

HOUSE OF REPRESENTATIVES
Monday, February 15, 1999

Committee Substitute for House Bill No. 1021

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1021 -- By HUTCHISON of the House and HERBERT of the Senate.

An Act relating to tourism; amending 74 O.S. 1991, Section 85.4, as last amended by Section 3, Chapter 371, O.S.L. 1998 (74 O.S. Supp. 1998, Section 85.4), which relates to the Oklahoma Central Purchasing Act; adding certain authorization for equipment leasing; amending 74 O.S. 1991, Section 1831, as last amended by Section 1, Chapter 194, O.S.L. 1996 (74 O.S. Supp. 1998, Section 1831), which relates to the Oklahoma Today Magazine; exempting certain advertising acquisitions from the Central Purchasing Act; amending Section 2, Chapter 240, O.S.L. 1993, as amended by Section 3, Chapter 228, O.S.L. 1995 (74 O.S. Supp. 1998, Section 1861.2), which relates to tourism revenue bonds; modifying distribution of funds; authorizing certain refunds; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 85.4, as last amended by Section 3, Chapter 371, O.S.L. 1998 (74 O.S. Supp. 1998, Section 85.4), is amended to read as follows:

Section 85.4 A. Except as provided in Section 85.12 of this title, every state agency shall make all acquisitions used, consumed or spent by the state agency in the performance of its official functions by the presentation of requisitions to the Purchasing Division established in Section 85.3 of this title and no acquisitions shall be acquired by any state agency for such use or consumption except by the presentation of the requisition and receipt of the acquisitions requisitioned through the Purchasing Division. The provisions of the Oklahoma Central Purchasing Act shall not preclude the acceptance of gifts and donations in the manner now authorized by law or the purchase of any acquisition by any state agency acting for itself and without presentation of a requisition when such acquisition is authorized in writing by the State Purchasing Director. Subject to the provisions of this section, every state agency shall have the authority to determine its own quantitative needs for acquisitions, insofar as it has such authority under existing law and shall have the authority to

determine the general class or nature of acquisitions, subject to the provisions of Section 85.5 of this title.

B. The Director of the Department of Central Services shall prescribe standardized contract forms and all other forms requisite or deemed necessary by the Director of the Department of Central Services to effectuate the provisions of this section and the Oklahoma Central Purchasing Act.

C. 1. Each requisition required by this section for the acquisition of any product shall be accompanied by a statement signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the state agency certifying:

- a. the product requested is necessary to the agency's responsibilities,
- b. the amount of the product requested is not excessive, and
- c. the justification for the purchase of the product.

2. Each requisition required by this section for nonprofessional services or professional services whether or not such services are exempt from the competitive bidding requirements pursuant to Section 85.7 of this title shall be accompanied by a statement signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the state agency certifying that:

- a. no employee of the state agency is able and available to perform the services called for by the contract,
- b. the state agency shall receive, review and accept a detailed work plan from the contractor for performance pursuant to the contract if requested by the State Purchasing Director,
- c. the state agency has developed, and fully intends to implement, a written plan providing for the assignment of specific state agency personnel to:
 - (1) a monitoring and auditing function,
 - (2) the periodic review of interim reports, or other indications of past performance, and

- (3) the ultimate utilization of the final product of the nonprofessional or professional services if requested by the State Purchasing Director,
- d. the work to be performed under the contract is necessary to the state agency's responsibilities, and there is statutory authority to enter into the contract,
- e. the contract will not establish an employment relationship between the state or the state agency and any persons performing under the contract,
- f. no current state employee will engage in the performance of the contract, unless specifically approved by the State Purchasing Director; and
- g. the purchase of the nonprofessional or professional services is justified.

3. When a state agency requisitions acquisitions that are to be supplied in components or phases, the requisition shall list each component or phase and the same shall be included on the Invitation to Bid. The determination of the lowest and best bid or best value bid, as required by the Oklahoma Central Purchasing Act, shall include all component or phase deliveries and shall not be based solely on the first component or phase delivery. State agencies may issue change orders to increase a purchase order for an acquisition not to exceed ten percent (10%) of the original purchase order total price.

