

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2476

By: Griffith

COMMITTEE SUBSTITUTE

An Act relating to state government; creating the Oklahoma Public and Private Facilities and Infrastructure Act; defining terms; prohibiting alteration of eminent domain laws; requiring approval of certain contracts; requiring identification of facility, building, infrastructure or improvement in proposal; providing for acceptance of proposal; providing for rejection of proposal; requiring certain entities provide publicly available guidelines; providing for information contained in guidelines; providing for proposals from business entities; authorizing certain entities to request proposals; providing for factors to consider; providing for approval of certain projects; authorizing charge of certain fees; requiring date for project to begin; requiring protection of confidential information; authorizing contracts for delivery of services; requiring notice to affected jurisdictions; providing for comment period for affected jurisdiction; authorizing governmental entity to dedicate property interest for public purpose; providing for powers and duties of contracting entity; prohibiting user fee; authorizing financing for qualifying project; providing for operation of qualifying project; providing for temporary closing; requiring and providing for comprehensive agreement before developing or operating qualifying project; providing for interim agreement; providing for funding sources; providing for assumption duties for default; providing for termination of certain agreements; providing for stipends; requiring posting of notice on Internet; requiring public hearing by time certain; requiring

1 certain records be available for public inspections;
2 providing for codification; and providing an
3 effective date.
4

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

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

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

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

14 As used in the Oklahoma Public and Private Facilities and
15 Infrastructure Act:

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

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

22 3. "Comprehensive agreement" means the comprehensive agreement
23 authorized by Section 11 of this act between the contracting entity
24 and the responsible governmental entity;

1 4. "Contracting entity" means a person or business entity who
2 enters into a comprehensive or interim agreement with a responsible
3 governmental entity;

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

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

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

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

18 9. "Material default" means any default by a contracting entity
19 in the performance of duties imposed under subsection F of Section
20 10 of this act that jeopardizes adequate service to the public from
21 a qualifying project;

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

24 11. "Qualifying project" means:

- 1 a. any transportation capacity, highway, bridge or
2 tunnel, mass transit facility, vehicle parking
3 facility, port facility, waterway, power generation
4 facility or transmission line, fuel supply facility or
5 pipeline, water supply facility or pipeline, public
6 work, wastewater or waste treatment facility,
7 hospital, school, medical or nursing care facility,
8 recreational facility, public building or other
9 similar facility currently available or to be made
10 available to a governmental entity for public use,
11 including any structure, parking area, appurtenance
12 and other property required to operate the structure
13 or facility and any technology infrastructure
14 installed in the structure or facility that is
15 essential to the purpose of the project, or
16 b. any improvements necessary or desirable to unimproved
17 real estate owned by a governmental entity.

18 Notwithstanding any provision of this section to the contrary, all
19 roadway or highway projects shall be subject to review and approval
20 by the Governor, and the responsible governmental entity shall not
21 approve any roadway or highway project disapproved by the Governor;

22 12. "Responsible governmental entity" means a governmental
23 entity that has the power to develop or operate an applicable
24 qualifying project;

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

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

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

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

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

17 The Oklahoma Public and Private Facilities and Infrastructure
18 Act shall not alter the eminent domain laws of this state or grant
19 the power of eminent domain to any person who is not expressly
20 granted that power under other state law.

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

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

10 B. A person or business entity submitting a proposal requesting
11 approval of a qualifying project shall specifically and conceptually
12 identify any facility, building, infrastructure or improvement
13 included in the proposal as a part of the qualifying project.

14 C. Upon receipt of a proposal submitted by a person or business
15 entity initiating the approval process under subsection A of Section
16 6 of this act, the responsible governmental entity shall determine
17 whether to accept the proposal for consideration in accordance with
18 Section 6 of this act and the guidelines adopted under those
19 sections. A responsible governmental entity that determines not to
20 accept the proposal for consideration shall return the proposal, all
21 fees and the accompanying documentation to the person or business
22 entity submitting the proposal.

