

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 184

By: Coates

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5  
6 AS INTRODUCED

7 An Act relating to the Public Building Construction  
8 and Planning Act; amending 61 O.S. 2001, Section  
9 202.1, as last amended by Section 28, Chapter 271,  
10 O.S.L. 2006, (61 O.S. Supp. 2010, Section 202.1),  
11 which relate to design-build and at-risk construction  
12 management project methods; deleting certain  
13 exception; amending 61 O.S. 2001, Section 208.1, as  
14 last amended by Section 3, Chapter 277, O.S.L. 2003  
15 (61 O.S. Supp. 2010, Section 208.1), which relates to  
16 contract management fees; clarifying purpose of fee;  
17 amending Section 1, Chapter 418, O.S.L. 2008 (61 O.S.  
18 Supp. 2010, Section 213), which relates to public  
19 building energy and environmental performance  
20 program; modifying definition; amending Section 1,  
21 Chapter 414, O.S.L. 2002, as amended by Section 33,  
22 Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2010, Section  
23 220), which relates to project delivery methods;  
24 specifying construction manager selection process,  
providing penalty for certain offenses; deleting  
certain exception; exempting certain entities from  
certain provisions; and providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2001, Section 202.1, as  
last amended by Section 28, Chapter 271, O.S.L. 2006 (61 O.S. Supp.  
2010, Section 202.1), is amended to read as follows:

1 Section 202.1 A. The design-build and construction management  
2 project delivery methods shall not be used without the written  
3 approval of the Director of Central Services, or the Director's  
4 designee, when those projects are constructed for a state agency or  
5 by an act of the Legislature specifying design-build or at-risk  
6 construction management for a project. In all instances where the  
7 design-build project or at-risk construction management delivery  
8 method is authorized, construction administration shall be performed  
9 by the State Construction Administrator, the Administrator's  
10 designee or designees, or otherwise by contract or contract  
11 provision approved by the Director of Central Services for  
12 construction administration by another party.

13 ~~B. Municipalities, counties, public trusts, or any other~~  
14 ~~political subdivision in this state shall not be required to get~~  
15 ~~approval of any other state agency in order to use design-build~~  
16 ~~construction management or at risk construction management as a~~  
17 ~~construction management delivery method. However, municipalities,~~  
18 ~~counties, public trusts, and any other political subdivision shall~~  
19 ~~be subject to all other provisions of the Public Building~~  
20 ~~Construction and Planning Act.~~

21 ~~C.~~ B. The design-build and construction management project  
22 delivery methods shall not be used for any project unless the  
23 project meets the criteria established by the administrative rules  
24 promulgated as required by this act. Such methods shall not be used

1 unless there is a need for compressed construction time as required  
2 to respond to a natural disaster or other emergency situation  
3 affecting public health and safety, or all of the following criteria  
4 for designation are met:

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

9 ~~D.~~ C. The use of design-build and construction management  
10 project delivery methods shall not interfere or inhibit the  
11 opportunity for subcontractors to openly and freely compete for  
12 subcontracts ~~pursuant to the Public Competitive Bidding Act of 1974.~~

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

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

21 ~~G.~~ E. The Department of Central Services shall, pursuant to the  
22 Administrative Procedures Act, promulgate rules to effect  
23 procedures, processes and design-build/construction management fee  
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1 guidelines necessary to the fulfillment of its responsibilities  
2 under this section.

3 ~~H.~~ F. As used in the Public Building Construction and Planning  
4 Act, public trusts shall not include state beneficiary public  
5 trusts.

6 SECTION 2. AMENDATORY 61 O.S. 2001, Section 208.1, as  
7 last amended by Section 3, Chapter 277, O.S.L. 2003 (61 O.S. Supp.  
8 2010, Section 208.1), is amended to read as follows:

9 Section 208.1 The Construction and Properties Division of the  
10 Department of Central Services may collect a reasonable fee for the  
11 purpose of providing or contracting for architectural, engineering,  
12 and land surveying services to state agencies and from persons  
13 requesting plans and notification of solicitations issued by the  
14 Division. The Division may collect a reasonable fee for contract  
15 management ~~for a construction project~~ services. All fees collected  
16 in accordance with the provisions of this section shall be deposited  
17 in the "State Construction Revolving Fund" created in Section 208.2  
18 of this title.

