

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 1316 By: Sparks of the Senate  
3 and  
4 Martin of the House  
5

6 [ infrastructure development - Oklahoma Public and  
7 Private Facilities and Infrastructure Act - eminent  
8 domain use - guidelines - comprehensive agreements -  
procurement records - codification - effective date ]

9  
10 AUTHOR: Add the following House Coauthor: Griffith  
11 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
12 entire bill and insert

13  
14 "[ infrastructure development - creating the Oklahoma  
15 Public and Private Facilities and Infrastructure  
16 Act - eminent domain use - requiring adoption of  
17 certain guidelines - providing for and specifying  
18 contents of comprehensive agreements - providing  
19 for public access to certain procurement records -  
20 effective date ]

21  
22  
23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:  
24

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 5152 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. "Affected jurisdiction" means any county or municipality in  
12 which all or a portion of a qualifying project is located;

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

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

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

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

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

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

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

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

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

19       11. "Qualifying project" means:

20           a. any transportation capacity, highway, bridge or  
21           tunnel, mass transit facility, vehicle parking  
22           facility, port facility, waterway, power generation  
23           facility or transmission line, fuel supply facility or  
24           pipeline, water supply facility or pipeline, public

1 work, wastewater or waste treatment facility,  
2 hospital, school, medical or nursing care facility,  
3 recreational facility, public building or other  
4 similar facility currently available or to be made  
5 available to a governmental entity for public use,  
6 including any structure, parking area, appurtenance  
7 and other property required to operate the structure  
8 or facility, or

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

11 Notwithstanding any provision of this section to the contrary,  
12 all roadway or highway projects shall be subject to review and  
13 approval by the Governor, and the responsible governmental entity  
14 shall not approve any roadway or highway project disapproved by the  
15 Governor.

16 "Qualifying project" as defined in this paragraph shall  
17 specifically exclude technology in infrastructure for state agencies  
18 pursuant to Section 34.11.1 of Title 62 of the Oklahoma Statutes;

19 12. "Responsible governmental entity" means a governmental  
20 entity that has the power to develop or operate an applicable  
21 qualifying project. Any such responsible governmental entity that  
22 is subject to the rules promulgated by the Office of Management and  
23 Enterprise Services shall comply with all such rules and  
24 regulations. Any such responsible governmental entity that is

1 subject to the Central Purchasing Act, the Public Competitive  
2 Bidding Act and the Oklahoma Privatization of State Functions Act  
3 shall comply with these laws;

4 13. "Revenue" means all revenue, income, earnings, user fees,  
5 lease payments or other service payments that support the  
6 development or operation of a qualifying project, including money  
7 received as a grant or otherwise from the federal government, a  
8 governmental entity or any agency or instrumentality of the federal  
9 government or governmental entity in aid of the project;

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

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

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

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

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

24

1           SECTION 4.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 5154 of Title 74, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. A contracting entity may not develop or operate a qualifying  
5 project unless the contracting entity obtains the approval of and  
6 contracts with the responsible governmental entity under the  
7 Oklahoma Public and Private Facilities and Infrastructure Act. The  
8 contracting entity may initiate the approval process by submitting a  
9 proposal requesting approval under subsection A of Section 6 of this  
10 act, or the responsible governmental entity may request proposals or  
11 invite bids under subsection B of Section 6 of this act.

12           B. A person or business entity submitting a proposal requesting  
13 approval of a qualifying project shall specifically and conceptually  
14 identify any facility, building, infrastructure or improvement  
15 included in the proposal as a part of the qualifying project.

16           C. On receipt of a proposal submitted by a person or business  
17 entity initiating the approval process under subsection A of Section  
18 6 of this act, the responsible governmental entity shall determine  
19 whether to accept the proposal for consideration in accordance with  
20 Section 6 of this act and the guidelines adopted under those  
21 sections. Notwithstanding any other provision of law, a responsible  
22 governmental entity that determines not to accept the proposal for  
23 consideration shall return the proposal, all fees and the  
24

1 accompanying documentation to the person or business entity  
2 submitting the proposal.

