

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

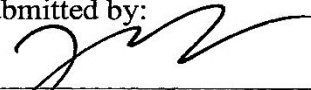
No. 2

COMMITTEE AMENDMENT

(Date)

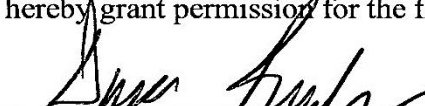
I move to amend Senate Bill No. 527, by the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:



Senator Montgomery

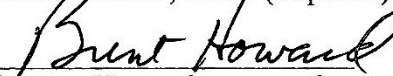
I hereby grant permission for the floor substitute to be adopted.



Senator Rader, Chair (required)



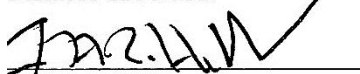
Senator Kirt




Senator Howard



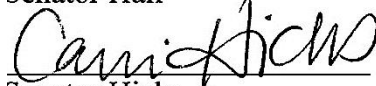
Senator Montgomery



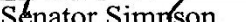
Senator Hall



Senator Rosino

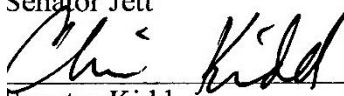


Senator Hicks



Senator Simpson

Senator Jett



Senator Kidd

Senator Thompson

Senator Treat, President Pro Tempore

Senator McCortney, Majority Floor Leader

Note: Finance committee majority requires six (6) members' signatures.

I hereby grant permission for the floor substitute to be adopted.



Senator Thompson
Appropriations Committee Chair

Montgomery-QD-FA-SB527
3/21/2022 11:32 AM

(Floor Amendments Only)

Date and Time Filed: 3-21-22 2:18 pm *fd*

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

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

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 527

6 By: Montgomery and Thompson of
7 the Senate

8 and

9 McEntire and Pae of the
10 House

11 FLOOR SUBSTITUTE

12 [public finance - Oklahoma Prosperity Act -
13 codification - effective date]

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

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

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

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

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

4 B. As used in this act:

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

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

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

18 4. "Participating employer" means an employer electing to
19 participate in the Oklahoma Prosperity Act Program that has not been
20 a participating or contributing employer in a retirement plan, an
21 automatic enrollment payroll deduction IRA, or a qualified
22 retirement plan in compliance with federal law for its employees
23 including plans qualified under Section 401(a), 401(k), 403(a),
24 403(b), 408(k), 408(p), 457(b), or 457(f) of Title 26 of the

1 Internal Revenue Code or any deferred compensation plan offered by
2 any employer at any time during the preceding two (2) calendar
3 years;

4 5. "Employer" means a person or entity engaged in a business,
5 profession, trade, or other enterprise in the state, whether for
6 profit or not-for-profit, that employs one or more individuals in
7 the state; provided, that a federal or state entity, agency, or
8 instrumentality or any political subdivision thereof, shall not be
9 an employer;

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

12 7. "Internal Revenue Code" means the federal Internal Revenue
13 Code of 1986, as amended;

14 8. "Investment adviser" means either:

15 a. an investment adviser registered as such under the
16 U.S. Investment Advisers Act of 1940, or

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

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

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

24

1 11. "Program" means the Oklahoma Prosperity Act Program
2 established under this act;

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

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

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

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

10 16. "Wages" means compensation within the meaning of Section
11 219(f) (1) of Title 26 of the Internal Revenue Code that is received
12 by a covered employee from a participating employer.

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

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

18 1. To design, establish, and operate the Oklahoma Prosperity
19 Act Program in accordance with the requirements established in this
20 act;

21 2. To collect fees to defray the costs of administering the
22 Program;

23 3. To enter into contracts necessary or desirable for the
24 establishment and administration of the Program;

1 4. To hire, retain, and terminate third-party service providers
2 for the Program including, but not limited to, consultants,
3 investment managers or advisors, trustees, custodians, insurance
4 companies, record keepers, administrators, actuaries, counsel,
5 auditors, and other professionals; provided, that each service
6 provider shall be authorized to do business in this state. For
7 purposes of selecting a third-party service provider, the Office of
8 the State Treasurer shall be exempt from the Oklahoma Central
9 Purchasing Act; provided, that a competitive process shall be
10 developed and utilized to select service providers;

11 5. To determine the type or types of IRAs to be offered;

12 6. To employ a program administrator and any other individuals
13 necessary to administer the Program and the administrative fund;

