

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 430

By: Leewright of the Senate

and

6 Montgomery of the House

7
8
9 COMMITTEE SUBSTITUTE

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

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

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

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

9 As used in the Oklahoma Public and Private Facilities and
10 Infrastructure Act:

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

15 2. "Improvement" means any instruction, reconstruction,
16 rehabilitation, renovation, installation, improvement, enlargement or
17 extension of property or improvements to property;

18 3. "Partnership Committee" means a committee consisting of eight
19 (8) members, three members nominated by the President Pro Tempore of the
20 Senate, three members nominated by the Speaker of the House of
21 Representatives and two representatives of the Office of Management and
22 Enterprise Services (OMES). All members of the Committee will be
23 appointed by the Governor. Five members of the Partnership Committee
24

1 shall constitute a quorum. The Partnership Committee shall act only upon
2 a decision of a majority;

3 4. "Private sector entity" means any corporation, whether for
4 profit or not for profit, limited liability company, partnership,
5 limited liability partnership, sole proprietorship, business trust,
6 joint venture or other entity, but shall not mean the state, a
7 political subdivision of the state, or a public or governmental entity,
8 agency or instrumentality of the state;

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

13 6. "Proposer" means a private sector entity, a local or regional
14 public entity or agency, or any group or combination thereof,
15 submitting qualifications or a proposal for a public-private partnership
16 contract;

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

20 8. "Responsible state agency" means the agency, department,
21 commission, authority or other instrumentality of the state responsible
22 for the provision of the public service which is or is proposed to be
23 the subject of a contract.

1 SECTION 3. 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 4. 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 short-
13 list of qualified bidders, to approve requests for proposals and to
14 approve template contracts before they are sent to bidders. The
15 Partnership Committee shall operate with the assistance of the Office of
16 Public-Private Partnerships. In order to protect the Separation of
17 Power set out in Article IV of the Oklahoma Constitution, The
18 Partnership Committee shall not have the power to enter into any
19 contract, nor shall it have the power to block any contract
20 negotiated by the Director of OMES or the authorized representative of
21 any responsible state agency.

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

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

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

10 SECTION 5. 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 A. Selection of Projects. Any proposer or responsible state agency
14 may submit to the Partnership Committee one or more proposals for
15 partnership projects in connection with any public service. The
16 Partnership Committee shall identify potential projects and public
17 services for which a public-private partnership may be appropriate from
18 those received from a proposer, a responsible state agency or those
19 identified by the Partnership Committee itself. The Partnership
20 Committee shall select such projects based on the partnership's potential
21 to improve public operational efficiencies, improve environmental
22 performance, promote public safety, attract private investment in the
23 state and minimize governmental liabilities.

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

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

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

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

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

22 a. the potential cost of utilizing an alternative method,

23 b. the operational and technological risks involved in
24 utilizing an alternative method,

- c. a comparative analysis of rendering the public service by allowing the responsible state agency to utilize traditional methods,
- d. the financial impact the partnership will have on the responsible state agency, and
- e. the impact a partnership would have on job formation, economic growth, and the community in which the public service is to be rendered.

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

D. The Office of Public-Private Partnerships shall publish notice of the intent to enter into a contract for a partnership for public service or related project and shall prepare a request for qualifications for private sector entities interested in serving as proposers for the partnership. The notice shall notify interested parties of the opportunity to submit their qualifications for consideration and shall be published at least sixty (60) days prior to the deadline for submitting those qualifications. The Office also may advertise the information contained in the notice in appropriate trade

1 journals and otherwise notify parties believed to be interested in
2 providing the public service and in any related project.

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

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

15 G. Partnership contracts may contain the terms and conditions to
16 carry out and effect the purposes of this act, including the duration of
17 the contract, which shall not exceed seventy-five (75) years, rates or
18 fees for the public services to be provided or methods or procedures for
19 the determination of such rates or fees, standards for the public
20 services to be provided, responsibilities and standards for operation
21 and maintenance of any related project, required financial assurances,
22 financial and other data reporting requirements, bases and procedures
23 for termination of the contract and retaking of possession or title to
24 the project, and events of default and remedies upon default, including

1 mandamus, a suit in equity, an action at law, or any combination of those
2 remedial actions.

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

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

21 J. Upon failure to negotiate a contract with the proposer ranked
22 most qualified, the director of OMES shall inform the proposer in
23 writing of the termination of negotiations and may enter, with the
24 responsible state agency, into negotiations with the proposer ranked next

1 most qualified. If negotiations again fail, the same procedure may be
2 followed with each next most qualified proposer selected and ranked, in
3 order of ranking, until a contract is negotiated and executed.

4 K. If the director of OMES and the authorized representative
5 of the responsible state agency fail to negotiate a contract with
6 any of the ranked proposers, the director of budget and management,
7 in consultation with the responsible state agency, may terminate the
8 process or select and rank additional proposers, based on their
9 qualifications or proposals, and negotiations shall continue as with
10 the proposers selected and ranked initially until a contract is
11 negotiated.

12 L. The director of OMES and the authorized representative of
13 the responsible state agency may jointly reject any and all
14 submissions of qualifications or proposals, and may jointly
15 terminate the procurement process at any point.

16 M. The director of OMES and the authorized representative of
17 the responsible state agency shall have the authority to make
18 commercially reasonable changes to the partnership contract approved
19 by the Partnership Committee. Any such contract may contain the
20 terms and conditions to carry out and affect the purposes of this
21 act.

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

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

4 B. The director of OMES is authorized to receive and deposit any
5 money received under the contract. Any such contract shall be
6 sufficient to effect its purpose notwithstanding any provision of law
7 to the contrary, including other laws governing the sale, lease or other
8 disposition of property or interests therein, service contracts or
9 financial transactions by or for the state.

10 C. The Office of Public-Private Partnerships shall provide a report
11 to the Speaker of the House of Representatives and the President Pro
12 Tempore of the Senate explaining the value of the contract to the state
13 and describing the procurement process by which the contract was
14 reached.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 5159 of Title 74, unless there
17 is created a duplication in numbering, reads as follows:

18 The exercise of the powers granted by this act will be for the
19 benefit of the people of the state and shall be liberally construed to
20 effect the purposes thereof. As the performance of public services will
21 constitute the performance of essential government functions, any
22 project or part thereof owned by the state and used for performing any
23 public service pursuant to a contract entered into under this act that
24 would be exempt from taxation or assessments in the absence of such

1 contract shall remain exempt from taxation and assessments levied by the
2 state and its subdivisions to the same extent as if not subject to that
3 contract. The gross receipts and income of a successful proposer derived
4 from providing public services under a contract through a project owned
5 by the state shall be exempt from taxation levied by the state and its
6 subdivisions. Any transfer or lease between a proposer and the state of
7 a project or part thereof, or item included or to be included in the
8 project, shall be exempt from any taxes levied if the state is retaining
9 ownership of the project or part thereof that is being transferred or
10 leased.

11 SECTION 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 5160 of Title 74, unless there
13 is created a duplication in numbering, reads as follows:

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

SECTION 9. This act shall become effective November 1, 2017.

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