

HOUSE BILL No. 2744

AN ACT concerning provision of architectural, engineering and land surveying services for certain projects for state agencies; fees; amending K.S.A. 75-1250, 75-1252, 75-1254, 75-1257, 75-1258, 75-1259, 75-1260, 75-1261, 75-1263, 75-1265, 75-1267, 75-1268 and 75-3784 and K.S.A. 2007 Supp. 75-1251, 75-1253, 75-1262, 75-1264 and 75-1269 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 75-1250 is hereby amended to read as follows: 75-1250. The legislature hereby declares it to be the policy of this state to announce publicly all requirements for architectural, *engineering or land surveying* services, and to negotiate contracts for architectural, *engineering or land surveying* services on the basis of demonstrated competence and qualification for the type of professional services required ~~and at fair and reasonable prices.~~

Sec. 2. K.S.A. 2007 Supp. 75-1251 is hereby amended to read as follows: 75-1251. As used in K.S.A. 75-1250 through 75-1267, and amendments thereto, unless the context otherwise requires, the following terms shall be defined as follows:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity that is permitted by law to practice the profession of architecture, *engineering or land surveying* ~~and that meets one of the following conditions:~~

~~— (1) Maintains an office in Kansas staffed by one or more architects who are licensed by the board of technical professions; or (2) does not maintain an office in Kansas but is qualified to perform special architectural services that are required in special cases where in the judgment of the secretary of administration it is necessary to go outside the state to obtain such services.~~

(b) "Negotiating committee" means a committee to negotiate as provided in this act, and consisting of the following members: (1) The head of the state agency for which the proposed project is planned or of the state agency that controls and supervises the operation and management of the institution for which the proposed project is planned, if such is the case, or a person designated by the head of the agency; (2) the head of the institution for which the proposed project is planned, or a person designated by the head of the institution. When the proposed project is not planned for an institution, the state agency head shall designate a second person in lieu of the head of an institution; and (3) the secretary of administration, or a person designated by the secretary, who shall act as chairperson of the committee.

(c) "Architectural services" means any of the following: (1) The practice of architecture, as defined in subsection (e) of K.S.A. 74-7003 and amendments thereto;

(2) the practice of landscape architecture, as defined in subsection (g) of K.S.A. 74-7003, and amendments thereto; and

(3) interior design services.

(d) "Project architect, *engineer or land surveyor*" means a firm employed under ~~this act~~ K.S.A. 75-1250 through 75-1267, and amendments thereto, for a particular project.

(e) "State building advisory commission" means the state building advisory commission created by K.S.A. 75-3780, and amendments thereto, or any duly authorized officer or employee of such commission.

(f) "State agency" includes any state institution.

(g) "*Engineering services*" means those services prescribed in subsection (i) of K.S.A. 74-7003, and amendments thereto, as related to building construction defined in this section.

(h) "*Land surveying*" means those services prescribed in subsection (k) of K.S.A. 74-7003, and amendments thereto, as related to building construction defined in this section.

(i) "Agency head" means the chief administrative officer of a state agency, as the term is defined in subsection (3) of K.S.A. 75-3701, and amendments thereto, but shall not include the chief administrative officer of any state institution.

(j) "Building construction" means furnishing and utilizing labor, equipment, materials or supplies used or consumed for the construction, alteration, renovation, repair or maintenance of a building or structure. Building construction does not include highways, roads, bridges, dams, turnpikes or related structures, including, but not limited to, rest areas and visitor centers or stand-alone parking lots.

Sec. 3. K.S.A. 75-1252 is hereby amended to read as follows: 75-1252. In the procurement of architectural, *engineering or land surveying* services, the secretary of administration shall encourage firms engaged in the lawful practice of their profession to submit to the secretary and to the state building advisory commission annually a statement of qualifications and performance data. Such statement shall include the qualifications and performance data of all consultants the firm proposes to use.

Sec. 4. K.S.A. 2007 Supp. 75-1253 is hereby amended to read as follows: 75-1253. (a) Whenever it becomes necessary in the judgment of the secretary of administration or in any case when the total cost of a project for the construction of a building or for major repairs or improvements to a building for a state agency is expected to exceed \$750,000 *when architectural services are desired for the project or to exceed \$500,000 when engineering services or land surveying services are desired for the project*, the secretary of administration shall convene a negotiating committee. The state building advisory commission shall prepare a list of at least three and not more than five firms which are, in the opinion of the state building advisory commission, qualified to serve as project architect, *engineer or land surveyor* for the project. Such list shall be submitted to the negotiating committee, without any recommendation of preference or other recommendation. ~~The secretary of administration shall meet with each negotiating committee and shall advise the negotiating committee but shall have no vote in the selection process or other matter upon which the committee may vote.~~

(b) The secretary of administration may combine two or more separate projects for the construction of buildings or for major repairs or improvements to buildings for state agencies, for the purpose of procuring architectural, *engineering or land surveying* services for all such projects from a single firm. In each case, the combined projects shall be construed to be a single project for all purposes under the provisions of K.S.A. 75-1250 to 75-1267, inclusive, and amendments thereto.

