

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 3692

By: Wallace

7 COMMITTEE SUBSTITUTE

8 An Act relating to property; amending 60 O.S. 2021,  
9 Sections 176 and 178, which relate to trusts for  
10 public functions; modifying bidding requirements;  
11 defining terms; providing for compensation; and  
12 providing an effective date.

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

14 SECTION 1. AMENDATORY 60 O.S. 2021, Section 176, is  
15 amended to read as follows:

16 Section 176. A. Express trusts may be created to issue  
17 obligations, enter into financing arrangements including, but not  
18 limited to, lease-leaseback, sale-leaseback, interest rate swaps and  
19 other similar transactions and to provide funds for the furtherance  
20 and accomplishment of any authorized and proper public function or  
21 purpose of the state or of any county or municipality or any and all  
22 combinations thereof, in real or personal property, or either or  
23 both, or in any estate or interest in either or both, with the  
24

1 state, or any county or municipality or any and all combinations  
2 thereof, as the beneficiary thereof by:

3 1. The express approval of the Legislature and the Governor if  
4 the State of Oklahoma is the beneficiary;

5 2. The express approval of two-thirds (2/3) of the membership  
6 of the governing body of the beneficiary if a county is a  
7 beneficiary;

8 3. The express approval of two-thirds (2/3) of the membership  
9 of the governing body of the beneficiary if a municipality is a  
10 beneficiary; or

11 4. The express approval of two-thirds (2/3) of the membership  
12 of the governing body of each beneficiary in the event a trust has  
13 more than one beneficiary; provided, that no funds of a beneficiary  
14 derived from sources other than the trust property, or the operation  
15 thereof, shall be charged with or expended for the execution of the  
16 trust, except by express action of the legislative authority of the  
17 beneficiary prior to the charging or expending of the funds. The  
18 officers or any other governmental agencies or authorities having  
19 the custody, management or control of any property, real or personal  
20 or mixed, of the beneficiary of the trust, or of a proposed trust,  
21 which property shall be needful for the execution of the trust  
22 purposes, are authorized and empowered to lease the property for  
23 those purposes, after the acceptance of the beneficial interest  
24 therein by the beneficiary as hereinafter provided.

1       B. Any trust created pursuant to the provisions of this  
2 section, in whole or in part, may engage in activities outside of  
3 the geographic boundaries of its beneficiary, so long as the  
4 activity provides a benefit to a large class of the public within  
5 the beneficiary's geographic area or lessens the burdens of  
6 government of the beneficiary and which does not solely provide a  
7 benefit by generating administrative fees.

8       C. A municipality may convey title to real property which is  
9 used for an airport to the trustees of an industrial development  
10 authority trust whose beneficiary is the municipality. The  
11 industrial development authority trust must already have the  
12 custody, management or control of the real property. The conveyance  
13 must be approved by a majority of the governing body of the  
14 municipality. A conveyance pursuant to this section may be made  
15 only for the sole purpose of allowing the authority to sell the  
16 property for fair market value when the property is to be used for  
17 industrial development purposes. Conveyances made pursuant to this  
18 subsection shall be made subject to any existing reversionary  
19 interest or other restrictions burdening the property and subject to  
20 any reversionary interest or other restriction considered prudent by  
21 the municipality.

22       D. The trustees of a public trust having the State of Oklahoma  
23 as beneficiary shall make and adopt bylaws for the due and orderly  
24 administration and regulation of the affairs of the public trust.

1 All bylaws of a public trust having the State of Oklahoma as  
2 beneficiary shall be submitted in writing to the Governor of the  
3 State of Oklahoma. The Governor must approve the proposed bylaws  
4 before they take effect.

5 E. No public trust in which the State of Oklahoma is the  
6 beneficiary may be amended without a two-thirds (2/3) vote of  
7 approval of the trustees of the trust; provided, that any amendment  
8 is subject to the approval of the Governor of the State of Oklahoma.  
9 Any amendments shall be sent to the Governor within fifteen (15)  
10 days of their adoption.

