

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 430 By: Leewright of the Senate  
3 and  
4 Montgomery of the House  
5

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

20 AUTHOR: Add the following Senate Coauthor: Sparks

21 AMENDMENT NO. 1. Replace the title, enacting clause and entire bill  
22 and insert

23 "An Act relating to infrastructure development;  
24 creating the Oklahoma Public and Private Facilities  
and Infrastructure Act; providing short title;

1 defining terms; clarifying applicability of act;  
2 clarifying scope of eminent domain use; providing  
3 procedure and requirements for proposals for  
4 qualifying projects; requiring adoption of certain  
5 guidelines; providing approval process for  
6 qualifying projects; authorizing governmental  
7 entities to enter into certain contracts; requiring  
8 notice to effected jurisdiction; providing for the  
9 dedication and conveyance of public property;  
10 specifying the powers and duties of contracting  
11 person; providing for and specifying the powers and  
12 contents of comprehensive agreements; providing for  
13 interim agreements; specifying funding sources for  
14 qualifying projects; requiring certain performance  
15 bonds; specifying remedies for material defaults;  
16 providing for use of eminent domain; providing  
17 procedures concerning effected facility owners;  
18 clarifying police powers; providing for posting of  
19 certain notice and public comment; providing for  
20 public access to certain procurement records;  
21 providing for codification; and providing an  
22 effective date.

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

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

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

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

A. As used in the Oklahoma Public and Private Facilities and  
Infrastructure Act:

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

5       2. "Improvement" means any instruction, reconstruction,  
6 rehabilitation, renovation, installation, improvement, enlargement  
7 or extension of property or improvements to property;

8       3. "Partnership Committee" means a committee consisting of nine  
9 (9) members, three members appointed by the President Pro Tempore of  
10 the Senate, three members appointed by the Speaker of the House of  
11 Representatives and three representatives of the Office of  
12 Management and Enterprise Services (OMES), to be appointed by the  
13 Governor. Five members of the Partnership Committee shall  
14 constitute a quorum. The Partnership Committee shall act only upon  
15 a decision of a majority of appointed members;

16       4. "Private sector entity" means any corporation, whether for  
17 profit or not for profit, limited liability company, partnership,  
18 limited liability partnership, sole proprietorship, business trust,  
19 joint venture or other entity, but shall not mean the state, a  
20 political subdivision of the state, or a public or governmental  
21 entity, agency or instrumentality of the state;

22       5. "Project" means real or personal property, or both, and  
23 improvements thereto or in support thereof, including undivided and  
24

1 other interests therein, used for or in the provision of a public  
2 service;

3 6. "Proposer" means a private sector entity, a local or  
4 regional public entity or agency, or any group or combination  
5 thereof, submitting qualifications or a proposal for a public-  
6 private partnership contract;

7 7. "Public service" means a service provided for a public  
8 purpose of a responsible state agency and identified in an  
9 invitation for qualifications or proposals under this act; and

10 8. "Responsible state agency" means the agency, department,  
11 commission, authority or other instrumentality of the state  
12 responsible for the provision of the public service which is or is  
13 proposed to be the subject of a contract. Any such agency that is  
14 subject to the Oklahoma Central Purchasing Act, the Public  
15 Competitive Bidding Act, the Oklahoma State Finance Act and the  
16 Oklahoma Privatization of the State Functions Act shall comply with  
17 these laws.

18 B. The Oklahoma Department of Transportation and the Oklahoma  
19 Turnpike Authority shall be exempt from this act. However, the  
20 Oklahoma Department of Transportation and the Oklahoma Turnpike  
21 Authority may utilize the general provisions and process described  
22 herein to develop a public-private partnership contract for a  
23 transportation improvement in consultation with the Director of the  
24 Office of Management and Enterprise Services (OMES) and subject to

1 the approval of the Oklahoma Transportation Commission or the  
2 Oklahoma Turnpike Authority Board as applicable.

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

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

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

13 A. The Partnership Committee shall have the ability to identify  
14 potential public-private partnerships, to review and endorse a short  
15 list of qualified bidders, to approve requests for proposals and to  
16 approve template contracts before they are sent to bidders. The  
17 Partnership Committee shall operate with the assistance of the  
18 Office of Public-Private Partnerships. In order to protect the  
19 Separation of Power set out in Article IV of the Oklahoma  
20 Constitution, the Partnership Committee shall not have the power to  
21 enter into any contract, nor shall it have the power to block any  
22 contract negotiated by the Director of the Office of Management and  
23 Enterprise Services (OMES) and the authorized representative of any  
24 responsible state agency.

1 B. There shall be established within OMES an Office of Public-  
2 Private Partnerships, which shall have the authority to charge fees  
3 for services it shall render as part of the procedures to establish  
4 partnerships in accordance with this act and to receive money to  
5 cover its operating expenses and to accomplish the purposes of this  
6 act.

7 C. The Director of OMES and the authorized representative of a  
8 responsible state agency shall jointly take any action and execute  
9 any public-private partnership contract, authorized under this act,  
10 for the provision of a public service in order to more efficiently  
11 and effectively provide public services, including by generating  
12 additional resources in support of those public services and related  
13 projects.

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

17 A. Selection of Projects. Any proposer or responsible state  
18 agency may submit to the Partnership Committee one or more proposals  
19 for partnership projects in connection with any public service. The  
20 Partnership Committee shall identify potential projects and public  
21 services for which a public-private partnership may be appropriate  
22 from those received from a proposer, a responsible state agency or  
23 those identified by the Partnership Committee itself. The  
24 Partnership Committee shall select such projects based on the

1 partnership's potential to improve public operational efficiencies,  
2 improve environmental performance, promote public safety, attract  
3 private investment in the state and minimize governmental  
4 liabilities.

5 B. Public-Sector Comparators. After the Partnership Committee  
6 identifies a potential partnership for a public project or public  
7 service, the Office of Public-Private Partnerships shall conduct a  
8 public-sector comparator study of the potential partnership. The  
9 Partnership Committee shall determine the scope of each public  
10 sector comparator, which scope shall depend on the type of proposed  
11 partnership and the nature of the public service under consideration  
12 for the partnership. The following issues shall be considered as  
13 components of a public sector comparator:

14 1. The definition of the need served by the proposed  
15 partnership;

16 2. The cost required to meet the public need served by the  
17 public service under traditional procurements or traditional state  
18 agency operations;

19 3. An analysis of alternative methods for providing the public  
20 services under consideration, including but not limited to design-  
21 build, design-build-finance, design-build-finance-operate-maintain,  
22 service contracts or leases and how the alternative method(s) would  
23 meet the need served by the public service; and  
24

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

- 4 a. the potential cost of utilizing an alternative method,
- 5 b. the operational and technological risks involved in  
6 utilizing an alternative method,
- 7 c. a comparative analysis of rendering the public service  
8 by allowing the responsible state agency to utilize  
9 traditional methods,
- 10 d. the financial impact the partnership will have on the  
11 responsible state agency, and
- 12 e. the impact a partnership would have on job formation,  
13 economic growth and the community in which the public  
14 service is to be rendered.

15 C. The Partnership Committee shall use the results of the  
16 public sector comparator to determine which public services and  
17 projects are appropriate for partnership. The Office of Public-  
18 Private Partnerships shall publish on its website the public sector  
19 comparator for each project to provide a public service for which a  
20 request for qualifications is initiated.

21 D. The Office of Public-Private Partnerships shall publish  
22 notice of the intent to enter into a contract for a partnership for  
23 public service or related project and shall prepare a request for  
24 qualifications for private sector entities interested in serving as



1 proposers for the partnership. The notice shall notify interested  
2 parties of the opportunity to submit their qualifications for  
3 consideration and shall be published at least sixty (60) days prior  
4 to the deadline for submitting those qualifications. The Office  
5 also may advertise the information contained in the notice in  
6 appropriate trade journals and otherwise notify parties believed to  
7 be interested in providing the public service and in any related  
8 project.

9 E. After inviting proposers to bid on the project, the  
10 Partnership Committee shall evaluate the qualifications submitted  
11 and may hold discussions with proposers to further explore their  
12 qualifications. Following this evaluation, the Partnership  
13 Committee may determine a list of qualified proposers based on  
14 criteria in the invitation and invite only those proposers to submit  
15 a proposal.

16 F. The Office of Public-Private Partnerships shall prepare a  
17 request for proposal, which may include proposal stipends and the  
18 proposed partnership contract, both of which shall be approved by  
19 the Partnership Committee. After the Partnership Committee's  
20 approval of the request for proposal and the partnership contract,  
21 the project shall be deemed an Approved Partnership Procurement.

22 G. Partnership contracts may contain the terms and conditions  
23 to carry out and effect the purposes of this act, including the  
24 duration of the contract, which shall not exceed ninety-nine (99)

1 years, rates or fees for the public services to be provided or  
2 methods or procedures for the determination of such rates or fees,  
3 standards for the public services to be provided, responsibilities  
4 and standards for operation and maintenance of any related project,  
5 required financial assurances, financial and other data reporting  
6 requirements, bases and procedures for termination of the contract  
7 and retaking of possession or title to the project, and events of  
8 default and remedies upon default, including mandamus, a suit in  
9 equity, an action at law or any combination of those remedial  
10 actions. Partnership contracts may also include a requirement for  
11 the delivery of performance and payment bonds required for all  
12 construction activities and letters of credit, surety bonds or other  
13 security in connection with the development or operation of the  
14 qualifying project in the forms and amounts satisfactory to the  
15 responsible governmental entity.

16 H. After proposals are received, the Office of Public-Private  
17 Partnerships, using the criteria established in the request for  
18 proposal by the Partnership Committee, shall evaluate the proposals  
19 submitted and may hold discussions with proposers to further explore  
20 their proposals, the scope and nature of the public service(s) they  
21 would provide and the various technical approaches they may take  
22 regarding the public service and any related project. Following  
23 this evaluation, the Partnership Committee shall select and rank no  
24 fewer than three proposers that the Partnership Committee considers

1 to be the most qualified to enter into the contract, except when the  
2 Partnership Committee determines that fewer than three qualified  
3 proposers are available, in which case the Partnership Committee  
4 shall select and rank them.

5 I. After the proposers have been ranked by the Partnership  
6 Committee, the Director of the Office of Management and Enterprise  
7 Services (OMES) and the authorized representative of the responsible  
8 state agency shall negotiate the contract with the proposer ranked  
9 most qualified to provide the public service at a compensation  
10 determined in writing to be fair and reasonable and to purchase,  
11 lease or otherwise take a legal interest in the project.

12 J. Upon failure to negotiate a contract with the proposer  
13 ranked most qualified, the Director of OMES shall inform the  
14 proposer in writing of the termination of negotiations and may  
15 enter, with the responsible state agency, into negotiations with the  
16 proposer ranked next most qualified. If negotiations again fail,  
17 the same procedure may be followed with each next most qualified  
18 proposer selected and ranked, in order of ranking, until a contract  
19 is negotiated and executed or the request for proposal is withdrawn.

20 K. If the Director of OMES and the authorized representative of  
21 the responsible state agency fail to negotiate a contract with any  
22 of the ranked proposers, the Director of OMES, in consultation with  
23 the responsible state agency, may terminate the process or select  
24 and rank additional proposers based on their qualifications or

1 proposals, and negotiations shall continue as with the proposers  
2 selected and ranked initially until a contract is negotiated.

3 L. The Director of OMES and the authorized representative of  
4 the responsible state agency may jointly reject any and all  
5 submissions of qualifications or proposals and may jointly terminate  
6 the procurement process at any point.

7 M. The Director of OMES and the authorized representative of  
8 the responsible state agency shall have the authority to make  
9 commercially reasonable changes to the partnership contract approved  
10 by the Partnership Committee. Any such contract may contain the  
11 terms and conditions to carry out and effect the purposes of this  
12 act.

13 N. Any submission not selected by the responsible state agency  
14 shall be considered intellectual property that shall remain the  
15 property of the proposer.

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

19 A. Partnership contracts shall be signed by both the Director  
20 of the Office of Management and Enterprise Services (OMES) and the  
21 authorized representative of the responsible state agency for which  
22 the public service at issue in the contract relates.

23 B. The Director of OMES is authorized to receive and deposit  
24 any money received under the contract. Any such contract shall be

1 sufficient to effect its purpose notwithstanding any provision of  
2 law to the contrary, including other laws governing the sale, lease  
3 or other disposition of property or interests therein, service  
4 contracts or financial transactions by or for the state.

5 C. The Office of Public-Private Partnerships shall provide a  
6 report to the Speaker of the House of Representatives and the  
7 President Pro Tempore of the Senate explaining the value of the  
8 contract to the state and describing the procurement process by  
9 which the contract was reached.

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

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

1 state shall be exempt from taxation levied by the state and its  
2 subdivisions. Any transfer or lease between a proposer and the  
3 state of a project or part thereof, or item included or to be  
4 included in the project, shall be exempt from any taxes levied if  
5 the state is retaining ownership of the project or part thereof that  
6 is being transferred or leased.

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

10 The Director of the Office of Management and Enterprise Services  
11 (OMES), in consultation with the responsible state agency, may  
12 retain or contract for the services of commercial appraisers,  
13 engineers, investment bankers, financial advisers, accounting  
14 experts and other consultants, independent contractors or providers  
15 of professional services as are necessary in the judgment of the  
16 Director to carry out the Director's powers and duties under this  
17 act. This may include the identification of public services and any  
18 related projects to be subject to invitations for qualifications or  
19 proposals under this act, the development of those invitations and  
20 related evaluation criteria, the evaluation of those invitations and  
21 the negotiation of any contract under this act.

22 SECTION 9. This act shall become effective November 1, 2017."  
23  
24

1 Passed the House of Representatives the 24th day of April, 2017.

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3  
4 Presiding Officer of the House of  
5 Representatives

6 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2017.

7  
8  
9 Presiding Officer of the Senate

1 ENGROSSED SENATE  
2 BILL NO. 430

By: Leewright of the Senate

3 and

4 Montgomery of the House

5  
6 An Act relating to infrastructure development;  
7 creating the Oklahoma Public and Private Facilities  
8 and Infrastructure Act; providing short title;  
9 defining terms; clarifying applicability of Act;  
10 clarifying scope of eminent domain use; providing  
11 procedure and requirements for proposals for  
12 qualifying projects; requiring adoption of certain  
13 guidelines; providing approval process for qualifying  
14 projects; authorizing governmental entities to enter  
15 into certain contracts; requiring notice to affected  
16 jurisdiction; providing for the dedication and  
17 conveyance of public property; specifying the powers  
18 and duties of contracting person; providing for and  
19 specifying the powers and contents of comprehensive  
20 agreements; providing for interim agreements;  
21 specifying funding sources for qualifying projects;  
22 requiring certain performance bonds; specifying  
23 remedies for material defaults; providing for use of  
24 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.

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

SECTION 10. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 5151 of Title 74, unless there  
is created a duplication in numbering, reads as follows:



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

3 SECTION 11. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 5153 of Title 74, unless there  
5 is created a duplication in numbering, reads as follows:

6 As used in the Oklahoma Public and Private Facilities and  
7 Infrastructure Act:

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

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

15 3. "Partnership Committee" means a committee consisting of nine  
16 (9) members, three members appointed by the President Pro Tempore of  
17 the Senate, three members appointed by the Speaker of the House of  
18 Representatives and three representatives of the Office of  
19 Management and Enterprise Services (OMES), to be appointed by the  
20 Governor. Five members of the Partnership Committee shall  
21 constitute a quorum. The Partnership Committee shall act only upon  
22 a decision of a majority of appointed members;

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

1 limited liability partnership, sole proprietorship, business trust,  
2 joint venture or other entity, but shall not mean the state, a  
3 political subdivision of the state, or a public or governmental  
4 entity, agency or instrumentality of the state;

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

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

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

16 8. "Responsible state agency" means the agency, department,  
17 commission, authority or other instrumentality of the state  
18 responsible for the provision of the public service which is or is  
19 proposed to be the subject of a contract. Any such agency that is  
20 subject to the Oklahoma Central Purchasing Act, the Public  
21 Competitive Bidding Act, the Oklahoma State Finance Act and the  
22 Oklahoma Privatization of the State Functions Act shall comply with  
23 these laws.

24

1 SECTION 12. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 5155 of Title 74, unless there  
3 is created a duplication in numbering, reads as follows:

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

8 SECTION 13. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 5156 of Title 74, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. The Partnership Committee shall have the ability to identify  
12 potential public-private partnerships, to review and endorse a  
13 short-list of qualified bidders, to approve requests for proposals  
14 and to approve template contracts before they are sent to bidders.  
15 The Partnership Committee shall operate with the assistance of the  
16 Office of Public-Private Partnerships. In order to protect the  
17 Separation of Power set out in Article IV of the Oklahoma  
18 Constitution, The Partnership Committee shall not have the power to  
19 enter into any contract, nor shall it have the power to block any  
20 contract negotiated by the Director of OMES and the authorized  
21 representative of any responsible state agency.

22 B. There shall be established within the Office of Management  
23 and Enterprise Services (OMES) an Office of Public-Private  
24 Partnerships, which shall have the authority to charge fees for

1 services it shall render as part of the procedures to establish  
2 Partnerships in accordance with this act and to receive money to  
3 cover its operating expenses and to accomplish the purposes of this  
4 act.

5 C. The director of OMES and the authorized representative of a  
6 responsible state agency shall jointly take any action and execute  
7 any Public-Private Partnership contract, authorized under this act,  
8 for the provision of a public service in order to more efficiently  
9 and effectively provide public services, including by generating  
10 additional resources in support of those public services and related  
11 projects.

