

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 582

By: Montgomery

AS INTRODUCED

An Act relating to public finance; creating the Oklahoma Prosperity Act; providing short title; making act contingent on certain appropriation; defining terms; requiring State Treasurer to develop and operate the Oklahoma Prosperity Act Program in accordance with stated requirements; establishing certain persons as fiduciary for accounts established under Program; exempting certain persons from fiduciary duty; providing standard of fiduciary duty; establishing mandates for designing and operating program; authorizing adoption of certain rules; creating the Oklahoma Prosperity Act Administrative Fund; specifying terms of the fund; creating the Oklahoma Prosperity Act Trust; authorizing Treasurer to appoint certain persons as trustee or custodian; requiring assets of certain IRAs be allocated to trust and managed for certain purpose; requiring establishment of at least one investment fund within the trust; establishing terms of investment funds; authorizing Treasurer to hire investment advisers for certain purpose; specifying terms of trust maintenance and investments; requiring trust assets be held separate from state assets; prohibiting liability of state for trust; exempting trust monies from state income tax; authorizing trust to be established by adoption of fund of other state in certain circumstances; requiring program be established in certain time frame; authorizing Treasurer to extend time frame; authorizing Treasurer to establish pilot program or rollouts for implementing act; amending 75 O.S. 2021, Section 250.4, which relates to the Administrative Procedures Act; providing exemption for certain activities; updating statutory language; providing for

1 noncodification; providing for codification; and  
2 providing an effective date.

3  
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. NEW LAW A new section of law not to be  
6 codified in the Oklahoma Statutes reads as follows:

7 This act shall be known and may be cited as the "Oklahoma  
8 Prosperity Act".

9 SECTION 2. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 3600 of Title 62, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. Implementation of this act shall be subject to the receipt  
13 of appropriations sufficient to establish the Oklahoma Prosperity  
14 Act Program, as defined in this section.

15 B. As used in this act:

16 1. "Administrative fund" shall mean the Oklahoma Prosperity Act  
17 administrative fund established under this act;

18 2. "Contribution rate" means the percentage of the wages of a  
19 covered employee that is withheld from his or her wages and paid to  
20 the individual retirement account or individual retirement annuity  
21 established for the covered employee under the Program;

22 3. "Covered employee" means any individual who is eighteen (18)  
23 years of age or older, who is employed by a participating employer  
24 and who has wages that are allocable to the state. For purposes of

1 the investment, withdrawal, transfer, rollover, or other  
2 distribution of an individual retirement account or individual  
3 retirement annuity, the term covered employee also includes the  
4 beneficiary of a deceased covered employee;

5 4. "Employer" means a person or entity engaged in a business,  
6 profession, trade, or other enterprise in the state, whether for  
7 profit or not-for-profit, that employs one or more individuals in  
8 the state; provided, that a federal or state entity, agency, or  
9 instrumentality or any political subdivision thereof, shall not be  
10 an employer;

11 5. "Enrollee" means any covered employee enrolled in the  
12 Oklahoma Prosperity Act Program;

13 6. "Internal Revenue Code" means the federal Internal Revenue  
14 Code of 1986, as amended;

15 7. "Investment adviser" means either:

16 a. an investment adviser registered under the U.S.  
17 Investment Advisers Act of 1940, or

18 b. a bank or other institution exempt from registration  
19 under the U.S. Investment Advisers Act of 1940;

20 8. "Investment fund" means each investment portfolio  
21 established within the trust for investment purposes;

22 9. "IRA" means either an individual retirement account or  
23 individual retirement annuity established under Section 408 or 408A  
24 of Title 26 of the Internal Revenue Code;

1       10. "Participating employer" means an employer electing to  
2 participate in the Oklahoma Prosperity Act Program that has not been  
3 a participating or contributing employer in a retirement plan, an  
4 automatic enrollment payroll deduction IRA, or a qualified  
5 retirement plan in compliance with federal law for its employees  
6 including plans qualified under Section 401(a), 401(k), 403(a),  
7 403(b), 408(k), 408(p), 457(b), or 457(f) of Title 26 of the  
8 Internal Revenue Code or any deferred compensation plan offered by  
9 any employer at any time during the preceding two (2) calendar  
10 years;

