

1 STATE OF OKLAHOMA

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

3 SENATE BILL 430

By: Leewright

6 AS INTRODUCED

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

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

32 SECTION 1. NEW LAW A new section of law to be codified
33 in the Oklahoma Statutes as Section 5151 of Title 74, unless there
34 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. "Affected jurisdiction" means any county or municipality in
9 which all or a portion of a qualifying project is located;

10 2. "Availability Payment" means a periodic payment made to a
11 private sector concessionaire or developer by the responsible public
12 sector entity, in exchange for making available the use of the
13 public facility at a predetermined level of service;

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

17 4. "Contracting entity" means a person or business entity, who
18 enters into a comprehensive or interim agreement with a responsible
19 governmental entity;

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

22 6. "Governmental entity" means a political subdivision, board,
23 commission, department or other agency of this state that elects to
24 operate under the Oklahoma Public and Private Facilities and

1 Infrastructure Act through the adoption of a resolution by the
2 governing body of the governmental entity;

3 7. "Interim agreement" means an agreement authorized by Section
4 12 of this act between a contracting entity and a responsible
5 governmental entity that proposes the development or operation of
6 the qualifying project;

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

10 9. "Material default" means any default by a contracting entity
11 in the performance of duties imposed under subsection F of Section
12 15 of this act that jeopardizes adequate service to the public from
13 a qualifying project;

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

16 11. "Qualifying project" means:

17 a. any transportation capacity, highway, bridge or
18 tunnel, mass transit facility, vehicle parking
19 facility, port facility, water way, power generation
20 facility or transmission line, fuel supply facility or
21 pipeline, water supply facility or pipeline, public
22 work, wastewater or waste treatment facility,
23 hospital, school, medical or nursing care facility,
24 recreational facility, public building, or other

1 similar facility currently available or to be made
2 available to a governmental entity for public use,
3 including any structure, parking area, appurtenance
4 and other property required to operate the structure
5 or facility and any technology infrastructure
6 installed in the structure or facility that is
7 essential to the purpose of the project, or

8 b. any improvements necessary or desirable to unimproved
9 real estate owned by a governmental entity,

10 c. notwithstanding any provision of this section to the
11 contrary, all roadway or highway projects shall be
12 subject to review and approval by the Governor and the
13 authority shall not approve any roadway or highway
14 project disapproved by the Governor;

15 12. "Responsible governmental entity" means a governmental
16 entity that has the power to develop or operate an applicable
17 qualifying project;

18 13. "Revenue" means all revenue, income, earnings, user fees,
19 lease payments or other service payments that support the
20 development or operation of a qualifying project, including money
21 received as a grant or otherwise from the federal government, a
22 governmental entity or any agency or instrumentality of the federal
23 government or governmental entity in aid of the project;

1 14. "Service contract" means a contract between a governmental
2 entity and a contracting entity under Section 8 of this act;

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

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

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

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

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

18 A. A contracting entity may not develop or operate a qualifying
19 project unless the contracting entity obtains the approval of and
20 contracts with the responsible governmental entity under the
21 Oklahoma Public and Private Facilities and Infrastructure Act. The
22 contracting entity may initiate the approval process by submitting a
23 proposal requesting approval under subsection A of Section 6 of this
24

1 act, or the responsible governmental entity may request proposals or
2 invite bids under subsection B of Section 6 of this act.

3 B. A person or business entity submitting a proposal requesting
4 approval of a qualifying project shall specifically and conceptually
5 identify any facility, building, infrastructure or improvement
6 included in the proposal as a part of the qualifying project.

7 C. On receipt of a proposal submitted by a person or business
8 entity initiating the approval process under subsection A of Section
9 6 of this act, the responsible governmental entity shall determine
10 whether to accept the proposal for consideration in accordance with
11 Section 6 of this act and the guidelines adopted under those
12 sections. A responsible governmental entity that determines not to
13 accept the proposal for consideration shall return the proposal, all
14 fees and the accompanying documentation to the person or business
15 entity submitting the proposal.

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

19 SECTION 5. 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 A. Before requesting or considering a proposal for a qualifying
23 project, a responsible governmental entity must adopt and make
24 publicly available guidelines that enable the governmental entity to

1 comply with the Oklahoma Public and Private Facilities and
2 Infrastructure Act. The guidelines must be reasonable, encourage
3 competition and guide the selection of projects under the purview of
4 the responsible governmental entity.

