

1 ENGROSSED HOUSE
2 BILL NO. 2694

By: Sears of the House

3 and

4 Jolley of the Senate
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7 An Act relating to the Commissioners of the Land Office; amending 61
8 O.S. 2011, Sections 60, as last amended by Section 1, Chapter 302,
9 O.S.L. 2013 and 61, as last amended by Section 2, Chapter 302,
10 O.S.L. 2013 (61 O.S. Supp. 2015, Sections 60 and 61), which relate
11 to state consultants; exempting the Commissioners of the Land Office
12 from requirements to use certain construction manager, consultant
13 and construction contract forms; excluding the Commissioners from
14 the definition of a state agency; amending 61 O.S. 2011, Sections
15 202, as last amended by Section 7, Chapter 302, O.S.L. 2013 and 208,
16 as last amended by Section 11, Chapter 302, O.S.L. 2013 (61 O.S.
17 Supp. 2015, Sections 202 and 208), which relate to the Public
18 Facilities Act; excluding the Commissioners from the definition of a
19 state agency; adding the Commissioners to certain exemption;
20 authorizing the Commissioners to invite the presentation of certain
21 proposals for investment real property; defining investment real
22 property; requiring proposals to be evaluated by the investment
23 committee; requiring the Commissioners to make certain decisions;
24 specifying criteria used to evaluate proposals; authorizing the
Secretary of the Land Office to enter into certain negotiations and
contracts; allowing the Commissioners to reject bids; amending 64
O.S. 2011, Section 1013, as last amended by Section 2, Chapter 117,
O.S.L. 2014 (64 O.S. Supp. 2015, Section 1013), which relates to the
investment of funds; authorizing the Commissioners to retain
investment managers for the management of investment real property;
amending 64 O.S. 2011, Section 1015, which relates to appraisals and
determining fair market value; changing statutory citation; and
providing for codification.

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 60, as last
amended by Section 1, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2015,
Section 60), is amended to read as follows:

1 Section 60. All state agencies, boards, commissions, offices,
2 institutions, and other governmental bodies of this state, and all
3 individuals representing such entities, except the Department of
4 Transportation, the Oklahoma Turnpike Authority, the Oklahoma State
5 Regents for Higher Education and its constituent institutions, the
6 Commissioners of the Land Office and CompSource Oklahoma provided
7 CompSource Oklahoma is operating pursuant to a pilot program
8 authorized by Sections 3316 and 3317 of Title 74 of the Oklahoma
9 Statutes, shall use construction manager, consultant and
10 construction contract forms that the State Facilities Director of
11 the Department of Real Estate Services of the Office of Management
12 and Enterprise Services requires to award and execute contracts for
13 designs to construct, renovate, alter, repair, maintain, or improve
14 real property or fixtures of real property of the state. The State
15 Facilities Director may authorize, in writing, exceptions to the use
16 of construction manager, consultant and construction contract forms
17 for specific projects.

18 SECTION 2. AMENDATORY 61 O.S. 2011, Section 61, as last
19 amended by Section 2, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2015,
20 Section 61), is amended to read as follows:

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

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

3 2. "Construction manager" means an individual, firm,
4 corporation, association, partnership, copartnership, or any other
5 legal entity possessing the qualifications to provide services of
6 construction management which 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 3. "Consultant" means an individual or legal entity possessing
11 the qualifications to provide licensed architectural, registered
12 engineering, or registered land surveying services or other
13 individuals or legal entities possessing specialized credentials and
14 qualifications as may be needed to evaluate, plan or design for any
15 construction or a public work improvement project;

16 4. "Director" means the Director of the Office of Management
17 and Enterprise Services;

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

20 6. "Office" means the Office of Management and Enterprise
21 Services;

22 7. "Project" means studies, evaluations, plans or designs for
23 facility evaluations or public work improvements, except the
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1 transportation facilities under the jurisdiction of the Department
2 of Transportation or the Oklahoma Turnpike Authority:

3 a. to construct, renovate, alter, repair, maintain, or
4 improve real property or fixtures of real property,
5 and