11       11. "Program" means the Oklahoma Prosperity Act Program  
12 established under this act;

13       12. "State" means the State of Oklahoma;

14       13. "State Treasurer" means the Oklahoma State Treasurer;

15       14. "Trust" means the IRA retirement trust or annuity contract  
16 established under Section 7 of this act;

17       15. "Trustee" means the trustee of the trust including an  
18 insurance company issuing an annuity contract selected under Section  
19 4 of this act; and

20       16. "Wages" means compensation within the meaning of Section  
21 219(f) (1) of Title 26 of the Internal Revenue Code that is received  
22 by a covered employee from a participating employer.  
23  
24  
25

1 SECTION 3. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3601 of Title 62, unless there  
3 is created a duplication in numbering, reads as follows:

4 The State Treasurer shall have the following powers and duties  
5 in implementing the provisions of this act:

6 1. To design, establish, and operate the Oklahoma Prosperity  
7 Act Program in accordance with the requirements established in this  
8 act;

9 2. To collect fees to defray the costs of administering the  
10 Program;

11 3. To enter into contracts necessary or desirable for the  
12 establishment and administration of the Program;

13 4. To hire, retain, and terminate third-party service providers  
14 for the Program including, but not limited to, consultants,  
15 investment managers or advisors, trustees, custodians, insurance  
16 companies, record keepers, administrators, actuaries, counsel,  
17 auditors, and other professionals; provided, that each service  
18 provider shall be authorized to do business in this state. For  
19 purposes of selecting a third-party service provider, the Office of  
20 the State Treasurer shall be exempt from the Oklahoma Central  
21 Purchasing Act; provided, that a competitive process shall be  
22 developed and utilized to select service providers;

23 5. To determine the type or types of IRAs to be offered;

24  
25

1           6. To employ a program administrator and any other individuals  
2 necessary to administer the Program and the administrative fund;

3           7. To develop and implement an outreach plan and disseminate  
4 information regarding the Program and retirement and financial  
5 education in general, to employees, employers, and other  
6 constituents in the state;

7           8. To adopt rules and procedures for the establishment and  
8 operation of the Program and to take such other actions as necessary  
9 to operate the Program in accordance with the provisions of this  
10 act. Any guidelines or procedures affecting the Program may be  
11 implemented after reasonable notice to the public and a public  
12 comment period, in a manner similar to the requirements of the  
13 Administrative Procedures Act. However, the Administrative  
14 Procedures Act shall not apply for purposes of this section; and

15           9. If applicable, to establish and maintain the Program by  
16 contracting with another state, partnering with one or more states  
17 to create a joint auto-IRA program, allowing states to participate  
18 in the Program, or forming a consortium with one or more other  
19 states in which certain aspects of the Program of each state are  
20 combined for administrative convenience and efficiency.

21           SECTION 4.       NEW LAW       A new section of law to be codified  
22 in the Oklahoma Statutes as Section 3602 of Title 62, unless there  
23 is created a duplication in numbering, reads as follows:

1 A. The trustee and each investment adviser shall be a fiduciary  
2 with respect to the trust and IRAs established and maintained under  
3 the Oklahoma Prosperity Act Program.

4 B. Each participating employer shall be required to provide  
5 covered employees with the information as required by the Program.  
6 No employer acting pursuant to this act shall be considered a  
7 fiduciary with respect to the trust or an IRA or have fiduciary  
8 responsibilities under the act.

9 C. Each fiduciary shall discharge its duties with respect to  
10 the Program solely in the best interests of covered employees and  
11 with the care, skill, prudence, and diligence under the prevailing  
12 circumstances that a prudent person acting in a similar capacity and  
13 familiar with those matters would use in the conduct of an  
14 enterprise of like character and aims.

