

ENGROSSED SENATE
BILL NO. 678

BY: HERBERT of the SENATE

and

BATES of the HOUSE

[PUBLIC TRUSTS - LISTING CONDITIONS - STATING
APPLICABLE PROVISIONS AND LAWS FOR DETERMINING THE
EXISTENCE AND VALIDITY OF A PUBLIC TRUST -
CODIFICATION -
EMERGENCY]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 176.1 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A public trust duly created in accordance with the provisions of Section 176 et seq. of Title 60 of the Oklahoma Statutes shall be presumed for all purposes of Oklahoma law to:

1. Exist for the public benefit;

2. Exist as a legal entity separate and distinct from the settlor and from the governmental entity that is its beneficiary;
and

3. Act on behalf and in the furtherance of a public function of the beneficiary,
even though facilities financed by the public trust or in which the public trust has an ownership interest may be operated by private

persons or entities pursuant to contract, provided that the conditions set out in subsection B of this section are satisfied.

B. The conditions to be satisfied as required in subsection A of this section are as follows:

1. The trustees of the public trust are appointed and are subject to removal by the governing body of the beneficiary; provided, this paragraph shall not apply to public trusts in existence as of the effective date of this section;

2. The public trust delivers to the governing body of the beneficiary, or in the case of the state as beneficiary, to the State Auditor and Inspector, annual audits as provided in Section 180.1 of Title 60 of the Oklahoma Statutes;

3. The function or enterprise in which the public trust is engaged is or could be authorized by state law to be performed by the beneficiary;

4. All indebtedness incurred by the public trust is approved by the governing body of the beneficiary as provided in Section 176 of Title 60 of the Oklahoma Statutes;

5. In connection with the approval of indebtedness provided in Section 176 of Title 60 of the Oklahoma Statutes, the governing bodies of the public trust and of the beneficiary each make a finding that the project or facility to be financed will serve a public function and will constitute a benefit to the public in accordance with applicable state laws;

6. In connection with the incurrence of any indebtedness or issuance of obligations, the public trust, acting upon the advice of counsel, certifies that it is in compliance with any applicable rules or regulations of the Internal Revenue Service pertaining to issuers acting "on behalf of" a political subdivision pursuant to Section 103 of the United States Internal Revenue Code of 1986, as amended;

7. Any contract for the operation or management of the facility financed by the public trust which provides that the operation of the facility shall be in furtherance of the public purpose of the public trust stated in the approval of such financing shall not affect the validity of such public trust; and

8. Except where the provisions of Section 176 et seq. of Title 60 of the Oklahoma Statutes, or of any other law written specifically to govern the affairs of public trusts, expressly requires otherwise, the conduct of the affairs of the public trust shall be separate and independent from the affairs of the beneficiary in all matters or activities authorized by the written instrument creating such public trust including, but not limited to, the public trust's budget, expenditures, revenues and general operation and management of its facilities or functions; provided, that either the public trust or the beneficiary may make payment of money to the other in accordance with the laws of this state and the written instrument creating such public trust.

C. For all purposes of Oklahoma law the existence and validity of any public trust shall be determined and established solely by the provisions of the written instrument creating such public trust, and by the provisions of Section 176 et seq. of Title 60 of the Oklahoma Statutes and of any other law written specifically to create a public trust. Actions taken or omitted by the trustees of a public trust shall not affect the existence or validity of the entity as a public trust but shall be subject to correction by the District Court in a proper proceeding.

SECTION 2. 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 2d day of March, 1992.

President of the Senate

Passed the House of Representatives the ____ day of
_____, 1992.

Speaker of the House of
Representatives