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

15 A. Selection of Projects. Any proposer or responsible state  
16 agency may submit to the Partnership Committee one or more proposals  
17 for partnership projects in connection with any public service. The  
18 Partnership Committee shall identify potential projects and public  
19 services for which a public-private partnership may be appropriate  
20 from those received from a proposer, a responsible state agency or  
21 those identified by the Partnership Committee itself. The  
22 Partnership Committee shall select such projects based on the  
23 partnership's potential to improve public operational efficiencies,  
24 improve environmental performance, promote public safety, attract

1 private investment in the state and minimize governmental  
2 liabilities.

3 B. Public-Sector Comparators. After the Partnership Committee  
4 identifies a potential partnership for a public project or public  
5 service, the Office of Public-Private Partnerships shall conduct a  
6 public-sector comparator study of the potential partnership. The  
7 Partnership Committee shall determine the scope of each public  
8 sector comparator, which scope shall depend on the type of proposed  
9 partnership and the nature of the public service under consideration  
10 for the partnership. The following issues shall be considered as  
11 components of a public sector comparator:

12 1. The definition of the need served by the proposed  
13 partnership;

14 2. The cost required to meet the public need served by the  
15 public service under traditional procurements or traditional state  
16 agency operations;

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

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

- 1 a. the potential cost of utilizing an alternative method,
- 2 b. the operational and technological risks involved in
- 3 utilizing an alternative method,
- 4 c. a comparative analysis of rendering the public service
- 5 by allowing the responsible state agency to utilize
- 6 traditional methods,
- 7 d. the financial impact the partnership will have on the
- 8 responsible state agency, and
- 9 e. the impact a partnership would have on job formation,
- 10 economic growth, and the community in which the public
- 11 service is to be rendered.

12 C. The Partnership Committee shall use the results of the  
13 public sector comparator to determine which public services and  
14 projects are appropriate for partnership. The Office of Public-  
15 Private Partnerships shall publish on its website the public sector  
16 comparator for each project to provide a public service for which a  
17 request for qualifications is initiated.

18 D. The Office of Public-Private Partnerships shall publish  
19 notice of the intent to enter into a contract for a partnership for  
20 public service or related project and shall prepare a request for  
21 qualifications for private sector entities interested in serving as  
22 proposers for the partnership. The notice shall notify interested  
23 parties of the opportunity to submit their qualifications for  
24 consideration and shall be published at least sixty (60) days prior

1 to the deadline for submitting those qualifications. The Office  
2 also may advertise the information contained in the notice in  
3 appropriate trade journals and otherwise notify parties believed to  
4 be interested in providing the public service and in any related  
5 project.

6 E. After inviting proposers to bid on the project, the  
7 Partnership Committee shall evaluate the qualifications submitted  
8 and may hold discussions with proposers to further explore their  
9 qualifications. Following this evaluation, the Partnership  
10 Committee may determine a list of qualified proposers based on  
11 criteria in the invitation and invite only those proposers to submit  
12 a proposal.

13 F. The Office of Public-Private Partnerships shall prepare a  
14 request for proposal, which may include proposal stipends, and the  
15 proposed partnership contract, both of which shall be approved by  
16 the Partnership Committee. After the Partnership Committee's  
17 approval of the request for proposal and the partnership contract,  
18 the project shall be deemed an Approved Partnership Procurement.

19 G. Partnership contracts may contain the terms and conditions  
20 to carry out and effect the purposes of this act, including the  
21 duration of the contract, which shall not exceed ninety-nine (99)  
22 years, rates or fees for the public services to be provided or  
23 methods or procedures for the determination of such rates or fees,  
24 standards for the public services to be provided, responsibilities

1 and standards for operation and maintenance of any related project,  
2 required financial assurances, financial and other data reporting  
3 requirements, bases and procedures for termination of the contract  
4 and retaking of possession or title to the project, and events of  
5 default and remedies upon default, including mandamus, a suit in  
6 equity, an action at law, or any combination of those remedial  
7 actions. Partnership contracts may also include a requirement for  
8 the delivery of performance and payment bonds required for all  
9 construction activities, and letters of credit, surety bonds or  
10 other security in connection with the development or operation of  
11 the qualifying project, in the forms and amounts satisfactory to the  
12 responsible governmental entity.

