

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 430

By: Leewright of the Senate

and

Montgomery of the House

COMMITTEE SUBSTITUTE

An Act relating to infrastructure development;
creating the Oklahoma Public and Private Facilities
and Infrastructure Act; providing short title;
defining terms; clarifying applicability of act;
clarifying scope of eminent domain use; providing
procedure and requirements for proposals for
qualifying projects; requiring adoption of certain
guidelines; providing approval process for qualifying
projects; authorizing governmental entities to enter
into certain contracts; requiring notice to effected
jurisdiction; providing for the dedication and

1 conveyance of public property; specifying the powers
2 and duties of contracting person; providing for and
3 specifying the powers and contents of comprehensive
4 agreements; providing for interim agreements;
5 specifying funding sources for qualifying projects;
6 requiring certain performance bonds; specifying
7 remedies for material defaults; providing for use of
8 eminent domain; providing procedures concerning
9 effected facility owners; clarifying police powers;
10 providing for posting of certain notice and public
11 comment; providing for public access to certain
12 procurement records; providing for codification; and
13 providing an effective date.

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

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

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

20 SECTION 2. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 5153 of Title 74, unless there
22 is created a duplication in numbering, reads as follows:

23 As used in the Oklahoma Public and Private Facilities and
24 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;
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1 5. "Project" means real or personal property, or both, and
2 improvements thereto or in support thereof, including undivided and
3 other interests therein, used for or in the provision of a public
4 service;

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

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

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

21 9. The Oklahoma Department of Transportation and the Oklahoma
22 Turnpike Authority shall be exempt from this act. However, the
23 Oklahoma Department of Transportation and the Oklahoma Turnpike
24

1 Authority may utilize the general provisions and process described
2 herein to develop a public-private partnership contract for a
3 transportation improvement in consultation with the Director of the
4 Office of Management and Enterprise Services (OMES) and subject to
5 the approval of the Oklahoma Transportation Commission or the
6 Oklahoma Turnpike Authority Board as applicable.

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

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

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

18
19 A. The Partnership Committee shall have the ability to identify
20 potential public-private partnerships, to review and endorse a short
21 list of qualified bidders, to approve requests for proposals and to
22 approve template contracts before they are sent to bidders. The
23 Partnership Committee shall operate with the assistance of the
24 Office of Public-Private Partnerships. In order to protect the

1 Separation of Power set out in Article IV of the Oklahoma
2 Constitution, the Partnership Committee shall not have the power to
3 enter into any contract, nor shall it have the power to block any
4 contract negotiated by the Director of OMES and the authorized
5 representative of any responsible state agency.

6
7 B. There shall be established within the Office of Management
8 and Enterprise Services (OMES) an Office of Public-Private
9 Partnerships, which shall have the authority to charge fees for
10 services it shall render as part of the procedures to establish
11 partnerships in accordance with this act and to receive money to
12 cover its operating expenses and to accomplish the purposes of this
13 act.

14 C. The Director of OMES and the authorized representative of a
15 responsible state agency shall jointly take any action and execute
16 any public-private partnership contract, authorized under this act,
17 for the provision of a public service in order to more efficiently
18 and effectively provide public services, including by generating
19 additional resources in support of those public services and related
20 projects.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 5157 of Title 74, unless there
23 is created a duplication in numbering, reads as follows:
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1 A. Selection of Projects. Any proposer or responsible state
2 agency may submit to the Partnership Committee one or more proposals
3 for partnership projects in connection with any public service. The
4 Partnership Committee shall identify potential projects and public
5 services for which a public-private partnership may be appropriate
6 from those received from a proposer, a responsible state agency or
7 those identified by the Partnership Committee itself. The
8 Partnership Committee shall select such projects based on the
9 partnership's potential to improve public operational efficiencies,
10 improve environmental performance, promote public safety, attract
11 private investment in the state and minimize governmental
12 liabilities.

13 B. Public-Sector Comparators. After the Partnership Committee
14 identifies a potential partnership for a public project or public
15 service, the Office of Public-Private Partnerships shall conduct a
16 public-sector comparator study of the potential partnership. The
17 Partnership Committee shall determine the scope of each public
18 sector comparator, which scope shall depend on the type of proposed
19 partnership and the nature of the public service under consideration
20 for the partnership. The following issues shall be considered as
21 components of a public sector comparator:
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23 1. The definition of the need served by the proposed
24 partnership;

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

4 3. An analysis of alternative methods for providing the public
5 services under consideration, including but not limited to design-
6 build, design-build-finance, design-build-finance-operate-maintain,
7 service contracts or leases and how the alternative method(s) would
8 meet the need served by the public service; and
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10 4. An evaluation of the cost/benefit of using an alternative
11 method or public-private partnership to render a public service,
12 which cost/benefit analysis shall include:

- 13 a. the potential cost of utilizing an alternative method,
14
15 b. the operational and technological risks involved in
16 utilizing an alternative method,
17
18 c. a comparative analysis of rendering the public service
19 by allowing the responsible state agency to utilize
20 traditional methods,
21
22 d. the financial impact the partnership will have on the
23 responsible state agency, and
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1 e. the impact a partnership would have on job formation,
2 economic growth and the community in which the public
3 service is to be rendered.

4
5 C. The Partnership Committee shall use the results of the
6 public sector comparator to determine which public services and
7 projects are appropriate for partnership. The Office of Public-
8 Private Partnerships shall publish on its website the public sector
9 comparator for each project to provide a public service for which a
10 request for qualifications is initiated.