(c) (1) This section shall not apply to any repetitive project with a standard plan that was originally designed by the secretary of administration or an agency architect pursuant to paragraphs (2) and (3) of subsection (a) of K.S.A. 75-1254, and amendments thereto. In such a case, the secretary of administration or the agency architect may provide architectural services for the repetitive project. ~~The repetitive design exception authorized by this subsection shall not apply if the in-house architectural design section of the division of architectural services has a staff of greater than one chief architect and five designers.~~

(2) “Repetitive project” means a project which uses the same standard design as was used for a project constructed previously, including, but not limited to, sub-area shops and salt domes of the department of transportation and showers and toilet buildings of the department of wild-life and parks. The plans for the project may be modified as required for current codes, operational needs or cost control. The total floor area of the project may be increased by an area of not more than 25% of the floor area of the originally constructed project, except that not more than 25% of the linear feet of the exterior and interior walls may be moved for such increase. A project shall not be considered to be repetitive if it has been over four years between the substantial completion of the last project using the design plans and the appropriation of funds for the proposed project.

Sec. 5. K.S.A. 75-1254 is hereby amended to read as follows: 75-1254. (a) Whenever a negotiating committee is not convened in accordance with K.S.A. 75-1253 and amendments thereto for a proposed project for the construction of a building or for major repairs or improvements to a building for a state agency, the secretary of administration shall:

(1) Conduct discussions with at least three firms regarding the proposed project, determine the architectural, *engineering or land surveying* services desired for such project, and negotiate a contract with one of such firms as project architect, *engineer or land surveyor* for the desired ~~architectural~~ services for all phases of the project which are authorized by appropriations therefor at a rate of compensation ~~not in excess of those specified in K.S.A. 75-1263 and amendments thereto~~ *in accordance with the provisions of K.S.A. 75-1263, and amendments thereto*;

(2) undertake to provide all or part of the architectural, *engineering*

or *land surveying* services for such project, including the construction administration services as described in K.S.A. 75-1260 and amendments thereto; or

(3) designate a qualified employee of the state agency or institution for which the project is being constructed, or of the state agency which controls and supervises the operation and management of such institution, to provide all or part of such services for the project; for the purposes of providing such architectural, *engineering or land surveying* services, such employee shall be known as the agency architect, *engineer or land surveyor, as the case may be*, for the project.

(b) The employee of such agency designated as the agency architect, *engineer or land surveyor, as the case may be*, for the project shall be a licensed architect, *engineer or land surveyor* under the provisions of K.S.A. 74-7001 to ~~74-7035~~ 74-7046, inclusive, and amendments thereto and shall be found by the secretary of administration to be qualified to perform all of the architectural, *engineering or land surveying* services for the particular project, including the construction administration services as described in K.S.A. 75-1260 and amendments thereto.

(c) The secretary of administration or the agency architect, *engineer or land surveyor* for the project, as the case may be, shall provide the preliminary design services, construction contract documents, bidding services and construction administration services as described in K.S.A. 75-1260 and amendments thereto for each phase of the project for which no firm is employed as project architect, *engineer or land surveyor*.

Sec. 6. K.S.A. 75-1257 is hereby amended to read as follows: 75-1257. (a) Each negotiating committee shall decide which ~~architectural professional design~~ services are desired and negotiate a contract with the selected firm as project architect for such ~~architectural professional design~~ services as desired at a fair and reasonable rate of compensation ~~not in excess of that specified in K.S.A. 75-1263, and amendments thereto~~. Whenever the project is for construction of a building or for major repairs or improvements for a building, such contract shall be for all phases of the project which are authorized by appropriations therefor.

(b) In such negotiations, the negotiating committee shall always consider demonstrated competence and qualifications, including satisfactory completion of any previous phase of work awarded for the same project, and shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature thereof. The negotiating committee shall attempt to negotiate a contract with any firm, which is on the list submitted by the state building advisory commission, for the later phases of work of any project upon which such firm has been awarded a contract and satisfactorily completed a previous phase of work.

