

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1184

By: Fields

6 AS INTRODUCED

7 An Act relating to state agencies; amending 74 O.S.
2011, Sections 1226.2, as amended by Section 1,
8 Chapter 339, O.S.L. 2015 (74 O.S. Supp. 2017, Section
1226.2), and 1226.17, as amended by Section 935,
9 Chapter 304, O.S.L. 2012 (74 O.S. Supp. 2017, Section
1226.17), which relate to the Native American
10 Cultural and Educational Authority and the Native
American Cultural and Educational Authority Fund;
11 removing requirement that the Oklahoma Department of
Commerce assist the Authority; requiring the Office
12 of Management and Enterprise Services to assist the
Authority; transferring revolving fund to the Office
13 of Management and Enterprise Services; requiring
funds to be made available to the Office of
14 Management and Enterprise Services; updating
statutory references; updating statutory language;
15 providing for noncodification; providing an effective
date; and declaring an emergency.

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

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

22 Section 1226.2. A. There is hereby created a body corporate
23 and politic to be known as the "Native American Cultural and
24 Educational Authority" (Authority), and by that name the Authority

1 may sue and be sued, and plead and be impleaded. The Authority is
2 hereby constituted an agency of the state, and the exercise by the
3 Authority of the powers conferred by Section 1226 et seq. of this
4 title shall be deemed to be essential governmental functions of the
5 state with all the attributes thereof. Provided, however, the
6 Authority is authorized to carry liability insurance to the extent
7 authorized by the Authority, and in addition thereto it shall be
8 subject to the workers' compensation laws of the State of Oklahoma
9 the same as a private employer. The ~~Department of Commerce~~ Office
10 of Management and Enterprise Services (OMES) shall assist the
11 Authority in fulfilling the responsibilities of Section 1226 et seq.
12 of this title, as requested by the Authority.

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

- 22 a. savings by reason of the state not being required to
23 pay operation and maintenance cost of the AICCM,
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- b. savings to the state by reason of the state not being required to appropriate funds for the general operations of the Authority,
- c. sales and other taxes projected to be derived from operation of the AICCM and the surrounding commercial development, as well as derived as a result of the existence of the AICCM and the surrounding commercial development,
- d. increases in employment and the benefits derived by the state from such employment, including income and other taxes, and
- e. other direct and indirect benefits to the state.

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

2. As contemplated by the existing Amended and Restated Ground Lease Agreement between the Authority and the Oklahoma Capitol

1 Improvement Authority (OCIA), but only upon the execution of the
2 agreement described in paragraph 5 of this subsection, all of the
3 unimproved real property of the Authority, which is all of the real
4 property held by the Authority less and except the real property
5 described as provided for by subsection C of Section ~~2 of this act~~
6 1226.18 of this title, shall be transferred to the City. Such
7 transfer shall be for the purpose of enabling the development of
8 commercial facilities on such unimproved property, lease revenues of
9 which shall be used to support the operations of the AICCM upon its
10 completion. The Director of the Office of Management and Enterprise
11 Services (OMES) is hereby authorized and directed to coordinate the
12 transfer of such real property in accordance with the provisions of
13 ~~this act~~ Section 1226 et seq. of this title.

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

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

1 with the City, the Authority and the AICCMTA to make such assets
2 available for use by the City, for at least the life of outstanding
3 bonds, by management agreement, license or otherwise, for the
4 consideration contemplated by paragraph 5 of this subsection, and to
5 take all steps necessary to effectuate the purpose of ~~this act~~
6 Section 1226 et seq. of this title. The AICCMTA, in consultation
7 with OMES, is hereby authorized to transfer to the City any assets
8 obtained by the Authority prior to its termination, including real
9 property, personal property, intellectual property and intangible
10 property, provided that measures are taken to ensure the tax-exempt
11 status of outstanding bonds, and provided further that no such
12 transfers shall take place in advance of the execution of the
13 agreement contemplated by paragraph 5 of this subsection. For
14 purposes of this paragraph, "outstanding bonds" shall include any
15 bonds or other obligations issued by OCIA pursuant to Section ~~3 of~~
16 ~~this act~~ 304.2 of Title 73 of the Oklahoma Statutes.