11 F. No trust in which a county or municipality is the  
12 beneficiary shall hereafter create an indebtedness or obligation  
13 until the indebtedness or obligation has been approved by a two-  
14 thirds (2/3) vote of the governing body of the beneficiary. In the  
15 event a trust has more than one beneficiary, as authorized by this  
16 section, the trust shall not incur an indebtedness or obligation  
17 until the indebtedness or obligation has been approved by a two-  
18 thirds (2/3) vote of the governing body of two-thirds (2/3) of the  
19 beneficiaries of the trust. Provided, however, a municipality with  
20 a governing body consisting of fewer than seven (7) members shall be  
21 required to approve the creation of an indebtedness or obligation  
22 under this subsection by a three-fifths (3/5) vote of the governing  
23 body.

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1       G. All bonds described in subsection F of this section, after  
2 December 1, 1976, except bonds sold to the federal government or any  
3 agency thereof or to any agency of the State of Oklahoma, shall be  
4 awarded to the lowest and best bidder based upon open competitive  
5 public offering, advertised at least once a week for two (2)  
6 successive weeks in a newspaper of general circulation in the county  
7 where the principal office of the trust is located prior to the date  
8 on which bids are received and opened; provided, competitive bidding  
9 may be waived on bond issues with the approval of three-fourths  
10 (3/4) of the trustees, unless the trust has fewer than four  
11 trustees, in which case a two-thirds (2/3) approval shall be  
12 required, and a three-fourths (3/4) vote of the governing body of  
13 the beneficiary, unless the beneficiary is a county in which case a  
14 two-thirds (2/3) vote of the members of the governing body shall be  
15 required, or three-fourths (3/4) vote of the governing bodies of  
16 each of the beneficiaries of the trust, unless one of the  
17 beneficiaries is a county in which case a two-thirds (2/3) vote of  
18 the members of the governing body of such county shall be required.  
19 No bonds shall be sold for less than par value, except upon approval  
20 of three-fourths (3/4) of the trustees, unless the beneficiary is a  
21 county in which case a two-thirds (2/3) vote of the members of the  
22 governing body shall be required. In no event shall bonds be sold  
23 for less than sixty-five percent (65%) of par value; provided,  
24 however, in no event shall the original purchaser from the issuer of

1 any bonds issued by any public trust for any purpose receive  
2 directly or indirectly any fees, compensation or other remuneration  
3 in excess of four percent (4%) of the price paid for the bonds by  
4 the purchaser of the bonds from the original purchaser; and further  
5 provided, that the average coupon rate thereon shall in no event  
6 exceed fourteen percent (14%) per annum. No public trust shall sell  
7 bonds for less than ninety-six percent (96%) of par value until the  
8 public trust has received from the underwriter or financial advisor  
9 or, in the absence of an underwriter or financial advisor, the  
10 initial purchaser of the bonds, an estimated alternative financing  
11 structure or structures showing the estimated total interest and  
12 principal cost of each alternative. At least one alternative  
13 financing structure shall include bonds sold to the public at par.  
14 Any estimates shall be considered a public record of the public  
15 trust. Bonds, notes or other evidences of indebtedness issued by  
16 any public trust shall be eligible for purchase by any state banking  
17 association or corporation subject to such limitations as to  
18 investment quality as may be imposed by regulations, rules or  
19 rulings of the State Banking Commissioner.

20 H. Public trusts created pursuant to this section shall file  
21 annually, with their respective beneficiaries, copies of financial  
22 documents and reports sufficient to demonstrate the fiscal activity  
23 of such trust, including, but not limited to, budgets, financial  
24 reports, bond indentures and audits. Amendments to the adopted

1 budget shall be approved by the trustees of the public trust and  
2 recorded as such in the official minutes of such trust.

3 ~~I. Contracts for construction, labor, or equipment, material~~  
4 ~~materials or repairs in excess of Fifty Thousand Dollars~~  
5 ~~(\$50,000.00) shall be awarded by public trusts to the lowest and~~  
6 ~~best competitive, pursuant to public invitation to bid, which shall~~  
7 ~~be published in the manner provided in subsection G of this section;~~  
8 ~~the advertisements shall appear in the county where the work, or the~~  
9 ~~major part of it, is to be done, or the equipment or materials are~~  
10 ~~to be delivered, or the services are to be rendered; provided,~~  
11 ~~however, should~~ The following bidding requirements shall apply to  
12 public trusts:

13 1. Construction contracts entered into by a public trust, when  
14 required, shall be administered, advertised, and awarded pursuant to  
15 the Public Competitive Bidding Act of 1974;

