

OFFICE OF STATE FINANCE
DIVISION OF THE BUDGET
2300 NORTH LINCOLN BOULEVARD, ROOM 122
OKLAHOMA CITY, OK 73105
(405)521-2814 FAX (405)521-3902

November 3, 1999

MEMORANDUM

TO: Agency Directors and Fiscal Officers
FROM: Rollo Redburn, Director
Division of the Budget
SUBJECT: Senate Bill 376 regarding privatization of state services

The 1999 Legislature passed statutory changes relating to the privatization of state services, and the Governor signed them into law. This memo will outline for you the changes and help you to understand the process that you need to follow as you attempt to reduce costs and improve program efficiencies through privatization efforts.

These law changes are not meant to hinder your efforts to manage your agency. The intent was to ensure that communication is occurring between agency management and employees that will be affected by changes in the way services are delivered. This communication is anticipated to be two-way. Management needs to keep the employees informed about how program performance is rated - efficient / not efficient; cost effective / too costly; and so-forth, and about program changes that are under consideration by management. The employees can also express to management ways that program efficiency can be improved and/or program costs can be reduced.

There are four attachments to this memo:

1. a summary of the law changes;
2. an example of how the privatization / notification process might work for you;
3. suggested language to fulfill notification requirements of the bill;
4. the full text of SB 376.

If you have questions about these new requirements, let me know and I'll be glad to help you.

Summary of Enrolled Senate Bill 376 dealing with the privatization of state functions

The changes in this legislation are *effective January 1, 2000*.

The bill requires agency management to provide several notifications during the process of privatizing an agency function. As mentioned previously, suggested language for the various notification requirement is attached to this memo. You can modify this language as necessary to more appropriately describe your specific situation.

Section 3 of the bill indicates that this applies to "an agency, board, commission or other entity of state government."

Section 3 of this act also explains that these procedures will apply whenever you are considering entering into a "contract for the performance of a duty or function which is currently being performed by a state employee." If the duty or function is currently contracted out, these procedures do not apply. If you implement a new duty or function and choose to do so by using private sector services, these procedures do not apply.

Section 4 of the bill outlines the process to follow if the act applies to privatization efforts you want to consider. One intent of the bill is that employees be given the opportunity to submit their ideas and proposals on how agency operations might be improved before the function is privatized. To better ensure that such opportunities occur, you are required to notify employees of your intent and subsequently to notify the Governor and lawmakers that you have complied with this act.

The process you follow should include the following steps. As you will see, the final step in this process is for you to notify the Governor, Speaker of the House of Representatives, President Pro Tempore of the Senate and the Director of the Office of State Finance that you have complied with this act and other applicable laws regarding privatization of the function or duties.

a. Notify employees of your intent to privatize: as you determine through the bench marking efforts of your staff or of others that a particular function or service might be better delivered by the private sector, you should notify the employees that would be affected by such action that you are considering privatization as an alternative to the existing process. The notification you send the employees should include a statement that the employees have an opportunity to submit proposals to agency management. You should also indicate that you will provide them with financial information if they want to develop proposals for your consideration (see paragraph c. below).

b. Simultaneously, you need to notify the Director of State Finance of your intent.

c. Provide information about the current program to affected employees as they develop proposals to be considered. The kind of information to be provided is outlined in Section 4.C. of the bill. The intent here is that you provide assistance to your employees that want to develop proposals for your consideration. The information you are to provide is financial and operating information that would be helpful in developing proposals. It is also the kind of information that you will need to be able to adequately assess potential bids and to accurately measure the success of your endeavor should you go ahead and privatize the function.

d. Give legitimate consideration to proposals developed by your employees. You should establish a reasonable deadline within which they can work, and once submitted, their proposals should be evaluated and considered as you are determining whether or not to go ahead and solicit bids from the private sector.

e. After you decide to go ahead and seek bids to privatize a function, you need to notify the Governor, Speaker of the House of Representatives, President Pro Tempore of the Senate and the Director of the Office of State Finance of your intent to solicit bids for the privatization of a state function and that you have complied with this act and other applicable laws regarding privatization of the function or duties.

One final provision of SB 376 is regarding the employment of individuals involved in the privatization of functions. Essentially, if you exercise discretionary or decision-making authority in awarding a privatization contract, you cannot become an officer or employee of a business organization that your agency contracts with if you exercised this authority during the contracting process with that business entity.

An example of how the privatization / notification process might work for you

New procedures you need to follow are indented.

1. In the normal course of business, you are continually benchmarking the costs, efficiency and effectiveness of the programs and services delivered by your agency (although not required by law, we encourage you to benchmark your performance and will be glad to assist you in doing that).
2. The results of your work may indicate to you that a program or service needs improvement in efficiency or effectiveness.
3. As you review potential alternatives and try to decide what to do to improve services, you might decide that the private sector should be considered as an alternative delivery mechanism.
 - **Notify affected employees of what is going on (required by Section 4.B.1. of the bill - see suggested language) and that you will provide them with helpful information if they would like to submit their own proposals to improve the service delivery.**
 - **Notify the Director of State Finance that you are considering privatizing a state function (required by Section 4.B.3. of the bill - see suggested language).**
 - **Establish a reasonable deadline for affected employees to notify you that they would like to prepare and present to you a proposal for service delivery.**
 - **If affected employees want to develop proposals, establish a reasonable deadline for the submission of the proposals.**
 - **Provide the employees with financial and operating information (required by Section 4.C. of the bill).**
 - **Accept and consider proposals from your employees prior to soliciting bids from interested parties (required by Section 4.D. of the bill).**
 - **If you decide to solicit bids from interested parties, notify the Director of State Finance of your intent to do so. Also notify the Governor, Speaker, and President Pro Tempore (all required by Section 4.E. of the bill - see suggested language).**

At this point, you are back on track with the normal purchasing and bidding procedures.

