

An Act

ENROLLED HOUSE
BILL NO. 1990

By: Brumbaugh and Murphey of
the House

and

Treat of the Senate

An Act relating to public buildings and public works; amending 61 O.S. 2011, Sections 60, 61, 62, 63 and 65, as amended by Sections 305, 306, 307, 309 and 310, Chapter 304, O.S.L. 2012, Section 201, Section 202, as last amended by Section 48 of Enrolled Senate Bill No. 977 of the 1st Session of the 54th Oklahoma Legislature, Sections 202.1 and 203, as amended by Sections 319 and 320, Chapter 304, O.S.L. 2012, Section 204, as last amended by Section 50 of Enrolled Senate Bill No. 977 of the 1st Session of the 54th Oklahoma Legislature, Section 208, as amended by Section 324, Chapter 304, O.S.L. 2012, Sections 208.1 and 208.2, as last amended by Sections 52 and 54 of Enrolled Senate Bill No. 977 of the 1st Session of the 54th Oklahoma Legislature, Section 208.3 and Sections 209, 210, 213 and 220, as amended by Sections 327, 328, 331 and 332, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Sections 60, 61, 62, 63, 65, 202.1, 203, 208, 209, 210, 213 and 220), which relate to the Public Building Construction and Planning Act; modifying references; modifying definitions; creating the Department of Real Estate Services; creating within the Department the position of State Facilities Director; modifying qualifications of Director; requiring the Department of Real Estate Services to perform procurement actions for certain agencies; increasing amount of certain contract; providing exceptions for certain notice and bids; modifying definitions; eliminating annual reporting requirement from the State Construction Administrator; providing State Facilities Director with certain authority; providing that certain terms have certain meanings; modifying

duties of the Department; authorizing Department to issue solicitations and award statewide contracts for managed construction service; authorizing Department to provide management and maintenance for certain agencies; allowing Director to authorize exemptions; modifying the State Construction Revolving Fund; modifying the adoption of certain construction standards; eliminating definitions; and providing an effective date.

SUBJECT: Public buildings and public works

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 60, as amended by Section 305, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 60), is amended to read as follows:

Section 60. All state agencies, boards, commissions, offices, institutions, and other governmental bodies of this state, and all individuals representing such entities, except the Department of Transportation, the Oklahoma Turnpike Authority, the Oklahoma State Regents for Higher Education and its constituent institutions and CompSource Oklahoma provided CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections 3316 and 3317 of Title 74 of the Oklahoma Statutes, shall use construction manager, consultant and construction contract forms that the State ~~Construction Administrator~~ Facilities Director of the Construction and Properties Division Department of Real Estate Services of the Office of Management and Enterprise Services requires to award and execute contracts for designs to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property of the state. The ~~Administrator~~ State Facilities Director may authorize, in writing, exceptions to the use of construction manager, consultant and construction contract forms for specific projects.

SECTION 2. AMENDATORY 61 O.S. 2011, Section 61, as amended by Section 306, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 61), is amended to read as follows:

Section 61. As used in Sections 61 through 65 of this title:

1. ~~"Administrator" means the State Construction Administrator of the Construction and Properties Division of the Office of Management and Enterprise Services;~~

2. "Chief administrative officer" means an individual responsible for directing the administration of a state agency. The term does not mean one or all of the individuals that make policy for a state agency;

3. ~~2.~~ "Construction manager" means an individual, firm, corporation, association, partnership, copartnership, or any other legal entity possessing the qualifications to provide services of construction management which 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;

4. ~~3.~~ "Consultant" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or other individuals or legal entities possessing specialized credentials and qualifications as may be needed to evaluate, plan or design for any construction or a public work improvement project;

5. ~~4.~~ "Director" means the Director of the Office of Management and Enterprise Services;

6. ~~"Division 5. "Department" means the Construction and Properties Division Department of Real Estate Services of the Office of Management and Enterprise Services;~~

7. ~~6.~~ "Office" means the Office of Management and Enterprise Services;

8. ~~7.~~ "Project" means studies, evaluations, plans or designs for a facility evaluations or public work improvement improvements, except the transportation facilities under the jurisdiction of the Department of Transportation or the Oklahoma Turnpike Authority:

- a. to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property, and
- b. that does not constitute "construction" as defined by the Public Building Construction and Planning Act; ~~and~~

9. 8. "State agency" means an agency, office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of state government, whether elected or appointed, excluding only political subdivisions of the state and the Oklahoma State Regents for Higher Education and its constituent institutions; and

9. "Facilities Director" or "SFD" means the State Facilities Director of the Department of Real Estate Services of the Office of Management and Enterprise Services.

