

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1990

6 By: Brumbaugh

7 COMMITTEE SUBSTITUTE

8 An Act relating to public buildings and public works;  
9 amending 61 O.S. 2011, Sections 60, 61, 62, 63 and  
10 65, as amended by Sections 305, 306, 307, 309 and  
11 310, Chapter 304, O.S.L. 2012, Section 201, Sections  
12 202, 202.1 and 203, as amended by Sections 318, 319  
13 and 320, Chapter 304, O.S.L. 2012, Section 204, as  
14 amended by Section 2, Chapter 184, O.S.L. 2012,  
15 Section 208, as amended by Section 324, Chapter 304,  
16 O.S.L. 2012, Sections 208.1 and 208.2, as amended by  
17 Sections 3 and 4, Chapter 184, O.S.L. 2012, Section  
18 208.3 and Sections 209, 210, 213 and 220, as amended  
19 by Sections 327, 328, 331 and 332, Chapter 304,  
20 O.S.L. 2012 (61 O.S. Supp. 2012, Sections 60, 61, 62,  
21 63, 65, 202, 202.1, 203, 204, 208, 208.1, 208.2, 209,  
22 210, 213 and 220), which relate to the Public  
23 Building Construction and Planning Act; modifying  
24 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

1 to authorize exemptions; modifying the State  
2 Construction Revolving Fund; modifying the adoption  
3 of certain construction standards; eliminating  
4 definitions; and providing an effective date.  
5

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

7 SECTION 1. AMENDATORY 61 O.S. 2011, Section 60, as  
8 amended by Section 305, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
9 2012, Section 60), is amended to read as follows:

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

1 manager, consultant and construction contract forms for specific  
2 projects.

3 SECTION 2. AMENDATORY 61 O.S. 2011, Section 61, as  
4 amended by Section 306, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
5 2012, Section 61), is amended to read as follows:

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

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

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

14 3. 2. "Construction manager" means an individual, firm,  
15 corporation, association, partnership, copartnership, or any other  
16 legal entity possessing the qualifications to provide services of  
17 construction management which include, but are not necessarily  
18 limited to, design review, scheduling, cost control, value  
19 engineering, constructability evaluation, preparation and  
20 coordination of bid packages, and construction administration;

21 4. 3. "Consultant" means an individual or legal entity  
22 possessing the qualifications to provide licensed architectural,  
23 registered engineering, or registered land surveying services or  
24 other individuals or legal entities possessing specialized

1 credentials and qualifications as may be needed to evaluate, plan or  
2 design for any construction or a public work improvement project;

3 ~~5.~~ 4. "Director" means the Director of the Office of Management  
4 and Enterprise Services;

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

8 ~~7.~~ 6. "Office" means the Office of Management and Enterprise  
9 Services;

10 ~~8.~~ 7. "Project" means studies, evaluations, plans or designs  
11 for ~~a~~ facility evaluations or public work improvement improvements,  
12 except the transportation facilities under the jurisdiction of the  
13 Department of Transportation or the Oklahoma Turnpike Authority:

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

18 ~~9.~~ 8. "State agency" means an agency, office, officer, bureau,  
19 board, counsel, court, commission, institution, unit, division, body  
20 or house of the executive or judicial branches of state government,  
21 whether elected or appointed, excluding only political subdivisions  
22 of the state; and

23

24

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

4        SECTION 3.        AMENDATORY        61 O.S. 2011, Section 62, as  
5 amended by Section 307, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
6 2012, Section 62), is amended to read as follows:

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

21        B.    The requisitioning state agency shall define the scope of a  
22 proposed project. The scope shall identify project components,  
23 phases, and timetables and shall include detailed project  
24 descriptions. The state agency may request the ~~Division~~ Department

1 to assist with scope development. The state agency shall send the  
2 scope and a requisition for construction management or consultant  
3 services, signed by ~~the chief administrative officer~~ an authorized  
4 official, to the ~~Division~~ Department. The ~~Division~~ Department shall  
5 review the scope and approve it before the state agency issues a  
6 solicitation.

