

ENROLLED SENATE
BILL NO. 1250

By: Robinson of the Senate

and

Paulk of the House

An Act relating to public buildings and public works; amending 61 O.S. 1991, Section 202, which relates to the Public Building Construction and Planning Act; modifying, adding, and deleting definitions; requiring approval or legislative action for utilization of design-build or at-risk construction management project delivery methods; stating exceptions; requiring promulgation of rules; amending Sections 2 and 3, Chapter 69, O.S.L. 1999, which relate to the Advisory Task Force on Public Construction and Renovation Laws; extending life of task force; changing quorum requirement; clarifying travel reimbursement directive; providing additional responsibility for task force; authorizing utilization of committees; deleting obsolete language; providing for codification; providing for noncodification; and declaring an emergency.

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

SECTION 1. AMENDATORY 61 O.S. 1991, 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 ~~within the Office of Public Affairs~~ of the Department of Central Services;

2. "Construction" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, 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. "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. "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. "Design-build" means a project delivery method whereby this 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;

6. "Department" means the Department of Central Services;

~~"Consultant"~~ 7. "Design consultant" means any individual, firm, corporation, association, partnership, copartnership, or any other legal entity possessing the required qualifications to provide licensed architectural, registered engineering, or registered land surveying services for any construction project;

~~4. "Contractor" means any person, corporation, partnership, business, or other organization, entity, or group of individuals who perform construction services;~~

~~5. 8. "Division" means the Construction and Properties Division within the Office of Public Affairs~~ of the Department of Central Services;

~~6. 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;~~

~~7. 10. "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;

~~8.~~ 11. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring or disposing of supplies, services, or construction;

~~9.~~ ~~"Services" means the furnishing of labor, effort, or time by a contractor;~~

~~10.~~ 12. "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;

~~11.~~ 13. "State agency" ~~or "department"~~ means any an agency, board, commission, counsel, court, office, officer, bureau, institution, or other governmental body of the state which receives its operating monies through the Office of State Finance;

~~12.~~ ~~"State funds" means monies which are disbursed through the Division of the Budget; and~~

~~13.~~ ~~"Supplies" means for the purpose of expenses all property including but not limited to equipment, materials, printing, insurance, and the purchase or lease of real property 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 202.1 of Title 61, unless there is created a duplication in numbering, reads as follows:

A. The design-build and at-risk construction management project delivery methods shall not be used without the written approval of the Director of the Department of Central Services or an act of the Legislature specifying design-build or at-risk construction management for a particular 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, the Administrator's designee or designees, or otherwise by contract or contract provision approved by the Director of the Department of Central Services for construction administration by another party.

B. The provisions of subsection A 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.

C. The Department of Central Services shall, pursuant to the Administrative Procedures Act and with regard for such recommendations or other assistance as it may receive from the Advisory Task Force on Public Construction and Renovation Laws, promulgate rules to effect procedures and processes necessary to the fulfillment of its responsibilities under subsection A of this section.

SECTION 3. AMENDATORY Section 2, Chapter 69, O.S.L. 1999, is amended to read as follows:

Section 2. A. Members appointed to the Advisory Task Force on Public Construction and Renovation Laws shall serve at the pleasure of the respective appointing authority in terms expiring with the termination of the task force, which shall occur on ~~June 1, 2000~~ June 30, 2002. Vacancies shall be filled by the respective appointing authority.

B. The President Pro Tempore of the Senate shall designate a member of the task force to serve as Chair, and the Speaker of the House of Representatives shall designate a member of the task force to serve as Vice Chair. The Chair and Vice Chair shall serve at the pleasure of the respective appointing authority.

C. ~~Nine~~ Eight members shall constitute a quorum. The task force shall conduct its business in compliance with the Oklahoma Open Meeting Act and with the Oklahoma Open Records Act. Upon termination of the task force, staff shall transfer all task force records to the Legislative Service Bureau for disposition as required by law.

D. Staff services for the task force shall be provided by the Senate and the House of Representatives. The Department of Central Services shall provide additional staff assistance upon request of the Chair.

E. Members of the task force shall receive no compensation for serving on the task force but shall receive travel reimbursement as follows:

1. Legislative members shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes;

2. Nonlegislative members who are state officers or employees shall be reimbursed by their respective agencies for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act; and

3. Members who are not otherwise officers or employees of the state shall be reimbursed by the Department of Central Services in accordance with the State Travel Reimbursement Act.

SECTION 4. AMENDATORY Section 3, Chapter 69, O.S.L. 1999, is amended to read as follows:

Section 3. A. The purpose of the Advisory Task Force on Public Construction and Renovation Laws shall be to make specific recommendations to the Legislature and to the Department of Central Services for giving greater clarity and coherence to laws relating to the construction and renovation of public buildings. However, the purview of the task force shall not extend to roads and highways except insofar as the task force may wish to recommend that certain provisions in Title 61 of the Oklahoma Statutes relating to roads and highways be deleted or be moved to Title 69 or elsewhere.

B. The scope of task force responsibility shall include, but not be limited to, assisting the Department of Central Services with the development of rules relating to the Public Building Construction and Planning Act, to be promulgated pursuant to the Administrative Procedures Act, and to examining and possibly making recommendations concerning:

1. Bonds required on public works contracts;
2. Purchasing preferences;
3. Consultant contracts;
4. The Oklahoma Lighting Energy Conservation Act;
5. Provisions of Senate Bill No. 1070 of 1996;
6. The Public Competitive Bidding Act of 1974;
7. The Public Building Construction and Planning Act; and
8. Miscellaneous provisions found in Title 61 of the Oklahoma Statutes.

C. In performing its duties pursuant to this section, the task force shall invite comment regarding, and give consideration to, a variety of approaches, strategies, or methods for the efficient accomplishment of public construction projects, such as "design/build" and construction management. The task force shall also consider the usefulness of lease-purchase procedures to the foregoing. The chair may appoint committees of task force members and, if the chair so desires, other willing persons, to prepare recommendations for consideration by the task force. Other persons so appointed shall not receive compensation or travel reimbursement.

D. ~~On or before November 30, 1999, the~~ The task force shall, from time to time, report its specific recommendations, in the form of proposed statutory revisions and rule provisions, together with such explanation and comment as the task force may deem appropriate, to the President Pro Tempore of the Senate and the Speaker of the House of Representatives, or their designees, and to the Director of the Department of Central Services.

E. For further consideration and discussion of its recommendations, the task force shall continue to make itself available to the Legislature ~~throughout the 2nd Session of the 47th~~

Legislature (2000) and the Department of Central Services until June 30, 2002.

SECTION 5. Sections 3 and 4 of this act shall not be codified in the Oklahoma Statutes.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 22nd day of May, 2000.

President of the Senate

Passed the House of Representatives the 23rd day of May, 2000.

Speaker of the House of Representatives