

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1517

By: Johnson (Rob)

4
5
6 AS INTRODUCED

7 An Act relating to public and private facilities and
8 infrastructure; enacting the Oklahoma Public and
9 Private Facilities and Infrastructure Act; stating
10 legislative findings and purpose; defining terms;
11 clarifying applicability of act; clarifying scope of
12 eminent domain use; providing procedure and
13 requirements for proposals for qualifying projects;
14 requiring adoption of certain guidelines; providing
15 approval process for qualifying projects; authorizing
16 governmental entities to enter into certain
17 contracts; requiring notice to affected
18 jurisdictions; providing for the dedication and
19 conveyance of public property; specifying the powers
20 and duties of contracting person; providing for and
21 specifying contents of comprehensive agreements;
22 providing for interim agreements; specifying funding
23 sources for qualifying projects; requiring certain
24 performance bonds; specifying remedies for material
defaults; providing for use of eminent domain;
providing procedures concerning affected facility
owners; clarifying police powers; providing for
posting of certain notice and public comment;
providing for public access to certain procurement
records; providing for codification; and providing an
effective date.

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

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

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

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

9 A. The Legislature finds that:

10 1. There is a public need for timely acquisition, design,
11 construction, improvement, renovation, expansion, equipping,
12 maintenance, operation, implementation, and installation of
13 technology and other public infrastructure and government facilities
14 in this state that serve a public need and purpose;

15 2. The public need may not be wholly satisfied by existing
16 methods of procurement in which qualifying projects are acquired,
17 designed, constructed, improved, renovated, expanded, equipped,
18 maintained, operated, implemented, or installed;

19 3. There are inadequate resources to develop new technology and
20 other public infrastructure and government facilities for the
21 benefit of the citizens of this state, and there is demonstrated
22 evidence that partnerships between public entities and private
23 entities or other persons can meet these needs by improving the
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1 schedule for delivery, lowering the cost, and providing other
2 benefits to the public;

3 4. Financial incentives exist under state and federal tax
4 provisions that encourage public entities to enter into partnerships
5 with private entities or other persons to develop qualifying
6 projects; and

7 5. Authorizing private entities or other persons to develop or
8 operate one or more qualifying projects may serve the public safety,
9 benefit, and welfare by making the projects available to the public
10 in a more timely or less costly fashion.

11 B. An action authorized under Section 8 of this act serves the
12 public purpose of the Oklahoma Public and Private Facilities and
13 Infrastructure Act if the action facilitates the timely development
14 or operation of a qualifying project.

15 C. The purposes of the Oklahoma Public and Private Facilities
16 and Infrastructure Act include:

17 1. Encouraging investment in this state by private entities and
18 other persons;

19 2. Facilitating bond financing or other similar financing
20 mechanisms, private capital, and other funding sources that support
21 the development or operation of qualifying projects in order to
22 expand and accelerate financing for qualifying projects that improve
23 and add to the convenience of the public; and
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1 3. Providing governmental entities with the greatest possible
2 flexibility in contracting with private entities or other persons to
3 provide public services through qualifying projects subject to the
4 Oklahoma Public and Private Facilities and Infrastructure Act.

5 D. The Oklahoma Public and Private Facilities and
6 Infrastructure Act shall be liberally construed in conformity with
7 the purposes of this section.

8 E. The procedures in the Oklahoma Public and Private Facilities
9 and Infrastructure Act are not exclusive. The Oklahoma Public and
10 Private Facilities and Infrastructure Act does not prohibit a
11 responsible governmental entity from entering into an agreement for
12 or procuring public and private facilities and infrastructure under
13 other statutory authority.

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

17 As used in the Oklahoma Public and Private Facilities and
18 Infrastructure Act:

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

21 2. "Comprehensive agreement" means the comprehensive agreement
22 authorized by Section 13 of this act between the contracting person
23 and the responsible governmental entity;

1 3. "Contracting person" means a person who enters into a
2 comprehensive or interim agreement with a responsible governmental
3 entity;

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

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

11 6. "Interim agreement" means an agreement authorized by Section
12 14 of this act between a contracting person and a responsible
13 governmental entity that proposes the development or operation of
14 the qualifying project;

15 7. "Lease payment" means any form of payment, including a land
16 lease, by a governmental entity to the contracting person for the
17 use of a qualifying project;

18 8. "Material default" means any default by a contracting person
19 in the performance of duties imposed under subsection F of Section
20 12 of this act that jeopardizes adequate service to the public from
21 a qualifying project;

22 9. "Operate" means to finance, maintain, improve, equip,
23 modify, repair, or operate a qualifying project;

24 10. "Qualifying project" means:

- 1 a. any ferry, mass transit facility, vehicle parking
2 facility, port facility, power generation facility,
3 fuel supply facility, oil or gas pipeline, water
4 supply facility, public work, waste treatment
5 facility, hospital, school, medical or nursing care
6 facility, recreational facility, public building, or
7 other similar facility currently available or to be
8 made available to a governmental entity for public
9 use, including any structure, parking area,
10 appurtenance, and other property required to operate
11 the structure or facility and any technology
12 infrastructure installed in the structure or facility
13 that is essential to the purpose of the project, or
14 b. any improvements necessary or desirable to unimproved
15 real estate owned by a governmental entity;

16 11. "Responsible governmental entity" means a governmental
17 entity that has the power to develop or operate an applicable
18 qualifying project;

19 12. "Revenue" means all revenue, income, earnings, user fees,
20 lease payments, or other service payments that support the
21 development or operation of a qualifying project, including money
22 received as a grant or otherwise from the federal government, a
23 governmental entity, or any agency or instrumentality of the federal
24 government or governmental entity in aid of the project;

1 13. "Service contract" means a contract between a governmental
2 entity and a contracting person under Section 9 of this act;

3 14. "Service payment" means a payment to a contracting person
4 of a qualifying project under a service contract; and

5 15. "User fee" means a rate, fee, or other charge imposed by a
6 contracting person for the use of all or part of a qualifying
7 project under a comprehensive agreement.

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

11 The Oklahoma Public and Private Facilities and Infrastructure
12 Act shall not apply to:

13 1. The financing, design, construction, maintenance, or
14 operation of a highway in the state highway system;

15 2. The Oklahoma Turnpike Authority; or

16 3. Any telecommunications, cable television, video service, or
17 broadband infrastructure other than technology installed as part of
18 a qualifying project that is essential to the project.

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

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

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

6 A. A person may not develop or operate a qualifying project
7 unless the person obtains the approval of and contracts with the
8 responsible governmental entity under the Oklahoma Public and
9 Private Facilities and Infrastructure Act. The person may initiate
10 the approval process by submitting a proposal requesting approval
11 under subsection A of Section 8 of this act, or the responsible
12 governmental entity may request proposals or invite bids under
13 subsection B of Section 8 of this act.

14 B. A person submitting a proposal requesting approval of a
15 qualifying project shall specifically and conceptually identify any
16 facility, building, infrastructure, or improvement included in the
17 proposal as a part of the qualifying project.

18 C. On receipt of a proposal submitted by a person initiating
19 the approval process under subsection A of Section 8 of this act,
20 the responsible governmental entity shall determine whether to
21 accept the proposal for consideration in accordance with Section 7
22 of this act and the guidelines adopted under those sections. A
23 responsible governmental entity that determines not to accept the
24 proposal for consideration shall return the proposal, all fees, and

1 the accompanying documentation to the person submitting the
2 proposal.

3 D. The responsible governmental entity may at any time reject a
4 proposal initiated by a person under subsection A of Section 8 of
5 this act.

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

9 A. Before requesting or considering a proposal for a qualifying
10 project, a responsible governmental entity must adopt and make
11 publicly available guidelines that enable the governmental entity to
12 comply with the Oklahoma Public and Private Facilities and
13 Infrastructure Act. The guidelines must be reasonable, encourage
14 competition, and guide the selection of projects under the purview
15 of the responsible governmental entity.

16 B. The guidelines for a responsible governmental entity must:

17 1. Require the responsible governmental entity to:

18 a. make a representative of the entity available to meet
19 with persons who are considering submitting a
20 proposal, and

21 b. provide notice of the availability of the
22 representative;

23 2. Provide reasonable criteria for choosing among competing
24 proposals;

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

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

6 5. Include financial review and analysis procedures that at a
7 minimum consist of:

8 a. a cost-benefit analysis,

9 b. an assessment of opportunity cost,

10 c. consideration of the degree to which functionality and
11 services similar to the functionality and services to
12 be provided by the proposed project are already
13 available in the private market, and

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

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

18 7. Include criteria for:

19 a. the qualifying project, including the scope, costs,
20 and duration of the project and the involvement or
21 impact of the project on multiple public entities, and

22 b. the creation of and the responsibilities of an
23 oversight committee, with members representing the
24 responsible governmental entity, that acts as an

1 advisory committee to review the terms of any proposed
2 interim or comprehensive agreement;

3 8. Require the responsible governmental entity to analyze the
4 adequacy of the information to be released by the entity when
5 seeking competing proposals and require that the entity provide more
6 detailed information, if the entity determines necessary, to
7 encourage competition, subject to subsection G of Section 8 of this
8 act;

9 9. Establish criteria, key decision points, and approvals
10 required to ensure that the responsible governmental entity
11 considers the extent of competition before selecting proposals and
12 negotiating an interim or comprehensive agreement; and

13 10. Require the posting and publishing of public notice of a
14 proposal requesting approval of a qualifying project, including:

15 a. specific information and documentation regarding the
16 nature, timing, and scope of the qualifying project,
17 as required under subsection A of Section 8 of this
18 act,

19 b. a reasonable period of not less than forty-five (45)
20 days, as determined by the responsible governmental
21 entity, to encourage competition and partnerships with
22 private entities and other persons in accordance with
23 the goals of the Oklahoma Public and Private
24 Facilities and Infrastructure Act, during which the

1 responsible governmental entity must accept submission
2 of competing proposals for the qualifying project, and
3 c. a requirement for advertising the notice on the
4 Internet website of the governmental entity and on the
5 official Internet website of the state.

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

9 A. A private entity or other person may submit a proposal
10 requesting approval of a qualifying project by the responsible
11 governmental entity. The proposal must be accompanied by the
12 following, unless waived by the responsible governmental entity:

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

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

16 a. the conceptual design of any facility or a conceptual
17 plan for the provision of services or technology
18 infrastructure, and

19 b. a schedule for the initiation of and completion of the
20 qualifying project that includes the proposed major
21 responsibilities and timeline for activities to be
22 performed by the governmental entity and the person;

23 3. A statement of the method the person proposes for securing
24 necessary property interests required for the qualifying project;

1 4. Information relating to any current plans for the
2 development of facilities or technology infrastructure to be used by
3 a governmental entity that are similar to the qualifying project
4 being proposed by the person for each affected jurisdiction;

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

9 6. A list of any facilities that will be affected by the
10 qualifying project and a statement by the person of the plans to
11 accommodate the affected facilities;

12 7. A statement by the person on the general plans for financing
13 the qualifying project, including the sources of the funds of the
14 person and identification of any dedicated revenue source or
15 proposed debt or equity investment for the person;

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

18 9. User fees, lease payments, and other service payments over
19 the term of any applicable interim or comprehensive agreement and
20 the methodology and circumstances for changes to the user fees,
21 lease payments, and other service payments over time; and

22 10. Any additional material and information the responsible
23 governmental entity reasonably requests.
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1 B. A responsible governmental entity may request proposals or
2 invite bids from persons for the development or operation of a
3 qualifying project. A responsible governmental entity shall
4 consider the total project cost as one factor in evaluating the
5 proposals received, but is not required to select the proposal that
6 offers the lowest total project cost. The responsible governmental
7 entity may consider the following factors:

- 8 1. The proposed cost of the qualifying project;
- 9 2. The general reputation, industry experience, and financial
10 capacity of the person submitting a proposal;
- 11 3. The proposed design of the qualifying project;
- 12 4. The eligibility of the project for accelerated selection,
13 review, and documentation timelines under the guidelines of the
14 responsible governmental entity;
- 15 5. Comments from local citizens and affected jurisdictions;
- 16 6. Benefits to the public;
- 17 7. The plans of the person to employ local contractors and
18 residents;
- 19 8. For a qualifying project that involves a continuing role
20 beyond design and construction, the proposed rate of return of the
21 person and opportunities for revenue sharing; and
- 22 9. Other criteria that the responsible governmental entity
23 considers appropriate.

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1 C. The responsible governmental entity may approve as a
2 qualifying project the development or operation of a facility needed
3 by the governmental entity, or the design or equipping of a
4 qualifying project, if the responsible governmental entity
5 determines that the project serves the public purpose of the
6 Oklahoma Public and Private Facilities and Infrastructure Act. The
7 responsible governmental entity may determine that the development
8 or operation of the project as a qualifying project serves the
9 public purpose if:

10 1. There is a public need for or benefit derived from the
11 project of the type the person proposes as a qualifying project;

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

14 3. The plans of the person will result in the timely
15 development or operation of the qualifying project.

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

20 E. The approval of a responsible governmental entity is subject
21 to the private entity or other person entering into an interim or
22 comprehensive agreement with the responsible governmental entity.

23 F. On approval of the qualifying project, the responsible
24 governmental entity shall establish a date by which activities

1 related to the qualifying project must begin. The responsible
2 governmental entity may extend the date.

3 G. The responsible governmental entity shall take action
4 appropriate under the Oklahoma Open Records Act to protect
5 confidential and proprietary information provided by the contracting
6 person under an agreement.

7 H. The Oklahoma Public and Private Facilities and
8 Infrastructure Act and an interim or comprehensive agreement entered
9 into under the Oklahoma Public and Private Facilities and
10 Infrastructure Act do not enlarge, diminish, or affect any authority
11 a responsible governmental entity has to take action that would
12 impact the debt capacity of this state.

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

16 A responsible governmental entity may contract with a
17 contracting person for the delivery of services to be provided as
18 part of a qualifying project in exchange for service payments and
19 other consideration as the governmental entity considers
20 appropriate.

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

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1 A. A person submitting a proposal to a responsible governmental
2 entity under Section 8 of this act shall notify each affected
3 jurisdiction by providing a copy of its proposal to the affected
4 jurisdiction.

5 B. Not later than the sixth day after the date an affected
6 jurisdiction receives the notice required by subsection A of this
7 section, the affected jurisdiction that is not the responsible
8 governmental entity for the respective qualifying project shall
9 submit in writing to the responsible governmental entity any
10 comments the affected jurisdiction has on the proposed qualifying
11 project and indicate whether the facility or project is compatible
12 with the local comprehensive plan, local infrastructure development
13 plans, the capital improvements budget, or other government spending
14 plan. The responsible governmental entity shall consider the
15 submitted comments before entering into a comprehensive agreement
16 with a contracting person.

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

20 A. After obtaining any appraisal of the property interest that
21 is required under other law in connection with the conveyance, a
22 governmental entity may dedicate any property interest, including
23 land, improvements, and tangible personal property, for public use
24 in a qualifying project if the governmental entity finds that the

1 dedication will serve the public purpose of this chapter by
2 minimizing the cost of a qualifying project to the governmental
3 entity or reducing the delivery time of a qualifying project.

