An Act

ENROLLED SENATE
BILL NO. 1052

By: Coates of the Senate

and

Liebmann of the House

An Act relating to public buildings; amending 61 O.S. 2011, Section 202, which relates to the Public Building Construction and Planning Act; defining terms; modifying definitions; modifying name of certain entity; amending 61 O.S. 2011, Section 204, which relates to master planning; modifying requirements for master planning process; requiring report of legislative recommendations for certain cost savings related to real property management by certain date; amending 61 O.S. 2011, Section 208.1, which relates to fees for certain services; authorizing fees for planning and real estate related services; providing for calculation of annual fees; amending 61 O.S. 2011, Section 208.2, which relates to the State Construction Revolving Fund; providing for monies appropriated for certain projects included in certain annual capital plan; and providing for payment of certain expenses.

SUBJECT: Public building construction

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 202, is amended to read as follows:

Section 202. As used in the Public Building Construction and Planning Act:

1. "Administrator" means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services of the Office of State Finance;

2. "Annual capital plan" means the collective state facility capital improvements and real property transactions approved by the Legislature relative to state construction, maintenance, and real estate services;

3. "Capital planning and asset management" means the processes delegated to the Construction and Properties Department for real property data acquisition, data analysis and determination of capital construction projects, disposition of real property and leasing of facility space;

4. "Construction" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, maintaining, leasing, disposing or demolishing any structure or appurtenance thereto including facilities, utilities, or other improvements to any real property but not including highways, bridges, airports, railroads, tunnels, sewers not related to a structure or appurtenance thereto, or dams;

~~3.~~ 5. "Construction administration" means a series of actions required of the State Construction Administrator, of other state agency employees, or, under a construction administration contract or contract provision, to ensure the full, timely, and proper performance of all phases of a construction project by all contractors, suppliers, and other persons having responsibility for project work and any guarantees or warranties pertaining thereto;

~~4.~~ 6. "Construction management" means a project delivery method based on an agreement whereby the owner acquires from a construction entity a series of services that include, but are not necessarily limited to, design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration; "construction management" includes:

a. "agency construction management" whereby the construction entity provides services to the owner

without taking on financial risks for the execution of the actual construction, and

b. "at-risk construction management" whereby the construction entity, after providing agency services during the pre-construction period, takes on the financial obligation to carry out construction under a specified cost agreement;

~~5.~~ 7. "Consultant" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, ~~or~~ registered land surveying, certified appraisal, land title, or abstract services or possessing specialized credentials and qualifications as may be needed to evaluate, plan or design for any construction or public work improvement project, or to lease, acquire or dispose of state-owned real property;

~~6.~~ 8. "Design-build" means a project delivery method whereby ~~this~~ the state acquires both design and construction services in the same contract from a single legal entity, referred to as the design-builder, without the bid component of the traditional design-bid-build process;

~~7.~~ 9. "Department" means the Department of Central Services of the Office of State Finance;

~~8.~~ 10. "Director" means the Director of the ~~Department of Central Services~~ Office of State Finance;

~~9.~~ 11. "Division" means the Construction and Properties Division of the Department of Central Services of the Office of State Finance;

~~10.~~ 12. "Energy performance index or indices" (EPI) means a number describing the energy requirements at the building boundary of a structure, per square foot of floor space or per cubic foot of occupied volume, as appropriate under defined internal and external ambient conditions over an entire seasonal cycle. As experience develops on the energy performance achieved with state construction, the indices (EPI) will serve as a measure of structure performance with respect to energy consumption;

~~11.~~ 13. "Life cycle costs" means the cost of owning, operating, and maintaining the structure over the life of the structure. This may be expressed as an annual cost for each year of the facility's use;

~~12.~~ 14. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring or disposing of supplies, services, or construction;

~~13.~~ 15. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, provided that the materials are not purchased in increments for an amount of less than Twenty-five Thousand Dollars ($25,000.00) and used for the purposes of completing a single project, equipment or supplies by a public agency, or any personal property as defined in paragraphs 1 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma Statutes;

~~14.~~ 16. "Shared savings financing" means the financing of energy conservation measures and maintenance services through a private firm which may own any purchased equipment for the duration of a contract. Such contract shall specify that the private firm will be recompensed either out of a negotiated portion of the savings resulting from the conservation measures and maintenance services provided by the private firm or, in the case of a cogeneration project, through the payment of a rate for energy lower than would otherwise have been paid for the same energy from current sources; and

~~15.~~ 17. "State agency" means an agency, board, commission, counsel, court, office, officer, bureau, institution, unit, division, body, or house of the executive or judicial branches of government of this state, whether elected or appointed, excluding only political subdivisions.

