

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 85

BY: FISHER

AS INTRODUCED

AN ACT RELATING TO STATE GOVERNMENT; AMENDING 74 O.S.

1981, SECTIONS 85.12, AS LAST AMENDED BY SECTION 20, CHAPTER 337, O.S.L. 1990, 855, AS LAST AMENDED BY SECTION 3, CHAPTER 88, O.S.L. 1988 AND 861 (74 O.S. SUPP. 1990, SECTIONS 85.12 AND 855), WHICH RELATE TO THE OKLAHOMA CENTRAL PURCHASING ACT AND THE OKLAHOMA INDUSTRIAL FINANCE AUTHORITY; EXEMPTING CERTAIN PURCHASES AND CONTRACTS FROM CENTRAL PURCHASING ACT; AUTHORIZING AUTHORITY TO CONTRACT WITH PRIVATE LEGAL COUNSEL UNDER CERTAIN CIRCUMSTANCES AND WHEN APPROVED BY ATTORNEY GENERAL; REQUIRING ATTORNEY GENERAL ADVISE AUTHORITY IN ALL OTHER CIRCUMSTANCES; DELETING REQUIREMENT FOR GOVERNOR'S REVIEW AND APPROVAL OF CERTAIN ACTIONS; EXEMPTING AUTHORITY FROM CERTAIN PROVISIONS OF THE OKLAHOMA PERSONNEL ACT; REQUIRING BOARD OF DIRECTORS OF AUTHORITY ESTABLISH SALARY SCHEDULE AND DETERMINE SALARY INCREASES AND DECREASES; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 74 O.S. 1981, Section 85.12, as last amended by Section 20, Chapter 337, O.S.L. 1990 (74 O.S. Supp. 1990, Section 85.12), 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 such as may be directly in conflict herewith; and all claims, warrants and bonds shall be examined, inspected and approved as now provided by law.

B. The following acquisitions shall not be included within the purview of the Oklahoma Central Purchasing Act:

1. Food and other products produced by state institutions and agencies;

2. Contracts for construction of new buildings and for the repair, maintenance or modernization of old buildings by state educational institutions included within The Oklahoma State System of Higher Education;

3. The printing or duplication of publications or forms of whatsoever kind or character by state agencies, which service is performed upon their own equipment, by their own employees;

4. Acquisitions by The Oklahoma State System of Higher Education on any institution or entity comprising the same insofar as such acquisitions relate to textbooks, laboratory supplies, instructional materials and specialized laboratory equipment;

5. 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, or 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.

Contractual services as used herein shall not include advertising or public relations services;

6. Utility services where rates therefor are regulated by a state or federal regulatory commission, or by city ordinance or by an Indian Tribal Council for use by the Department of Corrections only;

7. Purchases of products by Oklahoma Medical Center. The Commission for Human Services shall develop standards for the purchase of products and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and include appropriate safeguards to assure appropriate competition and economical and efficient purchasing;

8. Contracts for custom harvesting by the Department of Corrections for the Department or its institutions;

9. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

10. Acquisitions of aircraft by agencies authorized by the Legislature to purchase aircraft;

11. Purchases by the Oklahoma Municipal Power Authority;

12. Grand River Dam Authority;

13. Purchases by the Oklahoma Ordnance Works Authority, the Oklahoma Industrial Finance Authority or Midwestern Oklahoma Development Authority, except that the Oklahoma Ordnance Works Authority, the Oklahoma Industrial Finance Authority and the Midwestern Oklahoma Development Authority shall remain subject to the provisions of Section 85.32 of this title;

14. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser when it is determined by its Board of Directors that an emergency exists and for the services of legal counsel when approved by the Attorney General;

~~14~~ 15. Contracts entered into by the State Department of Education for the purpose of implementing the provisions of Section 6-156 of Title 70 of the Oklahoma Statutes;

~~15~~ 16. Expenditure of monies appropriated to the State Board of Education for the purpose of Local, State-supported Programs and State-supported Programs except monies appropriated for the Administrative and Support Functions of the State Department of Education;

~~16~~ 17. Contracts entered into by the State Department of Vocational and Technical Education for the development, revision or updating of vocational curriculum materials;

~~17~~ 18. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

~~18~~ 19. Purchases made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

~~19~~ 20. Purchases of products available to an agency through a General Services Administration contract or other federal contract if the item is not on current state contract or the terms of such contract are more favorable to the agency than the terms of a state contract for the same products; and

~~20~~ 21. Purchases amounting to less than that requiring competitive bid pursuant to Section 85.4 of this title.

C. Notwithstanding the exclusions provided herein, any agency or common schools of Oklahoma, any municipality of the state, any rural fire protection district and county officers may, unless the contract with the state specifies otherwise, avail themselves of the provisions of the Oklahoma Central Purchasing contracts and the services of the Purchasing Director. Provided further, however, that any subdivision of government and any rural fire protection district of the state may designate the office of Oklahoma Central Purchasing as its agent for the purchase or procurement of any item or service contracted or available to the state.

