

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 SENATE BILL 1692

By: Bergstrom

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5
6 AS INTRODUCED

7 An Act relating to state contracts; creating the
8 Establishing Public-Private Partnership Office Act;
9 providing definitions; establishing Office of Public-
10 Private Partnerships; providing for appointment of
11 Director by Governor; authorizing the office to
12 identify and approve proposals; authorizing Director
13 to work with state agencies to provide public
14 services; directing the Director to provide annual
15 report to Legislature and post report online;
16 allowing for the submission of proposals by
17 individuals or state agencies; requiring the office
18 to conduct a study on potential projects and public
19 services; providing factors to consider in study;
20 requiring publication of results of the study online;
21 requiring notice of intent by the office to enter
22 into a contract; requiring the office to prepare a
23 request for proposals; authorizing office to evaluate
24 proposals; authorizing Director to negotiate contract
with proposer; providing provisions upon failure to
negotiate contract; providing exemption from taxes or
assessments during contract period; promulgation of
rules; providing exemption of office from the Central
Purchasing Act; providing for codification; and
providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 131.1 of Title 74, unless there
24 is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Establishing
2 Public-Private Partnership Office Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 131.2 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 As used in this act:

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

11 2. "Director" means the Director of the Office of Public-
12 Private Partnerships;

13 3. "Improvement" means any construction, reconstruction,
14 rehabilitation, renovation, installation, improvement, enlargement,
15 or extension of property or improvements to property;

16 4. "Office" means the Office of Public-Private Partnerships;

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

23 6. "Project" means real or personal property, or both, and
24 improvements thereto or in support thereof including undivided and

1 other interests therein, used for or in the provision of a public
2 service;

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

7 8. "Public service" means a service provided for a public
8 purpose of the responsible state agency and identified in
9 procurement documents under this act; and

10 9. "Responsible state agency" means the agency, department,
11 commission, authority, or other instrumentality of the state
12 responsible for the provision of the public service, which is or is
13 proposed to be the subject of a contract.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 131.3 of Title 74, unless there
16 is created a duplication in numbering, reads as follows:

17 A. There shall be established an Office of Public-Private
18 Partnerships reporting to the Governor and independent of other
19 agencies and departments of this state. The Office shall be headed
20 by a Director, appointed by the Governor for a term of five (5)
21 years, who shall demonstrate knowledge, training, or experience in
22 one or more of the following areas:

23 1. Infrastructure development or operation;

24 2. Capital markets and finance including municipal finance;

1 3. Public-sector planning; or

2 4. Procurement.

3 B. The Office shall have the authority to identify potential
4 public-private partnerships, to approve a short-list of qualified
5 proposers, to approve requests for proposals, and to approve
6 template contracts before they are sent to proposers. The Office
7 shall have the authority to charge fees for services it shall render
8 as part of the procedures to establish partnerships in accordance
9 with this act and to receive money on loan to covers its operation
10 expenses and to accomplish the purposes of this act.

11 C. The Director and the authorized representative of a
12 responsible state agency may jointly take action and execute any
13 contract for the provision of a public service or facility in order
14 to more efficiently and effectively provide public services
15 including by generating additional resources in support of those
16 public services and related projects.

17 D. The Director shall provide to the Legislature and post
18 online an annual report within six (6) weeks following the end of
19 each fiscal year that:

- 20 1. Lists those public-private partnerships that:
- 21 a. are expected to be soliciting bids within the next
 - 22 fiscal year,
 - 23 b. are in progress,
 - 24 c. were completed during the previous fiscal year, or
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1 d. were removed from consideration during the previous
2 fiscal year; and

3 2. Summarizes actions taken by the Office to fulfill its duties
4 pursuant to this section.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 131.4 of Title 74, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Any proposer or responsible state agency may submit to the
9 Office of Public-Private Partnerships one or more proposals for
10 partnership projects in connection with any public service. The
11 Office shall identify potential projects and public services for
12 which a public-private partnership may be appropriate from those
13 received from a proposer, a responsible state agency, or those
14 identified by the Office itself. The Office shall select such
15 projects based on the partnership's potential to improve public
16 operational efficiencies, improve environmental performance, promote
17 public safety, attract private investment in this state and
18 efficiently allocate risk.

19 B. After the Office identifies a potential partnership for a
20 public project or public service, the Office shall conduct a public-
21 sector comparator study of the potential partnership. The Office
22 shall determine the scope of each public-sector comparator, which
23 scope shall depend on the type of proposed partnership and the
24 nature of the public service under consideration for the

1 partnership. The following issues shall be considered as components
2 of a public-sector comparator:

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

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

8 3. A comparative analysis of rendering the public service by
9 allowing the responsible state agency to utilize traditional
10 methods;

11 4. The financial impact the partnership will have on the
12 responsible state agency;

13 5. The impact a partnership would have on job formation,
14 economic growth, and the community in which the public service is to
15 be rendered; and

16 6. A competitive neutrality adjustment.