19 SECTION 3. AMENDATORY Section 1, Chapter 418, O.S.L.  
20 2008 (61 O.S. Supp. 2010, Section 213), is amended to read as  
21 follows:

22 Section 213. A. The purpose of this section is to promote  
23 effective energy and environmental standards for the construction,  
24 renovation, and maintenance of public buildings in this state which

1 will improve the capacity of the state to design, build, and operate  
2 high-performance buildings thus creating new jobs, contributing to  
3 economic growth, and increasing energy independence. To accomplish  
4 the objectives of this section, the state shall adopt construction  
5 standards for public buildings that:

6 1. Optimize the energy performance of public buildings in the  
7 state;

8 2. Increase the demand for environmentally preferable building  
9 materials, finishes, and furnishings;

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

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

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

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

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

22 8. Ensure that the systems of each building project are  
23 designed, installed, and tested to perform according to the design  
24

1 intent and operational needs of the building through third-party  
2 postconstruction review and verification; and

3 9. Authorize the Department of Central Services to pursue  
4 ENERGY STAR designation from the United States Environmental  
5 Protection Agency to further demonstrate the energy independence of  
6 a public building project.

7 B. For purposes of this section:

8 1. "High-performance certification program" means a public  
9 building design, construction, and renovation standard which meets  
10 either the standards of the United States Green Building Council's  
11 Leadership in Energy and Environmental Design Rating System (LEED)  
12 or the standards of the Green Building Initiative's Green Globes  
13 Rating System or the ANSI/ASHRAE/USGBC/IES "Standard for the Design  
14 of High-Performance Green Buildings (American National Standards  
15 Institute, American Society of Heating, Refrigerating and Air-  
16 Conditioning, U.S. Green Building Council and Illuminating  
17 Engineering Society joint standard, and which:

18 a. is quantifiable, measurable, and verifiable as  
19 certified by an independent third party, except that  
20 compliance with Standard 189.1 may be certified by the  
21 architect and/or engineer of record for the public  
22 building project,

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1 b. reduces the operating costs of public buildings by  
2 reducing the consumption of energy, water, and other  
3 resources,

4 c. results in the recovery of the increased initial  
5 capital costs attributable to compliance with the  
6 program over a time period by reducing long-term  
7 energy, maintenance, and operating costs,

8 d. improves the indoor environmental quality of public  
9 buildings for a healthier work environment,

10 e. encourages the use of products harvested, created, or  
11 mined within Oklahoma, regardless of product  
12 certification status, and

13 f. protects the environment of Oklahoma;

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

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

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

22 (3) includes a heating, ventilation, or air  
23 conditioning system, and  
24

1 (4) has not entered the design phase prior to July 1,  
2 2008.

3 b. A public building shall not include:

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

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

11 3. "State agency" means any agency, board, commission, counsel,  
12 court, office, officer, bureau, institution, unit division, body, or  
13 house of the executive or judicial branches of state government,  
14 whether elected or appointed. State agency shall include  
15 institutions within The Oklahoma State System of Higher Education.  
16 State agency shall not mean a public school district or technology  
17 center school district; and

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

21 C. The Department of Central Services shall adopt and update  
22 from time to time a high-performance certification program.

23 D. A state agency designing, constructing, or controlling the  
24 substantial renovation of a public building shall carry out the

1 design, construction, or substantial renovation so as to achieve the  
2 highest performance certification attainable as certified by an  
3 independent third party pursuant to the high-performance  
4 certification program adopted by the Department pursuant to  
5 subsection C of this section. For purposes of this subsection, a  
6 certification is attainable if the increased initial costs of  
7 achieving the certification, including the time value of money, can  
8 be recouped from decreased operational costs within five (5) years.

9 E. If the state agency estimates that the increased initial  
10 costs of achieving certification will exceed five percent (5%) of  
11 the total cost of the design, construction, or substantial  
12 renovation project, the Department of Central Services shall  
13 specifically examine the estimate before authorizing the design,  
14 construction or substantial renovation.

