

ENGROSSED HOUSE  
BILL NO. 1622

BY: CAMPBELL of the HOUSE

and

FORD of the SENATE

( CORPORATION COMMISSION - AMENDING SECTIONS  
IN TITLES 17, 52, 29, AND 74 - FUEL ADJUSTMENT  
CLAUSES - INCREASING POWERS OF CORPORATION  
COMMISSION - EFFECTIVE DATE -

EMERGENCY )

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

SECTION 1. AMENDATORY 17 O.S. 1981, Section 121, is amended to read as follows:

Section 121. The Corporation Commission is hereby vested with the power of a court of record to ~~determine: First,:~~

1. determine the amount of refund due and any interest owing upon such refund in all cases where any public service corporation, person, or firm, as defined by the Constitution, charges an amount for any service rendered by such public service corporation, person, or firm, in excess of the lawful rate in force at the time such charge was made, or may thereafter be declared to be the legal rate which should have been applied to the service rendered if no legal rate was in force at the time such charge was made; and, ~~second,~~

2. determine to whom the overcharge should be paid and require payment of the refund or the credit assigned to the customer's account.

The interest rate shall be the same rate of interest as the average United States Treasury bill rate of the preceding calendar year as certified to the Commission by the State Treasurer on the first regular business day in January of each year.

SECTION 2. AMENDATORY 17 O.S. 1981, Section 252, is amended to read as follows:

Section 252. Whenever the Commission approves a fuel adjustment clause pursuant to this act, the clause shall apply to all similar public utilities affected by such increased costs. In addition, the Commission shall continually monitor and oversee the application of the fuel adjustment clauses. The Commission shall hold a public hearing thereon whenever it deems it necessary, but no less frequently than once every ~~six (6)~~ twelve (12) months. If the Commission finds that the charges or credits are not based upon the actual prices paid for fuel, purchased gas or purchased power, or are not properly computed in accordance with the applicable adjustment clause, it shall recompute the charges or credits and shall direct the public utility to take such action as may be required to insure that the charges or credits properly reflect the actual prices paid for fuel, purchased gas or purchased power and are properly computed in accordance with the applicable adjustment clause for the applicable period. The fuel adjustment clause may be amended upon a finding of changed circumstances by the Commission but shall not be wholly discontinued or suspended except by order of the Commission after notice and hearings for the utilities affected have been rendered.

SECTION 3. AMENDATORY 17 O.S. 1981, Section 253, is amended to read as follows:

Section 253. A. No proposed monthly fuel adjustment, purchased power adjustment or purchased gas adjustment shall become effective until after the Commission has had an opportunity to determine that

the adjustment is calculated in accordance with the terms and conditions of the applicable fuel adjustment clause.

B. The Commission shall adopt regulations requiring each company as a necessary part of and condition to consideration of any adjustment application the monthly filing with the Commission, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the office of the Governor of the following:

1. A statement by each company subject to a fuel adjustment clause of the items and costs making up the average cost of fuel per million BTU and associated costs in dollars and cents or fraction thereof;

2. A summary of its fuel and gas purchase invoices and its computations of the proposed monthly fuel adjustment or purchased gas adjustment charges;

3. A summary of inventory records of fuel and gas going into and taken out of stockpile or storage;

4. A report containing the average unit price, the change in the average unit price, the volume purchased and a brief explanation of such unit cost increase; and

5. Any other records deemed necessary by the Commission including, but not limited to, the heat rate efficiency and delivery efficiency for affected electric public utilities and the actual capacity factor for each generating facility utilized to produce electric power.

The records and computations filed shall be open to public inspection at the office of the Commission.

C. The Commission shall have five (5) business days after the records and computations prescribed in subsection B of this section have been filed to determine the necessity of an administrative proceeding thereon. If the Commission does not determine that a hearing is required, the proposed adjustment charge shall become effective as filed. In the event the Commission decides to hold a

hearing on the information filed, it shall notify the public utility within such five-day period, set the matter for a public hearing to commence within ~~ten (10)~~ thirty (30) business days thereafter, and give notice thereof at least three (3) days prior to the commencement of such hearing by publication in a newspaper of general circulation in the area served by such company. The issue to be determined at such hearing shall be either or both of the following determinations:

1. Whether charges or credits made under the fuel adjustment clauses are based upon the actual prices paid for fuel, purchased gas or purchased power and are properly computed in accordance with the applicable adjustment clause; or

2. Whether the fuel adjustment clauses should be discontinued, amended or suspended. In the event that the Commission determines that it is necessary to set any proposed adjustment charge for hearing, the proposed charge shall nevertheless become effective at the option of the utility following the expiration of the five-day period after its records and computations have been filed, pending the Commission's finding with respect to such charges. However, in the discretion of the Commission, the effectiveness of the proposed charge may be conditioned upon the filing by the utility with the Commission of an assurance satisfactory to the Commission, which may include a bond with surety, of the utility's ability and willingness to refund to its customers any such amounts as the utility may collect from them in excess of the charge approved by the Commission in its finding. If the Commission has not approved, in whole or in part, or denied the proposed charge within a seven-day period subsequent to the commencement of such hearing, it shall promptly submit a written explanation of its failure to do so to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the office of the Governor.

SECTION 4. AMENDATORY 17 O.S. 1981, Section 259, is amended to read as follows:

Section 259. Whenever the Commission approves a purchased power adjustment clause pursuant to Section ~~9 of Article III~~ 258 of this ~~act~~ title, the clause shall apply to all similar distribution cooperatives affected by such increased costs. In addition, the Commission shall continually monitor and oversee the application of the adjustment clauses. The Commission shall hold a public hearing thereon whenever it deems it necessary, but no less frequently than once every ~~six (6)~~ twelve (12) months. The Commission shall undertake such other investigation thereof as is necessary to determine whether:

1. Charges or credits made under the adjustment clauses are based upon the actual prices paid for purchased power, are properly computed in accordance with the applicable adjustment clause, and that portion representing fuel adjustment charges made by an electric generation cooperative are fair, equitable and properly computed; or

2. Whether the purchased power adjustment clause should be amended, suspended or discontinued.

If the Commission finds that the charges or credits are not based upon the actual prices paid for purchased power, or are not properly computed in accordance with the applicable adjustment clause, it shall recompute the charges or credits. Appropriate adjustments shall then be ordered by the Commission in the amount used in calculating the power adjustment charge for one (1) or more succeeding months under the purchased power adjustment clause by the electric distribution cooperative making the error. The purchased power adjustment clause may be amended upon a finding of changed circumstances by the Commission, but shall not be wholly discontinued or suspended except by order of the Commission after

due notice and hearings for the cooperatives affected have been rendered.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 121.1 of Title 17, unless there is created a duplication in numbering, reads as follows:

The Commission shall have the authority to resolve disputes between any consumer and a public utility or public service company regulated by the Commission, which relate to the utility's provision of regulated electric, gas, water or telecommunications pursuant to the Commission's rules and the respective company's terms and conditions of service. Said dispute resolution may be accomplished through mediation or administrative hearing as prescribed by rule. Any affected party shall have the option of appealing said proceedings to the Commission en banc. This section shall be an express amendment to Sections 18 through 34 of Article 9 of the Oklahoma Constitution.

SECTION 6. AMENDATORY Section 62, Chapter 208, O.S.L. 1987, as amended by Section 84, Chapter 236, O.S.L. 1987 (17 O.S. Supp. 1990, Section 34.2), is amended to read as follows:

Section 34.2 ~~Full-time-equivalent~~ A. Prior to July 1, 1991, ~~full-time-equivalent~~ employee positions filled contingent upon the procurement of funding provided under the Federal Underground Injection Control Program shall be in the unclassified service and not subject to the provisions of the Oklahoma Personnel Act, ~~Section 840.1 et seq. of Title 74 of the Oklahoma Statutes.~~ Said full-time-equivalent employee positions funded by the Federal Underground Injection Control Program shall terminate upon the exhaustion of said federal funding.

B. On and after July 1, 1991, full-time-equivalent employees positions filled pursuant to subsection A of this section shall be in the classified service and subject to the provisions of the Oklahoma Personnel Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53.3 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The State of Oklahoma shall have a lien upon all real and personal property of any person subject to liability under Sections 53, 53.1 and 53.2 of Title 17 of the Oklahoma Statutes.

B. 1. The lien created by this section shall be perfected against the real property of such person when notice of the lien is filed of record against the real property in the office of the county clerk in the county where the real property is situated.

