SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT No. ________ ____________________

☐ COMMITTEE AMENDMENT ____________________

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 430, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

____

Senator Leewright

Leewright-MG-FS-Req#1583
3/8/2017 4:49 PM

(Floor Amendments Only) Date and Time Filed: ________________

☐ Untimely ☐ Amendment Cycle Extended ☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

FLOOR SUBSTITUTE
FOR
SENATE BILL NO. 430 By: Leewright of the Senate

and

Montgomery of the House

FLOOR 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 affected jurisdiction; providing for the dedication and conveyance of public property; specifying the powers and duties of contracting person; providing for and specifying the powers and contents of comprehensive 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:

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

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

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

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

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

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

3. "Partnership Committee" means a committee consisting of nine (9) members, three members appointed by the President Pro Tempore of the Senate, three members appointed by the Speaker of the House of Representatives and three representatives of the Office of Management and Enterprise Services (OMES), to be appointed by the Governor. Five members of the Partnership Committee shall

constitute a quorum. The Partnership Committee shall act only upon a decision of a majority of appointed members;

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

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

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

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

8. "Responsible state agency" means the agency, department, commission, authority or other instrumentality of the state responsible for the provision of the public service which is or is proposed to be the subject of a contract. Any such agency that is subject to the Oklahoma Central Purchasing Act, the Public

Competitive Bidding Act, the Oklahoma State Finance Act and the Oklahoma Privatization of the State Functions Act shall comply with these laws.

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

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

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

A. The Partnership Committee shall have the ability to identify potential public-private partnerships, to review and endorse a short-list of qualified bidders, to approve requests for proposals and to approve template contracts before they are sent to bidders. The Partnership Committee shall operate with the assistance of the Office of Public-Private Partnerships. In order to protect the Separation of Power set out in Article IV of the Oklahoma Constitution, The Partnership Committee shall not have the power to enter into any contract, nor shall it have the power to block any contract negotiated by the Director of OMES and the authorized representative of any responsible state agency.

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

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

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

A. Selection of Projects. Any proposer or responsible state agency may submit to the Partnership Committee one or more proposals for partnership projects in connection with any public service. The Partnership Committee shall identify potential projects and public services for which a public-private partnership may be appropriate from those received from a proposer, a responsible state agency or those identified by the Partnership Committee itself. The

Partnership Committee shall select such projects based on the partnership's potential to improve public operational efficiencies, improve environmental performance, promote public safety, attract private investment in the state and minimize governmental liabilities.

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

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

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

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

4. An evaluation of the cost/benefit of using an alternative method or public-private partnership to render a public service, 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 to the deadline for submitting those qualifications. The Office also may advertise the information contained in the notice in appropriate trade journals and otherwise notify parties believed to be interested in providing the public service and in any related project.

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

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

G. Partnership contracts may contain the terms and conditions to carry out and effect the purposes of this act, including the duration of the contract, which shall not exceed ninety-nine (99) years, rates or fees for the public services to be provided or methods or procedures for the determination of such rates or fees, standards for the public services to be provided, responsibilities and standards for operation and maintenance of any related project, required financial assurances, financial and other data reporting requirements, bases and procedures for termination of the contract and retaking of possession or title to the project, and events of default and remedies upon default, including mandamus, a suit in equity, an action at law, or any combination of those remedial actions. Partnership contracts may also include a requirement for the delivery of performance and payment bonds required for all construction activities, and letters of credit, surety bonds or other security in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible governmental entity.

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

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

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

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

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

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

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

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

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

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

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

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

The exercise of the powers granted by this act will be for the benefit of the people of the state and shall be liberally construed to effect the purposes thereof. As the performance of public services will constitute the performance of essential government functions, any project or part thereof owned by the state and used for performing any public service pursuant to a contract entered into under this act that would be exempt from taxation or assessments in the absence of such contract shall remain exempt from taxation and assessments levied by the state and its subdivisions to the same extent as if not subject to that contract. The gross receipts and income of a successful proposer derived from providing public services under a contract through a project owned by the state shall be exempt from taxation levied by the state and its subdivisions. Any transfer or lease between a proposer and the state of a project or part thereof, or item included or to be included in the project, shall be exempt from any taxes levied if the state is retaining ownership of the project or part thereof that is being transferred or leased.

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

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

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

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