

1 **SENATE FLOOR VERSION**

2 March 3, 2021

3 **AS AMENDED**

4 SENATE BILL NO. 527

5 By: Montgomery and Thompson of  
6 the Senate

7 and

8 McEntire and Pae of the  
9 House

10 **[ public finance - Oklahoma Prosperity Act -  
11 codification - effective date ]**

12  
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 3600 of Title 62, unless there  
16 is created a duplication in numbering, reads as follows:

17 This act shall be known and may be cited as the "Oklahoma  
18 Prosperity Act".

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

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

1 B. As used in this act:

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

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

8 3. "Covered employee" means any individual who is eighteen (18)  
9 years of age or older, who is employed by a covered employer and who  
10 has wages that are allocable to the state. For purposes of the  
11 investment, withdrawal, transfer, rollover or other distribution of  
12 an individual retirement account or individual retirement annuity,  
13 the term covered employee also includes the beneficiary of a  
14 deceased covered employee;

15 4. "Covered employer" means an employer that either:

16 a. satisfies the following requirements:

17 (1) has at no time during the previous calendar year  
18 employed fewer than **twenty-five (25)** employees in  
19 this state,

20 (2) has been in business for at least two (2) years,  
21 and

22 (3) has not been a participating or contributing  
23 employer in a retirement plan, **an automatic**  
24 **enrollment payroll deduction IRA or a qualified**

1                   **retirement plan in compliance with federal law**  
2                   **for its employees including plans qualified** under  
3                   Section 401(a), 401(k), 403(a), 403(b), 408(k),  
4                   408(p), **457(b) or 457(f)** of Title 26 of Internal  
5                   Revenue Code **or any deferred compensation plan**  
6                   **offered by any employer** at any time during the  
7                   preceding two (2) calendar years, or

8                   b.    elects to be a covered employer if and as permitted in  
9                   accordance with rules and procedures established by  
10                  the Oklahoma Prosperity Act Program;

11                5.    "Employer" means a person or entity engaged in a business,  
12                profession, trade or other enterprise in the state, whether for  
13                profit or not-for-profit, that employs one or more individuals in  
14                the state; provided, that a federal or state entity, agency or  
15                instrumentality or any political subdivision thereof, shall not be  
16                an employer;

17                6.    "Enrollee" means any covered employee enrolled in the  
18                Oklahoma Prosperity Act Program;

19                7.    "Internal Revenue Code" means the federal Internal Revenue  
20                Code of 1986, as amended;

21                8.    "Investment adviser" means either:

22                   a.    an investment adviser registered as such under the  
23                   U.S. Investment Advisers Act of 1940, or  
24

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

3           9.    "Investment fund" means each investment portfolio  
4 established within the trust for investment purposes;

5           10.   "IRA" means either an individual retirement account or  
6 individual retirement annuity established under Section 408 or 408A  
7 of Title 26 of the Internal Revenue Code;

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

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

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

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

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

17          16.   "Wages" means compensation within the meaning of Section  
18 219(f) (1) of Title 26 the Internal Revenue Code that is received by  
19 a covered employee from a covered employer.

20          SECTION 3.       NEW LAW       A new section of law to be codified  
21 in the Oklahoma Statutes as Section 3602 of Title 62, unless there  
22 is created a duplication in numbering, reads as follows:

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

- 1        1. To design, establish and operate the Oklahoma Prosperity Act  
2 Program in accordance with the requirements established in this act;
- 3        2. To collect fees to defray the costs of administering the  
4 Program;
- 5        3. To enter into contracts necessary or desirable for the  
6 establishment and administration of the Program;
- 7        4. To hire, retain and terminate third-party service providers  
8 for the Program including, but not limited to, consultants,  
9 investment managers or advisors, trustees, custodians, insurance  
10 companies, record keepers, administrators, actuaries, counsel,  
11 auditors and other professionals; provided, that each service  
12 provider shall be authorized to do business in this state. For  
13 purposes of selecting a third-party service provider, the Office of  
14 the State Treasurer shall be exempt from the Oklahoma Central  
15 Purchasing Act; provided, that a competitive process shall be  
16 developed and utilized to select service providers;
- 17        5. To determine the type or types of IRAs to be offered;
- 18        6. To employ a program administrator and any other individuals  
19 necessary to administer the Program and the administrative fund;
- 20        7. To develop and implement an outreach plan and disseminate  
21 information regarding the Program and retirement and financial  
22 education in general, to employees, employers and other constituents  
23 in the state;
- 24