16 2. Operational contracts entered into by public trusts for  
17 labor or equipment in excess of Two Hundred Fifty Thousand Dollars  
18 (\$250,000.00) shall be awarded by public trusts to the lowest  
19 responsible bidder, pursuant to a bid, which shall be published in  
20 the manner consistent with the bid solicitation requirements imposed  
21 on state agencies under the Oklahoma Central Purchasing Act;

22 3. Any construction contract issued under this section by a  
23 public trust may provide for a local bid preference of not more than  
24 five percent (5%) of the bid price if the public trust governing

body determines that there is an economic benefit to the local area or economy. Provided, however, the local bidder or contractor must agree to perform the contract for the same price and terms as the bid proposed by the nonlocal bidder or contractor. Any bid preference granted hereunder must be in accordance with an established policy adopted by the governing body of the trust to clearly demonstrate the economic benefit to the local area or economy. No local bid preference shall be granted unless the local bidding entity is the second lowest qualified bid on the contract. The bid specifications shall clearly state that the bid is subject to a local bidder preference law. For purposes of this section, "local bid" means the bidding person is authorized to transact business in this state and maintains a bona fide establishment for transacting such business within this state. This provision does not apply to any construction contract for which federal funds are available for expenditure when its provisions may be in conflict with federal law or regulation;

4. Should the trustee or the trustees find that an immediate emergency exists, ~~which findings shall be entered in the journal of the trust proceedings,~~ by reason of which an immediate outlay of trust funds in an amount exceeding ~~Seventy-five Thousand Dollars (\$75,000.00)~~ the emergency threshold provided in the Public Competitive Bidding Act of 1974 for construction contracts, or Two Hundred Fifty Thousand Dollars (\$250,000.00) for other contracts



1 subject to this section is necessary in order to avoid loss of life,  
2 substantial damage to property or damage to the public peace or  
3 safety, then the contracts may be made and entered into without  
4 public notice or competitive bids; provided that the provisions of  
5 this subsection shall not apply to contracts of industrial and  
6 cultural trusts. Findings of an emergency shall be entered in the  
7 journal or minutes of the trust proceedings;

8     5. Notwithstanding the provisions of this subsection, equipment  
9 ~~or materials~~ or labor may be purchased by a public trust directly  
10 from any contract ~~duly~~ awarded by this state or any state agency  
11 under the Oklahoma Central Purchasing Act, or from any contract ~~duly~~  
12 awarded or approved by a governmental entity which is the  
13 beneficiary of the public trust.

14     ~~Furthermore, any construction contract issued under this section~~  
15 ~~may provide for a local bid preference of not more than five percent~~  
16 ~~(5%) of the bid price if the public trust governing body determines~~  
17 ~~that there is an economic benefit to the local area or economy.~~  
18 ~~Provided, however, the local bidder or contractor must agree to~~  
19 ~~perform the contract for the same price and terms as the bid~~  
20 ~~proposed by the nonlocal bidder or contractor. Any bid preference~~  
21 ~~granted hereunder must be in accordance with an established policy~~  
22 ~~adopted by the governing body of the trust to clearly demonstrate~~  
23 ~~the economic benefit to the local area or economy. Provided,~~  
24 ~~further, no local bid preference shall be granted unless the local~~

~~bidding entity is the second lowest qualified bid on the contract.~~  
~~The bid specifications shall clearly state that the bid is subject~~  
~~to a local bidder preference law. For purposes of this section,~~  
~~"local bid" means the bidding person is authorized to transact~~  
~~business in this state and maintains a bona fide establishment for~~  
~~transacting such business within this state. This provision does~~  
~~not apply to any construction contract for which federal funds are~~  
~~available for expenditure when its provisions may be in conflict~~  
~~with federal law or regulation.;~~

6. A public trust may enter into sole source contracts for the  
purchase of equipment, labor, or both. For each sole source  
acquisition, the public trust shall retain a certification signed by  
the trustee or trustees listing the supplier's name, address, and  
contact information; affirming that the supplier is the only  
business entity qualified to provide the required equipment or  
labor, or is the only supplier able to provide the brand satisfying  
the contract requirements, and specifying the reasons for its unique  
qualifications; and giving a brief description of all efforts made  
to verify that there is only one source for the required equipment  
or labor; and

7. A public trust may enter into a cooperative purchasing  
agreement for the purchase of equipment or labor if economically  
justified by way of savings, material economic value, or both. The  
public trust shall consider the economic justification for using a

1 cooperative purchasing agreement before entering into the  
2 cooperative purchasing agreement. Economic justification may be  
3 demonstrated by a comparison of current cooperative pricing to  
4 information obtained from a request for information publicized by a  
5 public trust.