14 7. To develop and implement an outreach plan and disseminate
15 information regarding the Program and retirement and financial
16 education in general, to employees, employers, and other
17 constituents in the state;

18 8. To adopt rules and procedures for the establishment and
19 operation of the Program and to take such other actions as necessary
20 to operate the Program in accordance with the provisions of this
21 act. Any guidelines or procedures affecting the Program may be
22 implemented after reasonable notice to the public and a public
23 comment period, in a manner similar to the requirements of the
24

1 Administrative Procedures Act. However, the Administrative
2 Procedures Act shall not apply for purposes of this section; and

3 9. If applicable, to establish and maintain the Program by
4 contracting with another state, partnering with one or more states
5 to create a joint auto-IRA Program, allowing states to participate
6 in the Program, or forming a consortium with one or more other
7 states in which certain aspects of the Program of each state are
8 combined for administrative convenience and efficiency.

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

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

15 B. Each participating employer shall be required to provide
16 covered employees with the information as required by the Program.
17 No employer acting pursuant to this act shall be considered a
18 fiduciary with respect to the trust or an IRA or have fiduciary
19 responsibilities under the act.

20 C. Each fiduciary shall discharge its duties with respect to
21 the Program solely in the best interests of covered employees and
22 with the care, skill, prudence, and diligence under the prevailing
23 circumstances that a prudent person acting in a similar capacity and
24

1 familiar with those matters would use in the conduct of an
2 enterprise of like character and aims.

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

6 The Oklahoma Prosperity Act Program shall be designed,
7 established, and operated in accordance with the following
8 provisions:

9 1. Each participating employer may offer to each covered
10 employee an opportunity to contribute to an IRA established under
11 the Program for the benefit of the covered employee through
12 withholding from his or her wages. No employer shall be permitted
13 to contribute to the Program;

14 2. Unless the covered employee elects not to participate in the
15 Program, he or she may be automatically enrolled in the Program and
16 contributions shall be withheld from the wages of the covered
17 employee;

18 3. The minimum contribution rate of each enrollee shall be
19 three percent (3%); the minimum contribution rate shall be the
20 default contribution rate;

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

24

1 5. Each participating employer shall deposit withheld
2 contributions of the enrollee under the Program with the trustee in
3 such manner as is determined by the State Treasurer; provided, that
4 the employer shall deliver the amounts withheld to the trustee
5 within thirty (30) business days after the date the amounts
6 otherwise would have been paid to the enrollee;

7 6. Additional rules and procedures may be adopted in
8 conjunction with established IRS regulations for withdrawals,
9 distributions, transfers, and rollovers of IRAs and for the
10 designation of IRA beneficiaries;

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

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

16 9. Each participating employer shall be provided information
17 regarding the Program and disclosures including:

18 a. a description of the benefits and risks associated
19 with investments offered in the Program,

20 b. instructions about how to obtain additional
21 information about the Program,

22 c. a description of the federal and state income tax
23 consequences of an IRA, which may consist of or
24 include the disclosure statement required to be

1 distributed under the Internal Revenue Code and the
2 Treasury Regulations thereunder,

3 d. a statement that covered employees seeking financial
4 advice should contact their own financial advisors,
5 that participating employers shall not provide
6 financial advice, and that participating employers are
7 not liable for decisions covered employees make under
8 the act,

9 e. a statement that the Program is not an employer-
10 sponsored retirement plan,

11 f. a statement that neither the Program nor the IRA of
12 the enrollee established under the Program is
13 guaranteed by the state,

14 g. a statement that neither a participating employer nor
15 the state will monitor or has an obligation to monitor
16 the eligibility of the covered employee under the
17 Internal Revenue Code to make contributions to an IRA
18 or to monitor whether the contribution of the enrollee
19 to the IRA established for the enrollee under the
20 Program exceeds the maximum permissible IRA
21 contribution; it shall be the responsibility of the
22 covered employee, and

23 h. a statement that neither the state nor the
24 participating employer will have any liability with

1 respect to any failure of the covered employee to be
2 eligible to make IRA contributions or any contribution
3 in excess of the maximum IRA contribution;

4 10. Any information, forms, or instructions to be furnished to
5 covered employees that provide the covered employee with the
6 procedures for:

7 a. making contributions to the IRA of the covered
8 employee established under the Program including a
9 description of the minimum contribution rate and the
10 right to elect to make no contribution or to change
11 the contribution rate under the Program,

12 b. making an investment election with respect to the IRA
13 of the covered employee established under the Program
14 including a description of the default investment
15 fund, and

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

18 11. Each participating employer shall deliver or facilitate the
19 delivery of the information about the Program to each covered
20 employee at the time and in the manner as established by Program
21 guidelines; and

22 12. The Program shall be designed and operated in a manner that
23 will cause it not to be an employee benefit plan within the meaning
24

1 of Section 3(3) of the Employee Retirement Income Security Act of
2 1974.

