

1 ENGROSSED HOUSE  
2 BILL NO. 1534

By: Montgomery and Griffith of  
the House

3 and

4 Leewright of the Senate

5  
6  
7 [ infrastructure development - Oklahoma Public and  
8 Private Facilities and Infrastructure Act -  
9 effective date ]  
10  
11

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

13 SECTION 1. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 5151 of Title 74, unless there  
15 is created a duplication in numbering, reads as follows:

16 This act shall be known and may be cited as the "Oklahoma Public  
17 and Private Facilities and Infrastructure Act".

18 SECTION 2. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 5152 of Title 74, unless there  
20 is created a duplication in numbering, reads as follows:

21 As used in the Oklahoma Public and Private Facilities and  
22 Infrastructure Act:

23 1. "Affected jurisdiction" means any county or municipality in  
24 which all or a portion of a qualifying project is located;

1        2. "Availability payment" means a periodic payment made to a  
2 private sector concessionaire or developer by the responsible public  
3 sector entity in exchange for making available the use of the public  
4 facility at a predetermined level of service;

5        3. "Comprehensive agreement" means the comprehensive agreement  
6 authorized by Section 11 of this act between the contracting entity  
7 and the responsible governmental entity;

8        4. "Contracting entity" means a person or business entity who  
9 enters into a comprehensive or interim agreement with a responsible  
10 governmental entity;

11       5. "Develop" means to plan, design, develop, finance, lease,  
12 acquire, install, construct or expand a qualifying project;

13       6. "Governmental entity" means a political subdivision, board,  
14 commission, department or other agency of this state that elects to  
15 operate under the Oklahoma Public and Private Facilities and  
16 Infrastructure Act through the adoption of a resolution by the  
17 governing body of the governmental entity;

18       7. "Interim agreement" means an agreement authorized by Section  
19 12 of this act between a contracting entity and a responsible  
20 governmental entity that proposes the development or operation of  
21 the qualifying project;

22       8. "Lease payment" means any form of payment, including a land  
23 lease, by a governmental entity to the contracting entity for the  
24 use of a qualifying project;

1 9. "Material default" means any default by a contracting entity  
2 in the performance of duties imposed under subsection F of Section  
3 10 of this act that jeopardizes adequate service to the public from  
4 a qualifying project;

5 10. "Operate" means to finance, maintain, improve, equip,  
6 modify, repair or operate a qualifying project;

7 11. "Qualifying project" means:

8 a. any transportation capacity, highway, bridge or  
9 tunnel, mass transit facility, vehicle parking  
10 facility, port facility, waterway, power generation  
11 facility or transmission line, fuel supply facility or  
12 pipeline, water supply facility or pipeline, public  
13 work, wastewater or waste treatment facility,  
14 hospital, school, medical or nursing care facility,  
15 recreational facility, public building or other  
16 similar facility currently available or to be made  
17 available to a governmental entity for public use,  
18 including any structure, parking area, appurtenance  
19 and other property required to operate the structure  
20 or facility, or

21 b. any improvements necessary or desirable to unimproved  
22 real estate owned by a governmental entity.

23 Notwithstanding any provision of this section to the contrary,  
24 all roadway or highway projects shall be subject to review and

1 approval by the Governor, and the responsible governmental entity  
2 shall not approve any roadway or highway project disapproved by the  
3 Governor;

4 12. "Responsible governmental entity" means a governmental  
5 entity that has the power to develop or operate an applicable  
6 qualifying project. Any such responsible governmental entity that  
7 is subject to the rules promulgated by the Office of Management and  
8 Enterprise Services shall comply with all such rules and  
9 regulations. Any such responsible governmental entity that is  
10 subject to The Oklahoma Central Purchasing Act, the Public  
11 Competitive Bidding Act of 1974 and the Oklahoma Privatization of  
12 State Functions Act shall comply with these laws;

13 13. "Revenue" means all revenue, income, earnings, user fees,  
14 lease payments or other service payments that support the  
15 development or operation of a qualifying project, including money  
16 received as a grant or otherwise from the federal government, a  
17 governmental entity or any agency or instrumentality of the federal  
18 government or governmental entity in aid of the project;

19 14. "Service contract" means a contract between a governmental  
20 entity and a contracting entity under Section 7 of this act;

21 15. "Service payment" means a payment to a contracting entity  
22 of a qualifying project under a service contract; and  
23  
24

1        16. "User fee" means a rate, fee or other charge imposed by a  
2 contracting entity for the use of all or part of a qualifying  
3 project under a comprehensive agreement.

