

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 1534

By: Montgomery and Griffith of
the House

and

Leewright of the Senate

[infrastructure development - Oklahoma Public and
Private Facilities and Infrastructure Act -
effective date]

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

"[infrastructure development - Oklahoma Public and
Private Facilities and Infrastructure Act -
codification - effective date]

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

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

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

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

4 As used in the Oklahoma Local Public and Private Facilities and
5 Infrastructure Act:

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

10 2. "Improvement" means any instruction, reconstruction,
11 rehabilitation, renovation, installation, improvement, enlargement
12 or extension of property or improvements to property;

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

22 4. "Private sector entity" means any corporation, whether for
23 profit or not for profit, limited liability company, partnership,
24 limited liability partnership, sole proprietorship, business trust,

1 joint venture or other entity, but shall not mean the state, a
2 political subdivision of the state, or a public or governmental
3 entity, agency or instrumentality of the state;

4 5. "Project" means real or personal property, or both, and
5 improvements thereto or in support thereof, including undivided and
6 other interests therein, used for or in the provision of a public
7 service;

8 6. "Proposer" means a private sector entity, a local or
9 regional public entity or agency, or any group or combination
10 thereof, submitting qualifications or a proposal for a public-
11 private partnership contract;

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

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

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

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

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

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

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

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

24

1 A. Selection of Projects. Any proposer or responsible
2 governmental entity may submit to the Local Partnership Committee
3 one or more proposals for partnership projects in connection with
4 any public service. The Local Partnership Committee shall identify
5 potential projects and public services for which a public-private
6 partnership may be appropriate from those received from a proposer,
7 a responsible governmental entity or those identified by the Local
8 Partnership Committee itself. The Local Partnership Committee shall
9 select such projects based on the partnership's potential to improve
10 public operational efficiencies, improve environmental performance,
11 promote public safety, attract private investment and minimize
12 governmental liabilities.

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

22 1. The definition of the need served by the proposed
23 partnership;

24

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

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

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

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

23 C. The Local Partnership Committee shall use the results of the
24 public sector comparator to determine which public services and

1 projects are appropriate for partnership. The responsible
2 governmental entity shall publish on its website the public sector
3 comparator for each project to provide a public service for which a
4 request for qualifications is initiated.

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

17 E. After inviting qualifications, the Local Partnership
18 Committee shall evaluate the qualifications submitted and may hold
19 discussions with proposers to further explore their qualifications.
20 Following this evaluation, the Local Partnership Committee may
21 determine a list of qualified proposers based on criteria in the
22 invitation and invite only those proposers to submit a proposal.

23 F. The Local Partnership Committee shall prepare a request for
24 proposal, which may include proposal stipends, and the proposed

1 partnership contract, both of which shall be approved by the
2 responsible governmental entity. After the responsible governmental
3 entity's approval of the request for proposal and the partnership
4 contract, the project shall be deemed an Approved Partnership
5 Procurement.

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

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

24

1 I. After proposals are received, the responsible governmental
2 entity, using the criteria established in the request for proposal
3 by the Local Partnership Committee, shall evaluate the proposals
4 submitted and may hold discussions with proposers to further explore
5 their proposals, the scope and nature of the public service(s) they
6 would provide, and the various technical approaches they may take
7 regarding the public service and any related project. Following
8 this evaluation, the Local Partnership Committee shall select and
9 rank no fewer than three proposers that the Local Partnership
10 Committee considers to be the most qualified to enter into the
11 contract, except when the Local Partnership Committee determines
12 that fewer than three qualified proposers are available, in which
13 case the Local Partnership Committee shall select and rank them.

14 J. After the proposers have been ranked by the Local
15 Partnership Committee, the responsible governmental entity shall
16 negotiate the contract with the proposer ranked most qualified to
17 provide the public service at a compensation determined in writing
18 to be fair and reasonable, and to purchase, lease or otherwise take
19 a legal interest in the project.

20 K. Upon failure to negotiate a contract with the proposer
21 ranked most qualified, the responsible governmental entity shall
22 inform the proposer in writing of the termination of negotiations
23 and may enter into negotiations with the proposer ranked next most
24 qualified. If negotiations again fail, the same procedure may be

1 followed with each next most qualified proposer selected and ranked,
2 in order of ranking, until a contract is negotiated and executed.

3 L. If the responsible governmental entity fails to negotiate a
4 contract with any of the ranked proposers, the responsible
5 governmental entity may terminate the process or select and rank
6 additional proposers, based on their qualifications or proposals,
7 and negotiations shall continue as with the proposers selected and
8 ranked initially until a contract is negotiated.

9 M. The responsible governmental entity may reject any and all
10 submissions of qualifications or proposals and may terminate the
11 procurement process at any point.

12 N. The responsible governmental entity shall have the authority
13 to make commercially reasonable changes to the partnership contract
14 approved by the Local Partnership Committee. Any such contract may
15 contain the terms and conditions to carry out and effect the
16 purposes of this act.

17 O. Any submission not selected by the responsible governmental
18 entity shall be considered intellectual property that shall remain
19 the property of the proposer.

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

23

24

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

4 B. The responsible governmental entity is authorized to receive
5 and deposit any money received under the contract. Any such
6 contract shall be sufficient to effect its purpose notwithstanding
7 any provision of law to the contrary, including other laws governing
8 the sale, lease or other disposition of property or interests
9 therein, service contracts or financial transactions by or for the
10 responsible governmental entity.

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

14 The exercise of the powers granted by this act will be for the
15 benefit of the people represented by the responsible governmental
16 entity and shall be liberally construed to effect the purposes
17 thereof. As the performance of public services will constitute the
18 performance of essential government functions, any project or part
19 thereof owned by the responsible governmental entity and used for
20 performing any public service pursuant to a contract entered into
21 under this act that would be exempt from taxation or assessments in
22 the absence of such contract shall remain exempt from taxation and
23 assessments levied by the state and its subdivisions to the same
24 extent as if not subject to that contract. The gross receipts and

1 income of a successful proposer derived from providing public
2 services under a contract through a project owned by the responsible
3 governmental entity shall be exempt from taxation levied by the
4 state and its subdivisions. Any transfer or lease between a
5 proposer and the responsible governmental entity of a project or
6 part thereof, or item included or to be included in the project,
7 shall be exempt from any taxes levied if the responsible
8 governmental entity is retaining ownership of the project or part
9 thereof that is being transferred or leased.

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

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

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

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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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:

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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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.

23

24

1 SECTION 24. 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 25. 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 26. 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 27. This act shall become effective November 1, 2017.

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

16

17

Presiding Officer of the House
of Representatives

19

Passed the Senate the ___ day of _____, 2017.

20

21

Presiding Officer of the Senate

22

23

24