

1 ENGROSSED SENATE
2 BILL NO. 430

By: Leewright of the Senate

3 and

4 Montgomery of the House
5

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

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

SECTION 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:

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

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

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

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

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

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

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

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

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

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

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

16 8. "Responsible state agency" means the agency, department,
17 commission, authority or other instrumentality of the state
18 responsible for the provision of the public service which is or is
19 proposed to be the subject of a contract. Any such agency that is
20 subject to the Oklahoma Central Purchasing Act, the Public
21 Competitive Bidding Act, the Oklahoma State Finance Act and the
22 Oklahoma Privatization of the State Functions Act shall comply with
23 these laws.
24

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

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

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

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

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 5157 of Title 74, unless there
14 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

- a. the potential cost of utilizing an alternative method,
- b. the operational and technological risks involved in 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 SECTION 9. This act shall become effective November 1, 2017.
20
21
22
23
24

1 Passed the Senate the 14th day of March, 2017.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2017.

7
8 _____
9 Presiding Officer of the House
10 of Representatives