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

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

9 A. Responsible state governmental entities shall use guidelines  
10 set out in the Public Competitive Bidding Act.

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

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

20 1. Require the responsible governmental entity to:

21 a. make a representative of the entity available to meet  
22 with persons who are considering submitting a  
23 proposal, and  
24

1           b.    provide notice of the availability of the  
2                    representative;

3           2.    Provide reasonable criteria for choosing among competing  
4 proposals;

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

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

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

12           a.    a cost-benefit analysis,

13           b.    an assessment of opportunity cost,

14           c.    consideration of the degree to which functionality and  
15 services similar to the functionality and services to  
16 be provided by the proposed project are already  
17 available in the private market, and

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

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

22          7.    Subject to the Central Purchasing Act, the Public  
23 Competitive Bidding Act and the Oklahoma Privatization of State  
24 Functions Act, establish criteria for determining that, should the



1 responsible governmental entity deem it in the public's best  
2 interest to cancel a procurement, post-short-term listing, the  
3 responsible governmental entity may pay for documented third-party  
4 costs, to include but not be limited to: design services, legal  
5 advisors and financial advisors, together with reasonable internal  
6 expenditures when termination results from government action;

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

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

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

1 c. a requirement for advertising the notice on the  
2 Internet website of the governmental entity and on the  
3 official Internet website of the state.

4 SECTION 6. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 5156 of Title 74, unless there  
6 is created a duplication in numbering, reads as follows:

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

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

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

14 a. the conceptual design of any facility or a conceptual  
15 plan for the provision of services, and

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

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

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

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

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

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

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

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

23           10. Any additional material and information the responsible  
24 governmental entity reasonably requests.

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

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

24

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

10 1. There is a public need for or benefit derived from the  
11 project of the type the person or business entity proposes as a  
12 qualifying project;

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

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

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

21 E. The approval of a responsible governmental entity is subject  
22 to the contracting entity entering into an interim or comprehensive  
23 agreement with the responsible governmental entity.

24

1 F. On approval of the qualifying project, the responsible  
2 governmental entity shall establish a date by which activities  
3 related to the qualifying project must begin. The responsible  
4 governmental entity may extend the date.

5 G. The responsible governmental entity shall take action  
6 appropriate under the Oklahoma Open Records Act to protect  
7 confidential and proprietary information provided by the contracting  
8 entity under an agreement.

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

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

17 Subject to the provisions of the Oklahoma Privatization of State  
18 Functions Act, a responsible governmental entity may contract with a  
19 contracting entity for the delivery of services to be provided as  
20 part of a qualifying project in exchange for service payments and  
21 other consideration as the governmental entity considers  
22 appropriate.

23  
24

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

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

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

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

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

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

24



1 SECTION 10. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 5160 of Title 74, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. The contracting entity has:

5 1. The power granted by:

- 6 a. general law to a person that has the same form of  
7 organization as the contracting entity, and
- 8 b. a statute governing the business or activity of the  
9 contracting entity; and

10 2. The power to:

- 11 a. develop or operate the qualifying project, and
- 12 b. collect lease payments, impose user fees subject to  
13 subsection B of this section or enter into service  
14 contracts in connection with the use of the project.

15 B. The contracting entity may not impose a user fee or increase  
16 the amount of a user fee until the fee or increase is approved by  
17 the responsible governmental entity.

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

20 D. The contracting entity may finance a qualifying project in  
21 the amounts and on the terms determined by the contracting entity.  
22 The contracting entity may issue debt, equity or other securities or  
23 obligations, enter into sale and leaseback transactions and secure  
24 any financing with a pledge of, security interest in, or lien on any

1 or all of its property, including all of its property interests in  
2 the qualifying project.

3 E. In operating the qualifying project, the contracting entity  
4 may:

5 1. Establish classifications according to reasonable categories  
6 for assessment of user fees; and

7 2. With the consent of the responsible governmental entity,  
8 adopt and enforce reasonable rules for the qualifying project to the  
9 same extent as the responsible governmental entity.

10 F. The contracting entity shall:

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

14 2. Subject to subsection G of this section, keep the qualifying  
15 project open for use by the public at all times, or as appropriate  
16 based on the use of the project, after its initial opening on  
17 payment of the applicable user fees, lease payments or service  
18 payments;

19 3. Maintain, or provide by contract for the maintenance or  
20 upgrade of, the qualifying project, if required by any applicable  
21 interim or comprehensive agreement;

22 4. Cooperate with the responsible governmental entity to  
23 establish any interconnection with the qualifying project requested  
24 by the responsible governmental entity; and

1 5. Comply with any applicable interim or comprehensive  
2 agreement and any lease or service contract.

3 G. The qualifying project may be temporarily closed because of  
4 emergencies or, with the consent of the responsible governmental  
5 entity, to protect public safety or for reasonable construction or  
6 maintenance activities.