SECTION 2. AMENDATORY 61 O.S. 2011, Section 204, is amended to read as follows:

Section 204. A. The Construction and Properties Division ~~of the Department of Central Services~~ shall:

1. Maintain a comprehensive master plan for utilization and construction of buildings for state agencies, capital improvements, and utilization of land owned by this state. Requirements of the master planning process shall include:

a. reporting by each state agency concerning facility needs,

b. data acquisition of condition and performance benchmarking of state agency facilities,

c. analyses and audits of state agency facilities, properties and leaseholds to determine critical and long-range needs,

d. development of state agency long-range strategic facility plans,

e. short-range project programming to identify budget requests for facility capital improvements and asset management decisions, and

f. an annual capital plan for all state agencies submitted to the Legislature for line-item appropriation requests;

2. Review and approve all construction plans and specifications to ensure compliance with good construction practices and space standards, costs of project, proposed construction timetables, and agency need for the project, except as otherwise provided in subsection B of this section;

3. Inspect prior to acceptance and final payment all completed projects for which the Division issued bid solicitations to ensure compliance with the plans and specifications of the project;

4. Provide assistance to state agencies when a state agency desires to hire a consultant or construction manager for a project. Except as provided by subsection B of this section, the Division

shall award and execute contracts to consultants and construction managers that provide services to state agencies for construction projects;

5. Develop and issue solicitations for award of state agency contracts for construction. The Division shall have final approval authority for contracts and contract documents. Neither the Division nor any state agency shall, for performance of work that requires that a contractor be licensed by this state, issue a solicitation to, or make a contract with, a contractor not licensed by this state;

6. Review inspections performed by consultants and construction managers during construction, primary inspections when consultants or construction managers are not used, and final inspections after completion;

7. Recommend standards, including, but not limited to, building codes, space utilization, material testing, indexes of efficiency, economy, and effectiveness, pursuant to rules the Director promulgates;

8. Monitor construction projects to ensure maximum efficiency in the expenditure of state funds for construction;

9. Report fraud or waste in any construction project by written notification with documentation for the report to the Attorney General. The Attorney General shall take appropriate action to protect the interest of the state; and

10. Prequalify as good and sufficient insurance carriers, bonding companies and surety companies to meet provisions of Sections 1 and 134 of this title. The Director shall promulgate rules to establish criteria to determine whether a carrier or company is good and sufficient. The prequalification requirement and process shall not violate the provisions of Section 135 of this title.

B. When a state agency has a licensed architect or licensed engineer, as a full-time employee, to review construction plans and specifications, the review and approval of all construction plans

and specifications required pursuant to paragraph 2 of subsection A of this section shall not apply to:

1. The common schools subject to the jurisdiction of the State Department of Education;

2. The Department of Transportation with respect to highways, bridges and dams;

3. The Oklahoma State System of Higher Education;

4. The Military Department of the State of Oklahoma;

5. The Oklahoma Tourism and Recreation Department; and

6. The Department of Human Services.

C. Not later than December 31, 2012, with the advice of the State Construction Administrator, the Director of the Office of State Finance shall provide a report containing recommendations to the Legislature for the streamlining, integration, and consolidation of state construction, maintenance, and real property management processes to maximize capital assets and achieve cost savings to the state. The report shall identify the necessary planning processes for transitioning from a decentralized capital budgeting process to a centralized annual capital plan appropriation process, to be implemented no later than January 1, 2014.

SECTION 3. AMENDATORY 61 O.S. 2011, Section 208.1, is amended to read as follows:

Section 208.1. The Construction and Properties Division ~~of the Department of Central Services~~ may collect a reasonable fee for the purpose of providing or contracting for architectural, engineering, ~~and~~ land surveying, planning, real estate and related services to state agencies and political subdivisions of the state, and from persons requesting plans and notification of solicitations issued by the Division. The Division may collect a reasonable fee for ~~contract~~ management ~~for a construction project~~ services. Annual fees to the Division may be calculated as a percentage of annual construction and real estate services in an amount necessary to support Division operation as designated in the annual capital plan.

All fees collected in accordance with the provisions of this section shall be deposited in the "State Construction Revolving Fund" created in Section 208.2 of this title.

SECTION 4. AMENDATORY 61 O.S. 2011, Section 208.2, is amended to read as follows:

Section 208.2. There is hereby created in the State Treasury a revolving fund for the Construction and Properties Division of the Department of Central Services, to be designated the "State Construction Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all funds appropriated by the Legislature for projects included in the annual capital plan; funds from nonappropriated sources designated for projects within a capital plan; and fees collected by the Division in accordance with the provisions of this section or as otherwise provided by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Division. The fund shall be used to pay expenses resulting from contracts awarded by the Division and to defray Division operating costs and expenses the Department incurs to support Division operations. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

Passed the Senate the 12th day of March, 2012.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of April, 2012.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 30th

day of April, 2012,

at 2:59 o'clock PM.

By: Jennifer R Byers

Approved by the Governor of the State of Oklahoma the 4th day of

May, 2012, at 11:13 o'clock AM.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

4th day of May, 2012,

at 1:47 o'clock PM.

By: Michelle R Day