15 F. If a public building undergoing substantial renovation  
16 cannot achieve a high-performance certification due to either the  
17 historical nature of the building or because the increased costs of  
18 renovating the public building cannot be recouped from decreased  
19 operational costs within five (5) years, an accredited professional  
20 shall assert in writing that, as much as possible, the substantial  
21 renovation was executed in a manner that is consistent with the  
22 standards in the high-performance certification program adopted by  
23 the Department of Central Services.

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1 G. Any facility that is designed or newly constructed with  
2 state funds with less than five thousand (5,000) gross square feet  
3 that except for the size would be a public building subject to the  
4 high-performance certification program, any minor renovation of a  
5 public building, and any controlled maintenance of a public building  
6 shall, as much as possible, be executed in a manner that is  
7 consistent with the standards in the high-performance certification  
8 program adopted by the Department of Central Services.

9 H. A public building may be exempted from complying with this  
10 section upon a determination by the Department of Central Services  
11 that extenuating circumstances exist such as to preclude compliance  
12 with the high-performance certification program.

13 I. The Department of Central Services shall identify and seek  
14 to have any public building which has been designed, constructed, or  
15 renovated in accordance with the standards of the high-performance  
16 certification program designated as an ENERGY STAR building by the  
17 United States Environmental Protection Agency.

18 J. The Department of Central Services shall develop and  
19 implement a process to monitor and evaluate the energy and  
20 environmental benefits associated with designing, constructing, or  
21 renovating a public building in accordance with the standards of the  
22 high-performance certification program. The Department shall issue  
23 an annual report regarding program guidelines, monitoring and  
24 evaluation procedures, and the energy and environmental benefits

1 related to the implementation of the high-performance certification  
2 program.

3 SECTION 4. AMENDATORY Section 1, Chapter 414, O.S.L.  
4 2002, as amended by Section 33, Chapter 271, O.S.L. 2006 (61 O.S.  
5 Supp. 2010, Section 220), is amended to read as follows:

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

15 B. A political subdivision or school district shall select a  
16 construction manager based on the professional qualifications and  
17 technical experience of the construction manager. Selection  
18 criteria shall include the experience of the candidate, past  
19 performance, and certification of the company or individuals within  
20 the company of their knowledge of recognized standards of  
21 construction, construction management and project management. Only  
22 firms recognized as qualified construction managers by the  
23 Construction and Properties Division of the Department of Central  
24 Services pursuant to Section 62 of this title, may be considered for

1 selection as a construction manager by a political subdivision or  
2 school district. The political subdivision or school district shall  
3 select the Construction Manager using a selection process  
4 substantially similar to that described by Section 62 of this title,  
5 including notification of eligible firms, screening of submittals  
6 and interviews to identify the best qualified firm. Fees may not be  
7 discussed or requested until the first ranked firm is invited for  
8 fee negotiations. Any person that is not a qualified construction  
9 manager that knowingly offers construction management services, or  
10 public official that knowingly retains a firm or individual not  
11 qualified as a construction manager, upon conviction, shall be  
12 guilty of a misdemeanor punishable by imprisonment in the county  
13 jail for not more than one (1) year, or by a fine of not more than  
14 One Thousand Dollars (\$1,000.00), or by both such fine and  
15 imprisonment.

16 C. The construction management project delivery method may only  
17 be used for public construction contracts when the construction  
18 project meets the criteria established by Section 202.1 of this  
19 title, ~~except that a political subdivision or school district shall~~  
20 ~~not be required to obtain permission from the Director of Central~~  
21 ~~Services.~~

22 D. When bids for a public construction project have been  
23 received from general contractors pursuant to the Public Competitive  
24 Bidding Act of 1974 and the lowest responsible bid is within the

1 awarding agency's available funding, the awarding agency shall not  
2 reject all bids and award the project to a construction manager.

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

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

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1        G. Except for subsection B of Section 202.1 of this title,  
2 public school systems and political subdivisions of this state are  
3 exempt from the provisions of Section 202.1 of this tile.

4        SECTION 5. This act shall become effective November 1, 2011.

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