7 C. The state agency shall issue a solicitation to construction  
8 managers or consultants that are registered with the Department and  
9 capable of providing the services the state agency desires. The  
10 solicitation shall, at a minimum, contain:

11 1. Description and scope of the project;

12 2. Estimated construction cost or available funds, anticipated  
13 starting date, and completion date the state agency desires for the  
14 project;

15 3. Certification of funds available for the construction  
16 manager or consultant fee, including federal, state or other  
17 participation;

18 4. Closing date for construction manager or consultant to give  
19 notice of interest to the state agency; and

20 5. Additional data the state agency requires from the  
21 construction manager or consultant. The closing date for submission  
22 of construction manager or consultant notice of interest for  
23 consideration shall be within thirty (30) days of the date of the  
24 notice the state agency issues.

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

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

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

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

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

5 2. If the ~~Division~~ Department and the first-choice construction  
6 manager or consultant cannot reach an agreement, the negotiations  
7 shall terminate and negotiations with the second-choice construction  
8 manager or consultant shall commence. If the ~~Division~~ Department  
9 and the second-choice construction manager or consultant cannot  
10 reach an agreement, the negotiations shall terminate and  
11 negotiations with the third-choice construction manager or  
12 consultant shall commence. If the ~~Division~~ Department and the  
13 third-choice construction manager or consultant cannot reach an  
14 agreement, then all negotiations shall terminate. Should the  
15 ~~Division~~ Department be unable to negotiate a satisfactory contract  
16 with any of the three selected construction managers or consultants,  
17 the ~~Division~~ Department shall select additional construction  
18 managers or consultants in order of their competency and  
19 qualifications and shall continue negotiations in accordance with  
20 the provisions of this section until an agreement is reached.

21 H. Any plans developed pursuant to the process for selection of  
22 a contractor for construction of a facility authorized pursuant to  
23 Section 183 of Title 73 of the Oklahoma Statutes shall become the  
24

1 property of the State of Oklahoma as a condition of the award of the  
2 final contract for construction of the facility.

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

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

9 2. Issue solicitations for construction manager and consultant  
10 services;

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

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

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

18 The subdivision shall select a construction manager or  
19 consultant based upon the professional qualifications and technical  
20 experience of the construction manager or consultant. The  
21 subdivision shall negotiate a contract with the highest qualified  
22 construction manager or consultant, provided that a fee can be  
23 negotiated that is fair and reasonable to both parties. In the  
24 event a reasonable fee cannot be negotiated with the selected

1 construction manager or consultant, the subdivision may negotiate  
2 with other construction managers or consultants in order of their  
3 qualifications.

4 SECTION 4. AMENDATORY 61 O.S. 2011, Section 63, as  
5 amended by Section 309, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
6 2012, Section 63), is amended to read as follows:

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

18 SECTION 5. AMENDATORY 61 O.S. 2011, Section 65, as  
19 amended by Section 310, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
20 2012, Section 65), is amended to read as follows:

21 Section 65. A. In addition to the conditions prescribed  
22 pursuant to subsections C and D of this section, the provisions of  
23 Section 62 of this title shall not apply whenever the ~~Construction~~  
24 ~~and Properties Division~~ Department of Real Estate Services of the

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

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

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

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

20 C. The provisions of Section 62 of this title shall not apply  
21 to the process for construction of a correctional facility whenever  
22 the State Board of Corrections informs the ~~Division~~ Department that  
23 an emergency condition threatens the security of the state  
24 correctional system, including inmate population growth, and the

1 condition requires expeditious treatment for the review, approval  
2 and bid process as it relates to construction or expansion of  
3 correctional facilities. The ~~Division~~ Department and the Department  
4 of Corrections are authorized to implement an expedited competitive  
5 bid process for the contracting of construction managers or  
6 consultants and construction of new or expanded correctional  
7 facilities that adequately respond to the emergency. The State  
8 Board of Corrections shall provide written notification to the  
9 Governor, the Speaker of the House of Representatives and to the  
10 President Pro Tempore of the Senate of the emergency conditions.