15 SECTION 5. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 3603 of Title 62, unless there  
17 is created a duplication in numbering, reads as follows:

18 The Oklahoma Prosperity Act Program shall be designed,  
19 established, and operated in accordance with the following  
20 provisions:

21 1. Each participating employer may offer to each covered  
22 employee an opportunity to contribute to an IRA established under  
23 the Program for the benefit of the covered employee through  
24

1 withholding from his or her wages. No employer shall be permitted  
2 to contribute to the Program;

3 2. Unless the covered employee elects not to participate in the  
4 Program, he or she may be automatically enrolled in the Program and  
5 contributions shall be withheld from the wages of the covered  
6 employee;

7 3. The minimum contribution rate of each enrollee shall be  
8 three percent (3%); the minimum contribution rate shall be the  
9 default contribution rate;

10 4. The IRAs shall qualify for favorable federal income tax  
11 treatment under Sections 408 and 408A of Title 26, as appropriate,  
12 of the Internal Revenue Code;

13 5. Each participating employer shall deposit withheld  
14 contributions of the enrollee under the Program with the trustee in  
15 such manner as is determined by the State Treasurer; provided, that  
16 the employer shall deliver the amounts withheld to the trustee  
17 within thirty (30) business days after the date the amounts  
18 otherwise would have been paid to the enrollee;

19 6. Additional rules and procedures may be adopted in  
20 conjunction with established Internal Revenue Service (IRS)  
21 regulations for withdrawals, distributions, transfers, and rollovers  
22 of IRAs and for the designation of IRA beneficiaries;

23 7. Information regarding the Program shall be made available to  
24 the public on a website maintained for the Program;

1           8. Audited financial reports shall be submitted to the Governor  
2 and Legislature within two (2) years after the Program is  
3 established and annually thereafter at the end of each fiscal year;

4           9. Each participating employer shall be provided information  
5 regarding the Program and disclosures including:

6           a. a description of the benefits and risks associated  
7 with investments offered in the Program,

8           b. instructions about how to obtain additional  
9 information about the Program,

10          c. a description of the federal and state income tax  
11 consequences of an IRA, which may consist of or  
12 include the disclosure statement required to be  
13 distributed under the Internal Revenue Code and the  
14 Treasury Regulations thereunder,

15          d. a statement that covered employees seeking financial  
16 advice should contact their own financial advisors,  
17 that participating employers shall not provide  
18 financial advice, and that participating employers are  
19 not liable for decisions covered employees make under  
20 the act,

21          e. a statement that the Program is not an employer-  
22 sponsored retirement plan,  
23  
24  
25

- 1 f. a statement that neither the Program nor the IRA of  
2 the enrollee established under the Program is  
3 guaranteed by the state,  
4 g. a statement that neither a participating employer nor  
5 the state will monitor or has an obligation to monitor  
6 the eligibility of the covered employee under the  
7 Internal Revenue Code to make contributions to an IRA  
8 or to monitor whether the contribution of the enrollee  
9 to the IRA established for the enrollee under the  
10 Program exceeds the maximum permissible IRA  
11 contribution; it shall be the responsibility of the  
12 covered employee, and  
13 h. a statement that neither the state nor the  
14 participating employer will have any liability with  
15 respect to any failure of the covered employee to be  
16 eligible to make IRA contributions or any contribution  
17 in excess of the maximum IRA contribution;

18 10. Any information, forms, or instructions to be furnished to  
19 covered employees that provide the covered employee with the  
20 procedures for:

- 21 a. making contributions to the IRA of the covered  
22 employee established under the Program including a  
23 description of the minimum contribution rate and the  
24

1 right to elect to make no contribution or to change  
2 the contribution rate under the Program,

3 b. making an investment election with respect to the IRA  
4 of the covered employee established under the Program  
5 including a description of the default investment  
6 fund, and

7 c. making transfers, rollovers, withdrawals, and other  
8 distributions from the IRA of the covered employee;

9 11. Each participating employer shall deliver or facilitate the  
10 delivery of the information about the Program to each covered  
11 employee at the time and in the manner as established by Program  
12 guidelines; and

13 12. The Program shall be designed and operated in a manner that  
14 will cause it not to be an employee benefit plan within the meaning  
15 of Section 3(3) of the Employee Retirement Income Security Act of  
16 1974.