4        SECTION 3.        NEW LAW        A new section of law to be codified  
5 in the Oklahoma Statutes as Section 5153 of Title 74, unless there  
6 is created a duplication in numbering, reads as follows:

7        The Oklahoma Public and Private Facilities and Infrastructure  
8 Act shall not alter the eminent domain laws of this state or grant  
9 the power of eminent domain to any person who is not expressly  
10 granted that power under other state law.

11        SECTION 4.        NEW LAW        A new section of law to be codified  
12 in the Oklahoma Statutes as Section 5154 of Title 74, unless there  
13 is created a duplication in numbering, reads as follows:

14        A. A contracting entity may not develop or operate a qualifying  
15 project unless the contracting entity obtains the approval of and  
16 contracts with the responsible governmental entity under the  
17 Oklahoma Public and Private Facilities and Infrastructure Act. The  
18 contracting entity may initiate the approval process by submitting a  
19 proposal requesting approval under subsection A of Section 6 of this  
20 act, or the responsible governmental entity may request proposals or  
21 invite bids under subsection B of Section 6 of this act.

22        B. A person or business entity submitting a proposal requesting  
23 approval of a qualifying project shall specifically and conceptually  
24

1 identify any facility, building, infrastructure or improvement  
2 included in the proposal as a part of the qualifying project.

3 C. On receipt of a proposal submitted by a person or business  
4 entity initiating the approval process under subsection A of Section  
5 6 of this act, the responsible governmental entity shall determine  
6 whether to accept the proposal for consideration in accordance with  
7 Section 6 of this act and the guidelines adopted under that section.  
8 Notwithstanding any other provision of law, a responsible  
9 governmental entity that determines not to accept the proposal for  
10 consideration shall return the proposal, all fees and the  
11 accompanying documentation to the person or business entity  
12 submitting the proposal.

13 D. The responsible governmental entity may at any time reject a  
14 proposal initiated by a person or business entity under subsection A  
15 of Section 6 of this act.

16 SECTION 5. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 5155 of Title 74, unless there  
18 is created a duplication in numbering, reads as follows:

19 A. Responsible state governmental entities shall use guidelines  
20 set out in the Public Competitive Bidding Act of 1974.

21 B. Before requesting or considering a proposal for a qualifying  
22 project, a local responsible governmental entity shall adopt and  
23 make publicly available guidelines that enable the governmental  
24 entity to comply with the Oklahoma Public and Private Facilities and

1 Infrastructure Act. The guidelines shall be reasonable, encourage  
2 competition, provide for an internal dispute resolution process, and  
3 guide the selection of projects under the purview of the responsible  
4 governmental entity.

5 C. The guidelines for a responsible governmental entity shall:

6 1. Require the responsible governmental entity to:

7 a. make a representative of the entity available to meet  
8 with persons who are considering submitting a  
9 proposal, and

10 b. provide notice of the availability of the  
11 representative;

12 2. Provide reasonable criteria for choosing among competing  
13 proposals;

14 3. Contain suggested timelines for selecting proposals and  
15 negotiating an interim or comprehensive agreement;

16 4. Allow the responsible governmental entity to accelerate the  
17 selection, review and documentation timelines for proposals  
18 involving a qualifying project considered a priority by the entity;

19 5. Include financial review and analysis procedures that, at a  
20 minimum, consist of:

21 a. a cost-benefit analysis,

22 b. an assessment of opportunity cost,

23 c. consideration of the degree to which functionality and  
24 services similar to the functionality and services to

1 be provided by the proposed project are already  
2 available in the private market, and

3 d. consideration of the results of all studies and  
4 analyses related to the proposed qualifying project;

5 6. Allow the responsible governmental entity to consider the  
6 nonfinancial benefits of a proposed qualifying project;

