

1 STATE OF OKLAHOMA

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

3 SENATE BILL 580

By: Hall

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5
6 AS INTRODUCED

7 An Act relating to public trusts; amending 60 O.S.
8 2011, Section 176, as last amended by Section 1,
9 Chapter 405, O.S.L. 2019 (60 O.S. Supp. 2020, Section
10 176), which relates to trusts for benefit of state,
11 county or municipality; increasing contract amounts
12 for certain bidding procedures; amending 60 O.S.
13 2011, Section 178, which relates to trustees of
14 public trusts; prohibiting compensation for elected
15 officials serving as trustees of certain trusts;
16 authorizing reasonable compensation for certain
17 trustees; updating statutory language; and providing
18 an effective date.

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

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

23 Section 176. A. Express trusts may be created to issue
24 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
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.

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)~~ One Hundred
5 Thousand Dollars (\$100,000.00) shall be awarded by public trusts to
6 the lowest and best competitive bidder, pursuant to public
7 invitation to bid, which shall be published in the manner provided
8 in subsection G of this section; the advertisements shall appear in
9 the county where the work, or the major part of it, is to be done,
10 or the equipment or materials are to be delivered, or the services
11 are to be rendered; provided, however, should the trustee or the
12 trustees find that an immediate emergency exists, which findings
13 shall be entered in the journal of the trust proceedings, by reason
14 of which an immediate outlay of trust funds in an amount exceeding
15 ~~Seventy-five Thousand Dollars (\$75,000.00)~~ One Hundred Twenty-five
16 Thousand Dollars (\$125,000.00) is necessary in order to avoid loss
17 of life, substantial damage to property, or damage to the public
18 peace or safety, then the contracts may be made and entered into
19 without public notice or competitive bids; provided that the
20 provisions of this subsection shall not apply to contracts of
21 industrial and cultural trusts. Notwithstanding the provisions of
22 this subsection, equipment or materials may be purchased by a public
23 trust directly from any contract duly awarded by this state or any
24 state agency under ~~The~~ the Oklahoma Central Purchasing Act, or from

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

7 Section 178. A. The instrument or will creating such trust may
8 provide for the appointment, succession, powers, duties, term,
9 manner of removal and compensation of the trustee or trustees
10 subject to the provisions of subsections C and E of this section,
11 and in all such respects the terms of ~~said~~ the instrument or will
12 shall be controlling. Trustees, who are ~~public officers~~ elected
13 officials, shall serve without compensation, but may be reimbursed
14 for actual expenses incurred in the performance of their duties as
15 trustees. Trustees who are not elected officials may receive
16 reasonable compensation and may be reimbursed for actual expenses
17 related to the performance of their duties as trustees. If the ~~said~~
18 instrument or will makes no provisions in regard to any of the
19 foregoing, then the general laws of the state shall control as to
20 such omission or omissions. Every person hereafter becoming a
21 trustee of a public trust first shall take the oath of office
22 required of an elected public officer and every officer and employee
23 who handles funds of a public trust shall furnish a good and
24 sufficient fidelity bond in an amount and with surety as may be

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

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

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

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

16 D. Meetings of trustees of all public trusts shall be open to
17 the public to the same extent as is required by law for other public
18 boards and commissions. Such meetings shall also be open to the
19 press and any such equipment deemed necessary by the press to record
20 or report the activities of the meetings. In such trusts wherein
21 the State of Oklahoma is the beneficiary, a written notice of
22 trustees' meetings shall be filed with the office of the Secretary
23 of State at least three (3) days prior to the meeting date. Records
24 of the trust and minutes of the trust meetings of any public trust

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

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

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

10 SECTION 3. This act shall become effective November 1, 2021.

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