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

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

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

20 SECTION 7. AMENDATORY 61 O.S. 2011, Section 202, as  
21 amended by Section 318, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
22 2012, Section 202), is amended to read as follows:

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

1       1. ~~"Administrator" means the State Construction Administrator~~  
2 ~~of the Construction and Properties Division of the Office of~~  
3 ~~Management and Enterprise Services~~ "Annual capital plan" means the  
4 collective state facility capital improvements, facility operations  
5 and maintenance, rent and lease payments, facility debt services,  
6 water, sewer and energy utilities and real property transactions  
7 approved by the Legislature in a capital budget relative to state  
8 construction, maintenance, and real estate services;

9       2. "Capital planning and asset management" means the processes  
10 delegated to the Department of Real Estate Services for real  
11 property data acquisition, data analysis and determination of  
12 capital construction projects and procurement related to real  
13 property;

14       3. "Construction" means the process of planning, acquiring,  
15 designing, building, equipping, altering, repairing, improving,  
16 maintaining, or demolishing any structure or appurtenance thereto  
17 including facilities, utilities, or other improvements to any real  
18 property but not including highways, bridges, airports, railroads,  
19 tunnels, sewers not related to a structure or appurtenance thereto,  
20 or dams;

21       ~~3.~~ 4. "Construction administration" means a series of actions  
22 required of the State Construction Administrator, of other state  
23 agency employees, or, under a construction administration contract  
24 or contract provision, to ensure the full, timely, and proper

1 performance of all phases of a construction project by all  
2 contractors, suppliers, and other persons having responsibility for  
3 project work and any guarantees or warranties pertaining thereto;

4 ~~4.~~ 5. "Construction management" means a project delivery method  
5 based on an agreement whereby the owner acquires from a construction  
6 entity a series of services that include, but are not necessarily  
7 limited to, design review, scheduling, cost control, value  
8 engineering, constructability evaluation, preparation and  
9 coordination of bid packages, and construction administration;

10 "construction management" includes:

- 11 a. "agency construction management" whereby the  
12 construction entity provides services to the owner  
13 without taking on financial risks for the execution of  
14 the actual construction, and  
15 b. "at-risk construction management" whereby the  
16 construction entity, after providing agency services  
17 during the pre-construction period, takes on the  
18 financial obligation to carry out construction under a  
19 specified cost agreement;

20 ~~5.~~ 6. "Consultant" means an individual or legal entity  
21 possessing the qualifications to provide licensed architectural,  
22 registered engineering, or registered land surveying services or  
23 possessing specialized credentials and qualifications as may be  
24

1 needed to plan or design for any construction or public work  
2 improvement project;

3 ~~6.~~ 7. "Department" means the Department of Real Estate Services  
4 of the Office of Management and Enterprise Services;

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

10 ~~7.~~ 9. "Director" means the Director of the Office of Management  
11 and Enterprise Services;

12 ~~8.~~ "Division" means the Construction and Properties Division of  
13 the Office of Management and Enterprise Services;

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

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

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

4        ~~11.~~ 12. "Office" means the Office of Management and Enterprise  
5 Services;

6        ~~12.~~ 13. "Procurement" means buying, purchasing, renting,  
7 leasing, allocating, trading or otherwise acquiring or disposing of  
8 supplies, services, or construction necessary to evaluate, plan,  
9 construct, manage, operate and preserve real property capital  
10 assets;

11        ~~13.~~ 14. "Public improvement" means any beneficial or valuable  
12 change or addition, betterment, enhancement or amelioration of or  
13 upon any real property, or interest therein, belonging to a ~~public~~  
14 state agency and the State of Oklahoma, intended to enhance its  
15 value, beauty or utility or to adapt it to new or further purposes.  
16 The term does not include the direct purchase of materials, ~~provided~~  
17 ~~that the materials are not purchased in increments for an amount of~~  
18 ~~less than Twenty-five Thousand Dollars (\$25,000.00) and used for the~~  
19 ~~purposes of completing a single project, equipment or supplies by a~~  
20 ~~public agency, or any personal property as defined in paragraphs 1~~  
21 ~~and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma~~  
22 Statutes used for general repairs and maintenance to state  
23 facilities;

1       ~~14.~~ 15. "Shared savings financing" means the financing of  
2 energy conservation measures and maintenance services through a  
3 private firm which may own any purchased equipment for the duration  
4 of a contract. Such contract shall specify that the private firm  
5 will be recompensed either out of a negotiated portion of the  
6 savings resulting from the conservation measures and maintenance  
7 services provided by the private firm or, in the case of a  
8 cogeneration project, through the payment of a rate for energy lower  
9 than would otherwise have been paid for the same energy from current  
10 sources; and

11       ~~15.~~ 16. "State agency" means an agency, board, commission,  
12 counsel, court, office, officer, bureau, institution, unit,  
13 division, body, or house of the executive or judicial branches of  
14 government of this state, whether elected or appointed, excluding  
15 only political subdivisions.

