

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 762

By: Pederson of the Senate

and

West (Kevin) and **Branham** of
the House

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10 COMMITTEE SUBSTITUTE

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

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

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

4 Section 176. A. Express trusts may be created to issue
5 obligations, enter into financing arrangements including, but not
6 limited to, lease-leaseback, sale-leaseback, interest rate swaps and
7 other similar transactions and to provide funds for the furtherance
8 and accomplishment of any authorized and proper public function or
9 purpose of the state or of any county or municipality or any and all
10 combinations thereof, in real or personal property, or either or
11 both, or in any estate or interest in either or both, with the
12 state, or any county or municipality or any and all combinations
13 thereof, as the beneficiary thereof by:

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

16 2. The express approval of two-thirds (2/3) of the membership
17 of the governing body of the beneficiary if a county is a
18 beneficiary;

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

22 4. The express approval of two-thirds (2/3) of the membership
23 of the governing body of each beneficiary in the event a trust has
24 more than one beneficiary; provided, that no funds of a beneficiary

1 derived from sources other than the trust property, or the operation
2 thereof, shall be charged with or expended for the execution of the
3 trust, except by express action of the legislative authority of the
4 beneficiary prior to the charging or expending of the funds. The
5 officers or any other governmental agencies or authorities having
6 the custody, management, or control of any property, real or
7 personal or mixed, of the beneficiary of the trust, or of a proposed
8 trust, which property shall be needful for the execution of the
9 trust purposes, are authorized and empowered to lease the property
10 for those purposes, after the acceptance of the beneficial interest
11 therein by the beneficiary as hereinafter provided.

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

19 C. A municipality may convey title to real property which is
20 used for an airport to the trustees of an industrial development
21 authority trust whose beneficiary is the municipality. The
22 industrial development authority trust must already have the
23 custody, management, or control of the real property. The
24 conveyance must be approved by a majority of the governing body of

1 the municipality. A conveyance pursuant to this section may be made
2 only for the sole purpose of allowing the authority to sell the
3 property for fair market value when the property is to be used for
4 industrial development purposes. Conveyances made pursuant to this
5 subsection shall be made subject to any existing reversionary
6 interest or other restrictions burdening the property and subject to
7 any reversionary interest or other restriction considered prudent by
8 the municipality.

9 D. The trustees of a public trust having the State of Oklahoma
10 as beneficiary shall make and adopt bylaws for the due and orderly
11 administration and regulation of the affairs of the public trust.
12 All bylaws of a public trust having the State of Oklahoma as
13 beneficiary shall be submitted in writing to the Governor of the
14 State of Oklahoma. The Governor must approve the proposed bylaws
15 before they take effect.

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

22 F. No trust in which a county or municipality is the
23 beneficiary shall hereafter create an indebtedness or obligation
24 until the indebtedness or obligation has been approved by a two-

1 thirds (2/3) vote of the governing body of the beneficiary. In the
2 event a trust has more than one beneficiary, as authorized by this
3 section, the trust shall not incur an indebtedness or obligation
4 until the indebtedness or obligation has been approved by a two-
5 thirds (2/3) vote of the governing body of two-thirds (2/3) of the
6 beneficiaries of the trust. Provided, however, a municipality with
7 a governing body consisting of fewer than seven (7) members shall be
8 required to approve the creation of an indebtedness or obligation
9 under this subsection by a three-fifths (3/5) vote of the governing
10 body.

11 G. All bonds described in subsection F of this section, after
12 December 1, 1976, except bonds sold to the federal government or any
13 agency thereof or to any agency of the State of Oklahoma, shall be
14 awarded to the lowest and best bidder based upon open competitive
15 public offering, advertised at least once a week for two (2)
16 successive weeks in a newspaper of general circulation in the county
17 where the principal office of the trust is located prior to the date
18 on which bids are received and opened; provided, competitive bidding
19 may be waived on bond issues with the approval of three-fourths
20 (3/4) of the trustees, and a three-fourths (3/4) vote of the
21 governing body of the beneficiary, unless the beneficiary is a
22 county in which case a two-thirds (2/3) vote of the members of the
23 governing body shall be required, or three-fourths (3/4) vote of the
24 governing bodies of each of the beneficiaries of the trust, unless

1 one of the beneficiaries is a county in which case a two-thirds
2 (2/3) vote of the members of the governing body of such county shall
3 be required. No bonds shall be sold for less than par value, except
4 upon approval of three-fourths (3/4) of the trustees, unless the
5 beneficiary is a county in which case a two-thirds (2/3) vote of the
6 members of the governing body shall be required. In no event shall
7 bonds be sold for less than sixty-five percent (65%) of par value;
8 provided, however, in no event shall the original purchaser from the
9 issuer of any bonds issued by any public trust for any purpose
10 receive directly or indirectly any fees, compensation, or other
11 remuneration in excess of four percent (4%) of the price paid for
12 the bonds by the purchaser of the bonds from the original purchaser;
13 and further provided, that the average coupon rate thereon shall in
14 no event exceed fourteen percent (14%) per annum. No public trust
15 shall sell bonds for less than ninety-six percent (96%) of par value
16 until the public trust has received from the underwriter or
17 financial advisor or, in the absence of an underwriter or financial
18 advisor, the initial purchaser of the bonds, an estimated
19 alternative financing structure or structures showing the estimated
20 total interest and principal cost of each alternative. At least one
21 alternative financing structure shall include bonds sold to the
22 public at par. Any estimates shall be considered a public record of
23 the public trust. Bonds, notes or other evidences of indebtedness
24 issued by any public trust shall be eligible for purchase by any

1 state banking association or corporation subject to such limitations
2 as to investment quality as may be imposed by regulations, rules or
3 rulings of the State Banking Commissioner.

4 H. Public trusts created pursuant to this section shall file
5 annually, with their respective beneficiaries, copies of financial
6 documents and reports sufficient to demonstrate the fiscal activity
7 of such trust, including, but not limited to, budgets, financial
8 reports, bond indentures, and audits. Amendments to the adopted
9 budget shall be approved by the trustees of the public trust and
10 recorded as such in the official minutes of such trust.

11 I. Contracts for construction, labor, equipment, material or
12 repairs in excess of Fifty Thousand Dollars (\$50,000.00) shall be
13 awarded by public trusts to the lowest and best competitive bidder,
14 pursuant to public invitation to bid, which shall be published in
15 the manner provided in ~~the preceding section hereof~~ subsection G of
16 this section; the advertisements shall appear in the county where
17 the work, or the major part of it, is to be done, or the equipment
18 or materials are to be delivered, or the services are to be
19 rendered; provided, however, should the trustee or the trustees find
20 that an immediate emergency exists, which findings shall be entered
21 in the journal of the trust proceedings, by reason of which an
22 immediate outlay of trust funds in an amount exceeding Seventy-five
23 Thousand Dollars (\$75,000.00) is necessary in order to avoid loss of
24 life, substantial damage to property, or damage to the public peace

1 or safety, then the contracts may be made and entered into without
2 public notice or competitive bids; provided that the provisions of
3 this subsection shall not apply to contracts of industrial and
4 cultural trusts. Notwithstanding the provisions of this subsection,
5 equipment or materials may be purchased by a public trust directly
6 from any contract duly awarded by this state or any state agency
7 under The Oklahoma Central Purchasing Act, or from any contract duly
8 awarded by a governmental entity which is the beneficiary of the
9 public trust. Furthermore, any construction contract issued under
10 this section may provide for a local bid preference of not more than
11 five percent (5%) of the bid price if the public trust governing
12 body determines that there is an economic benefit to the local area
13 or economy. Provided, however, the local bidder or contractor must
14 agree to perform the contract for the same price and terms as the
15 bid proposed by the nonlocal bidder or contractor. Any bid
16 preference granted hereunder must be in accordance with an
17 established policy adopted by the governing body of the trust to
18 clearly demonstrate the economic benefit to the local area or
19 economy. Provided, further, no local bid preference shall be
20 granted unless the local bidding entity is the second lowest
21 qualified bid on the contract. The bid specifications shall clearly
22 state that the bid is subject to a local bidder preference law. For
23 purposes of this section, "local" means within two hundred (200)
24 miles of the job site, but not outside of the State of Oklahoma.

1 J. Any public trust created pursuant to the provisions of this
2 section shall have the power to acquire lands by use of eminent
3 domain in the same manner and according to the procedures provided
4 for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes.
5 Any exercise of the power of eminent domain by a public trust
6 pursuant to the provisions of this section shall be limited to the
7 furtherance of public purpose projects involving revenue-producing
8 utility projects of which the public trust retains ownership;
9 provided, for public trusts in which the State of Oklahoma is the
10 beneficiary the exercise of the power of eminent domain may also be
11 used for public purpose projects involving air transportation.
12 Revenue-producing utility projects shall be limited to projects for
13 the transportation, delivery, treatment, or furnishing of water for
14 domestic purposes or for power, including, but not limited to, the
15 construction of lakes, pipelines, and water treatment plants or for
16 projects for rail transportation. Any public trust formed pursuant
17 to this section which has a county as its beneficiary shall have the
18 power to acquire, by use of eminent domain, any lands located either
19 inside the county, or contiguous to the county pursuant to the
20 limitations imposed pursuant to this section.

