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February 28, 2018

AS AMENDED

SENATE BILL NO. 1184

By: Fields of the Senate

and

Wright of the House

[state agencies - Native American Cultural and Educational Authority Fund - Oklahoma Department of Commerce - Office of Management and Enterprise Services - noncodification - ~~effective date~~ - emergency]

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

SECTION 1. AMENDATORY 74 O.S. 2011, Section 1226.2, as amended by Section 1, Chapter 339, O.S.L. 2015 (74 O.S. Supp. 2017, Section 1226.2), is amended to read as follows:

Section 1226.2. A. There is hereby created a body corporate and politic to be known as the "Native American Cultural and Educational Authority" (Authority), and by that name the Authority may sue and be sued, and plead and be impleaded. The Authority is hereby constituted an agency of the state, and the exercise by the Authority of the powers conferred by Section 1226 et seq. of this title shall be deemed to be essential governmental functions of the state with all the attributes thereof. Provided, however, the Authority is authorized to carry liability insurance to the extent

1 authorized by the Authority, and in addition thereto it shall be
2 subject to the workers' compensation laws of the State of Oklahoma
3 the same as a private employer. The ~~Department of Commerce~~ Office
4 of Management and Enterprise Services (OMES) shall assist the
5 Authority in fulfilling the responsibilities of Section 1226 et seq.
6 of this title, as requested by the Authority.

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

- 16 a. savings by reason of the state not being required to
- 17 pay operation and maintenance cost of the AICCM,
- 18 b. savings to the state by reason of the state not being
- 19 required to appropriate funds for the general
- 20 operations of the Authority,
- 21 c. sales and other taxes projected to be derived from
- 22 operation of the AICCM and the surrounding commercial
- 23 development, as well as derived as a result of the
- 24

1 existence of the AICCM and the surrounding commercial
2 development,

3 d. increases in employment and the benefits derived by
4 the state from such employment, including income and
5 other taxes, and

6 e. other direct and indirect benefits to the state.

7 The Legislature further finds and declares that the State of
8 Oklahoma and its citizens will be best served by the soonest
9 possible completion of the AICCM and transfer of the Authority's
10 unimproved property to the City for a complementary commercial
11 development, with lease revenues therefrom to supply revenues to
12 support the operations of the AICCM. The Legislature further finds
13 that the State of Oklahoma will be best served by transferring
14 responsibility for operations and maintenance of the AICCM to the
15 City, and in furtherance of such purposes and intent, hereby adopts
16 ~~this act~~ Section 1226 et seq. of this title.

17 2. As contemplated by the existing Amended and Restated Ground
18 Lease Agreement between the Authority and the Oklahoma Capitol
19 Improvement Authority (OCIA), but only upon the execution of the
20 agreement described in paragraph 5 of this subsection, all of the
21 unimproved real property of the Authority, which is all of the real
22 property held by the Authority less and except the real property
23 described as provided for by subsection C of Section ~~2 of this act~~
24 1226.18 of this title, shall be transferred to the City. Such

1 transfer shall be for the purpose of enabling the development of
2 commercial facilities on such unimproved property, lease revenues of
3 which shall be used to support the operations of the AICCM upon its
4 completion. The Director of the Office of Management and Enterprise
5 Services (OMES) is hereby authorized and directed to coordinate the
6 transfer of such real property in accordance with the provisions of
7 ~~this act~~ Section 1226 et seq. of this title.

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

1 shall be transferred from the Authority to the American Indian
2 Cultural Center and Museum Trust Authority (AICCMTA) created
3 pursuant to Section ~~6 of this act~~ 1226.21 of this title. Upon the
4 termination of the Authority the remaining assets of the Authority
5 shall be transferred to the AICCMTA; provided, that any unexpended
6 funds held by the Authority for operational expenses of the
7 Authority or to enable the payment of principal and interest on
8 bonds or other obligations issued for the benefit of the Authority
9 or the AICCM shall be specifically transferred as provided by
10 paragraph 4 of this subsection. Assets to be transferred to the
11 AICCMTA shall include, but not be limited to, all remaining real
12 property and improvements, personal property, intellectual property,
13 intangible property, rights and obligations pursuant to contract and
14 any other assets, which assets shall be made available to the City
15 to enable the City to exercise its rights and fulfill its
16 obligations under the agreements contemplated by paragraph 5 of this
17 subsection. Notwithstanding any other provision of law, the
18 Director of OMES is hereby authorized and directed to coordinate
19 with the City, the Authority and the AICCMTA to make such assets
20 available for use by the City, for at least the life of outstanding
21 bonds, by management agreement, license or otherwise, for the
22 consideration contemplated by paragraph 5 of this subsection, and to
23 take all steps necessary to effectuate the purpose of ~~this act~~
24 Section 1226 et seq. of this title. The AICCMTA, in consultation