16       SECTION 8.       AMENDATORY       61 O.S. 2011, Section 202.1, as  
17 amended by Section 319, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
18 2012, Section 202.1), is amended to read as follows:

19       Section 202.1 A. The design-build and construction management  
20 project delivery methods shall not be used without the written  
21 approval of the Director of the Office of Management and Enterprise  
22 Services, or the Director's designee, when those projects are  
23 constructed for a state agency or by an act of the Legislature  
24 specifying design-build or at-risk construction management for a

1 project. In all instances where the design-build project or at-risk  
2 construction management delivery method is authorized, construction  
3 administration shall be performed by the State ~~Construction~~  
4 ~~Administrator~~ Facilities Director, the ~~Administrator's~~ SFD's  
5 designee or designees, or otherwise by contract or contract  
6 provision approved by the Director of the Office of Management and  
7 Enterprise Services for construction administration by another  
8 party.

9 B. Municipalities, counties, public trusts, or any other  
10 political subdivision in this state shall not be required to get  
11 approval of any other state agency in order to use ~~design-build~~  
12 agency construction management or at-risk construction management as  
13 a construction ~~management~~ delivery method. However, municipalities,  
14 counties, public trusts, and any other political subdivision shall  
15 be subject to ~~all other provisions of the Public Building~~  
16 ~~Construction and Planning Act~~ Section 220 of this title.

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

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

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

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

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

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

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

4 SECTION 9. AMENDATORY 61 O.S. 2011, Section 203, as  
5 amended by Section 320, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
6 2012, Section 203), is amended to read as follows:

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

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

19 C. The State Facilities Director or designee shall have  
20 authority over planning, procurement, contracts, facility  
21 management, property standards, state leasing and real estate  
22 brokerage services as delegated to the Department.  
23  
24

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

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

8        SECTION 10.        AMENDATORY        61 O.S. 2011, Section 204, as  
9 amended by Section 2, Chapter 184, O.S.L. 2012 (61 O.S. Supp. 2012,  
10 Section 204), is amended to read as follows:

11        Section 204. A. ~~The Construction and Properties Division~~  
12 Department of Real Estate Services shall:

13        1. Maintain a comprehensive master plan for utilization and  
14 construction of state buildings ~~for state agencies~~, capital  
15 improvements, and utilization of land owned by this state.

16 Requirements of the master planning process shall include:

- 17        a. reporting by each state agency concerning facility  
18        needs,
- 19        b. data acquisition of condition and performance  
20        benchmarking of state agency facilities,
- 21        c. analyses and audits of state agency facilities,  
22        properties and leaseholds to determine critical and  
23        long-range needs,

- 1           d.    development of state agency long-range strategic  
2                facility plans,  
3           e.    short-range project programming to identify budget  
4                requests for facility capital improvements and asset  
5                management decisions, and  
6           f.    an annual capital plan for all state agencies  
7                submitted to the Legislature for line-item  
8                appropriation requests;

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

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

18           4.    ~~Provide assistance to state agencies when a state agency~~  
19           ~~desires to~~ Select and hire a consultant or consultants and  
20           construction manager managers for a project projects as determined  
21           or approved by the Department. ~~Except as provided by subsection B~~  
22           ~~of this section, the Division~~ The Department shall select, award and  
23           execute contracts to consultants and construction managers that  
24

1 provide services to state agencies ~~for construction projects~~ subject  
2 to this act;

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

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

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

20 8. Monitor indices of facility condition, effectiveness of  
21 operations and maintenance programs, deferred maintenance  
22 prioritization, effectiveness of planning processes, budgeting for  
23 capital needs, application of facility standards as established by  
24 the Department, and performance outcomes of construction projects to

1 ensure maximum efficiency in the expenditure of state funds for  
2 ~~construction~~ asset management and preservation of the state's  
3 capital real property;

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

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

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

12 ~~10.~~ 12. Prequalify as good and sufficient insurance carriers,  
13 bonding companies and surety companies to meet provisions of  
14 Sections 1 and 134 of this title. The Director shall promulgate  
15 rules to establish criteria to determine whether a carrier or  
16 company is good and sufficient. The prequalification requirement  
17 and process shall not violate the provisions of Section 135 of this  
18 title.

