



1 requiring approval of Director; requiring projects  
2 meet certain criteria; addressing application of  
3 certain competitive bidding provisions; prohibiting  
4 application to certain projects; providing for the  
5 promulgation of rules; providing for codification;  
6 and providing an effective date.

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

7 SECTION 1. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 4041 of Title 69, unless there  
9 is created a duplication in numbering, reads as follows:

10 For purposes of Sections 2 through 13 of this act:

11 1. "Affected jurisdiction" means any county, city, or town or  
12 municipal corporation, or other unit of government within the state  
13 in which all or part of a transportation facility is located or any  
14 other public entity directly affected by the transportation  
15 facility;

16 2. "Department" means the Department of Transportation;

17 3. "Force majeure" means an uncontrollable force or natural  
18 disaster not within the power of the operator or the state;

19 4. "Maintenance" includes ordinary maintenance, repair,  
20 rehabilitation, capital maintenance, maintenance replacement, and  
21 any other categories of maintenance that may be designated by the  
22 Department;

23 5. "Material default" means any failure of an operator to  
24 perform any duties under a public-private agreement, which

1 jeopardizes delivery of adequate service to the public and remains  
2 unsatisfied after a reasonable period of time and after the operator  
3 has received written notice from the Department of the failure;

4 6. "Operate" means any action to maintain, rehabilitate,  
5 improve, equip, or modify a transportation facility;

6 7. "Operator" means a private entity that has entered into a  
7 public-private agreement under this act;

8 8. "Private entity" means any natural person, corporation,  
9 general partnership, limited liability company, limited partnership,  
10 joint venture, business trust, public benefit corporation, nonprofit  
11 entity, or other business entity;

12 9. "Public-private agreement" means the agreement between a  
13 private entity and the Department that relates to the development,  
14 financing, maintenance, or operation of a transportation facility  
15 subject to this act;

16 10. "Public-private initiative" means an arrangement between  
17 the Department and one or more private entities, the terms of which  
18 are stated in a public-private agreement, that provides for:

19 a. acceptance of a private contribution, including a  
20 money payment, for a project or service for a  
21 transportation facility,

22 b. sharing of resources and the means of providing a  
23 project or service for a transportation facility, and  
24

1 c. cooperation in researching, developing, and  
2 implementing projects or services for a transportation  
3 facility;

4 11. "Transportation facility" means any new or existing  
5 highway, road, bridge, tunnel, overpass, ferry, airport, public  
6 transportation facility, vehicle parking facility, seaport facility,  
7 rail facility, intermodal facility, or similar facility open to the  
8 public and used for the transportation of persons or goods, and any  
9 building, structure, parking area, appurtenances, or other property  
10 needed to operate such facility that is subject to a public-private  
11 agreement;

12 12. "User fees" means the rate, toll, fee, or other charges  
13 imposed by an operator for use of all or part of a transportation  
14 facility; and

15 13. "Utility" means a privately, publicly, or cooperatively  
16 owned line, facility, or system for producing, transmitting, or  
17 distributing communications, cable television, power, electricity,  
18 light, heat, gas, oil, crude products, water, steam, waste, storm  
19 water not connected with highway drainage, or any other similar  
20 commodity, including fire or police signal system or street lighting  
21 system, which directly or indirectly serves the public.

22 SECTION 2. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 4042 of Title 69, unless there  
24 is created a duplication in numbering, reads as follows:

1       A. The Public Competitive Bidding Act of 1974 shall not apply  
2 to solicited proposals under this act.

3       B. The Department of Transportation may solicit, receive,  
4 consider, evaluate, and accept a proposal for a public-private  
5 initiative.

6       C. In soliciting and selecting a private entity with which to  
7 enter into a public-private initiative, the Department may utilize  
8 one or more of the following procurement approaches:

9           1. Sealed bidding;

10           2. Selection of proposals, with or without negotiations, based  
11 on qualifications, best value, or both; or

12           3. Any competitive selection process that the Department  
13 determines to be appropriate or reasonable.

14       D. The Department may consider the following factors in  
15 evaluating and selecting a bid or proposal to enter into a public-  
16 private initiative:

17           1. The ability of the transportation facility to improve  
18 safety, reduce congestion, increase capacity, and promote economic  
19 growth;

20           2. The proposed cost of and financial plan for the  
21 transportation facility;

22           3. The general reputation, qualifications, industry experience,  
23 and financial capacity of the private entity;

24

1 4. The proposed design, operation, and feasibility of the  
2 transportation facility;

3 5. Comments from local citizens and affected jurisdictions;

4 6. Benefits to the public;

5 7. The safety record of the private entity; and

6 8. Other criteria that the Department deems appropriate.

7 E. The Department may select multiple private entities with  
8 which to enter a public-private agreement for a transportation  
9 facility if it is in the public's interest to do so.

10 F. The Department shall select a private entity or entities for  
11 a public-private initiative on a competitive basis to the maximum  
12 extent practicable.

13 G. 1. A private entity may request a review, prior to  
14 submission of a solicited proposal, by the Department of information  
15 that the private entity has identified as confidential or  
16 proprietary to determine whether such information would be subject  
17 to disclosure under the Oklahoma Open Records Act.

18 2. A private entity may identify confidential or proprietary  
19 information submitted as part of a solicited proposal. A private  
20 entity shall have an opportunity to object to the release of any  
21 information it identifies as confidential or proprietary.

22 3. The Department shall review any information identified as  
23 confidential or proprietary by a private entity as part of a  
24

1 solicited proposal and shall determine if such information is exempt  
2 from disclosure under the Oklahoma Open Records Act.

3 4. The Department shall inform the private entity that  
4 submitted the information of its determination of whether  
5 information identified by the private entity as confidential or  
6 proprietary is subject to disclosure under the Oklahoma Open Records  
7 Act.

8 5. The private entity shall have the opportunity to object to  
9 the determination that the information is subject to disclosure  
10 under the Oklahoma Open Records Act or to withdraw its proposal.

11 6. Any information determined by the state to be confidential  
12 or proprietary shall be exempt from disclosure under the Oklahoma  
13 Open Records Act.

14 7. Any information not determined to be confidential or  
15 proprietary may be subject to disclosure under the Oklahoma Open  
16 Records Act.

17 SECTION 3. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 4043 of Title 69, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. The Public Competitive Bidding Act of 1974 shall not apply  
21 to this section.

22 B. 1. The Department of Transportation may receive, consider,  
23 evaluate, and accept an unsolicited proposal for a public-private  
24 initiative if the proposal:

- a. is independently originated and developed by the proposer,
- b. benefits the public,
- c. is prepared without Department supervision, and
- d. includes sufficient detail and information for the Department to evaluate the proposal in an objective and timely manner.

2. Within thirty (30) days after receiving an unsolicited proposal, the Department shall undertake a preliminary evaluation of the unsolicited proposal to determine if the proposal complies with the requirements under paragraph 1 of this subsection.

C. 1. A private entity may request a review, prior to submission of an unsolicited proposal, by the Department of information that the private entity has identified as confidential or proprietary to determine whether such information would be subject to disclosure under the Oklahoma Open Records Act.

2. A private entity may identify confidential or proprietary information submitted as part of an unsolicited proposal. A private entity shall have an opportunity to object to the release of any information it identifies as confidential or proprietary.

3. The Department shall review any information identified as confidential or proprietary by a private entity as part of an unsolicited proposal and shall determine if such information is exempt from disclosure under the Oklahoma Open Records Act.

1 4. The Department shall inform the private entity that  
2 submitted the information of its determination of whether  
3 information identified by the private entity as confidential or  
4 proprietary is subject to disclosure under the Oklahoma Open Records  
5 Act.

6 5. The private entity shall have the opportunity to object to  
7 the determination that the information is subject to disclosure  
8 under the Oklahoma Open Records Act or to withdraw its proposal.

9 6. Any information determined by the state to be confidential  
10 or proprietary shall be exempt from disclosure under the Oklahoma  
11 Open Records Act.

12 7. Any information not determined to be confidential or  
13 proprietary may be subject to disclosure under the Oklahoma Open  
14 Records Act.

15 SECTION 4. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 4044 of Title 69, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. 1. After selecting a solicited or unsolicited proposal for  
19 a public-private initiative, the Department of Transportation shall  
20 enter into a public-private agreement for a transportation facility  
21 with the selected private entity or any configuration of private  
22 entities.

23  
24

1           2. An affected jurisdiction may be a party to a public-private  
2 agreement entered into by the Department and a selected private  
3 entity or combination of private entities.

4           B. A public-private agreement under this act shall provide for  
5 the following:

6           1. The planning, acquisition, financing, development, design,  
7 construction, reconstruction, replacement, improvement, maintenance,  
8 management, repair, leasing, or operation of a transportation  
9 facility;

10          2. The term of the public-private agreement;

11          3. The type of property interest, if any, the private entity  
12 will have in the transportation facility;

13          4. A description of the actions the Department may take to  
14 ensure proper maintenance of the transportation facility;

15          5. Whether user fees will be collected on the transportation  
16 facility and the basis by which such user fees shall be determined  
17 and modified;

18          6. Compliance with applicable federal, state, and local laws;

19          7. Grounds for termination of the public-private agreement by  
20 the Department or operator; and

21          8. Procedures for amendment of the agreement.

22           C. A public-private agreement under this act may provide for  
23 the following:

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UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

- 1        1. Review and approval by the Department of the operator's
- 2 plans for the development and operation of the transportation
- 3 facility;
- 4        2. Inspection by the Department of construction of or
- 5 improvements to the transportation facility;
- 6        3. Maintenance by the operator of a policy of liability
- 7 insurance or self-insurance;
- 8        4. Filing by the operator, on a periodic basis, of appropriate
- 9 financial statements in a form acceptable to the Department;
- 10       5. Filing by the operator, on a periodic basis, of traffic
- 11 reports in a form acceptable to the Department;
- 12       6. Financing obligations of the operator and the Department;
- 13       7. Apportionment of expenses between the operator and the
- 14 Department;
- 15       8. The rights and duties of the operator, the Department, and
- 16 other state and local governmental entities with respect to use of
- 17 the transportation facility;
- 18       9. The rights and remedies available in the event of default or
- 19 delay;
- 20       10. The terms and conditions of indemnification of the operator
- 21 by the Department;
- 22       11. Assignment, subcontracting, or other delegation of
- 23 responsibilities of the operator or the Department under the
- 24

1 agreement to third parties, including other private entities and  
2 other state agencies;

3 12. Sale or lease to the operator of private property related  
4 to the transportation facility;

5 13. Traffic enforcement and other policing issues including any  
6 reimbursement by the private entity for such services; or

7 14. Other terms and conditions.

8 SECTION 5. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 4045 of Title 69, unless there  
10 is created a duplication in numbering, reads as follows:

11 In the event of termination of the public-private agreement, the  
12 authority and duties of the operator cease, except for any duties  
13 and obligations that extend beyond the termination as provided in  
14 the public-private agreement, and the transportation facility  
15 reverts to the Department of Transportation and shall be dedicated  
16 to the Department for public use.

17 SECTION 6. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 4046 of Title 69, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. Upon the occurrence and during the continuation of material  
21 default by an operator, not related to an event of force majeure,  
22 the Department of Transportation may:

23 1. Elect to take over the transportation facility, including  
24 the succession of all right, title, and interest in the

1 transportation facility, subject to any liens on revenues previously  
2 granted by the private entity; and

3 2. Terminate the public-private agreement and exercise any  
4 other rights and remedies that may be available.

5 B. In the event that the Department elects to take over a  
6 transportation facility under subsection A of this section, the  
7 Department:

8 1. Shall collect and pay any revenues that are subject to lien  
9 to satisfy any obligation;

10 2. May develop and operate the transportation facility, impose  
11 user fees for the use of the transportation facility, and comply  
12 with any service contracts; and

13 3. May solicit proposals for the maintenance and operation of  
14 the transportation facility under Section 4 of this act.

15 SECTION 7. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 4047 of Title 69, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. 1. The Department of Transportation may issue and sell  
19 bonds or notes of the Department for the purpose of providing funds  
20 to carry out the provisions of this act with respect to the  
21 development, financing, or operation of a transportation facility or  
22 the refunding of any bonds or notes, together with any costs  
23 associated with the transaction.

24 2. Any bond or note issued under this section:

- 1 a. constitutes the corporate obligation of the  
2 Department,  
3 b. does not constitute the indebtedness of the state  
4 within the meaning or application of any  
5 constitutional provision or limitation, and  
6 c. is payable solely as to both principal and interest  
7 from:

8 (1) the revenues from a lease to the Department, if  
9 any,

10 (2) proceeds of bonds or notes, if any,

11 (3) investment earnings on proceeds of bonds or  
12 notes, if any, or

13 (4) other funds available to the Department for such  
14 purpose.

15 B. 1. For the purpose of financing a transportation facility,  
16 the Department and operator may apply for, obtain, issue, and use  
17 private activity bonds available under any federal law or program.

18 2. Any bonds debt, other securities, or other financing issued  
19 for the purpose of this act shall not be considered to be a debt of  
20 the state or any political subdivision of the state or a pledge of  
21 the faith and credit of the state or any political subdivision of  
22 the state.

1 C. Nothing in this section shall limit a local government or  
2 any authority of the state to issue bonds for transportation  
3 projects.

4 SECTION 8. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 4048 of Title 69, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. 1. The Department of Transportation may accept from the  
8 United States or any of its agencies funds that are available to the  
9 state for carrying out this act, whether the funds are made  
10 available by grant, loan, or other financial assistance.

11 2. The state assents to any federal requirements, conditions,  
12 or terms of any federal funding accepted by the Department under  
13 this section.

14 3. The Department may enter into agreements or other  
15 arrangements with the United States or any of its agencies as may be  
16 necessary for carrying out the purposes of this act.

17 B. The Department may accept from any source any grant,  
18 donation, gift, or other form of conveyance of land, money, other  
19 real or personal property, or other item of value made to the state  
20 or the Department for carrying out the purposes of this act.

21 C. Any transportation facility may be financed in whole or in  
22 part by contribution of any funds or property made by any private  
23 entity or affected jurisdiction that is party to a public-private  
24 agreement under this act.

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~~Strike thru~~ language denotes deletion from present Statutes.

1 D. The Department may combine federal, state, local, and  
2 private funds to finance a transportation facility under this act.

3 SECTION 9. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 4049 of Title 69, unless there  
5 is created a duplication in numbering, reads as follows:

6 The Department of Transportation may exercise the power of  
7 eminent domain to acquire property, rights of way or other rights in  
8 property for transportation projects that are part of a public-  
9 private initiative.

10 SECTION 10. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 4050 of Title 69, unless there  
12 is created a duplication in numbering, reads as follows:

13 A. All law enforcement officers of the state and of an affected  
14 jurisdiction shall have the same powers and jurisdiction within the  
15 limits of the transportation facility as they have in their  
16 respective areas of jurisdiction and access to the transportation  
17 facility at any time for the purpose of exercising such powers and  
18 jurisdiction.

19 B. The traffic and motor vehicle laws of the state or, if  
20 applicable, any affected local jurisdiction shall be the same on the  
21 transportation facility as those laws applied to conduct on similar  
22 transportation facilities in the state or local jurisdiction.

