

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1387

By: Brecheen

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5
6 AS INTRODUCED

7 An Act relating to the American Indian Cultural
8 Center and Museum; amending 74 O.S. 2011, Section
9 1226.2, as amended by Section 1, Chapter 339, O.S.L.
10 2015 (74 O.S. Supp. 2015, Section 1226.2), which
11 relates to the Native American Cultural and
12 Educational Authority; extending deadline for
13 entering certain agreement; providing that if certain
14 agreement not reached by certain deadline, issuance
15 of certain obligations prohibited; transfer of
16 certain property required after certain notice;
17 providing for termination of Authority upon
18 completion of certain events; and providing for
19 certain repayment and monitoring due to certain
20 event.

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1 Authority of the powers conferred by Section 1226 et seq. of this
2 title shall be deemed to be essential governmental functions of the
3 state with all the attributes thereof. Provided, however, the
4 Authority is authorized to carry liability insurance to the extent
5 authorized by the Authority, and in addition thereto it shall be
6 subject to the workers' compensation laws of the State of Oklahoma
7 the same as a private employer. The Department of Commerce shall
8 assist the Authority in fulfilling the responsibilities of Section
9 1226 et seq. of this title, as requested by the Authority.

10 B. 1. The Legislature hereby finds and it is hereby declared
11 to be the public policy of the State of Oklahoma that the completion
12 and operation of the American Indian Cultural Center and Museum
13 (AICCM) and the transfer of responsibility for operation and
14 maintenance of the AICCM to the City of Oklahoma City (together with
15 any designee thereof, hereinafter referred to as the "City") or its
16 designee will produce significant benefits to the state and the
17 citizens of the state, which benefits include, but are not limited
18 to:

- 19 a. savings by reason of the state not being required to
20 pay operation and maintenance cost of the AICCM,
 - 21 b. savings to the state by reason of the state not being
22 required to appropriate funds for the general
23 operations of the Authority,
- 24

- 1 c. sales and other taxes projected to be derived from
2 operation of the AICCM and the surrounding commercial
3 development, as well as derived as a result of the
4 existence of the AICCM and the surrounding commercial
5 development,
6 d. increases in employment and the benefits derived by
7 the state from such employment, including income and
8 other taxes, and
9 e. other direct and indirect benefits to the state.

10 The Legislature further finds and declares that the State of
11 Oklahoma and its citizens will be best served by the soonest
12 possible completion of the AICCM and transfer of the Authority's
13 unimproved property to the City for a complementary commercial
14 development, with lease revenues therefrom to supply revenues to
15 support the operations of the AICCM. The Legislature further finds
16 that the State of Oklahoma will be best served by transferring
17 responsibility for operations and maintenance of the AICCM to the
18 City, and in furtherance of such purposes and intent, hereby adopts
19 this act.

20 2. As contemplated by the existing Amended and Restated Ground
21 Lease Agreement between the Authority and the Oklahoma Capitol
22 Improvement Authority (OCIA), but only upon the execution of the
23 agreement described in paragraph 5 of this subsection, all of the
24 unimproved real property of the Authority, which is all of the real

1 property held by the Authority less and except the real property
2 described as provided for by subsection C of Section ~~2 of this act~~
3 1226.18 of this title, shall be transferred to the City. Such
4 transfer shall be for the purpose of enabling the development of
5 commercial facilities on such unimproved property, lease revenues of
6 which shall be used to support the operations of the AICCM upon its
7 completion. The Director of the Office of Management and Enterprise
8 Services (OMES) is hereby authorized and directed to coordinate the
9 transfer of such real property in accordance with the provisions of
10 this act.

