

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3000

6 By: Steele

7 COMMITTEE SUBSTITUTE

8 An Act relating to The Governmental Tort Claims Act;
9 amending 51 O.S. 2001, Section 158, as last amended
10 by Section 3, Chapter 315, O.S.L. 2009 (51 O.S. Supp.
11 2009, Section 158), which relates to settlements;
12 authorizing certain structured settlements; providing
13 requirements; amending 74 O.S. 2001, Section 85.12,
14 as last amended by Section 3, Chapter 273, O.S.L.
15 2009 (74 O.S. Supp. 2009, Section 85.12), which
16 relates to The Oklahoma Central Purchasing Act;
17 expanding excluded acquisitions; and providing an
18 effective date.

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

20 SECTION 1. AMENDATORY 51 O.S. 2001, Section 158, as last
21 amended by Section 3, Chapter 315, O.S.L. 2009 (51 O.S. Supp. 2009,
22 Section 158), is amended to read as follows:

23 Section 158. A. The state or a political subdivision, after
24 conferring with authorized legal counsel, may settle or defend
against a claim or suit brought against it or its employee under
~~this act~~ The Governmental Tort Claims Act subject to any procedural

1 requirements imposed by statute, ordinance, resolution or written
2 policy, and may appropriate money for the payment of amounts agreed
3 upon. When the amount of any settlement exceeds Twenty-five
4 Thousand Dollars (\$25,000.00), and any payment required by the
5 settlement will not be paid through an applicable contract or policy
6 of insurance, the settlement shall not be effective until approved
7 by the district court and entered as a judgment as provided by law.

8 B. Any settlement payout pursuant to this section may be
9 structured in any manner as agreed to by the parties involved;
10 provided, if the state is a party to the settlement, and the
11 settlement provides for a structured settlement, the state may
12 participate in the structured settlement if the state payments to
13 the claimant or the insurance or annuity company that is the
14 assignee of the claimant are completed within the fiscal year in
15 which settlement is agreed to and if the parties sign a Qualified
16 Assignment and Release Agreement that releases the state from
17 further obligation.

18 C. If a policy or contract of liability insurance covering the
19 state or political subdivision or its employees is applicable, the
20 terms of the policy govern the rights and obligations of the state
21 or political subdivision and the insurer with respect to the
22 investigation, settlement, payment and defense of claims or suits
23 against the state or political subdivision or its employees covered
24 by the policy. However, the insurer may not enter into a settlement

1 for an amount which exceeds the insurance coverage without the
2 approval of the governing body of the state or political subdivision
3 or its designated representative if the state or political
4 subdivision is insured.

5 D. Nothing in this section shall be construed to repeal or
6 modify Sections 361 through 365.6 and 435 of Title 62 of the
7 Oklahoma Statutes and it is intended that this section be construed
8 in conformance with those sections.

9 E. The state or a political subdivision shall not be liable for
10 any costs, judgments or settlements paid through an applicable
11 contract or policy of insurance but shall be entitled to set off
12 those payments against liability arising from the same occurrence.

13 F. The state or a political subdivision shall have the right of
14 subrogation against the insurer issuing any applicable contractor
15 policy of insurance to the monetary limit of said policy of
16 insurance or contract, if judgment or settlement of any claim
17 arising pursuant to this act results in the imposition of monetary
18 liability upon the state or the political subdivision.

19 G. Judgments, orders, and settlements of claims shall be open
20 public records unless sealed by the court for good cause shown.

21 SECTION 2. AMENDATORY 85 O.S. 2001, Section 85.12, as
22 last amended by Section 3, Chapter 273, O.S.L. 2009 (74 O.S. Supp.
23 2009, Section 85.12), is amended to read as follows:

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

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

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

12 2. The printing or duplication of publications or forms of
13 whatsoever kind or character by state agencies if the work is
14 performed upon their own equipment by their own employees. Pursuant
15 to this paragraph, the state agency may only use equipment owned or
16 leased by the agency and may only utilize that equipment for
17 printing services required by the agency in performing duties
18 imposed upon the agency or functions authorized to be performed by
19 the agency. Any use of the equipment by the agency pursuant to an
20 agreement or contract with any other entity resulting in delivery of
21 intermediate or finished products to the entity purchasing or using
22 the products shall be subject to the provisions of The Oklahoma
23 Central Purchasing Act;

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

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

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

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

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

4 8. Acquisitions by the Oklahoma Municipal Power Authority;

5 9. Acquisitions by the Grand River Dam Authority;

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

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

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

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

21 14. Expenditure of monies appropriated to the State Department
22 of Rehabilitation Services for educational programs or educational
23 materials for the Oklahoma School for the Blind and the Oklahoma
24 School for the Deaf;

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

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

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

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

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

19 20. Purchases of pharmaceuticals available through a multistate
20 or multigovernmental contract if such pharmaceuticals are or have
21 been on state contract within the last fiscal year, and the terms of
22 such contract are more favorable to the state or agency than the
23 terms of a state contract for the same products, as determined by
24 the State Purchasing Director. The state entity designated by law,

1 as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes,
2 shall participate in the purchase of pharmaceuticals available
3 through such contracts;

4 21. Contracts for managed health care services entered into by
5 the state entity designated by law or the Department of Human
6 Services, as specified in paragraph 1 of subsection A of Section
7 1010.3 of Title 56 of the Oklahoma Statutes;

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

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

18 24. Acquisitions by the Oklahoma Energy Resources Board;

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

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

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

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

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

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

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

19 32. Acquisitions by the Oklahoma Correctional Industries and
20 the Agri-Services programs of the Department of Corrections of raw
21 materials, component parts and other products, any equipment
22 excluding vehicles, and any services excluding computer consultant
23 services used to produce goods or services for resale and for the
24 production of agricultural products;

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

6 34. Contracts negotiated by the Office of Juvenile Affairs with
7 designated Youth Services Agencies and the Oklahoma Association of
8 Youth Services, or another Oklahoma nonprofit corporation whose
9 membership consists solely of Youth Services Agencies and of whom at
10 least a majority of Youth Services Agencies are members, pursuant to
11 the provisions of Section ~~7302-3.6a~~ 2-7-306 of Title ~~10~~ 10A of the
12 Oklahoma Statutes; ~~and~~

13 35. Contracts not to exceed One Hundred Thousand Dollars
14 (\$100,000.00) entered into by the Department of Environmental
15 Quality for engineering services to assist qualifying small
16 municipalities or rural water or sewer districts with engineering
17 reports or plans and specifications needed for construction or
18 repairs to achieve compliance with federal and state public water
19 supply or wastewater laws and regulations; and

20 36. Contracts for annuities for structured settlements provided
21 for in Section 158 of Title 51 of the Oklahoma Statutes.

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 3. This act shall become effective November 1, 2010.

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