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

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

18 5. With the exception of Section ~~5 of this act~~ 1226.20 of this
19 title, ~~this act~~ Section 1226 et seq. of this title shall be null and
20 void unless, prior to January 15, 2016, or not later than the
21 expiration of sixty (60) days from such date with the approval of an
22 extension of time, which may be less than sixty (60) days, by the
23 Director of the Office of Management and Enterprise Services upon a
24 showing by the parties that such extension is likely to result in

1 the execution of a final agreement, the Authority, the City and OMES
2 enter into a written agreement with the following minimum
3 provisions:

4 a. with the exception of funds provided pursuant to law
5 for the fiscal year ending June 30, 2016, neither the
6 State of Oklahoma, the Authority nor any other state
7 governmental entity shall have any responsibility for
8 providing funds for operation or maintenance of the
9 AICCM,

10 b. the City shall utilize all revenues derived from
11 admissions, event income, merchandise sales, food and
12 beverage sales at the AICCM and revenue from leases of
13 the real property transferred to the City by paragraph
14 2 of this subsection, for the operation,
15 administration, management and maintenance of the
16 AICCM, for repairs and capital improvements thereto,
17 for the repair, maintenance, development and operation
18 of exhibits and cultural programs, and to provide
19 reserve funds for such purposes,

20 c. fifty percent (50%) of the total revenues in excess of
21 Seven Million Dollars (\$7,000,000.00) each fiscal year
22 derived from each and all of the following sources
23 shall be credited to the General Revenue Fund of the
24 State Treasury until the total amount paid pursuant to

1 this subparagraph equals Twenty-five Million Dollars
2 (\$25,000,000.00):

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

15 The amount of Seven Million Dollars (\$7,000,000.00)
16 prescribed by this subparagraph shall be adjusted, not
17 less often than once each five (5) years, based upon
18 increases, if any, in the Consumer Price Index-All
19 Urban Consumers (CPI-U) or its successor index, as
20 published by the United States Bureau of Labor
21 Statistics. The first adjustment shall be made on
22 July 1, 2020. The Office of Management and Enterprise
23 Services shall be responsible for monitoring and
24 auditing the payments required by the provisions of

1 this paragraph and may require the City to provide
2 such documentation regarding the accuracy and timing
3 of the payments as OMES may request. OMES shall
4 ensure that the agreement required by subparagraph f
5 of this paragraph contains enforceable provisions to
6 allow OMES to monitor and audit the payments required
7 by this subparagraph,

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

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

20 f. the City, the Authority or its successor and OMES
21 shall enter into a separate operation, maintenance and
22 management agreement concerning the real property
23 described by the survey conducted pursuant to
24 subsection C of Section ~~2 of this act~~ 1226.18 of this

1 title and the improvements constructed thereon, which
2 separate operation, maintenance and management
3 agreement shall be executed prior to the termination
4 of the Authority and include the following minimum
5 terms:

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

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

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

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

18 (5) the City shall have the right to make such
19 alterations and further improvements as it deems
20 necessary or desirable to further the success of
21 the AICCM and the surrounding commercial
22 development,

23 (6) the City shall have the right to assign its
24 rights under this agreement to a designee and to

engage third parties to fulfill its obligations under this agreement,

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

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

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

6. Notwithstanding anything herein provided, the City shall be authorized to transfer any assets, rights or responsibilities transferred to it pursuant to ~~this act~~ Section 1226 et seq. of this title to any of its instrumentalities, public trusts or designees as appropriate and, with respect to the real property described as

1 provided for by subsection C of Section ~~2 of this act~~ 1226.18 of
2 this title and improvements thereon, to contract with such public
3 and private entities as it deems proper for the purpose of
4 exercising its rights and carrying out its obligations pursuant to
5 agreements contemplated by ~~this act~~ Section 1226 et seq. of this
6 title between the State of Oklahoma and the City, and with respect
7 to the property transferred by paragraph 2 of this subsection to
8 contract with such public and private entities, including the
9 leasing or transfer of property to such public or private entities,
10 as it deems proper for the purpose of carrying out the commercial
11 development of the unimproved property.

