

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 3692

By: Wallace of the House

and

6 Garvin of the Senate

7
8
9 COMMITTEE SUBSTITUTE

10 [property - trusts for public functions - bidding
11 requirements - effective date]
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14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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.

24

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, equipment, material or~~
4 ~~repairs in excess of Fifty Thousand Dollars (\$50,000.00) shall be~~
5 ~~awarded by public trusts to the lowest and best competitive bidder,~~
6 ~~pursuant to public invitation to bid, which shall be published in~~
7 ~~the manner provided in subsection G of this section; the~~
8 ~~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 trustee or the trustees find that an immediate~~
12 ~~emergency exists, which findings shall be entered in the journal of~~
13 ~~the trust proceedings, by reason of which an immediate outlay of~~
14 ~~trust funds in an amount exceeding Seventy-five Thousand Dollars~~
15 ~~(\$75,000.00) is necessary in order to avoid loss of life,~~
16 ~~substantial damage to property or damage to the public peace or~~
17 ~~safety, then the contracts may be made and entered into without~~
18 ~~public notice or competitive bids; provided that the provisions of~~
19 ~~this subsection shall not apply to contracts of industrial and~~
20 ~~cultural trusts. Notwithstanding the provisions of this subsection,~~
21 ~~equipment or materials may be purchased by a public trust directly~~
22 ~~from any contract duly awarded by this state or any state agency~~
23 ~~under The Oklahoma Central Purchasing Act, or from any contract duly~~
24 ~~awarded by a governmental entity which is the beneficiary of the~~

~~public trust. Furthermore, any construction contract issued under this section may provide for a local bid preference of not more than 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. Provided, 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~~

1. When applicable, public trusts shall comply with the Public Competitive Bidding Act of 1974.

2. A public trust may adopt its own or its beneficiary's purchasing policies and procedures for all equipment, supplies,

1 services, and other items not procured pursuant to paragraph 1 of
2 this subsection. Such policies and procedures may include
3 provisions regarding sole source and emergency purchases,
4 cooperative purchasing, purchasing from a state or its beneficiary's
5 contract, and any other provision necessary to meet the needs of the
6 trust.

7 J. Any public trust created pursuant to the provisions of this
8 section shall have the power to acquire lands by use of eminent
9 domain in the same manner and according to the procedures provided
10 for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes.
11 Any exercise of the power of eminent domain by a public trust
12 pursuant to the provisions of this section shall be limited to the
13 furtherance of public purpose projects involving revenue-producing
14 utility projects of which the public trust retains ownership;
15 provided, for public trusts in which the State of Oklahoma is the
16 beneficiary the exercise of the power of eminent domain may also be
17 used for public purpose projects involving air transportation.
18 Revenue-producing utility projects shall be limited to projects for
19 the transportation, delivery, treatment or furnishing of water for
20 domestic purposes or for power, including, but not limited to, the
21 construction of lakes, pipelines and water treatment plants or for
22 projects for rail transportation. Any public trust formed pursuant
23 to this section which has a county as its beneficiary shall have the
24 power to acquire, by use of eminent domain, any lands located either

1 inside the county, or contiguous to the county pursuant to the
2 limitations imposed pursuant to this section.

3 K. Provisions of this section shall not apply to entities
4 created under Sections 1324.1 through 1324.26 of Title 82 of the
5 Oklahoma Statutes.

6 L. Any trust created under Section 176 et seq. of this title,
7 in whole or in part, to operate, administer or oversee any county
8 jail facility shall consist of not less than five members and
9 include a county commissioner and the county sheriff, or their
10 designee, and one member appointed by each of the county
11 commissioners. The appointed members shall not be elected
12 officials.

13 SECTION 2. AMENDATORY 60 O.S. 2021, Section 178, is
14 amended to read as follows:

15 A. The instrument or will creating such trust may provide for
16 the appointment, succession, powers, duties, term, manner of removal
17 and compensation of the trustee or trustees subject to the
18 provisions of subsections C and E of this section, and in all such
19 respects the terms of said instrument or will shall be controlling.
20 Trustees, of public trusts who are ~~public officers,~~ elected
21 officials shall serve without compensation, but may be reimbursed
22 for actual expenses incurred in the performance of their duties as
23 trustees. Trustees of public trusts operating a hospital who are
24 not elected officials may receive reasonable compensation and

