

OKLAHOMA STATE SENATE
JOINT
COMMITTEE REPORT

May 16, 2011

JOINT COMMITTEE ON APPROPRIATIONS AND BUDGET

SB 985

By: Myers of the Senate and Sears of the House

Title: Native American Cultural and Educational Authority; modifying provisions relating to issuance of indebtedness; modifying various other provisions. Effective date. Emergency.

Co-Authored By:

Recommendation: **DO PASS AS AMENDED**

Aye: Brinkley, Burrage, Ford, Halligan, Ivester, Justice, Marlatt, Newberry, Nichols, Paddack, Rice, Stanislawski, Sykes, Wilson, Wyrick, Jolley, Myers

Nay:

Pass:

A handwritten signature in black ink, appearing to read "David Myers", with a long horizontal line extending to the right.

Senator David Myers, Chair

Amendments:

1. Committee Substitute Attached.

OKLAHOMA HOUSE OF REPRESENTATIVES
COMMITTEE REPORT

JOINT APPROPRIATIONS AND BUDGET COMMITTEE

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By: Sears et al of the House

Myers et al of the Senate

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Recommendation: **DO PASS AS AMENDED BY CS**

Amendments:

1. Committee Substitute Attached



Chr.
Representative Earl Sears

YEAS: 11

Billy, Cox, Hoskin, Sears, Blackwell, Denney, Liebmann, Walker, Brown, Dorman, Peters

NAYS: 4

Armes, Dank, DeWitt, Martin,, Sc

CONSTITUTIONAL PRIVILEGE: 0

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 985

By: Myers and Jolley of the
Senate

6 and

7 Sears and Martin (Scott) of
the House

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to the Native American Cultural and
11 Educational Authority; amending Section 1 of Enrolled
Senate Bill No. 980 of the 1st Session of the 53rd
12 Legislature, which relates to issuance of
obligations; limiting purposes for which obligations
13 may be issued; amending 74 O.S. 2001, Section 1226.2,
as last amended by Section 2, Chapter 146, O.S.L.
2005 (74 O.S. Supp. 2010, Section 1226.2), which
14 relates to the Authority; subjecting Authority to
provisions of Taxpayer Transparency Act; and
15 declaring an emergency.

16
17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY Section 1 of Enrolled Senate Bill
19 No. 980 of the 1st Session of the 53rd Oklahoma Legislature is
20 amended to read as follows:

21 Section 1. A. In addition to any other authorization provided
22 by law, the Oklahoma Capitol Improvement Authority (OCIA) is
23 authorized to issue obligations to acquire real property, together
24 with improvements located thereon, and personal property, to

1 construct buildings and other capital improvements to real property
2 and to provide funding for capital improvements to real and personal
3 property and for funding of further construction, improvements,
4 development and enhancement of a Native American cultural center and
5 museum for the Native American Cultural and Educational Authority
6 ("American Indian Cultural Center"), to include personal property
7 and exhibits in a total amount not to exceed Forty Million Dollars
8 (\$40,000,000.00) with debt retirement payments to be made as
9 provided herein, subject to the following:

10 1. The commitment of matching funds from other funding sources
11 as required by subsection J of this section; and

12 2. Prohibition of the use of state appropriated funds to pay
13 debt service on the obligations authorized by this section until the
14 fiscal year beginning July 1, 2016, as provided by subsection K of
15 this section.

16 B. The OCIA may hold title to or a leasehold interest in the
17 real and personal property and improvements until such time as any
18 obligations issued for this purpose are retired or defeased and may
19 lease the real property and improvements to the Native American
20 Cultural and Educational Authority. Upon final redemption or
21 defeasance of the obligations created pursuant to this section,
22 title to the real and personal property and improvements shall be
23 transferred from the OCIA to the Native American Cultural and
24 Educational Authority.

1 C. For the purpose of paying the costs for acquisition and
2 construction of the real property and improvements and personal
3 property and making the improvements to real and personal property,
4 and providing funding for the project authorized in subsection A of
5 this section, the OCIA is hereby authorized to borrow monies on the
6 credit of the income and revenues to be derived from the leasing of
7 such real and personal property and improvements and, in
8 anticipation of the collection of such income and revenues, to issue
9 negotiable obligations, in one or more series, in an amount
10 sufficient to generate net proceeds of Forty Million Dollars
11 (\$40,000,000.00) after providing for costs of issuance, credit
12 enhancement, reserves, and other associated expenses related to the
13 financing. Net proceeds of the financing will be deposited into a
14 construction fund to provide for the construction and acquisition of
15 improvements described herein, or shall be deposited in a debt
16 service or other fund to satisfy the requirements of subsection K of
17 this section. It is the intent of the Legislature to appropriate to
18 the Native American Cultural and Educational Authority sufficient
19 monies to make rental payments for the purposes of retiring the
20 obligations created pursuant to this section, subject to the
21 provisions of subsection K of this section. To the extent funds are
22 available from the proceeds of the borrowing authorized by this
23 subsection, the OCIA shall provide for the payment of professional
24

1 fees and associated costs related to the projects authorized in
2 subsection A of this section.