D. Any person certifying the information required by subsection C of this section who knows such information to be false, upon conviction, shall be deemed guilty of a misdemeanor and shall be punished by fine or imprisonment or both fine and imprisonment pursuant to the provisions of Section 85.15 of this title and civilly liable for the amount of the contract.

E. The State Purchasing Director may request any additional information necessary to adequately review the requisitions and the statements required pursuant to subsection C of this section and compliance with the Oklahoma Central Purchasing Act.

F. Upon a determination that an acquisition is not necessary, is excessive or is not justified, the State Purchasing Director shall deny the requisition.

G. 1. No state agency shall enter into a lease-purchase agreement if title is acquired to tangible property of any class or nature by making lease, rental, or any other type payments, except as specifically authorized by law or by a governing board of regents as to institutions of The Oklahoma State System of Higher Education and except insofar as data processing equipment or other equipment is concerned; provided, however, the lease-purchase of data processing or other equipment by any state agency, whether or not the state agency is subject to the provisions of the Oklahoma Central Purchasing Act, shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

2. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall have the authority to determine the most cost-effective method for obtaining financing for lease-purchase agreements, which may be financed by either negotiated sale or competitive bid. If the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission determine that the lease-purchase of personal or real property should be financed through negotiated sale, the financing shall be subject to the provisions of the Oklahoma Bond Oversight and Reform Act, 62 O.S. 1991, Section 695.1 et seq. Unless said Commissions determine that the sale should be executed on a negotiated basis, such financing shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

3. Regardless of the method of financing, the acquisition price of personal property subject to a lease-purchase agreement shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

H. No state agency shall enter into a lease-purchase contract between the state agency as lessee and a private party as lessor if the contract is not capable of complete performance within the current fiscal year in which the contract was entered into unless a valid nonappropriation clause is included in the contract. Such contracts shall contain the following or substantially similar language:

Lessee shall have the right to terminate this lease, in whole but not in part, at the end of any fiscal year of lessee, if the Legislature fails to allocate sufficient funds to lessee for the rental payments required under this lease.

I. 1. No change order or addendum can be made to a lease-purchase agreement which extends the term or life of the original bid contract. Any lease-purchase agreement requiring such extensions or refinancing shall be readvertised and processed in accordance with the provisions of the Oklahoma Central Purchasing Act.

2. All state agencies, whether or not the state agency is subject to the provisions of the Oklahoma Central Purchasing Act, shall prepare a list of all tangible personal property which it is acquiring by a lease-purchase method and, prior to the renewal of a lease-purchase agreement, shall evaluate the rate being paid under the current lease-purchase agreement against rates currently being received by the Purchasing Division of the Department of Central Services on a competitive bid basis to determine whether or not refinancing of the property will benefit the state. Any state agency which elects not to submit a requisition for a possible refinancing when the existing rates are at least one percent (1%) above rates being currently bid, and when the total sum to be paid for the property including principal and interest will be reduced, must submit a written justification to the State Purchasing Director stating the reasons for not attempting to refinance the property. The Purchasing Director shall forward all such justifications to the Chairman of the Appropriations Committee of the Senate and the Chairman of the Committee on Appropriations and Budget of the House of Representatives no later than February 1 of each year.

3. Unless otherwise provided by law, no state agency shall enter into a lease-purchase agreement for real or personal property costing less than Fifty Thousand Dollars (\$50,000.00). Institutions of The Oklahoma State System of Higher Education shall be exempt from this provision.

4. a. Unless otherwise provided by law, the maximum term of a state agency lease-purchase agreement shall be the lesser of the useful life of real or personal property subject to a lease-purchase agreement as determined by the State Purchasing Director, or three (3) years for personal property and

ten (10) years for real property, respectively. Institutions of The Oklahoma State System of Higher Education shall be exempt from this provision.

- b. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall have the authority to extend the term of a lease-purchase agreement beyond three (3) years for personal property and ten (10) years for real property if the State Purchasing Director determines that the useful life of the property exceeds said terms and the Oklahoma State Bond Advisor recommends the extension as being in the best interests of the State of Oklahoma.

