

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1534

By: Montgomery

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to state government; creating the
10 Oklahoma Public and Private Facilities and
11 Infrastructure Act; defining terms; prohibiting
12 alteration of eminent domain laws; requiring approval
13 of certain contracts; requiring identification of
14 facility, building, infrastructure or improvement in
15 proposal; providing for acceptance of proposal;
16 providing for rejection of proposal; requiring
17 certain entities provide publicly available
18 guidelines; providing for information contained in
19 guidelines; providing for proposals from business
20 entities; authorizing certain entities to request
21 proposals; providing for factors to consider;
22 providing for approval of certain projects;
23 authorizing charge of certain fees; requiring date
24 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

1 stipends; requiring posting of notice on Internet;
2 requiring public hearing by time certain; requiring
3 certain records be available for public inspections;
4 providing for codification; and providing an
5 effective date.

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

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

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

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

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

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

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

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

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

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

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

14 7. "Interim agreement" means an agreement authorized by Section
15 12 of this act between a contracting entity and a responsible
16 governmental entity that proposes the development or operation of
17 the qualifying project;

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

21 9. "Material default" means any default by a contracting entity
22 in the performance of duties imposed under subsection F of Section
23 10 of this act that jeopardizes adequate service to the public from
24 a qualifying project;

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

3 11. "Qualifying project" means:

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

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

1 12. "Responsible governmental entity" means a governmental
2 entity that has the power to develop or operate an applicable
3 qualifying project. Any such responsible governmental entity that
4 is subject to the rules promulgated by the Office of Management and
5 Enterprise Services shall comply with all such rules and
6 regulations. Any such responsible governmental entity that is
7 subject to The Oklahoma Central Purchasing Act, the Public
8 Competitive Bidding Act of 1974 and the Oklahoma Privatization of
9 State Functions Act shall comply with these laws;

10 13. "Revenue" means all revenue, income, earnings, user fees,
11 lease payments or other service payments that support the
12 development or operation of a qualifying project, including money
13 received as a grant or otherwise from the federal government, a
14 governmental entity or any agency or instrumentality of the federal
15 government or governmental entity in aid of the project;

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

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

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

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 5153 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 shall 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 5154 of Title 74, unless there
10 is created a duplication in numbering, reads as follows:

11 A. A contracting entity may not develop or operate a qualifying
12 project unless the contracting entity obtains the approval of and
13 contracts with the responsible governmental entity under the
14 Oklahoma Public and Private Facilities and Infrastructure Act. The
15 contracting entity may initiate the approval process by submitting a
16 proposal requesting approval under subsection A of Section 6 of this
17 act, or the responsible governmental entity may request proposals or
18 invite bids under subsection B of Section 6 of this act.

19 B. A person or business entity submitting a proposal requesting
20 approval of a qualifying project shall specifically and conceptually
21 identify any facility, building, infrastructure or improvement
22 included in the proposal as a part of the qualifying project.

23 C. On receipt of a proposal submitted by a person or business
24 entity initiating the approval process under subsection A of Section

1 6 of this act, the responsible governmental entity shall determine
2 whether to accept the proposal for consideration in accordance with
3 Section 6 of this act and the guidelines adopted under those
4 sections. Notwithstanding any other provision of law, a responsible
5 governmental entity that determines not to accept the proposal for
6 consideration shall return the proposal, all fees and the
7 accompanying documentation to the person or business entity
8 submitting the proposal.

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

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

15 A. Responsible state governmental entities shall use guidelines
16 set out in the Public Competitive Bidding Act of 1974.

17 B. Before requesting or considering a proposal for a qualifying
18 project, a local responsible governmental entity shall adopt and
19 make publicly available guidelines that enable the governmental
20 entity to comply with the Oklahoma Public and Private Facilities and
21 Infrastructure Act. The guidelines shall be reasonable, encourage
22 competition, provide for an internal dispute resolution process, and
23 guide the selection of projects under the purview of the responsible
24 governmental entity.