1 8. Determine the number of days by which an eligible employer  
2 must make the Program available to a covered employee upon first  
3 becoming an eligible employer or covered employee;

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

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

18 SECTION 4. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 3603 of Title 62, unless there  
20 is created a duplication in numbering, reads as follows:

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

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

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

12 SECTION 5. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 3604 of Title 62, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. The Oklahoma Prosperity Act Program shall be designed,  
16 established and operated in accordance with the following  
17 provisions:

18 1. Each covered employer shall be required to offer to each  
19 covered employee an opportunity to contribute to an IRA established  
20 under the Program for the benefit of the covered employee through  
21 withholding from his or her wages. No employer shall be permitted  
22 to contribute to the Program;

23 2. Unless the covered employee elects not to participate in the  
24 Program, he or she shall be automatically enrolled in the Program

1 and contributions shall be withheld from the wages of the covered  
2 employee;

3 3. The minimum contribution rate of each covered employee shall  
4 be three percent (3%); the minimum contribution rate shall be the  
5 default contribution rate;

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

9 5. Each covered employer shall deposit withheld contributions  
10 of the covered employee under the Program with the trustee in such  
11 manner as is determined by the State Treasurer, provided that the  
12 employer shall deliver the amounts withheld to the trustee within  
13 **thirty (30)** business days after the date the amounts otherwise would  
14 have been paid to the covered employee;

15 6. Additional rules and procedures may be adopted in  
16 conjunction with established IRS regulations for withdrawals,  
17 distributions, transfers and rollovers of IRAs and for the  
18 designation of IRA beneficiaries;

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

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

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- 1       9. Each covered employer shall be provided information  
2 regarding the Program and disclosures including:
- 3           a. a description of the benefits and risks associated  
4               with investments offered in the Program,
  - 5           b. instructions about how to obtain additional  
6               information about the Program,
  - 7           c. a description of the federal and state income tax  
8               consequences of an IRA, which may consist of or  
9               include the disclosure statement required to be  
10              distributed under the Internal Revenue Code and the  
11              Treasury Regulations thereunder,
  - 12           d. a statement that covered employees seeking financial  
13              advice should contact their own financial advisors,  
14              that covered employers shall not provide financial  
15              advice and that covered employers are not liable for  
16              decisions covered employees make under the act,
  - 17           e. a statement that the Program is not an employer-  
18              sponsored retirement plan,
  - 19           f. a statement that neither the Program nor the IRA of  
20              the covered employee established under the Program is  
21              guaranteed by the state,
  - 22           g. a statement that neither a covered employer nor the  
23              state will monitor or has an obligation to monitor the  
24              eligibility of the covered employee under the Internal

1 Revenue Code to make contributions to an IRA or to  
2 monitor whether the contributions of the covered  
3 employee to the IRA established for the covered  
4 employee under the Program exceeds the maximum  
5 permissible IRA contribution; it shall be the  
6 responsibility of the covered employee, and

- 7 h. a statement that neither the state nor the covered  
8 employer will have any liability with respect to any  
9 failure of the covered employee to be eligible to make  
10 IRA contributions or any contribution in excess of the  
11 maximum IRA contribution;

12 10. Any information, forms or instructions to be furnished to  
13 covered employees that provide the covered employee with the  
14 procedures for:

- 15 a. making contributions to the IRA of the covered  
16 employee established under the Program including a  
17 description of the minimum contribution rate and the  
18 right to elect to make no contribution or to change  
19 the contribution rate under the Program,  
20 b. making an investment election with respect to the IRA  
21 of the covered employee established under the Program  
22 including a description of the default investment  
23 fund, and  
24

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

3 11. Each covered employer shall deliver or facilitate the  
4 delivery of the information about the Program to each covered  
5 employee at the time and in the manner as established by Program  
6 guidelines; and

7 12. The Program shall be designed and operated in a manner that  
8 will cause it not to be an employee benefit plan within the meaning  
9 of Section 3(3) of the Employee Retirement Income Security Act of  
10 1974.

