

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3275

By: Boles

AS INTRODUCED

An Act relating to public buildings and public works; amending 61 O.S. 2011, Section 103, as last amended by Section 2, Chapter 405, O.S.L. 2019 (61 O.S. Supp. 2019, Section 103), which relates to competitive bidding; increasing public construction contract amount; amending 60 O.S. 2011, Section 176, as last amended by Section 1, Chapter 405, O.S.L. 2019 (60 O.S. Supp. 2019, Section 176), which relates to trusts for public functions; increasing construction contract amount; and providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 103, as last amended by Section 2, Chapter 405, O.S.L. 2019 (61 O.S. Supp. 2019, 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)~~ Seventy-five Thousand Dollars (\$75,000.00) 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

1 bonds and insurance have been provided by the contractor to the  
2 awarding public agency.

3 B. Notwithstanding subsection A of this section, in awarding  
4 public construction contracts exceeding ~~Fifty Thousand Dollars~~  
5 ~~(\$50,000.00)~~ Seventy-five Thousand Dollars (\$75,000.00), counties,  
6 cities, other local units of government and any public trust with a  
7 county or a municipality as its sole beneficiary may provide for a  
8 local bid preference of not more than five percent (5%) of the bid  
9 price if the awarding public agency determines that there is an  
10 economic benefit to the local area or economy. Provided, however,  
11 the local bidder or contractor must agree to perform the contract  
12 for the same price and terms as the bid proposed by the nonlocal  
13 bidder or contractor. Any bid preference granted hereunder must be  
14 in accordance with an established policy adopted by the governing  
15 body of the awarding public agency to clearly demonstrate the  
16 economic benefit to the local area or economy. Provided, further,  
17 no local bid preference shall be granted unless the local bidding  
18 entity is the second lowest qualified bid on the contract. The bid  
19 specifications shall clearly state that the bid is subject to a  
20 local bidder preference law. For purposes of this section, "local  
21 bid" means the bidding person is authorized to transact business in  
22 this state and maintains a bona fide establishment for transacting  
23 such business within this state. This provision does not apply to  
24 any construction contract for which federal funds are available for

1 expenditure when its provisions may be in conflict with federal law  
2 or regulation.

3 C. Except as provided in subsection E of this section, other  
4 construction contracts for the purpose of making any public  
5 improvements or constructing any public building or making repairs  
6 to the same for ~~Fifty Thousand Dollars (\$50,000.00)~~ Seventy-five  
7 Thousand Dollars (\$75,000.00) or less shall be let and awarded to  
8 the lowest responsible bidder by receipt of written bids or awarded  
9 on the basis of competitive quotes to the lowest responsible  
10 qualified contractor. Work may be commenced in accordance with the  
11 purchasing policies of the public agency.

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

17 E. The provisions of this subsection shall apply to public  
18 construction for minor maintenance or minor repair work to public  
19 school district property. Other construction contracts for less  
20 than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated  
21 with a qualified contractor. Construction contracts equal to or  
22 greater than Twenty-five Thousand Dollars (\$25,000.00) but less than  
23 ~~Fifty Thousand Dollars (\$50,000.00)~~ Seventy-five Thousand Dollars  
24 (\$75,000.00) shall be let and awarded to the lowest responsible

1 bidder by receipt of written bids. No work shall be commenced on  
2 any construction contract until a written contract is executed and  
3 proof of insurance has been provided by the contractor to the  
4 awarding public agency.

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

14 G. 1. A public agency shall not let or award a public  
15 construction contract exceeding ~~Fifty Thousand Dollars (\$50,000.00)~~  
16 Seventy-five Thousand Dollars (\$75,000.00) to any contractor  
17 affiliated with a purchasing cooperative unless the purchasing  
18 cooperative and the contractor have complied with all of the  
19 provisions of the Public 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)~~ Seventy-five Thousand Dollars  
24 (\$75,000.00) to any contractor affiliated with a purchasing

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

5 2. A purchasing cooperative and its affiliated contractors  
6 shall not be allowed to bid on any public construction contract  
7 exceeding ~~Fifty Thousand Dollars (\$50,000.00)~~ Seventy-five Thousand  
8 Dollars (\$75,000.00) unless the purchasing cooperative and its  
9 affiliated contractors have complied with all of the provisions of  
10 the Public Competitive Bidding Act of 1974, including but not  
11 limited to open competitive bidding after solicitation for sealed  
12 bids. A purchasing cooperative and its affiliated contractors shall  
13 not be allowed to bid on any public construction contract exceeding  
14 Two Thousand Five Hundred Dollars (\$2,500.00) unless the purchasing  
15 cooperative and its affiliated contractors have complied with all of  
16 the provisions of the Public Competitive Bidding Act of 1974,  
17 including submission of a written bid upon notice of open  
18 competitive bidding.

19 SECTION 2. AMENDATORY 60 O.S. 2011, Section 176, as last  
20 amended by Section 1, Chapter 405, O.S.L. 2019 (60 O.S. Supp. 2019,  
21 Section 176), is amended to read as follows:

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

1 other similar transactions and to provide funds for the furtherance  
2 and accomplishment of any authorized and proper public function or  
3 purpose of the state or of any county or municipality or any and all  
4 combinations thereof, in real or personal property, or either or  
5 both, or in any estate or interest in either or both, with the  
6 state, 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)~~ Seventy-  
7 five Thousand Dollars (\$75,000.00) shall be awarded by public trusts  
8 to the lowest and best competitive bidder, pursuant to public  
9 invitation to bid, which shall be published in the manner provided  
10 in subsection G of this section; the advertisements shall appear in  
11 the county where the work, or the major part of it, is to be done,  
12 or the equipment or materials are to be delivered, or the services  
13 are to be rendered; provided, however, should the trustee or the  
14 trustees find that an immediate emergency exists, which findings  
15 shall be entered in the journal of the trust proceedings, by reason  
16 of which an immediate outlay of trust funds in an amount exceeding  
17 Seventy-five Thousand Dollars (\$75,000.00) is necessary in order to  
18 avoid loss of life, substantial damage to property, or damage to the  
19 public peace or safety, then the contracts may be made and entered  
20 into without public notice or competitive bids; provided that the  
21 provisions of this subsection shall not apply to contracts of  
22 industrial and cultural trusts. Notwithstanding the provisions of  
23 this subsection, equipment or materials may be purchased by a public  
24 trust directly from any contract duly awarded by this state or any

1 state agency under The Oklahoma Central Purchasing Act, or from any  
2 contract duly awarded by a governmental entity which is the  
3 beneficiary of the public trust. Furthermore, any construction  
4 contract issued under this section may provide for a local bid  
5 preference of not more than five percent (5%) of the bid price if  
6 the public trust governing body determines that there is an economic  
7 benefit to the local area or economy. Provided, however, the local  
8 bidder or contractor must agree to perform the contract for the same  
9 price and terms as the bid proposed by the nonlocal bidder or  
10 contractor. Any bid preference granted hereunder must 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. For purposes of this section, "local bid" means the bidding  
18 person is authorized to transact business in this state and  
19 maintains a bona fide establishment for transacting such business  
20 within this state. This provision does not apply to any  
21 construction contract for which federal funds are available for  
22 expenditure when its provisions may be in conflict with federal law  
23 or regulation.

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 Section 176 et seq. of this title,  
2 in whole or in part, to operate, administer or oversee any county  
3 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 3. This act shall become effective November 1, 2020.

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10 57-2-9305 LRB 12/30/19

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