2. The lien created by this section shall be perfected against the tangible and intangible personal property of such person when notice of the lien is filed pursuant to Sections 9-401 through 9-407 of Title 12A of the Oklahoma Statutes.

C. The lien created by this section, once perfected, shall have priority over all other encumbrances arising thereafter, whether recorded or inchoate.

SECTION 8. AMENDATORY 52 O.S. 1981, Section 139, is amended to read as follows:

Section 139. A. ~~The Corporation Commission of Oklahoma, referred to in this act as the "Commission",~~ is hereby vested with jurisdiction, power and authority, and it shall be its duty, to make and enforce such rules, regulations and orders governing and regulating the handling, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing, refining and processing of oil and gas within the State of Oklahoma or operation of oil or gas wells in this state as are reasonable and necessary for the purpose of preventing the pollution of the surface and subsurface waters in the state, and to otherwise carry out the purpose of this act.

B. 1. For the purpose of immediately responding to emergency situations having potentially critical environmental or public safety impact and resulting from activities within its jurisdiction, the Commission may take whatever necessary action, without notice and hearing, including the expenditure of monies from the Corporation Commission Revolving Fund, to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act, upon such terms and conditions established by the Office of Public Affairs to accomplish the purposes of this section. Thereafter, the Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from the Corporation Commission Revolving Fund. Any monies received as reimbursement shall be deposited to the credit of the Corporation Commission Revolving Fund.

2. The Commission shall not expend from any fund in the State Treasury, in any fiscal year, for the purposes herein provided, an amount of money in excess of the total sum specifically authorized annually by the Legislature for such purposes. Any monies received by the Commission through execution on any required surety shall not be subject to such limitation on expenditure for remedial action.

3. Neither the Commission nor any independent contractor of the Commission authorized to conduct remedial action under this section shall be held liable or responsible for any damages resulting from operations reasonably necessary to the remedial work. Nothing in this section shall limit the authority of the Commission or relieve any person or persons otherwise legally responsible from any obligation to prevent or remediate pollution.

SECTION 9. AMENDATORY 52 O.S. 1981, Section 309, is amended to read as follows:

Section 309. The Legislature finds and declares that it is in the public interest to protect the waters and lands of the state

against pollution and, for that purpose, it is necessary and desirable in the exercise of the police power of the state to provide additional means whereby wells drilled for the exploration, development, or production of oil or gas, or as injection or disposal wells, ~~and which are causing surface or subsurface pollution of any freshwater or are leaking saltwater, oil, gas, or other deleterious substances upon the surface of the land,~~ may be plugged, replugged, or repaired by the Corporation Commission or under the authority and direction of the Corporation Commission, hereinafter called "Commission."

SECTION 10. AMENDATORY 52 O.S. 1981, Section 310, as last amended by Section 2, Chapter 107, O.S.L. 1990 (52 O.S. Supp. 1990, Section 310), is amended to read as follows:

Section 310. A. If, after notice and hearing, the Commission finds that:

1. a well drilled for the exploration, development, or production of oil or gas, or as an injection or disposal well, is abandoned and unplugged or improperly plugged or is causing or is likely to cause surface or subsurface pollution of any fresh water or is purging or is likely to purge salt water, oil, gas, or other deleterious substances onto the surface of the land in the vicinity of the well; and

2. the operator of the well or any other person responsible for plugging, replugging, or repairing the well in such manner as is necessary to prevent further or future pollution cannot be found or is financially unable to pay the cost of performing said work, the Commission or any person authorized by the Commission may enter upon the land upon which the well is located and plug, replug, or repair the well as may be reasonably required to remedy the condition. If an emergency exists or if it otherwise appears to the Commission that irreparable injury will result if immediate remedial action is not taken, said entry upon the land may be made or authorized by the

Commission without notice or hearing, for the purpose of taking such temporary remedial action as the Commission considers necessary to prevent or minimize the injury, pending the giving of notice and hearing. The operation shall be conducted in the manner prescribed by the Commission.

B. For the purpose of immediately responding to emergency situations within the Commission's jurisdiction having potentially critical environmental or public safety impact, the Commission may take whatever necessary action, without notice and hearing, including the expenditure of monies from the Corporation Commission Plugging Fund, to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act upon such terms and conditions established by the Office of Public Affairs to accomplish the purposes of this section. Thereafter, the Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from the Corporation Commission Plugging Fund. Any monies received as reimbursement shall be deposited to the credit of the Corporation Commission Plugging Fund.