4 B. In connection with a dedication under subsection a of this
5 Section, a governmental entity may convey any property interest,
6 including a license, franchise, easement, or another right or
7 interest the governmental entity considers appropriate, subject to
8 the conditions imposed by general law governing such conveyance and
9 subject to the rights of an existing utility under a license,
10 franchise, easement, or other right under law, to the contracting
11 person for the consideration determined by the governmental entity.
12 The consideration may include the agreement of the contracting
13 person to develop or operate the qualifying project.

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

17 A. The contracting person has:

18 1. The power granted by:

19 a. general law to a person that has the same form of
20 organization as the contracting person, and

21 b. a statute governing the business or activity of the
22 contracting person; and

23 2. The power to:

24 a. develop or operate the qualifying project, and

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

4 B. The contracting person may not impose a user fee or increase
5 the amount of a user fee until the fee or increase is approved by
6 the responsible governmental entity.

7 C. The contracting person may own, lease, or acquire any other
8 right to use or operate the qualifying project.

9 D. The contracting person may finance a qualifying project in
10 the amounts and on the terms determined by the contracting person.
11 The contracting person may issue debt, equity, or other securities
12 or obligations, enter into sale and leaseback transactions, and
13 secure any financing with a pledge of, security interest in, or lien
14 on any or all of its property, including all of its property
15 interests in the qualifying project.

16 E. In operating the qualifying project, the contracting person
17 may:

18 1. Establish classifications according to reasonable categories
19 for assessment of user fees; and

20 2. With the consent of the responsible governmental entity,
21 adopt and enforce reasonable rules for the qualifying project to the
22 same extent as the responsible governmental entity.

23 F. The contracting person shall:
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1 1. Develop or operate the qualifying project in a manner that
2 is acceptable to the responsible governmental entity and in
3 accordance with any applicable interim or comprehensive agreement;

4 2. Subject to subsection G of this section, keep the qualifying
5 project open for use by the public at all times, or as appropriate
6 based on the use of the project, after its initial opening on
7 payment of the applicable user fees, lease payments, or service
8 payments;

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

12 4. Cooperate with the responsible governmental entity to
13 establish any interconnection with the qualifying project requested
14 by the responsible governmental entity; and

15 5. Comply with any applicable interim or comprehensive
16 agreement and any lease or service contract.

17 G. The qualifying project may be temporarily closed because of
18 emergencies or, with the consent of the responsible governmental
19 entity, to protect public safety or for reasonable construction or
20 maintenance activities.

21 H. The Oklahoma Public and Private Facilities and
22 Infrastructure Act does not prohibit a contracting person of a
23 qualifying project from providing additional services for the
24 qualifying project to the public or persons other than the

1 responsible governmental entity if the provision of additional
2 service does not impair the ability of the contracting person to
3 meet the commitments of the person to the responsible governmental
4 entity under any applicable interim or comprehensive agreement.

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

8 A. Before developing or operating the qualifying project, the
9 contracting person must enter into a comprehensive agreement with a
10 responsible governmental entity. The comprehensive agreement shall
11 provide for:

12 1. Delivery of letters of credit or other security in
13 connection with the development or operation of the qualifying
14 project, in the forms and amounts satisfactory to the responsible
15 governmental entity, and delivery of performance and payment bonds
16 for all construction activities;

17 2. Review of plans and specifications for the qualifying
18 project by the responsible governmental entity and approval by the
19 responsible governmental entity if the plans and specifications
20 conform to standards acceptable to the responsible governmental
21 entity, except that the contracting person may not be required to
22 complete the design of a qualifying project before the execution of
23 a comprehensive agreement;

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1 3. Inspection of the qualifying project by the responsible
2 governmental entity to ensure that the activities of the contracting
3 person are acceptable to the responsible governmental entity in
4 accordance with the comprehensive agreement;

