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April 13, 2022

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 3692

By: Wallace of the House

and

Garvin of the Senate

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

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

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

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

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

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

23 B. Any trust created pursuant to the provisions of this
24 section, in whole or in part, may engage in activities outside of

1 the geographic boundaries of its beneficiary, so long as the
2 activity provides a benefit to a large class of the public within
3 the beneficiary's geographic area or lessens the burdens of
4 government of the beneficiary and which does not solely provide a
5 benefit by generating administrative fees.

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

20 D. The trustees of a public trust having the State of Oklahoma
21 as beneficiary shall make and adopt bylaws for the due and orderly
22 administration and regulation of the affairs of the public trust.
23 All bylaws of a public trust having the State of Oklahoma as
24 beneficiary shall be submitted in writing to the Governor of the

1 State of Oklahoma. The Governor must approve the proposed bylaws
2 before they take effect.

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

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

22 G. All bonds described in subsection F of this section, after
23 December 1, 1976, except bonds sold to the federal government or any
24 agency thereof or to any agency of the State of Oklahoma, shall be

1 awarded to the lowest and best bidder based upon open competitive
2 public offering, advertised at least once a week for two (2)
3 successive weeks in a newspaper of general circulation in the county
4 where the principal office of the trust is located prior to the date
5 on which bids are received and opened; provided, competitive bidding
6 may be waived on bond issues with the approval of three-fourths
7 ($\frac{3}{4}$) of the trustees, unless the trust has fewer than four
8 trustees, in which case a two-thirds ($\frac{2}{3}$) approval shall be
9 required, and a three-fourths ($\frac{3}{4}$) vote of the governing body of
10 the beneficiary, unless the beneficiary is a county in which case a
11 two-thirds ($\frac{2}{3}$) vote of the members of the governing body shall be
12 required, or three-fourths ($\frac{3}{4}$) vote of the governing bodies of
13 each of the beneficiaries of the trust, unless one of the
14 beneficiaries is a county in which case a two-thirds ($\frac{2}{3}$) vote of
15 the members of the governing body of such county shall be required.
16 No bonds shall be sold for less than par value, except upon approval
17 of three-fourths ($\frac{3}{4}$) of the trustees, unless the beneficiary is a
18 county in which case a two-thirds ($\frac{2}{3}$) vote of the members of the
19 governing body shall be required. In no event shall bonds be sold
20 for less than sixty-five percent (65%) of par value; provided,
21 however, in no event shall the original purchaser from the issuer of
22 any bonds issued by any public trust for any purpose receive
23 directly or indirectly any fees, compensation or other remuneration
24 in excess of four percent (4%) of the price paid for the bonds by

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

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

24

1 ~~I. Contracts for construction, labor, equipment, material or~~
2 ~~repairs in excess of Fifty Thousand Dollars (\$50,000.00) shall be~~
3 ~~awarded by public trusts to the lowest and best competitive bidder,~~
4 ~~pursuant to public invitation to bid, which shall be published in~~
5 ~~the manner provided in subsection G of this section; the~~
6 ~~advertisements shall appear in the county where the work, or the~~
7 ~~major part of it, is to be done, or the equipment or materials are~~
8 ~~to be delivered, or the services are to be rendered; provided,~~
9 ~~however, should the trustee or the trustees find that an immediate~~
10 ~~emergency exists, which findings shall be entered in the journal of~~
11 ~~the trust proceedings, by reason of which an immediate outlay of~~
12 ~~trust funds in an amount exceeding Seventy five Thousand Dollars~~
13 ~~(\$75,000.00) is necessary in order to avoid loss of life,~~
14 ~~substantial damage to property or damage to the public peace or~~
15 ~~safety, then the contracts may be made and entered into without~~
16 ~~public notice or competitive bids; provided that the provisions of~~
17 ~~this subsection shall not apply to contracts of industrial and~~
18 ~~cultural trusts. Notwithstanding the provisions of this subsection,~~
19 ~~equipment or materials may be purchased by a public trust directly~~
20 ~~from any contract duly awarded by this state or any state agency~~
21 ~~under The Oklahoma Central Purchasing Act, or from any contract duly~~
22 ~~awarded by a governmental entity which is the beneficiary of the~~
23 ~~public trust. Furthermore, any construction contract issued under~~
24 ~~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, services, and other items not procured pursuant to paragraph 1 of this subsection. Such policies and procedures may include

1 provisions regarding sole source and emergency purchases,
2 cooperative purchasing, purchasing from a state or its beneficiary's
3 contract, and any other provision necessary to meet the needs of the
4 trust.

5 J. Any public trust created pursuant to the provisions of this
6 section shall have the power to acquire lands by use of eminent
7 domain in the same manner and according to the procedures provided
8 for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes.

9 Any exercise of the power of eminent domain by a public trust
10 pursuant to the provisions of this section shall be limited to the
11 furtherance of public purpose projects involving revenue-producing
12 utility projects of which the public trust retains ownership;

13 provided, for public trusts in which the State of Oklahoma is the
14 beneficiary the exercise of the power of eminent domain may also be
15 used for public purpose projects involving air transportation.

16 Revenue-producing utility projects shall be limited to projects for
17 the transportation, delivery, treatment or furnishing of water for
18 domestic purposes or for power, including, but not limited to, the
19 construction of lakes, pipelines and water treatment plants or for
20 projects for rail transportation. Any public trust formed pursuant
21 to this section which has a county as its beneficiary shall have the
22 power to acquire, by use of eminent domain, any lands located either
23 inside the county, or contiguous to the county pursuant to the
24 limitations imposed pursuant to this section.

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

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

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

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

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

22 B. Unless otherwise specified in another state law authorizing
23 the creation of a state-beneficiary public trust, any public trust
24 that hereafter names the State of Oklahoma as the beneficiary shall

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

16 C. Any instrument or will creating a trust which is not within
17 the scope of subsection B of this section shall provide for the
18 appointment of a minimum of three trustees, their succession,
19 powers, duties, term, manner of removal and compensation subject to
20 the provisions of subsection E of this section, and in all such
21 respects the terms of ~~said~~ the instrument or will shall be
22 controlling. If the instrument or will makes no provision in regard
23 to any of the foregoing, then the general laws of the state shall
24 control as to the omissions.

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

20 E. Trustees of any public trust may be removed from office for
21 cause, including incompetency, neglect of duty, or malfeasance in
22 office, by a district court having jurisdiction. In the case of
23 persons appointed by the Governor, such persons shall be appointed
24 for terms not in excess of five (5) years, and shall be subject to

1 removal for cause. In the event of removal of a trustee under this
2 subsection, a successor trustee shall be appointed as provided in
3 the trust instrument. Provided, however, in the event a trustee is
4 so removed who is also a member of the governing board of a
5 municipal beneficiary, the successor trustee shall be appointed by
6 the judge of the court wherein the removal occurred; ~~said~~ the
7 successor trustee shall serve only until the removed trustee ceases
8 to serve as a member of the governing board of the municipal
9 beneficiary and his or her successor on ~~said~~ the board has
10 qualified.

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON RULES
20 April 13, 2022 - DO PASS AS AMENDED
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