C. If, at anytime, the monies in the Corporation Commission Plugging Fund are insufficient to cover the cost of remedial action for all wells eligible for plugging, replugging or repair under this statute, the Commission shall prioritize expenditures according to degree of actual or potential environmental harm.

SECTION 11. AMENDATORY 52 O.S. 1981, Section 318.1, as last amended by Section 3, Chapter 381, O.S.L. 1989 (52 O.S. Supp. 1990, Section 318.1), is amended to read as follows:

Section 318.1 A. Any person who drills or operates any well for the exploration, development or production of oil or gas, or as an injection or disposal well, within this state, shall furnish in writing, on forms approved by the Corporation Commission, his agreement to drill, operate and plug wells in compliance with the

rules and regulations of the Commission and the laws of this state, together with evidence of financial ability to comply with the requirements for plugging, closure of surface impoundments, removal of trash and equipment as established by the rules and regulations of the Commission and by law. To establish evidence of financial ability, the Commission shall require:

1. Category A surety which shall include a financial statement listing assets and liabilities and including a general release that the information may be verified with banks and other financial institutions. The statement shall prove a net worth of not less than Fifty Thousand Dollars (\$50,000.00); or

2. Category B surety which shall include an irrevocable commercial letter of credit, cash, a cashier's check, a Certificate of Deposit, Bank Joint Custody Receipt, other negotiable instrument or, a blanket surety bond. Except as provided in paragraph 3 of subsection A of this section, amount of such letter of credit, cash, check, certificate, bond, receipt or other negotiable instrument shall be in the amount of Twenty-five Thousand Dollars (\$25,000.00) but may be set higher at the discretion of the Director of the Oil and Gas Division. The Commission is authorized to determine the amount of Category B surety based upon the past performance of the ~~person~~ operator and its insiders and affiliates regarding compliance with the laws of this state, and any rules and regulations promulgated thereto including but not limited to the drilling, operation and plugging of wells, closure of surface impoundments or removal of trash and equipment. Any instrument shall constitute an unconditional promise to pay and be in a form negotiable by the Commission.

3. The Commission upon certification by any operator subject to Category B surety that its plugging liability statewide is less than the twenty-five-thousand-dollar standard specified in this section may allow said operator to provide Category B type surety in an

amount less than the required Twenty-five Thousand Dollars (\$25,000.00), but at least sufficient to cover the estimated cost of all plugging, closure, and removal operations currently the responsibility of that operator. The liability certification referred to in this paragraph shall take the form of an affidavit from a licensed well plugger estimating the costs of all plugging, closure, and removal operations of the operator requesting such relief. This alternative amount shall be modified upward upon the assumption of additional operations by said operator, the maximum amount of Category B surety to be posted not to exceed the twenty-five-thousand-dollar total unless as provided previously.

B. Operators of record as of the effective date of this act who do not have any outstanding contempt citations or fines and whose insiders or affiliates have no outstanding contempt citations or fines may post Category A surety.

New operators ~~or~~, operators who have outstanding fines or contempt citations and operators whose insiders or affiliates have outstanding contempt citations or fines as of the effective date of this act shall be required to post Category B surety. Operators who have posted Category B surety and have operated under this type surety and have no outstanding fines at the end of three (3) years may post Category A surety.

Operators using Category A surety who are assessed a fine of Two Thousand Dollars (\$2,000.00) or more and who do not pay the fine within the specified time shall be required to post a Category B surety within thirty (30) days of notification by the Commission.

C. For good cause shown concerning pollution or improper plugging of wells by the operator posting either Category A or B surety or by an insider or affiliate of such operator, the Commission, upon application of the Director of the Oil and Gas Division, after notice and hearing, may require the filing of a additional Category B surety in an amount greater than Twenty-five

Thousand Dollars (\$25,000.00) but not to exceed One Hundred Thousand Dollars (\$100,000.00).

D. If the Commission determines that a blanket surety bond is required, the bond shall be conditioned on the fact that the operator shall cause the wells to be plugged and abandoned surface impoundments to be closed, and trash and equipment to be removed in accordance with the laws of this state and the rules and regulations of the Commission. Each bond shall be executed by a corporate surety authorized to do business in this state and shall be renewed and continued in effect until the conditions have been met or release of the bond is authorized by the Commission.