7 7. Subject to The Oklahoma Central Purchasing Act, the Public  
8 Competitive Bidding Act of 1974 and the Oklahoma Privatization of  
9 State Functions Act, establish criteria for determining that, should  
10 the responsible governmental entity deem it in the public's best  
11 interest to cancel a procurement, post-short-term listing, the  
12 responsible governmental entity may pay for documented third-party  
13 costs, to include but not be limited to: design services, legal  
14 advisors and financial advisors, together with reasonable internal  
15 expenditures when termination results from government action;

16 8. Establish criteria, key decision points and approvals  
17 required to ensure that the responsible governmental entity  
18 considers the extent of competition before selecting proposals and  
19 negotiating an interim or comprehensive agreement; and

20 9. Require the posting and publishing of public notice of a  
21 proposal requesting approval of a qualifying project, including:

22 a. specific information and documentation regarding the  
23 nature, timing and scope of the qualifying project, as  
24 required under subsection A of Section 6 of this act,



- 1           b. a reasonable period of not less than forty-five (45)  
2           days, as determined by the responsible governmental  
3           entity, to encourage competition and partnerships with  
4           private entities and other persons in accordance with  
5           the goals of the Oklahoma Public and Private  
6           Facilities and Infrastructure Act, during which the  
7           responsible governmental entity must accept submission  
8           of competing proposals for the qualifying project, and  
9           c. a requirement for advertising the notice on the  
10          Internet website of the governmental entity and on the  
11          official Internet website of the state.

12          SECTION 6.        NEW LAW        A new section of law to be codified  
13          in the Oklahoma Statutes as Section 5156 of Title 74, unless there  
14          is created a duplication in numbering, reads as follows:

15          A. A business entity or other person may submit a proposal  
16          requesting approval of a qualifying project by the responsible  
17          governmental entity. The proposal shall be accompanied by the  
18          following, unless waived by the responsible governmental entity:

19           1. A topographic map, with a 1:2,000 or other appropriate  
20           scale, indicating the location of the qualifying project;

21           2. A description of the qualifying project, including:

- 22           a. the conceptual design of any facility or a conceptual  
23           plan for the provision of services, and  
24

1           b.    a schedule for the initiation of and completion of the  
2                   qualifying project that includes the proposed major  
3                   responsibilities and timeline for activities to be  
4                   performed by the governmental entity and the  
5                   contracting entity;

6           3.    A statement of the method the contracting entity proposes  
7 for securing necessary property interests required for the  
8 qualifying project;

9           4.    Information relating to any current plans for the  
10 development of facilities to be used by a governmental entity that  
11 are similar to the qualifying project being proposed by the  
12 contracting entity for each affected jurisdiction;

13          5.    A list of all permits and approvals required for the  
14 development and completion of the qualifying project from local,  
15 state or federal agencies and a projected schedule for obtaining the  
16 permits and approvals;

17          6.    A list of any facilities that will be affected by the  
18 qualifying project and a statement by the contracting entity of the  
19 plans to accommodate the affected facilities;

20          7.    A statement by the contracting entity on the general plans  
21 for financing the qualifying project, including the sources of the  
22 funds of the contracting entity and identification of any dedicated  
23 revenue source or proposed debt or equity investment for the  
24 contracting entity;

1 8. The name and address of each individual who may be contacted  
2 for further information concerning the request;

3 9. User fees, lease payments and other service payments over  
4 the term of any applicable interim or comprehensive agreement and  
5 the methodology and circumstances for changes to the user fees,  
6 lease payments and other service payments over time; and

7 10. Any additional material and information the responsible  
8 governmental entity reasonably requests.

9 B. A responsible governmental entity may request proposals or  
10 invite bids from persons or business entities for the development or  
11 operation of a qualifying project. A responsible governmental  
12 entity shall consider the total project cost as one factor in  
13 evaluating the proposals received but is not required to select the  
14 proposal that offers the lowest total project cost. The responsible  
15 governmental entity may consider the following factors:

16 1. The proposed cost of the qualifying project;

17 2. The general reputation, industry experience and financial  
18 capacity of the contracting entity submitting a proposal;

19 3. The proposed design of the qualifying project;

20 4. The eligibility of the project for accelerated selection,  
21 review and documentation timelines under the guidelines of the  
22 responsible governmental entity;

23 5. Comments from local citizens and affected jurisdictions;

24 6. Benefits to the public;

1       7. The plans of the contracting entity to employ local  
2 contractors and residents;

3       8. For a qualifying project that involves a continuing role  
4 beyond design and construction, the proposed rate of return of the  
5 contracting entity and opportunities for revenue sharing; and

6       9. Other criteria that the responsible governmental entity  
7 considers appropriate.

