

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL 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

1 beneficiary prior to the charging or expending of the funds. The
2 officers or any other governmental agencies or authorities having
3 the custody, management, or control of any property, real or
4 personal or mixed, of the beneficiary of the trust, or of a proposed
5 trust, which property shall be needful for the execution of the
6 trust purposes, are authorized and empowered to lease the property
7 for those purposes, after the acceptance of the beneficial interest
8 therein by the beneficiary as hereinafter provided.

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

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

1 industrial development purposes. Conveyances made pursuant to this
2 subsection shall be made subject to any existing reversionary
3 interest or other restrictions burdening the property and subject to
4 any reversionary interest or other restriction considered prudent by
5 the municipality.

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

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

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

1 until the indebtedness or obligation has been approved by a two-
2 thirds (2/3) vote of the governing body of two-thirds (2/3) of the
3 beneficiaries of the trust. Provided, however, a municipality with
4 a governing body consisting of fewer than seven (7) members shall be
5 required to approve the creation of an indebtedness or obligation
6 under this subsection by a three-fifths (3/5) vote of the governing
7 body.

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

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

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

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

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

20 J. Any public trust created pursuant to the provisions of this
21 section shall have the power to acquire lands by use of eminent
22 domain in the same manner and according to the procedures provided
23 for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes.
24 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 K. 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 L. Any trust created under ~~this act~~ Section 176 et seq. of this
20 title, in whole or in part, to operate, administer or oversee any
21 county jail facility shall consist of not less than five members and
22 include a county commissioner and the county sheriff, or their
23 designee, and one member appointed by each of the county
24

1 commissioners. The appointed members shall not be elected
2 officials.

3 SECTION 2. AMENDATORY 61 O.S. 2011, Section 103, as last
4 amended by Section 2, Chapter 186, O.S.L. 2013 (61 O.S. Supp. 2018,
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. Notwithstanding subsection A of this section, in awarding
15 public construction contracts exceeding Fifty Thousand Dollars
16 (\$50,000.00), counties, cities, other local units of government, and
17 any public trust with county or a municipality as its sole
18 beneficiary may provide for a local bid preference of not more than
19 five percent (5%) of the bid price if the awarding public agency
20 determines that there is an economic benefit to the local area or
21 economy. Provided, however, the local bidder or contractor must
22 agree to perform the contract for the same price and terms as the
23 bid proposed by the nonlocal bidder or contractor. Any bid
24 preference granted hereunder must be in accordance with an

1 established policy adopted by the governing body of the awarding
2 public agency to clearly demonstrate the economic benefit to the
3 local area or economy. Provided, further, no local bid preference
4 shall be granted unless the local bidding entity is the second
5 lowest qualified bid on the contract. The bid specifications shall
6 clearly state that the bid is subject to a local bidder preference
7 law.

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

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

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

1 with a qualified contractor. Construction contracts equal to or
2 greater than Twenty-five Thousand Dollars (\$25,000.00) but less than
3 Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the
4 lowest responsible bidder by receipt of written bids. No work shall
5 be commenced on any construction contract until a written contract
6 is executed and proof of insurance has been provided by the
7 contractor to the awarding public agency.

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

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

1 to Fifty Thousand Dollars (\$50,000.00) to any contractor affiliated
2 with a purchasing cooperative unless the purchasing cooperative and
3 the contractor have complied with all of the provisions of the
4 Public Competitive Bidding Act of 1974, including submission of a
5 written bid upon notice of competitive bidding.

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

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