7 H. The Oklahoma Public and Private Facilities and  
8 Infrastructure Act shall not prohibit a contracting entity of a  
9 qualifying project from providing additional services for the  
10 qualifying project to the public or persons other than the  
11 responsible governmental entity if the provision of additional  
12 service does not impair the ability of the contracting entity to  
13 meet the commitments of the contracting entity to the responsible  
14 governmental entity under any applicable interim or comprehensive  
15 agreement.

16 SECTION 11. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 5161 of Title 74, unless there  
18 is created a duplication in numbering, reads as follows:

19 A. Before developing or operating the qualifying project, the  
20 contracting entity must enter into a comprehensive agreement with a  
21 responsible governmental entity. The comprehensive agreement shall  
22 provide for:

23 1. Delivery of letters of credit or other security in  
24 connection with the development or operation of the qualifying

1 project, in the forms and amounts satisfactory to the responsible  
2 governmental entity and delivery of performance and payment bonds  
3 required for all construction activities;

4 2. Review of plans and specifications for the qualifying  
5 project by the responsible governmental entity and approval by the  
6 responsible governmental entity if the plans and specifications  
7 conform to standards acceptable to the responsible governmental  
8 entity, except that the contracting entity may not be required to  
9 complete the design of a qualifying project before the execution of  
10 a comprehensive agreement;

11 3. Inspection of the qualifying project by the responsible  
12 governmental entity to ensure that the activities of the contracting  
13 entity are acceptable to the responsible governmental entity in  
14 accordance with the comprehensive agreement;

15 4. Maintenance of a public liability insurance policy, copies  
16 of which must be filed with the responsible governmental entity  
17 accompanied by proofs of coverage, or self-insurance, each in the  
18 form and amount satisfactory to the responsible governmental entity  
19 and reasonably sufficient to ensure coverage of liability to the  
20 public and project employees and to enable the continued operation  
21 of the qualifying project;

22 5. Monitoring of the practices of the contracting entity by the  
23 responsible governmental entity to ensure that the qualifying  
24 project is properly maintained;

1       6. Reimbursement to be paid to the responsible governmental  
2 entity for services provided by the responsible governmental entity;

3       7. Filing of appropriate financial statements on an annual  
4 basis; and

5       8. Policies and procedures governing the rights and  
6 responsibilities of the responsible governmental entity and the  
7 contracting entity if the comprehensive agreement is terminated or  
8 there is a material default by the contracting entity, including  
9 conditions governing:

10           a. assumption of the duties and responsibilities of the  
11                contracting entity by the responsible governmental  
12                entity, and

13           b. the transfer to or purchase by the responsible  
14                governmental entity of property or other interests of  
15                the contracting entity.

16       B. The comprehensive agreement shall provide for any user fee,  
17 lease payment or service payment established by agreement of the  
18 parties. In negotiating a user fee under this section, the parties  
19 shall establish a payment or fee that is the same for persons using  
20 a facility of the qualifying project under like conditions and that  
21 will not materially discourage use of the qualifying project. The  
22 execution of the comprehensive agreement or an amendment to the  
23 agreement is conclusive evidence that the user fee, lease payment or  
24 service payment complies with the Oklahoma Public and Private

1 Facilities and Infrastructure Act. A user fee or lease payment  
2 established in the comprehensive agreement as a source of revenue  
3 may be in addition to, or in lieu of, a service payment.

4 C. Subject to applicable state laws and constitutional  
5 provisions, a comprehensive agreement may include a provision that  
6 authorizes the responsible governmental entity to make grants or  
7 loans to the contracting entity from money received from the  
8 federal, state or local government or any agency or instrumentality  
9 of the government.

10 D. The comprehensive agreement shall incorporate the duties of  
11 the contracting entity under the Oklahoma Public and Private  
12 Facilities and Infrastructure Act and may contain terms the  
13 responsible governmental entity determines serve the public purpose  
14 of the Oklahoma Public and Private Facilities and Infrastructure  
15 Act. The comprehensive agreement may contain:

16 1. Provisions that require the responsible governmental entity  
17 to provide notice of default and cure rights for the benefit of the  
18 contracting entity and the persons specified in the agreement as  
19 providing financing for the qualifying project;

20 2. Other lawful terms to which the contracting entity and the  
21 responsible governmental entity mutually agree, including provisions  
22 regarding unavoidable delays or providing for a loan of public money  
23 to the contracting entity to develop or operate one or more  
24 qualifying projects; and

1           3. Provisions in which the authority and duties of the  
2 contracting entity under the Oklahoma Public and Private Facilities  
3 and Infrastructure Act cease and the qualifying project is dedicated  
4 for public use to the responsible governmental entity or, if the  
5 qualifying project was initially dedicated by an affected  
6 jurisdiction, to the affected jurisdiction.