6 b. that does not constitute "construction" as defined by
7 the Public Building Construction and Planning Act;

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

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

18 SECTION 3. AMENDATORY 61 O.S. 2011, Section 202, as last
19 amended by Section 7, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2015,
20 Section 202), is amended to read as follows:

21 Section 202. As used in the Public Facilities Act:

22 1. "Annual capital plan" means the collective state facility
23 capital improvements, facility operations and maintenance, rent and
24 lease payments, facility debt services, water, sewer and energy

1 utilities and real property transactions approved by the Legislature
2 in a capital budget relative to state construction, maintenance, and
3 real estate services;

4 2. "Capital planning and asset management" means the processes
5 delegated to the Department of Real Estate Services for real
6 property data acquisition, data analysis and determination of
7 capital construction projects and procurement related to real
8 property;

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

16 4. "Construction administration" means a series of actions
17 required of the State Facilities Director, of other state agency
18 employees, or, under a construction administration contract or
19 contract provision, to ensure the full, timely, and proper
20 performance of all phases of a construction project by all
21 contractors, suppliers, and other persons having responsibility for
22 project work and any guarantees or warranties pertaining thereto;

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

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

7 "construction management" includes:

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

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

1 8. "Division" means the Construction and Properties Division of
2 the Office of Management and Enterprise Services;

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

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

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

17 12. "Office" means the Office of Management and Enterprise
18 Services;

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

23 14. "Public improvement" means any beneficial or valuable
24 change or addition, betterment, enhancement or amelioration of or

1 upon any real property, or interest therein, belonging to a state
2 agency and the State of Oklahoma, intended to enhance its value,
3 beauty or utility or to adapt it to new or further purposes. The
4 term does not include the direct purchase of materials used for
5 general repairs and maintenance to state facilities;

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

16 16. "State agency" means an agency, board, commission, counsel,
17 court, office, officer, bureau, institution, unit, division, body,
18 or house of the executive or judicial branches of government of this
19 state, whether elected or appointed, excluding only political
20 subdivisions ~~and~~, the Oklahoma State Regents ~~of~~ for Higher Education
21 and its constituent institutions and the Commissioners of the Land
22 Office.

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1 SECTION 4. AMENDATORY 61 O.S. 2011, Section 208, as
2 last amended by Section 11, Chapter 302, O.S.L. 2013 (61 O.S. Supp.
3 2015, Section 208), is amended to read as follows:

4 Section 208. A. The Department of Real Estate Services of the
5 Office of Management and Enterprise Services shall select and award
6 contracts to construction managers and design consultants pursuant
7 to the provisions of Section 62 of this title.

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

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

13 D. 1. When all bids for a public construction contract exceed
14 the programmed estimate and available funding, the Department may
15 enter into negotiations with the lowest responsible bidder for the
16 purpose of modifying the project scope and reducing the construction
17 cost, provided that:

18 a. the unexpected higher construction costs resulted from
19 unforeseen economic conditions or otherwise sudden
20 price volatility in the construction industry,

21 b. the project was appropriately planned, and cost
22 estimates were developed using standards of care
23 acceptable to the Department, and
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1 c. further delay caused by redesigning and rebidding the
2 project would jeopardize the using agency's mission or
3 result in the loss of a planned funding source.

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

12 3. If a suitable revised scope and contract amount is agreed
13 upon by the using agency, low bidder and the SFD, the Department may
14 award the public construction contract to the low bidder.

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

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

22 E. The Department of Real Estate Services is authorized to
23 issue solicitations and award statewide contracts for managed
24 construction service delivery in order to provide efficient and

1 cost-effective procurement solutions for public agencies. Statewide
2 contracts may be either mandatory or nonmandatory as determined by
3 the SFD.

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

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

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

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

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

23 2. Adheres to procurement requirements of Sections 62 through
24 65 of this title and the provisions of this act;

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

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

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 327.2 of Title 61, unless there
8 is created a duplication in numbering, reads as follows:

9 A. When the Commissioners of the Land Office determine it is in
10 the best interest of the trust, the Commissioners may invite the
11 presentation of written proposals for the lease, sale, exchange,
12 construction, maintenance, repair, improvement, development or
13 redevelopment of any investment real property, as defined in this
14 section, contained within the Land Office trust.

