ENGROSSED SENATE
BILL NO. 88

By: Howard of the Senate

and

Worthen of the House

An Act relating to public trusts; amending 60 O.S. 2011, Sections 176, as last amended by Section 1, Chapter 405, O.S.L. 2019, 180 and 180.1, as amended by Section 1, Chapter 83, O.S.L. 2017 (60 O.S. Supp. 2020, Sections 176 and 180.1), which relate to bond approval, termination of trust and annual audits; modifying threshold for approval of certain waiver; modifying approval requirement for termination of certain trusts; modifying public trusts required to perform certain audit; establishing exemption from certain audit requirements; updating statutory references; repealing 60 O.S. 2011, Section 178.2, which relates to filing of official statement, prospectus or offering document; 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, as last amended by Section 1, Chapter 405, O.S.L. 2019 (60 O.S. Supp. 2020, Section 176), is amended to read as follows:

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

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

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

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

4. The express approval of two-thirds (2/3) of the membership of the governing body of each beneficiary in the event a trust has more than one beneficiary; provided, that no funds of a beneficiary derived from sources other than the trust property, or the operation thereof, shall be charged with or expended for the execution of the trust, except by express action of the legislative authority of the beneficiary prior to the charging or expending of the funds. The officers or any other governmental agencies or authorities having the custody, management~~,~~ or control of any property, real or personal or mixed, of the beneficiary of the trust, or of a proposed trust, which property shall be needful for the execution of the

trust purposes, are authorized and empowered to lease the property for those purposes, after the acceptance of the beneficial interest therein by the beneficiary as hereinafter provided.

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

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

D. The trustees of a public trust having the State of Oklahoma as beneficiary shall make and adopt bylaws for the due and orderly administration and regulation of the affairs of the public trust. All bylaws of a public trust having the State of Oklahoma as beneficiary shall be submitted in writing to the Governor of the State of Oklahoma. The Governor must approve the proposed bylaws before they take effect.

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

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

G. All bonds described in subsection F of this section, after December 1, 1976, except bonds sold to the federal government or any agency thereof or to any agency of the State of Oklahoma, shall be awarded to the lowest and best bidder based upon open competitive public offering, advertised at least once a week for two (2) successive weeks in a newspaper of general circulation in the county where the principal office of the trust is located prior to the date on which bids are received and opened; provided, competitive bidding may be waived on bond issues with the approval of three-fourths (3/4) of the trustees, unless the trust has fewer than four trustees, in which case a two-thirds (2/3) approval shall be required, and a three-fourths (3/4) vote of the governing body of the beneficiary, unless the beneficiary is a county in which case a two-thirds (2/3) vote of the members of the governing body shall be required, or three-fourths (3/4) vote of the governing bodies of each of the beneficiaries of the trust, unless one of the beneficiaries is a county in which case a two-thirds (2/3) vote of the members of the governing body of such county shall be required. No bonds shall be sold for less than par value, except upon approval of three-fourths (3/4) of the trustees, unless the beneficiary is a county in which case a two-thirds (2/3) vote of the members of the governing body shall be required. In no event shall bonds be sold for less than sixty-five percent (65%) of par value; provided, however, in no event shall the original purchaser from the issuer of any bonds issued by any public trust for any purpose receive directly or indirectly any fees, compensation~~,~~ or other remuneration in excess of four percent (4%) of the price paid for the bonds by the purchaser of the bonds from the original purchaser; and further provided, that the average coupon rate thereon shall in no event exceed fourteen percent (14%) per annum. No public trust shall sell bonds for less than ninety-six percent (96%) of par value until the public trust has received from the underwriter or financial advisor or, in the absence of an underwriter or financial advisor, the initial purchaser of the bonds, an estimated alternative financing structure or structures showing the estimated total interest and principal cost of each alternative. At least one alternative financing structure shall include bonds sold to the public at par. Any estimates shall be considered a public record of the public trust. Bonds, notes or other evidences of indebtedness issued by any public trust shall be eligible for purchase by any state banking association or corporation subject to such limitations as to investment quality as may be imposed by regulations, rules or rulings of the State Banking Commissioner.

H. Public trusts created pursuant to this section shall file annually, with their respective beneficiaries, copies of financial documents and reports sufficient to demonstrate the fiscal activity of such trust, including, but not limited to, budgets, financial reports, bond indentures~~,~~ and audits. Amendments to the adopted budget shall be approved by the trustees of the public trust and recorded as such in the official minutes of such trust.

I. Contracts for construction, labor, equipment, material or repairs in excess of Fifty Thousand Dollars ($50,000.00) shall be awarded by public trusts to the lowest and best competitive bidder, pursuant to public invitation to bid, which shall be published in the manner provided in subsection G of this section; the advertisements shall appear in the county where the work, or the major part of it, is to be done, or the equipment or materials are to be delivered, or the services are to be rendered; provided, however, 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) is necessary in order to avoid loss of life, substantial damage to property~~,~~ or damage to the public peace or safety, then the contracts may be made and entered into without public notice or competitive bids; provided that the provisions of this subsection shall not apply to contracts of industrial and cultural trusts. Notwithstanding the provisions of this subsection, equipment or materials may be purchased by a public trust directly from any contract duly awarded by this state or any state agency under The Oklahoma Central Purchasing Act, or from any contract duly 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.