5. Unless otherwise provided by law, state agency real property acquisitions subject to lease-purchase agreements shall be explicitly authorized by the Legislature. Acquisitions of real property authorized by the Legislature, unless otherwise exempted by the Legislature, shall be subject to the competitive bid provisions of the Oklahoma Central Purchasing Act. If a state agency is authorized to enter into a lease-purchase agreement for real property, the financing of such acquisition, including acquisitions deemed desirable for executing a lease-purchase, certificate of participation, or similar agreement or obligation, shall be obtained in accordance with the provisions of the Oklahoma Central Purchasing Act. The State Purchasing Director shall consult with the Oklahoma State Bond Advisor on the preparation, evaluation, and negotiation of such financing. Legislative authorization shall constitute legal authorization for this state or state agencies to enter into such lease-purchase agreements. Institutions of The Oklahoma State System of Higher Education shall be exempt from this provision.

J. 1. The State Purchasing Director may permit leasing of products by state agencies if such leasing is determined by the State Purchasing Director to be in the best interest of the state, provided that such leasing must be processed by competitive bids through the State Purchasing Director except as to those acquisitions exempt under Section 85.12 of this title.

2. The State Purchasing Director may permit lease-purchasing of equipment by the Oklahoma Tourism and Recreation Commission if such leasing is determined by the State

Purchasing Director to be in the best interest of the state; provided, that such leasing must be processed by competitive bids through the State Purchasing Director except as to those acquisitions exempt under Section 85.12 of this title.

K. 1. In no event shall a state agency enter into a lease-purchase agreement unless that agreement contains the following or similar language:

The State of Oklahoma reserves the right to approve any reoffering of this obligation to another investor either through private placement, issuance of certificates of participation, or any other mechanism. Such approval must be obtained in advance, in writing, from the Oklahoma State Bond Advisor prior to any remarketing.

2. In the event that a remarketing of a lease-purchase agreement is proposed that includes the remarketing of securities or obligations to more than a single investor, any disclosure language prepared in connection with such marketing that describes the state's liability under the lease-purchase agreement must be approved in advance, in writing, by the Oklahoma State Bond Advisor.

L. 1. Whenever it appears advantageous to the state or any state agency to purchase or otherwise acquire any acquisition which may be offered for sale by the government of the United States of America or any agency thereof, the State Purchasing Director may enter into a contract for the acquisition with the federal government or with any federal agency charged with the sale or disposition of such equipment, supplies, material, or other property, and the State Purchasing Director shall be authorized to execute such contract.

2. Should the regulations of the federal government, or any agency thereof handling the disposition and sale of any equipment, supplies, materials, or other property which it would be advantageous to the state to purchase, require that partial or full payment be made at the time sale is effected and before the equipment, supplies, material, or other property will be delivered, the State Purchasing Director, upon requisition by the requesting party, shall draw a state warrant against the funds of the department or agency payable to the United States of America or its proper agency. The warrant shall be in such amount as may be necessary to meet the terms and conditions of sale without requiring a certificate showing that the equipment, supplies, material, or

other property has actually been delivered to the state department or other agency in whose behalf the purchase is being negotiated.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 1831, as last amended by Section 1, Chapter 194, O.S.L. 1996 (74 O.S. Supp. 1998, Section 1831), is amended to read as follows:

Section 1831. A. Merchandise for resale purchased for and sold through Oklahoma Today Magazine or in Oklahoma Tourism and Recreation Department retail outlets, such as golf course pro shops, marinas, restaurants, and other support facilities which are necessary for the efficient and economical operation of Department-operated facilities and programs and production of merchandise for resale, are exempt from the Central Purchasing Act. Services of writers, artists, photographers or others involved in the artistic production of Oklahoma Today Magazine such as separators, prepress houses, film houses and shippers of artistic and resale merchandise shall also be exempt from the Central Purchasing Act.

B. Acquisitions of advertising space for the Oklahoma Tourism and Recreation Department are exempt from the Central Purchasing Act.

