

1 ENGROSSED HOUSE
2 BILL NO. 1885

By: Branham, Frix and West
(Kevin) of the House

3 and

4 Leewright of the Senate

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7
8 An Act relating to public bidding and public
9 contracts; amending 60 O.S. 2011, Section 176, as
10 last amended by Section 22, Chapter 42, O.S.L. 2017
11 (60 O.S. Supp. 2018, Section 176), which relates to
12 trusts in furtherance of public functions; clarifying
13 statutory reference; authorizing certain public
14 trusts and public agencies to provide certain local
15 bid preference of certain amount; stating
16 requirements; amending 61 O.S. 2011, Section 103, as
17 last amended by Section 2, Chapter 186, O.S.L. 2013
18 (61 O.S. Supp. 2018, Section 103), which relates to
19 the Public Competitive Bidding Act of 1974; providing
20 for local bid preference for certain bids; and
21 providing an effective date.

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

23 SECTION 1. AMENDATORY 60 O.S. 2011, Section 176,
24 as last amended by Section 22, Chapter 42, O.S.L. 2017 (60
O.S. Supp. 2018, Section 176), is amended to read as follows:

Section 176. A. Express trusts may be created to issue
obligations, enter into financing arrangements including, but
not limited to, lease-leaseback, sale-leaseback, interest
rate swaps and other similar transactions and to provide

1 funds for the furtherance and accomplishment of any
2 authorized and proper public function or purpose of the state
3 or of any county or municipality or any and all combinations
4 thereof, in real or personal property, or either or both, or
5 in any estate or interest in either or both, with the state,
6 or any county or municipality or any and all combinations
7 thereof, as the beneficiary thereof by:

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

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

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

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

1 personal or mixed, of the beneficiary of the trust, or of a proposed
2 trust, which property shall be needful for the execution of the
3 trust purposes, are authorized and empowered to lease the property
4 for those purposes, after the acceptance of the beneficial interest
5 therein by the beneficiary as hereinafter provided.

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

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

1 any reversionary interest or other restriction considered prudent by
2 the municipality.

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

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

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

1 a governing body consisting of fewer than seven (7) members shall be
2 required to approve the creation of an indebtedness or obligation
3 under this subsection by a three-fifths (3/5) vote of the governing
4 body.

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

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

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

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

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

1 under The Oklahoma Central Purchasing Act, or from any contract duly
2 awarded by a governmental entity which is the beneficiary of the
3 public trust. Furthermore, any construction contract issued under
4 this section may provide for a local bid preference of not more than
5 five percent (5%) of the bid price if the public trust governing
6 body determines that there is an economic benefit to the local area
7 or economy. Provided, however, the local bidder or contractor shall
8 agree to perform the contract for the same price and terms as the
9 bid proposed by the nonlocal bidder or contractor. Any bid
10 preference granted pursuant to this subsection shall be in
11 accordance with an established policy adopted by the governing body
12 of the trust to clearly demonstrate the economic benefit to the
13 local area or economy. Provided, further, no local bid preference
14 shall be granted unless the local bidding entity is the second
15 lowest qualified bid on the contract. The bid specifications shall
16 clearly state that the bid is subject to a local bidder preference
17 law.

18 J. Any public trust created pursuant to the provisions of this
19 section shall have the power to acquire lands by use of eminent
20 domain in the same manner and according to the procedures provided
21 for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes.
22 Any exercise of the power of eminent domain by a public trust
23 pursuant to the provisions of this section shall be limited to the
24 furtherance of public purpose projects involving revenue-producing

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

14 K. Provisions of this section shall not apply to entities
15 created under Sections 1324.1 through 1324.26 of Title 82 of the
16 Oklahoma Statutes.

17 L. Any trust created under this act, in whole or in part, to
18 operate, administer or oversee any county jail facility shall
19 consist of not less than five members and include a county
20 commissioner and the county sheriff, or their designee, and one
21 member appointed by each of the county commissioners. The appointed
22 members shall not be elected officials.

1 SECTION 2. AMENDATORY 61 O.S. 2011, Section 103, as last
2 amended by Section 2, Chapter 186, O.S.L. 2013 (61 O.S. Supp. 2018,
3 Section 103), is amended to read as follows:

4 Section 103. A. Unless otherwise provided by law, all public
5 construction contracts exceeding Fifty Thousand Dollars (\$50,000.00)
6 shall be let and awarded to the lowest responsible bidder, by open
7 competitive bidding after solicitation for sealed bids, in
8 accordance with the provisions of the Public Competitive Bidding Act
9 of 1974. No work shall be commenced until a written contract is
10 executed and all required bonds and insurance have been provided by
11 the contractor to the awarding public agency.

