

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

SENATE BILL

4 **By: Senators Harriman, Malone, Edwards, Miles and Chaffin**

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For An Act To Be Entitled

8 "AN ACT TO AUTHORIZE COUNTIES AND MUNICIPALITIES TO ENTER
9 INTO MULTIYEAR LEASE AGREEMENTS AND PURCHASE CONTRACTS;
10 AND FOR OTHER PURPOSES."

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12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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14 SECTION 1. TITLE. This act shall be referred to as, and may be cited
15 as "The Local Government Lease Act of 1991".

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17 SECTION 2. LEGISLATIVE FINDINGS. The General Assembly of the State of
18 Arkansas hereby finds and declares:

19 (1) The ability of governmental units, as hereinafter defined, to
20 provide for capital improvements, facilities and services of a public nature
21 is essential for the health, welfare, and economic well being of the people of
22 the State of Arkansas; and

23 (2) Under the Constitution and existing laws of this state, such
24 governmental units have had, and continue to have, the power to issue bonds
25 and other evidences of indebtedness; but statutes applicable to such
26 governmental units lack effective, modern procedures for the structuring of
27 multiyear lease agreements and purchase contracts under circumstances which
28 are not violative of the Constitution of the State of Arkansas whereby such
29 multiyear lease agreements and purchase contracts may provide the terms most
30 suitable to the governmental unit, the project, the facilities or the
31 financing program; and

32 (3) The purposes sought to be achieved by this act are to provide such
33 governmental units with all legal means and procedures necessary to obtain
34 capital improvements, facilities and services for public purposes under
35 changing circumstances related to existing market conditions and current tax

1 policy of the federal government and to supplement and compliment the
2 provisions of existing and future laws authorizing the financing of such
3 capital improvements, facilities and services, to the end that governmental
4 units may provide for the health, safety and welfare of the people by the
5 utilization of multiyear lease agreements and purchase contracts on terms and
6 conditions necessary under existing conditions.

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8 SECTION 3. DEFINITIONS. As used in this subchapter:

9 (1) "Act" means the "Local Government Lease Act of 1991".

10 (2) "Governmental unit" means any county or municipality, or any board,
11 commission, authority or other public agency or instrumentality of a county or
12 municipality which is now or hereafter authorized by law to issue bonds or
13 other evidences of indebtedness.

14 (3) "State" means the State of Arkansas.

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16 SECTION 4. MULTIYEAR LEASE AGREEMENTS AND PURCHASE CONTRACTS

17 AUTHORIZED. In addition to and not as a limitation upon other powers and
18 authority, each governmental unit is authorized and has the power to enter
19 into multiyear lease agreements and purchase contracts of all kinds for the
20 acquisition, refinancing and sale and leaseback of capital improvements,
21 facilities, equipment, goods, supplies, materials and all other types of
22 personal property, real property and services that the governmental unit is
23 authorized by law to acquire; provided, that any such multiyear lease
24 agreement or purchase contract shall contain provisions as follows:

25 (a) The contract shall terminate without further obligation on the part
26 of the governmental unit at the close of the fiscal year in which it was
27 executed and at the close of each succeeding fiscal year for which it may be
28 renewed; except that the contract may provide for automatic renewal unless
29 positive action is taken by the governmental unit to terminate such contract,
30 and the nature of such action shall be determined by the governmental unit and
31 specified in the contract; and

32 (b) The contract shall state the total obligation for the rental
33 payments or base rental payments of the governmental unit for the fiscal year
34 of execution and shall further state the total obligation for the rental
35 payments or base rental payments which will be incurred in each fiscal year of

1 each renewal term, if renewed.