(c) Should the negotiating committee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, ~~within the fee limits established~~, negotiations with that firm shall be terminated. The negotiating committee shall then undertake negotiations with the second most qualified firm. Failing of accord with the second most qualified firm, negotiations with such firm shall be terminated. The negotiating committee shall then undertake negotiations with the third, fourth and fifth most qualified firm in turn. Should the negotiating committee be unable to negotiate a satisfactory contract with any of the selected firms, the committee shall reevaluate the services and fee requirements and reopen negotiations with any of the nominated firms.

(d) Should the negotiating committee still be unable to enter into a contract, it shall request the state building advisory commission to provide another list of nominees as provided in K.S.A. 75-1253, and amendments thereto.

Sec. 7. K.S.A. 75-1258 is hereby amended to read as follows: 75-1258. (a) Each contract for architectural, *engineering or land surveying* services negotiated under K.S.A. 75-1254 or 75-1257, and amendments thereto, shall be entered into between the secretary of administration or the state agency and the firm selected as the project architect, *engineer or land surveyor, as the case may be*. Each such contract shall require the project architect, *engineer or land surveyor, as the case may be*, to submit evidence which is satisfactory to the secretary of administration that the firm has general professional liability insurance or specific professional liability insurance which is adequate for the project.

(b) In addition to the requirements in subsection (a), each such contract for architectural, *engineering or land surveying* services shall specify the responsibilities undertaken by the project architect, *engineer or land surveyor* and that the project architect, *engineer or land surveyor, as the case may be*, shall be responsible for ~~all of~~ such architect's, *engineer's or land surveyor's* negligent acts, errors or omissions in the performance of such contract.

Sec. 8. K.S.A. 75-1259 is hereby amended to read as follows: 75-1259. (a) The project architect, *engineer or land surveyor* employed by the secretary of administration to prepare the construction documents shall submit all construction documents to the secretary of administration and the state agency for which the project is being constructed. All construction documents prepared by the project architect, *engineer or land surveyor* shall be approved by the secretary of administration and the state agency prior to submitting the same to the director of purchases to solicit bids thereon.

(b) The review of the construction documents by the secretary of administration and the state agency under this section shall be limited to ensuring only that such documents do not change the project description approved under K.S.A. 75-1255, and amendments thereto, and that the same comply with the standards established under K.S.A. 75-3783, and amendments thereto, by the secretary of administration with the advice of the state building advisory commission for the planning, design and construction of buildings and major repairs and improvements to buildings for state agencies.

(c) If the construction documents are prepared by the secretary of administration, the same shall be submitted to and approved by the state agency prior to submission to the director of purchases. If the construction documents are prepared by an agency architect, *engineer or land surveyor* as provided in K.S.A. 75-1254, and amendments thereto, the same shall be submitted to, reviewed and approved by the secretary of administration under this section prior to submission to the director of purchases.

(d) The construction documents for a capital improvement project for the construction of a building or for major repairs or improvements to a building for the use or benefit of a state agency, shall prescribe standards for energy conservation which provide the highest level of energy conservation and efficiency that is practical for the project, as determined by the secretary of administration. The standards for energy conservation determined practical for the project by the secretary of administration shall be included as program and base bid requirements for the project and not as alternates.

Sec. 9. K.S.A. 75-1260 is hereby amended to read as follows: 75-1260. Subject to the provisions of ~~this act~~ K.S.A. 75-1250 through 75-1268, and appropriation acts, any firm employed as project architect, *engineer or land surveyor* to perform construction administration services shall:

(a) Advise, consult, and represent the secretary of administration in the administration of the construction contract or contracts;

(b) make periodic *site* visits to ~~inspect~~ *determine if* the progress and quality of the work ~~for compliance of the project is in accordance~~ with the contract documents and make recommendations to the secretary of administration thereon;

(c) review and approve shop drawings of fabricators and manufacturers, and samples of materials for conformance with drawings and specifications and submit copies of approved shop drawings to the secretary of administration and the state agency for which the project is being constructed for their information;

(d) initiate and prepare change orders for approval by the secretary of administration and issue field orders to provide for adjustments or changes in work;

(e) determine dates of substantial and final completion; and

(f) issue certificates of payment in the amount determined as due the contractor, except that in cases where bids were let for the three specified portions of the project and not for the project as a whole under subsection (b) of K.S.A. 75-3741 and amendments thereto, such certificates shall be

issued to each contractor only after consultation with the prime contractor.