J. Any public trust created pursuant to the provisions of this section shall have the power to acquire lands by use of eminent domain in the same manner and according to the procedures provided for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes. Any exercise of the power of eminent domain by a public trust pursuant to the provisions of this section shall be limited to the furtherance of public purpose projects involving revenue-producing utility projects of which the public trust retains ownership; provided, for public trusts in which the State of Oklahoma is the beneficiary the exercise of the power of eminent domain may also be used for public purpose projects involving air transportation. Revenue-producing utility projects shall be limited to projects for the transportation, delivery, treatment~~,~~ or furnishing of water for domestic purposes or for power, including, but not limited to, the construction of lakes, pipelines~~,~~ and water treatment plants or for projects for rail transportation. Any public trust formed pursuant to this section which has a county as its beneficiary shall have the power to acquire, by use of eminent domain, any lands located either inside the county, or contiguous to the county pursuant to the limitations imposed pursuant to this section.

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

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

SECTION 2. AMENDATORY 60 O.S. 2011, Section 180, is amended to read as follows:

Section 180. ~~(a)~~ A. Any such trust may be terminated by agreement of the trustee, or, if there be more than one, then all of the trustees and the approval of a majority of the governing body of the beneficiary, and for trusts whose beneficiary is the State of Oklahoma, with the approval of the Governor of the State of Oklahoma; provided, that such trust shall not be terminated while there exists outstanding any contractual obligations chargeable against the trust property, which, by reason of such termination, might become an obligation of the beneficiary of such trust.

~~(b)~~ B. Nothing in this act shall operate to impair existing obligations of contracts or existing trust indentures of any trust created prior to ~~the effective date of this amendment~~ July 15, 1970; but to the extent that such existing obligations of contracts are not impaired by the provisions hereof, all of ~~said~~ the provisions shall be applicable; provided further, that nothing in this act shall operate to impair or alter the trust indenture of the Oklahoma Ordinance Works Authority or contracts executed prior to ~~the effective date of this act~~ July 15, 1970.

SECTION 3. AMENDATORY 60 O.S. 2011, Section 180.1, as amended by Section 1, Chapter 83, O.S.L. 2017 (60 O.S. Supp. 2020, Section 180.1), is amended to read as follows:

Section 180.1. A. The trustees of every trust created for the benefit and furtherance of any public function with the State of Oklahoma or any county or municipality as the beneficiary or beneficiaries thereof<u>, with assets or revenues in excess of Fifty Thousand Dollars ($50,000.00) or with outstanding debt obligations,</u> must cause an audit to be made of the financial statements of the trust, such audit to be ordered within thirty (30) days of the close of each fiscal year of the trust. The audit shall be filed in accordance with the requirements set forth for financial statement audits in Section 212A of Title 74 of the Oklahoma Statutes.

B. The trustees of a trust which has more than Fifty Thousand Dollars ($50,000.00) in revenues or assets, and for whom an annual financial statement audit is not required by another law, regulation~~,~~ or contract, shall cause to be conducted, by an independent licensed public accountant or a certified public accountant, an annual audit of the trust's financial statements in accordance with auditing standards generally accepted in the United States and Government Auditing Standards as issued by the Comptroller General of the United States or an agreed-upon-procedures engagement over certain financial information and compliance requirements to be performed in accordance with the applicable attestation standards of The American Institute of Certified Public Accountants. The specific procedures to be performed are:

1. Prepare a schedule of revenues, expenditures/expenses and changes in fund balances/net assets for each fund and determine compliance with any applicable trust or other prohibitions for creating fund balance deficits;

2. Agree material bank account balances to bank statements, and trace significant reconciling items to subsequent clearance;

3. Compare uninsured deposits to fair value of pledged collateral;

4. Compare use of material-restricted revenues and resources to their restrictions;

5. Determine compliance with requirements for separate funds; and

6. Determine compliance with reserve account and debt service coverage requirements of bond indentures.

Such engagement shall be ordered within thirty (30) days of the close of each fiscal year of the trust. Copies of the annual audit or agreed-upon-procedures report shall be filed with the State Auditor and Inspector within six (6) months after the close of the fiscal year and with the trustees and governing body of the beneficiaries.

C. Public trusts which have less than Fifty Thousand Dollars ($50,000.00) in revenue and less than Fifty Thousand Dollars ($50,000.00) in assets, and for whom an annual financial statement audit is not required by another law, regulation~~,~~ or contract and any public trust which did not have financial activity exceeding Fifty Thousand Dollars ($50,000.00) since its last audit ~~may apply to the State Auditor and Inspector for a waiver of~~ <u>shall be exempt from</u> the requirements of subsections A and B of this section <u>unless the public trust has outstanding debt obligations</u>.

SECTION 4. REPEALER 60 O.S. 2011, Section 178.2, is hereby repealed.

SECTION 5. This act shall become effective November 1, 2021.

Passed the Senate the 1st day of March, 2021.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of __________, 2021.

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Presiding Officer of the House of Representatives