SECTION 3. AMENDATORY Section 2, Chapter 240, O.S.L. 1993, as amended by Section 3, Chapter 228, O.S.L. 1995 (74 O.S. Supp. 1998, Section 1861.2), is amended to read as follows:

Section 1861.2 A. The Oklahoma Tourism and Recreation Commission shall have the power and is authorized to issue revenue bonds not to exceed Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000.00) pursuant to subsections B, C, D and E of Section 1861 of ~~Title 74 of the Oklahoma Statutes~~ this title for the purpose of constructing only the following capital projects at the prescribed costs:

PARK	AMOUNT
Beavers Bend	
- 2 twenty-plex units	\$1,100,000.00
Fort Cobb	

- RV campground	40,000.00	
Keystone		
- Keystone Community Building and Cabins	365,000.00	
Lake Murray		
- enclosed swimming pool	300,000.00	
- <u>swimming pool improvements</u>	<u>190,000.00</u>	
- State Park improvements	125,000.00	
Little Sahara		
- 14 additional RV pads	39,242.00	
Little River		
- 8 screened shelters	80,000.00	
Robbers Cave		
- 1 twenty-plex unit	550,000.00	
Texoma		
- Cabanas and enclosed pool	523,000.00	<u>333,000.00</u>
- Golf course renovation	175,000.00	
Wister		
- --cabin fireplaces & remodeling	40,000.00	
McGee Creek		
- 8 screened shelters	80,000.00	
Sequoyah Bay		
- group RV campground	130,000.00	
Roman Nose		

- RV campground	37,500.00
Western Hills	
- family reunion complex	450,000.00
Twin Bridges	
- -4 screened shelters	
for overnight camping	<u>40,000.00</u>
TOTAL	\$4,074,742.00

If any of the lodge facilities involved are sold to private entities, at any time in the future, prior to the payment of the bonds issued by virtue of Section 1861 et seq. of this act title, the amount received shall first be used to pay any unredeemed bonds for such facilities.

B. For revenue bonds issued by the Commission on or after July 1, 1993, only revenues generated by the improvements made from the proceeds of the issue shall be pledged to the payment of bonds issued pursuant to this section. However, the pledging of such revenues shall be made to the extent as to not impair the security interest of any of the Commission's previously issued bonds. The Commission may revise such charges directly associated with such improvements from time to time whenever necessary to assure that such are sufficient to pay the principal of and interest on such bonds. All revenues generated pursuant to the provisions of this section shall be placed in the 1993 Tourism Bond Revolving Account. Any funds not required for the purposes of this section are hereby committed for major maintenance and repairs of state park facilities. If deemed advantageous to the issuance of revenue bonds, the Commission is hereby authorized to make application to the Oklahoma Development Finance Authority for participation in the Credit Enhancement Reserve Fund.

C. The revenue bonds being issued by the Oklahoma Tourism and Recreation Commission pursuant to this section shall not be general obligation bonds and shall not be an indebtedness to the State of Oklahoma. The Oklahoma Legislature shall not be obligated to appropriate funds for the repayment of the bonds issued pursuant to this section and shall be under no obligation to pay

either the principal or the interest on such bonds. The bonds issued pursuant to this section are limited and special obligations of the Oklahoma Tourism and Recreation Commission and shall be payable solely from the pledged revenues from the projects involved and no other Department funds may be utilized in meeting the debt requirements of such bonds. Neither the faith and credit nor the taxing power of the State of Oklahoma or any political subdivision thereof is obligated to pay the principal of or the interest on the revenue bonds.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1861.2A of Title 74, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tourism and Recreation Commission shall have the power and is authorized to refund the outstanding series of the revenue bonds authorized in Section 1861.2 of Title 74 of the Oklahoma Statutes. The Commission shall pledge to the payment of the principal and interest of such refunded bonds all or any part of the revenues derived from the operation of the parks and lodges controlled and operated by the Commission. Interest earnings on construction funds may be utilized for park infrastructure improvements.

SECTION 5. This act shall become effective July 1, 1999.

SECTION 6. 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.