11 D. The Office of Public-Private Partnerships shall publish
12 notice of the intent to enter into a contract for a partnership for
13 public service or related project and shall prepare a request for
14 qualifications for private sector entities interested in serving as
15 proposers for the partnership. The notice shall notify interested
16 parties of the opportunity to submit their qualifications for
17 consideration and shall be published at least sixty (60) days prior
18 to the deadline for submitting those qualifications. The Office
19 also may advertise the information contained in the notice in
20 appropriate trade journals and otherwise notify parties believed to
21 be interested in providing the public service and in any related
22 project.

23 E. After inviting proposers to bid on the project, the
24 Partnership Committee shall evaluate the qualifications submitted

1 and may hold discussions with proposers to further explore their
2 qualifications. Following this evaluation, the Partnership
3 Committee may determine a list of qualified proposers based on
4 criteria in the invitation and invite only those proposers to submit
5 a proposal.

6
7 F. The Office of Public-Private Partnerships shall prepare a
8 request for proposal, which may include proposal stipends and the
9 proposed partnership contract, both of which shall be approved by
10 the Partnership Committee. After the Partnership Committee's
11 approval of the request for proposal and the partnership contract,
12 the project shall be deemed an Approved Partnership Procurement.

13 G. Partnership contracts may contain the terms and conditions
14 to carry out and effect the purposes of this act, including the
15 duration of the contract, which shall not exceed ninety-nine (99)
16 years, rates or fees for the public services to be provided or
17 methods or procedures for the determination of such rates or fees,
18 standards for the public services to be provided, responsibilities
19 and standards for operation and maintenance of any related project,
20 required financial assurances, financial and other data reporting
21 requirements, bases and procedures for termination of the contract
22 and retaking of possession or title to the project, and events of
23 default and remedies upon default, including mandamus, a suit in
24 equity, an action at law or any combination of those remedial

1 actions. Partnership contracts may also include a requirement for
2 the delivery of performance and payment bonds required for all
3 construction activities and letters of credit, surety bonds or other
4 security in connection with the development or operation of the
5 qualifying project in the forms and amounts satisfactory to the
6 responsible governmental entity.

7
8 H. After proposals are received, the Office of Public-Private
9 Partnerships, using the criteria established in the request for
10 proposal by the Partnership Committee, shall evaluate the proposals
11 submitted and may hold discussions with proposers to further explore
12 their proposals, the scope and nature of the public service(s) they
13 would provide and the various technical approaches they may take
14 regarding the public service and any related project. Following
15 this evaluation, the Partnership Committee shall select and rank no
16 fewer than three proposers that the Partnership Committee considers
17 to be the most qualified to enter into the contract, except when the
18 Partnership Committee determines that fewer than three qualified
19 proposers are available, in which case the Partnership Committee
20 shall select and rank them.

21 I. After the proposers have been ranked by the Partnership
22 Committee, the Director of OMES and the authorized representative of
23 the responsible state agency shall negotiate the contract with the
24 proposer ranked most qualified to provide the public service at a

1 compensation determined in writing to be fair and reasonable and to
2 purchase, lease or otherwise take a legal interest in the project.

3
4 J. Upon failure to negotiate a contract with the proposer
5 ranked most qualified, the Director of OMES shall inform the
6 proposer in writing of the termination of negotiations and may
7 enter, with the responsible state agency, into negotiations with the
8 proposer ranked next most qualified. If negotiations again fail,
9 the same procedure may be followed with each next most qualified
10 proposer selected and ranked, in order of ranking, until a contract
11 is negotiated and executed or the request for proposal is withdrawn.

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

20 L. The Director of OMES and the authorized representative of
21 the responsible state agency may jointly reject any and all
22 submissions of qualifications or proposals and may jointly terminate
23 the procurement process at any point.
24

1 M. The Director of OMES and the authorized representative of
2 the responsible state agency shall have the authority to make
3 commercially reasonable changes to the partnership contract approved
4 by the Partnership Committee. Any such contract may contain the
5 terms and conditions to carry out and effect the purposes of this
6 act.

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8 N. Any submission not selected by the responsible state agency
9 shall be considered intellectual property that shall remain the
10 property of the proposer.

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 5158 of Title 74, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Partnership contracts shall be signed by both the Director
15 of OMES and the authorized representative of the responsible state
16 agency for which the public service at issue in the contract
17 relates.

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19 B. The Director of OMES is authorized to receive and deposit
20 any money received under the contract. Any such contract shall be
21 sufficient to effect its purpose notwithstanding any provision of
22 law to the contrary, including other laws governing the sale, lease
23 or other disposition of property or interests therein, service
24 contracts or financial transactions by or for the state.

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

6 SECTION 7. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 5159 of Title 74, unless there
8 is created a duplication in numbering, reads as follows:
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10 The exercise of the powers granted by this act will be for the
11 benefit of the people of the state and shall be liberally construed
12 to effect the purposes thereof. As the performance of public
13 services will constitute the performance of essential government
14 functions, any project or part thereof owned by the state and used
15 for performing any public service pursuant to a contract entered
16 into under this act that would be exempt from taxation or
17 assessments in the absence of such contract shall remain exempt from
18 taxation and assessments levied by the state and its subdivisions to
19 the same extent as if not subject to that contract. The gross
20 receipts and income of a successful proposer derived from providing
21 public services under a contract through a project owned by the
22 state shall be exempt from taxation levied by the state and its
23 subdivisions. Any transfer or lease between a proposer and the
24 state of a project or part thereof, or item included or to be

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

4 SECTION 8. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 5160 of Title 74, unless there
6 is created a duplication in numbering, reads as follows:
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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 9. This act shall become effective November 1, 2017.
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