5 B. The guidelines for a responsible governmental entity must:

6 1. Require the responsible governmental entity to:

7 a. make a representative of the entity available to meet
8 with persons who are considering submitting a
9 proposal, and

10 b. provide notice of the availability of the
11 representative;

12 2. Provide reasonable criteria for choosing among competing
13 proposals;

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

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

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

21 a. a cost-benefit analysis,
22 b. an assessment of opportunity cost,
23 c. consideration of the degree to which functionality and
24 services similar to the functionality and services to

1 be provided by the proposed project are already
2 available in the private market, and

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

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

7 7. Include criteria for:

8 a. the qualifying project, including the scope, costs and
9 duration of the project and the involvement or impact
10 of the project on multiple public entities, and

11 b. the creation of and the responsibilities of an
12 oversight committee, with members representing the
13 responsible governmental entity, that acts as an
14 advisory committee to review the terms of any proposed
15 interim or comprehensive agreement;

16 8. Require the responsible governmental entity to analyze the
17 adequacy of the information to be released by the entity when
18 seeking competing proposals and require that the entity provide more
19 detailed information, if the entity determines necessary, to
20 encourage competition, subject to subsection G of Section 6 of this
21 act;

22 9. Establish criteria for determining that, should the
23 authority deem it in the public's best interest to cancel a
24 procurement, post-short-term listing, the authority shall pay for

1 documented third-party costs, to include, but not be limited to,
2 design services, legal advisors and financial advisors, together
3 with reasonable internal expenditures when termination results from
4 government action;

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

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

- 11 a. specific information and documentation regarding the
12 nature, timing and scope of the qualifying project, as
13 required under subsection A of Section 6 of this act,
- 14 b. a reasonable period of not less than forty-five (45)
15 days, as determined by the responsible governmental
16 entity, to encourage competition and partnerships with
17 private entities and other persons in accordance with
18 the goals of the Oklahoma Public and Private
19 Facilities and Infrastructure Act, during which the
20 responsible governmental entity must accept submission
21 of competing proposals for the qualifying project, and
- 22 c. a requirement for advertising the notice on the
23 Internet website of the governmental entity and on the
24 official Internet website of the state.

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. A business entity or other person may submit a proposal requesting approval of a qualifying project by the responsible governmental entity. The proposal must be accompanied by the following, unless waived by the responsible governmental entity:

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

2. A description of the qualifying project, including:

a. the conceptual design of any facility or a conceptual plan for the provision of services or technology infrastructure, and

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

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

4. Information relating to any current plans for the development of facilities or technology infrastructure to be used by a governmental entity that are similar to the qualifying project

1 being proposed by the contracting entity for each affected
2 jurisdiction;

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

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

10 7. A statement by the contracting entity on the general plans
11 for financing the qualifying project, including the sources of the
12 funds of the contracting entity and identification of any dedicated
13 revenue source or proposed debt or equity investment for the
14 contracting entity;

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

17 9. User fees, lease payments and other service payments over
18 the term of any applicable interim or comprehensive agreement and
19 the methodology and circumstances for changes to the user fees,
20 lease payments and other service payments over time; and

21 10. Any additional material and information the responsible
22 governmental entity reasonably requests.

23 B. A responsible governmental entity may request proposals or
24 invite bids from persons or business entities for the development or

1 operation of a qualifying project. A responsible governmental
2 entity shall consider the total project cost as one factor in
3 evaluating the proposals received, but is not required to select the
4 proposal that offers the lowest total project cost. The responsible
5 governmental entity may consider the following factors:

- 6 1. The proposed cost of the qualifying project;
- 7 2. The general reputation, industry experience and financial
8 capacity of the contracting entity submitting a proposal;
- 9 3. The proposed design of the qualifying project;
- 10 4. The eligibility of the project for accelerated selection,
11 review and documentation timelines under the guidelines of the
12 responsible governmental entity;
- 13 5. Comments from local citizens and affected jurisdictions;
- 14 6. Benefits to the public;
- 15 7. The plans of the contracting entity to employ local
16 contractors and residents;
- 17 8. For a qualifying project that involves a continuing role
18 beyond design and construction, the proposed rate of return of the
19 contracting entity and opportunities for revenue sharing; and
- 20 9. Other criteria that the responsible governmental entity
21 considers appropriate.

22 C. The responsible governmental entity may approve as a
23 qualifying project the development or operation of a facility needed
24 by the governmental entity, or the design or equipping of a

1 qualifying project, if the responsible governmental entity
2 determines that the project serves the public purpose of the
3 Oklahoma Public and Private Facilities and Infrastructure Act. The
4 responsible governmental entity may determine that the development
5 or operation of the project as a qualifying project serves the
6 public purpose if:

7 1. There is a public need for or benefit derived from the
8 project of the type the person or business entity proposes as a
9 qualifying project;

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

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

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

18 E. The approval of a responsible governmental entity is subject
19 to the contracting entity entering into an interim or comprehensive
20 agreement with the responsible governmental entity.

21 F. On approval of the qualifying project, the responsible
22 governmental entity shall establish a date by which activities
23 related to the qualifying project must begin. The responsible
24 governmental entity may extend the date.

1 G. The responsible governmental entity shall take action
2 appropriate under the Oklahoma Open Records Act to protect
3 confidential and proprietary information provided by the contracting
4 entity under an agreement.

5 H. The Oklahoma Public and Private Facilities and
6 Infrastructure Act and an interim or comprehensive agreement entered
7 into under the Oklahoma Public and Private Facilities and
8 Infrastructure Act do not enlarge, diminish or affect any authority
9 a responsible governmental entity has to take action that would
10 impact the debt capacity of this state.

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

14 A responsible governmental entity may contract with a
15 contracting entity for the delivery of services to be provided as
16 part of a qualifying project in exchange for service payments and
17 other consideration as the governmental entity considers
18 appropriate.

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

22 A. A person or business entity submitting a proposal to a
23 responsible governmental entity under Section 6 of this act shall
24

1 notify each affected jurisdiction by providing a copy of its
2 proposal to the affected jurisdiction.

3 B. Not later than the fourteenth business day after the date an
4 affected jurisdiction receives the notice required by subsection A
5 of this section, the affected jurisdiction that is not the
6 responsible governmental entity for the respective qualifying
7 project shall submit in writing to the responsible governmental
8 entity any comments the affected jurisdiction has on the proposed
9 qualifying project and indicate whether the facility or project is
10 compatible with the local comprehensive plan, local infrastructure
11 development plans, the capital improvements budget or other
12 government spending plan. The responsible governmental entity shall
13 consider the submitted comments before entering into a comprehensive
14 agreement with a contracting entity.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 5161 of Title 74, unless there
17 is created a duplication in numbering, reads as follows:

18 A. After obtaining any appraisal of the property interest that
19 is required under other law in connection with the conveyance, a
20 governmental entity may dedicate any property interest, including
21 land, improvements and tangible personal property, for public use in
22 a qualifying project if the governmental entity finds that the
23 dedication will serve the public purpose of the Oklahoma Public and
24 Private Facilities and Infrastructure Act by minimizing the cost of

1 a qualifying project to the governmental entity or reducing the
2 delivery time of a qualifying project.

3 B. In connection with a dedication under subsection A of this
4 section, a governmental entity may convey any property interest,
5 including a license, franchise, easement or another right or
6 interest the governmental entity considers appropriate, subject to
7 the conditions imposed by general law governing such conveyance and
8 subject to the rights of an existing utility under a license,
9 franchise, easement or other right under law, to the contracting
10 entity for the consideration determined by the governmental entity.
11 The consideration may include the agreement of the contracting
12 entity to develop or operate the qualifying project.

13 SECTION 10. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 5162 of Title 74, unless there
15 is created a duplication in numbering, reads as follows:

16 A. The contracting entity has:

17 1. The power granted by:

18 a. general law to a person that has the same form of
19 organization as the contracting entity, and

20 b. a statute governing the business or activity of the
21 contracting entity; and

22 2. The power to:

23 a. develop or operate the qualifying project, and
24

1 b. collect lease payments, impose user fees subject to
2 subsection B of this section or enter into service
3 contracts in connection with the use of the project.

4 B. The contracting entity may not impose a user fee or increase
5 the amount of a user fee until the fee or increase is approved by
6 the responsible governmental entity.

