

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3692

By: Wallace of the House

and

Garvin of the Senate

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10 COMMITTEE SUBSTITUTE

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

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

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

19 Section 176. A. Express trusts may be created to issue
20 obligations, enter into financing arrangements including, but not
21 limited to, lease-leaseback, sale-leaseback, interest rate swaps and
22 other similar transactions and to provide funds for the furtherance
23 and accomplishment of any authorized and proper public function or
24 purpose of the state or of any county or municipality or any and all

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

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

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

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

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

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.

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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, or equipment, material~~
6 ~~materials or repairs in excess of Fifty Thousand Dollars~~
7 ~~(\$50,000.00) shall be awarded by public trusts to the lowest and~~
8 ~~best competitive, pursuant to public invitation to bid, which shall~~
9 ~~be published in the manner provided in subsection C of this section;~~
10 ~~the 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 following bidding requirements shall apply to
14 public trusts:

15 1. Construction contracts entered into by a public trust, when
16 required, shall be administered, advertised, and awarded pursuant to
17 the Public Competitive Bidding Act of 1974;

18 2. Operational contracts entered into by public trusts for
19 labor or equipment in excess of Two Hundred Fifty Thousand Dollars
20 (\$250,000.00) shall be awarded by public trusts to the lowest
21 responsible bidder, pursuant to a bid, which shall be published in
22 the manner consistent with the bid solicitation requirements imposed
23 on state agencies under the Oklahoma Central Purchasing Act;

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1 3. Any construction contract issued under this section by a
2 public trust may provide for a local bid preference of not more than
3 five percent (5%) of the bid price if the public trust governing
4 body determines that there is an economic benefit to the local area
5 or economy. Provided, however, the local bidder or contractor must
6 agree to perform the contract for the same price and terms as the
7 bid proposed by the nonlocal bidder or contractor. Any bid
8 preference granted hereunder must be in accordance with an
9 established policy adopted by the governing body of the trust to
10 clearly demonstrate the economic benefit to the local area or
11 economy. No local bid preference shall be granted unless the local
12 bidding entity is the second lowest qualified bid on the contract.
13 The bid specifications shall clearly state that the bid is subject
14 to a local bidder preference law. For purposes of this section,
15 "local bid" means the bidding person is authorized to transact
16 business in this state and maintains a bona fide establishment for
17 transacting such business within this state. This provision does
18 not apply to any construction contract for which federal funds are
19 available for expenditure when its provisions may be in conflict
20 with federal law or regulation;

21 4. Should the trustee or the trustees find that an immediate
22 emergency exists, ~~which findings shall be entered in the journal of~~
23 ~~the trust proceedings,~~ by reason of which an immediate outlay of
24 trust funds in an amount exceeding ~~Seventy-five Thousand Dollars~~

1 ~~(\$75,000.00)~~ the emergency threshold provided in the Public
2 Competitive Bidding Act of 1974 for construction contracts, or Two
3 Hundred Fifty Thousand Dollars (\$250,000.00) for other contracts
4 subject to this section is necessary in order to avoid loss of life,
5 substantial damage to property or damage to the public peace or
6 safety, then the contracts may be made and entered into without
7 public notice or competitive bids; provided that the provisions of
8 this subsection shall not apply to contracts of industrial and
9 cultural trusts. Findings of an emergency shall be entered in the
10 journal or minutes of the trust proceedings;

11 5. Notwithstanding the provisions of this subsection, equipment
12 ~~or materials~~ or labor may be purchased by a public trust directly
13 from any contract ~~duly~~ awarded by this state or any state agency
14 under the Oklahoma Central Purchasing Act, or from any contract ~~duly~~
15 awarded or approved by a governmental entity which is the
16 beneficiary of the public trust.

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

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

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

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1 7. A public trust may enter into a cooperative purchasing
2 agreement for the purchase of equipment or labor if economically
3 justified by way of savings, material economic value, or both. The
4 public trust shall consider the economic justification for using a
5 cooperative purchasing agreement before entering into the
6 cooperative purchasing agreement. Economic justification may be
7 demonstrated by a comparison of current cooperative pricing to
8 information obtained from a request for information publicized by a
9 public trust.

