

OKLAHOMA STATE SENATE  
CONFERENCE  
COMMITTEE REPORT

May 11, 2021

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB858

By: Rosino of the Senate and Steagall and Manger of the House

Title: Trusts; providing for operation of jail trusts in counties with a certain population. Emergency.


together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,


SENATE CONFEREES:

  
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Rosino

  
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Dugger

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Floyd

  
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Haste

  
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Weaver

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Young

HOUSE CONFEREES:

Conference Committee on County and Municipal Government

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED

SENATE BILL NO. 858

By: Rosino of the Senate

and

Steagall of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to trusts; amending 60 O.S. 2011, Section 176, as last amended by Section 1 of Enrolled Senate Bill No. 88 of the 1st Session of the 58th Oklahoma Legislature, which relates to trusts for benefit of state, county or municipality; providing for operation of trusts in counties with certain populations; establishing membership of trusts; prohibiting certain appointments; stating that appointment of a county commissioner to the trust shall not be considered a right; and declaring an emergency.

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 of Enrolled Senate Bill No. 88 of the 1st Session of the 58th Oklahoma Legislature, is amended to read as follows:

Section 176. A. Express trusts may be created to issue obligations, enter into financing arrangements including, but not

1 limited to, lease-leaseback, sale-leaseback, interest rate swaps and  
2 other similar transactions and to provide funds for the furtherance  
3 and accomplishment of any authorized and proper public function or  
4 purpose of the state or of any county or municipality or any and all  
5 combinations thereof, in real or personal property, or either or  
6 both, or in any estate or interest in either or both, with the  
7 state, or any county or municipality or any and all combinations  
8 thereof, as the beneficiary thereof by:

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

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

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

17 4. The express approval of two-thirds (2/3) of the membership  
18 of the governing body of each beneficiary in the event a trust has  
19 more than one beneficiary; provided, that no funds of a beneficiary  
20 derived from sources other than the trust property, or the operation  
21 thereof, shall be charged with or expended for the execution of the  
22 trust, except by express action of the legislative authority of the  
23 beneficiary prior to the charging or expending of the funds. The  
24 officers or any other governmental agencies or authorities having

1 the custody, management, or control of any property, real or  
2 personal or mixed, of the beneficiary of the trust, or of a proposed  
3 trust, which property shall be needful for the execution of the  
4 trust purposes, are authorized and empowered to lease the property  
5 for those purposes, after the acceptance of the beneficial interest  
6 therein by the beneficiary as hereinafter provided.

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

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

1 interest or other restrictions burdening the property and subject to  
2 any reversionary interest or other restriction considered prudent by  
3 the municipality.

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

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

17 F. No trust in which a county or municipality is the  
18 beneficiary shall hereafter create an indebtedness or obligation  
19 until the indebtedness or obligation has been approved by a two-  
20 thirds (2/3) vote of the governing body of the beneficiary. In the  
21 event a trust has more than one beneficiary, as authorized by this  
22 section, the trust shall not incur an indebtedness or obligation  
23 until the indebtedness or obligation has been approved by a two-  
24 thirds (2/3) vote of the governing body of two-thirds (2/3) of the

1 beneficiaries of the trust. Provided, however, a municipality with  
2 a governing body consisting of fewer than seven (7) members shall be  
3 required to approve the creation of an indebtedness or obligation  
4 under this subsection by a three-fifths (3/5) vote of the governing  
5 body.

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

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

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

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



1 cultural trusts. Notwithstanding the provisions of this subsection,  
2 equipment or materials may be purchased by a public trust directly  
3 from any contract duly awarded by this state or any state agency  
4 under The Oklahoma Central Purchasing Act, or from any contract duly  
5 awarded by a governmental entity which is the beneficiary of the  
6 public trust. Furthermore, any construction contract issued under  
7 this section may provide for a local bid preference of not more than  
8 five percent (5%) of the bid price if the public trust governing  
9 body determines that there is an economic benefit to the local area  
10 or economy. Provided, however, the local bidder or contractor must  
11 agree to perform the contract for the same price and terms as the  
12 bid proposed by the nonlocal bidder or contractor. Any bid  
13 preference granted hereunder must be in accordance with an  
14 established policy adopted by the governing body of the trust to  
15 clearly demonstrate the economic benefit to the local area or  
16 economy. Provided, further, no local bid preference shall be  
17 granted unless the local bidding entity is the second lowest  
18 qualified bid on the contract. The bid specifications shall clearly  
19 state that the bid is subject to a local bidder preference law. For  
20 purposes of this section, "local bid" means the bidding person is  
21 authorized to transact business in this state and maintains a bona  
22 fide establishment for transacting such business within this state.  
23 This provision does not apply to any construction contract for which  
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1 federal funds are available for expenditure when its provisions may  
2 be in conflict with federal law 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 in a county with a population not exceeding three  
7 hundred thousand (300,000) people shall consist of not less than  
8 five members and include a county commissioner and the county  
9 sheriff, or their designee, and one member appointed by each of the  
10 county commissioners. The appointed members shall not be elected  
11 officials.

12 M. Any trust created under Section 176 et seq. of this title,  
13 in whole or in part, to operate, administer, or oversee any county  
14 jail facility in a county with a population exceeding three hundred  
15 thousand (300,000) people shall consist of not less than five  
16 members and include a county commissioner and the county sheriff, or  
17 their designee, and at least three members chosen at large by the  
18 board of county commissioners. The appointed members shall not be  
19 elected officials. Notwithstanding any provision to the contrary in  
20 the trust indenture, no individual county commissioner shall have  
21 the right to any appointment to the trust.

22 SECTION 2. It being immediately necessary for the preservation  
23 of the public peace, health or safety, an emergency is hereby  
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1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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