13 H. After proposals are received, the Office of Public-Private  
14 Partnerships, using the criteria established in the request for  
15 proposal by the Partnership Committee, shall evaluate the proposals  
16 submitted and may hold discussions with proposers to further explore  
17 their proposals, the scope and nature of the public service(s) they  
18 would provide, and the various technical approaches they may take  
19 regarding the public service and any related project. Following  
20 this evaluation, the Partnership Committee shall select and rank no  
21 fewer than three proposers that the Partnership Committee considers  
22 to be the most qualified to enter into the contract, except when the  
23 Partnership Committee determines that fewer than three qualified

24



1 proposers are available, in which case the Partnership Committee  
2 shall select and rank them.

3 I. After the proposers have been ranked by the Partnership  
4 Committee, the director of OMES and the authorized representative of  
5 the responsible state agency shall negotiate the contract with the  
6 proposer ranked most qualified to provide the public service at a  
7 compensation determined in writing to be fair and reasonable, and to  
8 purchase, lease or otherwise take a legal interest in the project.

9 J. Upon failure to negotiate a contract with the proposer  
10 ranked most qualified, the director of OMES shall inform the  
11 proposer in writing of the termination of negotiations and may  
12 enter, with the responsible state agency, into negotiations with the  
13 proposer ranked next most qualified. If negotiations again fail,  
14 the same procedure may be followed with each next most qualified  
15 proposer selected and ranked, in order of ranking, until a contract  
16 is negotiated and executed or the request for proposal is withdrawn.

17 K. If the director of OMES and the authorized representative of  
18 the responsible state agency fail to negotiate a contract with any  
19 of the ranked proposers, the director of the Office of Management  
20 and Enterprise Services, in consultation with the responsible state  
21 agency, may terminate the process or select and rank additional  
22 proposers, based on their qualifications or proposals, and  
23 negotiations shall continue as with the proposers selected and  
24 ranked initially until a contract is negotiated.

1 L. The director of OMES and the authorized representative of  
2 the responsible state agency may jointly reject any and all  
3 submissions of qualifications or proposals, and may jointly  
4 terminate the procurement process at any point.

5 M. The director of OMES and the authorized representative of  
6 the responsible state agency shall have the authority to make  
7 commercially reasonable changes to the partnership contract approved  
8 by the Partnership Committee. Any such contract may contain the  
9 terms and conditions to carry out and affect the purposes of this  
10 act.

11 N. Any submission not selected by the responsible state agency  
12 shall be considered intellectual property that shall remain the  
13 property of the proposer.

14 SECTION 15. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 5158 of Title 74, unless there  
16 is created a duplication in numbering, reads as follows:

17 A. Partnership contracts shall be signed by both the director  
18 of OMES and the authorized representative of the responsible state  
19 agency for which the public service at issue in the contract  
20 relates.

21 B. The director of OMES is authorized to receive and deposit  
22 any money received under the contract. Any such contract shall be  
23 sufficient to effect its purpose notwithstanding any provision of  
24 law to the contrary, including other laws governing the sale, lease

1 or other disposition of property or interests therein, service  
2 contracts or financial transactions by or for the state.

3 C. The Office of Public-Private Partnerships shall provide a  
4 report to the Speaker of the House of Representatives and the  
5 President Pro Tempore of the Senate explaining the value of the  
6 contract to the state and describing the procurement process by  
7 which the contract was reached.

8 SECTION 16. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 5159 of Title 74, unless there  
10 is created a duplication in numbering, reads as follows:

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

1 state of a project or part thereof, or item included or to be  
2 included in the project, shall be exempt from any taxes levied if  
3 the state is retaining ownership of the project or part thereof that  
4 is being transferred or leased.

5 SECTION 17. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 5160 of Title 74, unless there  
7 is created a duplication in numbering, reads as follows:

8 The director of OMES, in consultation with the responsible state  
9 agency, may retain or contract for the services of commercial  
10 appraisers, engineers, investment bankers, financial advisers,  
11 accounting experts and other consultants, independent contractors or  
12 providers of professional services as are necessary in the judgment  
13 of the director to carry out the director's powers and duties under  
14 this act. This may include the identification of public services  
15 and any related projects to be subject to invitations for  
16 qualifications or proposals under this act, the development of those  
17 invitations and related evaluation criteria, the evaluation of those  
18 invitations and the negotiation of any contract under this act.

19 SECTION 18. This act shall become effective November 1, 2017.  
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1 Passed the Senate the 14th day of March, 2017.

2  
3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2017.

7  
8 \_\_\_\_\_  
9 Presiding Officer of the House  
10 of Representatives