SECTION 3. AMENDATORY 61 O.S. 2011, Section 62, as amended by Section 307, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 62), is amended to read as follows:

Section 62. A. ~~The Construction and Properties Division~~ Department of Real Estate Services of the Office of Management and Enterprise Services shall maintain a file of all persons and entities interested in and capable of performing construction management and consultant services for state agencies. The file shall include registration forms and information submitted by construction managers and consultants pursuant to rules promulgated by the Office of Management and Enterprise Services. Pursuant to rules promulgated by the Office, the ~~Division~~ Department shall determine whether a construction manager or consultant qualifies for registration and shall notify the construction manager or consultant within twenty (20) days of receipt of a request for registration. Construction managers and consultants shall re-register for each successive calendar year with the ~~Division~~ Department.

B. The requisitioning state agency shall define the scope of a proposed project. The scope shall identify project components, phases, and timetables and shall include detailed project descriptions. The state agency may request the ~~Division~~ Department to assist with scope development. The state agency shall send the scope and a requisition for construction management or consultant services, signed by ~~the chief administrative officer~~ an authorized official, to the ~~Division~~ Department. The ~~Division~~ Department shall review the scope and approve it before the state agency issues a solicitation.

C. The state agency shall issue a solicitation to construction managers or consultants that are registered with the Department and

capable of providing the services the state agency desires. The solicitation shall, at a minimum, contain:

1. Description and scope of the project;
2. Estimated construction cost or available funds, anticipated starting date, and completion date the state agency desires for the project;
3. Certification of funds available for the construction manager or consultant fee, including federal, state or other participation;
4. Closing date for construction manager or consultant to give notice of interest to the state agency; and
5. Additional data the state agency requires from the construction manager or consultant. The closing date for submission of construction manager or consultant notice of interest for consideration shall be within thirty (30) days of the date of the notice the state agency issues.

D. After the closing date, the ~~State Construction Administrator of the Construction and Properties Division of the Office of Management and Enterprise Services~~ Department shall provide information from the construction managers' or consultants' files to the state agency. Should there be an inadequate expression of interest in the project, the state agency and ~~Division~~ Department personnel shall confer to add construction managers or consultants for consideration.

E. The state agency shall review the information the ~~Division~~ Department provides and shall select no less than three and no more than five construction managers or consultants per contract for interviews. The review shall include consideration of factors from the information the ~~Division~~ Department supplies including, but not limited to:

1. Professional qualifications for the type of work contemplated;
2. Capacity for completing the project in the specified time period; and
3. Past performance on projects of a similar nature.

F. The ~~Division~~ Department shall advise the state agency of the methods to be used to conduct an evaluation, interview, selection, contract negotiation, and fee negotiation processes pursuant to rules promulgated by the Office of Management and Enterprise Services.

G. 1. Upon completion of contract negotiation with the highest qualified construction manager or consultant, which contract shall include a fair and reasonable fee, the ~~Division~~ Department shall approve and award the contract.

2. If the ~~Division~~ Department and the first-choice construction manager or consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the second-choice construction manager or consultant shall commence. If the ~~Division~~ Department and the second-choice construction manager or consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the third-choice construction manager or consultant shall commence. If the ~~Division~~ Department and the third-choice construction manager or consultant cannot reach an agreement, then all negotiations shall terminate. Should the ~~Division~~ Department be unable to negotiate a satisfactory contract with any of the three selected construction managers or consultants, the ~~Division~~ Department shall select additional construction managers or consultants in order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

H. Any plans developed pursuant to the process for selection of a contractor for construction of a facility authorized pursuant to Section 183 of Title 73 of the Oklahoma Statutes shall become the property of the State of Oklahoma as a condition of the award of the final contract for construction of the facility.

I. For all state agencies subject to the Public Facilities Act, Sections 202 through 220 of this title, the Department shall perform the necessary procurement actions on behalf of a requisitioning agency as enumerated in subsections B through H of this section:

1. Determine or approve the agency's scope of a project and required services as provided in the Public Facilities Act;

2. Issue solicitations for construction manager and consultant services;

3. Conduct evaluations, interviews, selection, contract negotiation, and fee negotiation processes; and

4. Provide contract management services after award of a construction management or consultant contract.

J. In the selection of a construction manager or consultant, all political subdivisions of this state shall follow these procedures:

The subdivision shall select a construction manager or consultant based upon the professional qualifications and technical experience of the construction manager or consultant. The subdivision shall negotiate a contract with the highest qualified construction manager or consultant, provided that a fee can be negotiated that is fair and reasonable to both parties. In the event a reasonable fee cannot be negotiated with the selected construction manager or consultant, the subdivision may negotiate with other construction managers or consultants in order of their qualifications.