7           E. Any change in the terms of the comprehensive agreement that  
8 the parties agree to must be added to the comprehensive agreement by  
9 written amendment.

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

12          SECTION 12.        NEW LAW        A new section of law to be codified  
13 in the Oklahoma Statutes as Section 5162 of Title 74, unless there  
14 is created a duplication in numbering, reads as follows:

15           Before or in connection with the negotiation of the  
16 comprehensive agreement, the responsible governmental entity may  
17 enter into an interim agreement with the contracting entity  
18 proposing the development or operation of the qualifying project.  
19 The interim agreement may:

20           1. Authorize the contracting entity to begin project phases or  
21 activities for which the contracting entity may be compensated  
22 relating to the proposed qualifying project, including project  
23 planning and development, design, engineering, environmental  
24 analysis and mitigation, surveying and financial and revenue

1 analysis, including ascertaining the availability of financing for  
2 the proposed facility or facilities of the qualifying project;

3 2. Establish the process and timing of the negotiation of the  
4 comprehensive agreement; and

5 3. Contain any other provision related to any aspect of the  
6 development or operation of a qualifying project that the parties  
7 consider appropriate.

8 SECTION 13. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 5163 of Title 74, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. The contracting entity and the responsible governmental  
12 entity may use any funding resources allowed by law that are  
13 available to the parties.

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

19 C. The responsible governmental entity may determine that it  
20 serves the public purpose of the Oklahoma Public and Private  
21 Facilities and Infrastructure Act for all or part of the costs of a  
22 qualifying project to be directly or indirectly paid from the  
23 proceeds of a grant or loan made by the local, state or federal  
24 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 5164 of Title 74, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. The construction, remodeling or repair of a qualifying  
5 project may be performed only after performance and payment bonds  
6 for the construction, remodel or repair have been executed  
7 regardless of whether the qualifying project is on public or private  
8 property or 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 5165 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 for the qualifying project because  
23 the contracting entity has committed a material default, the  
24 responsible governmental entity has all the rights, title and

1 interest in the qualifying project, subject to any liens on revenue  
2 previously granted by the contracting entity to any person or  
3 business entity providing financing for the project.

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

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

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

22 2. After payment of the stipulated amount, the responsible  
23 governmental entity and the unsuccessful proposer will jointly own  
24 the rights to and may make use of any work product contained in the

1 proposal including the technologies, techniques, methods, processes,  
2 ideas and information contained in the proposal, project design and  
3 project financial plan. The use by the unsuccessful proposer of any  
4 part of the work product contained in the proposal is at the sole  
5 risk of the unsuccessful proposer and does not confer liability on  
6 the responsible governmental entity.

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

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

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

20 F. If the contracting entity commits a material default and the  
21 responsible governmental entity assumes the responsibilities of the  
22 contracting entity, the responsible governmental entity shall  
23 collect and pay to secured parties any revenue subject to a lien to  
24 the extent necessary to satisfy the obligations of the contracting

1 party to secured parties, including the maintenance of reserves.  
2 The liens shall be correspondingly reduced and, when paid off,  
3 released.

4 G. Before any payment is made to or for the benefit of a  
5 secured party, the responsible governmental entity may use revenue  
6 to pay the current operation and maintenance costs of the qualifying  
7 project, including compensation to the responsible governmental  
8 entity for its services in operating and maintaining the qualifying  
9 project. The right to receive any payment is considered just  
10 compensation for the qualifying project.

11 H. The full faith and credit of the responsible governmental  
12 entity shall not be pledged to secure any financing of the  
13 contracting entity that was assumed by the governmental entity when  
14 the governmental entity assumed responsibility for the qualifying  
15 project.

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

19 A. The contracting entity and each facility owner, including a  
20 public utility, a public service company or a cable television  
21 provider, whose facilities will be affected by a qualifying project  
22 shall cooperate fully in planning and arranging the manner in which  
23 the facilities will be affected.

24

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

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

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

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

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

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

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

5 E. On completion of the negotiation phase for the development  
6 of an interim or comprehensive agreement and before an interim  
7 agreement or comprehensive agreement is entered into, a responsible  
8 governmental entity shall make available the proposed agreement in a  
9 manner provided by subsection A or B of this section.

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

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

21 H. Any inspection of procurement transaction records under this  
22 section shall be subject to reasonable restrictions to ensure the  
23 security and integrity of the records.

24

1 I. This section applies to any accepted proposal regardless of  
2 whether the process of bargaining results in an interim or  
3 comprehensive agreement.