17 4. Unexpended funds held by the Authority for operational
18 expenses of the Authority or to enable the payment of principal and
19 interest on bonds or other obligations issued for the benefit of the
20 Authority or the AICCM shall, upon termination of the Authority,
21 transfer to the American Indian Cultural Center and Museum
22 Postcompletion Revolving Fund created by Section ~~7 of this act~~
23 1226.22 of this title.

1 5. With the exception of Section ~~5 of this act~~ 1226.20 of this
2 title, this act Section 1226 et seq. of this title shall be null and
3 void unless, prior to January 15, 2016, or not later than the
4 expiration of sixty (60) days from such date with the approval of an
5 extension of time, which may be less than sixty (60) days, by the
6 Director of the Office of Management and Enterprise Services upon a
7 showing by the parties that such extension is likely to result in
8 the execution of a final agreement, the Authority, the City and OMES
9 enter into a written agreement with the following minimum
10 provisions:

- 11 a. with the exception of funds provided pursuant to law
12 for the fiscal year ending June 30, 2016, neither the
13 State of Oklahoma, the Authority nor any other state
14 governmental entity shall have any responsibility for
15 providing funds for operation or maintenance of the
16 AICCM,
- 17 b. the City shall utilize all revenues derived from
18 admissions, event income, merchandise sales, food and
19 beverage sales at the AICCM and revenue from leases of
20 the real property transferred to the City by paragraph
21 2 of this subsection, for the operation,
22 administration, management and maintenance of the
23 AICCM, for repairs and capital improvements thereto,
24 for the repair, maintenance, development and operation

1 of exhibits and cultural programs, and to provide
2 reserve funds for such purposes,

3 c. fifty percent (50%) of the total revenues in excess of
4 Seven Million Dollars (\$7,000,000.00) each fiscal year
5 derived from each and all of the following sources
6 shall be credited to the General Revenue Fund of the
7 State Treasury until the total amount paid pursuant to
8 this subparagraph equals Twenty-five Million Dollars
9 (\$25,000,000.00):

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

22 The amount of Seven Million Dollars (\$7,000,000.00)
23 prescribed by this subparagraph shall be adjusted, not
24 less often than once each five (5) years, based upon

1 increases, if any, in the Consumer Price Index-All
2 Urban Consumers (CPI-U) or its successor index, as
3 published by the United States Bureau of Labor
4 Statistics. The first adjustment shall be made on
5 July 1, 2020. The Office of Management and Enterprise
6 Services shall be responsible for monitoring and
7 auditing the payments required by the provisions of
8 this paragraph and may require the City to provide
9 such documentation regarding the accuracy and timing
10 of the payments as OMES may request. OMES shall
11 ensure that the agreement required by subparagraph f
12 of this paragraph contains enforceable provisions to
13 allow OMES to monitor and audit the payments required
14 by this subparagraph,

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

22 e. the agreement shall specify a plan for completion that
23 will result in the opening of the AICCM to the public
24 using a combination of funds provided or committed by

1 the state, the City and the other contributors to the
2 project,

3 f. the City, the Authority or its successor and OMES
4 shall enter into a separate operation, maintenance and
5 management agreement concerning the real property
6 described by the survey conducted pursuant to
7 subsection C of Section ~~2 of this act~~ 1226.18 of this
8 title and the improvements constructed thereon, which
9 separate operation, maintenance and management
10 agreement shall be executed prior to the termination
11 of the Authority and include the following minimum
12 terms:

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

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

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

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

1 (5) the City shall have the right to make such
2 alterations and further improvements as it deems
3 necessary or desirable to further the success of
4 the AICCM and the surrounding commercial
5 development,

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

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

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

21 g. after execution of the agreement described by this
22 paragraph, the Director of OMES shall provide a copy
23 of the executed version of the agreement to the
24 Governor, the Speaker of the Oklahoma House of

