

CS for EHB 1021

1 THE STATE SENATE
2 Tuesday, March 30, 1999

3 Committee Substitute for
4 ENGROSSED
5 House Bill No. 1021

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

8 [tourism - amending 74 O.S., Sections 85.4 and 1861.2 -
9 Oklahoma Central Purchasing Act - tourism revenue bonds -
10 codification - effective date -
11
12 emergency]

13 SECTION 1. AMENDATORY 74 O.S. 1991, Section 85.4, as
14 last amended by Section 3, Chapter 371, O.S.L. 1998 (74 O.S. Supp.
15 1998, Section 85.4), is amended to read as follows:

16 Section 85.4 A. Except as provided in Section 85.12 of this
17 title, every state agency shall make all acquisitions used, consumed
18 or spent by the state agency in the performance of its official
19 functions by the presentation of requisitions to the Purchasing
20 Division established in Section 85.3 of this title and no
21 acquisitions shall be acquired by any state agency for such use or
22 consumption except by the presentation of the requisition and
23 receipt of the acquisitions requisitioned through the Purchasing
24 Division. The provisions of the Oklahoma Central Purchasing Act
25 shall not preclude the acceptance of gifts and donations in the
26 manner now authorized by law or the purchase of any acquisition by

1 any state agency acting for itself and without presentation of a
2 requisition when such acquisition is authorized in writing by the
3 State Purchasing Director. Subject to the provisions of this
4 section, every state agency shall have the authority to determine
5 its own quantitative needs for acquisitions, insofar as it has such
6 authority under existing law and shall have the authority to
7 determine the general class or nature of acquisitions, subject to
8 the provisions of Section 85.5 of this title.

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

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

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

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

- 8 a. no employee of the state agency is able and available
9 to perform the services called for by the contract,
- 10 b. the state agency shall receive, review and accept a
11 detailed work plan from the contractor for performance
12 pursuant to the contract if requested by the State
13 Purchasing Director,
- 14 c. the state agency has developed, and fully intends to
15 implement, a written plan providing for the assignment
16 of specific state agency personnel to:
 - 17 (1) a monitoring and auditing function,
 - 18 (2) the periodic review of interim reports, or other
19 indications of past performance, and
 - 20 (3) the ultimate utilization of the final product of
21 the nonprofessional or professional services if
22 requested by the State Purchasing Director,

- 1 d. the work to be performed under the contract is
2 necessary to the state agency's responsibilities, and
3 there is statutory authority to enter into the
4 contract,
- 5 e. the contract will not establish an employment
6 relationship between the state or the state agency and
7 any persons performing under the contract,
- 8 f. no current state employee will engage in the
9 performance of the contract, unless specifically
10 approved by the State Purchasing Director~~+~~L and
11 g. the purchase of the nonprofessional or professional
12 services is justified.

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

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

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

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

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

1 through the Purchasing Division of the Department of Central
2 Services.

3 2. The Executive Bond Oversight Commission and the Legislative
4 Bond Oversight Commission shall have the authority to determine the
5 most cost-effective method for obtaining financing for lease-
6 purchase agreements, which may be financed by either negotiated sale
7 or competitive bid. If the Executive Bond Oversight Commission and
8 the Legislative Bond Oversight Commission determine that the lease-
9 purchase of personal or real property should be financed through
10 negotiated sale, the financing shall be subject to the provisions of
11 the Oklahoma Bond Oversight and Reform Act, 62 O.S. 1991, Section
12 695.1 et seq. Unless said Commissions determine that the sale
13 should be executed on a negotiated basis, such financing shall be
14 processed by competitive bids through the Purchasing Division of the
15 Department of Central Services.

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

20 4. The State Purchasing Director may permit lease-purchasing of
21 equipment by the Oklahoma Tourism and Recreation Commission if such
22 leasing is determined by the State Purchasing Director to be in the
23 best interest of the state; provided, that such leasing must be

1 processed by competitive bids through the State Purchasing Director
2 except as to those acquisitions exempt under Section 85.12 of this
3 title.

