

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3692

By: Culver

6 AS INTRODUCED

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

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

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

15 Section 176. A. Express trusts may be created to issue
16 obligations, enter into financing arrangements including, but not
17 limited to, lease-leaseback, sale-leaseback, interest rate swaps and
18 other similar transactions and to provide funds for the furtherance
19 and accomplishment of any authorized and proper public function or
20 purpose of the state or of any county or municipality or any and all
21 combinations thereof, in real or personal property, or either or
22 both, or in any estate or interest in either or both, with the
23 state, or any county or municipality or any and all combinations
24 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 if the~~
2 ~~activity provides a~~ activities benefit ~~to a large class of the~~
3 ~~public within the beneficiary's geographic area or lessens the~~
4 ~~burdens of government of the beneficiary and which does not solely~~
5 ~~provide a benefit by generating administrative fees~~ and are approved
6 by the beneficiary of the public trust.

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

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

1 beneficiary shall be submitted in writing to the Governor of the
2 State of Oklahoma. The Governor must approve the proposed bylaws
3 before they take effect.

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

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

23 G. All bonds described in subsection F of this section, after
24 December 1, 1976, except bonds sold to the federal government or any

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

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

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

1 I. The following bidding requirements shall apply to public
2 trusts:

3 1. Contracts for construction, labor, or equipment, ~~material~~
4 ~~materials~~ or repairs in excess of ~~Fifty Thousand Dollars~~
5 ~~(\$50,000.00) the public construction contract as provided by Section~~
6 102 of Title 61 of the Oklahoma Statutes shall be awarded by public
7 trusts to the lowest ~~and best competitive~~ responsible bidder,
8 pursuant to a public invitation to bid, ~~which shall be published in~~
9 ~~the manner provided in subsection G 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.~~ Construction contracts entered into by a public
14 trust, when required, shall be administered, advertised, and awarded
15 pursuant to the Public Competitive Bidding Act of 1974. The public
16 trust may charge and retain actual costs for the duplication of
17 documents, including sets of bid documents to prospective bidders;

18 2. Any construction contract issued under this section by a
19 public trust may provide for a local bid preference of not more than
20 five percent (5%) of the bid price if the public trust governing
21 body determines that there is an economic benefit to the local area
22 or economy. Provided, however, the local bidder or contractor must
23 agree to perform the contract for the same price and terms as the
24 bid proposed by the nonlocal bidder or contractor. Any bid

1 preference granted hereunder must be in accordance with an
2 established policy adopted by the governing body of the trust to
3 clearly demonstrate the economic benefit to the local area or
4 economy. No local bid preference shall be granted unless the local
5 bidding entity is the second lowest qualified bid on the contract.
6 The bid specifications shall clearly state that the bid is subject
7 to a local bidder preference law. For purposes of this section,
8 "local bid" means the bidding person is authorized to transact
9 business in this state and maintains a bona fide establishment for
10 transacting such business within this state. This provision does
11 not apply to any construction contract for which federal funds are
12 available for expenditure when its provisions may be in conflict
13 with federal law or regulation;

14 3. Should the trustee or the trustees find that an immediate
15 emergency exists, ~~which findings shall be entered in the journal of~~
16 ~~the trust proceedings,~~ by reason of which an immediate outlay of
17 trust funds in an amount exceeding ~~Seventy-five Thousand Dollars~~
18 ~~(\$75,000.00) the emergency threshold provided in the Public~~
19 Competitive Bidding Act of 1974 is necessary in order to avoid loss
20 of life, substantial damage to property or damage to the public
21 peace or safety, then the contracts may be made and entered into
22 without public notice or competitive bids; provided that the
23 provisions of this subsection shall not apply to contracts of
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1 industrial and cultural trusts. Findings of an emergency shall be
2 entered in the journal or minutes of the trust proceedings;