12 B. Notwithstanding subsection A of this section, in awarding
13 public construction contracts exceeding Fifty Thousand Dollars
14 (\$50,000.00), counties, cities, other local units of government and
15 any public trust with a county or a municipality as its sole
16 beneficiary may provide for a local bid preference of not more than
17 five percent (5%) of the bid price if the awarding public agency
18 determines that there is an economic benefit to the local area or
19 economy. Provided, however, the local bidder or contractor shall
20 agree to perform the contract for the same price and terms as the
21 bid proposed by the nonlocal bidder or contractor. Any bid
22 preference granted pursuant to this subsection shall be in
23 accordance with an established policy adopted by the governing body
24 of the awarding public agency to clearly demonstrate the economic

1 benefit to the local area or economy. Provided, further, no local
2 bid preference shall be granted unless the local bidding entity is
3 the second lowest qualified bid on the contract. The bid
4 specifications shall clearly state that the bid is subject to a
5 local bidder preference law.

6 C. Except as provided in subsection ~~D~~ E of this section, other
7 construction contracts for the purpose of making any public
8 improvements or constructing any public building or making repairs
9 to the same for Fifty Thousand Dollars (\$50,000.00) or less shall be
10 let and awarded to the lowest responsible bidder by receipt of
11 written bids or awarded on the basis of competitive quotes to the
12 lowest responsible qualified contractor. Work may be commenced in
13 accordance with the purchasing policies of the public agency.

14 ~~C.~~ D. Except as provided in subsection ~~D~~ E of this section,
15 other construction contracts for less than Five Thousand Dollars
16 (\$5,000.00) may be negotiated with a qualified contractor. Work may
17 be commenced in accordance with the purchasing policies of the
18 public agency.

19 ~~D.~~ E. The provisions of this subsection shall apply to public
20 construction for minor maintenance or minor repair work to public
21 school district property. Other construction contracts for less
22 than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated
23 with a qualified contractor. Construction contracts equal to or
24 greater than Twenty-five Thousand Dollars (\$25,000.00) but less than

1 Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the
2 lowest responsible bidder by receipt of written bids. No work shall
3 be commenced on any construction contract until a written contract
4 is executed and proof of insurance has been provided by the
5 contractor to the awarding public agency.

6 ~~E.~~ F. The Construction and Properties Division of the Office of
7 Management and Enterprise Services may award contracts using best
8 value competitive proposals. As used in this subsection, "best
9 value" means an optional contract award system which can evaluate
10 and rank submitted competitive performance proposals to identify the
11 proposal with the greatest value to the state. The Office of
12 Management and Enterprise Services, pursuant to the Administrative
13 Procedures Act, shall promulgate rules necessary to implement the
14 provisions of this subsection.

15 ~~F.~~ G. 1. A public agency shall not let or award a public
16 construction contract exceeding Fifty Thousand Dollars (\$50,000.00)
17 to any contractor affiliated with a purchasing cooperative unless
18 the purchasing cooperative and the contractor have complied with all
19 of the provisions of the Competitive Bidding Act of 1974, including
20 but not limited to open competitive bidding after solicitation for
21 sealed bids. A public agency shall not let or award a public
22 construction contract exceeding Five Thousand Dollars (\$5,000.00) up
23 to Fifty Thousand Dollars (\$50,000.00) to any contractor affiliated
24 with a purchasing cooperative unless the purchasing cooperative and

1 the contractor have complied with all of the provisions of the
2 Public Competitive Bidding Act of 1974, including submission of a
3 written bid upon notice of competitive bidding.

4 2. A purchasing cooperative and its affiliated contractors
5 shall not be allowed to bid on any public construction contract
6 exceeding Fifty Thousand Dollars (\$50,000.00) unless the purchasing
7 cooperative and its affiliated contractors have complied with all of
8 the provisions of the Public Competitive Bidding Act of 1974,
9 including but not limited to open competitive bidding after
10 solicitation for sealed bids. A purchasing cooperative and its
11 affiliated contractors shall not be allowed to bid on any public
12 construction contract exceeding Two Thousand Five Hundred Dollars
13 (\$2,500.00) unless the purchasing cooperative and its affiliated
14 contractors have complied with all of the provisions of the Public
15 Competitive Bidding Act of 1974, including submission of a written
16 bid upon notice of open competitive bidding.

17 SECTION 3. This act shall become effective November 1, 2019.
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1 Passed the House of Representatives the 7th day of March, 2019.

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4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2019.

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8 Presiding Officer of the Senate