7 C. The contracting entity may own, lease or acquire any other
8 right to use or operate the qualifying project.

9 D. The contracting entity may finance a qualifying project in
10 the amounts and on the terms determined by the contracting entity.
11 The contracting entity may issue debt, equity or other securities or
12 obligations, enter into sale and leaseback transactions and secure
13 any financing with a pledge of, security interest in or lien on any
14 or all of its property, including all of its property interests in
15 the qualifying project.

16 E. In operating the qualifying project, the contracting entity
17 may:

18 1. Establish classifications according to reasonable categories
19 for assessment of user fees; and

20 2. With the consent of the responsible governmental entity,
21 adopt and enforce reasonable rules for the qualifying project to the
22 same extent as the responsible governmental entity.

23 F. The contracting entity shall:
24

1 1. Develop or operate the qualifying project in a manner that
2 is acceptable to the responsible governmental entity and in
3 accordance with any applicable interim or comprehensive agreement;

4 2. Subject to subsection G of this section, keep the qualifying
5 project open for use by the public at all times, or as appropriate
6 based on the use of the project, after its initial opening on
7 payment of the applicable user fees, lease payments or service
8 payments;

9 3. Maintain, or provide by contract for the maintenance or
10 upgrade of the qualifying project if required by any applicable
11 interim or comprehensive agreement;

12 4. Cooperate with the responsible governmental entity to
13 establish any interconnection with the qualifying project requested
14 by the responsible governmental entity; and

15 5. Comply with any applicable interim or comprehensive
16 agreement and any lease or service contract.

17 G. The qualifying project may be temporarily closed because of
18 emergencies or, with the consent of the responsible governmental
19 entity, to protect public safety or for reasonable construction or
20 maintenance activities.

21 H. The Oklahoma Public and Private Facilities and
22 Infrastructure Act does not prohibit a contracting entity of a
23 qualifying project from providing additional services for the
24 qualifying project to the public or persons other than the

1 responsible governmental entity if the provision of additional
2 service does not impair the ability of the contracting entity to
3 meet the commitments of the contracting entity to the responsible
4 governmental entity under any applicable interim or comprehensive
5 agreement.

6 SECTION 11. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 5163 of Title 74, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Before developing or operating the qualifying project, the
10 contracting entity must enter into a comprehensive agreement with a
11 responsible governmental entity. The comprehensive agreement shall
12 provide for:

13 1. Delivery of letters of credit or other security in
14 connection with the development or operation of the qualifying
15 project in the forms and amounts satisfactory to the responsible
16 governmental entity and delivery of performance and payment bonds
17 required for all construction activities;

18 2. Review of plans and specifications for the qualifying
19 project by the responsible governmental entity and approval by the
20 responsible governmental entity if the plans and specifications
21 conform to standards acceptable to the responsible governmental
22 entity, except that the contracting entity may not be required to
23 complete the design of a qualifying project before the execution of
24 a comprehensive agreement;

1 3. Inspection of the qualifying project by the responsible
2 governmental entity to ensure that the activities of the contracting
3 entity are acceptable to the responsible governmental entity in
4 accordance with the comprehensive agreement;

5 4. Maintenance of a public liability insurance policy, copies
6 of which must be filed with the responsible governmental entity
7 accompanied by proofs of coverage or self-insurance, each in the
8 form and amount satisfactory to the responsible governmental entity
9 and reasonably sufficient to ensure coverage of tort liability to
10 the public and project employees and to enable the continued
11 operation of the qualifying project;

12 5. Monitoring of the practices of the contracting entity by the
13 responsible governmental entity to ensure that the qualifying
14 project is properly maintained;

15 6. Reimbursement to be paid to the responsible governmental
16 entity for services provided by the responsible governmental entity;

17 7. Filing of appropriate financial statements on an annual
18 basis; and

19 8. Policies and procedures governing the rights and
20 responsibilities of the responsible governmental entity and the
21 contracting entity if the comprehensive agreement is terminated or
22 there is a material default by the contracting entity, including
23 conditions governing:
24

1 a. assumption of the duties and responsibilities of the
2 contracting entity by the responsible governmental
3 entity, and

4 b. the transfer or purchase of property or other
5 interests of the contracting entity to the responsible
6 governmental entity.