15 B. The term "investment real property" shall include all real
16 property acquired by the Commissioners for investment purposes, and
17 shall exclude all real property originally granted in the Enabling
18 Act of 1906.

19 C. Proposals shall be evaluated by the Commissioners of the
20 Land Office investment committee which shall make recommendations to
21 the Commissioners. The Commissioners shall retain authority to make
22 all decisions concerning investment real property. Evaluation of
23 the proposals shall be based on the following criteria:

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1 1. The economic benefit of the proposal to the Land Office
2 trust, advancement of long-term capital asset plan, investment
3 objectives, or other advantages to the Land Office trust for the
4 benefit of the trust;

5 2. The qualifications and experience of the construction or
6 maintenance provider, developer or redeveloper; and

7 3. The financial ability of the construction or maintenance
8 provider, developer or redeveloper to perform in a timely fashion.

9 D. The Secretary of the Land Office may enter into negotiations
10 with one or more respondents and may enter into contracts with the
11 respondent or respondents selected by majority vote of the
12 Commissioners in an open meeting.

13 E. The Commissioners may reject any and all bids.

14 SECTION 6. AMENDATORY 64 O.S. 2011, Section 1013, as
15 last amended by Section 2, Chapter 117, O.S.L. 2014 (64 O.S. Supp.
16 2015, Section 1013), is amended to read as follows:

17 Section 1013. A. The Commissioners of the Land Office shall be
18 responsible for the investment of the permanent school funds, other
19 educational funds and public building funds solely in the best
20 interests of the current and future beneficiaries. The
21 Commissioners of the Land Office shall make investments:

- 22 1. For the exclusive purpose of:
- 23 a. providing maximum benefits to current and future
 - 24 beneficiaries, and

1 b. defraying reasonable expenses of administering the
2 trust funds;

3 2. With the care, skill, prudence and diligence under the
4 circumstances then prevailing that a prudent person acting in a like
5 enterprise of a like character and with like aims would use; and

6 3. By diversifying the investments of the trust funds so as to
7 minimize the risk of large losses.

8 B. The permanent school fund and other educational funds may
9 only be invested in bonds issued in the United States, United States
10 dollar denominated or other investments settled in United States
11 dollars or traded on the United States exchange markets and real
12 property to be owned or acquired by the Commissioners of the Land
13 Office. The Commissioners of the Land Office shall not invest more
14 than sixty percent (60%) of the trust fund investments in equity
15 securities. The Commissioners of the Land Office are further
16 authorized to acquire, purchase, exchange and grant any real
17 property under its jurisdiction as is necessary to carry out the
18 investment in the real property. The Commissioners of the Land
19 Office shall not invest more than three percent (3%) of the total
20 value of the assets of the permanent school funds in connection with
21 investments in real property. In no case shall the Commissioners of
22 the Land Office bid against private sector bidders above the
23 appraised value of any property to be acquired.

1 C. The Commissioners shall establish an investment committee.
2 The investment committee shall be composed of not more than three
3 members of the Commissioners of the Land Office or their designees.
4 The committee shall make recommendations to the Commissioners of the
5 Land Office on all matters related to the choice of managers of the
6 assets of the funds, on the establishment of investment and fund
7 management guidelines, and in planning future investment policy.
8 The committee shall have no authority to act on behalf of the
9 Commissioners of the Land Office in any circumstances whatsoever.
10 No recommendations of the committee shall have effect as an action
11 of the Commissioners of the Land Office or take effect without the
12 approval of the Commissioners as provided by law. The Commissioners
13 shall promulgate and adopt on an annual basis an investment plan.
14 The investment plan shall state the criteria for selecting
15 investment managers, the allocation of assets among investment
16 managers, and established standards of investment and fund
17 management.