E. The agreement provided for in subsection A of this section shall provide that if the Commission determines that the person furnishing the agreement has neglected, failed, or refused to plug and abandon, or cause to be plugged and abandoned, or replug any well or has neglected, failed or refused to close any surface impoundment or removed or cause to be removed trash and equipment in compliance with the rules and regulations of the Commission, then the person shall forfeit from his bond, letter of credit or negotiable instrument or shall pay to this state, through the Commission, for deposit in the State Treasury, a sum equal to the cost of plugging the well, closure of any surface impoundment or removal of trash and equipment. The Commission may cause the remedial work to be done, issuing a warrant in payment of the cost thereof drawn against the monies accruing in the State Treasury from the forfeiture or payment. Any monies accruing in the State Treasury by reason of a determination that there has been a noncompliance with the provisions of the agreement or the rules and regulations of the Commission, in excess of the cost of remedial action ordered by the Commission, shall be credited to the Conservation Fund. The Commission shall also recover any costs arising from litigation to enforce this provision. Provided, before

a person is required to forfeit or pay any monies to the state pursuant to this section, the Commission shall notify the person at his last-known address of the determination of neglect, failure or refusal to plug or replug any well, or close any surface impoundment or remove trash and equipment and said person shall have ten (10) days from the date of notification within which to commence remedial operations. Failure to commence remedial operations shall result in forfeiture or payment as provided in this subsection.

F. If title to property or a well is transferred, the transferee shall furnish the evidence of financial ability to plug the well and close surface impoundments required by the provisions of this section, prior to the transfer.

G. As used in this section:

1. "Affiliate" means an entity that owns twenty percent (20%) or more of the operator, or an entity of which twenty percent (20%) or more is owned by the operator; and

2. "Insider" means officer, director, or person in control of the operator; general partners of or in the operator; general or limited partnership in which the operator is a general partner; spouse of an officer, director, or person in control of the operator; spouse of a general partner of or in the operator; corporation of which the operator is a director, officer, or person in control; affiliate, or insider of an affiliate as if such affiliate were the operator; or managing agent of the operator.

SECTION 12. AMENDATORY 29 O.S. 1981, Section 7-401, is amended to read as follows:

Section 7-401. A. Except as otherwise provided, no person may deposit, place, throw, or permit to be deposited, placed or thrown, any lime, dynamite or other explosive, poison, drug, sawdust, salt water, crude oil or any other deleterious, noxious or toxic substance in any stream, lake or pond of this state, or in any place where such substances may run or be washed into such waters.

B. Those persons exempt from the above subsection shall be:

1. The Department's authorized agents and employees when they shall use drugs, chemicals and other substances in connection with any fish count, scientific test or for improvement; and

2. Those holders of a scientific purposes license which specifically authorizes taking wildlife in such manner.

C. Any person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and each day or part of day during which such action is continued or repeated shall be a separate offense. ~~Provided, that the~~

D. 1. Any party responsible for the control of any salt water, crude oil or other deleterious substances causing a violation of this section and resulting from drilling, production, transmission, storage or other operation of the petroleum industry shall be reported report such violation to the Oklahoma Corporation Commission ~~and if corrective action is not taken immediately then criminal proceedings shall be had as herein provided.~~ within twenty-four (24) hours of discovery of the discharge or within twenty-four (24) hours of when the responsible party should have known of the discharge.

2. The responsible party shall take immediate corrective action to abate any discharge and shall take such remedial action to prevent further pollution.

3. The Corporation Commission is ~~also~~ given the express power to order whatever corrective action is necessary to abate the pollution and is given the authority to enforce the order by any action against the lease or well. ~~Such~~

4. Whenever the Commission finds that an emergency exists requiring immediate action in order to protect the public health and welfare, the Commission may issue an order without notice or

hearing, stating the existence of said emergency and requiring that action be taken as the Commission deems necessary to meet the emergency. The order shall be effective immediately upon issuance. Any person to whom the order is directed shall comply immediately with the provisions of the order, but, upon application to the Commission, shall be afforded a hearing within ten (10) days of the issuance of the order. On the basis of said hearing, the Commission shall continue the order in effect, revoke it, or modify it.

