

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL 1600

6 By: Crain of the Senate

7 and

8 Schwartz and Pittman of the  
9 House

10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to state government; amending 74 O.S.  
12 2001, Section 85.3A, as last amended by Section 1 of  
13 Enrolled House Bill No. 3204 of the 2nd Session of  
14 the 52nd Oklahoma Legislature, which relates to the  
15 Central Purchasing Act; exempting certain entities  
16 from the Central Purchasing Act; amending Section 2,  
17 Chapter 355, O.S.L. 2003, 74 O.S. 2001, Sections 589,  
18 as amended by Section 3, Chapter 355, O.S.L. 2003,  
19 and 85.42, as last amended by Section 12, Chapter  
20 322, O.S.L. 2009 (74 O.S. Supp. 2009, Sections 588.1,  
21 589, and 85.42), which relate to privatization;  
22 modifying conditions for certain requirement;  
23 modifying responsibilities of agency under the  
24 Oklahoma Privatization of State Functions Act;  
removing certain requirement for confidentiality;  
modifying certain requirement for notification;  
permitting the Department of Mental Health and  
Substance Abuse Services to enter into contracts with  
certain professionals; providing an effective date;  
and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 85.3A, as  
last amended by Section 1 of Enrolled House Bill No. 3204 of the 2nd

1 Session of the 52nd Oklahoma Legislature, is amended to read as  
2 follows:

3 Section 85.3A. Compliance with the provisions of The Oklahoma  
4 Central Purchasing Act shall not be required of:

5 1. County government;

6 2. The Oklahoma State Regents for Higher Education, the  
7 institutions, centers, or other constituent agencies of The Oklahoma  
8 State System of Higher Education;

9 3. The telecommunications network known as OneNet;

10 4. The Department of Public Safety gun range;

11 5. The State Treasurer for the following purchases:

12 a. services, including, but not limited to, legal  
13 services to assist in the administration of the  
14 Uniform Unclaimed Property Act, as provided in Section  
15 668 of Title 60 of the Oklahoma Statutes, and

16 b. software, hardware and associated services to assist  
17 in the administration of funds and securities held by  
18 the state, as provided in Section 71.2 of Title 62 of  
19 the Oklahoma Statutes;

20 6. CompSource Oklahoma if CompSource Oklahoma is operating  
21 pursuant to a pilot program authorized by Sections 3316 and 3317 of  
22 this title; ~~or~~

23 7. The Oklahoma Wheat Commission; or  
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1        8. Entities contracting with the state to provide senior  
2 nutrition services under the Older Americans Act.

3        SECTION 2.        AMENDATORY        Section 2, Chapter 355, O.S.L.  
4 2003 (74 O.S. Supp. 2009, Section 588.1), is amended to read as  
5 follows:

6        Section 588.1 A. Before any agency contracts to privatize a  
7 function, program, service, unit, or division valued at ~~One Hundred~~  
8 ~~Thousand Dollars (\$100,000.00)~~ One Million Dollars (\$1,000,000.00)  
9 or more, the agency must perform a cost analysis and provide a copy  
10 of the cost analysis report to the Department of Central Services.

11        B. The Department of Central Services shall review the cost  
12 analysis report and make a finding as to whether it fulfills the  
13 content requirements of the Oklahoma Privatization of State  
14 Functions Act and the rules of the Department. If the cost analysis  
15 report is found not to meet the requirements of the Oklahoma  
16 Privatization of State Functions Act or the rules of the Department,  
17 the Department shall return the cost analysis report to the agency  
18 with instructions.

19        C. The Director of the Department of Central Services shall  
20 promulgate rules necessary to implement the provisions of the  
21 Oklahoma Privatization of State Functions Act.

22        SECTION 3.        AMENDATORY        74 O.S. 2001, Section 589, as  
23 amended by Section 3, Chapter 355, O.S.L. 2003 (74 O.S. Supp. 2009,  
24 Section 589), is amended to read as follows:

1 Section 589. A. Upon a finding by the Department of Central  
2 Services pursuant to Section ~~2~~ 588.1 of this ~~act~~ title that the  
3 agency has complied with the requirements of the Oklahoma  
4 Privatization of State Functions Act, and before any agency can  
5 contract to privatize a function, program, service, unit or  
6 division, the agency must ~~allow its employees the opportunity to~~  
7 ~~submit proposals for improving the operations, efficiency or~~  
8 ~~organization of the entity being considered for privatization.~~

9 ~~B. The privatization process shall begin with~~ provide:

10 1. Notification to employees impacted by the proposed  
11 privatization by the agency of its intent to privatize a function,  
12 program, service, unit, or division of the agency;

13 2. ~~A specific statement that employees have an opportunity to~~  
14 ~~submit proposals to the agency~~ Notification to affected employees  
15 that the agency has performed a cost analysis as required to Section  
16 588.1 of this title; and

17 3. Notification by the agency simultaneously with the notice  
18 required pursuant to paragraph 1 of this subsection, to the Director  
19 of the Office of State Finance and the Director of the Department of  
20 Central Services of the intent of the agency to privatize a state  
21 function.