SECTION 4. AMENDATORY 61 O.S. 2011, Section 63, as amended by Section 309, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 63), is amended to read as follows:

Section 63. All drawings, plans, specifications, reports, and models made by a construction manager or consultant for a state agency shall be the property of this state, and shall be delivered to the ~~Construction and Properties Division~~ Department of Real Estate Services of the Office of Management and Enterprise Services. ~~The construction manager or consultant receiving payment for plans paid for in whole or in part with state funds~~ agency shall file such plans with the ~~Division~~ Department for inclusion in a library system to be maintained by the ~~Division~~ Department. Any state agency shall have access for review to any plans or specifications filed with the ~~Division~~ Department.

SECTION 5. AMENDATORY 61 O.S. 2011, Section 65, as amended by Section 310, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 65), is amended to read as follows:

Section 65. A. In addition to the conditions prescribed pursuant to subsections C and D of this section, the provisions of Section 62 of this title shall not apply whenever the ~~Construction~~

~~and Properties Division~~ Department of Real Estate Services of the Office of Management and Enterprise Services with concurrence of the chief administrative officer of the public agency affected declares that an emergency exists. The construction manager or consultant shall be selected by the State ~~Construction Administrator~~ Facilities Director of the ~~Construction and Properties Division~~ Department of Real Estate Services of the Office of Management and Enterprise Services. The resulting construction manager or consultant contract shall not exceed ~~Fifteen Thousand Dollars (\$15,000.00)~~ Fifty Thousand Dollars (\$50,000.00). The reasons for the emergency shall be recorded in the official records of the ~~Division~~ Department.

B. Emergency as used in this section shall be limited to conditions resulting from any of the following:

1. A sudden unexpected happening or unforeseen occurrence if it is impossible for the provisions of Section 62 of this title to be observed because of the time factor and if the public health or safety is endangered; and

2. A condition or situation which, if allowed to continue, would lead to economic loss to the state or to further damage of state property.

C. The provisions of Section 62 of this title shall not apply to the process for construction of a correctional facility whenever the State Board of Corrections informs the ~~Division~~ Department that an emergency condition threatens the security of the state correctional system, including inmate population growth, and the condition requires expeditious treatment for the review, approval and bid process as it relates to construction or expansion of correctional facilities. The ~~Division~~ Department and the Department of Corrections are authorized to implement an expedited competitive bid process for the contracting of construction managers or consultants and construction of new or expanded correctional facilities that adequately respond to the emergency. The State Board of Corrections shall provide written notification to the Governor, the Speaker of the House of Representatives and to the President Pro Tempore of the Senate of the emergency conditions.

D. The provisions of Section 62 of this title shall not apply to CompSource Oklahoma if CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections 3316 and 3317 of Title 74 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 61 O.S. 2011, Section 201, is amended to read as follows:

Section 201. Sections 202 through ~~209~~ 220 of this title shall be known and may be cited as the "Public ~~Building Construction and Planning~~ Facilities Act".

SECTION 7. AMENDATORY 61 O.S. 2011, Section 202, as last amended by Section 48 of Enrolled Senate Bill No. 977 of the 1st Session of the 54th Oklahoma Legislature, is amended to read as follows:

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

1. ~~"Administrator" means the State Construction Administrator of the Construction and Properties Division of the Office of Management and Enterprise Services;~~

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, facility operations and maintenance, rent and lease payments, facility debt services, water, sewer and energy utilities and real property transactions approved by the Legislature in a capital budget relative to state construction, maintenance, and real estate services;~~

~~3.~~ 2. ~~"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~~ Department of Real Estate Services for real property data acquisition, data analysis and determination of capital construction projects and procurement related to real property;

4. 3. "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;

5. 4. "Construction administration" means a series of actions required of the ~~State Construction Administrator~~ State Facilities Director, 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;

5. "Department" means the Department of Real Estate Services of the Office of Management and Enterprise Services;

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;

7. "Consultant" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, 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;

8. ~~"Design-build" means a project delivery method whereby 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;~~

~~9. "Director" means the Director of the Office of Management and Enterprise Services;~~

~~10. "Division" means the Construction and Properties Division of the Office of Management and Enterprise Services;~~

~~11. 9. "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;~~

~~12. 10. "Facilities Director" or "SFD" means the State Facilities Director of the Department of Real Estate Services of the Office of Management and Enterprise Services;~~

~~11. "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;~~

~~13. 12. "Office" means the Office of Management and Enterprise Services;~~

~~14. 13. "Procurement" means buying, purchasing, renting, leasing, allocating, trading or otherwise acquiring or disposing of supplies, services, or construction necessary to evaluate, plan, construct, manage, operate and preserve real property capital assets;~~

~~15. 14. "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 state agency and the State of Oklahoma, 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 used for general repairs and maintenance to state facilities;~~

~~16.~~ 15. "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

~~17.~~ 16. "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 and the Oklahoma State Regents of Higher Education and its constituent institutions.