11 3. The Authority shall be terminated no later than the first
12 day the AICCM is open to the public. The Office of Management and
13 Enterprise Services (OMES) shall make the determination of whether
14 AICCM is open to the public for purposes of this paragraph. For
15 purposes of this subsection, the AICCM shall mean the museum and
16 cultural center and associated improvements constructed upon the
17 real property described as provided for by subsection C of Section 2
18 ~~of this act~~ 1226.18 of this title. If the AICCM has not been opened
19 to the public by July 1, 2020, the Director of OMES may certify that
20 all building and site construction is complete, and upon such
21 certification the statutory entity created by subsection C of this
22 section shall be terminated, irrespective of whether all museum
23 content and exhibits have been completed. Upon the termination of
24 the Authority the functions of the Authority, including the leasing

1 of the AICCM, the right to acquire clear title to the AICCM upon
2 payment of all bonds, and the requirement to make lease payments to
3 pay debt service on all bonds previously or hereafter issued by OCIA
4 shall be transferred from the Authority to the American Indian
5 Cultural Center and Museum Trust Authority (AICCMTA) created
6 pursuant to Section ~~6 of this act~~ 1226.21 of this title. Upon the
7 termination of the Authority the remaining assets of the Authority
8 shall be transferred to the AICCMTA; provided, that any unexpended
9 funds held by the Authority for operational expenses of the
10 Authority or to enable the payment of principal and interest on
11 bonds or other obligations issued for the benefit of the Authority
12 or the AICCM shall be specifically transferred as provided by
13 paragraph 4 of this subsection. Assets to be transferred to the
14 AICCMTA shall include, but not be limited to, all remaining real
15 property and improvements, personal property, intellectual property,
16 intangible property, rights and obligations pursuant to contract and
17 any other assets, which assets shall be made available to the City
18 to enable the City to exercise its rights and fulfill its
19 obligations under the agreements contemplated by paragraph 5 of this
20 subsection. Notwithstanding any other provision of law, the
21 Director of OMES is hereby authorized and directed to coordinate
22 with the City, the Authority and the AICCMTA to make such assets
23 available for use by the City, for at least the life of outstanding
24 bonds, by management agreement, license or otherwise, for the

1 consideration contemplated by paragraph 5 of this subsection, and to
2 take all steps necessary to effectuate the purpose of this act. The
3 AICCMTA, in consultation with OMES, is hereby authorized to transfer
4 to the City any assets obtained by the Authority prior to its
5 termination, including real property, personal property,
6 intellectual property and intangible property, provided that
7 measures are taken to ensure the tax-exempt status of outstanding
8 bonds, and provided further that no such transfers shall take place
9 in advance of the execution of the agreement contemplated by
10 paragraph 5 of this subsection. For purposes of this paragraph,
11 "outstanding bonds" shall include any bonds or other obligations
12 issued by OCIA pursuant to Section ~~3 of this act~~ 304.2 of Title 73
13 of the Oklahoma Statutes.

14 4. Unexpended funds held by the Authority for operational
15 expenses of the Authority or to enable the payment of principal and
16 interest on bonds or other obligations issued for the benefit of the
17 Authority or the AICCM shall, upon termination of the Authority,
18 transfer to the American Indian Cultural Center and Museum
19 Postcompletion Revolving Fund created by Section ~~7 of this act~~
20 1226.22 of this title.

21 ~~5. With the exception of Section 5 of this act, this act shall~~
22 ~~be null and void~~ The provisions of paragraph 6 of this subsection
23 shall govern unless, prior to January 15, 2016 the effective date of
24 this act, or not later than the expiration of sixty (60) days from

1 such date with the approval of an extension of time, which may be
2 less than sixty (60) days, by the Director of the Office of
3 Management and Enterprise Services upon a showing by the parties
4 that such extension is likely to result in the execution of a final
5 agreement, the Authority, the City and OMES enter into a written
6 agreement with the following minimum provisions:

- 7 a. with the exception of funds provided pursuant to law
8 for the fiscal year ending June 30, 2016, neither the
9 State of Oklahoma, the Authority nor any other state
10 governmental entity shall have any responsibility for
11 providing funds for operation or maintenance of the
12 AICCM,
- 13 b. the City shall utilize all revenues derived from
14 admissions, event income, merchandise sales, food and
15 beverage sales at the AICCM and revenue from leases of
16 the real property transferred to the City by paragraph
17 2 of this subsection, for the operation,
18 administration, management and maintenance of the
19 AICCM, for repairs and capital improvements thereto,
20 for the repair, maintenance, development and operation
21 of exhibits and cultural programs, and to provide
22 reserve funds for such purposes,
- 23 c. fifty percent (50%) of the total revenues in excess of
24 Seven Million Dollars (\$7,000,000.00) each fiscal year

1 derived from each and all of the following sources
2 shall be credited to the General Revenue Fund of the
3 State Treasury until the total amount paid pursuant to
4 this subparagraph equals Twenty-five Million Dollars
5 (\$25,000,000.00):

- 6 (1) profits received by the City or its designee from
7 food and beverage sales occurring at AICCM,
- 8 (2) profits received by the City or its designee from
9 merchandise sales occurring at AICCM,
- 1 0 (3) profits received by the City or its designee from
1 1 events conducted at the AICCM,
- 1 2 (4) gross revenues derived from admissions to the
1 3 AICCM facility, and
- 1 4 (5) gross revenues derived from the lease of real
1 5 property transferred from the Authority to the
1 6 City pursuant to the provisions of paragraph 2 of
1 7 this subsection.

1 8 The amount of Seven Million Dollars (\$7,000,000.00)
1 9 prescribed by this subparagraph shall be adjusted, not
2 0 less often than once each five (5) years, based upon
2 1 increases, if any, in the Consumer Price Index-All
2 2 Urban Consumers (CPI-U) or its successor index, as
2 3 published by the United States Bureau of Labor
2 4 Statistics. The first adjustment shall be made on

1 July 1, 2020. The Office of Management and Enterprise
2 Services shall be responsible for monitoring and
3 auditing the payments required by the provisions of
4 this paragraph and may require the City to provide
5 such documentation regarding the accuracy and timing
6 of the payments as OMES may request. OMES shall
7 ensure that the agreement required by subparagraph f
8 of this paragraph contains enforceable provisions to
9 allow OMES to monitor and audit the payments required
10 by this subparagraph,

11 d. no later than the transfers provided for in paragraph
12 3 of this subsection, the City shall make payment to
13 the American Indian Cultural Center and Museum
14 Completion Fund created pursuant to Section ~~5 of this~~
15 ~~act~~ 1226.20 of this title in the amount of Nine
16 Million Dollars (\$9,000,000.00) toward completion of
17 the AICCM,

18 e. the agreement shall specify a plan for completion that
19 will result in the opening of the AICCM to the public
20 using a combination of funds provided or committed by
21 the state, the City and the other contributors to the
22 project,

23 f. the City, the Authority or its successor and OMES
24 shall enter into a separate operation, maintenance and

1 management agreement concerning the real property
2 described by the survey conducted pursuant to
3 subsection C of Section ~~2 of this act~~ 1226.18 of this
4 title and the improvements constructed thereon, which
5 separate operation, maintenance and management
6 agreement shall be executed prior to the termination
7 of the Authority and include the following minimum
8 terms:

9 (1) the term of the agreement shall be no less than
10 the remaining term of outstanding bonds,
11 including any bonds or other obligations issued
12 by OCIA pursuant to Section ~~3 of this act~~ 304.2
13 of Title 73 of the Oklahoma Statutes, or thirty
14 (30) years, whichever is longer,

15 (2) the City shall operate and manage the AICCM or
16 shall cause it to be operated and managed,

17 (3) the state shall have no responsibility for the
18 operations and maintenance costs of the AICCM,

19 (4) the Authority or its successor shall deliver
20 possession of the AICCM to the City,

21 (5) the City shall have the right to make such
22 alterations and further improvements as it deems
23 necessary or desirable to further the success of
24

1 the AICCM and the surrounding commercial
2 development,

3 (6) the City shall have the right to assign its
4 rights under this agreement to a designee and to
5 engage third parties to fulfill its obligations
6 under this agreement,