22 ~~C. The agency shall provide information about the delivery of~~  
23 ~~services to its employees as they develop proposals to be~~  
24 ~~considered. This information shall include revenue expenditure~~

1 ~~data, wage and salary data, an inventory of the supplies, equipment,~~  
2 ~~and facilities associated with the program being privatized, and the~~  
3 ~~cost analysis performed by the agency.~~

4 ~~D. Proposals submitted by agency employees shall remain~~  
5 ~~confidential and be considered simultaneously in the bid or proposal~~  
6 ~~process with nonemployee bids.~~

7 ~~E. B.~~ After an agency has decided to privatize a function,  
8 program, service, unit or division and has met the requirements of  
9 subsection ~~D~~ A of this section, the agency shall notify the Director  
10 of State Finance ~~of its intent to solicit bids by interested~~  
11 ~~parties. Prior to solicitation of bids from other interested~~  
12 ~~parties, the agency shall notify,~~ the Governor, the President Pro  
13 Tempore of the Senate, and the Speaker of the House of  
14 Representatives of the intent of the agency to solicit bids ~~and a~~  
15 ~~statement that the agency has given the opportunity to its employees~~  
16 ~~to submit proposals pursuant to this section prior to the decision~~  
17 ~~to privatize.~~

18 ~~F. C.~~ The agency shall provide a comprehensive written analysis  
19 of the contract cost based upon the designated bid, specifically  
20 including the costs of transition from public to private operation,  
21 severance payments to agency employees, and monitoring and otherwise  
22 administering contract performance.

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1       ~~G.~~ D. The agency shall require the following information prior  
2 to entering into a contract to privatize a function, program,  
3 service, unit, or division:

4           1. Financial stability of the vendor, past and present  
5 litigation, and references related to past government contract  
6 performance information; and

7           2. Detail how the vendor will perform the contract, including  
8 staffing and equipment information.

9       ~~H.~~ E. The agency shall establish a plan and cost analysis on  
10 how to return the privatized function, program, service, unit, or  
11 division to the state if there is a contract cancellation.

12       ~~I.~~ F. Any contract with a vendor to privatize a function,  
13 program, service, unit, or division shall require that the payment  
14 to the contractor be linked to performance. The contract shall  
15 provide that the amount agreed upon in the contract may be reduced  
16 if the agency experiences a budget shortfall.

17       ~~J.~~ G. Each privatization contract shall contain provisions  
18 requiring the contractor to offer available employee positions  
19 pursuant to the contract to qualified regular employees of the  
20 agency whose state employment is terminated because of the  
21 privatization contract and who satisfy the hiring criteria of the  
22 contractor.

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1 SECTION 4. AMENDATORY 74 O.S. 2001, Section 85.42, as  
2 last amended by Section 12, Chapter 322, O.S.L. 2009 (74 O.S. Supp.  
3 2009, Section 85.42), is amended to read as follows:

4 Section 85.42 A. Except as otherwise provided for in this  
5 section, any agency, whether or not such agency is subject to The  
6 Oklahoma Central Purchasing Act, is prohibited from entering into a  
7 sole source contract or a contract for professional services with or  
8 for the services of any person, who has terminated employment with  
9 or who has been terminated by that agency for one (1) year after the  
10 termination date of the employee from the agency. The provisions of  
11 this subsection shall not prohibit an agency from hiring or rehiring  
12 such person as a state employee.

13 B. Each contract entered into by any person or firm with the  
14 State of Oklahoma shall include a statement certifying that no  
15 person who has been involved in any manner in the development of  
16 that contract while employed by the State of Oklahoma shall be  
17 employed to fulfill any of the services provided for under said  
18 contract. This subsection shall not preclude faculty and staff of  
19 the institutions within The State System of Higher Education from  
20 negotiating and participating in research grants and educational  
21 contracts. Nor shall this subsection apply to personnel of the  
22 Capital Resources Division of the Oklahoma Department of Commerce  
23 who contract to provide services to the Oklahoma Capital Investment  
24 Board.

1 C. As used in this section, person is defined as any state  
2 official or employee of a department, board, bureau, commission,  
3 agency, trusteeship, authority, council, committee, trust, school  
4 district, fair board, court, executive office, advisory group, task  
5 force, study group, supported in whole or in part by public funds or  
6 entrusted with the expenditure of public funds or administering or  
7 operating public property, and all committees, or subcommittees  
8 thereof, judges, justices, and state legislators.

9 D. An agency may enter into a sole source contract or a  
10 contract for professional services at any time with a person who is  
11 a qualified interpreter for the deaf.

12 E. The Department of Transportation, Oklahoma Water Resources  
13 Board, Department of Environmental Quality, Oklahoma Tourism and  
14 Recreation Department, the Oklahoma Turnpike Authority and the  
15 Oklahoma Department of Agriculture, Food, and Forestry may enter  
16 into a contract for professional services at any time with a person  
17 who has retired from state service, provided the provisions  
18 specified in subsection B of this section are satisfied.

19 F. The Department of Human Services may enter into a contract  
20 for professional services related to computer application  
21 development support and network engineering at any time with a  
22 person who has separated from state service, provided the provisions  
23 specified in subsection B of this section are satisfied.

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1 G. To maintain public health infrastructure and preparedness,  
2 the State Department of Health and city-county health departments  
3 may enter into a contract for professional services at any time with  
4 a physicians assistant, registered nurse, advanced practice nurse,  
5 nurse midwife, registered dietician, occupational therapist,  
6 physical therapist, or speech-language pathologist who has retired  
7 from state service; provided, the provisions specified in subsection  
8 B of this section are also satisfied.

9 H. The Department of Mental Health and Substance Abuse Services  
10 may enter into a contract for professional services at any time with  
11 a physician, registered nurse, registered pharmacist, or person  
12 meeting the definition of a licensed mental health professional as  
13 defined in Section 1-103 of Title 43A of the Oklahoma Statutes who  
14 has separated and/or retired from state service; provided that the  
15 provisions specified in subsection B of this section are satisfied.

16 SECTION 5. This act shall become effective July 1, 2010.

17 SECTION 6. It being immediately necessary for the preservation  
18 of the public peace, health and safety, an emergency is hereby  
19 declared to exist, by reason whereof this act shall take effect and  
20 be in full force from and after its passage and approval.

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