

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1316
Page 31 Section 17 Lines 3 1/2
Of the printed Bill
Of the Engrossed Bill

By inserting new Sections 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 to read as follows:

[INSERT ATTACHMENT]

And by renumbering the subsequent section.

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Richard

Morrissette
Adopted: _____

Reading Clerk

"SECTION 18. AMENDATORY 51 O.S. 2011, Section 24A.5, as amended by Section 1, Chapter 370, O.S.L. 2015 (51 O.S. Supp. 2015, Section 24A.5), is amended to read as follows:

Section 24A.5. All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.30 of this title, does not apply to records specifically required by law to be kept confidential including:

a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges,

b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act,

c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725,

d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information, or

e. any test forms, question banks and answer keys developed for state licensure examinations, but specifically excluding test preparation materials or study guides, or

f. information in the files of the Department of Transportation obtained pursuant to Sections 3 through 13 of this act regarding a public-private initiative or a proposal for a public-private initiative that the Department of Transportation determines to be confidential or proprietary;

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions; provided however, the Department of Public Safety shall not be required to assemble for the requesting person specific information, in any format, from driving records relating to any person whose name and date of birth or whose driver license number is not furnished by the requesting person.

The Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names, dates of birth, and other identifying information required by the Oklahoma State Bureau of Investigation pursuant to administrative rule are not furnished by the requesting person;

3. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents (\$0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One

Dollar (\$1.00) per copied page for a certified copy. However, if the request:

a. is solely for commercial purpose, or

b. would clearly cause excessive disruption of the essential functions of the public body,

then the public body may charge a reasonable fee to recover the direct cost of record search and copying; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law.

Any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information;

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the

provisions of the Oklahoma Open Records Act; provided, however, the index shall not be copied or mechanically reproduced for the purpose of sale of the information;

5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions; and

6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one person shall be available at all times to release records during the regular business hours of the public body.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103.7 of Title 61, unless there is created a duplication in numbering, reads as follows:

For purposes of the provisions of the Public Competitive Bidding Act of 1974, contracts entered into as part of a public-private initiative pursuant to Sections 3 through 13 of this act shall not be considered to be public construction contracts and shall not be required to be open for competitive bidding.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4041 of Title 69, unless there is created a duplication in numbering, reads as follows:

For purposes of Sections 3 through 13 of this act:

1. "Affected jurisdiction" means any county, city, or town or municipal corporation, or other unit of government within the state in

which all or part of a transportation facility is located or any other public entity directly affected by the transportation facility;

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

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

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

5. "Material default" means any failure of an operator to perform any duties under a public-private agreement, which jeopardizes delivery of adequate service to the public and remains unsatisfied after a reasonable period of time and after the operator has received written notice from the Department of the failure;

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

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

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

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

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

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

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

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

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

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

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

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4042 of Title 69, unless there is created a duplication in numbering, reads as follows:

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

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

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

1. Sealed bidding;

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

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

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

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

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

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

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

5. Comments from local citizens and affected jurisdictions;

6. Benefits to the public;
7. The safety record of the private entity; and
8. Other criteria that the Department deems appropriate.

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

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

G. 1. A private entity may request a review, prior to submission of a solicited 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 a solicited 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 a solicited proposal and shall determine if such information is exempt from disclosure under the Oklahoma Open Records Act.

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

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

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

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

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4043 of Title 69, unless there is created a duplication in numbering, reads as follows:

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

B. 1. The Department of Transportation may receive, consider, evaluate, and accept an unsolicited proposal for a public-private 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.

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

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

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

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

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4044 of Title 69, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

2. The term of the public-private agreement;

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

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

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

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

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

8. Procedures for amendment of the agreement.

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

1. Review and approval by the Department of the operator's plans for the development and operation of the transportation facility;
2. Inspection by the Department of construction of or improvements to the transportation facility;
3. Maintenance by the operator of a policy of liability insurance or self-insurance;
4. Filing by the operator, on a periodic basis, of appropriate financial statements in a form acceptable to the Department;
5. Filing by the operator, on a periodic basis, of traffic reports in a form acceptable to the Department;
6. Financing obligations of the operator and the Department;
7. Apportionment of expenses between the operator and the Department;
8. The rights and duties of the operator, the Department, and other state and local governmental entities with respect to use of the transportation facility;
9. The rights and remedies available in the event of default or delay;
10. The terms and conditions of indemnification of the operator by the Department;
11. Assignment, subcontracting, or other delegation of responsibilities of the operator or the Department under the agreement to third parties, including other private entities and other state agencies;
12. Sale or lease to the operator of private property related to the transportation facility;

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

14. Other terms and conditions.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4045 of Title 69, unless there is created a duplication in numbering, reads as follows:

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

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4046 of Title 69, unless there is created a duplication in numbering, reads as follows:

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

1. Elect to take over the transportation facility, including the succession of all right, title, and interest in the transportation facility, subject to any liens on revenues previously granted by the private entity; and

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

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

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

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

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

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4047 of Title 69, unless there is created a duplication in numbering, reads as follows:

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

2. Any bond or note issued under this section:

a. constitutes the corporate obligation of the Department,

b. does not constitute the indebtedness of the state within the meaning or application of any constitutional provision or limitation, and

c. is payable solely as to both principal and interest from:

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

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

(3) investment earnings on proceeds of bonds or notes, or

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

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

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

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

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4048 of Title 69, unless there is created a duplication in numbering, reads as follows:

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

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

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

B. The Department may accept from any source any grant, donation, gift, or other form of conveyance of land, money, other real or personal

property, or other item of value made to the state or the Department for carrying out the purposes of this act.

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

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

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4049 of Title 69, unless there is created a duplication in numbering, reads as follows:

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

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4050 of Title 69, unless there is created a duplication in numbering, reads as follows:

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

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4051 of Title 69, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall be construed or deemed to limit any waiver of the sovereign immunity of the state or any officer or employee of the

state with respect to the participation in or approval of all or any part of the transportation facility or its operation.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4052 of Title 69, unless there is created a duplication in numbering, reads as follows:

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