17 SECTION 6. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 3604 of Title 62, unless there  
19 is created a duplication in numbering, reads as follows:

20 There is hereby created in the Office of the State Treasurer a  
21 fund to be designated as the "Oklahoma Prosperity Act Administrative  
22 Fund". The fund shall be a continuing fund, not subject to fiscal  
23 year limitations, and shall consist of monies appropriated for the  
24 administration of the Oklahoma Prosperity Act Program, all

1 administrative fees collected, and any other monies designated to  
2 the fund by law. All monies accruing to the credit of the fund are  
3 hereby appropriated and may be budgeted and expended by the State  
4 Treasurer for expenses related to the administration and support of  
5 the Program. Expenditures from the fund shall be made upon warrants  
6 issued by the State Treasurer against claims filed as prescribed by  
7 law with the Director of the Office of Management and Enterprise  
8 Services for approval and payment.

9 SECTION 7. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 3605 of Title 62, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. There is hereby created as an instrumentality of the state a  
13 trust to be known as the "Oklahoma Prosperity Act Trust".

14 B. The State Treasurer may appoint qualified financial  
15 institutions to act as trustee or custodian of the IRA accounts.

16 C. The assets of IRAs established for covered employees shall  
17 be allocated to the Trust and combined for investment purposes.  
18 Trust assets shall be managed and administered for the purposes of  
19 providing services to enrollees and defraying reasonable  
20 administrative expenses of the Oklahoma Prosperity Act Program.

21 D. There shall be established within the Trust one or more  
22 investment funds. The first One Thousand Dollars (\$1,000.00) in  
23 contributions made by, or on behalf of, an enrollee may be deposited  
24 into a default capital preservation investment fund and the enrollee

1 may be provided an account revocation period during which, if the  
2 enrollee chooses to end participation in the Program, the enrollee  
3 may withdraw the deposited amounts from the default investment  
4 without penalty.

5 E. Enrollees may allocate assets of their IRAs among investment  
6 funds and a default investment fund may be designated for the IRAs  
7 of enrollees who do not select an investment fund.

8 F. The State Treasurer may retain investment advisers to select  
9 and manage the investments of investment funds on a discretionary  
10 basis, subject to ongoing review and oversight.

11 G. The assets of the Trust shall be maintained, invested, and  
12 expended solely for the purposes of the Trust and no property rights  
13 therein shall exist in favor of the state or any participating  
14 employer. Trust assets shall not be transferred or used by the  
15 state for any purposes other than the purposes of the Trust or  
16 funding the expenses of operating the Program.

17 H. The assets of the Trust shall be held separate and apart  
18 from the assets of the state.

19 I. There shall be no liability for the state, the Program, the  
20 State Treasurer, or any employer for investment losses incurred by  
21 any covered employee as a result of participating in the Program.

22 J. The Trust and each investment fund shall not be subject to  
23 income tax of this state.

1 K. If the Program is established by using the IRA program of  
2 another state, a joint program, or a consortium with one or more  
3 other states, then the Trust may be established by adopting the  
4 trust established under the program of the other state or states or  
5 as a master trust or similar arrangement with the other state or  
6 states; provided, that the trust, master trust, or similar  
7 arrangement satisfies the requirements of this section.

8 SECTION 8. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 3606 of Title 62, unless there  
10 is created a duplication in numbering, reads as follows:

11 The Oklahoma Prosperity Act Program shall be established so that  
12 enrollees may begin making contributions within twenty-four (24)  
13 months of the effective date of this act; provided, that the State  
14 Treasurer may extend the period within which the Program is  
15 implemented by twelve (12) months. The State Treasurer may  
16 establish a pilot program for certain participating employers, may  
17 provide for a staggered rollout of the Program so that participating  
18 employers may offer the Program to covered employees in stages based  
19 on employee headcount or other criteria, or both.