4 SECTION 18. This act shall become effective November 1, 2016."  
5 Passed the House of Representatives the 21st day of April, 2016.

6  
7  
8 

---

Presiding Officer of the House of  
9 Representatives

10 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2016.

11  
12  
13 

---

Presiding Officer of the Senate

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 ENGROSSED SENATE  
2 BILL NO. 1316

By: Sparks of the Senate

and

Martin of the House

3  
4  
5  
6 [ infrastructure development - Oklahoma Public and  
7 Private Facilities and Infrastructure Act - eminent  
8 domain use - guidelines - comprehensive agreements -  
9 procurement records - codification - effective date ]

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

11 SECTION 19. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 5151 of Title 74, unless there  
13 is created a duplication in numbering, reads as follows:

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

16 SECTION 20. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 5153 of Title 74, unless there  
18 is created a duplication in numbering, reads as follows:

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

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

23 2. "Availability Payment" is a periodic payment made to a  
24 private sector concessionaire or developer by the responsible public



1 sector entity, in exchange for making available the use of the  
2 public facility at a predetermined level of service;

3 3. "Comprehensive agreement" means the comprehensive agreement  
4 authorized by Section 12 of this act between the contracting entity  
5 and the responsible governmental entity;

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

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

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

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

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

23 9. "Material default" means any default by a contracting entity  
24 in the performance of duties imposed under subsection F of Section

1 12 of this act that jeopardizes adequate service to the public from  
2 a qualifying project;

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

5 11. "Qualifying project" means:

- 6 a. any transportation capacity, highway, bridge or  
7 tunnel, mass transit facility, vehicle parking  
8 facility, port facility, water way, power generation  
9 facility or transmission line, fuel supply facility or  
10 pipeline, water supply facility or pipeline, public  
11 work, wastewater or waste treatment facility,  
12 hospital, school, medical or nursing care facility,  
13 recreational facility, public building, or other  
14 similar facility currently available or to be made  
15 available to a governmental entity for public use,  
16 including any structure, parking area, appurtenance  
17 and other property required to operate the structure  
18 or facility and any technology infrastructure  
19 installed in the structure or facility that is  
20 essential to the purpose of the project, or  
21 b. any improvements necessary or desirable to unimproved  
22 real estate owned by a governmental entity,  
23 c. notwithstanding any provision of this section to the  
24 contrary, all roadway or highway projects shall be

1 subject to review and approval by the Governor, and  
2 the authority shall not approve any roadway or highway  
3 project disapproved by the Governor;

4 12. "Responsible governmental entity" means a governmental  
5 entity that has the power to develop or operate an applicable  
6 qualifying project;

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

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

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

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

20 SECTION 21. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 5155 of Title 74, unless there  
22 is created a duplication in numbering, reads as follows:

23 The Oklahoma Public and Private Facilities and Infrastructure  
24 Act does not alter the eminent domain laws of this state or grant

1 the power of eminent domain to any person who is not expressly  
2 granted that power under other state law.

3 SECTION 22. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 5156 of Title 74, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. A contracting entity may not develop or operate a qualifying  
7 project unless the contracting entity obtains the approval of and  
8 contracts with the responsible governmental entity under the  
9 Oklahoma Public and Private Facilities and Infrastructure Act. The  
10 contracting entity may initiate the approval process by submitting a  
11 proposal requesting approval under subsection A of Section 7 of this  
12 act, or the responsible governmental entity may request proposals or  
13 invite bids under subsection B of Section 7 of this act.

14 B. A person, or business entity, submitting a proposal  
15 requesting approval of a qualifying project shall specifically and  
16 conceptually identify any facility, building, infrastructure or  
17 improvement included in the proposal as a part of the qualifying  
18 project.

19 C. On receipt of a proposal submitted by a person or business  
20 entity initiating the approval process under subsection A of Section  
21 7 of this act, the responsible governmental entity shall determine  
22 whether to accept the proposal for consideration in accordance with  
23 Section 6 of this act and the guidelines adopted under those  
24 sections. A responsible governmental entity that determines not to

1 accept the proposal for consideration shall return the proposal, all  
2 fees and the accompanying documentation to the person, or business  
3 entity, submitting the proposal.

4 D. The responsible governmental entity may at any time reject a  
5 proposal initiated by a person or business entity under subsection A  
6 of Section 8 of this act.

