

1 **SENATE FLOOR VERSION**

2 March 1, 2022

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 173

By: Rosino of the Senate

and

Miller of the House

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9 An Act relating to property; amending 60 O.S. 2021,
10 Section 176, which relates to trusts for benefit of
11 state, county, or municipality; removing certain
12 bidding requirements for certain public contracts;
13 providing for applicability of Public Competitive
14 Bidding Act of 1974 and Fair Pay for Construction Act
15 to certain public contracts; and providing an
16 effective date.

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

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

20 Section 176. A. Express trusts may be created to issue
21 obligations, enter into financing arrangements including, but not
22 limited to, lease-leaseback, sale-leaseback, interest rate swaps and
23 other similar transactions and to provide funds for the furtherance
24 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

1 both, or in any estate or interest in either or both, with the
2 state, or any county or municipality or any and all combinations
3 thereof, as the beneficiary thereof by:

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

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

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

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

1 those purposes, after the acceptance of the beneficial interest
2 therein by the beneficiary as hereinafter provided.

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

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

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

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

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

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

1 under this subsection by a three-fifths (3/5) vote of the governing
2 body.

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

1 for less than sixty-five percent (65%) of par value; provided,
2 however, in no event shall the original purchaser from the issuer of
3 any bonds issued by any public trust for any purpose receive
4 directly or indirectly any fees, compensation or other remuneration
5 in excess of four percent (4%) of the price paid for the bonds by
6 the purchaser of the bonds from the original purchaser; and further
7 provided, that the average coupon rate thereon shall in no event
8 exceed fourteen percent (14%) per annum. No public trust shall sell
9 bonds for less than ninety-six percent (96%) of par value until the
10 public trust has received from the underwriter or financial advisor
11 or, in the absence of an underwriter or financial advisor, the
12 initial purchaser of the bonds, an estimated alternative financing
13 structure or structures showing the estimated total interest and
14 principal cost of each alternative. At least one alternative
15 financing structure shall include bonds sold to the public at par.
16 Any estimates shall be considered a public record of the public
17 trust. Bonds, notes or other evidences of indebtedness issued by
18 any public trust shall be eligible for purchase by any state banking
19 association or corporation subject to such limitations as to
20 investment quality as may be imposed by regulations, rules or
21 rulings of the State Banking Commissioner.

22 H. Public trusts created pursuant to this section shall file
23 annually, with their respective beneficiaries, copies of financial
24 documents and reports sufficient to demonstrate the fiscal activity

1 of such trust, including, but not limited to, budgets, financial
2 reports, bond indentures and audits. Amendments to the adopted
3 budget shall be approved by the trustees of the public trust and
4 recorded as such in the official minutes of such trust.

5 I. ~~Contracts for construction, labor, equipment, material or~~
6 ~~repairs in excess of Fifty Thousand Dollars (\$50,000.00) shall be~~
7 ~~awarded by public trusts to the lowest and best competitive bidder,~~
8 ~~pursuant to public invitation to bid, which shall be published in~~
9 ~~the manner provided in subsection C of this section; the~~
10 ~~advertisements shall appear in the county where the work, or the~~
11 ~~major part of it, is to be done, or the equipment or materials are~~
12 ~~to be delivered, or the services are to be rendered; provided,~~
13 ~~however, should the trustee or the trustees find that an immediate~~
14 ~~emergency exists, which findings shall be entered in the journal of~~
15 ~~the trust proceedings, by reason of which an immediate outlay of~~
16 ~~trust funds in an amount exceeding Seventy-five Thousand Dollars~~
17 ~~(\$75,000.00) is necessary in order to avoid loss of life,~~
18 ~~substantial damage to property or damage to the public peace or~~
19 ~~safety, then the contracts may be made and entered into without~~
20 ~~public notice or competitive bids; provided that the Public~~
21 construction contracts as defined by the Public Competitive Bidding
22 Act of 1974 shall be subject to the Public Competitive Bidding Act
23 of 1974 and the Fair Pay for Construction Act, where applicable.
24 The provisions of this subsection shall not apply to contracts of

1 industrial and cultural trusts. ~~Notwithstanding the provisions of~~
2 ~~this subsection, equipment or materials may be purchased by a public~~
3 ~~trust directly from any contract duly awarded by this state or any~~
4 ~~state agency under The Oklahoma Central Purchasing Act, or from any~~
5 ~~contract duly awarded by a governmental entity which is the~~
6 ~~beneficiary of the public trust. Furthermore, any construction~~
7 ~~contract issued under this section may provide for a local bid~~
8 ~~preference of not more than five percent (5%) of the bid price if~~
9 ~~the public trust governing body determines that there is an economic~~
10 ~~benefit to the local area or economy. Provided, however, the local~~
11 ~~bidder or contractor must agree to perform the contract for the same~~
12 ~~price and terms as the bid proposed by the nonlocal bidder or~~
13 ~~contractor. Any bid preference granted hereunder must be in~~
14 ~~accordance with an established policy adopted by the governing body~~
15 ~~of the trust to clearly demonstrate the economic benefit to the~~
16 ~~local area or economy. Provided, further, no local bid preference~~
17 ~~shall be granted unless the local bidding entity is the second~~
18 ~~lowest qualified bid on the contract. The bid specifications shall~~
19 ~~clearly state that the bid is subject to a local bidder preference~~
20 ~~law. For purposes of this section, "local bid" means the bidding~~
21 ~~person is authorized to transact business in this state and~~
22 ~~maintains a bona fide establishment for transacting such business~~
23 ~~within this state. This provision does not apply to any~~
24 ~~construction contract for which federal funds are available for~~

1 ~~expenditure when its provisions may be in conflict with federal law~~
2 ~~or regulation.~~

3 J. Any public trust created pursuant to the provisions of this
4 section shall have the power to acquire lands by use of eminent
5 domain in the same manner and according to the procedures provided
6 for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes.
7 Any exercise of the power of eminent domain by a public trust
8 pursuant to the provisions of this section shall be limited to the
9 furtherance of public purpose projects involving revenue-producing
10 utility projects of which the public trust retains ownership;
11 provided, for public trusts in which the State of Oklahoma is the
12 beneficiary the exercise of the power of eminent domain may also be
13 used for public purpose projects involving air transportation.
14 Revenue-producing utility projects shall be limited to projects for
15 the transportation, delivery, treatment or furnishing of water for
16 domestic purposes or for power, including, but not limited to, the
17 construction of lakes, pipelines and water treatment plants or for
18 projects for rail transportation. Any public trust formed pursuant
19 to this section which has a county as its beneficiary shall have the
20 power to acquire, by use of eminent domain, any lands located either
21 inside the county, or contiguous to the county pursuant to the
22 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. This act shall become effective November 1, 2022.

12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
13 March 1, 2022 - DO PASS AS AMENDED
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