SECTION 8. AMENDATORY 61 O.S. 2011, Section 202.1, as amended by Section 319, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 202.1), is amended to read as follows:

Section 202.1 A. The design-build and construction management project delivery methods shall not be used without the written approval of the Director of the Office of Management and Enterprise Services, or the Director's designee, when those projects are constructed for a state agency or by an act of the Legislature specifying design-build or at-risk construction management for a project. In all instances where the design-build project or at-risk construction management delivery method is authorized, construction administration shall be performed by the State ~~Construction Administrator~~ Facilities Director, the ~~Administrator's~~ SFD's designee or designees, or otherwise by contract or contract provision approved by the Director of the Office of Management and Enterprise Services for construction administration by another party.

B. Municipalities, counties, public trusts, or any other political subdivision in this state shall not be required to get approval of any other state agency in order to use ~~design-build~~ agency construction management or at-risk construction management as a construction ~~management~~ delivery method. However, municipalities, counties, public trusts, and any other political subdivision shall

be subject to all other provisions of the ~~Public Building Construction and Planning Act~~ Section 220 of this title.

C. The design-build and construction management project delivery methods shall not be used for any project unless the project meets the criteria established by the administrative rules promulgated as required by this act. Such methods shall not be used unless there is a need for compressed construction time as required to respond to a natural disaster or other emergency situation affecting public health and safety, or all of the following criteria for designation are met:

1. The project benefits the public;
2. There is a need for cost control; and
3. The need exists for specialized or complex construction methods due to the unique nature of the project.

D. The use of design-build and construction management project delivery methods shall not interfere or inhibit the opportunity for subcontractors to openly and freely compete for subcontracts pursuant to the Public Competitive Bidding Act of 1974 with respect to public notices.

E. The provisions of subsections A and B of this section shall not apply to projects by contract pursuant to an interagency agreement under Section 581 of Title 74 of the Oklahoma Statutes or to projects a state agency performs solely with the staff of the agency.

~~F. The State Construction Administrator shall file an annual report to the legislature summarizing cost information for each construction management project completed the preceding year.~~

~~G. The Office of Management and Enterprise Services shall, pursuant to the Administrative Procedures Act, promulgate rules to effect procedures, processes and design-build/construction management fee guidelines necessary to the fulfillment of its responsibilities under this section.~~

~~H. G. As used in the Public Building Construction and Planning Facilities Act, public trusts shall not include state beneficiary public trusts.~~

SECTION 9. AMENDATORY 61 O.S. 2011, Section 203, as amended by Section 320, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 203), is amended to read as follows:

Section 203. A. There is hereby created within the Office of Management and Enterprise Services the ~~Construction and Properties Division~~ Department of Real Estate Services.

B. There is hereby created within the ~~Division~~ Department the position of State ~~Construction Administrator~~ Facilities Director who shall be the chief administrative officer of the ~~Division~~ Department and chief official over procurement as authorized in this act. The ~~Administrator~~ State Facilities Director shall be a registered professional engineer ~~or~~, a licensed architect or an individual credentialed and experienced in the field of real property administration who shall be appointed by and serve at the pleasure of the Director.

C. The State Facilities Director or designee shall have authority over planning, procurement, contracts, facility management, property standards, state leasing and real estate brokerage services as delegated to the Department.

D. The Director shall employ or contract with experts and consultants as are necessary to perform the duties of the ~~Division~~ Department.

E. Anywhere the terms "State Construction Administrator" and "Construction and Properties Division" appear in the Oklahoma Statutes, they shall have the same meaning as "State Facilities Director" and "Department of Real Estate Services" respectively.

SECTION 10. AMENDATORY 61 O.S. 2011, Section 204, as last amended by Section 50 of Enrolled Senate Bill No. 977 of the 1st Session of the 54th Oklahoma Legislature, is amended to read as follows:

Section 204. A. ~~The Construction and Properties Division of the Office of Management and Enterprise Services~~ Department of Real Estate Services shall:

1. Maintain a comprehensive master plan for utilization and construction of state 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~~ Department 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~~ Select and hire a consultant or consultants and construction manager managers for a project projects as determined or approved by the Department. ~~Except as provided by subsection B of this section, the Division~~ The Department shall select, award and execute contracts to consultants and construction managers that provide services to state agencies for construction projects subject to this act;

5. Develop and issue solicitations for award of state agency contracts for construction services. The ~~Division~~ Department shall have final approval authority for contracts and contract documents.