8       C. The responsible governmental entity may approve as a  
9 qualifying project the development or operation of a facility needed  
10 by the governmental entity, or the design or equipping of a  
11 qualifying project, if the responsible governmental entity  
12 determines that the project serves the public purpose of the  
13 Oklahoma Public and Private Facilities and Infrastructure Act. The  
14 responsible governmental entity may determine that the development  
15 or operation of the project as a qualifying project serves the  
16 public purpose if:

17       1. There is a public need for or benefit derived from the  
18 project of the type the person or business entity proposes as a  
19 qualifying project;

20       2. The estimated cost of the project is reasonable in relation  
21 to similar facilities; and

22       3. The plans of the contracting entity will result in the  
23 timely development or operation of the qualifying project.  
24

1 D. The responsible governmental entity may charge a reasonable  
2 fee to cover the costs of processing, reviewing and evaluating the  
3 proposal, including reasonable legal fees and fees for financial,  
4 technical and other necessary advisors or consultants.

5 E. The approval of a responsible governmental entity is subject  
6 to the contracting entity entering into an interim or comprehensive  
7 agreement with the responsible governmental entity.

8 F. On approval of the qualifying project, the responsible  
9 governmental entity shall establish a date by which activities  
10 related to the qualifying project must begin. The responsible  
11 governmental entity may extend the date.

12 G. The responsible governmental entity shall take action  
13 appropriate under the Oklahoma Open Records Act to protect  
14 confidential and proprietary information provided by the contracting  
15 entity under an agreement.

16 H. The Oklahoma Public and Private Facilities and  
17 Infrastructure Act and an interim or comprehensive agreement entered  
18 into pursuant to this act do not enlarge, diminish or affect any  
19 authority a responsible governmental entity has to take action that  
20 would impact the debt capacity of this state.

21 SECTION 7. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 5157 of Title 74, unless there  
23 is created a duplication in numbering, reads as follows:

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1 Subject to the provisions of the Oklahoma Privatization of State  
2 Functions Act, a responsible governmental entity may contract with a  
3 contracting entity for the delivery of services to be provided as  
4 part of a qualifying project in exchange for service payments and  
5 other consideration as the governmental entity considers  
6 appropriate.

7 SECTION 8. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 5158 of Title 74, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. A person or business entity submitting a proposal to a  
11 responsible governmental entity under Section 6 of this act shall  
12 notify each affected jurisdiction by providing a copy of its  
13 proposal to the affected jurisdiction.

14 B. Not later than fourteen (14) business days after the date an  
15 affected jurisdiction receives the notice required by subsection A  
16 of this section, the affected jurisdiction that is not the  
17 responsible governmental entity for the respective qualifying  
18 project shall submit in writing to the responsible governmental  
19 entity any comments the affected jurisdiction has on the proposed  
20 qualifying project and indicate whether the facility or project is  
21 compatible with the local comprehensive plan, local infrastructure  
22 development plans, the capital improvements budget or other  
23 government spending plan. The responsible governmental entity shall  
24 comply with the requirements set out by law and rules concerning the

1 Long-Range Capital Planning Commission and shall consider the  
2 submitted comments before entering into a comprehensive agreement  
3 with a contracting entity.

4 SECTION 9. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 5159 of Title 74, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. After obtaining any appraisal of the property interest that  
8 is required pursuant to other law in connection with the conveyance,  
9 a responsible governmental entity may dedicate any property  
10 interest, including land, improvements and tangible personal  
11 property, for public use in a qualifying project if the governmental  
12 entity finds that the dedication complies with the Oklahoma  
13 Constitution and Section 327 of Title 61 of the Oklahoma Statutes,  
14 and will serve the public purpose of the Oklahoma Public and Private  
15 Facilities and Infrastructure Act by optimizing the life-cycle cost  
16 of a qualifying project to the governmental entity or reducing the  
17 delivery time of a qualifying project.