1 C. The guidelines for a responsible governmental entity shall:

2 1. Require the responsible governmental entity to:

3 a. make a representative of the entity available to meet
4 with persons who are considering submitting a
5 proposal, and

6 b. provide notice of the availability of the
7 representative;

8 2. Provide reasonable criteria for choosing among competing
9 proposals;

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

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

15 5. Include financial review and analysis procedures that, at a
16 minimum, consist of:

17 a. a cost-benefit analysis,

18 b. an assessment of opportunity cost,

19 c. consideration of the degree to which functionality and
20 services similar to the functionality and services to
21 be provided by the proposed project are already
22 available in the private market, and

23 d. consideration of the results of all studies and
24 analyses related to the proposed qualifying project;

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

3 7. Subject to The Oklahoma Central Purchasing Act, the Public
4 Competitive Bidding Act of 1974 and the Oklahoma Privatization of
5 State Functions Act, establish criteria for determining that, should
6 the responsible governmental entity deem it in the public's best
7 interest to cancel a procurement, post-short-term listing, the
8 responsible governmental entity may pay for documented third-party
9 costs, to include but not be limited to: design services, legal
10 advisors and financial advisors, together with reasonable internal
11 expenditures when termination results from government action;

12 8. Establish criteria, key decision points and approvals
13 required to ensure that the responsible governmental entity
14 considers the extent of competition before selecting proposals and
15 negotiating an interim or comprehensive agreement; and

16 9. Require the posting and publishing of public notice of a
17 proposal requesting approval of a qualifying project, including:

- 18 a. specific information and documentation regarding the
19 nature, timing and scope of the qualifying project, as
20 required under subsection A of Section 6 of this act,
21 b. a reasonable period of not less than forty-five (45)
22 days, as determined by the responsible governmental
23 entity, to encourage competition and partnerships with
24 private entities and other persons in accordance with

1 the goals of the Oklahoma Public and Private
2 Facilities and Infrastructure Act, during which the
3 responsible governmental entity must accept submission
4 of competing proposals for the qualifying project, and
5 c. a requirement for advertising the notice on the
6 Internet website of the governmental entity and on the
7 official Internet website of the state.

8 SECTION 6. 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. A business entity or other person may submit a proposal
12 requesting approval of a qualifying project by the responsible
13 governmental entity. The proposal shall be accompanied by the
14 following, unless waived by the responsible governmental entity:

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

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

18 a. the conceptual design of any facility or a conceptual
19 plan for the provision of services, and

20 b. a schedule for the initiation of and completion of the
21 qualifying project that includes the proposed major
22 responsibilities and timeline for activities to be
23 performed by the governmental entity and the
24 contracting entity;

1 3. A statement of the method the contracting entity proposes
2 for securing necessary property interests required for the
3 qualifying project;

4 4. Information relating to any current plans for the
5 development of facilities to be used by a governmental entity that
6 are similar to the qualifying project being proposed by the
7 contracting entity for each affected jurisdiction;

8 5. A list of all permits and approvals required for the
9 development and completion of the qualifying project from local,
10 state or federal agencies and a projected schedule for obtaining the
11 permits and approvals;

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

15 7. A statement by the contracting entity on the general plans
16 for financing the qualifying project, including the sources of the
17 funds of the contracting entity and identification of any dedicated
18 revenue source or proposed debt or equity investment for the
19 contracting entity;

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

22 9. User fees, lease payments and other service payments over
23 the term of any applicable interim or comprehensive agreement and
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1 the methodology and circumstances for changes to the user fees,
2 lease payments and other service payments over time; and

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

5 B. A responsible governmental entity may request proposals or
6 invite bids from persons or business entities for the development or
7 operation of a qualifying project. A responsible governmental
8 entity shall consider the total project cost as one factor in
9 evaluating the proposals received but is not required to select the
10 proposal that offers the lowest total project cost. The responsible
11 governmental entity may consider the following factors:

- 12 1. The proposed cost of the qualifying project;
- 13 2. The general reputation, industry experience and financial
14 capacity of the contracting entity submitting a proposal;
- 15 3. The proposed design of the qualifying project;
- 16 4. The eligibility of the project for accelerated selection,
17 review and documentation timelines under the guidelines of the
18 responsible governmental entity;
- 19 5. Comments from local citizens and affected jurisdictions;
- 20 6. Benefits to the public;
- 21 7. The plans of the contracting entity to employ local
22 contractors and residents;

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

4 9. Other criteria that the responsible governmental entity
5 considers appropriate.

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

15 1. There is a public need for or benefit derived from the
16 project of the type the person or business entity proposes as a
17 qualifying project;

18 2. The estimated cost of the project is reasonable in relation
19 to similar facilities; and

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

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

3 E. The approval of a responsible governmental entity is subject
4 to the contracting entity entering into an interim or comprehensive
5 agreement with the responsible governmental entity.

6 F. On approval of the qualifying project, the responsible
7 governmental entity shall establish a date by which activities
8 related to the qualifying project must begin. The responsible
9 governmental entity may extend the date.

10 G. The responsible governmental entity shall take action
11 appropriate under the Oklahoma Open Records Act to protect
12 confidential and proprietary information provided by the contracting
13 entity under an agreement.

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

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

22 Subject to the provisions of the Oklahoma Privatization of State
23 Functions Act, a responsible governmental entity may contract with a
24 contracting entity for the delivery of services to be provided as

1 part of a qualifying project in exchange for service payments and
2 other consideration as the governmental entity considers
3 appropriate.

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

7 A. A person or business entity submitting a proposal to a
8 responsible governmental entity under Section 6 of this act shall
9 notify each affected jurisdiction by providing a copy of its
10 proposal to the affected jurisdiction.

11 B. Not later than fourteen (14) business days after the date an
12 affected jurisdiction receives the notice required by subsection A
13 of this section, the affected jurisdiction that is not the
14 responsible governmental entity for the respective qualifying
15 project shall submit in writing to the responsible governmental
16 entity any comments the affected jurisdiction has on the proposed
17 qualifying project and indicate whether the facility or project is
18 compatible with the local comprehensive plan, local infrastructure
19 development plans, the capital improvements budget or other
20 government spending plan. The responsible governmental entity shall
21 comply with the requirements set out by law and rules concerning the
22 Long-Range Capital Planning Commission and shall consider the
23 submitted comments before entering into a comprehensive agreement
24 with a contracting entity.

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

4 A. After obtaining any appraisal of the property interest that
5 is required pursuant to other law in connection with the conveyance,
6 a responsible governmental entity may dedicate any property
7 interest, including land, improvements and tangible personal
8 property, for public use in a qualifying project if the governmental
9 entity finds that the dedication complies with the Oklahoma
10 Constitution and Section 327 of Title 61 of the Oklahoma Statutes,
11 and will serve the public purpose of the Oklahoma Public and Private
12 Facilities and Infrastructure Act by optimizing the life-cycle cost
13 of a qualifying project to the governmental entity or reducing the
14 delivery time of a qualifying project.

15 B. In connection with a dedication under subsection A of this
16 section, a responsible governmental entity may, as long as it
17 complies with the Oklahoma Constitution and Section 327 of Title 61
18 of the Oklahoma Statutes, convey any property interest, including a
19 license, franchise, easement or another right or interest the
20 governmental entity considers appropriate, subject to the conditions
21 imposed by law governing such conveyance and subject to the rights
22 of an existing utility under a license, franchise, easement or other
23 right under law, to the contracting entity for the consideration
24 determined by the governmental entity. The consideration may

1 include the agreement of the contracting entity to develop or
2 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 may not impose a user fee or increase
18 the amount of a user fee until the fee or increase is approved by
19 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;

24

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 service 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
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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 liability to the
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1 public and project employees and to enable the continued operation
2 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. Subject to applicable state laws and constitutional
10 provisions, a comprehensive agreement may include a provision that
11 authorizes the responsible governmental entity to make grants or
12 loans to the contracting entity from money received from the
13 federal, state or local government or any agency or instrumentality
14 of the government.

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

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

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 allowed by law that are
18 available to the parties.

19 B. The responsible governmental entity may take any action
20 allowed by law to obtain federal, state or local assistance for a
21 qualifying project that serves the public purpose of the Oklahoma
22 Public and Private Facilities and Infrastructure Act and may enter
23 into any contracts required to receive the assistance.

1 C. The responsible governmental entity may determine that it
2 serves the public purpose of the Oklahoma Public and Private
3 Facilities and Infrastructure Act for all or part of the costs of a
4 qualifying project to be directly or indirectly paid from the
5 proceeds of a grant or loan made by the local, state or federal
6 government or any agency or instrumentality of the government.

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

10 A. The construction, remodeling or repair of a qualifying
11 project may be performed only after performance and payment bonds
12 for the construction, remodel or repair have been executed
13 regardless of whether the qualifying project is on public or private
14 property or is publicly or privately owned.

