ENGROSSED SENATE
BILL NO. 1453

By: Wilson of the Senate

and

Brown of the House

An Act relating to tourism and recreation; amending Sections 14, 31, 35, 38 and 43, Chapter 363, O.S.L. 2005 (74 O.S. Supp. 2005, Sections 2213, 2230, 2234, 2237 and 2242), which relate to the Oklahoma Tourism and Parks and Recreation Enhancement Act; updating statutory references; deleting obsolete language; providing access to certain material during certain periods; excepting division from providing certain copies; adding certain position to unclassified service; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 14, Chapter 363, O.S.L. 2005 (74 O.S. Supp. 2005, Section 2213), is amended to read as follows:

Section 2213. The Commission may contract for the study, analysis, and planning as reasonably necessary to aid in determining the feasibility of leasing, selling or privately managing or developing the property or facilities under the control of the Commission. The Commission shall be exempt from the competitive bidding requirements of the ~~Competitive Bidding~~ Oklahoma Central Purchasing Act for the purpose of soliciting, negotiating, and effectuating such a contract or contracts.

SECTION 2. AMENDATORY Section 31, Chapter 363, O.S.L. 2005 (74 O.S. Supp. 2005, Section 2230), is amended to read as follows:

Section 2230. A. The Division of Travel and Tourism shall:

1. Encourage the orderly growth and development of tourism to and within the state by preparing and maintaining a comprehensive

five-year travel development master plan and supporting marketing plan jointly with the private sector;

2. Create and convey an accurate, responsible, and elevated image of the state and its natural, cultural, historical, and recreational attractions and events;

3. Organize, coordinate, and conduct state, regional, national, and international marketing programs to increase the number of domestic and international travelers to Oklahoma;

4. Create, develop, produce, distribute, implement, and evaluate the effectiveness of public information programs, including publicity, brochures, public relations activities, film and slide production, still and audio visual photography, digital and electronic media, public service programs, advertising, and other informational aids for the promotion of tourism to the general public and the media;

5. Coordinate, advise and provide technical assistance to cities, counties, and regional tourism organizations in the state in the planning, development, and execution of tourism programs;

6. Cooperate and participate with neighboring states and the federal government to promote travel from domestic and international markets;

7. Develop and partner with other entities of government and private entities to obtain timely research data to measure traveler volume and economic impact, determine traveler profiles, evaluate, and analyze market and advertising effectiveness;

8. Plan, coordinate, and conduct statewide conferences, seminars, and workshops to inform and educate representatives from the public and private sector in the state about programs and travel trends which affect the tourism industry;

9. Provide organization and coordination assistance to public and private tourism promotion organizations for participation in cooperative advertising and promotion opportunities with the

Department, including travel trade marketplaces, consumer sport, travel, and recreation shows within and outside the state;

10. Administer matching grant programs to multicounty organizations which promote travel and tourism to their areas of the state that are consistent and coordinated with the statewide travel marketing plan; and

11. Assist other state agencies with special tourism promotion projects, development of professional training opportunities and other projects which provide services to travelers.

B. The Division may facilitate travel to and within the state by encouraging development of a tourism industry infrastructure which provides investment incentives to tourism businesses and tourism product development.

C. The Division may contract with professionally qualified companies or individuals for services to assist in the development and production of advertising, promotion, publicity, and public relations programs, primary and secondary research data collection including analysis of state travel marketing programs and economic impact information.

D. The Division may plan, construct, lease, operate, and maintain state-of-the-art tourism information centers and a central fulfillment warehouse. The centers shall be utilized for the purpose of providing services, selling merchandise, and distributing information to travelers on the tourism facilities and opportunities in the state.

E. The Division may, upon approval of the Commission, lease for a reasonable rate, retail and advertising space in state-operated tourism information centers. A performance bond, certificate of deposit, letter of credit, or cash equivalent, may be required by the Commission on any such lease.

F. Photographs, film recordings, video recordings, digital records and like recordings or records produced by or for the

Division shall be available for public inspection during Division business hours; however, the Division shall not be required to provide copies or allow copying of the materials.

SECTION 3. AMENDATORY Section 35, Chapter 363, O.S.L. 2005 (74 O.S. Supp. 2005, Section 2234), is amended to read as follows:

Section 2234. A. The Department, with the approval of the Commission, shall develop rules to administer any of the matching funds derived from the Department for the allowable expenditures of multicounty organizations. The rules shall be developed in accordance with this section and shall be adopted by the Commission. As used in the Oklahoma Tourism, Parks and Recreation Enhancement Act:

1. "Multicounty organization" means a nonprofit organization which satisfies the following requirements:

a. its primary purpose is to promote the tourism attributes of a multiple-county region which is identified as a tourism "country" or "lake" area, or any other organization participating in the matching funds program on July 1, 2001,

b. it is governed by a board of directors elected by the membership of the organization,

c. it is governed by a board of directors which equitably represents the counties within the multiple-county region,

d. it has an administrator of operations position who is not an elected director,

e. it utilizes income from private sector sources as the basis for funding its administrative and promotion expenses, and

f. it has provided to the Department an independent and certified financial~~-related~~ audit for the preceding fiscal year;

2. "Administrative expenditure" means expenditures for the administration of fund raising and tourism promotion. Administrative expenditures shall include salaries, payroll taxes, insurance, personal services contracts, travel expenses not to exceed the amounts provided in the State Travel Reimbursement Act, rent, lease or purchase of facilities, office supplies, telephone and electronic communications and multicounty organization audit costs;

3. "Allowable expenditures" means expenditures by a multicounty organization submitted to the Department for matching funds in accordance with the provisions of this section and the rules promulgated by the Commission;

4. "Discretionary expenditure" means those expenditures by multicounty organizations for which matching funds are not requested. Discretionary expenditures are not subject to the limiting provisions of this section and the rules promulgated by the Commission;

5. "Independent and certified audit" means a financial~~-related~~ audit performed in accordance with Generally Accepted Government Auditing Standards, issued by the Comptroller General of the United States. The scope of the audit shall, at a minimum, consist of a statement of revenue and expenditures and shall include the specific requirements identified in this section and the rules promulgated by the Commission; and

6. "Tourism promotion expenditure" means an expenditure for the preparation, printing, publication and distribution of media advertising in brochures, news and publicity materials, travel posters, mailing pieces, newspapers, magazines, television, radio, billboards, advertising and promotional specialties, exhibit space

and displays at trade shows and conventions and the expenses for operating such exhibits, including travel expenses, not to exceed amounts provided for in the State Travel Reimbursement Act, the cost of a travel writer, travel agent, tour broker and tour operator familiarization tours into the State of Oklahoma, and registration fees for an annual tourism and recreation industry conference with the purpose of attracting tourists or generating travel or tourism activity within the state or multicounty organization areas. The amount expended within the multicounty organization area for tourism promotion shall not exceed fifty percent (50%) of the total of allowable expenditures and allocated matching funds.

B. It is the intent of the Legislature to encourage the promotion of tourism by multicounty organizations in cooperation with the statewide program of the Department. Allowable administrative expenditures by multicounty organizations shall not exceed forty percent (40%) of the lesser of either the total amount allocated, including reallocations, to the organization from appropriations made by the Legislature or the total of the matched expenditures. The limitation on administrative expenditures applies only to those expenditures submitted for matching with state-appropriated funds.

C. With the exception of those organizations identified as "country" or "lake" associations participating in the matching funds program on July 1, 2001, not more than one organization representing a recognized "country" or "lake" area shall be eligible to receive matching funds.

D. Matching funds for the allowable expenditures shall be based upon actual expenditures by the multicounty organization less any discount, refund, or rebate to the multicounty organization. Multicounty organizations shall use a State of Oklahoma Notarized Claim Form with all applicable statements and affidavits to request matching funds for the allowable expenditures.

E. In order for a multicounty organization to receive matching funds for expenditures incurred to publish and distribute a promotional periodical emphasizing the attractions, landmarks, activities, geographical features and other characteristics of counties within the multicounty organization's area of responsibility, the multicounty organization shall be subject to the following requirements:

1. Maintain an account with a financial institution subject to the regulatory control of a state or federal financial regulatory entity for the deposit and withdrawal of all funds collected by or on behalf of the multicounty organization;

2. Prepare an annual Statement of Income and Expense showing all deposits to the account maintained with the financial institution and all withdrawals from the account with the financial institution for the period covered by the annual income and expense statement;

3. May enter into a contract with a person or legally organized business entity for the solicitation of advertising revenue in a promotional periodical publication and for the publication and distribution of the periodical emphasizing the attributes of sites, scenes, businesses and attractions located within the area for which the multicounty organization is responsible if:

a. the person or legally organized business entity provides a detailed written disclosure to the multicounty organization of its actual costs incurred in performance of the contract on a periodic basis during the period prescribed in the contract for performance which disclosure shall be at least quarterly,

b. the multicounty organization ensures that the actual cost of publication for the promotional periodical is

printed in at least 10-point type somewhere in the body of the publication,

c. the multicounty organization ensures that the person or legally organized business entity performing services on behalf of the multicounty organization identifies to the multicounty organization each purchaser of advertising in the multicounty organization promotional periodical, the amount of money paid for advertising in the promotional periodical, and the size or other relevant characteristics of the material purchased for publication in the promotional periodical,

d. the person or legally organized business entity soliciting advertising revenue may not advance or deposit their own funds as a means of securing matching state funds, and such acts shall be deemed as fraud, subject to prosecution, and

e. the multicounty organization and the person or legally organized business entity acting on behalf of the multicounty organization both execute a statement, upon a form to be prescribed by the State Auditor and Inspector, under oath, that any funds being requested from the Department for matching of an allowable expenditure as authorized by this section represent an amount of money equal to an amount of money that has previously been deposited into the account maintained by the multicounty organization as of the date the request for matching funds is made. The statement shall include the identity of each purchaser of advertising in the multicounty organization promotional periodical and the amount of money paid for advertising in the periodical together with the

other information required by subparagraph c of this paragraph. The statement shall also include a verification that the funds collected by or on behalf of the multicounty organization were expended for:

(1) a legitimate operational expense of the multicounty organization,

(2) the purpose of obtaining matching funds as authorized by this section, or

(3) a promotional event sponsored, conducted or organized by the multicounty organization for attracting attention to a specific location or occasion in furtherance of a purpose of the multicounty organization.

