

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1215

By: Jolley

AS INTRODUCED

An Act relating to Commissioners of the Land Office property management; amending 61 O.S. 2011, Sections 60 and 61, as last amended by Sections 1 and 2, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2015, Sections 60 and 61), which relate to state consultants; excluding Commissioners of the Land Office from certain requirement to utilize certain services by the Office of Management and Enterprise Services; amending 61 O.S. 2011, Sections 202 and 208, as last amended by Sections 7 and 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 of the Land Office from the requirements of the Public Facilities Act; authorizing the Commissioners of the Land Office to lease, sale, exchange, construct, maintain, repair, improve, develop or redevelop certain investment real property; defining term; stating criteria for proposals; authorizing agency to negotiate and 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 investments of school funds; requiring Commissioners of the Land Office to invest in real property; and amending 64 O.S. 2011, Section 1015, which relates to appraisal procedures; modifying certain appraisal and determination of fair market value procedures; providing for codification; providing an effective date; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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 Higher Education and

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

3 SECTION 4. AMENDATORY 61 O.S. 2011, Section 208, as last
4 amended by Section 11, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2015,
5 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,
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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
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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 of the Land Office
15 may invite the presentation of written proposals for the lease,
16 sale, exchange, construction, maintenance, repair, improvement,
17 development or redevelopment of any investment real property, as
18 defined in this section, contained within the Land Office Trust.

19 B. The term "investment real property" shall include all real
20 property acquired by the Land Office 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 investment committee
24 which shall make recommendations to the Commissioners of the Land

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

4 1. The proposal's economic benefits to the Land Office Trust,
5 advancement of long term capital asset plan, investment objectives
6 or other advantages to the Land Office Trust for the benefit of the
7 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 to the Commissioners of the Land Office may
13 enter into negotiations with one or more respondents and may enter
14 into contracts with the respondent or respondents selected by
15 majority vote of the Commission in an open meeting.

16 E. The Commissioners of the Land Office may reject any and all
17 bids.

18 SECTION 6. AMENDATORY 64 O.S. 2011, Section 1013, as
19 last amended by Section 2, Chapter 117, O.S.L. 2014 (64 O.S. Supp.
20 2015, Section 1013), is amended to read as follows:

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

3 1. For the exclusive purpose of:

- 4 a. providing maximum benefits to current and future
5 beneficiaries, and
- 6 b. defraying reasonable expenses of administering the
7 trust funds;

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

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

13 B. The permanent school fund and other educational funds may
14 only be invested in bonds issued in the United States, United States
15 dollar denominated or other investments settled in United States
16 dollars or traded on the United States exchange markets and real
17 property to be owned or acquired by the Commissioners of the Land
18 Office. The Commissioners of the Land Office shall not invest more
19 than sixty percent (60%) of the trust fund investments in equity
20 securities. The Commissioners of the Land Office are further
21 authorized to acquire, purchase, exchange and grant any real
22 property under its jurisdiction as is necessary to carry out the
23 investment in the real property. The Commissioners of the Land
24 Office shall not invest more than three percent (3%) of the total

1 value of the assets of the permanent school funds in connection with
2 investments in real property. In no case shall the Commissioners of
3 the Land Office bid against private sector bidders above the
4 appraised value of any property to be acquired.

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

22 D. The Commissioners shall retain qualified investment managers
23 to provide for investment of the fund monies and management of
24 investment real property pursuant to the investment plan.

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

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

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

17 G. The Commissioners shall compile a quarterly financial report
18 showing the performance of all the combined funds under their
19 control on a fiscal year basis. The report shall contain a list of
20 all investments made by the Commissioners and a list of any
21 commissions, fees or payments made for services regarding the
22 investments for that reporting period. The report shall be based on
23 market values and shall be compiled pursuant to uniform reporting
24 standards prescribed by the Oklahoma State Pension Commission for

1 all state retirement systems. The report shall be distributed to
2 the Oklahoma State Pension Commission, the Cash Management and
3 Investment Oversight Commission, and the Legislative Service Bureau.

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

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

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

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

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

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. This act shall become effective July 1, 2016.

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

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