An Act

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

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

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

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

4. The express approval of two-thirds (2/3) of the membership of the governing body of each beneficiary in the event a trust has more than one beneficiary; provided, that no funds of a beneficiary derived from sources other than the trust property, or the operation thereof, shall be charged with or expended for the execution of the trust, except by express action of the legislative authority of the beneficiary prior to the charging or expending of the funds. The officers or any other governmental agencies or authorities having the custody, management, or control of any property, real or personal or mixed, of the beneficiary of the trust, or of a proposed trust, which property shall be needful for the execution of the trust purposes, are authorized and empowered to lease the property for those purposes, after the acceptance of the beneficial interest therein by the beneficiary as hereinafter provided.

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

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

beneficiary shall be submitted in writing to the Governor of the State of Oklahoma. The Governor must approve the proposed bylaws before they take effect.

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

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

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

G. 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 of such trust, including, but not limited to, budgets, financial reports, bond indentures, and audits. Amendments to the adopted budget shall be approved by the trustees of the public trust and recorded as such in the official minutes of such trust.

H. Contracts for construction, labor, equipment, material or repairs in excess of ~~Twenty-five Thousand Dollars ($25,000.00)~~ Fifty Thousand Dollars ($50,000.00) shall be awarded by public trusts to the lowest and best competitive bidder, pursuant to public invitation to bid, which shall be published in the manner provided in the preceding section hereof; the advertisements shall appear in the county where the work, or the major part of it, is to be done, or the equipment or materials are to be delivered, or the services are to be rendered; provided, however, should the trustee or the trustees find that an immediate emergency exists, which findings shall be entered in the journal of the trust proceedings, by reason of which an immediate outlay of trust funds in an amount exceeding ~~Twenty-five Thousand Dollars ($25,000.00)~~ Fifty Thousand Dollars ($50,000.00) is necessary in order to avoid loss of life, substantial damage to property, or damage to the public peace or safety, then the contracts may be made and entered into without public notice or competitive bids; provided that the provisions of this subsection shall not apply to contracts of industrial and cultural trusts. Notwithstanding the provisions of this subsection,

equipment or materials may be purchased by a public trust directly from any contract duly awarded by this state or any state agency under the Oklahoma Central Purchasing Act, or from any contract duly awarded by a governmental entity which is the beneficiary of the public trust.

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

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

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

SECTION 2. AMENDATORY 61 O.S. 2001, Section 103, as amended by Section 15, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009, 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) 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 bonds and insurance have been provided by the contractor to the awarding public agency.

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

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

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

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

Passed the House of Representatives the 17th day of February, 2010.

Presiding Officer of the House of Representatives

Passed the Senate the 7th day of April, 2010.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 8th

day of April, **20** 10,

at 2:45 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 13th **day of** April, **20** 10, **at** 6:08 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

14th **day of** April, **20** 10,

at 3:15 **o'clock** P **M.**

By: