

1 **SENATE FLOOR VERSION**

2 April 10, 2017

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 1534

By: Montgomery and Griffith of
the House

and

Leewright of the Senate

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9 COMMITTEE SUBSTITUTE

10 [infrastructure development - Oklahoma Public and
11 Private Facilities and Infrastructure Act -
12 codification - effective date]

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

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

18 This act shall be known and may be cited as the "Oklahoma Local
19 Public and Private Facilities and Infrastructure Act".

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

23 As used in the Oklahoma Local Public and Private Facilities and
24 Infrastructure Act:

1 1. "Contract" means any purchase and sale agreement, lease,
2 service agreement, franchise agreement, concession agreement or
3 other written agreement entered into under this act with respect to
4 the provision of a public service and any project related thereto;

5 2. "Improvement" means any instruction, reconstruction,
6 rehabilitation, renovation, installation, improvement, enlargement
7 or extension of property or improvements to property;

8 3. "Local Partnership Committee" means a committee consisting
9 of at least five (5) members. All members of the Committee will be
10 appointed by the responsible governmental entity considering a
11 public and private partnership. Three members of the Local
12 Partnership Committee shall constitute a quorum in any committee of
13 five members. For the committees with more than five members, one
14 more than half of the membership shall constitute a quorum. The
15 Local Partnership Committee shall act only upon a decision of a
16 majority;

17 4. "Private sector entity" means any corporation, whether for
18 profit or not for profit, limited liability company, partnership,
19 limited liability partnership, sole proprietorship, business trust,
20 joint venture or other entity, but shall not mean the state, a
21 political subdivision of the state, or a public or governmental
22 entity, agency or instrumentality of the state;

23 5. "Project" means real or personal property, or both, and
24 improvements thereto or in support thereof, including undivided and

1 other interests therein, used for or in the provision of a public
2 service;

3 6. "Proposer" means a private sector entity, a local or
4 regional public entity or agency, or any group or combination
5 thereof, submitting qualifications or a proposal for a public-
6 private partnership contract;

7 7. "Public service" means a service provided for a public
8 purpose of a responsible governmental entity and identified in an
9 invitation for qualifications or proposals under this act; and

10 8. "Responsible governmental entity" means a local governmental
11 entity that is responsible for the provision of the public service
12 which is or is proposed to be the subject of a contract.

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

16 The Oklahoma Local Public and Private Facilities and
17 Infrastructure Act does not alter the eminent domain laws of this
18 state or grant the power of eminent domain to any person who is not
19 expressly granted that power under other state law.

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

23 A. The Local Partnership Committee shall have the ability to
24 identify potential public-private partnerships, to review and

1 endorse a short-list of qualified bidders, to approve requests for
2 proposals and to approve template contracts before they are sent to
3 bidders. The Local Partnership Committee shall operate with the
4 assistance of the responsible governmental entity considering a
5 contract. In order to protect the Separation of Power set out in
6 Article IV of the Oklahoma Constitution, The Local Partnership
7 Committee shall not have the power to enter into any contract, nor
8 shall it have the power to block any contract negotiated by the
9 responsible governmental entity.

10 B. The responsible governmental entity may take any action and
11 execute any Public-Private Partnership contract, authorized under
12 this act, for the provision of a public service in order to more
13 efficiently and effectively provide public services, including by
14 generating additional resources in support of those public services
15 and related projects.

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. Selection of Projects. Any proposer or responsible
20 governmental entity may submit to the Local Partnership Committee
21 one or more proposals for partnership projects in connection with
22 any public service. The Local Partnership Committee shall identify
23 potential projects and public services for which a public-private
24 partnership may be appropriate from those received from a proposer,

1 a responsible governmental entity or those identified by the Local
2 Partnership Committee itself. The Local Partnership Committee shall
3 select such projects based on the partnership's potential to improve
4 public operational efficiencies, improve environmental performance,
5 promote public safety, attract private investment and minimize
6 governmental liabilities.

7 B. Public-Sector Comparators. After the Local Partnership
8 Committee identifies a potential partnership for a public project or
9 public service, the Local Partnership Committee shall conduct a
10 public-sector comparator study of the potential partnership. The
11 Local Partnership Committee shall determine the scope of each public
12 sector comparator, which scope shall depend on the type of proposed
13 partnership and the nature of the public service under consideration
14 for the partnership. The following issues shall be considered as
15 components of a public sector comparator:

16 1. The definition of the need served by the proposed
17 partnership;

18 2. The cost required to meet the public need served by the
19 public service under traditional procurements or traditional local
20 government operations;

21 3. An analysis of alternative methods for providing the public
22 services under consideration, including but not limited to design-
23 build, design-build-finance, design-build-finance-operate-maintain,
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1 service contracts or leases and how the alternative method(s) would
2 meet the need served by the public service; and

3 4. An evaluation of the cost/benefit of using an alternative
4 method or public-private partnership to render a public service,
5 which cost/benefit analysis shall include:

- 6 a. the potential cost of utilizing an alternative method,
- 7 b. the operational and technological risks involved in
8 utilizing an alternative method,
- 9 c. a comparative analysis of rendering the public service
10 by allowing the responsible governmental entity to
11 utilize traditional methods,
- 12 d. the financial impact the partnership will have on the
13 responsible governmental entity, and
- 14 e. the impact a partnership would have on job formation,
15 economic growth, and the community in which the public
16 service is to be rendered.

17 C. The Local Partnership Committee shall use the results of the
18 public sector comparator to determine which public services and
19 projects are appropriate for partnership. The responsible
20 governmental entity shall publish on its website the public sector
21 comparator for each project to provide a public service for which a
22 request for qualifications is initiated.

23 D. The responsible governmental entity shall publish notice of
24 the intent to enter into a contract for a partnership for public

1 service or related project and shall prepare a request for
2 qualifications for private sector entities interested in serving as
3 proposers for the partnership. The notice shall notify interested
4 parties of the opportunity to submit their qualifications for
5 consideration and shall be published at least sixty (60) days prior
6 to the deadline for submitting those qualifications. The
7 responsible governmental entity also may advertise the information
8 contained in the notice in appropriate trade journals and otherwise
9 notify parties believed to be interested in providing the public
10 service and in any related project.

11 E. After inviting qualifications, the Local Partnership
12 Committee shall evaluate the qualifications submitted and may hold
13 discussions with proposers to further explore their qualifications.
14 Following this evaluation, the Local Partnership Committee may
15 determine a list of qualified proposers based on criteria in the
16 invitation and invite only those proposers to submit a proposal.

17 F. The Local Partnership Committee shall prepare a request for
18 proposal, which may include proposal stipends, and the proposed
19 partnership contract, both of which shall be approved by the
20 responsible governmental entity. After the responsible governmental
21 entity's approval of the request for proposal and the partnership
22 contract, the project shall be deemed an Approved Partnership
23 Procurement.

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1 G. Partnership contracts may contain the terms and conditions
2 to carry out and effect the purposes of this act, including the
3 duration of the contract, rates or fees for the public services to
4 be provided or methods or procedures for the determination of such
5 rates or fees, standards for the public services to be provided,
6 responsibilities and standards for operation and maintenance of any
7 related project, required financial assurances, financial and other
8 data reporting requirements, bases and procedures for termination of
9 the contract and retaking of possession or title to the project, and
10 events of default and remedies upon default, including mandamus, a
11 suit in equity, an action at law, or any combination of those
12 remedial actions.

13 H. Partnership contracts may also include a requirement for the
14 delivery of performance and payment bonds required for all
15 construction activities, and letters of credit, surety bonds or
16 other security in connection with the development or operation of
17 the qualifying project, in the forms and amounts satisfactory to the
18 responsible government entity.