23 C. Punishment for violations of traffic and motor vehicle laws  
24 of the state or, if applicable, any affected local jurisdiction on

1 the transportation facility shall be as prescribed by law for  
2 conduct occurring on similar transportation facilities in the state  
3 or local jurisdiction.

4 SECTION 11. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 4051 of Title 69, unless there  
6 is created a duplication in numbering, reads as follows:

7 An operator under this act and any utility whose facility is to  
8 be crossed or relocated shall cooperate fully in planning and  
9 arranging the manner of the crossing or relocation of the utility  
10 facility.

11 SECTION 12. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 4052 of Title 69, unless there  
13 is created a duplication in numbering, reads as follows:

14 Nothing in this act shall be construed or deemed to limit any  
15 waiver of the sovereign immunity of the state or any officer or  
16 employee of the state with respect to the participation in or  
17 approval of all or any part of the transportation facility or its  
18 operation.

19 SECTION 13. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 4053 of Title 69, unless there  
21 is created a duplication in numbering, reads as follows:

22 The Department of Transportation may adopt rules necessary to  
23 carry out the provisions of this act.

24

1 SECTION 14. AMENDATORY 61 O.S. 2011, Section 202.1, as  
2 last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.  
3 2013, Section 202.1), is amended to read as follows:

4 Section 202.1 A. The design-build and construction management  
5 project delivery methods shall not be used without the written  
6 approval of the Director of the Office of Management and Enterprise  
7 Services, or the Director's designee, when those projects are  
8 constructed for a state agency or by an act of the Legislature  
9 specifying design-build or at-risk construction management for a  
10 project. In all instances where the design-build project or at-risk  
11 construction management delivery method is authorized, construction  
12 administration shall be performed by the State Facilities Director,  
13 the SFD's designee or designees, or otherwise by contract or  
14 contract provision approved by the Director of the Office of  
15 Management and Enterprise Services for construction administration  
16 by another party.

17 B. Municipalities, counties, public trusts, or any other  
18 political subdivision in this state shall not be required to get  
19 approval of any other state agency in order to use agency  
20 construction management or at-risk construction management as a  
21 construction delivery method. However, municipalities, counties,  
22 public trusts, and any other political subdivision shall be subject  
23 to Section 220 of this title.

24

1 C. The design-build and construction management project  
2 delivery methods ~~shall not~~ may be used for any project ~~unless~~ if the  
3 project meets the criteria established by the administrative rules  
4 promulgated as required by this act. Such methods ~~shall not~~ may be  
5 used ~~unless~~ if there is a need for compressed construction time as  
6 required to respond to a natural disaster or other emergency  
7 situation affecting public health and safety, or ~~all~~ if one or a  
8 combination of the following criteria for designation are met:

- 9 1. The project benefits the public;
- 10 2. There is a need for cost control; ~~and~~
- 11 3. The need exists for specialized or complex construction  
12 methods due to the unique nature of the project;
- 13 4. The project is of an urgent nature;
- 14 5. The project presents an opportunity for innovation;
- 15 6. The project presents an opportunity for risk transfer;
- 16 7. The project presents an opportunity for overall cost  
17 savings;
- 18 8. The project presents an opportunity for higher quality;
- 19 9. The project is part of a State project-initiative; or
- 20 10 The state agency lacks the required in-house resources to  
21 complete the project.

22 D. The use of design-build and construction management project  
23 delivery methods shall not interfere or inhibit the opportunity for  
24 subcontractors to openly and freely compete for subcontracts

1 pursuant to the Public Competitive Bidding Act of 1974 with respect  
2 to public notices.

3 E. The provisions of subsections A and B of this section shall  
4 not apply to projects by contract pursuant to an interagency  
5 agreement under Section 581 of Title 74 of the Oklahoma Statutes or  
6 to projects a state agency performs solely with the staff of the  
7 agency.