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

6 There is hereby created in the Office of the State Treasurer a
7 fund to be designated as the "Oklahoma Prosperity Act Administrative
8 Fund". The fund shall be a continuing fund, not subject to fiscal
9 year limitations, and shall consist of monies appropriated for the
10 administration of the Oklahoma Prosperity Act Program, all
11 administrative fees collected, and any other monies designated to
12 the fund by law. All monies accruing to the credit of the fund are
13 hereby appropriated and may be budgeted and expended by the State
14 Treasurer for expenses related to the administration and support of
15 the Program. Expenditures from the fund shall be made upon warrants
16 issued by the State Treasurer against claims filed as prescribed by
17 law with the Director of the Office of Management and Enterprise
18 Services for approval and payment.

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

22 A. There is hereby created as an instrumentality of the state a
23 trust to be known as the "Oklahoma Prosperity Act Trust".
24

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

3 C. The assets of IRAs established for covered employees shall
4 be allocated to the trust and combined for investment purposes.
5 Trust assets shall be managed and administered for the purposes of
6 providing services to enrollees and defraying reasonable
7 administrative expenses of the Oklahoma Prosperity Act Program.

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

16 E. Enrollees may allocate assets of their IRAs among investment
17 funds and a default investment fund may be designated for the IRAs
18 of enrollees who do not select an investment fund.

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

22 G. The assets of the trust shall be maintained, invested, and
23 expended solely for the purposes of the trust and no property rights
24 therein shall exist in favor of the state or any participating

1 employer. Trust assets shall not be transferred or used by the
2 state for any purposes other than the purposes of the trust or
3 funding the expenses of operating the Program.

4 H. The assets of the trust shall be held separate and apart
5 from the assets of the state.

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

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

11 K. If the Program is established by using the IRA Program of
12 another state, a joint Program, or a consortium with one or more
13 other states, then the trust may be established by adopting the
14 trust established under the Program of the other state or states or
15 as a master trust or similar arrangement with the other state or
16 states; provided, that the trust, master trust, or similar
17 arrangement satisfies the requirements of this section.

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

21 The Oklahoma Prosperity Act Program shall be established so that
22 enrollees may begin making contributions within twenty-four (24)
23 months of the effective date of this act; provided, that the State
24 Treasurer may extend the period within which the Program is

1 implemented by twelve (12) months. The State Treasurer may
2 establish a pilot program for certain participating employers, may
3 provide for a staggered rollout of the Program so that participating
4 employers may offer the Program to covered employees in stages based
5 on employee headcount or other criteria, or both.

6 SECTION 9. AMENDATORY 75 O.S. 2021, Section 250.4, is
7 amended to read as follows:

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

11 2. The Corporation Commission shall be required to comply with
12 the provisions of Article I of the Administrative Procedures Act
13 except for subsections A, B, C, and E of Section 303 of this title
14 and Section 306 of this title. To the extent of any conflict or
15 inconsistency with Article I of the Administrative Procedures Act,
16 pursuant to Section 35 of Article IX of the Oklahoma Constitution,
17 it is expressly declared that Article I of the Administrative
18 Procedures Act is an amendment to and alteration of Sections 18
19 through 34 of Article IX of the Oklahoma Constitution.

20 3. The ~~Oklahoma~~ Military Department of the State of Oklahoma
21 shall be exempt from the provisions of Article I of the
22 Administrative Procedures Act to the extent it exercises its
23 responsibility for military affairs. Military publications, as
24 defined in Section 801 of Title 44 of the Oklahoma Statutes, shall

1 be exempt from the provisions of Article I and Article II of the
2 Administrative Procedures Act, except as provided in Section 251 of
3 this title.

4 4. The Oklahoma Ordnance Works Authority, the Northeast
5 Oklahoma Public Facilities Authority, the Oklahoma Office of
6 Homeland Security, and the Board of Trustees of the Oklahoma College
7 Savings Plan shall be exempt from Article I of the Administrative
8 Procedures Act.

