

1 ENGROSSED SENATE
2 BILL NO. 88

By: Howard of the Senate

and

Worthen of the House

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4
5
6 An Act relating to public trusts; amending 60 O.S.
7 2011, Sections 176, as last amended by Section 1,
8 Chapter 405, O.S.L. 2019, 180 and 180.1, as amended
9 by Section 1, Chapter 83, O.S.L. 2017 (60 O.S. Supp.
10 2020, Sections 176 and 180.1), which relate to bond
11 approval, termination of trust and annual audits;
12 modifying threshold for approval of certain waiver;
13 modifying approval requirement for termination of
14 certain trusts; modifying public trusts required to
15 perform certain audit; establishing exemption from
16 certain audit requirements; updating statutory
17 references; repealing 60 O.S. 2011, Section 178.2,
18 which relates to filing of official statement,
19 prospectus or offering document; and providing an
20 effective date.

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

22 SECTION 1. AMENDATORY 60 O.S. 2011, Section 176, as last
23 amended by Section 1, Chapter 405, O.S.L. 2019 (60 O.S. Supp. 2020,
24 Section 176), is amended to read as follows:

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

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

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

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

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

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

1 trust purposes, are authorized and empowered to lease the property
2 for those purposes, after the acceptance of the beneficial interest
3 therein by the beneficiary as hereinafter provided.

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

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

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

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

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

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

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

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

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

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

5 I. Contracts for construction, labor, equipment, material or
6 repairs in excess of Fifty Thousand Dollars (\$50,000.00) shall be
7 awarded by public trusts to the lowest and best competitive bidder,
8 pursuant to public invitation to bid, which shall be published in
9 the manner provided in subsection 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 the trustee or the trustees find that an immediate
14 emergency exists, which findings shall be entered in the journal of
15 the trust proceedings, by reason of which an immediate outlay of
16 trust funds in an amount exceeding Seventy-five Thousand Dollars
17 (\$75,000.00) is necessary in order to avoid loss of life,
18 substantial damage to property, or damage to the public peace or
19 safety, then the contracts may be made and entered into without
20 public notice or competitive bids; provided that the provisions of
21 this subsection shall not apply to contracts of industrial and
22 cultural trusts. Notwithstanding the provisions of this subsection,
23 equipment or materials may be purchased by a public trust directly
24 from any contract duly awarded by this state or any state agency

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

23 J. Any public trust created pursuant to the provisions of this
24 section shall have the power to acquire lands by use of eminent

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

19 K. Provisions of this section shall not apply to entities
20 created under Sections 1324.1 through 1324.26 of Title 82 of the
21 Oklahoma Statutes.

22 L. Any trust created under Section 176 et seq. of this title,
23 in whole or in part, to operate, administer or oversee any county
24 jail facility shall consist of not less than five members and

1 include a county commissioner and the county sheriff, or their
2 designee, and one member appointed by each of the county
3 commissioners. The appointed members shall not be elected
4 officials.

5 SECTION 2. AMENDATORY 60 O.S. 2011, Section 180, is
6 amended to read as follows:

7 Section 180. ~~(a)~~ A. Any such trust may be terminated by
8 agreement of the trustee, or, if there be more than one, then all of
9 the trustees and the approval of a majority of the governing body of
10 the beneficiary, and for trusts whose beneficiary is the State of
11 Oklahoma, with the approval of the Governor of the State of
12 Oklahoma; provided, that such trust shall not be terminated while
13 there exists outstanding any contractual obligations chargeable
14 against the trust property, which, by reason of such termination,
15 might become an obligation of the beneficiary of such trust.

16 ~~(b)~~ B. Nothing in this act shall operate to impair existing
17 obligations of contracts or existing trust indentures of any trust
18 created prior to ~~the effective date of this amendment~~ July 15, 1970;
19 but to the extent that such existing obligations of contracts are
20 not impaired by the provisions hereof, all of ~~said~~ the provisions
21 shall be applicable; provided further, that nothing in this act
22 shall operate to impair or alter the trust indenture of the Oklahoma
23 Ordinance Works Authority or contracts executed prior to ~~the~~
24 ~~effective date of this act~~ July 15, 1970.

1 SECTION 3. AMENDATORY 60 O.S. 2011, Section 180.1, as
2 amended by Section 1, Chapter 83, O.S.L. 2017 (60 O.S. Supp. 2020,
3 Section 180.1), is amended to read as follows:

4 Section 180.1. A. The trustees of every trust created for the
5 benefit and furtherance of any public function with the State of
6 Oklahoma or any county or municipality as the beneficiary or
7 beneficiaries thereof, with assets or revenues in excess of Fifty
8 Thousand Dollars (\$50,000.00) or with outstanding debt obligations,
9 must cause an audit to be made of the financial statements of the
10 trust, such audit to be ordered within thirty (30) days of the close
11 of each fiscal year of the trust. The audit shall be filed in
12 accordance with the requirements set forth for financial statement
13 audits in Section 212A of Title 74 of the Oklahoma Statutes.

14 B. The trustees of a trust which has more than Fifty Thousand
15 Dollars (\$50,000.00) in revenues or assets, and for whom an annual
16 financial statement audit is not required by another law,
17 regulation, or contract, shall cause to be conducted, by an
18 independent licensed public accountant or a certified public
19 accountant, an annual audit of the trust's financial statements in
20 accordance with auditing standards generally accepted in the United
21 States and Government Auditing Standards as issued by the
22 Comptroller General of the United States or an agreed-upon-
23 procedures engagement over certain financial information and
24 compliance requirements to be performed in accordance with the

1 applicable attestation standards of The American Institute of
2 Certified Public Accountants. The specific procedures to be
3 performed are:

4 1. Prepare a schedule of revenues, expenditures/expenses and
5 changes in fund balances/net assets for each fund and determine
6 compliance with any applicable trust or other prohibitions for
7 creating fund balance deficits;

8 2. Agree material bank account balances to bank statements, and
9 trace significant reconciling items to subsequent clearance;

10 3. Compare uninsured deposits to fair value of pledged
11 collateral;

12 4. Compare use of material-restricted revenues and resources to
13 their restrictions;

14 5. Determine compliance with requirements for separate funds;
15 and

16 6. Determine compliance with reserve account and debt service
17 coverage requirements of bond indentures.

18 Such engagement shall be ordered within thirty (30) days of the
19 close of each fiscal year of the trust. Copies of the annual audit
20 or agreed-upon-procedures report shall be filed with the State
21 Auditor and Inspector within six (6) months after the close of the
22 fiscal year and with the trustees and governing body of the
23 beneficiaries.

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1 C. Public trusts which have less than Fifty Thousand Dollars
2 (\$50,000.00) in revenue and less than Fifty Thousand Dollars
3 (\$50,000.00) in assets, and for whom an annual financial statement
4 audit is not required by another law, regulation, or contract and
5 any public trust which did not have financial activity exceeding
6 Fifty Thousand Dollars (\$50,000.00) since its last audit ~~may apply~~
7 ~~to the State Auditor and Inspector for a waiver of~~ shall be exempt
8 from the requirements of subsections A and B of this section unless
9 the public trust has outstanding debt obligations.

10 SECTION 4. REPEALER 60 O.S. 2011, Section 178.2, is
11 hereby repealed.

12 SECTION 5. This act shall become effective November 1, 2021.

13 Passed the Senate the 1st day of March, 2021.

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Presiding Officer of the Senate

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17 Passed the House of Representatives the ____ day of _____,

18 2021.

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Presiding Officer of the House
of Representatives

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