Neither the ~~Division~~ Department nor any ~~state agency~~ public entity 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, perform primary inspections when consultants or construction managers are not used, and final inspections after completion;

7. ~~Recommend~~ Establish standards, ~~including, but not limited to, building codes and policies as required to standardize facility assessment and benchmarking, facility operations and maintenance, asset preservation, design and energy standards, space utilization, material testing, indexes of efficiency, economy, and effectiveness,~~ pursuant to rules the Director promulgates;

8. Monitor indices of facility condition, effectiveness of operations and maintenance programs, deferred maintenance prioritization, effectiveness of planning processes, budgeting for capital needs, application of facility standards as established by the Department, and performance outcomes of construction projects to ensure maximum efficiency in the expenditure of state funds for construction asset management and preservation of the state's capital real property;

9. Coordinate, monitor and report on statewide energy conservation programs delegated to the Office;

10. Provide property leasing and brokerage services delegated to the Office;

11. 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.~~ 12. 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~~ employs 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;~~ said licensed employee may conduct required facility planning, prepare project plans and specifications and monitor construction work as prescribed by the Department. State agencies authorized to employ licensed architects and engineers for the purposes of this section include:

~~2.~~ 1. The Department of Transportation with respect to highways, bridges and dams;

~~3.~~ 2. The Oklahoma State ~~System of Regents for Higher Education and its constituent institutions;~~

~~4.~~ 3. The Military Department of the State of Oklahoma;

~~5.~~ 4. The Oklahoma Tourism and Recreation Department; and

~~6.~~ 5. The Department of Human Services.

C. Not later than December 31, 2012, with the advice of the State ~~Construction Administrator~~ Facilities Director, the Director of the Office of Management and Enterprise Services 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 11. AMENDATORY 61 O.S. 2011, Section 208, as amended by Section 324, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 208), is amended to read as follows:

Section 208. A. ~~The Construction and Properties Division~~ Department of Real Estate Services of the Office of Management and Enterprise Services shall ~~approve state agency selection of,~~ select

and award contracts to construction managers and design consultants pursuant to the provisions of Section 62 of this title.

B. The negotiation of construction manager and design consultant contracts and fees shall be performed by the Division Department.

C. The Division Department shall award and administer construction contracts for state agencies pursuant to the provisions of the Public Competitive Bidding Act of 1974.

D. 1. When all bids for a public construction contract exceed ~~an agency's~~ the programmed estimate and available funding, the ~~State Construction Administrator~~ Department may enter into negotiations with the lowest responsible bidder for the purpose of modifying the project scope and reducing the construction cost, provided that:

- a. the unexpected higher construction costs resulted from unforeseen economic conditions or otherwise sudden price volatility in the construction industry,
- b. the project was appropriately planned, and cost estimates were developed using standards of care acceptable to the Division Department, and
- c. further delay caused by redesigning and rebidding the project would jeopardize the using agency's mission or result in the loss of a planned funding source.

2. To request consideration for negotiations pursuant to this subsection, the using agency, within ten (10) days of the bid opening date, shall make a written request to the Director of the Office of Management and Enterprise Services to enter into negotiations pursuant to paragraph 1 of this subsection. If approved by the Director, the ~~State Construction Administrator~~ Department shall consult with the using agency, consultant and low bidder on methods to reduce the project scope or other cost-saving measures.

3. If a suitable revised scope and contract amount is agreed upon by the using agency, low bidder and ~~State Construction Administrator~~ the SFD, the Division Department may award the public construction contract to the low bidder.

4. The State Construction Administrator Department shall negotiate a fair and reasonable fee with the project's consultant, if applicable, to make any necessary revisions to the contract documents. The cost of this additional consulting work shall be paid from the agency's available funds.

5. Approval and final award of the contract for the construction negotiated pursuant to this subsection shall occur no later than one hundred twenty (120) days from the opening bid.

E. The Department of Real Estate Services is authorized to issue solicitations and award statewide contracts for managed construction service delivery in order to provide efficient and cost-effective procurement solutions for public agencies. Statewide contracts may be either mandatory or nonmandatory as determined by the SFD.

F. The Department of Real Estate Services is authorized to provide facility management and operations and maintenance services for any state agency on a cost-recovery basis for any facility operated by a state agency when:

1. The state agency initiates a request with the SFD; or

2. Beginning on or after July 1, 2016, the SFD determines a state agency is performing in the bottom ten percent (10%) of all state agencies with respect to performance measures for facility management established by the Department.