6 J. As used in this section:

7 1. "Equipment" means an item or product and includes all  
8 personal property used or consumed by a public trust that typically  
9 will last and be used multiple times over a period of more than  
10 twelve (12) months;

11 2. "Labor" means activity which is primarily accomplished  
12 through the use of physical or mechanical movement to produce a  
13 given result; and

14 3. "Sole source" means an acquisition which, by specification,  
15 restricts the acquisition to one supplier.

16 K. Any public trust created pursuant to the provisions of this  
17 section shall have the power to acquire lands by use of eminent  
18 domain in the same manner and according to the procedures provided  
19 for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes.  
20 Any exercise of the power of eminent domain by a public trust  
21 pursuant to the provisions of this section shall be limited to the  
22 furtherance of public purpose projects involving revenue-producing  
23 utility projects of which the public trust retains ownership;  
24 provided, for public trusts in which the State of Oklahoma is the

1 beneficiary the exercise of the power of eminent domain may also be  
2 used for public purpose projects involving air transportation.  
3 Revenue-producing utility projects shall be limited to projects for  
4 the transportation, delivery, treatment or furnishing of water for  
5 domestic purposes or for power, including, but not limited to, the  
6 construction of lakes, pipelines and water treatment plants or for  
7 projects for rail transportation. Any public trust formed pursuant  
8 to this section which has a county as its beneficiary shall have the  
9 power to acquire, by use of eminent domain, any lands located either  
10 inside the county, or contiguous to the county pursuant to the  
11 limitations imposed pursuant to this section.

12 ~~K.~~ L. Provisions of this section shall not apply to entities  
13 created under Sections 1324.1 through 1324.26 of Title 82 of the  
14 Oklahoma Statutes.

15 ~~L.~~ M. Any trust created under Section 176 et seq. of this  
16 title, in whole or in part, to operate, administer or oversee any  
17 county jail facility shall consist of not less than five members and  
18 include a county commissioner and the county sheriff, or their  
19 designee, and one member appointed by each of the county  
20 commissioners. The appointed members shall not be elected  
21 officials.

22 SECTION 2. AMENDATORY 60 O.S. 2021, Section 178, is  
23 amended to read as follows:  
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1       Section 178. A. The instrument or will creating such trust may  
2 provide for the appointment, succession, powers, duties, term,  
3 manner of removal and compensation of the trustee or trustees  
4 subject to the provisions of subsections C and E of this section,  
5 and in all such respects the terms of ~~said~~ the instrument or will  
6 shall be controlling. ~~Trustees, who are public officers,~~ Elected  
7 officials, who also serve as trustees, shall serve without  
8 compensation, but may be reimbursed for actual expenses incurred in  
9 the performance of their duties as trustees. Trustees who are not  
10 elected officials may receive reasonable compensation and may be  
11 reimbursed for actual expenses related to the performance of their  
12 duties as trustees. For purposes of this section, reasonable  
13 compensation shall not exceed a stipend per meeting equal to the  
14 regional average for compensation of members of other governmental  
15 or nonprofit boards and shall be approved by the beneficiary of the  
16 public trust. If the ~~said~~ instrument or will makes no provisions in  
17 regard to any of the foregoing, then the general laws of the state  
18 shall control as to such omission or omissions. Every person  
19 hereafter becoming a trustee of a public trust first shall take the  
20 oath of office required of an elected public officer and every  
21 officer and employee who handles funds of a public trust shall  
22 furnish a good and sufficient fidelity bond in an amount and with  
23 surety as may be specified and approved by the persons constituting  
24 a majority of each of the governing bodies of the beneficiaries of

1 the trust, such bond to be in a surety company authorized to  
2 transact surety business in the State of Oklahoma but in no event  
3 shall any bond be required of a trustee. The cost of ~~said~~ the bond  
4 shall be paid from funds of the trust authority. The oaths of  
5 office shall be administered by any person authorized to administer  
6 oaths in the State of Oklahoma, and shall be filed with the  
7 Secretary of State in trusts wherein the State of Oklahoma is the  
8 beneficiary; in the office of the county clerk in a trust wherein  
9 any county is beneficiary; and in the office of the clerk of the  
10 municipality in a trust wherein any municipality is the beneficiary.