21 K. Provisions of this section shall not apply to entities
22 created under Sections 1324.1 through 1324.26 of Title 82 of the
23 Oklahoma Statutes.

24

1 L. Any trust created under ~~this act~~ Section 176 et seq. of this
2 title, in whole or in part, to operate, administer or oversee any
3 county jail facility shall consist of not less than five members and
4 include a county commissioner and the county sheriff, or their
5 designee, and one member appointed by each of the county
6 commissioners. The appointed members shall not be elected
7 officials.

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

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

19 B. Notwithstanding subsection A of this section, in awarding
20 public construction contracts exceeding Fifty Thousand Dollars
21 (\$50,000.00), counties, cities, other local units of government and
22 any public trust with a county or a municipality as its sole
23 beneficiary may provide for a local bid preference of not more than
24 five percent (5%) of the bid price if the awarding public agency

1 determines that there is an economic benefit to the local area or
2 economy. Provided, however, the local bidder or contractor must
3 agree to perform the contract for the same price and terms as the
4 bid proposed by the nonlocal bidder or contractor. Any bid
5 preference granted hereunder must be in accordance with an
6 established policy adopted by the governing body of the awarding
7 public agency to clearly demonstrate the economic benefit to the
8 local area or economy. Provided, further, no local bid preference
9 shall be granted unless the local bidding entity is the second
10 lowest qualified bid on the contract. The bid specifications shall
11 clearly state that the bid is subject to a local bidder preference
12 law. For purposes of this section, "local" means within two hundred
13 (200) miles of the job site, but not outside of the State of
14 Oklahoma.

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

23 ~~C.~~ D. Except as provided in subsection ~~D~~ E of this section,
24 other construction contracts for less than Five Thousand Dollars

1 (\$5,000.00) may be negotiated with a qualified contractor. Work may
2 be commenced in accordance with the purchasing policies of the
3 public agency.

4 ~~D.~~ E. The provisions of this subsection shall apply to public
5 construction for minor maintenance or minor repair work to public
6 school district property. Other construction contracts for less
7 than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated
8 with a qualified contractor. Construction contracts equal to or
9 greater than Twenty-five Thousand Dollars (\$25,000.00) but less than
10 Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the
11 lowest responsible bidder by receipt of written bids. No work shall
12 be commenced on any construction contract until a written contract
13 is executed and proof of insurance has been provided by the
14 contractor to the awarding public agency.

15 ~~E.~~ F. The Construction and Properties Division of the Office of
16 Management and Enterprise Services may award contracts using best
17 value competitive proposals. As used in this subsection, "best
18 value" means an optional contract award system which can evaluate
19 and rank submitted competitive performance proposals to identify the
20 proposal with the greatest value to the state. The Office of
21 Management and Enterprise Services, pursuant to the Administrative
22 Procedures Act, shall promulgate rules necessary to implement the
23 provisions of this subsection.

24

1 ~~F.~~ G. 1. A public agency shall not let or award a public
2 construction contract exceeding Fifty Thousand Dollars (\$50,000.00)
3 to any contractor affiliated with a purchasing cooperative unless
4 the purchasing cooperative and the contractor have complied with all
5 of the provisions of the Competitive Bidding Act of 1974, including
6 but not limited to open competitive bidding after solicitation for
7 sealed bids. A public agency shall not let or award a public
8 construction contract exceeding Five Thousand Dollars (\$5,000.00) up
9 to Fifty Thousand Dollars (\$50,000.00) to any contractor affiliated
10 with a purchasing cooperative unless the purchasing cooperative and
11 the contractor have complied with all of the provisions of the
12 Public Competitive Bidding Act of 1974, including submission of a
13 written bid upon notice of competitive bidding.

14 2. A purchasing cooperative and its affiliated contractors
15 shall not be allowed to bid on any public construction contract
16 exceeding Fifty Thousand Dollars (\$50,000.00) unless the purchasing
17 cooperative and its affiliated contractors have complied with all of
18 the provisions of the Public Competitive Bidding Act of 1974,
19 including but not limited to open competitive bidding after
20 solicitation for sealed bids. A purchasing cooperative and its
21 affiliated contractors shall not be allowed to bid on any public
22 construction contract exceeding Two Thousand Five Hundred Dollars
23 (\$2,500.00) unless the purchasing cooperative and its affiliated
24 contractors have complied with all of the provisions of the Public

1 Competitive Bidding Act of 1974, including submission of a written
2 bid upon notice of open competitive bidding.

3 SECTION 3. This act shall become effective November 1, 2019.
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5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
6 04/11/2019 - DO PASS, As Amended and Coauthored.
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