7 SECTION 23. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 5157 of Title 74, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. Before requesting or considering a proposal for a qualifying  
11 project, a responsible governmental entity must adopt and make  
12 publicly available guidelines that enable the governmental entity to  
13 comply with the Oklahoma Public and Private Facilities and  
14 Infrastructure Act. The guidelines must be reasonable, encourage  
15 competition, and guide the selection of projects under the purview  
16 of the responsible governmental entity.

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

18 1. Require the responsible governmental entity to:

19 a. make a representative of the entity available to meet  
20 with persons who are considering submitting a  
21 proposal, and

22 b. provide notice of the availability of the  
23 representative;

24

1           2. Provide reasonable criteria for choosing among competing  
2 proposals;

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

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

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

10           a. a cost-benefit analysis,

11           b. an assessment of opportunity cost,

12           c. consideration of the degree to which functionality and  
13 services similar to the functionality and services to  
14 be provided by the proposed project are already  
15 available in the private market, and

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

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

20           7. Include criteria for:

21           a. the qualifying project, including the scope, costs,  
22 and duration of the project and the involvement or  
23 impact of the project on multiple public entities, and  
24

1           b.    the creation of and the responsibilities of an  
2                   oversight committee, with members representing the  
3                   responsible governmental entity, that acts as an  
4                   advisory committee to review the terms of any proposed  
5                   interim or comprehensive agreement;

6           8.    Require the responsible governmental entity to analyze the  
7   adequacy of the information to be released by the entity when  
8   seeking competing proposals and require that the entity provide more  
9   detailed information, if the entity determines necessary, to  
10   encourage competition, subject to subsection G of Section 7 of this  
11   act;

12           9.    Establish criteria for determining that, should the  
13   authority deem it in the public's best interest to cancel a  
14   procurement, post-short-term listing, the authority shall pay for  
15   documented third-party costs, to include, but not be limited to:  
16   design services, legal advisors, financial advisors, together with  
17   reasonable internal expenditures, when termination results from  
18   government action;

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

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

- 1 a. specific information and documentation regarding the  
2 nature, timing and scope of the qualifying project, as  
3 required under subsection A of Section 7 of this act,  
4 b. a reasonable period of not less than forty-five (45)  
5 days, as determined by the responsible governmental  
6 entity, to encourage competition and partnerships with  
7 private entities and other persons in accordance with  
8 the goals of the Oklahoma Public and Private  
9 Facilities and Infrastructure Act, during which the  
10 responsible governmental entity must accept submission  
11 of competing proposals for the qualifying project, and  
12 c. a requirement for advertising the notice on the  
13 Internet website of the governmental entity and on the  
14 official Internet website of the state.

15 SECTION 24. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 5158 of Title 74, unless there  
17 is created a duplication in numbering, reads as follows:

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

- 22 1. A topographic map, with a 1:2,000 or other appropriate  
23 scale, indicating the location of the qualifying project;  
24 2. A description of the qualifying project, including:



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

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

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

12           4.    Information relating to any current plans for the  
13           development of facilities or technology infrastructure to be used by  
14           a governmental entity that are similar to the qualifying project  
15           being proposed by the contracting entity for each affected  
16           jurisdiction;

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

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

1           7. A statement by the contracting entity on the general plans  
2 for financing the qualifying project, including the sources of the  
3 funds of the contracting entity and identification of any dedicated  
4 revenue source or proposed debt or equity investment for the  
5 contracting entity;

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

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

12           10. Any additional material and information the responsible  
13 governmental entity reasonably requests.

14           B. A responsible governmental entity may request proposals or  
15 invite bids from persons or business entities for the development or  
16 operation of a qualifying project. A responsible governmental  
17 entity shall consider the total project cost as one factor in  
18 evaluating the proposals received, but is not required to select the  
19 proposal that offers the lowest total project cost. The responsible  
20 governmental entity may consider the following factors:

21           1. The proposed cost of the qualifying project;

22           2. The general reputation, industry experience, and financial  
23 capacity of the contracting entity submitting a proposal;

24           3. The proposed design of the qualifying project;

1 4. The eligibility of the project for accelerated selection,  
2 review and documentation timelines under the guidelines of the  
3 responsible governmental entity;

4 5. Comments from local citizens and affected jurisdictions;

5 6. Benefits to the public;

6 7. The plans of the contracting entity to employ local  
7 contractors and residents;

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

11 9. Other criteria that the responsible governmental entity  
12 considers appropriate.