7 B. The comprehensive agreement shall provide for any user fee,
8 lease payment or service payment established by agreement of the
9 parties. In negotiating a user fee under this section, the parties
10 shall establish a payment or fee that is the same for persons using
11 a facility of the qualifying project under like conditions and that
12 will not materially discourage use of the qualifying project. The
13 execution of the comprehensive agreement or an amendment to the
14 agreement is conclusive evidence that the user fee, lease payment or
15 service payment complies with the Oklahoma Public and Private
16 Facilities and Infrastructure Act. A user fee or lease payment
17 established in the comprehensive agreement as a source of revenue
18 may be in addition to, or in lieu of, a service payment.

19 C. A comprehensive agreement may include a provision that
20 authorizes the responsible governmental entity to make grants or
21 loans to the contracting entity from money received from the
22 federal, state or local government or any agency or instrumentality
23 of the government.

1 D. The comprehensive agreement must incorporate the duties of
2 the contracting entity under the Oklahoma Public and Private
3 Facilities and Infrastructure Act and may contain terms the
4 responsible governmental entity determines serve the public purpose
5 of the Oklahoma Public and Private Facilities and Infrastructure
6 Act. The comprehensive agreement may contain:

7 1. Provisions that require the responsible governmental entity
8 to provide notice of default and cure rights for the benefit of the
9 contracting entity and the persons specified in the agreement as
10 providing financing for the qualifying project;

11 2. Other lawful terms to which the contracting entity and the
12 responsible governmental entity mutually agree, including provisions
13 regarding unavoidable delays or providing for a loan of public money
14 to the contracting entity to develop or operate one or more
15 qualifying projects; and

16 3. Provisions in which the authority and duties of the
17 contracting entity under the Oklahoma Public and Private Facilities
18 and Infrastructure Act cease and the qualifying project is dedicated
19 for public use to the responsible governmental entity or, if the
20 qualifying project was initially dedicated by an affected
21 jurisdiction, to the affected jurisdiction.

22 E. Any change in the terms of the comprehensive agreement that
23 the parties agree to must be added to the comprehensive agreement by
24 written amendment.

1 F. The comprehensive agreement may provide for the development
2 or operation of phases or segments of the qualifying project.

3 SECTION 12. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 5164 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 Before or in connection with the negotiation of the
7 comprehensive agreement, the responsible governmental entity may
8 enter into an interim agreement with the contracting entity
9 proposing the development or operation of the qualifying project.

10 The interim agreement may:

11 1. Authorize the contracting entity to begin project phases or
12 activities for which the contracting entity may be compensated
13 relating to the proposed qualifying project, including project
14 planning and development, design, engineering, environmental
15 analysis and mitigation, surveying and financial and revenue
16 analysis, including ascertaining the availability of financing for
17 the proposed facility or facilities of the qualifying project;

18 2. Establish the process and timing of the negotiation of the
19 comprehensive agreement; and

20 3. Contain any other provision related to any aspect of the
21 development or operation of a qualifying project that the parties
22 consider appropriate.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5165 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The contracting entity and the responsible governmental entity may use any funding resources that are available to the parties, including, but not limited to:

1. Accessing any designated trust funds; and

2. Borrowing or accepting grants from any state infrastructure loan program or bank.

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

C. If the responsible governmental entity is a state agency, any money received from the state or federal government or any agency or instrumentality of the state or federal government is subject to appropriation by the Legislature.

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

1 SECTION 14. 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 construction, remodel or repair of a qualifying project
5 may be performed only after performance and payment bonds for the
6 construction, remodel or repair have been executed regardless of
7 whether the qualifying project is on public or private property or
8 is publicly or privately owned.

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

12 C. The obligee under a performance bond under this section may
13 be a public entity, a contracting entity, a business entity or an
14 entity consisting of both a public entity and a contracting entity.

15 SECTION 15. 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. If the contracting entity commits a material default, the
19 responsible governmental entity may assume the responsibilities and
20 duties of the contracting entity of the qualifying project. If the
21 responsible governmental entity assumes the responsibilities and
22 duties of the contracting entity, the responsible governmental
23 entity has all the rights, title and interest in the qualifying
24 project, subject to any liens on revenue previously granted by the

1 contracting entity to any person or business entity providing
2 financing for the project.

3 B. The responsible governmental entity may terminate, with
4 cause, any applicable interim or comprehensive agreement and
5 exercise any other rights and remedies available to the governmental
6 entity at law or in equity.