19 I. After proposals are received, the responsible governmental
20 entity, using the criteria established in the request for proposal
21 by the Local Partnership Committee, shall evaluate the proposals
22 submitted and may hold discussions with proposers to further explore
23 their proposals, the scope and nature of the public service(s) they
24 would provide, and the various technical approaches they may take

1 regarding the public service and any related project. Following
2 this evaluation, the Local Partnership Committee shall select and
3 rank no fewer than three proposers that the Local Partnership
4 Committee considers to be the most qualified to enter into the
5 contract, except when the Local Partnership Committee determines
6 that fewer than three qualified proposers are available, in which
7 case the Local Partnership Committee shall select and rank them.

8 J. After the proposers have been ranked by the Local
9 Partnership Committee, the responsible governmental entity shall
10 negotiate the contract with the proposer ranked most qualified to
11 provide the public service at a compensation determined in writing
12 to be fair and reasonable, and to purchase, lease or otherwise take
13 a legal interest in the project.

14 K. Upon failure to negotiate a contract with the proposer
15 ranked most qualified, the responsible governmental entity shall
16 inform the proposer in writing of the termination of negotiations
17 and may enter into negotiations with the proposer ranked next most
18 qualified. If negotiations again fail, the same procedure may be
19 followed with each next most qualified proposer selected and ranked,
20 in order of ranking, until a contract is negotiated and executed.

21 L. If the responsible governmental entity fails to negotiate a
22 contract with any of the ranked proposers, the responsible
23 governmental entity may terminate the process or select and rank
24 additional proposers, based on their qualifications or proposals,

1 and negotiations shall continue as with the proposers selected and
2 ranked initially until a contract is negotiated.

3 M. The responsible governmental entity may reject any and all
4 submissions of qualifications or proposals and may terminate the
5 procurement process at any point.

6 N. The responsible governmental entity shall have the authority
7 to make commercially reasonable changes to the partnership contract
8 approved by the Local Partnership Committee. Any such contract may
9 contain the terms and conditions to carry out and effect the
10 purposes of this act.

11 O. Any submission not selected by the responsible governmental
12 entity shall be considered intellectual property that shall remain
13 the property of the proposer.

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

17 A. Partnership contracts shall be signed by an assigned
18 representative of the governmental entity for which the public
19 service at issue in the contract relates.

20 B. The responsible governmental entity is authorized to receive
21 and deposit any money received under the contract. Any such
22 contract shall be sufficient to effect its purpose notwithstanding
23 any provision of law to the contrary, including other laws governing
24 the sale, lease or other disposition of property or interests

1 therein, service contracts or financial transactions by or for the
2 responsible governmental entity.

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

6 The exercise of the powers granted by this act will be for the
7 benefit of the people represented by the responsible governmental
8 entity and shall be liberally construed to effect the purposes
9 thereof. As the performance of public services will constitute the
10 performance of essential government functions, any project or part
11 thereof owned by the responsible governmental entity and used for
12 performing any public service pursuant to a contract entered into
13 under this act that would be exempt from taxation or assessments in
14 the absence of such contract shall remain exempt from taxation and
15 assessments levied by the state and its subdivisions to the same
16 extent as if not subject to that contract. The gross receipts and
17 income of a successful proposer derived from providing public
18 services under a contract through a project owned by the responsible
19 governmental entity shall be exempt from taxation levied by the
20 state and its subdivisions. Any transfer or lease between a
21 proposer and the responsible governmental entity of a project or
22 part thereof, or item included or to be included in the project,
23 shall be exempt from any taxes levied if the responsible

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1 governmental entity is retaining ownership of the project or part
2 thereof that is being transferred or leased.

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

6 The responsible governmental entity may retain or contract for
7 the services of commercial appraisers, engineers, investment
8 bankers, financial advisers, accounting experts and other
9 consultants, independent contractors or providers of professional
10 services as are necessary in the judgment of the responsible
11 governmental entity to carry out the powers and duties under this
12 act. This may include the identification of public services and any
13 related projects to be subject to invitations for qualifications or
14 proposals under this act, the development of those invitations and
15 related evaluation criteria, the evaluation of those invitations and
16 the negotiation of any contract under this act.

17 SECTION 9. This act shall become effective November 1, 2017.

18 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT
19 April 10, 2017 - DO PASS AS AMENDED
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