9 5. The Transportation Commission and the Department of
10 Transportation shall be exempt from Article I of the Administrative
11 Procedures Act to the extent they exercise their authority in
12 adopting standard specifications, special provisions, plans, design
13 standards, testing procedures, federally imposed requirements and
14 generally recognized standards, project planning and programming,
15 and the operation and control of the State Highway System.

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

- 19 a. prescribing standards of higher education,
- 20 b. prescribing functions and courses of study in each
21 institution to conform to the standards,
- 22 c. granting of degrees and other forms of academic
23 recognition for completion of the prescribed courses,
- 24 d. allocation of state-appropriated funds, and

1 e. fees within the limits prescribed by the Legislature.

2 7. Institutional governing boards within The Oklahoma State
3 System of Higher Education shall be exempt from Article I of the
4 Administrative Procedures Act.

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

18 b. Such rules may be adopted by the Commissioner and
19 shall be deemed promulgated twenty (20) days after
20 notice of adoption is published in "The Oklahoma
21 Register". Such publication need not set forth the
22 full text of the rule but may incorporate the federal
23 rules and regulations by reference.

1 c. Such copies of promulgated rules shall be filed with
2 the Secretary as required by Section 251 of this
3 title.

4 d. For any rules for which the Commissioner has
5 discretion to allow variances, tolerances, or
6 modifications from the federal rules and regulations,
7 the Commissioner shall fully comply with Article I of
8 the Administrative Procedures Act.

9 9. The Council on Judicial Complaints shall be exempt from
10 Section 306 of Article I of the Administrative Procedures Act, with
11 respect to review of the validity or applicability of a rule by an
12 action for declaratory judgment, or any other relief based upon the
13 validity or applicability of a rule, in the district court or by an
14 appellate court. A party aggrieved by the validity or applicability
15 of a rule made by the Council on Judicial Complaints may petition
16 the Court on the Judiciary to review the rules and issue opinions
17 based upon them.

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

21 a. prescribing internal management procedures for the
22 management of the state prisons, county jails, and
23 city jails and for the management, supervision, and
24 control of all incarcerated prisoners, and

1 b. prescribing internal management procedures for the
2 management of the probation and parole unit of the
3 Department of Corrections and for the supervision of
4 probationers and parolees.

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

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

12 1. The Oklahoma Tax Commission, except as provided in
13 subsection G of Section 1140 of Title 47 of the Oklahoma Statutes;

14 2. The Commission for Human Services;

15 3. The Oklahoma Ordnance Works Authority;

16 4. The Corporation Commission;

17 5. The Pardon and Parole Board;

18 6. The Midwestern Oklahoma Development Authority;

19 7. The Grand River Dam Authority;

20 8. The Northeast Oklahoma Public Facilities Authority;

21 9. The Council on Judicial Complaints;

22 10. The Board of Trustees of the Oklahoma College Savings Plan;

23 11. The supervisory or administrative agency of any penal,
24 mental, medical, or eleemosynary institution, only with respect to

1 the institutional supervision, custody, control, care, or treatment
2 of inmates, prisoners, or patients therein; provided, that the
3 provisions of Article II shall apply to and govern all
4 administrative actions of the Oklahoma Alcohol Prevention, Training,
5 Treatment and Rehabilitation Authority;

6 12. The Board of Regents or employees of any university,
7 college, or other institution of higher learning;

8 13. The Oklahoma Horse Racing Commission, its employees, or
9 agents only with respect to hearing and notice requirements on the
10 following classes of violations which are an imminent peril to the
11 public health, safety, and welfare:

- 12 a. any rule regarding the running of a race,
- 13 b. any violation of medication laws and rules,
- 14 c. any suspension or revocation of an occupation license
15 by any racing jurisdiction recognized by the
16 Commission,
- 17 d. any assault or other destructive acts within
18 Commission-licensed premises,
- 19 e. any violation of prohibited devices, laws, and rules,
20 or
- 21 f. any filing of false information;

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

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

4 16. Hearings conducted by a public agency pursuant to Section
5 962 of Title 47 of the Oklahoma Statutes;

6 17. The ~~Oklahoma~~ Military Department of the State of Oklahoma;

7 18. The University Hospitals Authority, including all hospitals
8 or other institutions operated by the University Hospitals
9 Authority;

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

12 20. The Oklahoma Office of Homeland Security; and

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

16 SECTION 10. This act shall become effective November 1, 2022.

18 58-2-3708 QD 3/21/2022 4:14:18 PM

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