

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2411

By: McCorkell

AS INTRODUCED

An Act relating to public trusts; amending 60 O.S. 1991, Sections 176, as amended by Section 5, Chapter 371, O.S.L. 1992, 177, 178, 180 and 180.2 (60 O.S. Supp. 1993, Section 176), which relate to public trusts; requiring amendments to bylaws to be submitted to Governor; requiring filing of bylaws and amendments to bylaws with Secretary of State; requiring amended trust organizational instruments to be filed with Secretary of State; requiring certified copies of trust instruments to be filed with governing board of trust beneficiary; providing for filing of instruments if political subdivisions or combination of political subdivisions are beneficiaries; providing for filing of trust instrument with Secretary of State; requiring reports related to bond proceeds expenditure to be filed with Secretary of State; requiring information to be filed by public trusts having not issued certain indebtedness or incurred certain obligations within specified time; prescribing information; authorizing forms; restricting authority to issue evidence of indebtedness without providing specified information; providing procedures for dissolution

of public trusts; specifying content of information to be filed with Secretary of State upon dissolution; requiring annual audit to be filed with Secretary of State; and providing an effective date.

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

SECTION 1. AMENDATORY 60 O.S. 1991, Section 176, as amended by Section 5, Chapter 371, O.S.L. 1992 (60 O.S. Supp. 1993, Section 176), 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 the State of Oklahoma as beneficiary shall make and adopt bylaws for the due and orderly administration and regulation of the affairs of the public trust. All bylaws, including amendments to 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 and amendments to bylaws before they take effect. A certified copy of all bylaws and amendments to bylaws for such trusts shall be filed with the Secretary of State after approval by the Governor.

(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. A certified copy of any such approved amendments shall be filed with the Secretary of State.

(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) Public trusts created pursuant to this section shall file annually, with their respective beneficiaries, copies of financial documents and reports sufficient to demonstrate the fiscal activity of such trust, including, but not limited to, budgets, financial reports, bond indentures and audits. Amendments to the adopted budget shall be approved by the trustees of the public trust and recorded as such in the official minutes of such trust.

(h) Contracts for construction, labor, equipment, material or repairs in excess of Seven Thousand Five Hundred Dollars (\$7,500.00) 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 Seven Thousand Five Hundred Dollars (\$7,500.00) 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.

(i) 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.

(j) 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 60 O.S. 1991, Section 177, is amended to read as follows:

Section 177. (a) Such trusts may be created by written instruments or by will. In the case of written instruments, the same shall be subscribed by the grantor or grantors and duly acknowledged as conveyances of real estate are acknowledged, and before the same shall become effective the beneficial interest therein shall be accepted by the Governor, if the state is the beneficiary, or by the governing body of any other beneficiary named therein, which power and authority of acceptance hereby is conferred upon the Governor and upon the governing bodies of the counties or municipalities.

(b) Provided, every trust made hereunder, if the state is the beneficiary, shall, prior to and as a condition precedent to its entry into force, be submitted to the Attorney General who shall determine whether the trust is in proper form and compatible with the laws of this state. The Attorney General shall approve any trusts submitted to him which he determines to be in proper form and compatible with the laws of this state.

(c) If approved, the said instrument or will, together with the written acceptance of the beneficial interest and approval of the Attorney General endorsed thereon, shall be recorded in the office of the county clerk of each county wherein is situated any real estate, or any interest therein, belonging to said trust, as well as in the county wherein is located the trust property or wherein are conducted its principal operations.

(d) In the case of any trust of which the State of Oklahoma or any of its political subdivisions or any combination of political subdivisions is the beneficiary or are the beneficiaries, a

certified copy of such instrument or will and the instrument of acceptance shall be filed with the Secretary of State. In the case of any trust of which any political subdivision or any combination of political subdivisions is the beneficiary, a certified copy of such instrument or will and the instrument of acceptance shall be filed with the clerk of the governing board of the beneficiary. If a public trust has multiple beneficiaries, such instrument shall be filed with the clerk of the governing board of at least one of the beneficiaries and the public trust shall maintain a record of the location of such filing which record shall be open to public inspection in the manner provided by law.

(e) Upon the acceptance of the beneficial interest by the beneficiary and, in the case of a public trust with the State of Oklahoma as beneficiary, approval by the Attorney General as hereinabove provided, the same shall be and constitute a binding contract between the ~~State of Oklahoma~~ applicable beneficiary and the grantor or grantors, or the executor of the estate of the testator, for the acceptance of the beneficial interest in the trust property by the designated beneficiary and the application of the proceeds of the trust property and its operation for the purposes, and in accordance with the stipulations of the trust instrument or will. Such trusts shall have duration for the term of duration of the beneficiary, or such shorter length of time as shall be specified in the instrument or will creating said trust.

