

ENROLLED HOUSE
BILL NO. 3000

By: Steele and Jett of the
House

and

Laster and Johnson
(Constance) of the Senate

An Act relating to The Governmental Tort Claims Act; amending 51 O.S. 2001, Section 158, as last amended by Section 3, Chapter 315, O.S.L. 2009 (51 O.S. Supp. 2009, Section 158), which relates to settlements; authorizing certain structured settlements; providing requirements; amending 74 O.S. 2001, Section 85.12, as last amended by Section 98 of Enrolled Senate Bill No. 2113 of the 2nd Session of the 52nd Oklahoma Legislature, which relates to The Oklahoma Central Purchasing Act; expanding excluded acquisitions; and providing an effective date.

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

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

Section 158. A. The state or a political subdivision, after 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 requirements imposed by statute, ordinance, resolution or written policy, and may appropriate money for the payment of amounts agreed upon. When the amount of any settlement exceeds Twenty-five Thousand Dollars (\$25,000.00), and any payment required by the settlement will not be paid through an applicable contract or policy

of insurance, the settlement shall not be effective until approved by the district court and entered as a judgment as provided by law.

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

C. If a policy or contract of liability insurance covering the state or political subdivision or its employees is applicable, the terms of the policy govern the rights and obligations of the state or political subdivision and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state or political subdivision or its employees covered by the policy. However, the insurer may not enter into a settlement for an amount which exceeds the insurance coverage without the approval of the governing body of the state or political subdivision or its designated representative if the state or political subdivision is insured.

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

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

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

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

SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.12, as last amended by Section 98 of Enrolled Senate Bill No. 2113 of the 2nd Session of the 52nd Oklahoma Legislature, 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;

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 Hisson Memorial Center, et. al.*, Case Number 85-C-437-E, United States District Court for the Northern District of Oklahoma;

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

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

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

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

Passed the House of Representatives the 27th day of May, 2010.

Presiding Officer of the House of
Representatives

Passed the Senate the 28th day of May, 2010.

Presiding Officer of the Senate