STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1739 BY: THOMPSON

AS INTRODUCED

AN ACT RELATING TO PROPERTY AND PUBLIC FINANCE; AMENDING 60 O.S. 1981, SECTION 176, AS LAST AMENDED BY SECTION 3 OF ENROLLED HOUSE BILL NO. 1001 OF THE 1ST EXTRAORDINARY SESSION OF THE 43RD OKLAHOMA LEGISLATURE, WHICH RELATES TO PUBLIC TRUSTS; CLARIFYING STATUTORY LANGUAGE; AMENDING 62 O.S. 1981, SECTION 358, AS AMENDED BY SECTION 45, CHAPTER 170, O.S.L. 1983 (62 O.S. SUPP. 1990, SECTION 358), WHICH RELATES TO THE ISSUE AND SALE OF CERTAIN BONDS; CLARIFYING STATUTORY LANGUAGE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 60 O.S. 1981, Section 176, as last amended by Section 3 of Enrolled House Bill No. 1001 of the 1st Extraordinary Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 176. (a) Express trusts may be created to issue obligations and to provide funds for the furtherance and accomplishment of any authorized and proper public function or purpose of the state or of any county or municipality or any

combinations thereof, in real or personal property, or either or both, or in any estate or interest in either or both, with the state, or any county or municipality or any combinations thereof, as the beneficiary thereof by the: (1) express approval of the Legislature and the Governor if the State of Oklahoma is the beneficiary; (2) express approval of two-thirds (2/3) of the membership of the governing body of the beneficiary if a county is a beneficiary; (3) express approval of two-thirds (2/3) of the membership of the governing body of the beneficiary if a municipality is a beneficiary. Provided, that no funds of said beneficiary derived from sources other than the trust property, or the operation thereof, shall be charged with or expended for the execution of said trust, except by express action of the legislative authority of the beneficiary prior to the charging or expending of the funds. The officers or any other governmental agencies or authorities having the custody, management or control of any property, real or personal or both, of the beneficiary of such trust, or of such a proposed trust, which property shall be needful for the execution of the trust purposes, are authorized and empowered to lease such property for said purposes, after the acceptance of the beneficial interest therein by the beneficiary as hereinafter provided.

(b) A municipality may convey title to real property which is used for an airport to the trustees of an industrial development authority trust whose beneficiary is the municipality. Said industrial development authority trust must already have the custody, management or control of such real property. Such conveyance must be approved by a majority of the governing body of the municipality. A conveyance pursuant to this section may be made only for the sole purpose of allowing such authority to sell the property for fair market value when the property is to be used for industrial development purposes. Conveyances made pursuant to this

subsection shall be made subject to any existing reversionary interest or other restrictions burdening the property and subject to any reversionary interest or other restriction considered prudent by the municipality.

(c) The trustees of a public trust ~~having~~ in which the State of Oklahoma ~~as~~ is the beneficiary shall make and adopt bylaws for the due and orderly administration and regulation of the affairs of the public trust. All bylaws of a public trust having the State of Oklahoma as beneficiary shall be submitted in writing to the Governor of the State of Oklahoma. The Governor must approve the proposed bylaws before they take effect.

(d) No public trust in which the State of Oklahoma is the beneficiary may be amended without a two-thirds (2/3) vote of approval of the trustees of such trust. Provided, that any such amendment is subject to the approval of the Governor of the State of Oklahoma. Such amendments shall be sent to the Governor within fifteen (15) days of their adoption.

(e) No trust in which a county or municipality is the beneficiary shall hereafter create an indebtedness or obligation until such indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of said beneficiary. In the event a trust has more than one beneficiary, as authorized by this section, such trust shall not incur an indebtedness or obligation until such indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of two-thirds (2/3) of the beneficiaries of said trust.