13 C. The responsible governmental entity may approve as a  
14 qualifying project the development or operation of a facility needed  
15 by the governmental entity, or the design, or equipping of a  
16 qualifying project, if the responsible governmental entity  
17 determines that the project serves the public purpose of the  
18 Oklahoma Public and Private Facilities and Infrastructure Act. The  
19 responsible governmental entity may determine that the development  
20 or operation of the project as a qualifying project serves the  
21 public purpose if:

22 1. There is a public need for or benefit derived from the  
23 project of the type the person or business entity proposes as a  
24 qualifying project;

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

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

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

9           E. The approval of a responsible governmental entity is subject  
10 to the contracting entity entering into an interim or comprehensive  
11 agreement with the responsible governmental entity.

12           F. On approval of the qualifying project, the responsible  
13 governmental entity shall establish a date by which activities  
14 related to the qualifying project must begin. The responsible  
15 governmental entity may extend the date.

16           G. The responsible governmental entity shall take action  
17 appropriate under the Oklahoma Open Records Act to protect  
18 confidential and proprietary information provided by the contracting  
19 entity under an agreement.

20           H. The Oklahoma Public and Private Facilities and  
21 Infrastructure Act and an interim or comprehensive agreement entered  
22 into under the Oklahoma Public and Private Facilities and  
23 Infrastructure Act do not enlarge, diminish or affect any authority  
24

1 a responsible governmental entity has to take action that would  
2 impact the debt capacity of this state.

3 SECTION 25. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 5159 of Title 74, unless there  
5 is created a duplication in numbering, reads as follows:

6 A responsible governmental entity may contract with a  
7 contracting entity for the delivery of services to be provided as  
8 part of a qualifying project in exchange for service payments and  
9 other consideration as the governmental entity considers  
10 appropriate.

11 SECTION 26. 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 A. A person or business entity submitting a proposal to a  
15 responsible governmental entity under Section 7 of this act shall  
16 notify each affected jurisdiction by providing a copy of its  
17 proposal to the affected jurisdiction.

18 B. Not later than the fourteenth business day after the date an  
19 affected jurisdiction receives the notice required by subsection A  
20 of this section, the affected jurisdiction that is not the  
21 responsible governmental entity for the respective qualifying  
22 project shall submit in writing to the responsible governmental  
23 entity any comments the affected jurisdiction has on the proposed  
24 qualifying project and indicate whether the facility or project is

1 compatible with the local comprehensive plan, local infrastructure  
2 development plans, the capital improvements budget or other  
3 government spending plan. The responsible governmental entity shall  
4 consider the submitted comments before entering into a comprehensive  
5 agreement with a contracting entity.

6 SECTION 27. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 5161 of Title 74, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. After obtaining any appraisal of the property interest that  
10 is required under other law in connection with the conveyance, a  
11 governmental entity may dedicate any property interest, including  
12 land, improvements and tangible personal property, for public use in  
13 a qualifying project if the governmental entity finds that the  
14 dedication will serve the public purpose of the Oklahoma Public and  
15 Private Facilities and Infrastructure Act by minimizing the cost of  
16 a qualifying project to the governmental entity or reducing the  
17 delivery time of a qualifying project.

18 B. In connection with a dedication under subsection A of this  
19 section, a governmental entity may convey any property interest,  
20 including a license, franchise, easement or another right or  
21 interest the governmental entity considers appropriate, subject to  
22 the conditions imposed by general law governing such conveyance and  
23 subject to the rights of an existing utility under a license,  
24 franchise, easement or other right under law, to the contracting

1 entity for the consideration determined by the governmental entity.  
2 The consideration may include the agreement of the contracting  
3 entity to develop or operate the qualifying project.

4 SECTION 28. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 5162 of Title 74, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. The contracting entity has:

8 1. The power granted by:

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

11 b. a statute governing the business or activity of the  
12 contracting entity; and

13 2. The power to:

14 a. develop or operate the qualifying project, and

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

18 B. The contracting entity may not impose a user fee or increase  
19 the amount of a user fee until the fee or increase is approved by  
20 the responsible governmental entity.

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

23 D. The contracting entity may finance a qualifying project in  
24 the amounts and on the terms determined by the contracting entity.

1 The contracting entity may issue debt, equity or other securities or  
2 obligations, enter into sale and leaseback transactions and secure  
3 any financing with a pledge of, security interest in, or lien on any  
4 or all of its property, including all of its property interests in  
5 the qualifying project.

6 E. In operating the qualifying project, the contracting entity  
7 may:

8 1. Establish classifications according to reasonable categories  
9 for assessment of user fees; and

10 2. With the consent of the responsible governmental entity,  
11 adopt and enforce reasonable rules for the qualifying project to the  
12 same extent as the responsible governmental entity.