5 4. Maintenance of a public liability insurance policy, copies
6 of which must be filed with the responsible governmental entity
7 accompanied by proofs of coverage, or self-insurance, each in the
8 form and amount satisfactory to the responsible governmental entity
9 and reasonably sufficient to ensure coverage of tort liability to
10 the public and project employees and to enable the continued
11 operation of the qualifying project;

12 5. Monitoring of the practices of the contracting person by the
13 responsible governmental entity to ensure that the qualifying
14 project is properly maintained;

15 6. Reimbursement to be paid to the responsible governmental
16 entity for services provided by the responsible governmental entity;

17 7. Filing of appropriate financial statements on a periodic
18 basis; and

19 8. Policies and procedures governing the rights and
20 responsibilities of the responsible governmental entity and the
21 contracting person if the comprehensive agreement is terminated or
22 there is a material default by the contracting person, including
23 conditions governing:
24

1 a. assumption of the duties and responsibilities of the
2 contracting person by the responsible governmental
3 entity, and

4 b. the transfer or purchase of property or other
5 interests of the contracting person to the responsible
6 governmental entity.

7 B. The comprehensive agreement shall provide for any user fee,
8 lease payment, or service payment established by agreement of the
9 parties. In negotiating a user fee under this section, the parties
10 shall establish a payment or fee that is the same for persons using
11 a facility of the qualifying project under like conditions and that
12 will not materially discourage use of the qualifying project. The
13 execution of the comprehensive agreement or an amendment to the
14 agreement is conclusive evidence that the user fee, lease payment,
15 or service payment complies with the Oklahoma Public and Private
16 Facilities and Infrastructure Act. A user fee or lease payment
17 established in the comprehensive agreement as a source of revenue
18 may be in addition to, or in lieu of, a service payment.

19 C. A comprehensive agreement may include a provision that
20 authorizes the responsible governmental entity to make grants or
21 loans to the contracting person from money received from the
22 federal, state, or local government or any agency or instrumentality
23 of the government.

1 D. The comprehensive agreement must incorporate the duties of
2 the contracting person under the Oklahoma Public and Private
3 Facilities and Infrastructure Act and may contain terms the
4 responsible governmental entity determines serve the public purpose
5 of the Oklahoma Public and Private Facilities and Infrastructure
6 Act. The comprehensive agreement may contain:

7 1. Provisions that require the responsible governmental entity
8 to provide notice of default and cure rights for the benefit of the
9 contracting person and the persons specified in the agreement as
10 providing financing for the qualifying project;

11 2. Other lawful terms to which the contracting person and the
12 responsible governmental entity mutually agree, including provisions
13 regarding unavoidable delays or providing for a loan of public money
14 to the contracting person to develop or operate one or more
15 qualifying projects; and

16 3. Provisions in which the authority and duties of the
17 contracting person under the Oklahoma Public and Private Facilities
18 and Infrastructure Act cease and the qualifying project is dedicated
19 for public use to the responsible governmental entity or, if the
20 qualifying project was initially dedicated by an affected
21 jurisdiction, to the affected jurisdiction.

22 E. Any change in the terms of the comprehensive agreement that
23 the parties agree to must be added to the comprehensive agreement by
24 written amendment.

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

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

6 Before or in connection with the negotiation of the
7 comprehensive agreement, the responsible governmental entity may
8 enter into an interim agreement with the contracting person
9 proposing the development or operation of the qualifying project.

10 The interim agreement may:

11 1. Authorize the contracting person to begin project phases or
12 activities for which the contracting person may be compensated
13 relating to the proposed qualifying project, including project
14 planning and development, design, engineering, environmental
15 analysis and mitigation, surveying, and financial and revenue
16 analysis, including ascertaining the availability of financing for
17 the proposed facility or facilities of the qualifying project;

18 2. Establish the process and timing of the negotiation of the
19 comprehensive agreement; and

20 3. Contain any other provision related to any aspect of the
21 development or operation of a qualifying project that the parties
22 consider appropriate.