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

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

7 A. Before requesting or considering a proposal for a qualifying
8 project, a responsible governmental entity shall adopt and make
9 publicly available guidelines that enable the governmental entity to
10 comply with the Oklahoma Public and Private Facilities and
11 Infrastructure Act. The guidelines shall be reasonable, encourage
12 competition and guide the selection of projects under the purview of
13 the responsible governmental entity.

14 B. The guidelines for a responsible governmental entity shall:

15 1. Require the responsible governmental entity to:

16 a. make a representative of the entity available to meet
17 with persons who are considering submitting a
18 proposal, and

19 b. provide notice of the availability of the
20 representative;

21 2. Provide reasonable criteria for choosing among competing
22 proposals;

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

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

4 5. Include financial review and analysis procedures that at a
5 minimum consist of:

- 6 a. a cost-benefit analysis,
- 7 b. an assessment of opportunity cost,
- 8 c. consideration of the degree to which functionality and
9 services similar to the functionality and services to
10 be provided by the proposed project are already
11 available in the private market, and
- 12 d. consideration of the results of all studies and
13 analyses related to the proposed qualifying project;

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

16 7. Include criteria for:

- 17 a. the qualifying project, including the scope, costs and
18 duration of the project and the involvement or impact
19 of the project on multiple public entities, and
- 20 b. the creation of and the responsibilities of an
21 oversight committee, with members representing the
22 responsible governmental entity, that acts as an
23 advisory committee to review the terms of any proposed
24 interim or comprehensive agreement;

1 8. Require the responsible governmental entity to analyze the
2 adequacy of the information to be released by the entity when
3 seeking competing proposals and require that the entity provide more
4 detailed information, if the entity determines necessary, to
5 encourage competition, subject to Section 6 of this act;

6 9. Establish criteria for determining that, should the
7 responsible governmental entity deem it in the public's best
8 interest to cancel a procurement after the post-short-term listing,
9 the responsible governmental entity shall pay for documented third-
10 party costs, to include, but not be limited to: design services,
11 legal advisors, financial advisors, together with reasonable
12 internal expenditures, when termination results from government
13 action;

14 10. Establish criteria, key decision points and approvals
15 required to ensure that the responsible governmental entity
16 considers the extent of competition before selecting proposals,
17 availability, payment options and negotiating an interim or
18 comprehensive agreement; and

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

- 21 a. specific information and documentation regarding the
22 nature, timing and scope of the qualifying project, as
23 required under subsection A of Section 6 of this act,
24

- 1 b. a reasonable period of not less than forty-five (45)
2 days, as determined by the responsible governmental
3 entity, to encourage competition and partnerships with
4 private entities and other persons in accordance with
5 the goals of the Oklahoma Public and Private
6 Facilities and Infrastructure Act, during which the
7 responsible governmental entity must accept submission
8 of competing proposals for the qualifying project, and
9 c. a requirement for advertising the notice on the
10 Internet website of the governmental entity and on the
11 official Internet website of the state.

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

15 A. A business entity or other person may submit a proposal
16 requesting approval of a qualifying project by the responsible
17 governmental entity. The proposal shall be accompanied by the
18 following, unless waived by the responsible governmental entity:

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

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

- 22 a. the conceptual design of any facility or a conceptual
23 plan for the provision of services or technology
24 infrastructure, and

1 b. a schedule for the initiation of and completion of the
2 qualifying project that includes the proposed major
3 responsibilities and timeline for activities to be
4 performed by the governmental entity and the
5 contracting entity;

6 3. A statement of the method the contracting entity proposes
7 for securing necessary property interests required for the
8 qualifying project;

9 4. Information relating to any current plans for the
10 development of facilities or technology infrastructure to be used by
11 a governmental entity that are similar to the qualifying project
12 being proposed by the contracting entity for each affected
13 jurisdiction;

14 5. A list of all permits and approvals required for the
15 development and completion of the qualifying project from local,
16 state or federal agencies and a projected schedule for obtaining the
17 permits and approvals;