SECTION 3. AMENDATORY 60 O.S. 1991, Section 178, is amended to read as follows:

Section 178. A. The instrument or will creating such trust may provide for the appointment, succession, powers, duties, term, manner of removal and compensation of the trustee or trustees subject to the provisions of subsections C and E of this section, and in all such respects the terms of said instrument or will shall be controlling. Trustees, who are public officers, shall serve

without compensation, but may be reimbursed for actual expenses incurred in the performance of their duties as trustees. If the said instrument or will makes no provisions in regard to any of the foregoing, then the general laws of the state shall control as to such omission or omissions. Every person hereafter becoming a trustee of a public trust first shall take the oath of office required of an elected public officer and every officer and employee who handles funds of a public trust shall furnish a good and sufficient fidelity bond in an amount and with surety as may be specified and approved by the persons constituting a majority of the governing body of the beneficiary of the trust, such bond to be in a surety company authorized to transact surety business in the State of Oklahoma but in no event shall any bond be required of a trustee. The cost of said bond shall be paid from funds of the trust authority. The oaths of office shall be administered by any person authorized to administer oaths in the State of Oklahoma, and shall be filed with the Secretary of State in trusts wherein the State of Oklahoma is the beneficiary; in the office of the county clerk in a trust wherein any county is beneficiary; and in the office of the clerk of the municipality in a trust wherein any municipality is the beneficiary.

B. Any public trust that hereafter names the State of Oklahoma as the beneficiary shall have five (5) trustees appointed by the Governor of the State of Oklahoma with the advice and consent of the Senate. The terms of the trustees shall be as follows: of the trustees first appointed, one member shall be appointed for a term of one (1) year; one member shall be appointed for a term of two (2) years; one member shall be appointed for a term of three (3) years; one member shall be appointed for a term of four (4) years; and one member shall be appointed for a term of five (5) years. At the expiration of the term of each member and of each succeeding member, the Governor shall appoint a successor who shall serve for a term of

five (5) years. Whenever a vacancy on such trust shall occur by death, resignation or otherwise, the Governor shall fill the same by appointment and the appointee shall hold office during the unexpired term. Each member shall hold office until his successor has been appointed and qualified.

C. Any instrument or will creating a trust which is not within the scope of subsection B of this section shall provide for the appointment of a minimum of three trustees, their succession, powers, duties, term, manner of removal and compensation subject to the provisions of subsection E of this section, and in all such respects the terms of said instrument or will shall be controlling. If the instrument or will makes no provision in regard to any of the foregoing, then the general laws of the state shall control as to the omissions.

D. Meetings of trustees of all public trusts shall be open to the public to the same extent as is required by law for other public boards and commissions. Such meetings shall also be open to the press and any such equipment deemed necessary by the press to record or report the activities of the meetings. In such trusts wherein the State of Oklahoma is the beneficiary, a written notice of trustees' meetings shall be filed with the office of the Secretary of State at least three (3) days prior to the meeting date. Records of the trust and minutes of the trust meetings of any public trust shall be written and kept in a place, the location of which shall be recorded in the office of the county clerk of each county, wherein the trust instrument shall be recorded. Such records and minutes shall be available for inspection by any person during regular business hours. Every trust created under Sections 176 et seq. of this title shall file a monthly report of all expenditures of bond proceeds with the governing body of the beneficiary and with the Secretary of State. In the case of a public trust having the State of Oklahoma as beneficiary, such expenditure reports shall also be

filed with the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate ~~in the case of a public trust having the State of Oklahoma as beneficiary.~~

E. Trustees of any public trust may be removed from office for cause, including incompetency, neglect of duty, or malfeasance in office, by a district court having jurisdiction. In the case of persons appointed by the Governor, such persons shall be appointed for terms not in excess of five (5) years, and shall be subject to removal for cause. In the event of removal of a trustee under this subsection, a successor trustee shall be appointed as provided in the trust instrument. Provided, however, in the event a trustee is so removed who is also a member of the governing board of a municipal beneficiary, the successor trustee shall be appointed by the judge of the court wherein the removal occurred; said successor trustee shall serve only until the removed trustee ceases to serve as a member of the governing board of the municipal beneficiary and his successor on said board has qualified.

F. The provisions of this section shall be inapplicable to any public trust created and existing prior to July 1, 1988, if the instrument or will creating such public trust shall have been held to be a valid and binding agreement in an opinion of the Supreme Court of the State of Oklahoma; and nothing in this section shall impair or be deemed to impair the trust indenture or existing or future obligations of such public trust.

SECTION 4. AMENDATORY 60 O.S. 1991, Section 180, is amended to read as follows:

Section 180. (a) Any such trust may be terminated by agreement of the trustee, or, if there be more than one, then all of the trustees and the governing body of the beneficiary, with the approval of the Governor of the State of Oklahoma; provided, that such trust shall not be terminated while there exists outstanding any contractual obligations chargeable against the trust property,

which, by reason of such termination, might become an obligation of the beneficiary of such trust.

(b) Nothing in this act shall operate to impair existing obligations of contracts or existing trust indentures of any trust created prior to the effective date of this amendment; but to the extent that such existing obligations of contracts are not impaired by the provisions hereof, all of said provisions shall be applicable; provided further, that nothing in this act shall operate to impair or alter the trust indenture of the Oklahoma Ordinance Works Authority or contracts executed prior to the effective date of this act.

