

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1316 _____
 _____ Of the printed Bill
 Page _____ Section _____ Lines _____
 _____ Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Scott Martin

Adopted: _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 PROPOSED
4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1316

By: Sparks of the Senate

and

Martin of the House

7
8
9
10 PROPOSED COMMITTEE SUBSTITUTE

11 An Act relating to infrastructure development;
12 creating the Oklahoma Public and Private Facilities
13 and Infrastructure Act; providing short title;
14 defining terms; clarifying applicability of act;
15 clarifying scope of eminent domain use; providing
16 procedure and requirements for proposals for
17 qualifying projects; requiring adoption of certain
18 guidelines; providing approval process for qualifying
19 projects; authorizing governmental entities to enter
20 into certain contracts; requiring notice to affected
21 jurisdictions; providing for the dedication and
22 conveyance of public property; specifying the powers
23 and duties of contracting person; providing for and
24 specifying contents of comprehensive agreements;
providing for interim agreements; specifying funding
sources for qualifying projects; requiring certain
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.

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

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

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

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

10 As used in the Oklahoma Public and Private Facilities and
11 Infrastructure Act:

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

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

18 3. "Comprehensive agreement" means the comprehensive agreement
19 authorized by Section 11 of this act between the contracting entity
20 and the responsible governmental entity;

21 4. "Contracting entity" means a person or business entity who
22 enters into a comprehensive or interim agreement with a responsible
23 governmental entity;

24

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

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

8 7. "Interim agreement" means an agreement authorized by Section
9 12 of this act between a contracting entity and a responsible
10 governmental entity that proposes the development or operation of
11 the qualifying project;

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

15 9. "Material default" means any default by a contracting entity
16 in the performance of duties imposed under subsection F of Section
17 10 of this act that jeopardizes adequate service to the public from
18 a qualifying project;

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

21 11. "Qualifying project" means:

22 a. any transportation capacity, highway, bridge or
23 tunnel, mass transit facility, vehicle parking
24 facility, port facility, waterway, power generation

1 facility or transmission line, fuel supply facility or
2 pipeline, water supply facility or pipeline, public
3 work, wastewater or waste treatment facility,
4 hospital, school, medical or nursing care facility,
5 recreational facility, public building, or other
6 similar facility currently available or to be made
7 available to a governmental entity for public use,
8 including any structure, parking area, appurtenance
9 and other property required to operate the structure
10 or facility, or

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

13 Notwithstanding any provision of this section to the contrary,
14 all roadway or highway projects shall be subject to review and
15 approval by the Governor, and the responsible governmental entity
16 shall not approve any roadway or highway project disapproved by the
17 Governor.

18 "Qualifying project" as defined in this paragraph shall
19 specifically exclude technology in infrastructure for state agencies
20 pursuant to Section 34.11.1 of Title 62 of the Oklahoma Statutes;

21 12. "Responsible governmental entity" means a governmental
22 entity that has the power to develop or operate an applicable
23 qualifying project. Any such responsible governmental entity that
24 is subject to the rules promulgated by the Office of Management and

1 Enterprise Services shall comply with all such rules and
2 regulations. Any such responsible governmental entity that is
3 subject to the Central Purchasing Act, the Public Competitive
4 Bidding Act and the Oklahoma Privatization of State Functions Act
5 shall comply with these laws;

6 13. "Revenue" means all revenue, income, earnings, user fees,
7 lease payments or other service payments that support the
8 development or operation of a qualifying project, including money
9 received as a grant or otherwise from the federal government, a
10 governmental entity or any agency or instrumentality of the federal
11 government or governmental entity in aid of the project;

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

14 15. "Service payment" means a payment to a contracting entity
15 of a qualifying project under a service contract; and

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

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 5153 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 shall not alter the eminent domain laws of this state or grant
24

1 the power of eminent domain to any person who is not expressly
2 granted that power under other state law.

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

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

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

18 C. On receipt of a proposal submitted by a person or business
19 entity initiating the approval process under subsection A of Section
20 6 of this act, the responsible governmental entity shall determine
21 whether to accept the proposal for consideration in accordance with
22 Section 6 of this act and the guidelines adopted under those
23 sections. Notwithstanding any other provision of law, a responsible
24 governmental entity that determines not to accept the proposal for

1 consideration shall return the proposal, all fees and the
2 accompanying documentation to the person or business entity
3 submitting the proposal.

