

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2939

By: Mulready of the House

and

Dahm of the Senate

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10                                   COMMITTEE SUBSTITUTE

11                   An Act relating to public buildings and public works;  
12                   amending 61 O.S. 2011, Sections 202.1, as last  
13                   amended by Section 8, Chapter 302, O.S.L. 2013 and  
14                   220, as last amended by Section 18, Chapter 302,  
15                   O.S.L. 2013 (61 O.S. Supp. 2017, Sections 202.1 and  
16                   220), which relate to the Public Facilities Act;  
17                   eliminating certain criteria for use for design-build  
18                   and at-risk construction management project delivery  
19                   methods; requiring competitive bidding for all  
20                   contracts for at-risk construction management; and  
21                   providing an effective date.

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

SECTION 1.           AMENDATORY           61 O.S. 2011, Section 202.1, as  
last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.  
2017, Section 202.1), is amended to read as follows:

Section 202.1 A. The design-build and construction management  
project delivery methods shall not be used without the written

1 approval of the Director of the Office of Management and Enterprise  
2 Services, or the Director's designee, when those projects are  
3 constructed for a state agency or by an act of the Legislature  
4 specifying design-build or at-risk construction management for a  
5 project. In all instances where the design-build project or at-risk  
6 construction management delivery method is authorized, construction  
7 administration shall be performed by the State Facilities Director,  
8 the SFD's designee or designees, or otherwise by contract or  
9 contract provision approved by the Director of the Office of  
10 Management and Enterprise Services for construction administration  
11 by another party.

12 B. Municipalities, counties, public trusts, or any other  
13 political subdivision in this state shall not be required to get  
14 approval of any other state agency in order to use agency  
15 construction management or at-risk construction management as a  
16 construction delivery method. However, municipalities, counties,  
17 public trusts, and any other political subdivision shall be subject  
18 to Section 220 of this title.

19 C. The design-build and construction management project  
20 delivery methods shall not be used for any project unless the  
21 project meets the criteria established by the administrative rules  
22 promulgated as required by this act. Such methods shall not be used  
23 unless there is a need for compressed construction time as required  
24 to respond to a natural disaster or other emergency situation

1 affecting public health and safety, or all of the following criteria  
2 for designation are met:

- 3 1. The project benefits the public; and
- 4 2. There is a need for cost control; ~~and~~
- 5 ~~3. The need exists for specialized or complex construction~~  
6 ~~methods due to the unique nature of the project.~~

7 D. The use of design-build and construction management project  
8 delivery methods shall not interfere or inhibit the opportunity for  
9 subcontractors to openly and freely compete for subcontracts  
10 pursuant to the Public Competitive Bidding Act of 1974 with respect  
11 to public notices.

12 E. The provisions of subsections A and B of this section shall  
13 not apply to projects by contract pursuant to an interagency  
14 agreement under Section 581 of Title 74 of the Oklahoma Statutes or  
15 to projects a state agency performs solely with the staff of the  
16 agency.

17 F. The Office of Management and Enterprise Services shall,  
18 pursuant to the Administrative Procedures Act, promulgate rules to  
19 effect procedures, processes and design-build/construction  
20 management fee guidelines necessary to the fulfillment of its  
21 responsibilities under this section.

22 G. As used in the Public Facilities Act, public trusts shall  
23 not include state beneficiary public trusts.

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1 SECTION 2. AMENDATORY 61 O.S. 2011, Section 220, as last  
2 amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2017,  
3 Section 220), is amended to read as follows:

4 Section 220. A. Any political subdivision or board of  
5 education of a school district may use construction management as a  
6 project delivery method for the building, altering, repairing,  
7 improving, maintaining or demolishing any structure or appurtenance  
8 thereto, or any other improvement to real property owned by that  
9 political subdivision or school district. For purposes of this  
10 section "construction management" shall be defined as set forth in  
11 Section 202 of this title and shall include both agency construction  
12 management and at-risk construction management.

13 B. A political subdivision or school district shall select a  
14 construction manager based on the professional qualifications and  
15 technical experience of the construction manager. Selection  
16 criteria shall include the experience of the candidate, past  
17 performance, and certification of the company or individuals within  
18 the company of their knowledge of recognized standards of  
19 construction, construction management and project management. Only  
20 firms recognized as qualified construction managers by the  
21 Department of Real Estate Services of the Office of Management and  
22 Enterprise Services pursuant to Section 62 of this title, may be  
23 considered for selection as a construction manager by a political  
24 subdivision or school district.

1 C. The construction management project delivery method may only  
2 be used for public construction contracts when the construction  
3 project meets the criteria established by Section 202.1 of this  
4 title, except that a political subdivision or school district shall  
5 not be required to obtain permission from the Director of the Office  
6 of Management and Enterprise Services.

7 D. When bids for a public construction project have been  
8 received from general contractors pursuant to the Public Competitive  
9 Bidding Act of 1974 and the lowest responsible bid is within the  
10 awarding agency's available funding, the awarding agency shall not  
11 reject all bids and award the project to a construction manager.

12 E. Construction management contracts, ~~for both agency~~  
13 ~~construction management and at-risk construction management,~~ entered  
14 into by a political subdivision or school district pursuant to this  
15 section shall not be considered a public construction contract  
16 pursuant to Section 102 of Title 61 of the Oklahoma Statutes and  
17 shall not be subject to competitive bidding requirements as set  
18 forth in the Public Competitive Bidding Act of 1974. All contracts  
19 for at-risk construction management shall be subject to the  
20 competitive bidding requirements as set forth in the Public  
21 Competitive Bidding Act of 1974.

22 F. All construction contracts or subcontracts for work to be  
23 performed for any political subdivision or school district pursuant  
24 to a construction management project delivery method shall be

1 awarded in accordance with the provisions of the Public Competitive  
2 Bidding Act of 1974. ~~If a construction manager at-risk wishes to~~  
3 ~~self-perform portions of the construction work to be performed, the~~  
4 ~~construction manager at-risk may self-perform portions of the work~~  
5 ~~provided the construction manager at-risk competitively bids the~~  
6 ~~work under the same terms and conditions as the other bidders and~~  
7 ~~the construction manager at-risk is the lowest responsible bidder~~  
8 ~~for the construction subcontract.~~ No work shall commence until the  
9 school district executes a written contract and the contractor and  
10 subcontractors submit bonds and proofs of insurance as required by  
11 the appropriate contract.

12 SECTION 3. This act shall become effective November 1, 2018.

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14 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION, dated  
15 03/01/2018 - DO PASS, As Amended and Coauthored.

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