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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. The contracting person and the responsible governmental
5 entity may use any funding resources that are available to the
6 parties, including:

- 7 1. Accessing any designated trust funds; and
- 8 2. Borrowing or accepting grants from any state infrastructure
9 bank.

10 B. The responsible governmental entity may take any action to
11 obtain federal, state, or local assistance for a qualifying project
12 that serves the public purpose of the Oklahoma Public and Private
13 Facilities and Infrastructure Act and may enter into any contracts
14 required to receive the assistance.

15 C. If the responsible governmental entity is a state agency,
16 any money received from the state or federal government or any
17 agency or instrumentality of the state or federal government is
18 subject to appropriation by the Legislature.

19 D. The responsible governmental entity may determine that it
20 serves the public purpose of the Oklahoma Public and Private
21 Facilities and Infrastructure Act for all or part of the costs of a
22 qualifying project to be directly or indirectly paid from the
23 proceeds of a grant or loan made by the local, state, or federal
24 government or any agency or instrumentality of the government.

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

4 A. The construction, remodel, or repair of a qualifying project
5 may be performed only after performance and payment bonds for the
6 construction, remodel, or repair have been executed regardless of
7 whether the qualifying project is on public or private property or
8 is publicly or privately owned.

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

12 C. The obligee under a performance bond under this section may
13 be a public entity, a private person, or an entity consisting of
14 both a public entity and a private person.

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

18 A. If the contracting person commits a material default, the
19 responsible governmental entity may assume the responsibilities and
20 duties of the contracting person of the qualifying project. If the
21 responsible governmental entity assumes the responsibilities and
22 duties of the contracting person, the responsible governmental
23 entity has all the rights, title, and interest in the qualifying
24 project, subject to any liens on revenue previously granted by the

1 contracting person to any person providing financing for the
2 project.

3 B. A responsible governmental entity that has the power of
4 eminent domain under state law may exercise that power to acquire
5 the qualifying project in the event of a material default by the
6 contracting person. Any person who has provided financing for the
7 qualifying project, and the contracting person to the extent of its
8 capital investment, may participate in the eminent domain
9 proceedings with the standing of a property owner.

10 C. The responsible governmental entity may terminate, with
11 cause, any applicable interim or comprehensive agreement and
12 exercise any other rights and remedies available to the governmental
13 entity at law or in equity.

14 D. The responsible governmental entity may make any appropriate
15 claim under the letters of credit or other security or the
16 performance and payment bonds required by paragraph 1 of subsection
17 A of Section 13 of this act.

18 E. If the responsible governmental entity elects to assume the
19 responsibilities and duties for a qualifying project under
20 subsection A of this section, the responsible governmental entity
21 may:

- 22 1. Develop or operate the qualifying project;
- 23 2. Impose user fees;

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1 3. Impose and collect lease payments for the use of the
2 project; and

3 4. Comply with any applicable contract to provide services.

4 F. The responsible governmental entity shall collect and pay to
5 secured parties any revenue subject to a lien to the extent
6 necessary to satisfy the obligations of the contracting party to
7 secured parties, including the maintenance of reserves. The liens
8 shall be correspondingly reduced and, when paid off, released.

9 G. Before any payment is made to or for the benefit of a
10 secured party, the responsible governmental entity may use revenue
11 to pay the current operation and maintenance costs of the qualifying
12 project, including compensation to the responsible governmental
13 entity for its services in operating and maintaining the qualifying
14 project. The right to receive any payment is considered just
15 compensation for the qualifying project.

16 H. The full faith and credit of the responsible governmental
17 entity may not be pledged to secure any financing of the contracting
18 person that was assumed by the governmental entity when the
19 governmental entity assumed responsibility for the qualifying
20 project.