G. In addition to the exception from this act hereby provided to the Oklahoma State Regents for Higher Education and its constituent institutions, the State Facilities Director may authorize an exemption to the provisions of this act to any other state agency provided that the recipient of the exemption:

1. Adopts standards, processes and procedures for planning, budgeting, design, facility management, asset management and asset preservation that are substantially compliant with those as prescribed by the Department;

2. Adheres to procurement requirements of Sections 62 through 65 of this title and the provisions of this act;

3. Reports benchmark, budget and ongoing performance data required by the Department; and

4. Participates in annual performance reviews and organized forums for promoting best practices statewide as determined by the SFD.

SECTION 12. AMENDATORY 61 O.S. 2011, Section 208.1, as last amended by Section 52 of Enrolled Senate Bill No. 977 of the 1st Session of the 54th Oklahoma Legislature, is amended to read as follows:

Section 208.1 ~~The Construction and Properties Division of the Office of Management and Enterprise Services~~ Department of Real Estate Services may collect a reasonable fee for the purpose of providing or contracting for architectural, engineering, 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~~ Department. ~~The Division~~ Department may collect a reasonable fee for management services. Annual fees to the ~~Division~~ Department shall be on a cost-recovery basis and may be calculated as a percentage of annual construction and real estate services in an amount necessary to support ~~Division~~ Department 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 13. AMENDATORY 61 O.S. 2011, Section 208.2, as last amended by Section 54 of Enrolled Senate Bill No. 977 of the 1st Session of the 54th Oklahoma Legislature, 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~~ Department of Real Estate Services of the Office of Management and Enterprise 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; allocations from an approved annual capital plan designed for assessment and planning services; allocations from an approved annual capital plan for emergency response in accordance with Section 130 of this title; and fees collected by the ~~Division~~ Department 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~~ Department. The fund shall be used to pay expenses resulting from contracts awarded by the ~~Division~~ Department and to defray ~~Division~~ Department operating costs and expenses the ~~Department~~ Office incurs to support ~~Division~~ Department 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 the Office of Management and Enterprise Services for approval and payment.

SECTION 14. AMENDATORY 61 O.S. 2011, Section 208.3, is amended to read as follows:

Section 208.3 Nothing in the Public ~~Building Construction and Planning~~ Facilities Act shall be construed to prevent any state entity exempted from any of the provisions of the Public ~~Building Construction and Planning~~ Facilities Act from complying with any provisions of the Public ~~Building Construction and Planning~~ Facilities Act.

SECTION 15. AMENDATORY 61 O.S. 2011, Section 209, as amended by Section 327, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 209), is amended to read as follows:

Section 209. The Director of the Office of Management and Enterprise Services shall promulgate rules:

1. For state agencies to perform minor construction projects;
2. Specifying building codes pursuant to the Oklahoma Uniform Building Code Commission Act for construction projects;
3. Permitting state agencies who have the expertise, upon written application to the ~~Construction and Properties~~ Division Department of Real Estate Services of the Office of Management and Enterprise Services, to perform any part of the responsibilities of the ~~Division~~ Department pursuant to the provisions of the Public ~~Building Construction and Planning~~ Facilities Act for a specific project;
4. Specifying procedures and guidelines for the implementation of shared savings financing by state agencies;

5. Specifying energy conservation performance guidelines, for conducting a life cycle cost analysis of alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in existing state-owned or leased structures and for developing energy performance indices to evaluate the efficiency of energy utilization for completing designs in the construction of state-financed and leased structures;

6. The time, manner, authentication, and form of making requisitions to the ~~Division~~ Department;

7. The form and manner of submission for bids or proposals and the manner of accepting and opening bids or proposals that may include online bids pursuant to the Oklahoma Online Bidding Act;

8. The manner for a state agency to acquire services for construction projects ~~not exceeding the amount for which competitive bids are required pursuant to Section 102 of this title~~;

9. Conditions under which any of the rules herein authorized may be waived;

10. The form of any document the Director requires;

11. Specifying provisions ~~the Division of~~ a state agency shall follow to adhere to acquisition, contract, contract management and other provisions of this title; and

12. Specifying the process a state agency shall follow to establish the scope of work, schedule and cost estimate for all publicly bid construction projects involving construction or renovation of buildings. ~~This requirement shall not apply to project planning work performed by a state agency which employs an architect pursuant to other provisions of this act.~~

SECTION 16. AMENDATORY 61 O.S. 2011, Section 210, as amended by Section 328, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 210), is amended to read as follows:

Section 210. A. Shared savings contracts shall be developed in accordance with a model contract ~~to be developed by the Construction and Properties Division~~ Department of Real Estate Services of the Office of Management and Enterprise Services. The model contract shall include:

1. The methodology for calculating baseline energy costs;
2. A procedure for revising these costs should the state institute additional energy conservation features or structure use change;
3. A requirement for a performance bond guaranteeing that the structure will be restored to the original condition in the event of default;
4. A provision for early ~~buy-out~~ buyout;
5. A clause specifying who will be responsible for maintaining the equipment; and
6. A provision allowing the disposal of equipment at the end of the contract.