11 B. Unless otherwise specified in another state law authorizing  
12 the creation of a state-beneficiary public trust, any public trust  
13 that hereafter names the State of Oklahoma as the beneficiary shall  
14 have five (5) trustees appointed by the Governor of the State of  
15 Oklahoma with the advice and consent of the Senate. The terms of  
16 the trustees shall be as follows: of the trustees first appointed,  
17 one member shall be appointed for a term of one (1) year; one member  
18 shall be appointed for a term of two (2) years; one member shall be  
19 appointed for a term of three (3) years; one member shall be  
20 appointed for a term of four (4) years; and one member shall be  
21 appointed for a term of five (5) years. At the expiration of the  
22 term of each member and of each succeeding member, the Governor  
23 shall appoint a successor who shall serve for a term of five (5)  
24 years. Whenever a vacancy on such trust shall occur by death,

1 resignation or otherwise, the Governor shall fill the same by  
2 appointment and the appointee shall hold office during the unexpired  
3 term. Each member shall hold office until his or her successor has  
4 been appointed and qualified.

5 C. Any instrument or will creating a trust which is not within  
6 the scope of subsection B of this section shall provide for the  
7 appointment of a minimum of three trustees, their succession,  
8 powers, duties, term, manner of removal and compensation subject to  
9 the provisions of subsection E of this section, and in all such  
10 respects the terms of ~~said~~ the instrument or will shall be  
11 controlling. If the instrument or will makes no provision in regard  
12 to any of the foregoing, then the general laws of the state shall  
13 control as to the omissions.

14 D. Meetings of trustees of all public trusts shall be open to  
15 the public to the same extent as is required by law for other public  
16 boards and commissions. Such meetings shall also be open to the  
17 press and any such equipment deemed necessary by the press to record  
18 or report the activities of the meetings. In such trusts wherein  
19 the State of Oklahoma is the beneficiary, a written notice of  
20 trustees' meetings shall be filed with the office of the Secretary  
21 of State at least three (3) days prior to the meeting date. Records  
22 of the trust and minutes of the trust meetings of any public trust  
23 shall be written and kept in a place, the location of which shall be  
24 recorded in the office of the county clerk of each county, wherein

1 the trust instrument shall be recorded. Such records and minutes  
2 shall be available for inspection by any person during regular  
3 business hours. Every trust created under ~~Sections~~ Section 176 et  
4 seq. of this title shall file a monthly report of all expenditures  
5 of bond proceeds with the governing body of each beneficiary and  
6 with the Governor, the Speaker of the House of Representatives and  
7 the President Pro Tempore of the Senate in the case of a public  
8 trust having the State of Oklahoma as beneficiary.

9 E. Trustees of any public trust may be removed from office for  
10 cause, including incompetency, neglect of duty, or malfeasance in  
11 office, by a district court having jurisdiction. In the case of  
12 persons appointed by the Governor, such persons shall be appointed  
13 for terms not in excess of five (5) years, and shall be subject to  
14 removal for cause. In the event of removal of a trustee under this  
15 subsection, a successor trustee shall be appointed as provided in  
16 the trust instrument. Provided, however, in the event a trustee is  
17 so removed who is also a member of the governing board of a  
18 municipal beneficiary, the successor trustee shall be appointed by  
19 the judge of the court wherein the removal occurred; ~~said~~ the  
20 successor trustee shall serve only until the removed trustee ceases  
21 to serve as a member of the governing board of the municipal  
22 beneficiary and his or her successor on ~~said~~ the board has  
23 qualified.  
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1 F. The provisions of this section shall be inapplicable to any  
2 public trust created and existing prior to July 1, 1988, if the  
3 instrument or will creating such public trust shall have been held  
4 to be a valid and binding agreement in an opinion of the Supreme  
5 Court of the State of Oklahoma; and nothing in this section shall  
6 impair or be deemed to impair the trust indenture or existing or  
7 future obligations of such public trust.

8 SECTION 3. This act shall become effective November 1, 2022.

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