

SHORT TITLE: Public trusts; multiple beneficiaries; rail transportation projects. Effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1113

By: Snyder

AS INTRODUCED

An Act relating to public trusts; amending 60 O.S. 1991, Section 176, as last amended by Section 4, Chapter 288, O.S.L. 1996, Section 6, Chapter 371, O.S.L. 1992, Sections 178 and 178.7 (60 O.S. Supp. 1997, Sections 176 and 176.1), which relate to creation, purposes, presumptions, trustees and taxation of public trusts; clarifying language; authorizing exercise of power of eminent domain for certain purpose; modifying authority to require certain bond; modifying entities required to pay certain in lieu tax; 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 last amended by Section 4, Chapter 288, O.S.L. 1996 (60 O.S. Supp. 1997, 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 and all 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 and all combinations thereof, as the beneficiary thereof by:

1. The express approval of the Legislature and the Governor if the State of Oklahoma is the beneficiary;

2. The express approval of two-thirds (2/3) of the membership of the governing body of the beneficiary if a county is a beneficiary; or

3. The express approval of two-thirds (2/3) of the membership of the governing body of the beneficiary if a municipality is a beneficiary; or

4. The express approval of two-thirds (2/3) of the membership of the governing body of each beneficiary in the event a trust has more than one beneficiary; provided, that no funds of a beneficiary derived from sources other than the trust property, or the operation thereof, shall be charged with or expended for the execution of the 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 mixed, of the beneficiary of the trust, or of a proposed trust, which property shall be needful for the execution of the trust purposes, are authorized and empowered to lease the property for those 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. The industrial development authority trust must already have the custody, management, or control of the real property. The 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 the 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 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 the trust; provided, that any amendment is subject to the approval of the Governor of the State of Oklahoma. Any 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 the indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of the beneficiary. In the event a trust has more than one beneficiary, as authorized by this section, the trust shall not incur an indebtedness or obligation until the 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 the trust.

F. All bonds described in subsection E of this section, after December 1, 1976, 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; provided, competitive bidding may be waived 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, unless the beneficiary is a county in which case a two-thirds ($2/3$) vote of the members of the governing body shall be required, or three-fourths ($3/4$) vote of the governing bodies of each of the beneficiaries of the trust, unless one of the beneficiaries is a county in which case a two-thirds ($2/3$) vote of the members of the governing body of such county shall be required. No bonds shall be sold for less than par value, except upon approval of three-fourths ($3/4$) of the trustees, unless the beneficiary is a county in which case a two-thirds ($2/3$) vote of the members of the governing body shall be required. 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 the bonds by the purchaser of the 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 the 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. Any estimates shall be considered a public record of

the 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; the 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 the 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. Notwithstanding the provisions of this subsection, equipment or materials may be purchased by a public trust directly from any contract duly awarded by this state or any state agency

under the Oklahoma Central Purchasing Act, or from any contract duly awarded by a governmental entity which is the beneficiary of the public trust.

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 or for projects for rail transportation. 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 the county, or contiguous to the 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 Section 6, Chapter 371, O.S.L. 1992 (60 O.S. Supp. 1997, Section 176.1), is amended to read as follows:

Section 176.1 A. Except as provided in subsection F of this section and if the conditions set out in subsection B of this section are satisfied in compliance with Section 176 et seq. of

~~Title 60 of the Oklahoma Statutes~~ this title, a public trust duly created in accordance with the provisions of Section 176 et seq. of ~~Title 60 of the Oklahoma Statutes~~ this title 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 or functions for which it is created 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.

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 by the governing body of the beneficiary or beneficiaries. This paragraph shall not apply to public trusts in existence as of ~~the effective date of this section~~ July 1, 1992;

2. The public trust delivers to the governing body of the ~~beneficiary~~ beneficiaries, 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~~ this title;

3. With respect to city or county beneficiary public trusts, 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; and

4. With respect to city or county beneficiary public trusts, all indebtedness incurred by the public trust is approved by the governing body of the beneficiary as provided in subsection (e) of Section 176 of ~~Title 60 of the Oklahoma Statutes~~ this title.

C. The existence of a contract for the operation or management of the facility financed by the public trust is hereby declared to be in furtherance of the public purpose of the public trust and shall not affect the validity of such public trust.

D. Except where the provisions of the trust indenture or of Section 176 et seq. of ~~Title 60 of the Oklahoma Statutes~~ this title, or of any other law written specifically to govern the affairs of public trusts, expressly requires otherwise, 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 unless prohibited by the written instrument creating such public trust or by existing state law.

E. 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~~ this title 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 subsequent review or ratification by said trustees or to correction by the District Court in a proper proceeding.

F. Nothing in this section shall affect coverage of any entity under the Governmental Tort Claims Act.

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 each of the governing body bodies of the beneficiary beneficiaries 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~~ each beneficiary and 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 178.7, is amended to read as follows:

Section 178.7 All public trusts hereafter issuing revenue bonds, notes or other evidences of indebtedness for industrial development purposes, including but not limited to rail transportation projects, shall require the lessee of each industrial

project owned by the public trust, excluding nonprofit health care facilities, to pay an annual sum in lieu of ad valorem taxes for each year following the tenth anniversary date of the issuance of such revenue bonds, notes or other evidences of indebtedness. The lease or other agreement between the public trust and the lessee shall provide that the amount of the annual in lieu of payments shall be equal to the amount which such lessee would be obligated to pay were it the title owner of such industrial project during such annual period according to the assessment and valuation methods and procedures then provided by law. Prior to the tenth anniversary date of the issuance of such revenue bonds, notes or other evidences of indebtedness, the public trust shall elect, pursuant to a written notice of election filed with the county assessor and the county treasurer of the county in which the project property is located, either (a) to cause said annual in lieu of payments to be paid directly to said county and collected and distributed by said county treasurer in the manner then provided by law for ad valorem tax payments, or (b) to cause said annual in lieu of payments to be paid to said public trust and distributed as received by it to the local units of government in the impact area of the project supplying services and facilities to the industrial project and its employees in the proportions that the public trust shall determine to be equitable under the circumstances, with total distribution to all impacted school districts of not less than the percentage that would have been received in ad valorem taxes, by the school districts in the county where the facility is located, if imposed, and with said distribution based upon enrollment figures provided annually, in writing, within thirty (30) days after enrollment, to the trust. If said enrollment figures are not submitted in writing within said time period, then said school district is permanently barred after said thirty (30) days from receiving in lieu of payments for that annual distribution period. The term "industrial project" as used

in this section shall include an expansion of an existing industrial facility; provided, however, no such arrangement shall operate to remove any property from the tax rolls except unimproved land then owned by the lessee to be acquired by the trust or additional unimproved land to be acquired by the trust to provide such improvements. The term "lessee" as used in this section shall include any individual, association, partnership, corporation or other entity engaged in any trade or business for profit and not otherwise exempt from ad valorem taxation under the laws of the state and shall include any purchaser or obligor under an installment sale agreement or other underlying financing agreement. The provisions of this section shall not apply to any project financed, or formally committed to be financed, by any public trust prior to the effective date hereof. Provided, further, that nothing contained in this section shall prevent any public trust from requiring in lieu of payments to be made by a lessee to the trust for public use, prior to the tenth anniversary date of the issuance of bonds, notes or other evidences of indebtedness hereafter issued for industrial development purposes.

SECTION 5. This act shall become effective November 1, 1998.

46-2-2327

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