1 Representatives and the President Pro Tempore of the
2 Oklahoma State Senate.

3 6. Notwithstanding anything herein provided, the City shall be
4 authorized to transfer any assets, rights or responsibilities
5 transferred to it pursuant to ~~this act~~ Section 1226 et seq. of this
6 title to any of its instrumentalities, public trusts or designees as
7 appropriate and, with respect to the real property described as
8 provided for by subsection C of Section ~~2 of this act~~ 1226.18 of
9 this title and improvements thereon, to contract with such public
10 and private entities as it deems proper for the purpose of
11 exercising its rights and carrying out its obligations pursuant to
12 agreements contemplated by ~~this act~~ Section 1226 et seq. of this
13 title between the State of Oklahoma and the City, and with respect
14 to the property transferred by paragraph 2 of this subsection to
15 contract with such public and private entities, including the
16 leasing or transfer of property to such public or private entities,
17 as it deems proper for the purpose of carrying out the commercial
18 development of the unimproved property.

19 7. Contracts and privileges which have been issued, made,
20 granted or allowed to become effective by the statutory entity that
21 may be terminated by the provisions of ~~this act~~ Section 1226 et seq.
22 of this title or by any provision of law affected by ~~this act~~
23 Section 1226 et seq. of this title shall continue in effect
24 according to their terms until terminated or modified by operation

1 of law; provided, that the City shall, upon termination of the
2 Authority, be permitted to assume the Authority's interest in such
3 contracts.

4 8. Notwithstanding any other provision of law, any lease
5 revenue bonds or other obligations issued prior to or after ~~the~~
6 ~~effective date of this act~~ September 1, 2015, by OCIA or other state
7 instrumentalities for the benefit of the Authority and/or completion
8 of the AICCM shall remain in full force and effect, and any
9 obligation, moral or otherwise, to make payments under the lease or
10 other agreements or to service the lease revenue bonds or other
11 obligations shall remain unaffected and in full force and effect.

12 It is the intent of the Legislature to appropriate sufficient monies
13 to the Authority or its successor for deposit in the American Indian
14 Cultural Center and Museum Postcompletion Revolving Fund created by
15 ~~Section 7 of this act~~ 1226.22 of this title to cover the payment of
16 all lease and other scheduled payments for the purpose of retiring
17 such lease revenue bonds or other obligations.

18 C. The Authority shall consist of seven appointed members who
19 are members of a federally recognized American Indian Tribe located
20 within this state, six ex officio members and four appointed members
21 from the business community. Each appointed member, excluding ex
22 officio members, shall have one vote for purposes of conducting the
23 business of the Authority. Except for the members appointed
24 pursuant to paragraph 3 of this subsection, the appointed members

1 shall be residents of the state, and shall have been qualified
2 electors therein for a period of at least one (1) year preceding
3 their appointment. Any member of the Authority shall be eligible
4 for reappointment, and no member shall be removed from office except
5 for good cause shown. Good cause may be shown in evidence of
6 excessive failure to attend three consecutive regular Board meetings
7 of the Authority. The chair of the Authority shall have the right
8 to remove any member pursuant to good cause. At the expiration of
9 any term, the person holding such office shall continue to serve
10 until such person's duly appointed successor shall be appointed and
11 qualified.

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

1 appointment, with the term of each initially appointed member to be
2 designated by the Governor at the time of the appointment, with one
3 member to be appointed to a three-year term, two members to be
4 appointed to a four-year term, one member to be appointed to a five-
5 year term, one member to be appointed to a six-year term, and two
6 members to be appointed to a seven-year term. Any person appointed
7 to fill a vacancy shall serve only for the unexpired term. Upon the
8 expiration of a term, on or after July 1, 2000, any succeeding term
9 shall be for four (4) years.

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

18 3. The four appointed members from the business community shall
19 be chosen as follows: two members shall be appointed by the
20 Governor; one member shall be appointed by the Speaker of the House
21 of Representatives; and one member shall be appointed by the
22 President Pro Tempore of the Senate. Each member shall have at
23 least fifteen (15) years of experience in business, banking, finance
24 or corporate law, and shall have demonstrated outstanding ability in

1 business or industry. However, in lieu of appointing a member with
2 such experience, one of the two members appointed by the Governor
3 may be a person who has exhibited at least three (3) years of
4 outstanding leadership and involvement in recognized Native American
5 organizations and activities. Upon the expiration of a term, on or
6 after July 1, 2000, any succeeding term shall be for four (4) years.
7 Any person appointed to fill a vacancy shall serve only for the
8 unexpired term.

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

18 E. Before the issuance of any revenue bonds under the
19 provisions of Section 1226 et seq. of this title, each member of the
20 Authority shall execute a surety bond in the penal sum of Twenty-
21 five Thousand Dollars (\$25,000.00) and the secretary and treasurer
22 shall execute a surety bond in the penal sum of One Hundred Thousand
23 Dollars (\$100,000.00), each such surety bond to be conditioned upon
24 the faithful performance of the duties of his or her office, to be

1 executed by a surety company authorized to transact business in the
2 State of Oklahoma as surety, and to be filed in the office of the
3 Secretary of State.

4 F. The members of the Authority shall not be entitled to
5 compensation for their services, but each member shall be reimbursed
6 for actual expenses necessarily incurred in the performance of
7 duties on behalf of the Authority; provided, that members of the
8 Authority shall be compensated for their travel expenses pursuant to
9 the State Travel Reimbursement Act. All expenses incurred in
10 carrying out the provisions of Section 1226 et seq. of this title
11 shall be payable solely from funds provided under the authority of
12 Section 1226 et seq. of this title and no liability or obligation
13 shall be incurred by the Authority hereunder beyond the extent to
14 which monies shall have been provided under the authority of Section
15 1226 et seq. of this title. With the exception of funds
16 appropriated to the Authority for the fiscal year ending June 30,
17 2016, no further appropriations shall be made to the Authority, or
18 to any successor state entity owning some interest in the AICCM, for
19 the purpose of operating the AICCM; provided, however, that
20 appropriations to pay debt service on revenue bonds or other
21 obligations issued heretofore or hereafter by OCIA or other state
22 agencies for the benefit of the Authority will continue until all
23 such bonds or other obligations are fully paid.

1 G. The Authority is authorized to establish subcommittees as
2 necessary to perform its functions and duties. A subcommittee may
3 be composed of Authority members and/or nonmembers and shall not
4 have more than five members. Nonmembers of a subcommittee shall be
5 reimbursed by the Authority in accordance with the State Travel
6 Reimbursement Act.

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

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

18 J. Real property transferred by the Authority to any person,
19 firm, partnership, corporation, limited liability company, express
20 private trust, public trust or any other lawfully recognized entity
21 shall be subject to the same restrictions regarding the use of such
22 real property as contained in the instrument of conveyance by which
23 the Authority acquired title to such real property, including, but
24

1 not limited to, any restriction regarding gambling activity upon
2 such real property.

3 SECTION 2. AMENDATORY 74 O.S. 2011, Section 1226.17, as
4 amended by Section 935, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
5 2017, Section 1226.17), is amended to read as follows:

6 Section 1226.17. There is hereby created in the State Treasury
7 a revolving fund for the ~~Oklahoma Department of Commerce~~ Office of
8 Management and Enterprise Services (OMES) to be designated the
9 "Native American Cultural and Educational Authority Fund." The fund
10 shall be a continuing fund, not subject to fiscal year limitations.
11 The fund shall consist of all monies authorized by law for deposit
12 in such fund including but not limited to appropriations, gifts,
13 grants, private donations, fee revenues and funds by governmental or
14 tribal government entities. Monies deposited or apportioned to the
15 credit of the fund may be expended for the purposes authorized by
16 law. All monies accruing to the credit of ~~said~~ the fund are hereby
17 appropriated and may be budgeted and expended by the ~~Oklahoma~~
18 ~~Department of Commerce~~ Office of Management and Enterprise Services
19 (OMES). Expenditures from ~~said~~ the fund shall be made upon warrants
20 issued by the State Treasurer against claims submitted to the
21 Director of the Office of Management and Enterprise Services.

22 SECTION 3. NEW LAW A new section of law not to be
23 codified in the Oklahoma Statutes reads as follows:
24

1 All funds currently held in the Native American Cultural and
2 Educational Authority Fund shall remain in the fund and be available
3 for use by the Office of Management and Enterprise Services (OMES)
4 for the purposes identified in Section 1226.17 of Title 74 of the
5 Oklahoma Statutes.

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

7 SECTION 5. It being immediately necessary for the preservation
8 of the public peace, health or safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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