STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 762 By: Pederson of the Senate

and

West (Kevin) of the House

COMMITTEE SUBSTITUTE

An Act relating to public bidding and public contracts; amending 60 O.S. 2011, Section 176, as last amended by Section 22, Chapter 42, O.S.L. 2017 (60 O.S. Supp. 2018, Section 176), which relates to trusts in furtherance of public functions; clarifying statutory reference; 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; amending 61 O.S. 2011, Section 103, as last amended by Section 2, Chapter 186, O.S.L. 2013 (61 O.S. Supp. 2018, Section 103), which relates to the Public Competitive 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; and providing an effective date.

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

SECTION 1. AMENDATORY 60 O.S. 2011, Section 176, 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:
1 Section 176. A. Express trusts may be created to issue
2 obligations, enter into financing arrangements including, but not
3 limited to, lease-leaseback, sale-leaseback, interest rate swaps and
4 other similar transactions and to provide funds for the furtherance
5 and accomplishment of any authorized and proper public function or
6 purpose of the state or of any county or municipality or any and all
7 combinations thereof, in real or personal property, or either or
8 both, or in any estate or interest in either or both, with the
9 state, or any county or municipality or any and all combinations
10 thereof, as the beneficiary thereof by:
11 1. The express approval of the Legislature and the Governor if
12 the State of Oklahoma is the beneficiary;
13 2. The express approval of two-thirds (2/3) of the membership
14 of the governing body of the beneficiary if a county is a
15 beneficiary;
16 3. The express approval of two-thirds (2/3) of the membership
17 of the governing body of the beneficiary if a municipality is a
18 beneficiary; or
19 4. The express approval of two-thirds (2/3) of the membership
20 of the governing body of each beneficiary in the event a trust has
21 more than one beneficiary; provided, that no funds of a beneficiary
22 derived from sources other than the trust property, or the operation
23 thereof, shall be charged with or expended for the execution of the
24 trust, except by express action of the legislative authority of the
beneficiary prior to the charging or expending of the funds. The officers or any other governmental agencies or authorities having the custody, management, or control of any property, real or personal or mixed, of the beneficiary of the trust, or of a proposed trust, which property shall be needful for the execution of the trust purposes, are authorized and empowered to lease the property for those purposes, after the acceptance of the beneficial interest therein by the beneficiary as hereinafter provided.

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

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

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

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

F. No trust in which a county or municipality is the beneficiary shall hereafter create an indebtedness or obligation until the indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of the beneficiary. In the event a trust has more than one beneficiary, as authorized by this section, the trust shall not incur an indebtedness or obligation
until the indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of two-thirds (2/3) of the beneficiaries of the trust. Provided, however, a municipality with a governing body consisting of fewer than seven (7) members shall be required to approve the creation of an indebtedness or obligation under this subsection by a three-fifths (3/5) vote of the governing body.

G. All bonds described in subsection F of this section, after December 1, 1976, except bonds sold to the federal government or any agency thereof or to any agency of the State of Oklahoma, shall be awarded to the lowest and best bidder based upon open competitive public offering, advertised at least once a week for two (2) successive weeks in a newspaper of general circulation in the county where the principal office of the trust is located prior to the date on which bids are received and opened; provided, competitive bidding may be waived on bond issues with the approval of three-fourths (3/4) of the trustees, and a three-fourths (3/4) vote of the governing body of the beneficiary, unless the beneficiary is a county in which case a two-thirds (2/3) vote of the members of the governing body shall be required, or three-fourths (3/4) vote of the governing bodies of each of the beneficiaries of the trust, unless one of the beneficiaries is a county in which case a two-thirds (2/3) vote of the members of the governing body of such county shall be required. No bonds shall be sold for less than par value, except
upon approval of three-fourths (3/4) of the trustees, unless the 
beneficiary is a county in which case a two-thirds (2/3) vote of the 
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 of such trust, including, but not limited to, budgets, financial reports, bond indentures, and audits. Amendments to the adopted budget shall be approved by the trustees of the public trust and recorded as such in the official minutes of such trust.

I. Contracts for construction, labor, equipment, material or repairs in excess of Fifty Thousand Dollars ($50,000.00) shall be awarded by public trusts to the lowest and best competitive bidder, pursuant to public invitation to bid, which shall be published in the manner provided in subsection G of this section; the advertisements shall appear in the county where the work, or the major part of it, is to be done, or the equipment or materials are to be delivered, or the services are to be rendered; provided, however, should the trustee or the trustees find that an immediate emergency exists, which findings shall be entered in the journal of the trust proceedings, by reason of which an immediate outlay of trust funds in an amount exceeding Seventy-five Thousand Dollars ($75,000.00) is necessary in order to avoid loss of life, substantial damage to property, or damage to the public peace or safety, then the contracts may be made and entered into without public notice or competitive bids; provided that the provisions of this subsection shall not apply to contracts of industrial and
cultural trusts. Notwithstanding the provisions of this subsection, equipment or materials may be purchased by a public trust directly from any contract duly awarded by this state or any state agency under The Oklahoma Central Purchasing Act, or from any contract duly awarded by a governmental entity which is the beneficiary of the public trust. Furthermore, any construction contract issued under this section may provide for a local bid preference of not more than five percent (5%) of the bid price if the public trust governing body determines that there is an economic benefit to the local area or economy. Provided, however, the local bidder or contractor must agree to perform the contract for the same price and terms as the bid proposed by the nonlocal bidder or contractor. Any bid preference granted hereunder must be in accordance with an established policy adopted by the governing body of the trust to clearly demonstrate the economic benefit to the local area or economy. Provided, further, no local bid preference shall be granted unless the local bidding entity is the second lowest qualified bid on the contract. The bid specifications shall clearly state that the bid is subject to a local bidder preference law.

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

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

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

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

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

B. Notwithstanding subsection A of this section, in awarding public construction contracts exceeding Fifty Thousand Dollars ($50,000.00), counties, cities, other local units of government, and any public trust with county or a municipality as its sole beneficiary may provide for a local bid preference of not more than five percent (5%) of the bid price if the awarding public agency determines that there is an economic benefit to the local area or economy. Provided, however, the local bidder or contractor must agree to perform the contract for the same price and terms as the bid proposed by the nonlocal bidder or contractor. Any bid preference granted hereunder must be in accordance with an
established policy adopted by the governing body of the awarding public agency to clearly demonstrate the economic benefit to the local area or economy. Provided, further, no local bid preference shall be granted unless the local bidding entity is the second lowest qualified bid on the contract. The bid specifications shall clearly state that the bid is subject to a local bidder preference law.

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

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

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

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

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

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

SECTION 3. This act shall become effective November 1, 2019.