Suggested language to fulfill notification requirements of SB 376

- Notify affected employees of what is going on (required by Section 4.B.1. of the bill - see suggested language) and that you will provide them with helpful information if they would like to submit their own proposals to provide the service.

The law does not mandate that this notification be written and in many cases, notification in a meeting with affected employees may be a more effective method. You may also decide to have a meeting and to provide written notification to the employees. Whatever you decide to do, make sure you keep accurate documentation about your actions.

Following is suggested language for a written notification:

Dear employees of the xxx unit:

(I have determined / the Board has determined / etc.) that we should consider private sector alternatives to service delivery for the xxx program.

At this point I am notifying you of (my / the Board's) intent and notifying you that you have the opportunity to submit alternative proposals on how we might deliver the xxx services (more effectively; at a lower cost; etc.).

- If you would like to submit an alternative proposal, you need to let me know by written notice to (name) no later than (date and time) that you intend to develop a proposal.
- If you do not notify me by that time that you want to develop a proposal, we will go ahead and solicit bids from other interested parties.
- If you decide to develop a proposal and notify me by the deadline, we will provide you with financial, payroll, and inventory information that you may wish to consider in developing your proposal.
- Proposals need to be submitted in writing to (name) no later than (date and time).

(appropriate closing)

- Notify the Director of State Finance that you are considering privatizing a state function (required by Section 4.B.3. of the bill - see suggested language).

Dear Director of State Finance:

(I have determined / the Board has determined / etc.) that we should consider private sector alternatives to service delivery for the xxx program.

I am notifying you of (my / the Board's) intent to do so. Simultaneously with this notification, I am notifying affected employees of our intent and of their opportunity to submit proposals (copy of the written notification is attached).

(appropriate closing)

- If you decide to solicit bids from interested parties, notify the Director of State Finance of your intent to do so. Also notify the Governor, Speaker, and President Pro Tempore (all required by Section 4.E. of the bill - see suggested language).

The suggested language covers the mandatory notification and certification you are required to provide.

Dear Governor xxx
Representative xxx, Speaker of the House of Representatives
Senator xxx, President Pro Tempore of the Senate
xxx xxx, Director of State Finance:

(I have determined / the Board has determined / etc.) that we should consider private sector alternatives to service delivery for the xxx program.

I am notifying you of (my / the Board's) intent to solicit bids from other interested parties and that we have complied with the requirements of SB 376. We have complied with all the notification requirements and have given affected employees the opportunity to submit proposals prior to our decision to solicit bids.

I certify to you that we have complied with the provisions of SB 376 and all other applicable laws regarding the privatization of (this / these) functions.

(appropriate closing)

Text of Enrolled Senate Bill 376

ENROLLED SENATE
BILL NO. 376

By: Leftwich of the
Senate

and

Paulk, Collins,
Lindley and Toure
of the House

An Act relating to state government; enacting the Oklahoma Privatization of State Functions Act; citing act; stating purpose; defining terms; requiring state agencies to perform certain duties prior to privatization; providing for notification; providing information; giving consideration to agency employee proposals; providing for notice of intent to seek requests for proposals; providing certification by agency; prohibiting certain activity; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595 of Title 74, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Privatization of State Functions Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

It is hereby declared that the purpose of the Oklahoma Privatization of State Functions Act is to set guidelines for the privatization of state services in order to ensure that, if approved, the privatization of state services is cost effective and in the best interest of the citizens of this state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.2 of Title

74, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Agency" means an agency, board, commission or other entity of state government.
2. "Privatize" means to enter into contract for the performance of a duty or function which is currently being performed by a state employee.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.3 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Before any agency can contract to privatize a function, program, service, unit or division, the agency must allow its employees the opportunity to submit proposals for improving the operations, efficiency or organization of the entity being considered for privatization.

B. The privatization process shall begin with:

1. Notification to employees impacted by the proposed privatization by the agency of its intent to privatize a function, program, service, unit or division of the agency;
2. A specific statement that employees have an opportunity to submit proposals to the agency; and
3. Notification by the agency simultaneously with the notice required pursuant to paragraph 1 of this subsection, to the Director of the Office of State Finance of the agency's intent to privatize a state function.

C. The agency shall provide information about the delivery of services to its employees as they develop proposals to be considered. This information shall include revenue expenditure data, wage and salary data, and inventory of the supplies, equipment, and facilities associated with the program being privatized.

D. Proposals submitted by agency employees to the agency shall be considered when a determination is made on seeking nonemployee bids to privatize a function, program, service, unit or division of the agency.

E. After an agency has decided to privatize a function, program, service, unit or division and has met the requirements of subsection D of this section, the agency shall notify the Director of State Finance of its intent to

solicit bids by interested parties. Prior to solicitation of bids from other interested parties, the agency shall notify the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives of the agency's intent to solicit bids and a statement that the agency has given the opportunity to its employees to submit proposals pursuant to this section prior to the decision to privatize. The agency shall also certify that the provisions of this act and all other applicable laws regarding the privatization of the respective state functions have been complied with.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.4 of Title 74, unless there is created a duplication in numbering, reads as follows:

Any state officer or employee who exercises discretionary or decision-making authority in awarding a privatization contract shall be prohibited for a period of one (1) year from the date that the privatization contract is awarded from becoming an officer or employee of a business organization which is a party to any privatization contract with the state agency in which the state officer or employee exercised such discretionary or decision-making authority.

SECTION 6. This act shall become effective January 1, 2000.