3 D. The OCIA may issue obligations in one or more series and in
4 conjunction with other issues of the OCIA. The OCIA is authorized
5 to hire bond counsel, financial consultants, and such other
6 professionals as it may deem necessary to provide for the efficient
7 sale of the obligations and may utilize a portion of the proceeds of
8 any borrowing to create such reserves as may be deemed necessary and
9 to pay costs associated with the issuance and administration of such
10 obligations.

11 E. The obligations authorized under this section may be sold at
12 either competitive or negotiated sale, as determined by the OCIA,
13 and in such form and at such prices as may be authorized by the
14 OCIA. The OCIA may enter into agreements with such credit enhancers
15 and liquidity providers as may be determined necessary to
16 efficiently market the obligations. The obligations may mature and
17 have such provisions for redemption as shall be determined by the
18 OCIA, but in no event shall the final maturity of such obligations
19 occur later than twenty-five (25) years from the first principal
20 maturity date.

21 F. Any interest earnings on funds or accounts created for the
22 purposes of this section may be utilized as partial payment of the
23 annual debt service or for the purposes directed by the OCIA.

24

1 G. The obligations issued under this section, the transfer
2 thereof and the interest earned on such obligations, including any
3 profit derived from the sale thereof, shall not be subject to
4 taxation of any kind by the State of Oklahoma, or by any county,
5 municipality or political subdivision therein.

6 H. The OCIA may direct the investment of all monies in any
7 funds or accounts created in connection with the offering of the
8 obligations authorized under this section. Such investments shall
9 be made in a manner consistent with the investment guidelines of the
10 State Treasurer. The OCIA may place additional restrictions on the
11 investment of such monies if necessary to enhance the marketability
12 of the obligations.

13 I. Insofar as they are not in conflict with the provisions of
14 this section, the provisions of Section 151 et seq. of Title 73 of
15 the Oklahoma Statutes shall apply to this section.

16 J. The authorization to borrow money and issue negotiable
17 obligations granted by this section is subject to the following
18 restrictions:

19 1. Twelve Million Dollars (\$12,000,000.00) of obligations shall
20 be issued only after the Native American Cultural and Educational
21 Authority has caused to be committed Thirteen Million Dollars
22 (\$13,000,000.00) to the American Indian Cultural Center, from other
23 funding sources, to include funds received for the benefit of the
24 American Indian Cultural Center beginning January 1, 2008, and which

1 Twelve Million Dollars (\$12,000,000.00) of obligations shall not be
2 issued prior to July 1, 2011;

3 2. An additional Eight Million Dollars (\$8,000,000.00) of
4 obligations shall be issued only after the Native American Cultural
5 and Educational Authority has caused to be committed, from other
6 funding sources, an additional Nine Million Dollars (\$9,000,000.00)
7 to the American Indian Cultural Center, and which additional Eight
8 Million Dollars (\$8,000,000.00) of obligations shall not be issued
9 prior to January 1, 2012; and

10 3. An additional Twenty Million Dollars (\$20,000,000.00) of
11 obligations shall be issued only after the Native American Cultural
12 and Educational Authority has caused to be committed, from other
13 funding sources, an additional Twenty Million Dollars
14 (\$20,000,000.00) to the American Indian Cultural Center, and which
15 additional Twenty Million Dollars (\$20,000,000.00) of obligations
16 shall not be issued prior to July 1, 2012. If any of the Forty
17 Million Dollars (\$40,000,000.00) of net proceeds of obligations
18 authorized by this section have not been issued by June 30, 2012,
19 such obligations may thereafter be issued provided that the Native
20 American Cultural and Educational Authority has caused to be
21 committed to the American Indian Cultural Center the above amounts
22 of Thirteen Million Dollars (\$13,000,000.00), Nine Million Dollars
23 (\$9,000,000.00) and Twenty Million Dollars (\$20,000,000.00),
24 respectively, each exclusive of state appropriated funds.