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

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

10 A. Responsible state governmental entities shall use guidelines
11 set out in the Public Competitive Bidding Act.

12 B. Before requesting or considering a proposal for a qualifying
13 project, a local responsible governmental entity shall adopt and
14 make publicly available guidelines that enable the governmental
15 entity to comply with the Oklahoma Public and Private Facilities and
16 Infrastructure Act. The guidelines shall be reasonable, encourage
17 competition, provide for an internal dispute resolution process, and
18 guide the selection of projects under the purview of the responsible
19 governmental entity.

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

21 1. Require the responsible governmental entity to:

22 a. make a representative of the entity available to meet
23 with persons who are considering submitting a
24 proposal, and

1 b. provide notice of the availability of the
2 representative;

3 2. Provide reasonable criteria for choosing among competing
4 proposals;

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

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

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

12 a. a cost-benefit analysis,

13 b. an assessment of opportunity cost,

14 c. consideration of the degree to which functionality and
15 services similar to the functionality and services to
16 be provided by the proposed project are already
17 available in the private market, and

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

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

22 7. Subject to the Central Purchasing Act, the Public
23 Competitive Bidding Act and the Oklahoma Privatization of State
24 Functions Act, establish criteria for determining that, should the

1 responsible governmental entity deem it in the public's best
2 interest to cancel a procurement, post-short-term listing, the
3 responsible governmental entity may pay for documented third-party
4 costs, to include but not be limited to: design services, legal
5 advisors and financial advisors, together with reasonable internal
6 expenditures when termination results from government action;

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

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

- 13 a. specific information and documentation regarding the
14 nature, timing and scope of the qualifying project, as
15 required under subsection A of Section 6 of this act,
- 16 b. a reasonable period of not less than forty-five (45)
17 days, as determined by the responsible governmental
18 entity, to encourage competition and partnerships with
19 private entities and other persons in accordance with
20 the goals of the Oklahoma Public and Private
21 Facilities and Infrastructure Act, during which the
22 responsible governmental entity must accept submission
23 of competing proposals for the qualifying project, and
24

1 c. a requirement for advertising the notice on the
2 Internet website of the governmental entity and on the
3 official Internet website of the state.

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

7 A. A business entity or other person may submit a proposal
8 requesting approval of a qualifying project by the responsible
9 governmental entity. The proposal shall be accompanied by the
10 following, unless waived by the responsible governmental entity:

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

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

14 a. the conceptual design of any facility or a conceptual
15 plan for the provision of services, and

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

21 3. A statement of the method the contracting entity proposes
22 for securing necessary property interests required for the
23 qualifying project;

24

1 4. Information relating to any current plans for the
2 development of facilities to be used by a governmental entity that
3 are similar to the qualifying project being proposed by the
4 contracting entity 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 the
8 permits and approvals;

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

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

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

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

23 10. Any additional material and information the responsible
24 governmental entity reasonably requests.

1 B. A responsible governmental entity may request proposals or
2 invite bids from persons or business entities for the development or
3 operation of a qualifying project. A responsible governmental
4 entity shall consider the total project cost as one factor in
5 evaluating the proposals received, but is not required to select the
6 proposal that offers the lowest total project cost. The responsible
7 governmental 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 contracting entity 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 contracting entity to employ local
18 contractors and 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 contracting entity and opportunities for revenue sharing; and
- 22 9. Other criteria that the responsible governmental entity
23 considers appropriate.

24

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 or business entity proposes as a
12 qualifying project;

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

15 3. The plans of the contracting entity will result in the
16 timely development or operation of the qualifying project.

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

21 E. The approval of a responsible governmental entity is subject
22 to the contracting entity entering into an interim or comprehensive
23 agreement with the responsible governmental entity.

1 F. On approval of the qualifying project, the responsible
2 governmental entity shall establish a date by which activities
3 related to the qualifying project must begin. The responsible
4 governmental entity may extend the date.

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

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

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

17 Subject to the provisions of the Oklahoma Privatization of State
18 Functions Act, a responsible governmental entity may contract with a
19 contracting entity for the delivery of services to be provided as
20 part of a qualifying project in exchange for service payments and
21 other consideration as the governmental entity considers
22 appropriate.

23
24

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

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

8 B. Not later than fourteen (14) business days after the date an
9 affected jurisdiction receives the notice required by subsection A
10 of this section, the affected jurisdiction that is not the
11 responsible governmental entity for the respective qualifying
12 project shall submit in writing to the responsible governmental
13 entity any comments the affected jurisdiction has on the proposed
14 qualifying project and indicate whether the facility or project is
15 compatible with the local comprehensive plan, local infrastructure
16 development plans, the capital improvements budget or other
17 government spending plan. The responsible governmental entity shall
18 comply with the requirements set out by law and rules concerning the
19 Long-Range Capital Planning Commission and shall consider the
20 submitted comments before entering into a comprehensive agreement
21 with a contracting entity.

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

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

12 B. In connection with a dedication under subsection A of this
13 section, a responsible governmental entity may, as long as it
14 complies with the Oklahoma Constitution and Section 327 of Title 61
15 of the Oklahoma Statutes, convey any property interest, including a
16 license, franchise, easement or another right or interest the
17 governmental entity considers appropriate, subject to the conditions
18 imposed by law governing such conveyance and subject to the rights
19 of an existing utility under a license, franchise, easement or other
20 right under law, to the contracting entity for the consideration
21 determined by the governmental entity. The consideration may
22 include the agreement of the contracting entity to develop or
23 operate the qualifying project.

24

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

4 A. The contracting entity has:

5 1. The power granted by:

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

8 b. a statute governing the business or activity of the
9 contracting entity; and

10 2. The power to:

11 a. develop or operate the qualifying project, and

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

15 B. The contracting entity may not impose a user fee or increase
16 the amount of a user fee until the fee or increase is approved by
17 the responsible governmental entity.

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

20 D. The contracting entity may finance a qualifying project in
21 the amounts and on the terms determined by the contracting entity.

22 The contracting entity may issue debt, equity or other securities or
23 obligations, enter into sale and leaseback transactions and secure
24 any financing with a pledge of, security interest in, or lien on any

1 or all of its property, including all of its property interests in
2 the qualifying project.

3 E. In operating the qualifying project, the contracting entity
4 may:

5 1. Establish classifications according to reasonable categories
6 for assessment of user fees; and

7 2. With the consent of the responsible governmental entity,
8 adopt and enforce reasonable rules for the qualifying project to the
9 same extent as the responsible governmental entity.

10 F. The contracting entity shall:

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

14 2. Subject to subsection G of this section, keep the qualifying
15 project open for use by the public at all times, or as appropriate
16 based on the use of the project, after its initial opening on
17 payment of the applicable user fees, lease payments or service
18 payments;

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

22 4. Cooperate with the responsible governmental entity to
23 establish any interconnection with the qualifying project requested
24 by the responsible governmental entity; and

1 5. Comply with any applicable interim or comprehensive
2 agreement and any lease or service contract.

3 G. The qualifying project may be temporarily closed because of
4 emergencies or, with the consent of the responsible governmental
5 entity, to protect public safety or for reasonable construction or
6 maintenance activities.

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

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

19 A. Before developing or operating the qualifying project, the
20 contracting entity must enter into a comprehensive agreement with a
21 responsible governmental entity. The comprehensive agreement shall
22 provide for:

23 1. Delivery of letters of credit or other security in
24 connection with the development or operation of the qualifying

1 project, in the forms and amounts satisfactory to the responsible
2 governmental entity and delivery of performance and payment bonds
3 required for all construction activities;

4 2. Review of plans and specifications for the qualifying
5 project by the responsible governmental entity and approval by the
6 responsible governmental entity if the plans and specifications
7 conform to standards acceptable to the responsible governmental
8 entity, except that the contracting entity may not be required to
9 complete the design of a qualifying project before the execution of
10 a comprehensive agreement;

11 3. Inspection of the qualifying project by the responsible
12 governmental entity to ensure that the activities of the contracting
13 entity are acceptable to the responsible governmental entity in
14 accordance with the comprehensive agreement;

15 4. Maintenance of a public liability insurance policy, copies
16 of which must be filed with the responsible governmental entity
17 accompanied by proofs of coverage, or self-insurance, each in the
18 form and amount satisfactory to the responsible governmental entity
19 and reasonably sufficient to ensure coverage of liability to the
20 public and project employees and to enable the continued operation
21 of the qualifying project;

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

1 6. Reimbursement to be paid to the responsible governmental
2 entity for services provided by the responsible governmental entity;

3 7. Filing of appropriate financial statements on an annual
4 basis; and

5 8. Policies and procedures governing the rights and
6 responsibilities of the responsible governmental entity and the
7 contracting entity if the comprehensive agreement is terminated or
8 there is a material default by the contracting entity, including
9 conditions governing:

10 a. assumption of the duties and responsibilities of the
11 contracting entity by the responsible governmental
12 entity, and

13 b. the transfer to or purchase by the responsible
14 governmental entity of property or other interests of
15 the contracting entity.

16 B. The comprehensive agreement shall provide for any user fee,
17 lease payment or service payment established by agreement of the
18 parties. In negotiating a user fee under this section, the parties
19 shall establish a payment or fee that is the same for persons using
20 a facility of the qualifying project under like conditions and that
21 will not materially discourage use of the qualifying project. The
22 execution of the comprehensive agreement or an amendment to the
23 agreement is conclusive evidence that the user fee, lease payment or
24 service payment complies with the Oklahoma Public and Private

1 Facilities and Infrastructure Act. A user fee or lease payment
2 established in the comprehensive agreement as a source of revenue
3 may be in addition to, or in lieu of, a service payment.

4 C. Subject to applicable state laws and constitutional
5 provisions, a comprehensive agreement may include a provision that
6 authorizes the responsible governmental entity to make grants or
7 loans to the contracting entity from money received from the
8 federal, state or local government or any agency or instrumentality
9 of the government.

10 D. The comprehensive agreement shall incorporate the duties of
11 the contracting entity under the Oklahoma Public and Private
12 Facilities and Infrastructure Act and may contain terms the
13 responsible governmental entity determines serve the public purpose
14 of the Oklahoma Public and Private Facilities and Infrastructure
15 Act. The comprehensive agreement may contain:

16 1. Provisions that require the responsible governmental entity
17 to provide notice of default and cure rights for the benefit of the
18 contracting entity and the persons specified in the agreement as
19 providing financing for the qualifying project;

20 2. Other lawful terms to which the contracting entity and the
21 responsible governmental entity mutually agree, including provisions
22 regarding unavoidable delays or providing for a loan of public money
23 to the contracting entity to develop or operate one or more
24 qualifying projects; and

1 3. Provisions in which the authority and duties of the
2 contracting entity under the Oklahoma Public and Private Facilities
3 and Infrastructure Act cease and the qualifying project is dedicated
4 for public use to the responsible governmental entity or, if the
5 qualifying project was initially dedicated by an affected
6 jurisdiction, to the affected jurisdiction.

7 E. Any change in the terms of the comprehensive agreement that
8 the parties agree to must be added to the comprehensive agreement by
9 written amendment.

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

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

15 Before or in connection with the negotiation of the
16 comprehensive agreement, the responsible governmental entity may
17 enter into an interim agreement with the contracting entity
18 proposing the development or operation of the qualifying project.
19 The interim agreement may:

20 1. Authorize the contracting entity to begin project phases or
21 activities for which the contracting entity may be compensated
22 relating to the proposed qualifying project, including project
23 planning and development, design, engineering, environmental
24 analysis and mitigation, surveying and financial and revenue

1 analysis, including ascertaining the availability of financing for
2 the proposed facility or facilities of the qualifying project;

3 2. Establish the process and timing of the negotiation of the
4 comprehensive agreement; and

5 3. Contain any other provision related to any aspect of the
6 development or operation of a qualifying project that the parties
7 consider appropriate.

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

11 A. The contracting entity and the responsible governmental
12 entity may use any funding resources allowed by law that are
13 available to the parties.

14 B. The responsible governmental entity may take any action
15 allowed by law to obtain federal, state or local assistance for a
16 qualifying project that serves the public purpose of the Oklahoma
17 Public and Private Facilities and Infrastructure Act and may enter
18 into any contracts required to receive the assistance.

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

4 A. The construction, remodeling or repair of a qualifying
5 project may be performed only after performance and payment bonds
6 for the construction, remodel or repair have been executed
7 regardless of whether the qualifying project is on public or private
8 property or 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 contracting entity, a business entity or an
14 entity consisting of both a public entity and a contracting entity.

