HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2694 By: Sears of the House

and

Jolley of the Senate

AS INTRODUCED

An Act relating to the Commissioners of the Land Office; amending 61 O.S. 2011, Sections 60, as last amended by Section 1, Chapter 302, O.S.L. 2013 and 61, as last amended by Section 2, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2015, Sections 60 and 61), which relate to state consultants; exempting the Commissioners of the Land Office from requirements to use certain construction manager, consultant and construction contract forms; excluding the Commissioners from the definition of a state agency; amending 61 O.S. 2011, Sections 202, as last amended by Section 7, Chapter 302, O.S.L. 2013 and 208, as last amended by Section 11, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2015, Sections 202 and 208), which relate to the Public Facilities Act; excluding the Commissioners from the definition of a state agency; adding the Commissioners to certain exemption; 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.

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 202. As used in the Public Facilities Act:

1. "Annual capital plan" means the collective state facility capital improvements, facility operations and maintenance, rent and lease payments, facility debt services, water, sewer and energy utilities and real property transactions approved by the Legislature in a capital budget relative to state construction, maintenance, and real estate services;

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

3. "Construction" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, maintaining, leasing, disposing or demolishing any structure or appurtenance thereto including facilities, utilities, or other improvements to any real property but not including highways,

bridges, airports, railroads, tunnels, sewers not related to a structure or appurtenance thereto, or dams;

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

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

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

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

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

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

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

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

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

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

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

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

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

15. "Shared savings financing" means the financing of energy conservation measures and maintenance services through a private firm which may own any purchased equipment for the duration of a contract. Such contract shall specify that the private firm will be recompensed either out of a negotiated portion of the savings resulting from the conservation measures and maintenance services provided by the private firm or, in the case of a cogeneration project, through the payment of a rate for energy lower than would

otherwise have been paid for the same energy from current sources; and

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

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

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

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

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

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

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

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

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

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

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

4. The Department shall negotiate a fair and reasonable fee with the project's consultant, if applicable, to make any necessary

revisions to the contract documents. The cost of this additional consulting work shall be paid from the agency's available funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. The Commissioners may reject any and all bids.

SECTION 6. AMENDATORY 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), is amended to read as follows:

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

1. For the exclusive purpose of:

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

   b. defraying reasonable expenses of administering the trust funds;

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

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

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

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

D. The Commissioners shall retain qualified investment managers to provide for investment of the fund monies <u>and for the management of investment real property</u> pursuant to the investment plan. Investment managers shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Commissioners. Subject to the investment plan, each investment manager shall have full discretion in the management of the funds <u>or investment real property</u> allocated to said investment managers. The funds allocated to investment managers shall be actively managed by them, which may include selling investments and realizing losses if the action is considered advantageous to longer term return maximization. Because of the total return objective, no distinction shall be made for management and performance evaluation purposes between realized and unrealized capital gains and losses.

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

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

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

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

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

J. The Commissioners of the Land Office shall select one custodial bank to settle transactions involving the investment of the funds under the control of the Commissioners of the Land Office. The Commissioners of the Land Office shall review the performance of the custodial bank at least once every year. The Commissioners of the Land Office shall require a written competitive bid every five (5) years. The custodial bank shall have a minimum of Five Hundred Million Dollars ($500,000,000.00) in assets to be eligible for selection. Any out-of-state custodial bank shall have a service agent in the State of Oklahoma so that service of summons or legal notice may be had on the designated agent, and the bank shall submit to the jurisdiction of Oklahoma state courts for resolution of any and all disputes. In order to be eligible for selection, the custodial bank shall allow electronic access to all transaction and portfolio reports maintained by the custodial bank involving the investment of state funds under control of the Commissioners of the Land Office and to the Cash Management and Investment Oversight Commission. The requirement for electronic access shall be incorporated into any contract between the Commissioners of the Land Office and the custodial bank. Neither the Commissioners of the Land Office nor the custodial bank shall permit any of the funds under the control of the Commissioners of the Land Office or any of the documents, instruments, securities or other evidence of a right to be paid money to be located in any place other than within a jurisdiction or territory under the control or regulatory power of the United States government.

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 02/11/2016 - DO PASS, As Coauthored.