Sec. 10. K.S.A. 75-1261 is hereby amended to read as follows: 75-1261. ~~(a)~~ If a contract to provide construction administration services as described in K.S.A. 75-1260, and amendments thereto, is not entered into, such construction administration services shall be the responsibility of the secretary of administration or the agency architect, *engineer or land surveyor* for the project as provided in K.S.A. 75-1254, and amendments thereto.

~~(b) Whenever the secretary of administration or the agency architect for the project, as the case may be, assumes responsibility for such services regarding any contract which is let for a project for the construction of a building or for major repairs or improvements to a building for a state agency, and the total price for such project exceeds fifty thousand dollars (\$50,000), the secretary of administration or, where there is an agency architect for the project, the state agency for which the project is being constructed, shall employ a job representative for such project. The compensation of a job representative employed under this subsection shall be paid from: (1) The same fund or appropriation as the cost of the project for which he or she is job representative, or (2) appropriations for the department of administration and available for such purpose if the job representative is employed by the secretary of administration, or from appropriations available for such purpose made for the state agency which employed such job representative, if such is the case.~~

~~(c) Whenever the secretary of administration or the agency architect for the project, as the case may be, assumes responsibility for such services regarding any contract which is let for any such project, the total price of which does not exceed fifty thousand dollars (\$50,000), the secretary of administration or, where there is an agency architect for the project, the state agency for which the project is being constructed, may employ a job representative for such project. The compensation of a job representative employed under this subsection shall be paid from: (1) Funds appropriated for the department of administration and available for such purpose, if the job representative is employed by the secretary of administration, or (2) appropriations available for such purpose made for the state agency which employed the job representative, if such is the case.~~

~~(d) Each job representative employed pursuant to this section shall be present at the site of such project as directed by the secretary of administration or the agency architect for the project, whichever is responsible for construction administration services for the project, and shall make reports thereto relating to the manner in which the work is being done, the progress thereof, and other matters specified by the secretary of administration or agency architect for the project, as the case may be. Job representatives shall be solely responsible to, and shall perform their duties under the direction and supervision of, the secretary of administration or the state agency for which the project is being constructed, whichever is the employer, in accordance with the inspection standards adopted by the secretary of administration under K.S.A. 75-3783 and amendments thereto. Job representatives shall be in the unclassified service under the Kansas civil service act and shall receive compensation fixed by the secretary of administration or the state agency for which the project is being constructed, whichever is the employer and approved by the governor in each case. All job representatives shall meet the standard qualifications for inspection personnel adopted by the secretary of administration under K.S.A. 75-3783 and amendments thereto.~~

Sec. 11. K.S.A. 2007 Supp. 75-1262 is hereby amended to read as follows: 75-1262. (a) In performing the construction administration services described in K.S.A. 75-1260, and amendments thereto, the project architect, *engineer or land surveyor* or, if there is no project architect, *engineer or land surveyor*, the secretary of administration or the agency architect, *engineer or land surveyor* as provided in K.S.A. 75-1254, and amendments thereto, shall have primary responsibility for inspection of the project to determine if the progress and quality of the work of the project is in accordance with the contract documents. The state agency for which the project is being constructed may perform and the secretary of administration shall perform periodic inspection of the construction

project. In no case shall such inspections by the state agency or the secretary of administration relieve the project architect, *engineer or land surveyor* of any part of its authority or responsibility to perform all construction administration services as described in K.S.A. 75-1260, and amendments thereto.

(b) When the project architect, *engineer or land surveyor* or, if there is no project architect, *engineer or land surveyor*, the secretary of administration or the agency architect, *engineer or land surveyor* as provided in K.S.A. 75-1254, and amendments thereto, determines that a project has been satisfactorily completed, such project architect, *engineer or land surveyor*, secretary or agency architect, *engineer or land surveyor* shall ~~certify~~ *make that determination and shall send a notice of such determination* to the state agency for which the project was completed and to the secretary of administration. The final inspection of the project shall be conducted jointly by the project architect, *engineer or land surveyor*, if there is one, the state agency and the secretary of administration.

(c) The results of such final inspection shall be reported to the secretary of administration. Upon determining that the project has been satisfactorily completed, based on the recommendations of the project architect, *engineer or land surveyor*, if there is one, and the state agency and on other information, the secretary of administration shall officially accept the project as satisfactorily complete and thereby authorize the state agency for which the project was completed to occupy and make use of the project. No state agency shall occupy or make use of any building or portion thereof which has been constructed, or any areas of a building which were repaired or improved, until the project therefor has been officially accepted as provided in this section, except that an agency may occupy all or any area of any such building for which the contractor has agreed in writing to complete and correct all work for the project in accordance with the contract documents within a time specified after the date of such occupancy.

