

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 1155

By: Sparks

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5
6 AS INTRODUCED

7 An Act relating to state government; authorizing the
8 Governor to designate certain state agency an
9 enterprise agency; providing for duration of
10 designation; stating purpose; providing for agreement
11 to set certain goal; authorizing the Governor to pay
12 bonus for certain purpose to certain person;
13 authorizing the director to pay bonus for certain
14 purpose to certain person; stating certain exception;
15 authorizing the enterprise agency to waive certain
16 rule concerning employees of the enterprise agency;
17 authorizing the enterprise agency to waive provisions
18 of the Oklahoma Central Purchasing Act and any rule
19 of the Department of Central Services; requiring
20 certain waiver of rules to be filed with certain
21 agency; authorizing the enterprise agency to waive
22 certain administrative rule regarding the acquisition
23 and use of information technology; setting procedures
24 for waiving certain provisions of certain rules;
setting time frame for certain waiver or suspension;
requiring report; establishing enterprise agency
grant fund; stating purpose; providing for
application; authorizing enterprise agency to keep
certain funds in the enterprise agency grant fund;
providing for codification; and providing an
effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3316 of Title 74, unless there
24 is created a duplication in numbering, reads as follows:

1 The Governor may, by executive order, designate a state agency
2 as an enterprise agency. The designation of an enterprise agency
3 shall be for a period of five (5) years which shall automatically
4 renew unless revoked within 180 days of the end of the initial five
5 year term. The purpose of designating an enterprise agency is to
6 grant the agency relief from certain statutory provisions or agency
7 rules as provided by this act upon a prior showing of projected
8 savings resulting from such relief.

9 SECTION 2. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 3317 of Title 74, unless there
11 is created a duplication in numbering, reads as follows:

12 A. Prior to each fiscal year, or as soon thereafter as
13 possible, each director of a designated enterprise agency shall
14 submit an annual enterprise plan to the Governor, the Speaker of the
15 House of Representatives and the President Pro Tempore of the Senate
16 which shall set forth measurable organizational and budgetary goals
17 for the director in key operational areas of the agency. The annual
18 performance plan shall be made public, except those portions
19 containing proprietary, privileged or confidential information
20 protected by law or that would place the agency or its constituents
21 at an unfair disadvantage relative to those similarly situated.

22 B. Except when contrary to the Oklahoma Constitution, the
23 agency's governing board may set the salary and authorize the
24 payment of a bonus to a director of an enterprise agency in an

1 amount not in excess of fifteen percent (15%) of the director's
2 annual rate of pay, based upon the agency's governing board's
3 evaluation of the director's performance in relation to the goals
4 set forth in the annual performance plan and the director's efficacy
5 of performance, notwithstanding any statutory salary limitation. In
6 the event an enterprise agency does not have a governing board, the
7 Governor shall have such authorization.

8 C. A director of an enterprise agency may authorize the payment
9 of bonuses to employees of the enterprise agency in a total amount
10 not in excess of fifteen percent (15%) of the individual employee's
11 annual rate of pay, based upon the director's evaluation of the
12 employees' performance.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3318 of Title 74, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Except as otherwise provided by law, proceeds from the sale
17 or lease of capital assets that are under the control of an
18 enterprise agency shall be retained by the enterprise agency and
19 used for such purposes within the scope of the responsibilities of
20 the enterprise agency.

21 B. With respect only to agencies that receive appropriations
22 and are not self-sustaining, notwithstanding any provision of law to
23 the contrary, one-half (1/2) of all unencumbered or unobligated
24 balances of appropriations made for each fiscal year of that fiscal

1 period to the enterprise agency shall not revert to the State
2 Treasury or to the credit of the funds from which the appropriations
3 were made. This provision does not apply to self-sustaining
4 agencies that do not receive appropriations.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3319 of Title 74, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Notwithstanding any provision of law to the contrary, an
9 enterprise agency shall not be subject to any limitation relating to
10 the number of or pay grade assigned to its employees, including any
11 limitation on the number of full-time-equivalent positions.

12 B. An enterprise agency may waive any personnel rule or statute
13 and may exercise the authority granted to the Office of Personnel
14 Management concerning employees of the enterprise agency. The
15 waiver of any statute or rule pursuant to this subsection shall be
16 filed with the Office of Personnel Management and shall be available
17 for public inspection.

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3320 of Title 74, unless there
20 is created a duplication in numbering, reads as follows:

21 An enterprise agency may waive any provision of the Oklahoma
22 Central Purchasing Act and any administrative rule of the Department
23 of Central Services regarding procurement, fleet management,
24 printing and copying, or maintenance of buildings and grounds, and

1 may exercise the authority of the Department of Central Services as
2 it relates to the physical resources of the state. A waiver of a
3 statute or rule pursuant to this subsection shall be filed with the
4 Department of Central Services and made available for public
5 inspection.

