

CS for SB 840

1 THE STATE SENATE
2 Monday, February 23, 2004

3 Committee Substitute for
4 Senate Bill No. 840

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 840 - By: COATES of the
6 Senate and FERGUSON of the House.

7 An Act relating to public finance; amending 61 O.S. 2001,
8 Section 102, as amended by Section 13, Chapter 294, O.S.L.
9 2002 (61 O.S. Supp. 2003, Section 102), which relates to the
10 Public Competitive Bidding Act of 1974; amending 62 O.S.
11 2001, Section 430.1, as last amended by Section 8, Chapter
12 433, O.S.L. 2003 (62 O.S. Supp. 2003, Section 430.1), which
13 relates to powers of political subdivisions to rent
14 property; modifying definitions; and declaring an emergency.

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

16 SECTION 1. AMENDATORY 61 O.S. 2001, Section 102, as
17 amended by Section 13, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2003,
18 Section 102), is amended to read as follows:

19 Section 102. As used in the Public Competitive Bidding Act of
20 1974:

21 1. "Administrator" means the State Construction Administrator
22 of the Construction and Properties Division of the Department of
23 Central Services;

24 2. "Awarding public agency" means the public agency which
25 solicits and receives sealed bids on a particular public
26 construction contract;

1 3. "Bidding documents" means the bid notice, instruction to
2 bidders, plans and specifications, bidding form, bidding
3 instructions, general conditions, special conditions and all other
4 written instruments prepared by or on behalf of an awarding public
5 agency for use by prospective bidders on a public construction
6 contract;

7 4. "Chief administrative officer" means an individual
8 responsible for directing the administration of a public agency.
9 The term does not mean one or all of the individuals that make
10 policy for a public agency;

11 5. "Public agency" means the State of Oklahoma, and any county,
12 city, town, school district or other political subdivision of the
13 state, any public trust, any public entity specifically created by
14 the statutes of the State of Oklahoma or as a result of statutory
15 authorization therefor, and any department, agency, board, bureau,
16 commission, committee or authority of any of the foregoing public
17 entities;

18 6. "Public construction contract" or "contract" means any
19 contract, exceeding Twenty-five Thousand Dollars (\$25,000.00) in
20 amount, awarded by any public agency for the purpose of making any
21 public improvements or constructing any public building or making
22 repairs to or performing maintenance on the same except where the
23 improvements, construction of any building or repairs to the same

1 are improvements or buildings leased to a person or other legal
2 entity exclusively for private and not for public use and no public
3 tax revenues shall be expended on or for the contract unless the
4 public tax revenues used for the project are authorized by a
5 majority of the voters of the applicable public agency voting at an
6 election held for that purpose and the public tax revenues do not
7 exceed twenty-five percent (25%) of the total project cost. The
8 amount of public tax dollars committed to the project will not
9 exceed a fixed amount established by resolution of the governing
10 body prior to or concurrent with approval of the project;

11 7. "Public improvement" means any beneficial or valuable change
12 or addition, betterment, enhancement or amelioration of or upon any
13 real property, or interest therein, belonging to a public agency,
14 intended to enhance its value, beauty or utility or to adapt it to
15 new or further purposes. The term does not include the direct
16 purchase of materials, equipment or supplies by a public agency or
17 any personal property as defined in paragraphs 1 and 4 of subsection
18 B of Section 430.1 of Title 62 of the Oklahoma Statutes; and

19 8. "Retainage" means the difference between the amount earned
20 by the contractor on a public construction contract, with the work
21 being accepted by the public agency, and the amount paid on said
22 contract by the public agency.

1 SECTION 2. AMENDATORY 62 O.S. 2001, Section 430.1, as
2 last amended by Section 8, Chapter 433, O.S.L. 2003 (62 O.S. Supp.
3 2003, Section 430.1), is amended to read as follows:

4 Section 430.1 A. The governing board of any county, city or
5 town, or school district is authorized to rent on a monthly basis
6 real or personal property as authorized by the governing board and
7 to pay the rental charges thereon for usage during any fiscal
8 period, or portion thereof, out of appropriations made and approved
9 for such purposes for, or during, such fiscal year. Any such rental
10 contract extending beyond June 30 of the fiscal year shall contain
11 provisions for mutual ratification of renewal under the conditions
12 provided in this section.