20 SECTION 9. AMENDATORY 75 O.S. 2021, Section 250.4, is  
21 amended to read as follows:

22 Section 250.4. A. 1. Except as is otherwise specifically  
23 provided in this subsection, each agency is required to comply with  
24 Article I of the Administrative Procedures Act.

1           2. The Corporation Commission shall be required to comply with  
2 the provisions of Article I of the Administrative Procedures Act  
3 except for subsections A, B, C, and E of Section 303 of this title  
4 and Section 306 of this title. To the extent of any conflict or  
5 inconsistency with Article I of the Administrative Procedures Act,  
6 pursuant to Section 35 of Article IX of the Oklahoma Constitution,  
7 it is expressly declared that Article I of the Administrative  
8 Procedures Act is an amendment to and alteration of Sections 18  
9 through 34 of Article IX of the Oklahoma Constitution.

10           3. The ~~Oklahoma~~ Military Department of the State of Oklahoma  
11 shall be exempt from the provisions of Article I of the  
12 Administrative Procedures Act to the extent it exercises its  
13 responsibility for military affairs. Military publications, as  
14 defined in Section 801 of Title 44 of the Oklahoma Statutes, shall  
15 be exempt from the provisions of Article I and Article II of the  
16 Administrative Procedures Act, except as provided in Section 251 of  
17 this title.

18           4. The Oklahoma Ordnance Works Authority, the Northeast  
19 Oklahoma Public Facilities Authority, the Oklahoma Office of  
20 Homeland Security, and the Board of Trustees of the Oklahoma College  
21 Savings Plan shall be exempt from Article I of the Administrative  
22 Procedures Act.

23           5. The Transportation Commission and the Department of  
24 Transportation shall be exempt from Article I of the Administrative  
25

1 Procedures Act to the extent they exercise their authority in  
2 adopting standard specifications, special provisions, plans, design  
3 standards, testing procedures, federally imposed requirements and  
4 generally recognized standards, project planning and programming,  
5 and the operation and control of the State Highway System.

6 6. The Oklahoma State Regents for Higher Education shall be  
7 exempt from Article I of the Administrative Procedures Act with  
8 respect to:

- 9 a. prescribing standards of higher education,
- 10 b. prescribing functions and courses of study in each  
11 institution to conform to the standards,
- 12 c. granting of degrees and other forms of academic  
13 recognition for completion of the prescribed courses,
- 14 d. allocation of state-appropriated funds, and
- 15 e. fees within the limits prescribed by the Legislature.

16 7. Institutional governing boards within The Oklahoma State  
17 System of Higher Education shall be exempt from Article I of the  
18 Administrative Procedures Act.

- 19 8. a. The Commissioner of Public Safety shall be exempt from  
20 Sections 303.1, 304, 307.1, 308, and 308.1 of this  
21 title insofar as it is necessary to promulgate rules  
22 pursuant to the Oklahoma Motor Carrier Safety and  
23 Hazardous Materials Transportation Act, to maintain a  
24 current incorporation of federal motor carrier safety  
25

1 and hazardous material regulations, or pursuant to  
2 Chapter 6 of Title 47 of the Oklahoma Statutes, to  
3 maintain a current incorporation of federal commercial  
4 driver license regulations, for which the Commissioner  
5 has no discretion when the state is mandated to  
6 promulgate rules identical to federal rules and  
7 regulations.

8 b. Such rules may be adopted by the Commissioner and  
9 shall be deemed promulgated twenty (20) days after  
10 notice of adoption is published in "The Oklahoma  
11 Register". Such publication need not set forth the  
12 full text of the rule but may incorporate the federal  
13 rules and regulations by reference.

14 c. Such copies of promulgated rules shall be filed with  
15 the Secretary as required by Section 251 of this  
16 title.

17 d. For any rules for which the Commissioner has  
18 discretion to allow variances, tolerances, or  
19 modifications from the federal rules and regulations,  
20 the Commissioner shall fully comply with Article I of  
21 the Administrative Procedures Act.