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

21 7. A statement by the contracting entity on the general plans
22 for financing the qualifying project, including the sources of the
23 funds of the contracting entity and identification of any dedicated
24

1 revenue source or proposed debt or equity investment for the
2 contracting entity;

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

5 9. User fees, lease payments and other service payments over
6 the term of any applicable interim or comprehensive agreement and
7 the methodology and circumstances for changes to the user fees,
8 lease payments and other service payments over time; and

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

11 B. A responsible governmental entity may request proposals or
12 invite bids from persons or business entities for the development or
13 operation of a qualifying project. A responsible governmental
14 entity shall consider the total project cost as one factor in
15 evaluating the proposals received, but is not required to select the
16 proposal that offers the lowest total project cost. The responsible
17 governmental entity may consider the following factors:

18 1. The proposed cost of the qualifying project;

19 2. The general reputation, industry experience and financial
20 capacity of the contracting entity submitting a proposal;

21 3. The proposed design of the qualifying project;

22 4. The eligibility of the project for accelerated selection,
23 review and documentation timelines under the guidelines of the
24 responsible governmental entity;

1 5. Comments from local citizens and affected jurisdictions;

2 6. Benefits to the public;

3 7. The plans of the contracting entity to employ local
4 contractors and residents;

5 8. For a qualifying project that involves a continuing role
6 beyond design and construction, the proposed rate of return of the
7 contracting entity and opportunities for revenue sharing; and

8 9. Other criteria that the responsible governmental entity
9 considers appropriate.

10 C. The responsible governmental entity may approve as a
11 qualifying project the development or operation of a facility needed
12 by the governmental entity, or the design or equipping of a
13 qualifying project, if the responsible governmental entity
14 determines that the project serves the public purpose of the
15 Oklahoma Public and Private Facilities and Infrastructure Act. The
16 responsible governmental entity may determine that the development
17 or operation of the project as a qualifying project serves the
18 public purpose if:

19 1. There is a public need for or benefit derived from the
20 project of the type the person or business entity proposes as a
21 qualifying project;

22 2. The estimated cost of the project is reasonable in relation
23 to similar facilities; and
24

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

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

7 E. The approval of a responsible governmental entity is subject
8 to the contracting entity entering into an interim or comprehensive
9 agreement with the responsible governmental entity.

10 F. On approval of the qualifying project, the responsible
11 governmental entity shall establish a date by which activities
12 related to the qualifying project must begin. The responsible
13 governmental entity may extend the date.

14 G. The responsible governmental entity shall take action
15 appropriate under the Oklahoma Open Records Act to protect
16 confidential and proprietary information provided by the contracting
17 entity under an agreement.

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

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

4 A responsible governmental entity may contract with a
5 contracting entity for the delivery of services to be provided as
6 part of a qualifying project in exchange for service payments and
7 other consideration as the governmental entity considers
8 appropriate.

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

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

16 B. Not later than fourteen (14) business days after the date an
17 affected jurisdiction receives the notice required by subsection A
18 of this section, the affected jurisdiction that is not the
19 responsible governmental entity for the respective qualifying
20 project shall submit in writing to the responsible governmental
21 entity any comments the affected jurisdiction has on the proposed
22 qualifying project and indicate whether the facility or project is
23 compatible with the local comprehensive plan, local infrastructure
24 development plans, the capital improvements budget or other

1 government spending plan. The responsible governmental entity shall
2 consider the submitted comments before entering into a comprehensive
3 agreement with a contracting entity.

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

7 A. After obtaining any appraisal of the property interest that
8 is required pursuant to other law in connection with the conveyance,
9 a governmental entity may dedicate any property interest, including
10 land, improvements and tangible personal property, for public use in
11 a qualifying project if the governmental entity finds that the
12 dedication will serve the public purpose of the Oklahoma Public and
13 Private Facilities and Infrastructure Act by minimizing the cost of
14 a qualifying project to the governmental entity or reducing the
15 delivery time of a qualifying project.

16 B. In connection with a dedication under subsection A of this
17 section, a governmental entity may convey any property interest,
18 including a license, franchise, easement or another right or
19 interest the governmental entity considers appropriate, subject to
20 the conditions imposed by general law governing such conveyance and
21 subject to the rights of an existing utility under a license,
22 franchise, easement or other right under law, to the contracting
23 entity for the consideration determined by the governmental entity.
24

1 The consideration may include the agreement of the contracting
2 entity to develop or operate the qualifying project.

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

6 A. The contracting entity has:

7 1. The power granted by:

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

10 b. a statute governing the business or activity of the
11 contracting entity; and

12 2. The power to:

13 a. develop or operate the qualifying project, and

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

17 B. The contracting entity shall not impose a user fee or
18 increase the amount of a user fee until the fee or increase is
19 approved by the responsible governmental entity.

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

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

24 The contracting entity may issue debt, equity or other securities or

1 obligations, enter into sale and leaseback transactions, and secure
2 any financing with a pledge of, security interest in or lien on any
3 or all of its property, including all of its property interests in
4 the qualifying project.

5 E. In operating the qualifying project, the contracting entity
6 may:

7 1. Establish classifications according to reasonable categories
8 for assessment of user fees; and

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

12 F. The contracting entity shall:

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

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

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

1 4. Cooperate with the responsible governmental entity to
2 establish any interconnection with the qualifying project requested
3 by the responsible governmental entity; and

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

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

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

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

22 A. Before developing or operating the qualifying project, the
23 contracting entity must enter into a comprehensive agreement with a
24

1 responsible governmental entity. The comprehensive agreement shall
2 provide for:

3 1. Delivery of letters of credit or other security in
4 connection with the development or operation of the qualifying
5 project, in the forms and amounts satisfactory to the responsible
6 governmental entity, and delivery of performance and payment bonds
7 required for all construction activities;

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

15 3. Inspection of the qualifying project by the responsible
16 governmental entity to ensure that the activities of the contracting
17 entity are acceptable to the responsible governmental entity in
18 accordance with the comprehensive agreement;

19 4. Maintenance of a public liability insurance policy, copies
20 of which must be filed with the responsible governmental entity
21 accompanied by proofs of coverage or self-insurance, each in the
22 form and amount satisfactory to the responsible governmental entity
23 and reasonably sufficient to ensure coverage of tort liability to
24

1 the public and project employees and to enable the continued
2 operation of the qualifying project;

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

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

8 7. Filing of appropriate financial statements on an annual
9 basis; and

10 8. Policies and procedures governing the rights and
11 responsibilities of the responsible governmental entity and the
12 contracting entity if the comprehensive agreement is terminated or
13 there is a material default by the contracting entity, including
14 conditions governing:

15 a. assumption of the duties and responsibilities of the
16 contracting entity by the responsible governmental
17 entity, and

18 b. the transfer to or purchase by the responsible
19 governmental entity of property or other interests of
20 the contracting entity.

21 B. The comprehensive agreement shall provide for any user fee,
22 lease payment or service payment established by agreement of the
23 parties. In negotiating a user fee under this section, the parties
24 shall establish a payment or fee that is the same for persons using

1 a facility of the qualifying project under like conditions and that
2 will not materially discourage use of the qualifying project. The
3 execution of the comprehensive agreement or an amendment to the
4 agreement is conclusive evidence that the user fee, lease payment or
5 service payment complies with the Oklahoma Public and Private
6 Facilities and Infrastructure Act. A user fee or lease payment
7 established in the comprehensive agreement as a source of revenue
8 may be in addition to, or in lieu of, a service payment.

9 C. A comprehensive agreement may include a provision that
10 authorizes the responsible governmental entity to make grants or
11 loans to the contracting entity from money received from the
12 federal, state or local government or any agency or instrumentality
13 of the government.

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

20 1. Provisions that require the responsible governmental entity
21 to provide notice of default and cure rights for the benefit of the
22 contracting entity and the persons specified in the agreement as
23 providing financing for the qualifying project;
24

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

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

12 E. Any change in the terms of the comprehensive agreement that
13 the parties agree to must be added to the comprehensive agreement by
14 written amendment.

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

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

20 Before or in connection with the negotiation of the
21 comprehensive agreement, the responsible governmental entity may
22 enter into an interim agreement with the contracting entity
23 proposing the development or operation of the qualifying project.
24 The interim agreement may:

1 1. Authorize the contracting entity to begin project phases or
2 activities for which the contracting entity may be compensated
3 relating to the proposed qualifying project, including project
4 planning and development, design, engineering, environmental
5 analysis and mitigation, surveying and financial and revenue
6 analysis, including ascertaining the availability of financing for
7 the proposed facility or facilities of the qualifying project;

8 2. Establish the process and timing of the negotiation of the
9 comprehensive agreement; and

10 3. Contain any other provision related to any aspect of the
11 development or operation of a qualifying project that the parties
12 consider appropriate.

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

16 A. The contracting entity and the responsible governmental
17 entity may use any funding resources that are available to the
18 parties, including, but not limited to:

19 1. Accessing any designated trust funds; and

20 2. Borrowing or accepting grants from any state infrastructure
21 loan program or bank.

22 B. The responsible governmental entity may take any action to
23 obtain federal, state or local assistance for a qualifying project
24 that serves the public purpose of the Oklahoma Public and Private

1 Facilities and Infrastructure Act and may enter into any contracts
2 required to receive the assistance.

3 C. If the responsible governmental entity is a state agency,
4 any money received from the state or federal government or any
5 agency or instrumentality of the state or federal government is
6 subject to appropriation by the Legislature.

7 D. The responsible governmental entity may determine that it
8 serves the public purpose of the Oklahoma Public and Private
9 Facilities and Infrastructure Act for all or part of the costs of a
10 qualifying project to be directly or indirectly paid from the
11 proceeds of a grant or loan made by the local, state or federal
12 government or any agency or instrumentality of the government.

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

16 A. The construction, remodeling or repair of a qualifying
17 project may be performed only after performance and payment bonds
18 for the construction, remodeling or repair have been executed
19 regardless of whether the qualifying project is on public or private
20 property or is publicly or privately owned.

21 B. For purposes of this section, a qualifying project is
22 considered a public work and the responsible governmental entity
23 shall assume the obligations and duties of a governmental entity.
24

1 C. The obligee under a performance bond under this section may
2 be a public entity, a contracting entity, a business entity or an
3 entity consisting of both a public entity and a contracting entity.

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

7 A. If the contracting entity commits a material default, the
8 responsible governmental entity may assume the responsibilities and
9 duties of the contracting entity of the qualifying project. If the
10 responsible governmental entity assumes the responsibilities and
11 duties of the contracting entity, the responsible governmental
12 entity has all the rights, title and interest in the qualifying
13 project, subject to any liens on revenue previously granted by the
14 contracting entity to any person or business entity providing
15 financing for the project.

16 B. The responsible governmental entity may terminate, with
17 cause, any applicable interim or comprehensive agreement and
18 exercise any other rights and remedies available to the governmental
19 entity at law or in equity.

20 C. Stipends are to be used on large projects where there is
21 substantial opportunity for innovation and the cost for developing a
22 proposal is significant. Also called "payment for work product",
23 stipends encourage competition and do not put smaller companies at a
24

1 competitive disadvantage, and they compensate unsuccessful offerors
2 for a portion of their costs.

3 1. The responsible governmental entity may elect to pay
4 unsuccessful proposers for the work product that they submit with
5 their proposal in response to a request-for-proposal solicitation.
6 The use by the responsible governmental entity of any design element
7 contained in an unsuccessful proposal is at the sole risk and
8 discretion of the responsible governmental agency and does not
9 confer liability on the recipient of the stipulated amount under
10 this section.