7 (7) the City shall use its revenues from the AICCM
8 and the surrounding commercial development as
9 provided by this section, and

10 (8) within five (5) years after the date on which all
11 outstanding bonds, including any bonds or other
12 obligations issued by OCIA pursuant to Section ~~3~~
13 ~~of this act~~ 304.2 of Title 73 of the Oklahoma
14 Statutes, issued for the AICCM have been retired,
15 the City shall accept title of the AICCM and the
16 real property upon which it is located from the
17 Authority or its successor, and

18 g. after execution of the agreement described by this
19 paragraph, the Director of OMES shall provide a copy
20 of the executed version of the agreement to the
21 Governor, the Speaker of the Oklahoma House of
22 Representatives and the President Pro Tempore of the
23 Oklahoma State Senate.
24

1 6. If by the deadline established in paragraph 5 of this
2 subsection there is no written agreement as described in paragraph 5
3 of this subsection:

4 a. the authorization provided in Section 304.2 of Title
5 73 of the Oklahoma Statutes to the Oklahoma Capitol
6 Improvement Authority (OCIA) to issue obligations
7 sufficient to generate net proceeds of Twenty-five
8 Million Dollars (\$25,000,000.00) shall be null and
9 void,

10 b. neither the OCIA nor any other state governmental
11 entity shall issue additional obligations or otherwise
12 create debt against the state or any state entity to
13 fund construction or improvements for the American
14 Indian Cultural Center and Museum,

15 c. the Authority, OMES and, if applicable, the AICCMTA
16 shall enter into an operation, maintenance and
17 management agreement with the City to cover the
18 remaining life of outstanding bonds issued prior to
19 the effective date of this act,

20 d. within thirty (30) days of receipt of notice of the
21 completion of repayment of all outstanding bonds
22 issued prior to the effective date of this act, the
23 City shall exercise its right of reentry by issuing
24 the Authority, or any other authorized entity, sixty

1 (60) days written notice for breach of specific deed
2 conditions, and all interest held by the state in the
3 AICCM and all appurtenances thereto shall divest to
4 the City on the date specified in such notice and any
5 required documents or costs shall be executed by the
6 parties to satisfy the conveyances, upon the
7 completion of which the Authority shall be terminated,
8 and

9 e. upon the AICCM's eventual opening to the public and
10 the generation of income from AICCM admissions,
11 events, merchandise sales and food and beverage sales,
12 the state and the City shall negotiate terms under
13 which the state's appropriations for operation and
14 maintenance may be recouped, whereby the City shall
15 transfer fifty percent (50%) of such income in excess
16 of Seven Million Dollars (\$7,000,000.00) each fiscal
17 year to the General Revenue Fund of the State Treasury
18 until such transfers equal the total amount of state
19 revenue that has been appropriated for the operation
20 and maintenance of the AICCM. The State Auditor shall
21 monitor and audit payments required by the agreement
22 and may require the City to provide documentation
23 regarding the accuracy and timing of the payments.
24

1 7. Notwithstanding anything herein provided, the City shall be
2 authorized to transfer any assets, rights or responsibilities
3 transferred to it pursuant to this act to any of its
4 instrumentalities, public trusts or designees as appropriate and,
5 with respect to the real property described as provided for by
6 subsection C of Section ~~2 of this act~~ 1226.18 of this title and
7 improvements thereon, to contract with such public and private
8 entities as it deems proper for the purpose of exercising its rights
9 and carrying out its obligations pursuant to agreements contemplated
10 by this act between the State of Oklahoma and the City, and with
11 respect to the property transferred by paragraph 2 of this
12 subsection to contract with such public and private entities,
13 including the leasing or transfer of property to such public or
14 private entities, as it deems proper for the purpose of carrying out
15 the commercial development of the unimproved property.

16 ~~7.~~ 8. Contracts and privileges which have been issued, made,
17 granted or allowed to become effective by the statutory entity that
18 may be terminated by the provisions of this act or by any provision
19 of law affected by this act shall continue in effect according to
20 their terms until terminated or modified by operation of law;
21 provided, that the City shall, upon termination of the Authority, be
22 permitted to assume the Authority's interest in such contracts.