8 F. The Office of Management and Enterprise Services shall,  
9 pursuant to the Administrative Procedures Act, promulgate rules to  
10 effect procedures, processes and design-build/construction  
11 management fee guidelines necessary to the fulfillment of its  
12 responsibilities under this section.

13 G. As used in the Public Facilities Act, public trusts shall  
14 not include state beneficiary public trusts.

15 SECTION 15. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 306.3 of Title 69, unless there  
17 is created a duplication in numbering, reads as follows:

18 Section 306.3 A. As used in this section:

19 1. "Construction" means the process of planning, acquiring,  
20 designing, building, equipping, altering, repairing, improving,  
21 maintaining, or demolishing any roads, highways, bridges, railroads,  
22 tunnels, or appurtenances thereto including facilities, utilities,  
23 or other improvements to any real property;

24

1        2. "Construction administration" means a series of actions  
2 required to ensure the full, timely, and proper performance of all  
3 phases of a construction project by all contractors, suppliers, and  
4 other persons having responsibility for project work and any  
5 guarantees or warranties pertaining thereto;

6        3. "Construction management" means a project delivery method  
7 based on an agreement whereby the Department acquires from a  
8 construction entity a series of services that include, but are not  
9 necessarily limited to, design review, scheduling, cost control,  
10 value engineering, constructability evaluation, preparation and  
11 coordination of bid packages, and construction administration;

12 "construction management" includes:

13            a. "agency construction management" whereby the  
14                    construction entity provides services to the  
15                    Department without taking on financial risks for the  
16                    execution of the actual construction, and

17            b. "at-risk construction management" whereby the  
18                    construction entity, after providing agency services  
19                    during the preconstruction period, takes on the  
20                    financial obligation to carry out construction under a  
21                    specified cost agreement;

22        4. "Department" means the Department of Transportation;

23        5. "Design-build" means a project delivery method whereby the  
24 Department acquires both design and construction services in the

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1 same contract from a single legal entity, referred to as the design-  
2 builder, without the bid component of the traditional design-bid-  
3 build process; and

4 6. "Director" means the Director of the Department of  
5 Transportation.

6 B. The Department of Transportation may use design-build and  
7 construction management project delivery methods with the written  
8 approval of the Director of the Department, or the designee of the  
9 Director. In all instances where the design-build project method is  
10 authorized, construction administration shall be performed by the  
11 Department, the designee or designees of the Director, or otherwise  
12 by contract or contract provision approved by the Director for  
13 construction administration by another party.

14 C. The design-build and construction management project  
15 delivery methods shall not be used for any project unless the  
16 project meets the criteria established by the administrative rules  
17 promulgated as required by this section and at least one or a  
18 combination of the following criteria are met:

- 19 1. The project is of an urgent nature;
- 20 2. The project presents an opportunity for innovation;
- 21 3. The project presents an opportunity for risk transfer;
- 22 4. The project presents an opportunity for overall cost  
23 savings;
- 24 5. The project presents an opportunity for higher quality;

1       6. The project is part of a State project-initiative;

2       7 The state agency lacks the required in-house resources to  
3 complete the project; or

4       8. The project is part of a Federal project-initiative.

5       D. The use of design-build and construction management project  
6 delivery methods shall not interfere or inhibit the opportunity for  
7 subcontractors to openly and freely compete for subcontracts  
8 pursuant to the Public Competitive Bidding Act of 1974.

9       E. The provisions of subsections B and C of this section shall  
10 not apply to projects by contract pursuant to an interagency  
11 agreement under Section 581 of Title 74 of the Oklahoma Statutes or  
12 to projects a state agency performs solely with the staff of the  
13 agency.

14       F. The Department shall, pursuant to the Administrative  
15 Procedures Act, promulgate any rules to effect procedures, processes  
16 and design-build and construction management fee guidelines  
17 necessary to the fulfillment of its responsibilities under this  
18 section.

19       SECTION 16. This act shall become effective November 1, 2014.

20  
21 COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION, dated 02/25/2014 -  
22 DO PASS, As Coauthored.