11 2. After payment of the stipulated amount, the responsible
12 governmental entity and the unsuccessful proposer will jointly own
13 the rights to, and may make use of, any work product contained in
14 the proposal including the technologies, techniques, methods,
15 processes, ideas and information contained in the proposal, project
16 design and project financial plan. The use by the unsuccessful
17 proposer of any part of the work product contained in the proposal
18 is at the sole risk of the unsuccessful proposer and does not confer
19 liability on the responsible governmental entity.

20 D. The responsible governmental entity may make any appropriate
21 claim under the letters of credit or other security or the
22 performance and payment bonds required by paragraph 1 of subsection
23 A of Section 11 of this act.
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1 E. If the responsible governmental entity elects to assume the
2 responsibilities and duties for a qualifying project under
3 subsection A of this section, the responsible governmental entity
4 may:

- 5 1. Develop or operate the qualifying project;
- 6 2. Impose user fees;
- 7 3. Impose and collect lease payments for the use of the
8 project; and
- 9 4. Comply with any applicable contract to provide services.

10 F. The responsible governmental entity shall collect and pay to
11 secured parties any revenue subject to a lien to the extent
12 necessary to satisfy the obligations of the contracting party to
13 secured parties, including the maintenance of reserves. The liens
14 shall be correspondingly reduced and, when paid off, released.

15 G. Before any payment is made to or for the benefit of a
16 secured party, the responsible governmental entity may use revenue
17 to pay the current operation and maintenance costs of the qualifying
18 project, including compensation to the responsible governmental
19 entity for its services in operating and maintaining the qualifying
20 project. The right to receive any payment is considered just
21 compensation for the qualifying project.

22 H. The full faith and credit of the responsible governmental
23 entity may not be pledged to secure any financing of the contracting
24 entity that was assumed by the governmental entity when the

1 governmental entity assumed responsibility for the qualifying
2 project.

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

6 A. The contracting entity and each facility owner, including a
7 public utility, a public service company or a cable television
8 provider, whose facilities will be affected by a qualifying project
9 shall cooperate fully in planning and arranging the manner in which
10 the facilities will be affected.

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

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

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

20 A. Not later than the ten (10) days after the date a
21 responsible governmental entity accepts a proposal, the responsible
22 governmental entity shall provide notice of the proposal by posting
23 the proposal on the Internet website of the entity.
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1 B. The responsible governmental entity shall make available for
2 public inspection at least one copy of the proposal. This section
3 shall not prohibit the responsible governmental entity from posting
4 the proposal in another manner considered appropriate by the
5 responsible governmental entity to provide maximum notice to the
6 public of the opportunity to inspect the proposal.

7 C. Trade secrets, financial records or other records of the
8 contracting entity excluded from disclosure under the Oklahoma Open
9 Records Act shall not be posted or made available for public
10 inspection except as otherwise agreed to by the responsible
11 governmental entity and the contracting entity.

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

16 E. On completion of the negotiation phase for the development
17 of an interim or comprehensive agreement and before an interim
18 agreement or comprehensive agreement is entered into, a responsible
19 governmental entity shall make available the proposed agreement in a
20 manner provided by subsection A or B of this section.

21 F. A responsible governmental entity that has entered into an
22 interim agreement or comprehensive agreement shall make procurement
23 records available for public inspection on request. For purposes of
24 this subsection, procurement records shall not include the trade

1 secrets of the contracting entity or financial records, including
2 balance sheets or financial statements of the contracting entity,
3 that are not generally available to the public through regulatory
4 disclosure or other means.

5 G. Cost estimates relating to a proposed procurement
6 transaction prepared by or for a responsible governmental entity are
7 not open to public inspection.

8 H. Any inspection of procurement transaction records under this
9 section is subject to reasonable restrictions to ensure the security
10 and integrity of the records.

11 I. This section applies to any accepted proposal regardless of
12 whether the process of bargaining results in an interim or
13 comprehensive agreement.

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

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