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AS AMENDED

By: Jolley of the Senate

and

Sears of the House

[Commissioners of the Land Office property
management - state consultants - Office of Management
and Enterprise Services - Public Facilities Act -
certain investment real property - investments of
school funds - appraisal procedures - codification -
~~effective date -~~

~~emergency]~~

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

1 Statutes, shall use construction manager, consultant and
2 construction contract forms that the State Facilities Director of
3 the Department of Real Estate Services of the Office of Management
4 and Enterprise Services requires to award and execute contracts for
5 designs to construct, renovate, alter, repair, maintain, or improve
6 real property or fixtures of real property of the state. The State
7 Facilities Director may authorize, in writing, exceptions to the use
8 of construction manager, consultant and construction contract forms
9 for specific projects.

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

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

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

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

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

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

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

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

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

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

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

22 8. "State agency" means an agency, office, officer, bureau,
23 board, counsel, court, commission, institution, unit, division, body
24 or house of the executive or judicial branches of state government,

1 whether elected or appointed, excluding only political subdivisions
2 of the state, ~~and~~ the Oklahoma State Regents for Higher Education
3 and its constituent institutions and the Commissioners of the Land
4 Office; and

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

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

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

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

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

23 3. "Construction" means the process of planning, acquiring,
24 designing, building, equipping, altering, repairing, improving,

1 maintaining, leasing, disposing or demolishing any structure or
2 appurtenance thereto including facilities, utilities, or other
3 improvements to any real property but not including highways,
4 bridges, airports, railroads, tunnels, sewers not related to a
5 structure or appurtenance thereto, or dams;

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

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

15 6. "Construction management" means a project delivery method
16 based on an agreement whereby the owner acquires from a construction
17 entity a series of services that 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 "construction management" includes:

- 22 a. "agency construction management" whereby the
23 construction entity provides services to the owner
24

1 without taking on financial risks for the execution of
2 the actual construction, and

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

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

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

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

1 10. "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 11. "Life cycle costs" means the cost of owning, operating, and
5 maintaining the structure over the life of the structure. This may
6 be expressed as an annual cost for each year of the facility's use;

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

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

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

20 15. "Shared savings financing" means the financing of energy
21 conservation measures and maintenance services through a private
22 firm which may own any purchased equipment for the duration of a
23 contract. Such contract shall specify that the private firm will be
24 recompensed either out of a negotiated portion of the savings

1 resulting from the conservation measures and maintenance services
2 provided by the private firm or, in the case of a cogeneration
3 project, through the payment of a rate for energy lower than would
4 otherwise have been paid for the same energy from current sources;
5 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 2. Beginning on or after July 1, 2016, the SFD determines a
23 state agency is performing in the bottom ten percent (10%) of all
24

1 state agencies with respect to performance measures for facility
2 management established by the Department.

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

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

13 2. Adheres to procurement requirements of Sections 62 through
14 65 of this title and the provisions of this act;

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

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

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

23 A. When the Commissioners of the Land Office determine it is in
24 the best interest of the trust, the Commissioners of the Land Office

1 may invite the presentation of written proposals for the lease,
2 sale, exchange, construction, maintenance, repair, improvement,
3 development or redevelopment of any investment real property, as
4 defined in this section, contained within the Land Office Trust.

5 B. The term "investment real property" shall include all real
6 property acquired by the Land Office for investment purposes and
7 shall exclude all real property originally granted in the Enabling
8 Act of 1906.

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

14 1. The proposal's economic benefits to the Land Office Trust,
15 advancement of long term capital asset plan, investment objectives
16 or other advantages to the Land Office Trust for the benefit of the
17 trust;

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

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

22 D. The Secretary to the Commissioners of the Land Office may
23 enter into negotiations with one or more respondents and may enter
24

1 into contracts with the respondent or respondents selected by
2 majority vote of the Commission in an open meeting.

3 E. The Commissioners of the Land Office may reject any and all
4 bids.

5 SECTION 6. AMENDATORY 64 O.S. 2011, Section 1013, as
6 last amended by Section 2, Chapter 117, O.S.L. 2014 (64 O.S. Supp.
7 2015, Section 1013), is amended to read as follows:

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

13 1. For the exclusive purpose of:

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

16 b. defraying reasonable expenses of administering the
17 trust funds;

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

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

23 B. The permanent school fund and other educational funds may
24 only be invested in bonds issued in the United States, United States

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

15 C. The Commissioners shall establish an investment committee.
16 The investment committee shall be composed of not more than three
17 members of the Commissioners of the Land Office or their designees.
18 The committee shall make recommendations to the Commissioners of the
19 Land Office on all matters related to the choice of managers of the
20 assets of the funds, on the establishment of investment and fund
21 management guidelines, and in planning future investment policy.
22 The committee shall have no authority to act on behalf of the
23 Commissioners of the Land Office in any circumstances whatsoever.
24 No recommendations of the committee shall have effect as an action

1 of the Commissioners of the Land Office or take effect without the
2 approval of the Commissioners as provided by law. The Commissioners
3 shall promulgate and adopt on an annual basis an investment plan.
4 The investment plan shall state the criteria for selecting
5 investment managers, the allocation of assets among investment
6 managers, and established standards of investment and fund
7 management.

8 D. The Commissioners shall retain qualified investment managers
9 to provide for investment of the fund monies and management of
10 investment real property pursuant to the investment plan.

11 Investment managers shall be chosen by a solicitation of proposals
12 on a competitive bid basis pursuant to standards set by the
13 Commissioners. Subject to the investment plan, each investment
14 manager shall have full discretion in the management of the funds or
15 real property allocated to said investment managers. The funds
16 allocated to investment managers shall be actively managed by them,
17 which may include selling investments and realizing losses if the
18 action is considered advantageous to longer term return
19 maximization. Because of the total return objective, no distinction
20 shall be made for management and performance evaluation purposes
21 between realized and unrealized capital gains and losses.

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

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

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

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

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

7 J. The Commissioners of the Land Office shall select one
8 custodial bank to settle transactions involving the investment of
9 the funds under the control of the Commissioners of the Land Office.
10 The Commissioners of the Land Office shall review the performance of
11 the custodial bank at least once every year. The Commissioners of
12 the Land Office shall require a written competitive bid every five
13 (5) years. The custodial bank shall have a minimum of Five Hundred
14 Million Dollars (\$500,000,000.00) in assets to be eligible for
15 selection. Any out-of-state custodial bank shall have a service
16 agent in the State of Oklahoma so that service of summons or legal
17 notice may be had on the designated agent, and the bank shall submit
18 to the jurisdiction of Oklahoma state courts for resolution of any
19 and all disputes. In order to be eligible for selection, the
20 custodial bank shall allow electronic access to all transaction and
21 portfolio reports maintained by the custodial bank involving the
22 investment of state funds under control of the Commissioners of the
23 Land Office and to the Cash Management and Investment Oversight
24 Commission. The requirement for electronic access shall be

1 incorporated into any contract between the Commissioners of the Land
2 Office and the custodial bank. Neither the Commissioners of the
3 Land Office nor the custodial bank shall permit any of the funds
4 under the control of the Commissioners of the Land Office or any of
5 the documents, instruments, securities or other evidence of a right
6 to be paid money to be located in any place other than within a
7 jurisdiction or territory under the control or regulatory power of
8 the United States government.

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

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

17 ~~SECTION 8. This act shall become effective July 1, 2016.~~

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

22 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
23 February 24, 2016 - DO PASS AS AMENDED
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