18 B. In connection with a dedication under subsection A of this  
19 section, a responsible governmental entity may, as long as it  
20 complies with the Oklahoma Constitution and Section 327 of Title 61  
21 of the Oklahoma Statutes, convey any property interest, including a  
22 license, franchise, easement or another right or interest the  
23 governmental entity considers appropriate, subject to the conditions  
24 imposed by law governing such conveyance and subject to the rights

1 of an existing utility under a license, franchise, easement or other  
2 right under law, to the contracting entity for the consideration  
3 determined by the governmental entity. The consideration may  
4 include the agreement of the contracting entity to develop or  
5 operate the qualifying project.

6 SECTION 10. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 5160 of Title 74, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. The contracting entity has:

10 1. The power granted by:

11 a. general law to a person that has the same form of  
12 organization as the contracting entity, and

13 b. a statute governing the business or activity of the  
14 contracting entity; and

15 2. The power to:

16 a. develop or operate the qualifying project, and

17 b. collect lease payments, impose user fees subject to  
18 subsection B of this section or enter into service  
19 contracts in connection with the use of the project.

20 B. The contracting entity may not impose a user fee or increase  
21 the amount of a user fee until the fee or increase is approved by  
22 the responsible governmental entity.

23 C. The contracting entity may own, lease or acquire any other  
24 right to use or operate the qualifying project.



1 D. The contracting entity may finance a qualifying project in  
2 the amounts and on the terms determined by the contracting entity.  
3 The contracting entity may issue debt, equity or other securities or  
4 obligations, enter into sale and leaseback transactions and secure  
5 any financing with a pledge of, security interest in, or lien on any  
6 or all of its property, including all of its property interests in  
7 the qualifying project.

8 E. In operating the qualifying project, the contracting entity  
9 may:

10 1. Establish classifications according to reasonable categories  
11 for assessment of user fees; and

12 2. With the consent of the responsible governmental entity,  
13 adopt and enforce reasonable rules for the qualifying project to the  
14 same extent as the responsible governmental entity.

15 F. The contracting entity shall:

16 1. Develop or operate the qualifying project in a manner that  
17 is acceptable to the responsible governmental entity and in  
18 accordance with any applicable interim or comprehensive agreement;

19 2. Subject to subsection G of this section, keep the qualifying  
20 project open for use by the public at all times, or as appropriate  
21 based on the use of the project, after its initial opening on  
22 payment of the applicable user fees, lease payments or service  
23 payments;

24

1           3. Maintain, or provide by contract for the maintenance or  
2 upgrade of, the qualifying project, if required by any applicable  
3 interim or comprehensive agreement;

4           4. Cooperate with the responsible governmental entity to  
5 establish any interconnection with the qualifying project requested  
6 by the responsible governmental entity; and

7           5. Comply with any applicable interim or comprehensive  
8 agreement and any lease or service contract.

9           G. The qualifying project may be temporarily closed because of  
10 emergencies or, with the consent of the responsible governmental  
11 entity, to protect public safety or for reasonable construction or  
12 maintenance activities.

13           H. The Oklahoma Public and Private Facilities and  
14 Infrastructure Act shall not prohibit a contracting entity of a  
15 qualifying project from providing additional services for the  
16 qualifying project to the public or persons other than the  
17 responsible governmental entity if the provision of additional  
18 service does not impair the ability of the contracting entity to  
19 meet the commitments of the contracting entity to the responsible  
20 governmental entity under any applicable interim or comprehensive  
21 agreement.

22           SECTION 11.       NEW LAW       A new section of law to be codified  
23 in the Oklahoma Statutes as Section 5161 of Title 74, unless there  
24 is created a duplication in numbering, reads as follows:

1       A. Before developing or operating the qualifying project, the  
2 contracting entity must enter into a comprehensive agreement with a  
3 responsible governmental entity. The comprehensive agreement shall  
4 provide for:

5       1. Delivery of letters of credit or other security in  
6 connection with the development or operation of the qualifying  
7 project, in the forms and amounts satisfactory to the responsible  
8 governmental entity and delivery of performance and payment bonds  
9 required for all construction activities;