F. 1. Each multicounty organization shall prepare and submit appropriate plans, including a budget work program, for the ensuing fiscal year to the Commission. Expenditures for obligations incurred before the Commission approves the multicounty organizations' plans and budget work programs and any changes thereto, and expenditures not in accordance with the multicounty organizations' plans and budget work programs, shall not be allowable expenditures. The approval by the Commission of a multicounty organization budget work program constitutes a firm commitment of the multicounty organization's appropriated funds, subject to any fiscal year limitation, except that the Commission may reallocate unobligated funds as provided by law.

2. Any funds collected on behalf of the multicounty organization for advertisements in the promotional periodical shall be paid to the multicounty organization within twenty (20) working days after collection by any entity acting on behalf of the multicounty organization for solicitation of advertising revenue. The multicounty organization shall deposit any funds paid to it within five (5) working days of receipt.

G. Each multicounty organization shall be required to submit an annual independent and certified audit of the multicounty organization. The audits shall encompass all funds available to the multicounty organization. The audit report shall include a statement of Income and Expense and, at a minimum, encompass all monies received by the multicounty organization and all matched expenditures reimbursed to the multicounty organization. Revenue reported shall include all advertising revenue received and define all other individual sources of revenue. The names and addresses of and amounts received from each advertiser shall be included as an unaudited supplemental schedule to the audit report.

H. The person or entity engaged to perform the audit required by subsection G of this section shall:

1. Not be the same person or entity that performs bookkeeping, controllership or management functions, or other accounting services for the multicounty organization;

2. Be registered with the Oklahoma Accountancy Board and possess a license to practice; and

3. File a copy of the audit performed on behalf of a multicounty organization with the State Auditor and Inspector.

I. Failure to submit an audit report shall be cause for withholding of matching funds to a multicounty organization. Audit reports showing matching by any amount in excess of the allowable expenditures, matching for unallowable expenditures, or noncompliance with statutes, procedures prescribed herein, or in rules promulgated by the Commission shall be cause for withholding of matching funds until such time as restitution is made to the Department.

J. The State Auditor and Inspector shall conduct an office examination of the audits filed pursuant to paragraph 3 of subsection H of this section on an annual basis. The examination shall include analysis of the quality of the audit performed and

shall include written recommendations for modifications in future audits conducted on behalf of a multicounty organization.

SECTION 4. AMENDATORY Section 38, Chapter 363, O.S.L. 2005 (74 O.S. Supp. 2005, Section 2237), is amended to read as follows:

Section 2237. A. "Oklahoma Today Magazine" is hereby authorized to sell advertising. All advertising shall be approved by the appropriate division director prior to acceptance for publication.

B. In addition to a regular salary, any employee of the "Oklahoma Today Magazine" who obtains advertising, bulk subscription, newsstand, or ancillary product sales, for "Oklahoma Today Magazine", at the discretion of the Executive Director, may be awarded additional compensation in the form of a commission on net sales by the employee. The commission shall not exceed twenty-five percent (25%), with the commission percentage to be determined by the Executive Director. In no case shall the additional compensation, when combined with the salary of the employee, exceed ninety-five percent (95%) of the salary of the Executive Director. Commission payments shall be paid monthly, based on collected revenues from sales by the employee.

C. The sale of advertising and negotiation of rates for the advertising shall not be subject to the ~~Public Competitive Bidding~~ Oklahoma Central Purchasing Act of 1974 or the Administrative Procedures Act.

D. "Oklahoma Today Magazine" articles, and photographs produced by or for "Oklahoma Today Magazine", shall be available for public inspection during Department business hours. The Department shall not be required to provide copies or allow copying of the magazine, articles, or photographs other than as the Department provides copies of "Oklahoma Today Magazine" for newsstand and subscription sales.

SECTION 5. AMENDATORY Section 43, Chapter 363, O.S.L. 2005 (74 O.S. Supp. 2005, Section 2242), is amended to read as follows:

Section 2242. A. The offices and positions of the Executive Director, the Deputy Director, Directors of the Divisions of the Department herein created, and administrative assistant of each shall be in the unclassified service and shall not be subject to the Merit System of Personnel Administration.

B. The following positions in the Travel and Tourism Division within the Department filled after the effective date of the Oklahoma Tourism, Parks and Recreation Enhancement Act shall be in the unclassified service:

1. All positions in the Traveler Response Information Program;

2. All professional or managerial positions in the Division~~, except those in the tourism information centers~~;

3. Any position associated with the development and production of "Oklahoma Today Magazine"; and

4. Any position in the Division of State Parks utilized in the operation and administration of state resorts, cabins, lodges, and golf courses.

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.

Passed the Senate the 7th day of March, 2006.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2006.

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Presiding Officer of the House
of Representatives