18 D. The Commissioners shall retain qualified investment managers
19 to provide for investment of the fund monies and for the management
20 of investment real property pursuant to the investment plan.
21 Investment managers shall be chosen by a solicitation of proposals
22 on a competitive bid basis pursuant to standards set by the
23 Commissioners. Subject to the investment plan, each investment
24 manager shall have full discretion in the management of the funds or

1 investment real property allocated to said investment managers. The
2 funds allocated to investment managers shall be actively managed by
3 them, which may include selling investments and realizing losses if
4 the action is considered advantageous to longer term return
5 maximization. Because of the total return objective, no distinction
6 shall be made for management and performance evaluation purposes
7 between realized and unrealized capital gains and losses.

8 E. The Commissioners shall take any measures they deem
9 appropriate to safeguard custody of securities and other assets of
10 the trusts.

11 F. By September 1 of each year, the Commissioners shall develop
12 a written investment plan for the trust funds.

13 G. The Commissioners shall compile a quarterly financial report
14 showing the performance of all the combined funds under their
15 control on a fiscal year basis. The report shall contain a list of
16 all investments made by the Commissioners and a list of any
17 commissions, fees or payments made for services regarding the
18 investments for that reporting period. The report shall be based on
19 market values and shall be compiled pursuant to uniform reporting
20 standards prescribed by the Oklahoma State Pension Commission for
21 all state retirement systems. The report shall be distributed to
22 the Oklahoma State Pension Commission, the Cash Management and
23 Investment Oversight Commission, and the Legislative Service Bureau.

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1 H. Before January 1 of each year, the Commissioners shall
2 publish an annual report of all Trust operations, presented in a
3 simple and easily understood manner to the extent possible. The
4 report shall be submitted to the Governor, the Speaker of the House
5 of Representatives, the President Pro Tempore of the Senate, the
6 State Department of Education and each higher education beneficiary.
7 The annual report shall cover the operation of the Trusts during the
8 past fiscal year, including income, disbursements and the financial
9 condition of the Trusts at the end of each fiscal year on a cash
10 basis. The annual report shall also contain a summary of the assets
11 of each trust and current market value as of the report date.

12 I. The Cash Management and Investment Oversight Commission
13 shall review reports prepared by the Commissioners of the Land
14 Office pursuant to this subsection and shall make recommendations
15 regarding the investment strategies and practices, the development
16 of internal auditing procedures and practices and any other matters
17 as determined necessary and applicable.

18 J. The Commissioners of the Land Office shall select one
19 custodial bank to settle transactions involving the investment of
20 the funds under the control of the Commissioners of the Land Office.
21 The Commissioners of the Land Office shall review the performance of
22 the custodial bank at least once every year. The Commissioners of
23 the Land Office shall require a written competitive bid every five
24 (5) years. The custodial bank shall have a minimum of Five Hundred

1 Million Dollars (\$500,000,000.00) in assets to be eligible for
2 selection. Any out-of-state custodial bank shall have a service
3 agent in the State of Oklahoma so that service of summons or legal
4 notice may be had on the designated agent, and the bank shall submit
5 to the jurisdiction of Oklahoma state courts for resolution of any
6 and all disputes. In order to be eligible for selection, the
7 custodial bank shall allow electronic access to all transaction and
8 portfolio reports maintained by the custodial bank involving the
9 investment of state funds under control of the Commissioners of the
10 Land Office and to the Cash Management and Investment Oversight
11 Commission. The requirement for electronic access shall be
12 incorporated into any contract between the Commissioners of the Land
13 Office and the custodial bank. Neither the Commissioners of the
14 Land Office nor the custodial bank shall permit any of the funds
15 under the control of the Commissioners of the Land Office or any of
16 the documents, instruments, securities or other evidence of a right
17 to be paid money to be located in any place other than within a
18 jurisdiction or territory under the control or regulatory power of
19 the United States government.

20 SECTION 7. AMENDATORY 64 O.S. 2011, Section 1015, is
21 amended to read as follows:

22 Section 1015. The Commissioners of the Land Office shall
23 utilize the procedures set forth in Section ~~129.4~~ 327 of Title ~~74~~ 61
24 of the Oklahoma Statutes that are applicable for purposes of