6 SECTION 6. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3321 of Title 74, unless there
8 is created a duplication in numbering, reads as follows:

9 An enterprise agency may waive any provision of the Oklahoma
10 Central Purchasing Act, any provision of Section 41.5a et seq. of
11 Title 62 of the Oklahoma Statutes, and any administrative rule
12 regarding the acquisition and use of information technology and may
13 exercise the powers of the Department of Central Services and the
14 Information Services Division of the Office of State Finance as it
15 relates to information technology, except that if the enterprise
16 agency receives appropriations and is not self-sustaining, then such
17 enterprise agency shall comply with Section 41.5e of Title 62 of the
18 Oklahoma Statutes. A waiver of any statute or rule pursuant to this
19 subsection shall be filed with the Department of Central Services
20 and made available for public inspection.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3322 of Title 74, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. An enterprise agency may temporarily waive or suspend the
2 provisions of any other administrative rule if strict compliance
3 with the rule impacts the ability of the enterprise agency to
4 perform its duties in a more cost-efficient manner and the
5 requirements of this subsection are met.

6 B. The procedure for granting a temporary waiver or suspension
7 of any administrative rule shall be as follows:

8 1. The enterprise agency may waive or suspend a rule if the
9 agency finds, based on clear and convincing evidence, all of the
10 following:

- 11 a. the application of the rule poses an undue financial
12 hardship on the agency,
- 13 b. the waiver or suspension from the requirements of a
14 rule in the specific case would not prejudice the
15 substantial legal rights of any person,
- 16 c. substantially equal protection of public health,
17 safety, and welfare will be afforded by a means other
18 than that prescribed in the particular rule for which
19 the waiver or suspension is requested, and
- 20 d. the waiver or suspension would not result in a
21 violation of due process, a violation of state or
22 federal law, or a violation of the state or federal
23 constitution;

1 2. If an enterprise agency proposes to grant a waiver or
2 suspension, the enterprise agency shall draft the waiver or
3 suspension so as to provide the narrowest exception possible to the
4 provisions of the rule and may place any condition on the waiver or
5 suspension that the enterprise agency finds desirable to protect the
6 public health, safety, and welfare. The enterprise agency shall
7 then submit the waiver or suspension to the Governor;

8 3. The Governor shall review the proposed waiver or suspension
9 and may either take no action, affirmatively approve the waiver or
10 suspension, delay the effective date of the waiver or suspension or
11 reject the waiver or suspension.

12 a. The waiver or suspension shall become effective within
13 ninety (90) days from the date of submission if the
14 Governor approves or takes no action concerning the
15 proposed waiver or suspension.

16 b. If the Governor delays the effective date of the
17 waiver or suspension, but takes no further action to
18 rescind the waiver or suspension, the proposed waiver
19 or suspension shall become effective on the date to
20 which the waiver or suspension was delayed.

21 c. The Governor shall notify the enterprise agency in
22 writing of the action concerning the proposed waiver
23 or suspension.
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1 d. Rejection of the waiver or suspension by the Governor
2 shall require that the enterprise agency fully comply
3 with the rule; and

4 4. Copies of the grant or denial of a waiver or suspension
5 under this subsection shall be filed and made available to the
6 public by the agency.

7 C. A waiver or suspension granted pursuant to this section
8 shall be for a period of time not to exceed twelve (12) months, and
9 as determined by the applicable enterprise agency. A renewal of a
10 temporary waiver or suspension granted pursuant to this section
11 shall be granted or denied in the same manner as the initial waiver
12 or suspension.

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3323 of Title 74, unless there
15 is created a duplication in numbering, reads as follows:

16 Each enterprise agency shall submit a written report to the
17 Governor and the Legislature by December 31 of each year summarizing
18 the activities of the enterprise agency for the preceding fiscal
19 year. The report shall include information concerning the
20 expenditures of the agency and the number of filled full-time-
21 equivalent positions during the preceding fiscal year. The report
22 shall include information relating to the actions taken by the
23 agency pursuant to the authority granted by this act. Information
24 that is privileged, proprietary or confidential by law or that would

1 place the agency or its constituents at an unfair disadvantage
2 relative to others similarly situated shall not be publicly
3 disclosed.

4 SECTION 9. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3324 of Title 74, unless there
6 is created a duplication in numbering, reads as follows:

7 A. An enterprise agency grant fund is created in the State
8 Treasury under the control of the State Treasurer for the purpose of
9 providing funding to support innovation by those state agencies
10 designated as enterprise agencies in accordance with this act.
11 Innovation purposes shall include but are not limited to training,
12 development of outcome measurement systems, management system
13 modifications, and other modifications associated with transition of
14 operations to enterprise agency status. Monies in the fund are
15 appropriated to the Office of State Finance for the purposes
16 described in this subsection.

17 B. An enterprise agency requesting a grant from the fund shall
18 complete an application process designated by the Director of the
19 Office of State Finance.

20 C. Notwithstanding any provision of law to the contrary,
21 interest or earnings on monies deposited in the enterprise agency
22 grant fund shall be credited to the enterprise agency grant fund.
23 Notwithstanding any provision of law to the contrary, monies
24 credited to the enterprise agency grant fund shall not revert to the

1 fund from which they were appropriated at the close of a fiscal
2 year.

3 SECTION 10. This act shall become effective November 1, 2009.

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