D. Further, notwithstanding the exclusions provided herein, the purchasing policies and procedures of the Oklahoma Ordnance Works Authority and the Midwestern Oklahoma Development Authority shall be subject to approval by the Director of the Office of Public Affairs, and said Director shall make periodic audits of the purchasing policies and procedures of the Oklahoma Ordnance Works Authority and the Midwestern Oklahoma Development Authority to assure that said purchasing policies and procedures, as approved by him, are being followed.

SECTION 2. AMENDATORY 74 O.S. 1981, Section 855, as last amended by Section 3, Chapter 88, O.S.L. 1988 (74 O.S. Supp. 1990, Section 855), is amended to read as follows:

Section 855. The Oklahoma Industrial Finance Authority, as a public corporation and governmental instrumentality exercising public powers of the State of Oklahoma, is hereby granted and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this act, including the following powers, in addition to others herein granted:

(a) To cooperate with industrial development agencies in their efforts to promote the expansion of industrial and manufacturing activity in the state;

(b) To determine, upon proper application of industrial development agencies, whether the declared public purpose of this act has been or will be accomplished by the establishment of such industrial development projects by such industrial development agencies;

(c) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material for its information and necessary to the establishment of industrial development projects hereunder or other determinations related to exercise of the Authority's lawful powers;

(d) To issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before such Authority, or before one or more members of the Authority appointed by it to conduct such hearing;

(e) To apply to any court having jurisdiction of the offense, to have punished for contempt any witness who refuses to obey a subpoena, or who refuses to be sworn or affirmed or to testify, or who is guilty of any contempt after summons to appear;

(f) To authorize any member or members of such Authority to conduct hearings and to administer oaths, take affidavits and subpoenas;

(g) To make, upon proper application of industrial development agencies, loans to such industrial development agencies of monies held in the Industrial Development Fund for industrial development projects in Oklahoma, and to provide for the repayment and redeposit of such allocations and loans in the manner hereinafter provided;

(h) To sue and be sued, implead and be impleaded, complain and defend in all courts;

(i) To adopt, use, and alter at will a corporate seal;

(j) To adopt bylaws for the management and regulation of its affairs; and to promulgate and issue rules and regulations governing its operations;

(k) To appoint officers, agents, and employees, and to prescribe their duties and to fix their compensation, within the limitations prescribed by laws;

(l) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business;

(m) To contract with private legal counsel when its Board of Directors determines that special circumstances merit the services of such counsel and when approved by the Attorney General; provided,

in all other circumstances, the Attorney General shall advise and represent the Authority on legal matters;

~~(m)~~ (n) Without limitation of the foregoing, to accept grants from and enter into contracts or other transactions with, any federal agency; and

~~(n)~~ (o) To take title by foreclosure to any industrial development project where such acquisition is necessary to protect any loan previously made by the Authority, and to sell, transfer and convey any such industrial development project to any responsible buyer; in the event such sale, transfer and conveyance cannot be effected with reasonable promptness, the Authority may, in order to minimize financial losses and sustain employment, lease such industrial development project to a responsible tenant or tenants; the Authority shall not lease industrial development projects except under the conditions and for the purposes cited in this section.

SECTION 3. AMENDATORY 74 O.S. 1981, Section 861, is amended to read as follows:

Section 861. A. The powers of the Oklahoma Industrial Finance Authority shall be exercised by a governing body consisting of the members of the Authority acting as a Board. Within thirty (30) days after this act shall become effective the Board shall meet and organize, electing a chairman, vice-chairman, secretary and treasurer. Bonds running to the State of Oklahoma shall be required of the chairman, treasurer and any other officer or employee having funds of the Authority in his control or possession in an amount to be determined by the Board.

B. A majority of the members shall constitute a quorum of the Board for the purpose of organizing the Authority and conducting the business thereof and, except in the instance of passing upon loan applications, all action may be taken by a vote of a majority of the members present, unless in any case the bylaws shall require a larger number. Approval or rejection of loan applications shall be

by a majority vote of the full membership of the Board, the vote of each member being duly recorded thereon.

C. The Board shall have full authority to manage the properties and business of the Authority, ~~and, subject to prior review and approval by the Governor,~~ to renegotiate loans and approve leases with new tenants when, in the sound business judgment of the Board, the remedy of foreclosure is not in the best interest of the State of Oklahoma; to be represented by the Office of Attorney General in all legal matters other than with respect to issuance of state industrial finance bonds; and to prescribe, amend, and repeal bylaws, rules and regulations governing the manner in which the business of the Authority shall be conducted. Out of any court awarded attorney fees in foreclosure actions successfully prosecuted by the Attorney General on behalf of the Authority, a sum equal to actual expenses incurred by that office shall be withheld and placed in the Attorney General's evidence fund; and a sum up to the full amount of attorney fees awarded by the court shall be placed in said evidence fund to the extent that proceeds of sale of the property being foreclosed upon shall exceed the unpaid balance on the Authority's loan, including delinquent interest thereon.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840.16e of Title 74, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Industrial Finance Authority is hereby exempt from the provisions of Sections 840.16, 840.16a and 840.16b of Title 74 of the Oklahoma Statutes. The Board of Directors of the Authority shall establish a salary schedule for its employees and shall provide for salary increases and decreases as merit and financial circumstances warrant, as determined by the Board.

SECTION 5. 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.

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