

1 **SENATE FLOOR VERSION**

2 February 9, 2015

3 SENATE BILL NO. 352

By: Newberry of the Senate

4 and

5 Echols of the House

6  
7  
8 An Act relating to public bidding and public  
9 contracts; amending 60 O.S. 2011, Section 176, which  
10 relates to trusts in furtherance of public functions;  
11 clarifying statutory reference; authorizing certain  
12 public trusts and public agencies to provide certain  
13 local bid preference of certain amount; requiring  
14 entities to adopt certain rules; stating  
15 requirements; amending 61 O.S. 2011, Section 103, as  
16 last amended by Section 2, Chapter 186, O.S.L. 2013,  
17 (61 O.S. Supp. 2014, Section 103), which relates to  
18 the Public Competitive Bidding Act of 1974; providing  
19 for local bid preference for certain bids; and  
20 declaring an emergency.

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

22 SECTION 1. AMENDATORY 60 O.S. 2011, Section 176, is  
23 amended to read as follows:

24 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

1 purpose of the state or of any county or municipality or any and all  
2 combinations thereof, in real or personal property, or either or  
3 both, or in any estate or interest in either or both, with the  
4 state, or any county or municipality or any and all combinations  
5 thereof, as the beneficiary thereof by:

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

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

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

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

1 trust purposes, are authorized and empowered to lease the property  
2 for those purposes, after the acceptance of the beneficial interest  
3 therein by the beneficiary as hereinafter provided.

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

18 C. The trustees of a public trust having the State of Oklahoma  
19 as beneficiary shall make and adopt bylaws for the due and orderly  
20 administration and regulation of the affairs of the public trust.  
21 All bylaws of a public trust having the State of Oklahoma as  
22 beneficiary shall be submitted in writing to the Governor of the  
23 State of Oklahoma. The Governor must approve the proposed bylaws  
24 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  
24 may be waived on bond issues with the approval of three-fourths

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

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

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

16 H. Contracts for construction, labor, equipment, material or  
17 repairs in excess of Fifty Thousand Dollars (\$50,000.00) shall be  
18 awarded by public trusts to the lowest and best competitive bidder,  
19 pursuant to public invitation to bid, which shall be published in  
20 the manner provided in ~~the preceding section hereof~~ subsection F of  
21 this section; the advertisements shall appear in the county where  
22 the work, or the major part of it, is to be done, or the equipment  
23 or materials are to be delivered, or the services are to be  
24 rendered; provided, however, should the trustee or the trustees find

1 that an immediate emergency exists, which findings shall be entered  
2 in the journal of the trust proceedings, by reason of which an  
3 immediate outlay of trust funds in an amount exceeding Fifty  
4 Thousand Dollars (\$50,000.00) is necessary in order to avoid loss of  
5 life, substantial damage to property, or damage to the public peace  
6 or safety, then the contracts may be made and entered into without  
7 public notice or competitive bids; provided that the provisions of  
8 this subsection shall not apply to contracts of industrial and  
9 cultural trusts. Notwithstanding the provisions of this subsection,  
10 equipment or materials may be purchased by a public trust directly  
11 from any contract duly awarded by this state or any state agency  
12 under the Oklahoma Central Purchasing Act, or from any contract duly  
13 awarded by a governmental entity which is the beneficiary of the  
14 public trust. Furthermore, any construction contract issued under  
15 this section may provide for a local bid preference of not more than  
16 five percent (5%) of the bid price if the public trust governing  
17 body determines that there is an economic benefit to the local area  
18 or economy. Provided, however, the local bidder or contractor must  
19 agree to perform the contract for the same price and terms as the  
20 bid proposed by the nonlocal bidder or contractor. Any bid  
21 preference granted hereunder must be in accordance with an  
22 established policy adopted by the governing body of the trust to  
23 clearly demonstrate the economic benefit to the local area or  
24 economy. Provided, further, no local bid preference shall be

1 granted unless the local bidding entity is the second lowest  
2 qualified bid on the contract.

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

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

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

11 SECTION 2. AMENDATORY 61 O.S. 2011, Section 103, as last  
12 amended by Section 2, Chapter 186, O.S.L. 2013 (61 O.S. Supp. 2014,  
13 Section 103), is amended to read as follows:

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

22 B. Notwithstanding subsection A of this section, in awarding  
23 public construction contracts exceeding Fifty Thousand Dollars  
24 (\$50,000.00), counties, cities, other local units of government, and

1 any public trust with county or a municipality as its sole  
2 beneficiary may provide for a local bid preference of not more than  
3 five percent (5%) of the bid price if the awarding public agency  
4 determines that there is an economic benefit to the local area or  
5 economy. Provided, however, the local bidder or contractor must  
6 agree to perform the contract for the same price and terms as the  
7 bid proposed by the nonlocal bidder or contractor. Any bid  
8 preference granted hereunder must be in accordance with an  
9 established policy adopted by the governing body of the awarding  
10 public agency to clearly demonstrate the economic benefit to the  
11 local area or economy. Provided, further, no local bid preference  
12 shall be granted unless the local bidding entity is the second  
13 lowest qualified bid on the contract.

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

22 ~~C.~~ D. Except as provided in subsection ~~D~~ E of this section,  
23 other construction contracts for less than Five Thousand Dollars  
24 (\$5,000.00) may be negotiated with a qualified contractor. Work may

1 be commenced in accordance with the purchasing policies of the  
2 public agency.

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

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

23 ~~F.~~ G. 1. A public agency shall not let or award a public  
24 construction contract exceeding Fifty Thousand Dollars (\$50,000.00)

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

12 2. A purchasing cooperative and its affiliated contractors  
13 shall not be allowed to bid on any public construction contract  
14 exceeding Fifty Thousand Dollars (\$50,000.00) 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 but not limited to open competitive bidding after  
18 solicitation for sealed bids. A purchasing cooperative and its  
19 affiliated contractors shall not be allowed to bid on any public  
20 construction contract exceeding Two Thousand Five Hundred Dollars  
21 (\$2,500.00) unless the purchasing cooperative and its affiliated  
22 contractors have complied with all of the provisions of the Public  
23 Competitive Bidding Act of 1974, including submission of a written  
24 bid upon notice of open competitive bidding.

1       SECTION 3. It being immediately necessary for the preservation  
2 of the public peace, health and safety, an emergency is hereby  
3 declared to exist, by reason whereof this act shall take effect and  
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
6 February 9, 2015 - DO PASS  
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