

1 **SENATE FLOOR VERSION**

2 February 20, 2017

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 430

By: Leewright of the Senate

and

Montgomery of the House

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

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

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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.

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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,

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

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

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

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

2 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
3 February 20, 2017 - DO PASS AS AMENDED  
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