

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 HOUSE BILL 2694

By: Sears

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5  
6 AS INTRODUCED

7 An Act relating to the Commissioners of the Land  
8 Office; amending 61 O.S. 2011, Sections 60, as last  
9 amended by Section 1, Chapter 302, O.S.L. 2013 and  
10 61, as last amended by Section 2, Chapter 302, O.S.L.  
11 2013 (61 O.S. Supp. 2015, Sections 60 and 61), which  
12 relate to state consultants; exempting the  
13 Commissioners of the Land Office from requirements to  
14 use certain construction manager, consultant and  
15 construction contract forms; excluding the  
16 Commissioners from the definition of a state agency;  
17 amending 61 O.S. 2011, Sections 202, as last amended  
18 by Section 7, Chapter 302, O.S.L. 2013 and 208, as  
19 last amended by Section 11, Chapter 302, O.S.L. 2013  
20 (61 O.S. Supp. 2015, Sections 202 and 208), which  
21 relate to the Public Facilities Act; excluding the  
22 Commissioners from the definition of a state agency;  
23 adding the Commissioners to certain exemption;  
24 authorizing the Commissioners to invite the  
presentation of certain proposals for investment real  
property; defining investment real property;  
requiring proposals to be evaluated by the investment  
committee; requiring the Commissioners to make  
certain decisions; 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 1023, 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; providing  
for codification; and declaring an emergency.

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

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

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

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

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

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

6 2. "Construction manager" means an individual, firm,  
7 corporation, association, partnership, copartnership, or any other  
8 legal entity possessing the qualifications to provide services of  
9 construction management which include, but are not necessarily  
10 limited to, design review, scheduling, cost control, value  
11 engineering, constructability evaluation, preparation and  
12 coordination of bid packages, and construction administration;

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

19 4. "Director" means the Director of the Office of Management  
20 and Enterprise Services;

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

23 6. "Office" means the Office of Management and Enterprise  
24 Services;

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

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

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

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

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

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

23           Section 202. As used in the Public Facilities Act:  
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1 1. "Annual capital plan" means the collective state facility  
2 capital improvements, facility operations and maintenance, rent and  
3 lease payments, facility debt services, water, sewer and energy  
4 utilities and real property transactions approved by the Legislature  
5 in a capital budget relative to state construction, maintenance, and  
6 real estate services;

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

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

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

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

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

11 "construction management" includes:

12 a. "agency construction management" whereby the  
13 construction entity provides services to the owner  
14 without taking on financial risks for the execution of  
15 the actual construction, and

16 b. "at-risk construction management" whereby the  
17 construction entity, after providing agency services  
18 during the pre-construction period, takes on the  
19 financial obligation to carry out construction under a  
20 specified cost agreement;

21 7. "Consultant" means an individual or legal entity possessing  
22 the qualifications to provide licensed architectural, registered  
23 engineering, registered land surveying, certified appraisal, land  
24 title, or abstract services or possessing specialized credentials

1 and qualifications as may be needed to evaluate, plan or design for  
2 any construction or public work improvement project, or to lease,  
3 acquire or dispose of state-owned real property;

4 8. "Division" means the Construction and Properties Division of  
5 the Office of Management and Enterprise Services;

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

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

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

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

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

3 14. "Public improvement" means any beneficial or valuable  
4 change or addition, betterment, enhancement or amelioration of or  
5 upon any real property, or interest therein, belonging to a state  
6 agency and the State of Oklahoma, intended to enhance its value,  
7 beauty or utility or to adapt it to new or further purposes. The  
8 term does not include the direct purchase of materials used for  
9 general repairs and maintenance to state facilities;

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

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

1 and its constituent institutions and the Commissioners of the Land  
2 Office.

3 SECTION 4. AMENDATORY 61 O.S. 2011, Section 208, as  
4 last amended by Section 11, Chapter 302, O.S.L. 2013 (61 O.S. Supp.  
5 2015, Section 208), is amended to read as follows:

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

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

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

15 D. 1. When all bids for a public construction contract exceed  
16 the programmed estimate and available funding, the Department may  
17 enter into negotiations with the lowest responsible bidder for the  
18 purpose of modifying the project scope and reducing the construction  
19 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  
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1           b. the project was appropriately planned, and cost  
2           estimates were developed using standards of care  
3           acceptable to the 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 Department shall consult with the  
13          using agency, consultant and low bidder on methods to reduce the  
14          project scope or other cost-saving measures.

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

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

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

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

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

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

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

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

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

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

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

19 B. The term "investment real property" shall include all real  
20 property acquired by the Commissioners for investment purposes, and  
21 shall exclude all real property originally granted in the Enabling  
22 Act of 1906.

23 C. Proposals shall be evaluated by the Commissioners of the  
24 Land Office investment committee which shall make recommendations to

1 the Commissioners. The Commissioners shall retain authority to make  
2 all decisions concerning investment real property. Evaluation of  
3 the proposals shall be based on the following criteria:

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

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

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

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

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

17 SECTION 6. AMENDATORY 64 O.S. 2011, Section 1023, as  
18 last amended by Section 2, Chapter 117, O.S.L. 2014 (64 O.S. Supp.  
19 2015, Section 1013), is amended to read as follows:

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

1 1. For the exclusive purpose of:

2 a. providing maximum benefits to current and future  
3 beneficiaries, and

4 b. defraying reasonable expenses of administering the  
5 trust funds;

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

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

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

1 the Land Office bid against private sector bidders above the  
2 appraised value of any property to be acquired.

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

20 D. The Commissioners shall retain qualified investment managers  
21 to provide for investment of the fund monies and for the management  
22 of investment real property pursuant to the investment plan.  
23 Investment managers shall be chosen by a solicitation of proposals  
24 on a competitive bid basis pursuant to standards set by the

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

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

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

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

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

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

20 J. The Commissioners of the Land Office shall select one  
21 custodial bank to settle transactions involving the investment of  
22 the funds under the control of the Commissioners of the Land Office.  
23 The Commissioners of the Land Office shall review the performance of  
24 the custodial bank at least once every year. The Commissioners of

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

22 SECTION 7. AMENDATORY 64 O.S. 2011, Section 1015, is  
23 amended to read as follows:  
24

1 Section 1015. The Commissioners of the Land Office shall  
2 utilize the procedures set forth in Section ~~129.4~~ 327 of Title ~~74~~ 61  
3 of the Oklahoma Statutes that are applicable for purposes of  
4 obtaining appraisals and determining fair market value whenever the  
5 Commissioners acquire real property from any department, board,  
6 commission, institution or agency of this state.

7 SECTION 8. It being immediately necessary for the preservation  
8 of the public peace, health and safety, an emergency is hereby  
9 declared to exist, by reason whereof this act shall take effect and  
10 be in full force from and after its passage and approval.

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