10       2. Review of plans and specifications for the qualifying  
11 project by the responsible governmental entity and approval by the  
12 responsible governmental entity if the plans and specifications  
13 conform to standards acceptable to the responsible governmental  
14 entity, except that the contracting entity may not be required to  
15 complete the design of a qualifying project before the execution of  
16 a comprehensive agreement;

17       3. Inspection of the qualifying project by the responsible  
18 governmental entity to ensure that the activities of the contracting  
19 entity are acceptable to the responsible governmental entity in  
20 accordance with the comprehensive agreement;

21       4. Maintenance of a public liability insurance policy, copies  
22 of which must be filed with the responsible governmental entity  
23 accompanied by proofs of coverage, or self-insurance, each in the  
24 form and amount satisfactory to the responsible governmental entity

1 and reasonably sufficient to ensure coverage of liability to the  
2 public and project employees and to enable the continued operation  
3 of the qualifying project;

4 5. Monitoring of the practices of the contracting entity by the  
5 responsible governmental entity to ensure that the qualifying  
6 project is properly maintained;

7 6. Reimbursement to be paid to the responsible governmental  
8 entity for services provided by the responsible governmental entity;

9 7. Filing of appropriate financial statements on an annual  
10 basis; and

11 8. Policies and procedures governing the rights and  
12 responsibilities of the responsible governmental entity and the  
13 contracting entity if the comprehensive agreement is terminated or  
14 there is a material default by the contracting entity, including  
15 conditions governing:

16 a. assumption of the duties and responsibilities of the  
17 contracting entity by the responsible governmental  
18 entity, and

19 b. the transfer to or purchase by the responsible  
20 governmental entity of property or other interests of  
21 the contracting entity.

22 B. The comprehensive agreement shall provide for any user fee,  
23 lease payment or service payment established by agreement of the  
24 parties. In negotiating a user fee under this section, the parties

1 shall establish a payment or fee that is the same for persons using  
2 a facility of the qualifying project under like conditions and that  
3 will not materially discourage use of the qualifying project. The  
4 execution of the comprehensive agreement or an amendment to the  
5 agreement is conclusive evidence that the user fee, lease payment or  
6 service payment complies with the Oklahoma Public and Private  
7 Facilities and Infrastructure Act. A user fee or lease payment  
8 established in the comprehensive agreement as a source of revenue  
9 may be in addition to, or in lieu of, a service payment.

10 C. Subject to applicable state laws and constitutional  
11 provisions, a comprehensive agreement may include a provision that  
12 authorizes the responsible governmental entity to make grants or  
13 loans to the contracting entity from money received from the  
14 federal, state or local government or any agency or instrumentality  
15 of the government.

16 D. The comprehensive agreement shall incorporate the duties of  
17 the contracting entity under the Oklahoma Public and Private  
18 Facilities and Infrastructure Act and may contain terms that the  
19 responsible governmental entity determines serve the public purpose  
20 of the Oklahoma Public and Private Facilities and Infrastructure  
21 Act. The comprehensive agreement may contain:

22 1. Provisions that require the responsible governmental entity  
23 to provide notice of default and cure rights for the benefit of the  
24

1 contracting entity and the persons specified in the agreement as  
2 providing financing for the qualifying project;

3 2. Other lawful terms to which the contracting entity and the  
4 responsible governmental entity mutually agree, including provisions  
5 regarding unavoidable delays or providing for a loan of public money  
6 to the contracting entity to develop or operate one or more  
7 qualifying projects; and

8 3. Provisions in which the authority and duties of the  
9 contracting entity under the Oklahoma Public and Private Facilities  
10 and Infrastructure Act cease and the qualifying project is dedicated  
11 for public use to the responsible governmental entity or, if the  
12 qualifying project was initially dedicated by an affected  
13 jurisdiction, to the affected jurisdiction.

14 E. Any change in the terms of the comprehensive agreement that  
15 the parties agree to must be added to the comprehensive agreement by  
16 written amendment.

17 F. The comprehensive agreement may provide for the development  
18 or operation of phases or segments of the qualifying project.

19 SECTION 12. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 5162 of Title 74, unless there  
21 is created a duplication in numbering, reads as follows:

22 Before or in connection with the negotiation of the  
23 comprehensive agreement, the responsible governmental entity may  
24 enter into an interim agreement with the contracting entity

1 proposing the development or operation of the qualifying project.

