

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 2138

By: Sneed

AS INTRODUCED

An Act relating to property; amending 60 O.S. 2011, Section 176.1, which relates to public trusts; eliminating requirement that any indebtedness incurred by the city or county beneficiary public trust be approved by the governing body; and providing an effective date.

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

SECTION 1. AMENDATORY 60 O.S. 2011, Section 176.1, is amended to read as follows:

Section 176.1 A. Except as provided in subsection F of this section and if the conditions set out in subsection B of this section are satisfied in compliance with Section 176 et seq. of this title, a public trust duly created in accordance with the provisions of Section 176 et seq. of this title shall be presumed for all purposes of Oklahoma law to:

1. Exist for the public benefit;

1 2. Exist as a legal entity separate and distinct from the
2 settlor and from the governmental entity that is its beneficiary;
3 and

4 3. Act on behalf and in the furtherance of a public function or
5 functions for which it is created even though facilities financed by
6 the public trust or in which the public trust has an ownership
7 interest may be operated by private persons or entities pursuant to
8 contract.

9 B. The conditions to be satisfied as required in subsection A
10 of this section are as follows:

11 1. The trustees of the public trust are appointed by the
12 governing body of the beneficiary or beneficiaries or as otherwise
13 provided by law. This paragraph shall not apply to public trusts in
14 existence as of July 1, 1992;

15 2. The public trust delivers to the governing body of the
16 beneficiaries, or in the case of the state as beneficiary, to the
17 State Auditor and Inspector, annual audits as provided in Section
18 180.1 of this title; and

19 3. With respect to city or county beneficiary public trusts,
20 the function or enterprise in which the public trust is engaged is
21 or could be authorized by state law to be performed by the
22 beneficiary; ~~and~~

23 ~~4. With respect to city or county beneficiary public trusts,~~
24 ~~all indebtedness incurred by the public trust is approved by the~~

1 ~~governing body of the beneficiary as provided in subsection E of~~
2 ~~Section 176 of this title.~~

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

7 D. Except where the provisions of the trust indenture or of
8 Section 176 et seq. of this title, or of any other law written
9 specifically to govern the affairs of public trusts, expressly
10 requires otherwise, the affairs of the public trust shall be
11 separate and independent from the affairs of the beneficiary in all
12 matters or activities authorized by the written instrument creating
13 such public trust including, but not limited to, the public trust's
14 budget, expenditures, revenues and general operation and management
15 of its facilities or functions; provided, that either the public
16 trust or the beneficiary may make payment of money to the other
17 unless prohibited by the written instrument creating such public
18 trust or by existing state law.

19 E. For all purposes of Oklahoma law, the existence and validity
20 of any public trust shall be determined and established solely by
21 the provisions of the written instrument creating such public trust,
22 and by the provisions of Section 176 et seq. of this title and of
23 any other law written specifically to create a public trust.

24 Actions taken or omitted by the trustees of a public trust shall not

1 affect the existence or validity of the entity as a public trust but
2 shall be subject to subsequent review or ratification by said
3 trustees or to correction by the district court in a proper
4 proceeding.

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

7 SECTION 2. This act shall become effective November 1, 2019.

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