

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 856

By: Johnson (Constance)

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5
6 AS INTRODUCED

7 An Act relating to corrections; stating legislative
8 intent; requiring market rates for certain
9 communication services for certain persons; providing
10 for lowest cost contracts beginning on certain date;
11 criminalizing certain funds above certain rates;
12 setting penalty; defining term; criminalizing certain
13 services or equipment for personal use at certain
14 rates; setting penalty; authorizing debit or prepaid
15 communication systems; exempting certain contract
16 provisions under certain condition; limiting certain
17 charges for debit or prepaid system; requiring the
18 Department of Corrections to contract for certain
19 services at certain rates; exempting certain
20 contracts from the Oklahoma Central Purchasing Act;
21 directing certain file of providers be maintained by
22 the Department of Corrections; stating data to be
23 maintained in certain file; permitting solicitation
24 of certain providers for certain purpose; allowing
for out-of-area providers to be included; requiring
annual notice of intent to contract; setting notice
requirements; providing procedures for contract
approval; requiring maintenance of equipment and non
interruption of services; providing for contract
renewals and negotiations; prohibiting encumbrance of
funds beyond fiscal year or for other entity;
specifying priority for contracts; construing certain
provisions for certain purposes; providing contracts
are open records; excluding county jails from
contracts; requiring certain facilities to permit
contracting and installation of services; setting
penalty; allowing removal of certain persons from
office for certain offense; prohibiting certain
private prison contracts after certain convictions;
providing for certain report of lost revenue;
authorizing grant funds for certain lost revenue;

1 amending 74 O.S. 2001, Section 85.12, as last amended
2 by Section 17, Chapter 320, O.S.L. 2006 (74 O.S.
3 Supp. 2006, Section 85.12), which relates to
4 acquisitions excluded; including contracts by the
5 Department of Corrections for certain
6 telecommunication services; providing for
7 codification; providing an effective date; and
8 declaring an emergency.

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

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

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

16 B. The cost of local and long distance telephone,
17 telecommunication and computer services and equipment available for
18 use by, or provided to, any person sentenced to the custody of the
19 Department of Corrections and held in any halfway house, community
20 correctional facility, prison or other correctional facility,
21 whether owned or operated by any private entity, public trust,
22 governmental agency or this state, shall be not more than the market
23 rate charged for comparable residential services and equipment
24 available within the geographic area of such facility. Such
services and equipment shall be contracted on the basis of the

1 lowest cost to users at the beginning of each fiscal year as
2 provided in this act.

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

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

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

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

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

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

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

1 persons sentenced to the custody of the Department of Corrections
2 and held in any halfway house, community correctional facility,
3 prison or other correctional facility, whether owned or operated by
4 any private entity, public trust, governmental agency, political
5 subdivision of this state or this state, to facilitate necessary
6 local and long-distance communications between the person held in
7 custody and his or her family, legal counsel, and other appropriate
8 contacts. In the event a no cost or debit or prepaid communication
9 system is implemented, any provision relating to contracts for
10 telephone, telecommunications or computer services and equipment
11 specified in this act shall not apply to the geographic area
12 utilizing such no cost or debit or prepaid communication system. No
13 debit or prepaid communication system authorized by this section
14 shall charge any person sentenced to the custody of the Department
15 of Corrections and held in any halfway house, community correctional
16 facility, prison or other correctional facility, whether owned or
17 operated by any private entity, public trust, governmental agency,
18 political subdivision of this state or this state, any rate above
19 the residential market rate charged for comparable services or
20 equipment.

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

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1 A. The Department of Corrections is required to negotiate
2 contracts for local and long-distance telephone, telecommunication
3 and computer services and equipment for persons sentenced to the
4 custody of the Department of Corrections and held in any halfway
5 house, community correctional facility, prison or other correctional
6 facility, whether owned or operated by any private entity, public
7 trust, governmental agency, political subdivision of this state or
8 this state, on the basis of offering the lowest cost and best
9 service to all users within the geographical residential market rate
10 for each facility.

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

21 C. The Department shall maintain a comprehensive file of all
22 telephone, telecommunications and computer service and equipment
23 providers operating within the geographical area of each facility
24 specified in this act, who have expressed an interest in and are

1 capable of providing services necessary to meet the communication
2 needs of this act. Additional service providers may be added at any
3 time prior to approving a contract for services and equipment. The
4 provider file shall include, but not be limited to:

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

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

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

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

23 E. Each year the Department shall notify all telephone,
24 telecommunication and computer service and equipment providers in

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

20 F. Contracts shall be entered into for a period specified in
21 the contract, subject to annual review and rate negotiation to keep
22 within market rates or below. No contract awarded shall encumber
23 any funds beyond the amount available for a fiscal year. The
24 Department shall not be authorized to contract for any services or

1 equipment that encumbers any funds belonging to, or creates any
2 liability for, any person, agency, political subdivision,
3 organization or entity other than the Department. Priority in
4 awarding contracts shall be given to those service providers who
5 have previously had a contract for services to the facility;
6 provided, such services were effectively delivered, and unless
7 another service provider can provide services at a lower cost.

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

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

15 I. Notwithstanding the provisions of Section 24A.22 of Title 51
16 of the Oklahoma Statutes contracts entered into pursuant to this
17 section shall not be confidential and shall be open to any person
18 for inspection, copying, or mechanical reproduction pursuant to the
19 provisions of the Open Records Act.

20 J. Nothing in this act shall be construed to affect or apply to
21 county jails or inmates held in county jails awaiting transfer to
22 the Department of Corrections.