2 The interim agreement may:

3 1. Authorize the contracting entity to begin project phases or  
4 activities for which the contracting entity may be compensated  
5 relating to the proposed qualifying project, including project  
6 planning and development, design, engineering, environmental  
7 analysis and mitigation, surveying and financial and revenue  
8 analysis, including ascertaining the availability of financing for  
9 the proposed facility or facilities of the qualifying project;

10 2. Establish the process and timing of the negotiation of the  
11 comprehensive agreement; and

12 3. Contain any other provision related to any aspect of the  
13 development or operation of a qualifying project that the parties  
14 consider appropriate.

15 SECTION 13. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 5163 of Title 74, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. The contracting entity and the responsible governmental  
19 entity may use any funding resources allowed by law that are  
20 available to the parties.

21 B. The responsible governmental entity may take any action  
22 allowed by law to obtain federal, state or local assistance for a  
23 qualifying project that serves the public purpose of the Oklahoma  
24

1 Public and Private Facilities and Infrastructure Act and may enter  
2 into any contracts required to receive the assistance.

3 C. The responsible governmental entity may determine that it  
4 serves the public purpose of the Oklahoma Public and Private  
5 Facilities and Infrastructure Act for all or part of the costs of a  
6 qualifying project to be directly or indirectly paid from the  
7 proceeds of a grant or loan made by the local, state or federal  
8 government or any agency or instrumentality of the government.

9 SECTION 14. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 5164 of Title 74, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. The construction, remodeling or repair of a qualifying  
13 project may be performed only after performance and payment bonds  
14 for the construction, remodel or repair have been executed  
15 regardless of whether the qualifying project is on public or private  
16 property or is publicly or privately owned.

17 B. For purposes of this section, a qualifying project is  
18 considered a public work and the responsible governmental entity  
19 shall assume the obligations and duties of a governmental entity.

20 C. The obligee under a performance bond under this section may  
21 be a public entity, a contracting entity, a business entity or an  
22 entity consisting of both a public entity and a contracting entity.

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1           SECTION 15.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 5165 of Title 74, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. If the contracting entity commits a material default, the  
5 responsible governmental entity may assume the responsibilities and  
6 duties of the contracting entity of the qualifying project. If the  
7 responsible governmental entity assumes the responsibilities and  
8 duties of the contracting entity for the qualifying project because  
9 the contracting entity has committed a material default, the  
10 responsible governmental entity has all the rights, title and  
11 interest in the qualifying project, subject to any liens on revenue  
12 previously granted by the contracting entity to any person or  
13 business entity providing financing for the project.

14           B. The responsible governmental entity may terminate, with  
15 cause, any applicable interim or comprehensive agreement and  
16 exercise any other rights and remedies available to the governmental  
17 entity at law or in equity.

18           C. Stipends shall be used on large projects where there is  
19 substantial opportunity for innovation and the costs for developing  
20 a proposal are significant. Also called "payment for work product",  
21 stipends encourage competition and do not put smaller companies at a  
22 competitive disadvantage, and they compensate unsuccessful offerors  
23 for a portion of their costs.

24

1           1. The responsible governmental entity may elect to pay  
2 unsuccessful proposers for the work product that they submit with  
3 their proposal in response to a request for proposal solicitation.  
4 The use by the responsible governmental entity of any design element  
5 contained in an unsuccessful proposal is at the sole risk and  
6 discretion of the responsible governmental entity and does not  
7 confer liability on the recipient of the stipulated amount under  
8 this section.

9           2. After payment of the stipulated amount, the responsible  
10 governmental entity and the unsuccessful proposer will jointly own  
11 the rights to and may make use of any work product contained in the  
12 proposal, including the technologies, techniques, methods,  
13 processes, ideas and information contained in the proposal, project  
14 design and project financial plan. The use by the unsuccessful  
15 proposer of any part of the work product contained in the proposal  
16 is at the sole risk of the unsuccessful proposer and does not confer  
17 liability on the responsible governmental entity.

18           D. The responsible governmental entity may make any appropriate  
19 claim under the letters of credit or other security or the  
20 performance and payment bonds required by paragraph 1 of subsection  
21 A of Section 11 of this act.