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3 SECTION 5. ADDITIONAL PROVISIONS. In addition to the provisions
4 enumerated in Section 4 of this act, any multiyear lease agreement or purchase
5 contract authorized herein may, but is not required to, include:

6 (a) A provision which requires that the contract will terminate at such
7 time as appropriated and otherwise unobligated funds are no longer available
8 to satisfy the obligations of the governmental unit under the contract;

9 (b) A provision for the allocation by the governmental unit of a
10 portion of the contract payment as interest for federal income tax purposes;

11 (c) Provisions related to the rights, remedies, obligations and other
12 liabilities of the parties in the event of a default or other failure to
13 comply with the provisions of the contract; and

14 (d) Any other provisions reasonably necessary to protect the interests
15 of the governmental unit and the seller, lessor or mortgagee, and other
16 provisions, including a pledge of revenues or other assets, as the parties may
17 mutually agree upon.

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19 SECTION 6. LIMITATION OF LIABILITY. Any multiyear lease agreement
20 authorized herein shall be deemed to obligate the governmental unit only for
21 those sums payable during the fiscal year of execution or, in the event of a
22 renewal by the governmental unit, for such sums payable in the fiscal year of
23 each renewal term. No single renewal term shall exceed a period of twelve
24 (12) months, but the governmental unit may enter into as many renewal terms as
25 it deems necessary and appropriate. No multiyear lease agreement or purchase
26 contract which complies with this act shall be deemed to create a debt of
27 governmental unit for the payment of any sum beyond the fiscal year of
28 execution, or, in the event of a renewal, beyond the fiscal year of such
29 renewal.

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31 SECTION 7. SALE. If a governmental unit shall determine that a
32 negotiated sale of certificates of participation or other interests in the
33 multiyear lease agreement or purchase contract is in the best interest of the
34 governmental unit, the governmental unit may negotiate for the sale of such
35 certificates of participation or interest in such multiyear lease agreements

1 or purchase contracts upon such terms and conditions as the governmental unit
2 may determine.

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4 SECTION 8. ACT SUPPLEMENTAL - EFFECT ON OTHER STATES LAWS OR PREVIOUSLY
5 AUTHORIZED LEASE AGREEMENTS OR PURCHASE CONTRACTS. Nothing in this act shall
6 restrict governmental units from executing reasonable contracts arising out of
7 their proprietary functions.

8 (a) The provisions of this act are cumulative to, and not in derogation
9 of, rights of governmental units to execute and perform contracts, including
10 multiyear lease agreements and purchase contracts, as otherwise permitted by
11 law.

12 (b) Nothing herein shall be deemed to amend or otherwise alter any
13 provisions of state law as they relate to the financing by governmental units
14 of capital improvements, facilities, equipment, goods, supplies, materials and
15 all other types of personal property, real property and services.

16 (c) Nothing herein shall be deemed to alter or amend existing laws
17 pertaining to public bidding and purchase by governmental units of capital
18 improvements, facilities, equipment, goods, supplies, materials and all other
19 types of personal property, real property or services.

20 (d) The reference herein to laws providing authority for the entering
21 into of lease agreements and purchase contracts shall mean laws now in effect
22 and as hereinafter enacted or amended by the General Assembly.

23 (e) Nothing contained herein shall be construed to impugn the validity
24 of any lease agreement or purchase contract hereinbefore entered into by any
25 governmental unit.

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27 SECTION 9. SEVERABILITY. If any provision of this act or the
28 application thereof to any person or circumstance is held invalid, such
29 invalidity shall not affect other provisions or applications of the act which
30 can be given effect without the invalid provision or application, and to this
31 end the provisions of this act are declared to be severable.

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33 SECTION 10. CONFLICT WITH OTHER LAWS. All laws or parts of laws which
34 conflict with this act are hereby amended or repealed to the extent of such
35 conflict as necessary to permit the full effectiveness of this act.

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SECTION 11. CONSTRUCTION. The provisions of this act shall be liberally construed in order to effectively carry out the purposes of this act.

SECTION 12. CODE AMENDMENT. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 13. EMERGENCY. It is hereby found and determined by the General Assembly that the continued ability of governmental units to provide for capital improvements, facilities, equipment, goods, supplies, materials and all other types of personal property, real property and services will be enhanced by the utilization of multiyear lease agreements and that the utilization of such contracts can improve the cash management of such governmental units, all of which are essential for the health, welfare and economic well-being of the people of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

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