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

9 ~~Furthermore, any construction contract issued under this section~~
10 ~~may provide for a local bid preference of not more than five percent~~
11 ~~(5%) of the bid price if the public trust governing body determines~~
12 ~~that there is an economic benefit to the local area or economy.~~
13 ~~Provided, however, the local bidder or contractor must agree to~~
14 ~~perform the contract for the same price and terms as the bid~~
15 ~~proposed by the nonlocal bidder or contractor. Any bid preference~~
16 ~~granted hereunder must be in accordance with an established policy~~
17 ~~adopted by the governing body of the trust to clearly demonstrate~~
18 ~~the economic benefit to the local area or economy. Provided,~~
19 ~~further, no local bid preference shall be granted unless the local~~
20 ~~bidding entity is the second lowest qualified bid on the contract.~~
21 ~~The bid specifications shall clearly state that the bid is subject~~
22 ~~to a local bidder preference law. For purposes of this section,~~
23 ~~"local bid" means the bidding person is authorized to transact~~
24 ~~business in this state and maintains a bona fide establishment for~~

1 ~~transacting such business within this state. This provision does~~
2 ~~not apply to any construction contract for which federal funds are~~
3 ~~available for expenditure when its provisions may be in conflict~~
4 ~~with federal law or regulation.;~~

5 5. A public trust may purchase equipment, labor, or both
6 directly from any contract duly awarded by this state or any state
7 agency under the Oklahoma Central Purchasing Act, or from any
8 contract duly awarded by a governmental entity which is the
9 beneficiary of a public trust;

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

21 7. A public trust may enter into a cooperative purchasing
22 agreement for the purchase of equipment or labor if economically
23 justified by way of savings, material economic value, or both. The
24 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 of the board of any trust governed
7 by this section shall have the same obligations to serve the trust
8 as a public officer. Elected officials who also serve as trustees,
9 who are public officers, shall serve without compensation, but may
10 be reimbursed for actual expenses incurred in the performance of
11 their duties as trustees. Trustees who are not elected officials
12 may receive reasonable compensation and may be reimbursed for actual
13 expenses related to the performance of their duties as trustees.
14 Reasonable compensation shall for purposes of this section not
15 exceed a stipend per meeting of the regional average for
16 compensation of members of other governmental or nonprofit boards
17 and shall be approved by the beneficiary of the public trust. If
18 the ~~said~~ instrument or will makes no provisions in regard to any of
19 the foregoing, then the general laws of the state shall control as
20 to such omission or omissions. Every person hereafter becoming a
21 trustee of a public trust first shall take the oath of office
22 required of an elected public officer and every officer and employee
23 who handles funds of a public trust shall furnish a good and
24 sufficient fidelity bond in an amount and with surety as may be

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

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

1 shall appoint a successor who shall serve for a term of five (5)
2 years. Whenever a vacancy on such trust shall occur by death,
3 resignation or otherwise, the Governor shall fill the same by
4 appointment and the appointee shall hold office during the unexpired
5 term. Each member shall hold office until his or her successor has
6 been appointed and qualified.

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

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

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

11 E. Trustees of any public trust may be removed from office for
12 cause, including incompetency, neglect of duty, or malfeasance in
13 office, by a district court having jurisdiction. In the case of
14 persons appointed by the Governor, such persons shall be appointed
15 for terms not in excess of five (5) years, and shall be subject to
16 removal for cause. In the event of removal of a trustee under this
17 subsection, a successor trustee shall be appointed as provided in
18 the trust instrument. Provided, however, in the event a trustee is
19 so removed who is also a member of the governing board of a
20 municipal beneficiary, the successor trustee shall be appointed by
21 the judge of the court wherein the removal occurred; ~~said the~~ the
22 successor trustee shall serve only until the removed trustee ceases
23 to serve as a member of the governing board of the municipal
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1 beneficiary and his or her successor on ~~said~~ the board has
2 qualified.

3 F. The provisions of this section shall be inapplicable to any
4 public trust created and existing prior to July 1, 1988, if the
5 instrument or will creating such public trust shall have been held
6 to be a valid and binding agreement in an opinion of the Supreme
7 Court of the State of Oklahoma; and nothing in this section shall
8 impair or be deemed to impair the trust indenture or existing or
9 future obligations of such public trust.

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

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