22           E. If the responsible governmental entity elects to assume the  
23 responsibilities and duties for a qualifying project under  
24

1 subsection A of this section, the responsible governmental entity  
2 may:

- 3 1. Develop or operate the qualifying project;
- 4 2. Impose user fees;
- 5 3. Impose and collect lease payments for the use of the  
6 project; and
- 7 4. Comply with any applicable contract to provide services.

8 F. If the contracting entity commits a material default and the  
9 responsible governmental entity assumes the responsibilities of the  
10 contracting entity, the responsible governmental entity shall  
11 collect and pay to secured parties any revenue subject to a lien to  
12 the extent necessary to satisfy the obligations of the contracting  
13 party to secured parties, including the maintenance of reserves.  
14 The liens shall be correspondingly reduced and, when paid off,  
15 released.

16 G. Before any payment is made to or for the benefit of a  
17 secured party, the responsible governmental entity may use revenue  
18 to pay the current operation and maintenance costs of the qualifying  
19 project, including compensation to the responsible governmental  
20 entity for its services in operating and maintaining the qualifying  
21 project. The right to receive any payment is considered just  
22 compensation for the qualifying project.

23 H. The full faith and credit of the responsible governmental  
24 entity shall not be pledged to secure any financing of the

1 contracting entity that was assumed by the governmental entity when  
2 the governmental entity assumed responsibility for the qualifying  
3 project.

4 SECTION 16. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 5166 of Title 74, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. The contracting entity and each facility owner, including a  
8 public utility, a public service company or a cable television  
9 provider whose facilities will be affected by a qualifying project,  
10 shall cooperate fully in planning and arranging the manner in which  
11 the facilities will be affected.

12 B. The contracting entity and responsible governmental entity  
13 shall ensure that a facility owner whose facility will be affected  
14 by a qualifying project does not suffer a disruption of service as a  
15 result of the construction or improvement of the qualifying project.

16 C. The contracting entity shall pay any amount owed for the  
17 crossing, constructing or relocating of facilities.

18 SECTION 17. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 5167 of Title 74, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. Not later than ten (10) days after the date a responsible  
22 governmental entity accepts a proposal, the responsible governmental  
23 entity shall provide notice of the proposal by posting the proposal  
24 on the Internet website of the entity.

1 B. The responsible governmental entity shall make available for  
2 public inspection at least one copy of the proposal. This section  
3 does not prohibit the responsible governmental entity from posting  
4 the proposal in another manner considered appropriate by the  
5 responsible governmental entity to provide maximum notice to the  
6 public of the opportunity to inspect the proposal.

7 C. Trade secrets, financial records or other records of the  
8 contracting entity excluded from disclosure under the Oklahoma Open  
9 Records Act shall not be posted or made available for public  
10 inspection except as otherwise agreed to by the responsible  
11 governmental entity and the contracting entity.

12 D. The responsible governmental entity shall hold a public  
13 hearing on the proposal during the proposal review process not later  
14 than thirty (30) days before the date the entity enters into an  
15 interim or comprehensive agreement.

16 E. On completion of the negotiation phase for the development  
17 of an interim or comprehensive agreement and before an interim  
18 agreement or comprehensive agreement is entered into, a responsible  
19 governmental entity shall make available the proposed agreement in a  
20 manner provided by subsection A or B of this section.

21 F. A responsible governmental entity that has entered into an  
22 interim agreement or comprehensive agreement shall make procurement  
23 records available for public inspection on request. For purposes of  
24 this subsection, procurement records do not include the trade

1 secrets of the contracting entity or financial records, including  
2 balance sheets or financial statements of the contracting entity,  
3 that are not generally available to the public through regulatory  
4 disclosure or other means.

5 G. Cost estimates relating to a proposed procurement  
6 transaction prepared by or for a responsible governmental entity  
7 shall not be open to public inspection until after a contract award.

8 H. Any inspection of procurement transaction records under this  
9 section shall be subject to reasonable restrictions to ensure the  
10 security and integrity of the records.

11 I. This section applies to any accepted proposal regardless of  
12 whether the process of bargaining results in an interim or  
13 comprehensive agreement.

14 SECTION 18. This act shall become effective November 1, 2017.

15 Passed the House of Representatives the 21st day of March, 2017.

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\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2017.

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Presiding Officer of the Senate

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