19 B. When a state agency ~~has~~ employs a licensed architect or  
20 licensed engineer, as a full-time employee, ~~to review construction~~  
21 ~~plans and specifications, the review and approval of all~~  
22 ~~construction plans and specifications required pursuant to paragraph~~  
23 ~~2 of subsection A of this section shall not apply to:~~

24

1       ~~1. The common schools subject to the jurisdiction of the State~~  
2 ~~Department of Education;~~ said licensed employee may conduct required  
3 facility planning, prepared project plans and specification and  
4 monitor construction work as prescribed by the Department. State  
5 agencies authorized to employ licensed architects and engineers for  
6 the purposes of this section include:

7       ~~2.~~ 1. The Department of Transportation with respect to  
8 highways, bridges and dams;

9       ~~3.~~ 2. The Oklahoma State System of Higher Education;

10       ~~4.~~ 3. The Military Department of the State of Oklahoma;

11       ~~5.~~ 4. The Oklahoma Tourism and Recreation Department; and

12       ~~6.~~ 5. The Department of Human Services.

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

1 SECTION 11. AMENDATORY 61 O.S. 2011, Section 208, as  
2 amended by Section 324, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
3 2012, Section 208), is amended to read as follows:

4 Section 208. A. The ~~Construction and Properties Division~~  
5 Department of Real Estate Services of the Office of Management and  
6 Enterprise Services shall ~~approve state agency selection of,~~ select  
7 and award contracts to, construction managers and design consultants  
8 pursuant to the provisions of Section 62 of this title.

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

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

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

20 a. the unexpected higher construction costs resulted from  
21 unforeseen economic conditions or otherwise sudden  
22 price volatility in the construction industry,  
23  
24

1           b. the project was appropriately planned, and cost  
2           estimates were developed using standards of care  
3           acceptable to the ~~Division~~ Department, and

4           c. further delay caused by redesigning and rebidding the  
5           project would jeopardize the using agency's mission or  
6           result in the loss of a planned funding source.

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

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

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

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

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

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

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

19 G. The State Facilities Director may authorize an exemption to  
20 the provisions of this act to a state agency, including but not  
21 limited to The Oklahoma State System of Higher Education, provided  
22 that the recipient of an exemption:

- 23 1. Adopts standards, processes and procedures for planning,  
24 budgeting, design, facility management, asset management and asset

1 preservation that are substantially compliant with those as  
2 prescribed by the Department;

3 2. Adheres to procurement requirements of Sections 62 through  
4 65 of this title and the provisions of this act;

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

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

10 SECTION 12. AMENDATORY 61 O.S. 2011, Section 208.1, as  
11 amended by Section 3, Chapter 184, O.S.L. 2012 (61 O.S. Supp. 2012,  
12 Section 208.1), is amended to read as follows:

13 Section 208.1 ~~The Construction and Properties Division~~  
14 Department of Real Estate Services may collect a reasonable fee for  
15 the purpose of providing or contracting for architectural,  
16 engineering, land surveying, planning, real estate and related  
17 services to state agencies and political subdivisions of the state,  
18 and from persons requesting plans and notification of solicitations  
19 issued by the ~~Division~~ Department. The ~~Division~~ Department may  
20 collect a reasonable fee for management services. Annual fees to  
21 the ~~Division~~ Department shall be on a cost-recovery basis and may be  
22 calculated as a percentage of annual construction and real estate  
23 services in an amount necessary to support ~~Division~~ Department  
24 operation as designated in the annual capital plan. All fees

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

4 SECTION 13. AMENDATORY 61 O.S. 2011, Section 208.2, as  
5 amended by Section 4, Chapter 184, O.S.L. 2012 (61 O.S. Supp. 2012,  
6 Section 208.2), is amended to read as follows:

7 Section 208.2 There is hereby created in the State Treasury a  
8 revolving fund for the ~~Construction and Properties Division~~  
9 Department of Real Estate Services of the ~~Department of Central~~  
10 Office of Management and Enterprise Services, to be designated the  
11 "State Construction Revolving Fund". The fund shall be a continuing  
12 fund, not subject to fiscal year limitations, and shall consist of  
13 all funds appropriated by the Legislature for projects included in  
14 the annual capital plan; funds from nonappropriated sources  
15 designated for projects within a capital plan; allocations from an  
16 approved annual capital plan designed for assessment and planning  
17 services; allocations from an approved annual capital plan for  
18 emergency response in accordance with Section 130 of this title; and  
19 fees collected by the ~~Division~~ Department in accordance with the  
20 provisions of this section or as otherwise provided by law. All  
21 monies accruing to the credit of the fund are hereby appropriated  
22 and may be budgeted and expended by the ~~Division~~ Department. The  
23 fund shall be used to pay expenses resulting from contracts awarded  
24 by the ~~Division~~ Department and to defray ~~Division~~ Department

1 operating costs and expenses the ~~Department~~ Office incurs to support  
2 ~~Division~~ Department operations. Expenditures from the fund shall be  
3 made upon warrants issued by the State Treasurer against claims  
4 filed as prescribed by law with the Director of ~~State Finance~~ the  
5 Office of Management and Enterprise Services for approval and  
6 payment.

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

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

15 SECTION 15. AMENDATORY 61 O.S. 2011, Section 209, as  
16 amended by Section 327, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
17 2012, Section 209), is amended to read as follows:

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

- 20 1. For state agencies to perform minor construction projects;
- 21 2. Specifying building codes pursuant to the Oklahoma Uniform  
22 Building Code Commission Act for construction projects;
- 23 3. Permitting state agencies who have the expertise, upon  
24 written application to the ~~Construction and Properties Division~~

1 Department of Real Estate Services of the Office of Management and  
2 Enterprise Services, to perform any part of the responsibilities of  
3 the ~~Division~~ Department pursuant to the provisions of the Public  
4 ~~Building Construction and Planning~~ Facilities Act for a specific  
5 project;

6 4. Specifying procedures and guidelines for the implementation  
7 of shared savings financing by state agencies;

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

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

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

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

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

1 10. The form of any document the Director requires;

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

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

11 SECTION 16. AMENDATORY 61 O.S. 2011, Section 210, as  
12 amended by Section 328, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
13 2012, Section 210), is amended to read as follows:

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

- 19 1. The methodology for calculating baseline energy costs;
- 20 2. A procedure for revising these costs should the state  
21 institute additional energy conservation features or structure use  
22 change;

1 3. A requirement for a performance bond guaranteeing that the  
2 structure will be restored to the original condition in the event of  
3 default;

4 4. A provision for early ~~buy-out~~ buyout;

5 5. A clause specifying who will be responsible for maintaining  
6 the equipment; and

7 6. A provision allowing the disposal of equipment at the end of  
8 the contract.

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

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

14 SECTION 17. AMENDATORY 61 O.S. 2011, Section 213, as  
15 amended by Section 331, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
16 2012, Section 213), is amended to read as follows:

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

- 1        1. ~~Optimize~~ Conserve energy consumption and optimize the energy  
2 performance of ~~public buildings in the state~~ new building  
3 construction;
- 4        2. Increase the demand for environmentally preferable building  
5 materials, finishes, and furnishings;
- 6        3. Reduce the dependence of the state on imported sources of  
7 energy through buildings that conserve energy and utilize local and  
8 renewable energy sources;
- 9        4. Protect and restore the natural resources of the state by  
10 avoiding development of inappropriate building sites;
- 11       5. Reduce the burden on municipal water supply and treatment by  
12 reducing potable water consumption;
- 13       6. Reduce waste generation and manage waste through recycling  
14 and diversion from landfill disposal;
- 15       7. Establish life-cycle cost analysis as the appropriate and  
16 most efficient analysis to determine the optimal performance level  
17 of a building project;
- 18       8. Ensure that the systems of each building project are  
19 designed, installed, and tested to perform according to the design  
20 intent and operational needs of the building ~~through third-party~~  
21 ~~postconstruction review and verification~~; and
- 22       9. Authorize the Office of Management and Enterprise Services  
23 to pursue ENERGY STAR designation from the United States  
24

1 Environmental Protection Agency to further demonstrate the energy  
2 independence efficiency of a public building project.