(c) On and after the effective date of this act, any public trust created pursuant to the provisions of Section 176 et seq. of this title whether created prior to, on or after the effective date of this act which has not issued any form of debt obligation for a period of five (5) years and which does not have any outstanding debt which requires payment or which does not have any contractual obligations remaining to be performed shall not be authorized to incur any indebtedness or issue any bonds, notes or other evidence of indebtedness until thirty (30) days after having filed with the Secretary of State a form, prescribed by the Attorney General, containing the following information:

1. The date upon which the public trust was originally created and the identity of the beneficiary or beneficiaries;

2. The identity of the beneficiary or beneficiaries for whose benefit the proposed indebtedness is to be incurred by the public trust;

3. The names and addresses of the trustees of the public trust;

4. A certified copy of the instrument creating the trust, together with any amendments in force and effect;

5. A certified copy of the bylaws of the trust together with any amendments in force and effect;

6. The current mailing address to which correspondence or official notices to the trust are mailed or delivered;

7. A telephone number which permits direct communication with an agent, employee or representative of the public trust; and

8. Any other information required by the Attorney General upon the form authorized by this subsection.

(d) Any public trust which is terminated according to this section shall file a certified copy of its formal instrument of dissolution with the clerk of the governing body of the trust beneficiary and, in the case of a public trust the beneficiary of which is the State of Oklahoma, shall file a certified copy of such instrument with the Secretary of State, the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives. If a public trust has multiple political subdivisions as beneficiaries, the instrument of dissolution shall be filed with the clerk of the governing board of at least one of the beneficiaries and the public trust shall maintain a record of the location of the filing and the record shall be open to public inspection in the manner provided by law.

(e) Any public trust which is to be dissolved pursuant to this section but which does not have a sufficient number of trustees to act on its behalf due to trustees' death, resignation, failure of successors or any other cause shall be deemed to have appointed the governing body of the beneficiary or, in the case of a public trust having the State of Oklahoma as its beneficiary, the Governor of the State of Oklahoma, to act on its behalf for purposes of filing a certified copy of an instrument of dissolution. The Attorney General shall prescribe a form for use by the governing body or the Governor, as may be applicable, in accomplishing the dissolution of a public trust as provided by this section.

(f) Upon dissolution of a public trust, the trustees or the persons or entities authorized by law to act on behalf of the trust

in accomplishing its dissolution shall file with the Secretary of State a form, prescribed by the Attorney General, which shall contain the following information:

1. The date upon which the trust was originally created;
2. The name and last-known address of each trustee of the trust whose term of office has not expired as of the date for dissolution;
3. A verified statement that the dissolution is an authorized act of the trust or that the dissolution is authorized for one of the reasons specified in this section without express action by the trustees of the trust;
4. The identity of the beneficiary or beneficiaries for whose benefit the trust was originally created;
5. The identity of the beneficiary or beneficiaries for whose benefit the trust exists as of the date of dissolution, if different than the identity specified by paragraph 4 of this subsection;
6. The address of the administrative office of the public trust, if any;
7. The date as of which the last indebtedness owed by the trust resulting from the issuance of any of its instruments for the payment of money was paid, if known; and
8. Such further information as may be required by the forms prescribed by the Attorney General.

SECTION 5. AMENDATORY 60 O.S. 1991, Section 180.2, is amended to read as follows:

Section 180.2 (a) The audits herein required shall be certified with the opinion of a certified public accountant or a licensed public accountant notwithstanding any lesser requirement by any instrument under which the trust may have covenanted for an audit to be made or furnished. The required audit shall adhere to standards set by the State Auditor and Inspector. One copy of the annual audit shall be filed with the State Auditor and Inspector, and, in

the case of a trust wherein the state is the beneficiary, one copy with the Governor of the State of Oklahoma and one copy with the ~~legislative committee provided for in Section 178.1 of this title~~ Secretary of State and one copy with each beneficiary of the trust, not later than six (6) months following the close of each fiscal year of the trust.

(b) Within thirty (30) days after the effective date hereof, each trust mentioned in Section 180.1 of this title shall certify to the State Auditor and Inspector the date of the close of its fiscal year.

(c) In the event that copy of such audit as herein required shall not be filed with the State Auditor and Inspector within the time herein provided, the State Auditor and Inspector hereby is authorized to employ, at the cost and expense of the trust, a certified public accountant or licensed public accountant to make the audit herein required.

(d) Prior to the delivery of and payment for any bonds, notes or other evidences of indebtedness by a public trust, there shall be filed with the Secretary of State an executed original or certified copy of the written instrument or will creating such public trust and a notice of said filing with the Secretary of State shall be delivered to the State Auditor and Inspector and, in the case of a trust wherein the state is the beneficiary, to the Attorney General.

SECTION 6. This act shall become effective September 1, 1994.

44-2-7529

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