1 reimbursement for actual expenses related to the performance of
2 their duties as trustees. For purposes of this section, reasonable
3 compensation shall not exceed a stipend per meeting equal to the
4 regional average for compensation of members of other governmental
5 or nonprofit boards. If the said instrument or will makes no
6 provisions in regard to any of the foregoing, then the general laws
7 of the state shall control as to such omission or omissions. Every
8 person hereafter becoming a trustee of a public trust first shall
9 take the oath of office required of an elected public officer and
10 every officer and employee who handles funds of a public trust shall
11 furnish a good and sufficient fidelity bond in an amount and with
12 surety as may be specified and approved by the persons constituting
13 a majority of each of the governing bodies of the beneficiaries of
14 the trust, such bond to be in a surety company authorized to
15 transact surety business in the State of Oklahoma but in no event
16 shall any bond be required of a trustee. The cost of ~~said~~ the bond
17 shall be paid from funds of the trust authority. The oaths of
18 office shall be administered by any person authorized to administer
19 oaths in the State of Oklahoma, and shall be filed with the
20 Secretary of State in trusts wherein the State of Oklahoma is the
21 beneficiary; in the office of the county clerk in a trust wherein
22 any county is beneficiary; and in the office of the clerk of the
23 municipality in a trust wherein any municipality is the beneficiary.

1 B. Unless otherwise specified in another state law authorizing
2 the creation of a state-beneficiary public trust, any public trust
3 that hereafter names the State of Oklahoma as the beneficiary shall
4 have five (5) trustees appointed by the Governor of the State of
5 Oklahoma with the advice and consent of the Senate. The terms of
6 the trustees shall be as follows: of the trustees first appointed,
7 one member shall be appointed for a term of one (1) year; one member
8 shall be appointed for a term of two (2) years; one member shall be
9 appointed for a term of three (3) years; one member shall be
10 appointed for a term of four (4) years; and one member shall be
11 appointed for a term of five (5) years. At the expiration of the
12 term of each member and of each succeeding member, the Governor
13 shall appoint a successor who shall serve for a term of five (5)
14 years. Whenever a vacancy on such trust shall occur by death,
15 resignation or otherwise, the Governor shall fill the same by
16 appointment and the appointee shall hold office during the unexpired
17 term. Each member shall hold office until his or her successor has
18 been appointed and qualified.

19 C. Any instrument or will creating a trust which is not within
20 the scope of subsection B of this section shall provide for the
21 appointment of a minimum of three trustees, their succession,
22 powers, duties, term, manner of removal and compensation subject to
23 the provisions of subsection E of this section, and in all such
24 respects the terms of ~~said~~ the instrument or will shall be

1 controlling. If the instrument or will makes no provision in regard
2 to any of the foregoing, then the general laws of the state shall
3 control as to the omissions.

4 D. Meetings of trustees of all public trusts shall be open to
5 the public to the same extent as is required by law for other public
6 boards and commissions. Such meetings shall also be open to the
7 press and any such equipment deemed necessary by the press to record
8 or report the activities of the meetings. In such trusts wherein
9 the State of Oklahoma is the beneficiary, a written notice of
10 trustees' meetings shall be filed with the office of the Secretary
11 of State at least three (3) days prior to the meeting date. Records
12 of the trust and minutes of the trust meetings of any public trust
13 shall be written and kept in a place, the location of which shall be
14 recorded in the office of the county clerk of each county, wherein
15 the trust instrument shall be recorded. Such records and minutes
16 shall be available for inspection by any person during regular
17 business hours. Every trust created under ~~Sections~~ Section 176 et
18 seq. of this title shall file a monthly report of all expenditures
19 of bond proceeds with the governing body of each beneficiary and
20 with the Governor, the Speaker of the House of Representatives and
21 the President Pro Tempore of the Senate in the case of a public
22 trust having the State of Oklahoma as beneficiary.

23 E. Trustees of any public trust may be removed from office for
24 cause, including incompetency, neglect of duty, or malfeasance in

1 office, by a district court having jurisdiction. In the case of
2 persons appointed by the Governor, such persons shall be appointed
3 for terms not in excess of five (5) years, and shall be subject to
4 removal for cause. In the event of removal of a trustee under this
5 subsection, a successor trustee shall be appointed as provided in
6 the trust instrument. Provided, however, in the event a trustee is
7 so removed who is also a member of the governing board of a
8 municipal beneficiary, the successor trustee shall be appointed by
9 the judge of the court wherein the removal occurred; ~~said~~ the
10 successor trustee shall serve only until the removed trustee ceases
11 to serve as a member of the governing board of the municipal
12 beneficiary and his or her successor on ~~said~~ the board has
13 qualified.

14 F. The provisions of this section shall be inapplicable to any
15 public trust created and existing prior to July 1, 1988, if the
16 instrument or will creating such public trust shall have been held
17 to be a valid and binding agreement in an opinion of the Supreme
18 Court of the State of Oklahoma; and nothing in this section shall
19 impair or be deemed to impair the trust indenture or existing or
20 future obligations of such public trust.

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