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

18 A. If the contracting entity commits a material default, the
19 responsible governmental entity may assume the responsibilities and
20 duties of the contracting entity of the qualifying project. If the
21 responsible governmental entity assumes the responsibilities and
22 duties of the contracting entity for the qualifying project because
23 the contracting entity has committed a material default, the
24 responsible governmental entity has all the rights, title and

1 interest in the qualifying project, subject to any liens on revenue
2 previously granted by the contracting entity to any person or
3 business entity providing financing for the project.

4 B. The responsible governmental entity may terminate, with
5 cause, any applicable interim or comprehensive agreement and
6 exercise any other rights and remedies available to the governmental
7 entity at law or in equity.

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

14 1. The responsible governmental entity may elect to pay
15 unsuccessful proposers for the work product that they submit with
16 their proposal in response to a request for proposal solicitation.
17 The use by the responsible governmental entity of any design element
18 contained in an unsuccessful proposal is at the sole risk and
19 discretion of the responsible governmental entity and does not
20 confer liability on the recipient of the stipulated amount under
21 this section.

22 2. After payment of the stipulated amount, the responsible
23 governmental entity and the unsuccessful proposer will jointly own
24 the rights to and may make use of any work product contained in the

1 proposal including the technologies, techniques, methods, processes,
2 ideas and information contained in the proposal, project design and
3 project financial plan. The use by the unsuccessful proposer of any
4 part of the work product contained in the proposal is at the sole
5 risk of the unsuccessful proposer and does not confer liability on
6 the responsible governmental entity.

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

11 E. If the responsible governmental entity elects to assume the
12 responsibilities and duties for a qualifying project under
13 subsection A of this section, the responsible governmental entity
14 may:

- 15 1. Develop or operate the qualifying project;
- 16 2. Impose user fees;
- 17 3. Impose and collect lease payments for the use of the
18 project; and
- 19 4. Comply with any applicable contract to provide services.

20 F. If the contracting entity commits a material default and the
21 responsible governmental entity assumes the responsibilities of the
22 contracting entity, the responsible governmental entity shall
23 collect and pay to secured parties any revenue subject to a lien to
24 the extent necessary to satisfy the obligations of the contracting

1 party to secured parties, including the maintenance of reserves.
2 The liens shall be correspondingly reduced and, when paid off,
3 released.

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

11 H. The full faith and credit of the responsible governmental
12 entity shall not be pledged to secure any financing of the
13 contracting entity that was assumed by the governmental entity when
14 the governmental entity assumed responsibility for the qualifying
15 project.

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

19 A. The contracting entity and each facility owner, including a
20 public utility, a public service company or a cable television
21 provider, whose facilities will be affected by a qualifying project
22 shall cooperate fully in planning and arranging the manner in which
23 the facilities will be affected.

24

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

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

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

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

14 B. The responsible governmental entity shall make available for
15 public inspection at least one copy of the proposal. This section
16 does not prohibit the responsible governmental entity from posting
17 the proposal in another manner considered appropriate by the
18 responsible governmental entity to provide maximum notice to the
19 public of the opportunity to inspect the proposal.

20 C. Trade secrets, financial records, or other records of the
21 contracting entity excluded from disclosure under the Oklahoma Open
22 Records Act shall not be posted or made available for public
23 inspection except as otherwise agreed to by the responsible
24 governmental entity and the contracting entity.

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

5 E. On completion of the negotiation phase for the development
6 of an interim or comprehensive agreement and before an interim
7 agreement or comprehensive agreement is entered into, a responsible
8 governmental entity shall make available the proposed agreement in a
9 manner provided by subsection A or B of this section.

10 F. A responsible governmental entity that has entered into an
11 interim agreement or comprehensive agreement shall make procurement
12 records available for public inspection on request. For purposes of
13 this subsection, procurement records do not include the trade
14 secrets of the contracting entity or financial records, including
15 balance sheets or financial statements of the contracting entity,
16 that are not generally available to the public through regulatory
17 disclosure or other means.

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

21 H. Any inspection of procurement transaction records under this
22 section shall be subject to reasonable restrictions to ensure the
23 security and integrity of the records.

24

1 I. This section applies to any accepted proposal regardless of
2 whether the process of bargaining results in an interim or
3 comprehensive agreement.

4 SECTION 18. This act shall become effective November 1, 2016.

5

6 55-2-9723 LRB 04/06/16

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24