5. Any party responsible for the control of any deleterious substance who has been determined by the Commission to have violated any provisions of this section or any rule, regulation, or order issued pursuant to the provisions of this section shall be liable for an administrative penalty of not more than Five Hundred Dollars (\$500.00) per day for each day that said violation continues. The maximum administrative penalty shall not exceed Two Hundred Thousand Dollars (\$200,000.00) for any related series of violations.

6. The amount of the penalty shall be assessed by the Commission after notice and hearing. In determining the amount of penalty, the Commission shall include but not be limited to consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the effect on ability of the person to continue to do business, and any show of good faith in attempting to achieve compliance with the provisions of this section.

7. Failure to comply with any order of the Commission shall subject such party to the criminal proceedings specified by subsection C of this section.

8. Any such action taken by the Commission shall be reported ~~by~~ to the Wildlife Department ~~to~~ by the appropriate agency.

SECTION 13. AMENDATORY 74 O.S. 1981, Section 85.7, as last amended by Section 19, Chapter 337, O.S.L. 1990 (74 O.S. Supp. 1990, Section 85.7), is amended to read as follows:

Section 85.7 A. No acquisition or contract shall be made without the submission of competitive bids by the State Purchasing Director, except as provided in this section.

1. Any acquisition or contract for an amount of Seven Hundred Fifty Dollars (\$750.00) or less shall be exempted from competitive bidding procedures. Separate contracts or acquisitions for the individual components of a total project or service or split purchasing for the purpose of evading the requirement of competitive bidding shall be deemed a felony. The State Purchasing Director may waive or increase the seven-hundred-fifty-dollar limit up to, but not to exceed, a contract or purchase price of One Thousand Dollars (\$1,000.00) to perfect an otherwise valid acquisition or contract inadvertently exceeding the seven-hundred-fifty-dollar limit due to administrative error or unforeseeable circumstances. Requests for such waiver or increase shall be promptly submitted upon the discovery of such error or circumstance to the State Purchasing Director in a form prescribed by said Director setting forth the facts. All requests for such waiver or increase in amount, whether granted or denied, shall be reported monthly to the offices of the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives.

2. Contracts for master custodian banks or trust companies, investment managers and investment consultants for state retirement systems, the State Insurance Fund, and the State and Education Employees Group Insurance Board, the pension fund management consultants of the Oklahoma State Pension Commission and actuarial, architectural, engineering, legal or other professional services as such term is defined in Section 803 of Title 18 of the Oklahoma Statutes shall be exempt from competitive bidding procedures. The

Office of Public Affairs shall send a copy of such contracts or a list of such contracts to any member of the House or Senate Appropriations Committee, if requested by such member.

3. Competitive bids shall not be required for any emergency acquisitions or contracts involving Two Thousand Dollars (\$2,000.00) or less, when upon written request of the State Purchasing Director specifying the facts and circumstances given rise thereto, the Governor may certify in writing the existence of an emergency authorizing the acquisition or contract.

4. Competitive bids for services to alleviate a serious environmental emergency shall not be required if, upon the request of the Chairman of the Corporation Commission, the Governor having examined the facts and circumstances of the case, certifies in writing the existence of a serious environmental emergency. A serious environmental emergency for the purpose of this section means a situation within the jurisdiction of the Commission:

- a. in which serious damage to the environment will quickly occur if immediate action is not taken, and the damage will be so significant that the urgent need for action outweighs the public policy strongly favoring competitive bids, or
- b. a situation in which human life or safety is in imminent danger or significant property interests are threatened with imminent destruction.

5. Purchases or acquisitions for repairs of equipment and machinery in emergencies, or of livestock through a market agency, dealer, commission house or livestock auction market bonded or licensed under federal or state law shall not be subject to the competitive bid requirements of this section or any other provisions of the Oklahoma Central Purchasing Act.

~~5.~~ 6. Purchases or acquisitions of human organs and internal prostheses for the Oklahoma Medical Center, shall not be subject to

the competitive bid requirements of this section or any other provisions of the Oklahoma Central Purchasing Act.

~~6.~~ 7. Any contract for the restoration of historical sites and museums shall not be subject to the competitive bid requirements of this section or any other provision of the Oklahoma Central Purchasing Act. The procedures will be followed except contractor and bid selection will be the prerogative of the Oklahoma Historical Society Board and selection will be based on contractors' documented qualifications and experience.