No state agency or department shall substantially alter the provisions described in the model without the permission of the ~~Division~~ Department.

B. Contracts subject to this section shall be awarded pursuant to the provisions of subsection A of Section 208 of this title.

SECTION 17. AMENDATORY 61 O.S. 2011, Section 213, as amended by Section 331, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 213), is amended to read as follows:

Section 213. ~~A.~~ The purpose of this section is to promote effective energy and environmental standards for the construction, renovation, and maintenance of public state buildings ~~in this state~~ which will improve the capacity of the state to design, build, and operate high-performance buildings thus creating new jobs, contributing to economic growth, and increasing energy independence. To accomplish the objectives of this section, the state shall adopt planning and construction standards for public state buildings that:

1. ~~Optimize~~ Conserve energy consumption and optimize the energy performance of public buildings in the state new building construction;
2. Increase the demand for environmentally preferable building materials, finishes, and furnishings;

3. Reduce the dependence of the state on imported sources of energy through buildings that conserve energy and utilize local and renewable energy sources;

4. Protect and restore the natural resources of the state by avoiding development of inappropriate building sites;

5. Reduce the burden on municipal water supply and treatment by reducing potable water consumption;

6. Reduce waste generation and manage waste through recycling and diversion from landfill disposal;

7. Establish life-cycle cost analysis as the appropriate and most efficient analysis to determine the optimal performance level of a building project;

8. Ensure that the systems of each building project are designed, installed, and tested to perform according to the design intent and operational needs of the building ~~through third party postconstruction review and verification~~; and

9. Authorize the Office of Management and Enterprise Services to pursue ENERGY STAR designation from the United States Environmental Protection Agency to further demonstrate the energy ~~independence~~ efficiency of a public building project.

~~B. For purposes of this section:~~

~~1. "High performance certification program" means a public building design, construction, and renovation standard which meets either the standards of the United States Green Building Council's Leadership in Energy and Environmental Design Rating System (LEED) or the standards of the Green Building Initiative's Green Globes Rating System, and which:~~

- ~~a. is quantifiable, measurable, and verifiable as certified by an independent third party,~~
- ~~b. reduces the operating costs of public buildings by reducing the consumption of energy, water, and other resources,~~
- ~~c. results in the recovery of the increased initial capital costs attributable to compliance with the~~

~~program over a time period by reducing long-term energy, maintenance, and operating costs,~~

- ~~d. improves the indoor environmental quality of public buildings for a healthier work environment,~~
- ~~e. encourages the use of products harvested, created, or mined within Oklahoma, regardless of product certification status, and~~
- ~~f. protects the environment of Oklahoma;~~

~~2. a. "Public building" means a facility that:~~

~~(1) is constructed or renovated in whole or in part with state funds or with funds guaranteed or insured by a state agency and the state funds constitute at least fifty percent (50%) of the project cost,~~

~~(2) contains ten thousand (10,000) or more gross square feet,~~

~~(3) includes a heating, ventilation, or air conditioning system, and~~

~~(4) has not entered the design phase prior to July 1, 2008.~~

~~b. A public building shall not include:~~

~~(1) a building constructed or renovated with funds from a public school in the state as defined in Section 1-106 of Title 70 of the Oklahoma Statutes, and~~

~~(2) a building constructed or renovated where the primary purpose of the building project is for the storage of archived documents;~~

~~3. "State agency" means any agency, board, commission, counsel, court, office, officer, bureau, institution, unit division, body, or house of the executive or judicial branches of state government, whether elected or appointed. State agency shall include institutions within The Oklahoma State System of Higher Education.~~

~~State agency shall not mean a public school district or technology center school district; and~~

~~4. "Substantial renovation" means any renovation of a public building the cost of which exceeds fifty percent (50%) of the replacement value of the facility.~~

~~C. The Office of Management and Enterprise Services shall adopt and update from time to time a high-performance certification program.~~

~~D. A state agency designing, constructing, or controlling the substantial renovation of a public building shall carry out the design, construction, or substantial renovation so as to achieve the highest performance certification attainable as certified by an independent third party pursuant to the high-performance certification program adopted by the Office pursuant to subsection C of this section. For purposes of this subsection, a certification is attainable if the increased initial costs of achieving the certification, including the time value of money, can be recouped from decreased operational costs within five (5) years.~~