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

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

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

21 2. All state agencies, whether or not the state agency is
22 subject to the provisions of the Oklahoma Central Purchasing Act,
23 shall prepare a list of all tangible personal property which it is

1 acquiring by a lease-purchase method and, prior to the renewal of a
2 lease-purchase agreement, shall evaluate the rate being paid under
3 the current lease-purchase agreement against rates currently being
4 received by the Purchasing Division of the Department of Central
5 Services on a competitive bid basis to determine whether or not
6 refinancing of the property will benefit the state. Any state
7 agency which elects not to submit a requisition for a possible
8 refinancing when the existing rates are at least one percent (1%)
9 above rates being currently bid, and when the total sum to be paid
10 for the property including principal and interest will be reduced,
11 must submit a written justification to the State Purchasing Director
12 stating the reasons for not attempting to refinance the property.
13 The Purchasing Director shall forward all such justifications to the
14 Chairman of the Appropriations Committee of the Senate and the
15 Chairman of the Committee on Appropriations and Budget of the House
16 of Representatives no later than February 1 of each year.

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

22 4. a. Unless otherwise provided by law, the maximum term of
23 a state agency lease-purchase agreement shall be the

1 lesser of the useful life of real or personal property
2 subject to a lease-purchase agreement as determined by
3 the State Purchasing Director, or three (3) years for
4 personal property and ten (10) years for real
5 property, respectively. Institutions of The Oklahoma
6 State System of Higher Education shall be exempt from
7 this provision.

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

17 5. Unless otherwise provided by law, state agency real property
18 acquisitions subject to lease-purchase agreements shall be
19 explicitly authorized by the Legislature. Acquisitions of real
20 property authorized by the Legislature, unless otherwise exempted by
21 the Legislature, shall be subject to the competitive bid provisions
22 of the Oklahoma Central Purchasing Act. If a state agency is
23 authorized to enter into a lease-purchase agreement for real

1 property, the financing of such acquisition, including acquisitions
2 deemed desirable for executing a lease-purchase, certificate of
3 participation, or similar agreement or obligation, shall be obtained
4 in accordance with the provisions of the Oklahoma Central Purchasing
5 Act. The State Purchasing Director shall consult with the Oklahoma
6 State Bond Advisor on the preparation, evaluation, and negotiation
7 of such financing. Legislative authorization shall constitute legal
8 authorization for this state or state agencies to enter into such
9 lease-purchase agreements. Institutions of The Oklahoma State
10 System of Higher Education shall be exempt from this provision.

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

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

20 The State of Oklahoma reserves the right to approve any
21 reoffering of this obligation to another investor either through
22 private placement, issuance of certificates of participation, or any
23 other mechanism. Such approval must be obtained in advance, in

1 writing, from the Oklahoma State Bond Advisor prior to any
2 remarketing.

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

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

18 2. Should the regulations of the federal government, or any
19 agency thereof handling the disposition and sale of any equipment,
20 supplies, materials, or other property which it would be
21 advantageous to the state to purchase, require that partial or full
22 payment be made at the time sale is effected and before the
23 equipment, supplies, material, or other property will be delivered,

1 the State Purchasing Director, upon requisition by the requesting
2 party, shall draw a state warrant against the funds of the
3 department or agency payable to the United States of America or its
4 proper agency. The warrant shall be in such amount as may be
5 necessary to meet the terms and conditions of sale without requiring
6 a certificate showing that the equipment, supplies, material, or
7 other property has actually been delivered to the state department
8 or other agency in whose behalf the purchase is being negotiated.

9 SECTION 2. AMENDATORY Section 2, Chapter 240, O.S.L.
10 1993, as amended by Section 3, Chapter 228, O.S.L. 1995 (74 O.S.
11 Supp. 1998, Section 1861.2), is amended to read as follows:

12 Section 1861.2 A. The Oklahoma Tourism and Recreation
13 Commission shall have the power and is authorized to issue revenue
14 bonds not to exceed Five Million Two Hundred Fifty Thousand Dollars
15 (\$5,250,000.00) pursuant to subsections B, C, D and E of Section
16 1861 of ~~Title 74 of the Oklahoma Statutes~~ this title for the purpose
17 of constructing only the following capital projects at the
18 prescribed costs:

19	PARK	AMOUNT
20	Beavers Bend	
21	- 2 twenty-plex units	\$1,100,000.00
22	Fort Cobb	
23	- RV campground	40,000.00

1	Keystone		
2	- Keystone Community Building		
3	and Cabins	365,000.00	
4	Lake Murray		
5	- enclosed swimming pool	300,000.00	
6	- <u>swimming pool improvements</u>	<u>190,000.00</u>	
7	- State Park improvements	125,000.00	
8	Little Sahara		
9	- 14 additional RV pads	39,242.00	
10	Little River		
11	- 8 screened shelters	80,000.00	
12	Robbers Cave		
13	- 1 twenty-plex unit	550,000.00	
14	Texoma		
15	- Cabanas and enclosed pool	523,000.00	<u>333,000.00</u>
16	- Golf course renovation	175,000.00	
17	Wister		
18	- cabin fireplaces &		
19	remodeling	40,000.00	
20	McGee Creek		
21	- 8 screened shelters	80,000.00	
22	Sequoyah Bay		
23	- group RV campground	130,000.00	

1	Roman Nose	
2	- RV campground	37,500.00
3	Western Hills	
4	- family reunion complex	450,000.00
5	Twin Bridges	
6	- 4 screened shelters	
7	for overnight camping	<u>40,000.00</u>
8	TOTAL	\$4,074,742.00

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

14 B. For revenue bonds issued by the Commission on or after July
15 1, 1993, only revenues generated by the improvements made from the
16 proceeds of the issue shall be pledged to the payment of bonds
17 issued pursuant to this section. However, the pledging of such
18 revenues shall be made to the extent as to not impair the security
19 interest of any of the Commission's previously issued bonds. The
20 Commission may revise such charges directly associated with such
21 improvements from time to time whenever necessary to assure that
22 such are sufficient to pay the principal of and interest on such
23 bonds. All revenues generated pursuant to the provisions of this

1 section shall be placed in the 1993 Tourism Bond Revolving Account.
2 Any funds not required for the purposes of this section are hereby
3 committed for major maintenance and repairs of state park
4 facilities. If deemed advantageous to the issuance of revenue
5 bonds, the Commission is hereby authorized to make application to
6 the Oklahoma Development Finance Authority for participation in the
7 Credit Enhancement Reserve Fund.

8 C. The revenue bonds being issued by the Oklahoma Tourism and
9 Recreation Commission pursuant to this section shall not be general
10 obligation bonds and shall not be an indebtedness to the State of
11 Oklahoma. The Oklahoma Legislature shall not be obligated to
12 appropriate funds for the repayment of the bonds issued pursuant to
13 this section and shall be under no obligation to pay either the
14 principal or the interest on such bonds. The bonds issued pursuant
15 to this section are limited and special obligations of the Oklahoma
16 Tourism and Recreation Commission and shall be payable solely from
17 the pledged revenues from the projects involved and no other
18 Department funds may be utilized in meeting the debt requirements of
19 such bonds. Neither the faith and credit nor the taxing power of
20 the State of Oklahoma or any political subdivision thereof is
21 obligated to pay the principal of or the interest on the revenue
22 bonds.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1861.2A of Title 74, unless
3 there is created a duplication in numbering, reads as follows:

4 The Oklahoma Tourism and Recreation Commission shall have the
5 power and is authorized to refund the outstanding series of the
6 revenue bonds authorized in Section 1861.2 of Title 74 of the
7 Oklahoma Statutes. The Commission shall pledge to the payment of
8 the principal and interest of such refunded bonds all or any part of
9 the revenues derived from the operation of the parks and lodges
10 controlled and operated by the Commission. If not prohibited by the
11 terms of such revenue bonds, interest earnings on construction funds
12 shall be transferred to the Tourism Equipment Revolving Fund for the
13 purpose of purchasing state park equipment.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1851.1 of Title 74, unless there
16 is created a duplication in numbering, reads as follows:

17 There is hereby created in the State Treasury a revolving fund
18 for the Oklahoma Tourism and Recreation Department to be designated
19 the "Tourism Equipment Revolving Fund". The fund shall be a
20 continuing fund, not subject to fiscal year limitations, and shall
21 consist of appropriated funds, gifts, donations, interest earnings
22 on construction funds pursuant to Section 3 of this act, and any
23 other transferred monies. All monies accruing to the credit of the

1 fund may be budgeted and expended by the Oklahoma Tourism and
2 Recreation Department for the purchase, acquisition, or lease-
3 purchase of equipment for state parks. Expenditures from the fund
4 shall be made upon warrants issued by the State Treasurer against
5 claims filed as prescribed by law with the Director of State Finance
6 for approval of payment.

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

8 SECTION 6. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

12 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-24-99 - DO
13 PASS, As Amended.