1 For purposes of this section, "other funding sources" means any
2 funding source excluding state appropriated funds or any obligation
3 to be repaid by state appropriated funds. Before the issuance of
4 any obligations pursuant to this section, the State Auditor and
5 Inspector shall audit the accounts of the Native American Cultural
6 and Educational Authority and verify to the OCIA that the monies
7 required from other funding sources pursuant to this subsection
8 exist and are committed to the American Indian Cultural Center.

9 K. No state appropriated funds shall be provided for payment of
10 obligations authorized under this section until the fiscal year
11 beginning July 1, 2016. Obligations issued under this section shall
12 include the borrowing of funds sufficient to pay all principal and
13 interest owing in connection with the obligations through the fiscal
14 year ending June 30, 2016, or shall otherwise be structured so that
15 no principal or interest payments shall be due on the obligations
16 until the fiscal year beginning July 1, 2016.

17 L. The bonds or other obligations issued pursuant to this
18 section shall not at any time be deemed to constitute a debt of the
19 state or of any political subdivision thereof or a pledge of the
20 faith and credit of the state or of any such political subdivision.
21 Such bonds or other obligations shall contain on the face thereof a
22 statement that neither the faith and credit nor the taxing power of
23 the state or any political subdivision thereof is pledged, or may
24

1 hereafter be pledged, to the payment of the principal of or the
2 interest on such bonds.

3 M. After the implementation of this section, the State of
4 Oklahoma shall not provide any further financing or funding for
5 capital needs of the American Indian Cultural Center without a vote
6 of the people.

7 SECTION 2. AMENDATORY 74 O.S. 2001, Section 1226.2, as
8 last amended by Section 2, Chapter 146, O.S.L. 2005 (74 O.S. Supp.
9 2010, Section 1226.2), is amended to read as follows:

10 Section 1226.2. A. There is hereby created a body corporate
11 and politic to be known as the "Native American Cultural and
12 Educational Authority", and by that name the Authority may sue and
13 be sued, and plead and be impleaded. The Authority is hereby
14 constituted an agency of the state, and the exercise by the
15 Authority of the powers conferred by Section 1226 et seq. of this
16 title shall be deemed to be essential governmental functions of the
17 state with all the attributes thereof. Provided, however, the
18 Authority is authorized to carry liability insurance to the extent
19 authorized by the Authority, and in addition thereto it shall be
20 subject to the workers' compensation laws of the State of Oklahoma
21 the same as a private employer. The Department of Commerce shall
22 assist the Authority in fulfilling the responsibilities of Section
23 1226 et seq. of this title, as requested by the authority.

24

1 B. The Authority shall consist of seven appointed members who
2 are members of a federally recognized American Indian Tribe located
3 within this state, six ex officio members and four appointed members
4 from the business community. Each appointed member, excluding ex
5 officio members, shall have one vote for purposes of conducting the
6 business of the Authority. Except for the members appointed
7 pursuant to paragraph 3 of this subsection, the appointed members
8 shall be residents of the state, and shall have been qualified
9 electors therein for a period of at least one (1) year preceding
10 their appointment. Any member of the Authority shall be eligible
11 for reappointment, and no member shall be removed from office except
12 for good cause shown. Good cause may be shown in evidence of
13 excessive failure to attend three consecutive regular Board meetings
14 of the Authority. The chair of the Authority shall have the right
15 to remove any member pursuant to good cause. At the expiration of
16 any term, the person holding such office shall continue to serve
17 until such person's duly appointed successor shall be appointed and
18 qualified.

19 1. Seven members appointed to serve shall serve overlapping
20 terms and shall be chosen as follows: three members shall be
21 appointed by the Governor; two members shall be appointed by the
22 President Pro Tempore of the Senate; and two members shall be
23 appointed by the Speaker of the House of Representatives. Each of
24 these members shall be a member of a federally recognized American

1 Indian tribe located within this state. Such tribal membership
2 shall be determined by the respective tribes. Appointments shall be
3 made from names provided by tribal governments, councils or other
4 recognized tribal entities. Appointments shall be restricted to not
5 more than one representative of any tribe. Such appointed members
6 initially appointed shall continue in office for terms of from three
7 (3) to seven (7) years, respectively, from the date of their
8 appointment, with the term of each initially appointed member to be
9 designated by the Governor at the time of the appointment, with one
10 member to be appointed to a three-year term, two members to be
11 appointed to a four-year term, one member to be appointed to a five-
12 year term, one member to be appointed to a six-year term, and two
13 members to be appointed to a seven-year term. Any person appointed
14 to fill a vacancy shall serve only for the unexpired term. Upon the
15 expiration of a term, on or after July 1, 2000, any succeeding term
16 shall be for four (4) years.