11 SECTION 6. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 3605 of Title 62, unless there  
13 is created a duplication in numbering, reads as follows:

14 There is hereby created in the Office of the State Treasurer a  
15 fund to be designated as the "Oklahoma Prosperity Act Administrative  
16 Fund". The fund shall be a continuing fund, not subject to fiscal  
17 year limitations, and shall consist of monies appropriated for the  
18 administration of the Oklahoma Prosperity Act Program, all  
19 administrative fees collected and any other monies designated to the  
20 fund by law. All monies accruing to the credit of the fund are  
21 hereby appropriated and may be budgeted and expended by the State  
22 Treasurer for expenses related to the administration and support of  
23 the Program. Expenditures from the fund shall be made upon warrants  
24 issued by the State Treasurer against claims filed as prescribed by

1 law with the Director of the Office of Management of Enterprise  
2 Services for approval and payment.

3 SECTION 7. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 3606 of Title 62, unless there  
5 is created a duplication in numbering, reads as follows:

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

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

10 C. The assets of IRAs established for covered employees shall  
11 be allocated to the trust and combined for investment purposes.  
12 Trust assets shall be managed and administered for the purposes of  
13 providing services to covered employees and defraying reasonable  
14 administrative expenses of the Oklahoma Prosperity Act Program.

15 D. There shall be established within the trust one or more  
16 investment funds. The first One Thousand Dollars (\$1,000.00) in  
17 contributions made by, or on behalf of, an enrollee may be deposited  
18 into a default capital preservation investment fund and the enrollee  
19 may be provided an account revocation period during which, if the  
20 enrollee chooses to end participation in the Program, the enrollee  
21 may withdraw the deposited amounts from the default investment  
22 without penalty.

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1 E. Covered employees may allocate assets of their IRAs among  
2 investment funds and a default investment fund may be designated for  
3 the IRAs of covered employees who do not select an investment fund.

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

7 G. The assets of the trust shall be maintained, invested and  
8 expended solely for the purposes of the trust and no property rights  
9 therein shall exist in favor of the state or any covered employer.  
10 Trust assets shall not be transferred or used by the state for any  
11 purposes other than the purposes of the trust or funding the  
12 expenses of operating the Program.

13 H. The assets of the trust shall be held separate and apart  
14 from the assets of the state.

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

18 J. The trust and each investment fund shall not be subject to  
19 income tax of this state.

20 K. If the Program is established by using the auto-IRA Program  
21 of another state, a joint Program or a consortium with one or more  
22 other states, then the trust may be established by adopting the  
23 trust established under the Program of the other state or states or  
24 as a master trust or similar arrangement with the other state or

1 states; provided, that the trust, master trust or similar  
2 arrangement satisfies the requirements of this section.

3 SECTION 8. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 3607 of Title 62, unless there  
5 is created a duplication in numbering, reads as follows:

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

15 SECTION 9. AMENDATORY 75 O.S. 2011, Section 250.4, as  
16 last amended by Section 214, Chapter 408, O.S.L. 2019 (75 O.S. Supp.  
17 2020, Section 250.4), is amended to read as follows:

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

21 2. The Corporation Commission shall be required to comply with  
22 the provisions of Article I of the Administrative Procedures Act  
23 except for subsections A, B, C and E of Section 303 of this title  
24 and Section 306 of this title. To the extent of any conflict or

1 inconsistency with Article I of the Administrative Procedures Act,  
2 pursuant to Section 35 of Article IX of the Oklahoma Constitution,  
3 it is expressly declared that Article I of the Administrative  
4 Procedures Act is an amendment to and alteration of Sections 18  
5 through 34 of Article IX of the Oklahoma Constitution.

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

13 4. The Oklahoma Ordnance Works Authority, the Northeast  
14 Oklahoma Public Facilities Authority, the Oklahoma Office of  
15 Homeland Security and the Board of Trustees of the Oklahoma College  
16 Savings Plan shall be exempt from Article I of the Administrative  
17 Procedures Act.

18 5. The Transportation Commission and the Department of  
19 Transportation shall be exempt from Article I of the Administrative  
20 Procedures Act to the extent they exercise their authority in  
21 adopting standard specifications, special provisions, plans, design  
22 standards, testing procedures, federally imposed requirements and  
23 generally recognized standards, project planning and programming,  
24 and the operation and control of the State Highway System.