13 F. The contracting entity shall:

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

17 2. Subject to subsection G of this section, keep the qualifying  
18 project open for use by the public at all times, or as appropriate  
19 based on the use of the project, after its initial opening on  
20 payment of the applicable user fees, lease payments or service  
21 payments;

22 3. Maintain, or provide by contract for the maintenance or  
23 upgrade of, the qualifying project, if required by any applicable  
24 interim or comprehensive agreement;



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 does 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 29. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 5163 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  
24

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 tort liability to  
24

1 the public and project employees and to enable the continued  
2 operation 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 or purchase of property or other  
19 interests of the contracting entity to the responsible  
20 governmental 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. A comprehensive agreement may include a provision that  
10 authorizes the responsible governmental entity to make grants or  
11 loans to the contracting entity from money received from the  
12 federal, state or local government or any agency or instrumentality  
13 of the government.

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

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

24

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 30.           NEW LAW           A new section of law to be codified  
18 in the Oklahoma Statutes as Section 5164 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 31.        NEW LAW        A new section of law to be codified  
14 in the Oklahoma Statutes as Section 5165 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 that are available to the  
18 parties, including, but not limited to:

- 19           1. Accessing any designated trust funds; and
- 20           2. Borrowing or accepting grants from any state infrastructure  
21 loan program or bank.

22          B. The responsible governmental entity may take any action to  
23 obtain federal, state or local assistance for a qualifying project  
24 that serves the public purpose of the Oklahoma Public and Private

1 Facilities and Infrastructure Act and may enter into any contracts  
2 required to receive the assistance.

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

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

13 SECTION 32. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 5166 of Title 74, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. The construction, remodel or repair of a qualifying project  
17 may be performed only after performance and payment bonds for the  
18 construction, remodel or repair have been executed regardless of  
19 whether the qualifying project is on public or private property or  
20 is publicly or privately owned.

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

24

1 C. The obligee under a performance bond under this section may  
2 be a public entity, a contracting entity, a business entity, or an  
3 entity consisting of both a public entity and a contracting entity.

4 SECTION 33. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 5167 of Title 74, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. If the contracting entity commits a material default, the  
8 responsible governmental entity may assume the responsibilities and  
9 duties of the contracting entity of the qualifying project. If the  
10 responsible governmental entity assumes the responsibilities and  
11 duties of the contracting entity, the responsible governmental  
12 entity has all the rights, title and interest in the qualifying  
13 project, subject to any liens on revenue previously granted by the  
14 contracting entity to any person or business entity providing  
15 financing for the project.

16 B. The responsible governmental entity may terminate, with  
17 cause, any applicable interim or comprehensive agreement and  
18 exercise any other rights and remedies available to the governmental  
19 entity at law or in equity.

20 C. Stipends are to be used on large projects where there is  
21 substantial opportunity for innovation and the costs for developing  
22 a proposal is significant. Also called 'payment for work product',  
23 stipends encourage competition and do not put smaller companies at a  
24



1 competitive disadvantage and they compensate unsuccessful offerors  
2 for a portion of their costs.

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

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

18 D. The responsible governmental entity may make any appropriate  
19 claim under the letters of credit or other security or the  
20 performance and payment bonds required by paragraph 1 of subsection  
21 A of Section 12 of this act.

22 E. If the responsible governmental entity elects to assume the  
23 responsibilities and duties for a qualifying project under  
24

1 subsection A of this section, the responsible governmental entity  
2 may:

- 3 1. Develop or operate the qualifying project;
- 4 2. Impose user fees;
- 5 3. Impose and collect lease payments for the use of the  
6 project; and
- 7 4. Comply with any applicable contract to provide services.

8 F. The responsible governmental entity shall collect and pay to  
9 secured parties any revenue subject to a lien to the extent  
10 necessary to satisfy the obligations of the contracting party to  
11 secured parties, including the maintenance of reserves. The liens  
12 shall be correspondingly reduced and, when paid off, released.

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

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

1 SECTION 34. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 5169 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 35. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 5171 of Title 74, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. Not later than the tenth day 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 (1) copy of the proposal. This  
24 section does not prohibit the responsible governmental entity from

1 posting 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 may 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 the thirtieth day 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 must 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 are  
5 not open to public inspection.

6 H. Any inspection of procurement transaction records under this  
7 section is subject to reasonable restrictions to ensure the security  
8 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 36. This act shall become effective November 1, 2016.

13 Passed the Senate the 9th day of March, 2016.

14

15

\_\_\_\_\_  
Presiding Officer of the Senate

16

17 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

18 2016.

19

20

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

21

22

23

24