~~7.~~ 8. Purchases of postage by state agencies shall be made in accordance with the provisions of Sections 90.1 through 90.4 of this title.

~~8.~~ 9. Any sole source contract shall not be subject to competitive bidding procedures. Any agency requesting products or services pursuant to a sole source contract shall comply with Section 89 of this title.

~~9.~~ 10. Contracts for the design, development, communication or implementation of the state employees flexible benefits plan shall not be subject to the requirements of this section, provided that the Flexible Benefits Advisory Council shall use procedures consistent with the competitive bid requirements of the Oklahoma Central Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes.

- ~~10.~~ 11.
- a. Any contract for a service for which the Office of Public Affairs has approved as qualifying for a fixed and uniform rate shall not be subject to competitive bid procedures.
  - b. The Office of Public Affairs shall establish criteria and guidelines for those services which may be qualified for a fixed and uniform rate.
  - c. The exception to competitive bid procedures authorized by this paragraph shall be limited to contracts for

those services furnished to persons directly benefiting from such services and shall not be used by any agency to employ consultants or to purchase products.

- d. Any agency desiring to have a service qualified for a fixed and uniform rate shall make a request for such qualification to the Office of Public Affairs and shall submit any documentation necessary to support such request. The Office of Public Affairs shall either approve or deny the request. If the Office of Public Affairs qualifies such services for a fixed and uniform rate, the agency requesting such qualification shall establish a fixed and uniform rate for such service, provided no contracts shall be entered into by the agency until such rate has been approved by the agency in a public hearing. Prior to approval, the proposed rate shall be clearly and separately identified in the agenda of the agency for the hearing and shall be openly and separately discussed during such hearing. In addition, the agency shall notify the Director of the Office of Public Affairs of its pending consideration of the proposed rate at least thirty (30) days before the agency is to meet on the proposed rate. Along with such notice, the agency shall deliver to the Office of Public Affairs a copy of the agenda items concerning the proposed rate with all supporting documentation and materials. The Director of the Office of Public Affairs shall communicate any observation, reservation, criticism or recommendation to the agency, either in person at the time of the hearing or in writing delivered to the agency before or at the time of the hearing. The

Director of the Office of Public Affairs shall specifically note in such written communications if the Director of the Office of Public Affairs has determined the rate to be excessive. Any such written communication presented in the absence of the Director of the Office of Public Affairs shall be presented orally during the public hearing. Whether made in person or in writing any comment made by the Director of the Office of Public Affairs shall be made a part of the minutes of the hearing in full.

- e. Within two (2) weeks after the convening of the Legislature, the administrative officer of each state agency shall furnish to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and to any member of the House or Senate, if requested by such member, a complete list of all of the types of services paid for by uniform fixed rates, the amount of the rate last approved by the agency for the service, and the number of contracts then in existence for each type of service. Any rate which has been determined to be excessive by the Director of the Office of Public Affairs shall be specifically identified in such list.
- f. At anytime, the Director of the Office of Public Affairs is authorized to review, suspend, or terminate a contract entered into pursuant to the provisions of this paragraph if the Director of the Office of Public Affairs determines the contract is not necessary, is excessive, or is not justified.

B. Acquisitions or contracts shall be awarded to the lowest and best bidder therefor at a specified time and place, which shall be open to the public, with such preference between bidders offering

substantially the same products or services at substantially the same prices, as may be set under the authority of Section 85.5 of this title.

C. Bids for professional service contracts shall be evaluated by the State Purchasing Director and the agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best bid. Further, such agency shall present its evaluation and recommendation to the State Purchasing Director. A documented evaluation report containing the evaluations of the State Purchasing Director and the agency contracting for such service shall be completed prior to the awarding of a professional service contract and such report shall be a matter of public record.

D. When requested by the governing body of a state retirement system, the State Insurance Fund or the State and Education Employees Group Insurance Board which are authorized to hire investment managers, the Office of Public Affairs shall assist the governing body of a state retirement system, the Fund or the Board in the process of selecting investment managers. When requested by the Flexible Benefits Advisory Council, the Office of Public Affairs shall assist the Council in the process of selecting contracts for the design, development, communication or implementation of the state employees flexible benefits plan.

SECTION 14. This act shall become effective July 1, 1991.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 12th day of March, 1991.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1991.

President                      of the Senate