13 B. As used in this section, the term "personal property" shall
14 include, but not be limited to:

15 1. Portable, or otherwise moveable, buildings and structures;

16 2. Prefabricated metal buildings and structures, along with
17 necessary utility services for such buildings or structures;

18 3. Roofs placed over existing roof structures; provided, lease-
19 purchase of retrofit metal roofs shall be awarded by competitive
20 bids where total payments of principle and interest provided by the
21 lease-purchase contract are anticipated to exceed Twenty-five
22 Thousand Dollars (\$25,000.00) not be included within the definition
23 of "personal property" for purposes of this section; and

1 4. Other structures or property that can be disassembled after
2 installation and removed without permanent physical damage to
3 existing property.

4 Notwithstanding the provisions of Section 7 of Title 60 of the
5 Oklahoma Statutes, such personal property shall retain its status as
6 personal property and shall not be deemed to become attached to the
7 real estate for the duration of the lease-purchase agreement.

8 C. It is the purpose of this section to authorize such
9 governing boards to enter into lease and lease-purchase contracts
10 but not to incur any obligation upon the part of their respective
11 municipal or governmental subdivisions in excess of the income and
12 revenue thereof provided for such purposes for the fiscal year in
13 which the lease contract is effectively operative.

14 D. Any agreement to lease and purchase real or personal
15 property, where title is to be acquired by the municipal or
16 governmental subdivision, shall state the purchase price of the real
17 or personal property so leased and in no event shall the lease be
18 extended so as to cause payment of more than the stated purchase
19 price of the real or personal property plus interest not to exceed
20 ten percent (10%) simple interest on the unpaid balance due as of
21 each payment date. When the purchase price plus interest has been
22 paid, the property shall belong to the lessee and the lessor shall
23 deliver a bill of sale to the property to the lessee. Any lease-

1 purchase agreement may include an option to purchase, transfer and
2 acquire title during the term of the lease upon payment of the
3 balance of the agreed purchase price, and each agreement shall
4 include a provision to transfer title to the lessee at the end of
5 the completed lease term for nominal or no additional consideration.

6 E. The payment for the lease or rental of real or personal
7 property shall be made only from annual and supplemental
8 appropriations specifically designated for such purpose, and no
9 appropriation for the purpose of paying rentals on real or personal
10 property shall be transferred or diverted to any other purpose,
11 except as may be authorized by the terms of the agreement or by law.

12 F. When any real or personal property has been leased or rented
13 during any fiscal year under any contract which permits continuance
14 of such rental for the remainder of the fiscal year, the renting or
15 leasing thereof shall be continued for the remainder of the fiscal
16 year unless the governing body renting or leasing the same, by
17 proper resolution entered in the minutes of the governing body,
18 shall certify that the continuance of such rental is unnecessary and
19 contrary to the public interest. However, to affect a contract
20 termination of lease or lease-purchase equipment, written notice
21 shall be sent by certified mail to the vendor thirty (30) days prior
22 to the termination of the contract. Such notice shall be
23 accompanied by payment of all sums then owed up to the date of the

1 termination of the contract and shall certify that the canceled
2 equipment is not being replaced by equipment performing similar
3 functions. All equipment covered by such contract termination shall
4 be returned to the vendor at the expense of the governmental agency
5 terminating such contract. Such equipment shall be returned in good
6 condition to a location designated by the vendor and the equipment,
7 when returned, shall be free of all liens and encumbrances.
8 Satisfaction of all of the requirements of this section shall
9 release the governmental agency terminating such contract from any
10 further obligation to make any further payments to the vendor.

11 SECTION 3. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

15 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 2-16-04
16 - DO PASS, As Amended and Coauthored.