22 9. The Council on Judicial Complaints shall be exempt from  
23 Section 306 of Article I of the Administrative Procedures Act, with  
24 respect to review of the validity or applicability of a rule by an  
25

1 action for declaratory judgment, or any other relief based upon the  
2 validity or applicability of a rule, in the district court or by an  
3 appellate court. A party aggrieved by the validity or applicability  
4 of a rule made by the Council on Judicial Complaints may petition  
5 the Court on the Judiciary to review the rules and issue opinions  
6 based upon them.

7 10. The Department of Corrections, State Board of Corrections,  
8 county sheriffs, and managers of city jails shall be exempt from  
9 Article I of the Administrative Procedures Act with respect to:

- 10 a. prescribing internal management procedures for the  
11 management of the state prisons, county jails, and  
12 city jails and for the management, supervision, and  
13 control of all incarcerated prisoners, and  
14 b. prescribing internal management procedures for the  
15 management of the probation and parole unit of the  
16 Department of Corrections and for the supervision of  
17 probationers and parolees.

18 11. The State Board of Education shall be exempt from Article I  
19 of the Administrative Procedures Act with respect to prescribing  
20 subject matter standards as provided for in Section 11-103.6a of  
21 Title 70 of the Oklahoma Statutes.

22 B. As specified, the following agencies or classes of agency  
23 activities are not required to comply with the provisions of Article  
24 II of the Administrative Procedures Act:

- 1       1. The Oklahoma Tax Commission, except as provided in
- 2 subsection G of Section 1140 of Title 47 of the Oklahoma Statutes;
- 3       2. The Commission for Human Services;
- 4       3. The Oklahoma Ordnance Works Authority;
- 5       4. The Corporation Commission;
- 6       5. The Pardon and Parole Board;
- 7       6. The Midwestern Oklahoma Development Authority;
- 8       7. The Grand River Dam Authority;
- 9       8. The Northeast Oklahoma Public Facilities Authority;
- 10      9. The Council on Judicial Complaints;
- 11      10. The Board of Trustees of the Oklahoma College Savings Plan;
- 12      11. The supervisory or administrative agency of any penal,
- 13 mental, medical or eleemosynary institution, only with respect to
- 14 the institutional supervision, custody, control, care, or treatment
- 15 of inmates, prisoners, or patients therein; provided, that the
- 16 provisions of Article II shall apply to and govern all
- 17 administrative actions of the Oklahoma Alcohol Prevention, Training,
- 18 Treatment and Rehabilitation Authority;
- 19      12. The Board of Regents or employees of any university,
- 20 college, or other institution of higher learning;
- 21      13. The Oklahoma Horse Racing Commission, its employees, or
- 22 agents only with respect to hearing and notice requirements on the
- 23 following classes of violations which are an imminent peril to the
- 24 public health, safety, and welfare:

- a. any rule regarding the running of a race,
- b. any violation of medication laws and rules,
- c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,
- d. any assault or other destructive acts within Commission-licensed premises,
- e. any violation of prohibited devices, laws, and rules, or
- f. any filing of false information;

14. The Commissioner of Public Safety only with respect to driver license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

15. The Administrator of the Department of Securities only with respect to hearings conducted pursuant to provisions of the Oklahoma Take-over Disclosure Act of 1985;

16. Hearings conducted by a public agency pursuant to Section 962 of Title 47 of the Oklahoma Statutes;

17. The ~~Oklahoma~~ Military Department of the State of Oklahoma;

18. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority;

19. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority; ~~and~~

1           20. The Oklahoma Office of Homeland Security; and

2           21. The State Treasurer with respect to the adoption of rules

3 and procedures for the implementation and operation of the Oklahoma

4 Prosperity Act pursuant to Section 1 of this act.

5           SECTION 10. This act shall become effective November 1, 2023.

6  
7           59-1-494           QD           1/17/2023 6:21:24 PM