10 J. As used in this section:

11 1. "Equipment" means an item or product and includes all
12 personal property used or consumed by a public trust that typically
13 will last and be used multiple times over a period of more than
14 twelve (12) months;

15 2. "Labor" means activity which is primarily accomplished
16 through the use of physical or mechanical movement to produce a
17 given result; and

18 3. "Sole source" means an acquisition which, by specification,
19 restricts the acquisition to one supplier.

20 K. Any public trust created pursuant to the provisions of this
21 section shall have the power to acquire lands by use of eminent
22 domain in the same manner and according to the procedures provided
23 for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes.
24 Any exercise of the power of eminent domain by a public trust

1 pursuant to the provisions of this section shall be limited to the
2 furtherance of public purpose projects involving revenue-producing
3 utility projects of which the public trust retains ownership;
4 provided, for public trusts in which the State of Oklahoma is the
5 beneficiary the exercise of the power of eminent domain may also be
6 used for public purpose projects involving air transportation.
7 Revenue-producing utility projects shall be limited to projects for
8 the transportation, delivery, treatment or furnishing of water for
9 domestic purposes or for power, including, but not limited to, the
10 construction of lakes, pipelines and water treatment plants or for
11 projects for rail transportation. Any public trust formed pursuant
12 to this section which has a county as its beneficiary shall have the
13 power to acquire, by use of eminent domain, any lands located either
14 inside the county, or contiguous to the county pursuant to the
15 limitations imposed pursuant to this section.

16 ~~K.~~ L. Provisions of this section shall not apply to entities
17 created under Sections 1324.1 through 1324.26 of Title 82 of the
18 Oklahoma Statutes.

19 ~~L.~~ M. Any trust created under Section 176 et seq. of this
20 title, in whole or in part, to operate, administer or oversee any
21 county jail facility shall consist of not less than five members and
22 include a county commissioner and the county sheriff, or their
23 designee, and one member appointed by each of the county
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1 commissioners. The appointed members shall not be elected
2 officials.

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

5 Section 178. A. The instrument or will creating such trust may
6 provide for the appointment, succession, powers, duties, term,
7 manner of removal and compensation of the trustee or trustees
8 subject to the provisions of subsections C and E of this section,
9 and in all such respects the terms of ~~said~~ the instrument or will
10 shall be controlling. ~~Trustees, who are public officers,~~ Elected
11 officials, who also serve as trustees, shall serve without
12 compensation, but may be reimbursed for actual expenses incurred in
13 the performance of their duties as trustees. Trustees who are not
14 elected officials may receive reasonable compensation and may be
15 reimbursed for actual expenses related to the performance of their
16 duties as trustees. For purposes of this section, reasonable
17 compensation shall not exceed a stipend per meeting equal to the
18 regional average for compensation of members of other governmental
19 or nonprofit boards and shall be approved by the beneficiary of the
20 public trust. If the ~~said~~ instrument or will makes no provisions in
21 regard to any of the foregoing, then the general laws of the state
22 shall control as to such omission or omissions. Every person
23 hereafter becoming a trustee of a public trust first shall take the
24 oath of office required of an elected public officer and every

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

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

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

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

18 D. Meetings of trustees of all public trusts shall be open to
19 the public to the same extent as is required by law for other public
20 boards and commissions. Such meetings shall also be open to the
21 press and any such equipment deemed necessary by the press to record
22 or report the activities of the meetings. In such trusts wherein
23 the State of Oklahoma is the beneficiary, a written notice of
24 trustees' meetings shall be filed with the office of the Secretary

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

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

1 to serve as a member of the governing board of the municipal
2 beneficiary and his or her successor on ~~said~~ the board has
3 qualified.

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

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

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13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
14 03/03/2022 - DO PASS, As Amended and Coauthored.

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