

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

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4 Presiding Officer of the House of
5 Representatives

6 Passed the Senate the ____ day of _____, 2017.

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9 Presiding Officer of the Senate