17 C. The Office shall use the results of the public sector
18 comparator analysis to determine which public services and projects
19 are appropriate for partnership. The Office shall publish on its
20 website the analysis for each project to provide a public service
21 for which a request for qualifications is initiated.

22 D. The Office shall publish notice of the intent to enter into
23 a contract for a partnership for public service or related project
24 and shall prepare a request for qualifications for private sector
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1 entities interested in serving as proposers for the partnership.
2 The notice shall notify interested parties of the opportunity to
3 submit their qualifications for consideration and shall be published
4 at least thirty (30) days prior to the deadline for submitting those
5 qualifications. The Office also may advertise the information
6 contained in the notice in appropriate trade journals and otherwise
7 notify parties believed to be interested in providing the public
8 service and in any related project.

9 E. After inviting qualifications, the Office shall evaluate the
10 qualifications submitted and may hold discussions with proposers to
11 further explore their qualifications. Following this evaluation,
12 the Office may determine a list of qualified proposers based on
13 criteria in the invitation, select and rank no more than four
14 proposers, and invite only those proposers to submit a proposal.

15 F. The Office shall prepare a request for proposals and an
16 outline of the proposed partnership contract. Partnership contracts
17 may contain the terms and conditions to carry out and effect the
18 purposes of this act including the duration of the contract, rates,
19 or fees for the public services to be provided or methods or
20 procedures for the determination of such rates or fees, standards
21 for the public services to be provided, responsibilities and
22 standards for operation and maintenance of any related project,
23 required financial assurances, financial and other data reporting
24 requirements, bases and procedures for termination of the contract

1 and retaking of possession or title to the project, and events of
2 default and remedies upon default including mandamus, a suit in
3 equity, an action at law, or any combination of those remedial
4 actions.

5 G. After proposals are received, the Office, using the criteria
6 established in the request for proposals, shall evaluate the
7 proposals submitted and may hold discussions with proposers to
8 further explore their proposals, the scope and nature of the public
9 service or services they would provide, the various technical
10 approaches they may take regarding the public service, and any
11 related project, price, and other factors that determined best
12 value.

13 H. The Director and the authorized representative of the
14 responsible state agency shall negotiate the contract with the best
15 value proposer ranked most qualified to provide the public service
16 at a compensation determined in writing to be fair and reasonable,
17 and to purchase, lease, or otherwise take a legal interest in the
18 project.

19 1. Upon failure to negotiate a contract with the proposer
20 ranked most qualified, the Director shall inform the proposer in
21 writing of the termination of negotiations and may enter, with the
22 responsible state agency, into negotiations with the proposer ranked
23 next most qualified. If negotiations again fail, the same procedure
24 may be followed with each next most qualified proposer selected and

1 ranked, in order of ranking, until a contract is negotiated and
2 executed.

3 2. If the Director and the authorized representative of the
4 responsible state agency fail to negotiate a contract with any of
5 the ranked proposers, the Director, in consultation with the
6 responsible state agency, may terminate the process or select and
7 rank additional proposers, based on their qualifications or
8 proposals, and negotiations shall continue as with the proposers
9 selected and ranked initially until a contract is negotiated.

10 3. The Director and the authorized representative of the
11 responsible state agency may jointly reject any and all submissions
12 of qualifications or proposals and may jointly terminate the
13 procurement process at any point.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 131.5 of Title 74, unless there
16 is created a duplication in numbering, reads as follows:

17 The exercise of the powers granted by this act shall be for the
18 benefit of the people in this state and shall be liberally construed
19 to effect the purposes thereof. As the performance of public
20 services shall constitute the performance of essential government
21 functions, any project or part thereof owned by the state and used
22 for performing any public service pursuant to a contract entered
23 into in this act that would be exempt from taxation or assessments
24 in the absence of such contract shall remain exempt from taxation

1 and assessments levied by the state and its subdivisions to the same
2 extent as if not subject to that contract. Any transfer or lease
3 between a proposer and the state of a project or part thereof, or
4 item included or to be included in the project, shall be exempt from
5 the taxes levied if the state is retaining ownership of the project
6 or part thereof that is being transferred or leased.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 131.6 of Title 74, unless there
9 is created a duplication in numbering, reads as follows:

10 The Director of the Office of Public-Private Partnerships, in
11 consultation with the responsible state agency, may retain or
12 contract for the services of commercial appraisers, engineers,
13 investment bankers, financial advisors, accounting experts, and
14 other consultants, independent contractors or providers of
15 professional services as are necessary in the judgement of the
16 Director to carry out the powers and duties described in Section 2
17 of this act including identification of public services and any
18 related projects to be subject to invitations for qualifications or
19 proposals under this act, the development of those invitations and
20 related evaluation of those invitations, and negotiation of any
21 contract under this act.

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 131.7 of Title 74, unless there
24 is created a duplication in numbering, reads as follows:

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Any contracts the Office of Public-Private Partnerships enters into with proposers shall not be subject to the Oklahoma Central Purchasing Act.

SECTION 8. This act shall become effective November 1, 2022.

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