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

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

11          7. Institutional governing boards within The Oklahoma State  
12 System of Higher Education shall be exempt from Article I of the  
13 Administrative Procedures Act.

- 14          8.    a. The Commissioner of Public Safety shall be exempt from  
15                Sections 303.1, 304, 307.1, 308 and 308.1 of this  
16                title insofar as it is necessary to promulgate rules  
17                pursuant to the Oklahoma Motor Carrier Safety and  
18                Hazardous Materials Transportation Act, to maintain a  
19                current incorporation of federal motor carrier safety  
20                and hazardous material regulations, or pursuant to  
21                Chapter 6 of Title 47 of the Oklahoma Statutes, to  
22                maintain a current incorporation of federal commercial  
23                driver license regulations, for which the Commissioner  
24                has no discretion when the state is mandated to

1 promulgate rules identical to federal rules and  
2 regulations.

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

9 c. Such copies of promulgated rules shall be filed with  
10 the Secretary as required by Section 251 of this  
11 title.

12 d. For any rules for which the Commissioner has  
13 discretion to allow variances, tolerances or  
14 modifications from the federal rules and regulations,  
15 the Commissioner shall fully comply with Article I of  
16 the Administrative Procedures Act.

17 9. The Council on Judicial Complaints shall be exempt from  
18 Section 306 of Article I of the Administrative Procedures Act, with  
19 respect to review of the validity or applicability of a rule by an  
20 action for declaratory judgment, or any other relief based upon the  
21 validity or applicability of a rule, in the district court or by an  
22 appellate court. A party aggrieved by the validity or applicability  
23 of a rule made by the Council on Judicial Complaints may petition  
24

1 the Court on the Judiciary to review the rules and issue opinions  
2 based upon them.

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

6 a. prescribing internal management procedures for the  
7 management of the state prisons, county jails and city  
8 jails and for the management, supervision and control  
9 of all incarcerated prisoners, and

10 b. prescribing internal management procedures for the  
11 management of the probation and parole unit of the  
12 Department of Corrections and for the supervision of  
13 probationers and parolees.

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

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

- 21 1. The Oklahoma Tax Commission;
- 22 2. The Commission for Human Services;
- 23 3. The Oklahoma Ordnance Works Authority;
- 24 4. The Corporation Commission;

- 1        5. The Pardon and Parole Board;
- 2        6. The Midwestern Oklahoma Development Authority;
- 3        7. The Grand River Dam Authority;
- 4        8. The Northeast Oklahoma Public Facilities Authority;
- 5        9. The Council on Judicial Complaints;
- 6        10. The Board of Trustees of the Oklahoma College Savings Plan;
- 7        11. The supervisory or administrative agency of any penal,
- 8 mental, medical or eleemosynary institution, only with respect to
- 9 the institutional supervision, custody, control, care or treatment
- 10 of inmates, prisoners or patients therein; provided, that the
- 11 provisions of Article II shall apply to and govern all
- 12 administrative actions of the Oklahoma Alcohol Prevention, Training,
- 13 Treatment and Rehabilitation Authority;
- 14        12. The Board of Regents or employees of any university,
- 15 college, or other institution of higher learning;
- 16        13. The Oklahoma Horse Racing Commission, its employees or
- 17 agents only with respect to hearing and notice requirements on the
- 18 following classes of violations which are an imminent peril to the
- 19 public health, safety and welfare:
- 20            a. any rule regarding the running of a race,
- 21            b. any violation of medication laws and rules,
- 22            c. any suspension or revocation of an occupation license
- 23                    by any racing jurisdiction recognized by the
- 24                    Commission,

- 1           d. any assault or other destructive acts within  
2           Commission-licensed premises,  
3           e. any violation of prohibited devices, laws and rules,  
4           or  
5           f. any filing of false information;

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

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

12           16. Hearings conducted by a public agency pursuant to Section  
13 962 of Title 47 of the Oklahoma Statutes;

14           17. The Oklahoma Military Department;

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

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

20           20. The Oklahoma Office of Homeland Security; and

21           21. The State Treasurer with respect to the adoption of rules  
22 and procedures for the implementation and operation of the Oklahoma  
23 Prosperity Act pursuant to Section 1 of this act.

1 SECTION 10. This act shall become effective November 1, 2021.

2 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
3 March 3, 2021 - DO PASS AS AMENDED  
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