

EHB 3313

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THE STATE SENATE
Tuesday, March 23, 2010

ENGROSSED

House Bill No. 3313

ENGROSSED HOUSE BILL NO. 3313 - By: Martin (Scott) of the House and Barrington of the Senate.

An Act relating to public bidding; amending 60 O.S. 2001, Section 176, as last amended by Section 48, Chapter 5, O.S.L. 2004 (60 O.S. Supp. 2009, Section 176), which relates to trusts for furtherance of public functions; modifying certain contract amount requiring competitive bid; amending 61 O.S. 2001, Section 103, as amended by Section 15, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009, Section 103), which relates to the Public Competitive Bidding Act of 1974; modifying requirements for award of certain contracts; and providing an effective date.

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

SECTION 1. AMENDATORY 60 O.S. 2001, Section 176, as last amended by Section 48, Chapter 5, O.S.L. 2004 (60 O.S. Supp. 2009, 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 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 combinations thereof, in real or personal property, or either or both, or in any estate or interest in either or both, with the

1 state, or any county or municipality or any and all combinations
2 thereof, as the beneficiary thereof by:

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

5 2. The express approval of two-thirds (2/3) of the membership
6 of the governing body of the beneficiary if a county is a
7 beneficiary;

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

11 4. The express approval of two-thirds (2/3) of the membership
12 of the governing body of each beneficiary in the event a trust has
13 more than one beneficiary; provided, that no funds of a beneficiary
14 derived from sources other than the trust property, or the operation
15 thereof, shall be charged with or expended for the execution of the
16 trust, except by express action of the legislative authority of the
17 beneficiary prior to the charging or expending of the funds. The
18 officers or any other governmental agencies or authorities having
19 the custody, management, or control of any property, real or
20 personal or mixed, of the beneficiary of the trust, or of a proposed
21 trust, which property shall be needful for the execution of the
22 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. A municipality may convey title to real property which is
4 used for an airport to the trustees of an industrial development
5 authority trust whose beneficiary is the municipality. The
6 industrial development authority trust must already have the
7 custody, management, or control of the real property. The
8 conveyance must be approved by a majority of the governing body of
9 the municipality. A conveyance pursuant to this section may be made
10 only for the sole purpose of allowing the authority to sell the
11 property for fair market value when the property is to be used for
12 industrial development purposes. Conveyances made pursuant to this
13 subsection shall be made subject to any existing reversionary
14 interest or other restrictions burdening the property and subject to
15 any reversionary interest or other restriction considered prudent by
16 the municipality.

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

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

7 E. No trust in which a county or municipality is the
8 beneficiary shall hereafter create an indebtedness or obligation
9 until the indebtedness or obligation has been approved by a two-
10 thirds (2/3) vote of the governing body of the beneficiary. In the
11 event a trust has more than one beneficiary, as authorized by this
12 section, the trust shall not incur an indebtedness or obligation
13 until the indebtedness or obligation has been approved by a two-
14 thirds (2/3) vote of the governing body of two-thirds (2/3) of the
15 beneficiaries of the trust.

16 F. All bonds described in subsection E of this section, after
17 December 1, 1976, except bonds sold to the federal government or any
18 agency thereof or to any agency of the State of Oklahoma, shall be
19 awarded to the lowest and best bidder based upon open competitive
20 public offering, advertised at least once a week for two (2)
21 successive weeks in a newspaper of general circulation in the county
22 where the principal office of the trust is located prior to the date
23 on which bids are received and opened; provided, competitive bidding

1 may be waived on bond issues with the approval of three-fourths
2 (3/4) of the trustees, and a three-fourths (3/4) vote of the
3 governing body of the beneficiary, unless the beneficiary is a
4 county in which case a two-thirds (2/3) vote of the members of the
5 governing body shall be required, or three-fourths (3/4) vote of the
6 governing bodies of each of the beneficiaries of the trust, unless
7 one of the beneficiaries is a county in which case a two-thirds
8 (2/3) vote of the members of the governing body of such county shall
9 be required. No bonds shall be sold for less than par value, except
10 upon approval of three-fourths (3/4) of the trustees, unless the
11 beneficiary is a county in which case a two-thirds (2/3) vote of the
12 members of the governing body shall be required. In no event shall
13 bonds be sold for less than sixty-five percent (65%) of par value;
14 provided, however, in no event shall the original purchaser from the
15 issuer of any bonds issued by any public trust for any purpose
16 receive directly or indirectly any fees, compensation, or other
17 remuneration in excess of four percent (4%) of the price paid for
18 the bonds by the purchaser of the bonds from the original purchaser;
19 and further provided, that the average coupon rate thereon shall in
20 no event exceed fourteen percent (14%) per annum. No public trust
21 shall sell bonds for less than ninety-six percent (96%) of par value
22 until the public trust has received from the underwriter or
23 financial advisor or, in the absence of an underwriter or financial

1 advisor, the initial purchaser of the bonds, an estimated
2 alternative financing structure or structures showing the estimated
3 total interest and principal cost of each alternative. At least one
4 alternative financing structure shall include bonds sold to the
5 public at par. Any estimates shall be considered a public record of
6 the public trust. Bonds, notes or other evidences of indebtedness
7 issued by any public trust shall be eligible for purchase by any
8 state banking association or corporation subject to such limitations
9 as to investment quality as may be imposed by regulations, rules or
10 rulings of the State Banking Commissioner.

11 G. Public trusts created pursuant to this section shall file
12 annually, with their respective beneficiaries, copies of financial
13 documents and reports sufficient to demonstrate the fiscal activity
14 of such trust, including, but not limited to, budgets, financial
15 reports, bond indentures, and audits. Amendments to the adopted
16 budget shall be approved by the trustees of the public trust and
17 recorded as such in the official minutes of such trust.

18 H. Contracts for construction, labor, equipment, material or
19 repairs in excess of ~~Twenty five Thousand Dollars (\$25,000.00)~~ Fifty
20 Thousand Dollars (\$50,000.00) shall be awarded by public trusts to
21 the lowest and best competitive bidder, pursuant to public
22 invitation to bid, which shall be published in the manner provided
23 in the preceding section hereof; the advertisements shall appear in

1 the county where the work, or the major part of it, is to be done,
2 or the equipment or materials are to be delivered, or the services
3 are to be rendered; provided, however, should the trustee or the
4 trustees find that an immediate emergency exists, which findings
5 shall be entered in the journal of the trust proceedings, by reason
6 of which an immediate outlay of trust funds in an amount exceeding
7 ~~Twenty-five Thousand Dollars (\$25,000.00)~~ Fifty Thousand Dollars
8 (\$50,000.00) is necessary in order to avoid loss of life,
9 substantial damage to property, or damage to the public peace or
10 safety, then the contracts may be made and entered into without
11 public notice or competitive bids; provided that the provisions of
12 this subsection shall not apply to contracts of industrial and
13 cultural trusts. Notwithstanding the provisions of this subsection,
14 equipment or materials may be purchased by a public trust directly
15 from any contract duly awarded by this state or any state agency
16 under the Oklahoma Central Purchasing Act, or from any contract duly
17 awarded by a governmental entity which is the beneficiary of the
18 public trust.

19 I. Any public trust created pursuant to the provisions of this
20 section shall have the power to acquire lands by use of eminent
21 domain in the same manner and according to the procedures provided
22 for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes.
23 Any exercise of the power of eminent domain by a public trust

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

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

19 K. Any trust created under this act, in whole or in part, to
20 operate, administer or oversee any county jail facility shall
21 consist of not less than five members and include a county
22 commissioner and the county sheriff, or their designee, and one

1 member appointed by each of the county commissioners. The appointed
2 members shall not be elected officials.

3 SECTION 2. AMENDATORY 61 O.S. 2001, Section 103, as
4 amended by Section 15, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009,
5 Section 103), is amended to read as follows:

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

14 B. Except as provided in subsection D of this section, ~~public~~
15 other construction contracts less than for the purpose of making any
16 public improvements or constructing any public building or making
17 repairs to the same for Fifty Thousand Dollars (\$50,000.00) or less
18 shall be let and awarded to the lowest responsible bidder by receipt
19 of written bids or awarded on the basis of competitive quotes to the
20 lowest responsible qualified contractor. ~~No work shall~~ Work may be
21 ~~commenced until a written contract is executed and proof of~~
22 ~~insurance has been provided by the contractor to the awarding in~~
23 accordance with the purchasing policies of the public agency.

1 C. Except as provided in subsection D of this section, ~~public~~
2 other construction contracts for less than Two Thousand Five Hundred
3 Dollars (\$2,500.00) ~~for minor maintenance or minor repair work~~ may
4 be negotiated with a qualified contractor. ~~No work shall~~ Work may
5 be commenced ~~until a written contract is executed and proof of~~
6 ~~insurance has been provided by the contractor to the awarding in~~
7 accordance with the purchasing policies of the public agency.

8 D. The provisions of this subsection shall apply to public
9 construction for minor maintenance or minor repair work to public
10 school district property. ~~Such public~~ Other construction contracts
11 for less than Twenty-five Thousand Dollars (\$25,000.00) may be
12 negotiated with a qualified contractor. ~~Such public construction~~
13 Construction contracts equal to or greater than Twenty-five Thousand
14 Dollars (\$25,000.00) but less than Fifty Thousand Dollars
15 (\$50,000.00) shall be let and awarded to the lowest responsible
16 bidder by receipt of written bids. No work shall be commenced on
17 any ~~such public~~ construction contract until a written contract is
18 executed and proof of insurance has been provided by the contractor
19 to the awarding public agency.

20 SECTION 3. This act shall become effective November 1, 2010.

21 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 3-22-10
22 - DO PASS.