23 ~~8.~~ 9. Notwithstanding any other provision of law, any lease
24 revenue bonds or other obligations issued prior to or after the

1 effective date of this act by OCIA or other state instrumentalities
2 for the benefit of the Authority and/or completion of the AICCM
3 shall remain in full force and effect, and any obligation, moral or
4 otherwise, to make payments under the lease or other agreements or
5 to service the lease revenue bonds or other obligations shall remain
6 unaffected and in full force and effect. It is the intent of the
7 Legislature to appropriate sufficient monies to the Authority or its
8 successor for deposit in the American Indian Cultural Center and
9 Museum Postcompletion Revolving Fund created by Section ~~7 of this~~
10 ~~act~~ 1226.22 of this title to cover the payment of all lease and
11 other scheduled payments for the purpose of retiring such lease
12 revenue bonds or other obligations.

13 C. The Authority shall consist of seven appointed members who
14 are members of a federally recognized American Indian Tribe located
15 within this state, six ex officio members and four appointed members
16 from the business community. Each appointed member, excluding ex
17 officio members, shall have one vote for purposes of conducting the
18 business of the Authority. Except for the members appointed
19 pursuant to paragraph 3 of this subsection, the appointed members
20 shall be residents of the state, and shall have been qualified
21 electors therein for a period of at least one (1) year preceding
22 their appointment. Any member of the Authority shall be eligible
23 for reappointment, and no member shall be removed from office except
24 for good cause shown. Good cause may be shown in evidence of

1 excessive failure to attend three consecutive regular Board meetings
2 of the Authority. The chair of the Authority shall have the right
3 to remove any member pursuant to good cause. At the expiration of
4 any term, the person holding such office shall continue to serve
5 until such person's duly appointed successor shall be appointed and
6 qualified.

7 1. Seven members appointed to serve shall serve overlapping
8 terms and shall be chosen as follows: three members shall be
9 appointed by the Governor; two members shall be appointed by the
10 President Pro Tempore of the Senate; and two members shall be
11 appointed by the Speaker of the House of Representatives. Each of
12 these members shall be a member of a federally recognized American
13 Indian tribe located within this state. Such tribal membership
14 shall be determined by the respective tribes. Appointments shall be
15 made from names provided by tribal governments, councils or other
16 recognized tribal entities. Appointments shall be restricted to not
17 more than one representative of any tribe. Such appointed members
18 initially appointed shall continue in office for terms of from three
19 (3) to seven (7) years, respectively, from the date of their
20 appointment, with the term of each initially appointed member to be
21 designated by the Governor at the time of the appointment, with one
22 member to be appointed to a three-year term, two members to be
23 appointed to a four-year term, one member to be appointed to a five-
24 year term, one member to be appointed to a six-year term, and two

1 members to be appointed to a seven-year term. Any person appointed
2 to fill a vacancy shall serve only for the unexpired term. Upon the
3 expiration of a term, on or after July 1, 2000, any succeeding term
4 shall be for four (4) years.

5 2. The six ex officio members shall be as follows: the
6 Oklahoma Native American Liaison, or the designee of the same; the
7 Lieutenant Governor, or the designee of same; the Director of the
8 Oklahoma Historical Society, or the designee of same; the Secretary
9 of Commerce, or the designee of same; the Executive Director of the
10 Oklahoma Arts Council, or the designee of same; and the Executive
11 Director of the Oklahoma Tourism and Recreation Department, or the
12 designee of the same.