7 C. Stipends are to be used on large projects where there is
8 substantial opportunity for innovation and the costs for developing
9 a proposal are significant. Also called "payment for work product",
10 stipends encourage competition and do not put smaller companies at a
11 competitive disadvantage and they compensate unsuccessful offerors
12 for a portion of their costs.

13 1. The authority may elect to pay unsuccessful proposers for
14 the work product that they submit with their proposal in response to
15 an RFP solicitation. The use by the authority of any design element
16 contained in an unsuccessful proposal is at the sole risk and
17 discretion of the authority and does not confer liability on the
18 recipient of the stipulated amount under this section.

19 2. After payment of the stipulated amount, the authority and
20 the unsuccessful proposer will jointly own the rights to, and may
21 make use of any work product contained in the proposal including the
22 technologies, techniques, methods, processes, ideas and information
23 contained in the proposal, project design and project financial
24 plan. The use by the unsuccessful proposer of any part of the work

1 product contained in the proposal is at the sole risk of the
2 unsuccessful proposer and does not confer liability on the
3 authority.

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

8 E. If the responsible governmental entity elects to assume the
9 responsibilities and duties for a qualifying project under
10 subsection A of this section, the responsible governmental entity
11 may:

- 12 1. Develop or operate the qualifying project;
- 13 2. Impose user fees;
- 14 3. Impose and collect lease payments for the use of the
15 project; and
- 16 4. Comply with any applicable contract to provide services.

17 F. The responsible governmental entity shall collect and pay to
18 secured parties any revenue subject to a lien to the extent
19 necessary to satisfy the obligations of the contracting party to
20 secured parties, including the maintenance of reserves. The liens
21 shall be correspondingly reduced and, when paid off, released.

22 G. Before any payment is made to or for the benefit of a
23 secured party, the responsible governmental entity may use revenue
24 to pay the current operation and maintenance costs of the qualifying

1 project, including compensation to the responsible governmental
2 entity for its services in operating and maintaining the qualifying
3 project. The right to receive any payment is considered just
4 compensation for the qualifying project.

5 H. The full faith and credit of the responsible governmental
6 entity may not be pledged to secure any financing of the contracting
7 entity that was assumed by the governmental entity when the
8 governmental entity assumed responsibility for the qualifying
9 project.

10 SECTION 16. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 5169 of Title 74, unless there
12 is created a duplication in numbering, reads as follows:

13 A. The contracting entity and each facility owner, including a
14 public utility, a public service company or a cable television
15 provider, whose facilities will be affected by a qualifying project,
16 shall cooperate fully in planning and arranging the manner in which
17 the facilities will be affected.

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

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

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5171 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Not later than the tenth day after the date a responsible governmental entity accepts a proposal, the responsible governmental entity shall provide notice of the proposal by posting the proposal on the Internet website of the entity.

B. The responsible governmental entity shall make available for public inspection at least one (1) copy of the proposal. This section does not prohibit the responsible governmental entity from posting the proposal in another manner considered appropriate by the responsible governmental entity to provide maximum notice to the public of the opportunity to inspect the proposal.

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

D. The responsible governmental entity shall hold a public hearing on the proposal during the proposal review process not later than the thirtieth day before the date the entity enters into an interim or comprehensive agreement.

E. On completion of the negotiation phase for the development of an interim or comprehensive agreement and before an interim

1 agreement or comprehensive agreement is entered into, a responsible
2 governmental entity must make available the proposed agreement in a
3 manner provided by subsection A or B of this section.

4 F. A responsible governmental entity that has entered into an
5 interim agreement or comprehensive agreement shall make procurement
6 records available for public inspection on request. For purposes of
7 this subsection, procurement records do not include the trade
8 secrets of the contracting entity or financial records, including
9 balance sheets or financial statements of the contracting entity,
10 that are not generally available to the public through regulatory
11 disclosure or other means.

12 G. Cost estimates relating to a proposed procurement
13 transaction prepared by or for a responsible governmental entity are
14 not open to public inspection.

15 H. Any inspection of procurement transaction records under this
16 section is subject to reasonable restrictions to ensure the security
17 and integrity of the records.

18 I. This section applies to any accepted proposal regardless of
19 whether the process of bargaining results in an interim or
20 comprehensive agreement.

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

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