15 B. For purposes of this section, a qualifying project is
16 considered a public work and the responsible governmental entity
17 shall assume the obligations and duties of a governmental entity.

18 C. The obligee under a performance bond under this section may
19 be a public entity, a contracting entity, a business entity or an
20 entity consisting of both a public entity and a contracting entity.

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

1 A. If the contracting entity commits a material default, the
2 responsible governmental entity may assume the responsibilities and
3 duties of the contracting entity of the qualifying project. If the
4 responsible governmental entity assumes the responsibilities and
5 duties of the contracting entity for the qualifying project because
6 the contracting entity has committed a material default, the
7 responsible governmental entity has all the rights, title and
8 interest in the qualifying project, subject to any liens on revenue
9 previously granted by the contracting entity to any person or
10 business entity providing financing for the project.

11 B. The responsible governmental entity may terminate, with
12 cause, any applicable interim or comprehensive agreement and
13 exercise any other rights and remedies available to the governmental
14 entity at law or in equity.

15 C. Stipends shall be used on large projects where there is
16 substantial opportunity for innovation and the costs for developing
17 a proposal are significant. Also called "payment for work product",
18 stipends encourage competition and do not put smaller companies at a
19 competitive disadvantage, and they compensate unsuccessful offerors
20 for a portion of their costs.

21 1. The responsible governmental entity may elect to pay
22 unsuccessful proposers for the work product that they submit with
23 their proposal in response to a request for proposal solicitation.
24 The use by the responsible governmental entity of any design element

1 contained in an unsuccessful proposal is at the sole risk and
2 discretion of the responsible governmental entity and does not
3 confer liability on the recipient of the stipulated amount under
4 this section.

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

14 D. The responsible governmental entity may make any appropriate
15 claim under the letters of credit or other security or the
16 performance and payment bonds required by paragraph 1 of subsection
17 A of Section 11 of this act.

18 E. If the responsible governmental entity elects to assume the
19 responsibilities and duties for a qualifying project under
20 subsection A of this section, the responsible governmental entity
21 may:

- 22 1. Develop or operate the qualifying project;
 - 23 2. Impose user fees;
- 24

1 3. Impose and collect lease payments for the use of the
2 project; and

3 4. Comply with any applicable contract to provide services.

4 F. If the contracting entity commits a material default and the
5 responsible governmental entity assumes the responsibilities of the
6 contracting entity, the responsible governmental entity shall
7 collect and pay to secured parties any revenue subject to a lien to
8 the extent necessary to satisfy the obligations of the contracting
9 party to secured parties, including the maintenance of reserves.
10 The liens shall be correspondingly reduced and, when paid off,
11 released.

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

19 H. The full faith and credit of the responsible governmental
20 entity shall not be pledged to secure any financing of the
21 contracting entity that was assumed by the governmental entity when
22 the governmental entity assumed responsibility for the qualifying
23 project.

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

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

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

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

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

18 A. Not later than ten (10) days after the date a responsible
19 governmental entity accepts a proposal, the responsible governmental
20 entity shall provide notice of the proposal by posting the proposal
21 on the Internet website of the entity.

22 B. The responsible governmental entity shall make available for
23 public inspection at least one copy of the proposal. This section
24 does not prohibit the responsible governmental entity from posting

1 the proposal in another manner considered appropriate by the
2 responsible governmental entity to provide maximum notice to the
3 public of the opportunity to inspect the proposal.

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

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

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

18 F. A responsible governmental entity that has entered into an
19 interim agreement or comprehensive agreement shall make procurement
20 records available for public inspection on request. For purposes of
21 this subsection, procurement records do not include the trade
22 secrets of the contracting entity or financial records, including
23 balance sheets or financial statements of the contracting entity,
24

1 that are not generally available to the public through regulatory
2 disclosure or other means.

3 G. Cost estimates relating to a proposed procurement
4 transaction prepared by or for a responsible governmental entity
5 shall not be open to public inspection until after a contract award.

6 H. Any inspection of procurement transaction records under this
7 section shall be subject to reasonable restrictions to ensure the
8 security and integrity of the records.

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

12 SECTION 18. This act shall become effective November 1, 2017.

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14 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM,
15 dated 02/09/2017 - DO PASS, As Amended.

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