(f) All bonds described in subsection (e) of this section, after the effective date of this act, except bonds sold to the federal government or any agency thereof or to any agency of the State of Oklahoma, shall be awarded to the lowest and best bidder based upon open competitive public offering, advertised at least once a week for two (2) successive weeks in a newspaper of general

circulation in the county where the principal office of the trust is located prior to the date on which bids are received and opened, except, on bond issues with the approval of three-fourths (3/4) of the trustees, and a three-fourths (3/4) vote of the governing body of the beneficiary, or three-fourths (3/4) vote of the governing bodies of each of the beneficiaries of said trust as the case may be, competitive bidding may be waived. No bonds shall be sold for less than par value, except upon approval of three-fourths (3/4) of the trustees. In no event shall bonds be sold for less than sixty-five percent (65%) of par value. Provided, however, in no event shall the original purchaser from the issuer of any bonds issued by any public trust for any purpose receive directly or indirectly any fees, compensation or other remuneration in excess of four percent (4%) of the price paid for such bonds by the purchaser of such bonds from the original purchaser; and further provided, that the average coupon rate thereon shall in no event exceed fourteen percent (14%) per annum. No public trust shall sell bonds for less than ninety-six percent (96%) of par value until the public trust has received from the underwriter or financial advisor or, in the absence of an underwriter or financial advisor, the initial purchaser of such bonds, an estimated alternative financing structure or structures showing the estimated total interest and principal cost of each alternative. At least one alternative financing structure shall include bonds sold to the public at par. Such estimates shall be considered a public record of said public trust. Bonds, notes or other evidences of indebtedness issued by any public trust shall be eligible for purchase by any state banking association or corporation subject to such limitations as to investment quality as may be imposed by regulations, rules or rulings of the State Banking Commissioner.

(g) Contracts for construction, labor, equipment, material or repairs in excess of Two Thousand Dollars ($2,000.00) shall be

awarded by public trusts to the lowest and best competitive bidder, pursuant to public invitation to bid, which shall be published in the manner provided in the preceding section hereof; such advertisements shall appear in the county where the work, or the major part of it, is to be done, or the equipment or materials are to be delivered, or the services are to be rendered. Provided, however, should the trustee or the trustees find that an immediate emergency exists, which findings shall be entered in the journal of the trust proceedings, by reason of which an immediate outlay of trust funds in an amount exceeding Two Thousand Dollars ($2,000.00) is necessary in order to avoid loss of life, substantial damage to property, or damage to the public peace or safety, then such contracts may be made and entered into without public notice or competitive bids; provided that the provisions of this subsection shall not apply to contracts of industrial and cultural trusts.

(h) Any public trust created pursuant to the provisions of this section shall have the power to acquire lands by use of eminent domain in the same manner and according to the procedures provided for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes. Any exercise of the power of eminent domain by a public trust pursuant to the provisions of this section shall be limited to the furtherance of public purpose projects involving revenue-producing utility projects of which the public trust retains ownership; provided, for public trusts in which the State of Oklahoma is the beneficiary the exercise of the power of eminent domain may also be used for public purpose projects involving air transportation. Revenue-producing utility projects shall be limited to projects for the transportation, delivery, treatment or furnishing of water for domestic purposes or for power, including, but not limited to the construction of lakes, pipelines and water treatment plants. Any public trust formed pursuant to this section which has a county as its beneficiary shall have the power to acquire, by use of eminent

domain, any lands located either inside such county, or contiguous to such county pursuant to the limitations imposed pursuant to this section.

(i) Provisions of this section shall not apply to entities created under Sections 1324.1 through 1324.26, of Title 82 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 62 O.S. 1981, Section 358, as amended by Section 45, Chapter 170, O.S.L. 1983 (62 O.S. Supp. 1990, Section 358), is amended to read as follows:

Section 358. All general obligation bonds including funding and refunding bonds issued by a county, city, town, township, board of education or school district shall be signed by the chief officer of such municipality or political subdivision and attested by the clerk. Facsimile signatures may be used ~~as provided in the~~ pursuant to the provisions of the Registered Public Obligations Act of Oklahoma. There shall be endorsed thereon a certificate signed by the district attorney and county clerk of the county in which such issuing municipality or political subdivision is located that said bonds or evidence of debts are issued pursuant to law and that said issue is within the debt limit. There shall be contained on each of said bonds a certificate of the treasurer of the issuing municipality or political subdivision that he registered the said bonds.

SECTION 3. This act shall become effective September 1, 1991.

43-1-5914 DDL