21 SECTION 18. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 5168 of Title 74, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. At the request of the contracting person, the responsible
2 governmental entity may exercise any power of eminent domain that it
3 has under law to acquire any land or property interest to the extent
4 that the responsible governmental entity dedicates the land or
5 property interest to public use and finds that the action serves the
6 public purpose of the Oklahoma Public and Private Facilities and
7 Infrastructure Act.

8 B. Any amounts to be paid in any eminent domain proceeding
9 shall be paid by the contracting person.

10 SECTION 19. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 5169 of Title 74, unless there
12 is created a duplication in numbering, reads as follows:

13 A. The contracting person and each facility owner, including a
14 public utility, a public service company, or a cable television
15 provider, whose facilities will be affected by a qualifying project
16 shall cooperate fully in planning and arranging the manner in which
17 the facilities will be affected.

18 B. The contracting person and responsible governmental entity
19 shall ensure that a facility owner whose facility will be affected
20 by a qualifying project does not suffer a disruption of service as a
21 result of the construction or improvement of the qualifying project.

22 C. A governmental entity possessing the power of eminent domain
23 may exercise that power in connection with the relocation of
24 facilities affected by the qualifying project or facilities that

1 must be relocated to the extent that the relocation is necessary or
2 desirable by construction of, renovation to, or improvements to the
3 qualifying project, which includes construction of, renovation to,
4 or improvements to temporary facilities to provide service during
5 the period of construction or improvement. The governmental entity
6 shall exercise its power of eminent domain to the extent required to
7 ensure an affected facility owner does not suffer a disruption of
8 service as a result of the construction or improvement of the
9 qualifying project during the construction or improvement or after
10 the qualifying project is completed or improved.

11 D. The contracting person shall pay any amount owed for the
12 crossing, constructing, or relocating of facilities.

13 SECTION 20. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 5170 of Title 74, unless there
15 is created a duplication in numbering, reads as follows:

16 A peace officer of this state or of any affected jurisdiction
17 has the same powers and jurisdiction within the area of the
18 qualifying project as the officer has in the area of jurisdiction of
19 the officer. The officer may access the qualifying project at any
20 time to exercise the powers and jurisdiction of the officer.

21 SECTION 21. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 5171 of Title 74, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. Not later than the tenth day after the date a responsible
2 governmental entity accepts a proposal, the responsible governmental
3 entity shall provide notice of the proposal by posting the proposal
4 on the Internet website of the entity.

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

11 C. Trade secrets, financial records, or other records of the
12 contracting person excluded from disclosure under the Oklahoma Open
13 Records Act may not be posted or made available for public
14 inspection except as otherwise agreed to by the responsible
15 governmental entity and the contracting person.

16 D. The responsible governmental entity shall hold a public
17 hearing on the proposal during the proposal review process not later
18 than the thirtieth day before the date the entity enters into an
19 interim or comprehensive agreement.

20 E. On completion of the negotiation phase for the development
21 of an interim or comprehensive agreement and before an interim
22 agreement or comprehensive agreement is entered into, a responsible
23 governmental entity must make available the proposed agreement in a
24 manner provided by subsection A or B of this section.

1 F. A responsible governmental entity that has entered into an
2 interim agreement or comprehensive agreement shall make procurement
3 records available for public inspection on request. For purposes of
4 this subsection, procurement records do not include the trade
5 secrets of the contracting person or financial records, including
6 balance sheets or financial statements of the contracting person,
7 that are not generally available to the public through regulatory
8 disclosure or other means.

9 G. Cost estimates relating to a proposed procurement
10 transaction prepared by or for a responsible governmental entity are
11 not open to public inspection.

12 H. Any inspection of procurement transaction records under this
13 section is subject to reasonable restrictions to ensure the security
14 and integrity of the records.

15 I. This section applies to any accepted proposal regardless of
16 whether the process of bargaining results in an interim or
17 comprehensive agreement.

18 SECTION 22. This act shall become effective November 1, 2012.

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