13 3. The four appointed members from the business community shall
14 be chosen as follows: two members shall be appointed by the
15 Governor; one member shall be appointed by the Speaker of the House
16 of Representatives; and one member shall be appointed by the
17 President Pro Tempore of the Senate. Each member shall have at
18 least fifteen (15) years of experience in business, banking, finance
19 or corporate law, and shall have demonstrated outstanding ability in
20 business or industry. However, in lieu of appointing a member with
21 such experience, one of the two members appointed by the Governor
22 may be a person who has exhibited at least three (3) years of
23 outstanding leadership and involvement in recognized Native American
24 organizations and activities. Upon the expiration of a term, on or

1 after July 1, 2000, any succeeding term shall be for four (4) years.
2 Any person appointed to fill a vacancy shall serve only for the
3 unexpired term.

4 D. The Authority shall elect one of its members as chairperson,
5 and another as vice-chairperson, and also shall elect a secretary,
6 treasurer and such other officers as the Authority may deem
7 appropriate. A majority of the members of the Authority (exclusive
8 of vacancies) shall constitute a quorum and the vote of a majority
9 of the members (exclusive of vacancies) shall be necessary for any
10 action taken by the Authority. No vacancy in the membership of the
11 Authority shall impair the right of a quorum to exercise all the
12 rights and perform all the duties of the Authority.

13 E. Before the issuance of any revenue bonds under the
14 provisions of Section 1226 et seq. of this title, each member of the
15 Authority shall execute a surety bond in the penal sum of Twenty-
16 five Thousand Dollars (\$25,000.00) and the secretary and treasurer
17 shall execute a surety bond in the penal sum of One Hundred Thousand
18 Dollars (\$100,000.00), each such surety bond to be conditioned upon
19 the faithful performance of the duties of his or her office, to be
20 executed by a surety company authorized to transact business in the
21 State of Oklahoma as surety, and to be filed in the office of the
22 Secretary of State.

23 F. The members of the Authority shall not be entitled to
24 compensation for their services, but each member shall be reimbursed

1 for actual expenses necessarily incurred in the performance of
2 duties on behalf of the Authority; provided, that members of the
3 Authority shall be compensated for their travel expenses pursuant to
4 the State Travel Reimbursement Act. All expenses incurred in
5 carrying out the provisions of Section 1226 et seq. of this title
6 shall be payable solely from funds provided under the authority of
7 Section 1226 et seq. of this title and no liability or obligation
8 shall be incurred by the Authority hereunder beyond the extent to
9 which monies shall have been provided under the authority of Section
10 1226 et seq. of this title. With the exception of funds
11 appropriated to the Authority for the fiscal year ending June 30,
12 2016, no further appropriations shall be made to the Authority, or
13 to any successor state entity owning some interest in the AICCM, for
14 the purpose of operating the AICCM; provided, however, that
15 appropriations to pay debt service on revenue bonds or other
16 obligations issued heretofore or hereafter by OCIA or other state
17 agencies for the benefit of the Authority will continue until all
18 such bonds or other obligations are fully paid.

19 G. The Authority is authorized to establish subcommittees as
20 necessary to perform its functions and duties. A subcommittee may
21 be composed of Authority members and/or nonmembers and shall not
22 have more than five members. Nonmembers of a subcommittee shall be
23 reimbursed by the Authority in accordance with the State Travel
24 Reimbursement Act.

1 H. Members of the Authority shall be exempt from the provisions
2 of Section 6 of Title 51 of the Oklahoma Statutes, which prohibits
3 the holding of any other office during the member's term of office
4 on the Authority.

5 I. The Directors and staff of the Authority employed to perform
6 the duties of Section 1226 et seq. of this title shall be considered
7 employees of the Authority. The employees of the Authority shall be
8 entitled to be reimbursed for actual and necessary expenses incurred
9 in the performance of duties on behalf of the Authority. Such
10 compensation for travel expenses shall be paid pursuant to the State
11 Travel Reimbursement Act.

12 J. Real property transferred by the Authority to any person,
13 firm, partnership, corporation, limited liability company, express
14 private trust, public trust or any other lawfully recognized entity
15 shall be subject to the same restrictions regarding the use of such
16 real property as contained in the instrument of conveyance by which
17 the Authority acquired title to such real property, including, but
18 not limited to, any restriction regarding gambling activity upon
19 such real property.

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