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

4 Every halfway house, community correctional facility, prison or
5 other correctional facility, whether owned or operated by any
6 private entity, public trust, governmental agency, political
7 subdivision of this state or this state shall permit the Department
8 of Corrections to contract for telephone, telecommunications and
9 computer services and equipment for such facility as provided in
10 this act, and shall further agree to allow the approved contract
11 provider access to install, operate and maintain equipment and
12 services within such facility as specified in the contract
13 provisions. Every entity receiving contract services and equipment
14 specified in this act shall participate in the selection and
15 approval of the contract provider based upon previous contracts and
16 communication with the Department of Corrections and the Board of
17 Corrections in the selection and approval process specified in this
18 act. Failure of any entity specified in this act to permit the
19 Department to contract for required services or to allow access by
20 the approved contract provider to deliver services and equipment as
21 contracted and specified in this act, shall be a misdemeanor on a
22 first offense, and a felony upon any second or subsequent offense.
23 Any elected official convicted of a violation of this section, shall
24 be removed from office for failure to provide fair and adequate

1 services to persons held in custody. Upon any third violation, if
2 the violator is a private prison contractor, the Department of
3 Corrections shall be prohibited from continuing any contract for
4 services for state inmates or other services, until there is
5 compliance with the provisions of this act.

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

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

1 Reports of lost revenue from inmate telephone contracts may be
2 resubmitted each year with updated information on the use of any
3 grant funds provided by the Legislature in the previous year.

4 SECTION 7. AMENDATORY 74 O.S. 2001, Section 85.12, as
5 last amended by Section 17, Chapter 320, O.S.L. 2006 (74 O.S. Supp.
6 2006, Section 85.12), is amended to read as follows:

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

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

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

18 2. The printing or duplication of publications or forms of
19 whatsoever kind or character by state agencies if the work is
20 performed upon their own equipment by their own employees. Pursuant
21 to this paragraph, the state agency may only use equipment owned or
22 leased by the agency and may only utilize that equipment for
23 printing services required by the agency in performing duties
24 imposed upon the agency or functions authorized to be performed by

1 the agency. Any use of the equipment by the agency pursuant to an
2 agreement or contract with any other entity resulting in delivery of
3 intermediate or finished products to the entity purchasing or using
4 the products shall be subject to the provisions of the Oklahoma
5 Central Purchasing Act;

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

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

21 5. Acquisitions by the University Hospitals Authority. The
22 Authority shall develop standards for the acquisition of products
23 and services and may elect to utilize the Purchasing Division. The
24 standards shall foster economy and short response time and shall

1 include appropriate safeguards and record-keeping requirements to
2 ensure appropriate competition and economical and efficient
3 purchasing;

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

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

9 8. Acquisitions by the Oklahoma Municipal Power Authority;

10 9. Acquisitions by the Grand River Dam Authority;

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

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

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

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

3 14. Expenditure of monies appropriated to the State Department
4 of Rehabilitation Services for educational programs or educational
5 materials for the Oklahoma School for the Blind and the Oklahoma
6 School for the Deaf;

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

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

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

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

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

1 20. Purchases of pharmaceuticals available through a multistate
2 or multigovernmental contract if such pharmaceuticals are or have
3 been on state contract within the last fiscal year, and the terms of
4 such contract are more favorable to the state or agency than the
5 terms of a state contract for the same products, as determined by
6 the State Purchasing Director. The state entity designated by law,
7 as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes,
8 shall participate in the purchase of pharmaceuticals available
9 through such contracts;

10 21. Contracts for managed health care services entered into by
11 the state entity designated by law or the Department of Human
12 Services, as specified in paragraph 1 of subsection A of Section
13 1010.3 of Title 56 of the Oklahoma Statutes;

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

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

24 24. Acquisitions by the Oklahoma Energy Resources Board;

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

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

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

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

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

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

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

1 32. Acquisitions by the Oklahoma Correctional Industries and
2 the Agri-Services programs of the Oklahoma Department of Corrections
3 of raw materials, component parts and other products used to produce
4 goods or services for resale and for the production of agricultural
5 products;

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

11 34. Contracts negotiated by the Office of Juvenile Affairs with
12 designated Youth Services Agencies and the Oklahoma Association of
13 Youth Services, or another Oklahoma nonprofit corporation whose
14 membership consists solely of Youth Services Agencies and of whom at
15 least a majority of Youth Services Agencies are members, pursuant to
16 the provisions of Section 7302-3.6a of Title 10 of the Oklahoma
17 Statutes; and

18 35. Contracts entered into by the Department of Corrections for
19 telephone, telecommunication and computer services and equipment for
20 correctional facilities and private prisons pursuant to the
21 provisions of this act.

22 C. Pursuant to the terms of a contract the State Purchasing
23 Director enters into or awards, a state agency, common school,
24 municipality, rural fire protection district, county officer, or any

1 program contract, purchase, acquisition or expenditure that is not
2 subject to the provisions of the Oklahoma Central Purchasing Act,
3 may, unless acting pursuant to a contract with the state that
4 specifies otherwise, make use of statewide contracts and the
5 services of the Purchasing Division and the State Purchasing
6 Director. Any political subdivision or rural fire protection
7 district may designate the State Purchasing Director as its agent
8 for any acquisition from a statewide contract or otherwise available
9 to the state.

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

15 SECTION 8. This act shall become effective July 1, 2007.

16 SECTION 9. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

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