

1 **SENATE FLOOR VERSION**

2 March 28, 2019

3 ENGROSSED HOUSE  
4 BILL NO. 1885

By: Branham, Frix, West (Kevin)  
and Wallace of the House

5 and

6 Leewright of the Senate

7  
8  
9 An Act relating to public bidding and public  
10 contracts; amending 60 O.S. 2011, Section 176, as  
11 last amended by Section 22, Chapter 42, O.S.L. 2017  
12 (60 O.S. Supp. 2018, Section 176), which relates to  
13 trusts in furtherance of public functions; clarifying  
14 statutory reference; authorizing certain public  
15 trusts and public agencies to provide certain local  
16 bid preference of certain amount; stating  
17 requirements; amending 61 O.S. 2011, Section 103, as  
18 last amended by Section 2, Chapter 186, O.S.L. 2013  
19 (61 O.S. Supp. 2018, Section 103), which relates to  
20 the Public Competitive Bidding Act of 1974; providing  
21 for local bid preference for certain bids; and  
22 providing an effective date.

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

24 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:

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

1 rate swaps and other similar transactions and to provide  
2 funds for the furtherance and accomplishment of any  
3 authorized and proper public function or purpose of the state  
4 or of any county or municipality or any and all combinations  
5 thereof, in real or personal property, or either or both, or  
6 in any estate or interest in either or both, with the state,  
7 or any county or municipality or any and all combinations  
8 thereof, as the beneficiary thereof by:

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

11 2. The express approval of two-thirds (2/3) of the membership  
12 of the governing body of the beneficiary if a county is a  
13 beneficiary;

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

17 4. The express approval of two-thirds (2/3) of the membership  
18 of the governing body of each beneficiary in the event a trust has  
19 more than one beneficiary; provided, that no funds of a beneficiary  
20 derived from sources other than the trust property, or the operation  
21 thereof, shall be charged with or expended for the execution of the  
22 trust, except by express action of the legislative authority of the  
23 beneficiary prior to the charging or expending of the funds. The  
24 officers or any other governmental agencies or authorities having

1 the custody, management, or control of any property, real or  
2 personal or mixed, of the beneficiary of the trust, or of a proposed  
3 trust, which property shall be needful for the execution of the  
4 trust purposes, are authorized and empowered to lease the property  
5 for those purposes, after the acceptance of the beneficial interest  
6 therein by the beneficiary as hereinafter provided.

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

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

1 interest or other restrictions burdening the property and subject to  
2 any reversionary interest or other restriction considered prudent by  
3 the municipality.

4 D. The trustees of a public trust having the State of Oklahoma  
5 as beneficiary shall make and adopt bylaws for the due and orderly  
6 administration and regulation of the affairs of the public trust.

7 All bylaws of a public trust having the State of Oklahoma as  
8 beneficiary shall be submitted in writing to the Governor of the  
9 State of Oklahoma. The Governor must approve the proposed bylaws  
10 before they take effect.

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

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

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

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

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

23 H. Public trusts created pursuant to this section shall file  
24 annually, with their respective beneficiaries, copies of financial

1 documents and reports sufficient to demonstrate the fiscal activity  
2 of such trust, including, but not limited to, budgets, financial  
3 reports, bond indentures, and audits. Amendments to the adopted  
4 budget shall be approved by the trustees of the public trust and  
5 recorded as such in the official minutes of such trust.

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

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

19 J. 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  
24 pursuant to the provisions of this section shall be limited to the



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

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

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

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

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

12 B. Notwithstanding subsection A of this section, in awarding  
13 public construction contracts exceeding Fifty Thousand Dollars  
14 (\$50,000.00), counties, cities, other local units of government and  
15 any public trust with a county or a municipality as its sole  
16 beneficiary may provide for a local bid preference of not more than  
17 five percent (5%) of the bid price if the awarding public agency  
18 determines that there is an economic benefit to the local area or  
19 economy. Provided, however, the local bidder or contractor shall  
20 agree to perform the contract for the same price and terms as the  
21 bid proposed by the nonlocal bidder or contractor. Any bid  
22 preference granted pursuant to this subsection shall be in  
23 accordance with an established policy adopted by the governing body  
24 of the awarding public agency to clearly demonstrate the economic

1 benefit to the local area or economy. Provided, further, no local  
2 bid preference shall be granted unless the local bidding entity is  
3 the second lowest qualified bid on the contract. The bid  
4 specifications shall clearly state that the bid is subject to a  
5 local bidder preference law.

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

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

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

1 Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the  
2 lowest responsible bidder by receipt of written bids. No work shall  
3 be commenced on any construction contract until a written contract  
4 is executed and proof of insurance has been provided by the  
5 contractor to the awarding public agency.

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

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

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
19 March 28, 2019 - DO PASS  
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