year.

SECTION 7. AMENDATORY 74 O.S. 2001, Section 85.12, as last amended by Section 1, Chapter 80, O.S.L. 2006 (74 O.S. Supp. 2006, Section 85.12), is amended to read as follows:

Section 85.12 A. The provisions of this section shall not be construed to affect any law relating to fiscal or accounting procedure except as they may be directly in conflict herewith; and all claims, warrants, and bonds shall be examined, inspected, and approved as now provided by law.

B. Except as otherwise provided by this section, the acquisitions specified in this subsection shall be made in compliance with Section 85.39 of this title but are not subject to other provisions of The Oklahoma Central Purchasing Act:

1. Food and other products produced by state institutions and agencies;

2. The printing or duplication of publications or forms of whatsoever kind or character by state agencies if the work is performed upon their own equipment by their own employees. Pursuant to this paragraph, the state agency may only use equipment owned or leased by the agency and may only utilize that equipment for printing services required by the agency in performing duties imposed upon the agency or functions authorized to be performed by the agency. Any use of the equipment by the agency pursuant to an agreement or contract with any other entity resulting in delivery of intermediate or finished products to the entity purchasing or using

the products shall be subject to the provisions of The Oklahoma Central Purchasing Act;

3. Department of Transportation and Transportation Commission contractual services or right-of-way purchases; contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, underpasses, or any other transportation facilities under the control of the Department of Transportation, the acquisitions of equipment or materials accruing to the Department of Transportation required in Federal-Aid contracts; and contracts for public service type announcements initiated by the Department of Transportation; but not contractual services for advertising or public relations or employment services;

4. Utility services where rates therefor are regulated by a state or federal regulatory commission, or by municipal ordinance, or by an Indian Tribal Council for use by the Department of Corrections only;

5. Acquisitions by the University Hospitals Authority. The Authority shall develop standards for the acquisition of products and services and may elect to utilize the Purchasing Division. The standards shall foster economy and short response time and shall include appropriate safeguards and record-keeping requirements to ensure appropriate competition and economical and efficient purchasing;

6. Contracts for custom harvesting by the Department of Corrections for the Department or its institutions;

7. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

8. Acquisitions by the Oklahoma Municipal Power Authority;

9. Acquisitions by the Grand River Dam Authority;

10. Acquisitions by rural water, sewer, gas, or solid waste management districts created pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act;

11. Acquisitions by the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, or the Midwestern Oklahoma Development Authority;

12. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when the Authority's Board of Directors determines that an emergency exists, and contracts for the services of legal counsel when approved by the Attorney General;

13. Expenditure of monies appropriated to the State Board of Education for Local and State Supported Financial Support of Public Schools, except monies allocated therefrom for the Administrative and Support Functions of the State Department of Education;

14. Expenditure of monies appropriated to the State Department of Rehabilitation Services for educational programs or educational

materials for the Oklahoma School for the Blind and the Oklahoma School for the Deaf;

15. Contracts entered into by the Oklahoma Department of Career and Technology Education for the development, revision, or updating of vocational curriculum materials, and contracts entered into by the Oklahoma Department of Career and Technology Education for training and supportive services that address the needs of new or expanding industries;

16. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

17. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5066.4 of this title;

18. Acquisitions made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

19. Acquisitions available to an agency through a General Services Administration (GSA) contract or other federal contract if the acquisition is on current statewide contract and the terms of the GSA or other federal contract, as determined by the State Purchasing Director, are more favorable to the agency than the terms of a statewide contract for the same products;

20. Purchases of pharmaceuticals available through a multistate or multigovernmental contract if such pharmaceuticals are or have been on state contract within the last fiscal year, and the terms of such contract are more favorable to the state or agency than the

terms of a state contract for the same products, as determined by the State Purchasing Director. The state entity designated by law, as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes, shall participate in the purchase of pharmaceuticals available through such contracts;

21. Contracts for managed health care services entered into by the state entity designated by law or the Department of Human Services, as specified in paragraph 1 of subsection A of Section 1010.3 of Title 56 of the Oklahoma Statutes;

22. Acquisitions by the Forestry Service of the Oklahoma Department of Agriculture, Food, and Forestry as authorized by the federal General Services Administration through a General Services Administration contract or other federal contract if the acquisitions are not on current statewide contract or the terms of the federal contract are more favorable to the agency than the terms of a statewide contract for the same products;

23. Acquisitions of clothing for clients of the Department of Human Services and acquisitions of food for group homes operated by the Department of Human Services;

24. Acquisitions by the Oklahoma Energy Resources Board;

25. Acquisitions of clothing for juveniles in the custody of the Office of Juvenile Affairs and acquisitions of food for group homes operated by the Office of Juvenile Affairs;

26. State contracts for flexible benefits plans pursuant to the Oklahoma State Employees Benefits Act, Section 1361 et seq. of this title;

27. Acquisitions by the Department of Securities to investigate, initiate, or pursue administrative, civil, or criminal proceedings involving potential violations of the acts under the Department's jurisdiction;

28. Acquisitions by the Native America Cultural and Educational Authority and acquisitions by the Oklahoma Department of Commerce to assist the Native American Cultural and Educational Authority pursuant to Section 5017 of this title;

29. Acquisitions for resale in and through canteens operated pursuant to Section 537 of Title 57 of the Oklahoma Statutes;

30. Acquisitions by the Oklahoma Boll Weevil Eradication Organization for employment and personnel services, and for acquiring sprayers, blowers, traps, and attractants related to the eradication of boll weevils in this state or as part of a national or regional boll weevil eradication program;

31. Contracts entered into by the Oklahoma Indigent Defense System for expert services pursuant to the provisions of subsection D of Section 1355.4 of Title 22 of the Oklahoma Statutes;

32. Acquisitions by the Oklahoma Correctional Industries and the Agri-Services programs of the Department of Corrections of raw materials, component parts and other products, any equipment

excluding vehicles, and any services excluding computer consultant services used to produce goods or services for resale and for the production of agricultural products; ~~and~~

33. Contracts entered into by the Department of Human Services for provision of supported living services to members of the plaintiff class in Homeward Bound, Inc., et. al., v. The Hissom Memorial Center, et. al., Case Number 85-C-437-E, United States District Court for the Northern District of Oklahoma; and

34. Contracts entered into by the Department of Corrections for telephone, telecommunication and computer services and equipment for correctional facilities, jails and private prisons pursuant to the provisions of this act.

C. Pursuant to the terms of a contract the State Purchasing Director enters into or awards, a state agency, common school, municipality, rural fire protection district, county officer, or any program contract, purchase, acquisition or expenditure that is not subject to the provisions of The Oklahoma Central Purchasing Act, may, unless acting pursuant to a contract with the state that specifies otherwise, make use of statewide contracts and the services of the Purchasing Division and the State Purchasing Director. Any political subdivision or rural fire protection district may designate the State Purchasing Director as its agent for any acquisition from a statewide contract or otherwise available to the state.

D. The State Purchasing Director shall make periodic audits of the purchasing procedures of the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, the University Hospitals Authority, and the Midwestern Oklahoma Development Authority to ensure that the procedures are being followed.

SECTION 8. This act shall become effective January 1, 2008.

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