17 2. The six ex officio members shall be as follows: the
18 Executive Director of the Oklahoma Indian Affairs Commission, or the
19 designee of the same; the Lieutenant Governor, or the designee of
20 same; the Director of the Oklahoma Historical Society, or the
21 designee of same; the Secretary of Commerce, or the designee of
22 same; the Executive Director of the Oklahoma Arts Council, or the
23 designee of same; and the Executive Director of the Oklahoma Tourism
24 and Recreation Department, or the designee of the same.

1 3. The four appointed members from the business community shall
2 be chosen as follows: two members shall be appointed by the
3 Governor; one member shall be appointed by the Speaker of the House
4 of Representatives; and one member shall be appointed by the
5 President Pro Tempore of the Senate. Each member shall have at
6 least fifteen (15) years of experience in business, banking, finance
7 or corporate law, and shall have demonstrated outstanding ability in
8 business or industry. However, in lieu of appointing a member with
9 such experience, one of the two members appointed by the Governor
10 may be a person who has exhibited at least three (3) years of
11 outstanding leadership and involvement in recognized Native American
12 organizations and activities. Upon the expiration of a term, on or
13 after July 1, 2000, any succeeding term shall be for four (4) years.
14 Any person appointed to fill a vacancy shall serve only for the
15 unexpired term.

16 C. The Authority shall elect one of its members as chairperson,
17 and another as vice-chairperson, and also shall elect a secretary,
18 treasurer and such other officers as the Authority may deem
19 appropriate. A majority of the members of the Authority (exclusive
20 of vacancies) shall constitute a quorum and the vote of a majority
21 of the members (exclusive of vacancies) shall be necessary for any
22 action taken by the Authority. No vacancy in the membership of the
23 Authority shall impair the right of a quorum to exercise all the
24 rights and perform all the duties of the Authority.

1 D. Before the issuance of any revenue bonds under the
2 provisions of Section 1226 et seq. of this title, each member of the
3 Authority shall execute a surety bond in the penal sum of Twenty-
4 five Thousand Dollars (\$25,000.00) and the secretary and treasurer
5 shall execute a surety bond in the penal sum of One Hundred Thousand
6 Dollars (\$100,000.00), each such surety bond to be conditioned upon
7 the faithful performance of the duties of his or her office, to be
8 executed by a surety company authorized to transact business in the
9 State of Oklahoma as surety, and to be filed in the office of the
10 Secretary of State.

11 E. The members of the Authority shall not be entitled to
12 compensation for their services, but each member shall be reimbursed
13 for actual expenses necessarily incurred in the performance of
14 duties on behalf of the Authority, provided that members of the
15 Authority shall be compensated for their travel expenses pursuant to
16 the State Travel Reimbursement Act. All expenses incurred in
17 carrying out the provisions of Section 1226 et seq. of this title
18 shall be payable solely from funds provided under the authority of
19 Section 1226 et seq. of this title and no liability or obligation
20 shall be incurred by the Authority hereunder beyond the extent to
21 which monies shall have been provided under the authority of Section
22 1226 et seq. of this title.

23 F. The Authority is authorized to establish subcommittees as
24 necessary to perform its functions and duties. A subcommittee may

1 be composed of Authority members and/or nonmembers and shall not
2 have more than five members. Nonmembers of a subcommittee shall be
3 reimbursed by the Authority in accordance with the State Travel
4 Reimbursement Act.

5 G. Members of the Authority shall be exempt from the provisions
6 of Section 6 of Title 51 of the Oklahoma Statutes, which prohibits
7 the holding of any other office during the member's term of office
8 on the Authority.

9 H. The Directors and staff of the Authority employed to perform
10 the duties of Sections 1226 et seq. of this title shall be
11 considered employees of the Authority. The employees of the
12 Authority shall be entitled to be reimbursed for actual and
13 necessary expenses incurred in the performance of duties on behalf
14 of the Authority. Such compensation for travel expenses shall be
15 paid pursuant to the State Travel Reimbursement Act.

16 I. The Authority shall be subject to the provisions of the
17 Taxpayer Transparency Act.

18 SECTION 3. It being immediately necessary for the preservation
19 of the public peace, health and safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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