~~E. If the state agency estimates that the increased initial costs of achieving certification will exceed five percent (5%) of the total cost of the design, construction, or substantial renovation project, the Office of Management and Enterprise Services shall specifically examine the estimate before authorizing the design, construction or substantial renovation.~~

~~F. If a public building undergoing substantial renovation cannot achieve a high-performance certification due to either the historical nature of the building or because the increased costs of renovating the public building cannot be recouped from decreased operational costs within five (5) years, an accredited professional shall assert in writing that, as much as possible, the substantial renovation was executed in a manner that is consistent with the standards in the high-performance certification program adopted by the Office of Management and Enterprise Services.~~

~~G. Any facility that is designed or newly constructed with state funds with less than five thousand (5,000) gross square feet that except for the size would be a public building subject to the high-performance certification program, any minor renovation of a public building, and any controlled maintenance of a public building shall, as much as possible, be executed in a manner that is~~

~~consistent with the standards in the high-performance certification program adopted by the Office of Management and Enterprise Services.~~

~~H. A public building may be exempted from complying with this section upon a determination by the Office of Management and Enterprise Services that extenuating circumstances exist such as to preclude compliance with the high-performance certification program.~~

~~I. The Office of Management and Enterprise Services shall identify and seek to have any public building which has been designed, constructed, or renovated in accordance with the standards of the high-performance certification program designated as an ENERGY STAR building by the United States Environmental Protection Agency.~~

~~J. The Office of Management and Enterprise Services shall develop and implement a process to monitor and evaluate the energy and environmental benefits associated with designing, constructing, or renovating a public building in accordance with the standards of the high-performance certification program. The Office shall issue an annual report regarding program guidelines, monitoring and evaluation procedures, and the energy and environmental benefits related to the implementation of the high-performance certification program.~~

SECTION 18. AMENDATORY 61 O.S. 2011, Section 220, as amended by Section 332, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2012, Section 220), is amended to read as follows:

Section 220. A. Any political subdivision or board of education of a school district may use construction management as a project delivery method for the building, altering, repairing, improving, maintaining or demolishing any structure or appurtenance thereto, or any other improvement to real property owned by that political subdivision or school district. For purposes of this section "construction management" shall be defined as set forth in Section 202 of this title and shall include both agency construction management and at-risk construction management.

B. A political subdivision or school district shall select a construction manager based on the professional qualifications and technical experience of the construction manager. Selection criteria shall include the experience of the candidate, past performance, and certification of the company or individuals within the company of their knowledge of recognized standards of

construction, construction management and project management. Only firms recognized as qualified construction managers by the Construction and Properties Division Department of Real Estate Services of the Office of Management and Enterprise Services pursuant to Section 62 of this title, may be considered for selection as a construction manager by a political subdivision or school district.

C. The construction management project delivery method may only be used for public construction contracts when the construction project meets the criteria established by Section 202.1 of this title, except that a political subdivision or school district shall not be required to obtain permission from the Director of the Office of Management and Enterprise Services.

D. When bids for a public construction project have been received from general contractors pursuant to the Public Competitive Bidding Act of 1974 and the lowest responsible bid is within the awarding agency's available funding, the awarding agency shall not reject all bids and award the project to a construction manager.

E. Construction management contracts, for both agency construction management and at-risk construction management, entered into by a political subdivision or school district pursuant to this section shall not be considered a public construction contract pursuant to Section 102 of Title 61 of the Oklahoma Statutes and shall not be subject to competitive bidding requirements as set forth in the Public Competitive Bidding Act of 1974.

F. All construction contracts or subcontracts for work to be performed for any political subdivision or school district pursuant to a construction management project delivery method shall be awarded in accordance with the provisions of the Public Competitive Bidding Act of 1974. If a construction manager at-risk wishes to self-perform portions of the construction work to be performed, the construction manager at-risk may self-perform portions of the work provided the construction manager at-risk competitively bids the work under the same terms and conditions as the other bidders and the construction manager at-risk is the lowest responsible bidder for the construction subcontract. No work shall commence until the school district executes a written contract and the contractor and subcontractors submit bonds and proofs of insurance as required by the appropriate contract.

SECTION 19. This act shall become effective November 1, 2013.

Passed the House of Representatives the 9th day of May, 2013.

Mark Jacobson
Presiding Officer of the House
of Representatives

Passed the Senate the 24th day of April, 2013.

Anthony S. Williams
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 13th

day of May, 20 13, at 3:21 o'clock P M.

By: Kandi C. Balt

Approved by the Governor of the State of Oklahoma this 16th

day of May, 20 13, at 10:12 o'clock A M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 16th

day of May, 20 13, at 11:35 o'clock A M.

By: Chris Morris