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

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

10 ~~a. is quantifiable, measurable, and verifiable as~~  
11 ~~certified by an independent third party,~~

12 ~~b. reduces the operating costs of public buildings by~~  
13 ~~reducing the consumption of energy, water, and other~~  
14 ~~resources,~~

15 ~~c. results in the recovery of the increased initial~~  
16 ~~capital costs attributable to compliance with the~~  
17 ~~program over a time period by reducing long-term~~  
18 ~~energy, maintenance, and operating costs,~~

19 ~~d. improves the indoor environmental quality of public~~  
20 ~~buildings for a healthier work environment,~~

21 ~~e. encourages the use of products harvested, created, or~~  
22 ~~mined within Oklahoma, regardless of product~~  
23 ~~certification status, and~~

24 ~~f. protects the environment of Oklahoma;~~

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

2                   ~~(1) is constructed or renovated in whole or in part~~

3                           ~~with state funds or with funds guaranteed or~~

4                           ~~insured by a state agency and the state funds~~

5                           ~~constitute at least fifty percent (50%) of the~~

6                           ~~project cost,~~

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

8                           ~~square feet,~~

9                   ~~(3) includes a heating, ventilation, or air~~

10                           ~~conditioning system, and~~

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

12                           ~~2008.~~

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

14                   ~~(1) a building constructed or renovated with funds~~

15                           ~~from a public school in the state as defined in~~

16                           ~~Section 1-106 of Title 70 of the Oklahoma~~

17                           ~~Statutes, and~~

18                   ~~(2) a building constructed or renovated where the~~

19                           ~~primary purpose of the building project is for~~

20                           ~~the storage of archived documents;~~

21        3.    ~~"State agency" means any agency, board, commission, counsel,~~

22                   ~~court, office, officer, bureau, institution, unit division, body, or~~

23                   ~~house of the executive or judicial branches of state government,~~

24                   ~~whether elected or appointed. State agency shall include~~

1 ~~institutions within The Oklahoma State System of Higher Education.~~  
2 ~~State agency shall not mean a public school district or technology~~  
3 ~~center school district; and~~

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

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

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

20 E. ~~If the state agency estimates that the increased initial~~  
21 ~~costs of achieving certification will exceed five percent (5%) of~~  
22 ~~the total cost of the design, construction, or substantial~~  
23 ~~renovation project, the Office of Management and Enterprise Services~~  
24

1 ~~shall specifically examine the estimate before authorizing the~~  
2 ~~design, construction or substantial renovation.~~

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

12 ~~G. Any facility that is designed or newly constructed with~~  
13 ~~state funds with less than five thousand (5,000) gross square feet~~  
14 ~~that except for the size would be a public building subject to the~~  
15 ~~high-performance certification program, any minor renovation of a~~  
16 ~~public building, and any controlled maintenance of a public building~~  
17 ~~shall, as much as possible, be executed in a manner that is~~  
18 ~~consistent with the standards in the high-performance certification~~  
19 ~~program adopted by the Office of Management and Enterprise Services.~~

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

24

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

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

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

19 Section 220. A. Any political subdivision or board of  
20 education of a school district may use construction management as a  
21 project delivery method for the building, altering, repairing,  
22 improving, maintaining or demolishing any structure or appurtenance  
23 thereto, or any other improvement to real property owned by that  
24 political subdivision or school district. For purposes of this

1 section "construction management" shall be defined as set forth in  
2 Section 202 of this title and shall include both agency construction  
3 management and at-risk construction management.

4 B. A political subdivision or school district shall select a  
5 construction manager based on the professional qualifications and  
6 technical experience of the construction manager. Selection  
7 criteria shall include the experience of the candidate, past  
8 performance, and certification of the company or individuals within  
9 the company of their knowledge of recognized standards of  
10 construction, construction management and project management. Only  
11 firms recognized as qualified construction managers by the  
12 ~~Construction and Properties Division~~ Department of Real Estate  
13 Services of the Office of Management and Enterprise Services  
14 pursuant to Section 62 of this title, may be considered for  
15 selection as a construction manager by a political subdivision or  
16 school district.

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

23 D. When bids for a public construction project have been  
24 received from general contractors pursuant to the Public Competitive

1 Bidding Act of 1974 and the lowest responsible bid is within the  
2 awarding agency's available funding, the awarding agency shall not  
3 reject all bids and award the project to a construction manager.

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

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

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

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