12 7. Contracts and privileges which have been issued, made,
13 granted or allowed to become effective by the statutory entity that
14 may be terminated by the provisions of ~~this act~~ Section 1226 et seq.
15 of this title or by any provision of law affected by ~~this act~~
16 Section 1226 et seq. of this title shall continue in effect
17 according to their terms until terminated or modified by operation
18 of law; provided, that the City shall, upon termination of the
19 Authority, be permitted to assume the Authority's interest in such
20 contracts.

21 8. Notwithstanding any other provision of law, any lease
22 revenue bonds or other obligations issued prior to or after ~~the~~
23 ~~effective date of this act~~ September 1, 2015, by OCIA or other state
24 instrumentalities for the benefit of the Authority and/or completion

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

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

1 to remove any member pursuant to good cause. At the expiration of
2 any term, the person holding such office shall continue to serve
3 until such person's duly appointed successor shall be appointed and
4 qualified.

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

1 expiration of a term, on or after July 1, 2000, any succeeding term
2 shall be for four (4) years.

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

11 3. The four appointed members from the business community shall
12 be chosen as follows: two members shall be appointed by the
13 Governor; one member shall be appointed by the Speaker of the House
14 of Representatives; and one member shall be appointed by the
15 President Pro Tempore of the Senate. Each member shall have at
16 least fifteen (15) years of experience in business, banking, finance
17 or corporate law, and shall have demonstrated outstanding ability in
18 business or industry. However, in lieu of appointing a member with
19 such experience, one of the two members appointed by the Governor
20 may be a person who has exhibited at least three (3) years of
21 outstanding leadership and involvement in recognized Native American
22 organizations and activities. Upon the expiration of a term, on or
23 after July 1, 2000, any succeeding term shall be for four (4) years.

1 Any person appointed to fill a vacancy shall serve only for the
2 unexpired term.

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

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

22 F. The members of the Authority shall not be entitled to
23 compensation for their services, but each member shall be reimbursed
24 for actual expenses necessarily incurred in the performance of

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

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

24

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.

20 SECTION 2. AMENDATORY 74 O.S. 2011, Section 1226.17, as
21 amended by Section 935, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
22 2017, Section 1226.17), is amended to read as follows:

23 Section 1226.17. There is hereby created in the State Treasury
24 a revolving fund for the ~~Oklahoma Department of Commerce~~ Office of

1 Management and Enterprise Services (OMES) to be designated the
2 "Native American Cultural and Educational Authority Fund." The fund
3 shall be a continuing fund, not subject to fiscal year limitations.
4 The fund shall consist of all monies authorized by law for deposit
5 in such fund including but not limited to appropriations, gifts,
6 grants, private donations, fee revenues and funds by governmental or
7 tribal government entities. Monies deposited or apportioned to the
8 credit of the fund may be expended for the purposes authorized by
9 law. All monies accruing to the credit of ~~said~~ the fund are hereby
10 appropriated and may be budgeted and expended by the ~~Oklahoma~~
11 ~~Department of Commerce~~ Office of Management and Enterprise Services
12 (OMES). Expenditures from ~~said~~ the fund shall be made upon warrants
13 issued by the State Treasurer against claims submitted to the
14 Director of the Office of Management and Enterprise Services.

15 SECTION 3. NEW LAW A new section of law not to be
16 codified in the Oklahoma Statutes reads as follows:

17 All funds currently held in the Native American Cultural and
18 Educational Authority Fund shall remain in the fund and be available
19 for use by the Office of Management and Enterprise Services (OMES)
20 for the purposes identified in Section 1226.17 of Title 74 of the
21 Oklahoma Statutes.

22 ~~SECTION 4. This act shall become effective July 1, 2018.~~

23 ~~SECTION 5. It being immediately necessary for the preservation~~
24 ~~of the public peace, health or safety, an emergency is hereby~~

~~declared to exist, by reason whereof this act shall take effect and
be in full force from and after its passage and approval.~~

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
February 28, 2018 - DO PASS AS AMENDED