

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 2601

6 By: Roberts (Sean)

7 COMMITTEE SUBSTITUTE

8 An Act relating to public trusts; amending 60 O.S.
9 2011, Section 176, as last amended by Section 1,
10 Chapter 405, O.S.L. 2019 (60 O.S. Supp. 2020, Section
11 176), which relates to formation of certain public
12 trusts; modifying provisions related to appointment
13 by board of county commissioners; providing for
14 method of selection; restricting appointment of
15 certain county commissioners based upon trust
16 indenture provisions; and declaring an emergency.

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

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

21 Section 176. A. Express trusts may be created to issue
22 obligations, enter into financing arrangements including, but not
23 limited to, lease-leaseback, sale-leaseback, interest rate swaps and
24 other similar transactions and to provide funds for the furtherance
and accomplishment of any authorized and proper public function or
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
22 personal or mixed, of the beneficiary of the trust, or of a proposed
23 trust, which property shall be needful for the execution of the
24 trust purposes, are authorized and empowered to lease the property

1 for 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
15 conveyance must be approved by a majority of the governing body of
16 the 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.

24

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, and a three-fourths (3/4) vote of the
13 governing body of the beneficiary, unless the beneficiary is a
14 county in which case a two-thirds (2/3) vote of the members of the
15 governing body shall be required, or three-fourths (3/4) vote of the
16 governing bodies of each of the beneficiaries of the trust, unless
17 one of the beneficiaries is a county in which case a two-thirds
18 (2/3) vote of the members of the governing body of such county shall
19 be required. No bonds shall be sold for less than par value, except
20 upon approval of three-fourths (3/4) of the trustees, unless the
21 beneficiary is a county in which case a two-thirds (2/3) vote of the
22 members of the governing body shall be required. In no event shall
23 bonds be sold for less than sixty-five percent (65%) of par value;
24 provided, however, in no event shall the original purchaser from the

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

20 H. Public trusts created pursuant to this section shall file
21 annually, with their respective beneficiaries, copies of financial
22 documents and reports sufficient to demonstrate the fiscal activity
23 of such trust, including, but not limited to, budgets, financial
24 reports, bond indentures, and audits. Amendments to the adopted

1 budget shall be approved by the trustees of the public trust and
2 recorded as such in the official minutes of such trust.

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

1 public trust. Furthermore, any construction contract issued under
2 this section 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. Provided, further, no local bid preference shall be
12 granted unless the local bidding entity is the second lowest
13 qualified bid on the contract. The bid specifications shall clearly
14 state that the bid is subject to a local bidder preference law. For
15 purposes of this section, "local bid" means the bidding person is
16 authorized to transact business in this state and maintains a bona
17 fide establishment for transacting such business within this state.
18 This provision does not apply to any construction contract for which
19 federal funds are available for expenditure when its provisions may
20 be in conflict with federal law or regulation.

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

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

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

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

1 ~~commissioners~~ at least three members chosen at large by the board of
2 county commissioners. The appointed members shall not be elected
3 officials. Notwithstanding any provision to the contrary in the
4 trust indenture, no individual county commissioner shall have the
5 right to any appointment to the trust.

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

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