(d) Within nine months after official acceptance of a project, the state agency for which the project was completed and the secretary of administration shall conduct a full inspection of the completed project and shall promptly notify the appropriate contractor of any claims resulting therefrom.

(e) In performing the inspection services pursuant to this section, the secretary of administration, with the concurrence of the state agency that owns the property, may use inspection services of the city, township, county or other political subdivision in which the project is located, in accordance with K.S.A. 75-3741c, and amendments thereto.

Sec. 12. K.S.A. 75-1263 is hereby amended to read as follows: 75-1263. (a) ~~Except as otherwise provided in subsection (e), Fees paid to firms employed as project architect, *engineer or land surveyor* to provide architectural professional design services shall be negotiated at a fair and reasonable rate of compensation by the secretary of administration for shall not exceed the following: (1) When the firm provides preliminary design services, construction documents, bidding services and the construction administration services specified in K.S.A. 75-1260 and amendments thereto the maximum shall be: Seven percent of that portion of the estimated cost of the project not exceeding \$2,250,000, 6.25% of that portion of the estimated cost of the project exceeding \$2,250,000 but not exceeding \$4,500,000, 5.5% of that portion of the estimated cost of the project exceeding \$4,500,000 but not exceeding \$6,750,000. The fees to be paid for any project for which the estimate of cost exceeds \$6,750,000 shall be negotiated between the firm selected and the negotiating committee, but shall not exceed 5% on that portion of the estimated cost of the project exceeding \$6,750,000.~~

(b) *The secretary of administration shall maintain and publish guidelines for fees based on the projected cost of a project, the complexity of a project, the type of construction for the project and the level of services to be provided, as factors in establishing the rate or amount of such fees.*

~~(2)~~ (c) When a prior project architect, the secretary of administration or any agency architect as provided in K.S.A. 75-1254 and amendments thereto provides preliminary design services and the project architect provides construction documents, bidding services and construction administration services, ~~the maximum established under subsection (a)(1)~~

compensation shall be reduced by the negotiating committee which shall determine the value of the services to be performed and shall adjust the fee accordingly.

~~(3)~~ (d) When a prior project architect, *engineer or land surveyor*, as the case may be, the secretary of administration or an agency architect, *engineer or land surveyor*, as provided in K.S.A. 75-1254 and amendments thereto provides preliminary design services, bidding services and construction administration services, ~~the maximum established under subsection (a)(1)~~ compensation shall be reduced by the negotiating committee which shall determine the value of the services to be performed and shall adjust the fee accordingly.

~~(b) A fee of not to exceed 4% of the estimated cost of the project, which shall be determined by the negotiating committee and which shall be proportional to the relative complexity of the project, may be added to the fees otherwise authorized under this section.~~

~~(c)~~ (e) For purposes of computing the project architect's, *engineer's or land surveyor's* maximum fees, the estimated cost of ~~the project construction~~ shall be that provided in the original program cost estimate for the project. The estimated cost of the project shall not be reduced or increased without the prior approval of the negotiating committee which approved the project description under K.S.A. 75-1255 and amendments thereto. The project architect's, *engineer's or land surveyor's* maximum fee shall not be reduced or increased except that the project architect, *engineer or land surveyor* may be paid additional fees as a result of change orders initiated by the state or for additional services which are the result of changes in the scope or program of the project or construction circumstances beyond the control of the project architect, *engineer or land surveyor* or the state. Any increase in the fees paid to a project architect, *engineer or land surveyor* above the fees previously established ~~maximum~~ for the project shall receive the prior approval of the negotiating committee which approved the project description under K.S.A. 75-1255 and amendments thereto and, upon such approval, shall constitute a revised ~~maximum~~ fee under this section.

~~(d)~~ (f) Fees of project architects, *engineers or land surveyors* shall be paid from appropriations for the particular project for which the project architect, *engineer or land surveyor* is employed and in no case shall the amount appropriated for a project be exceeded for any increase in a project architect's, *engineer's or land surveyor's* fees. The secretary of administration shall report to the joint committee on state building construction all actions relating to any ~~increase~~ *changes to the published guidelines for fees* under subsection ~~(e)~~ in the fees (a)(1) paid to a project architect, *engineer or land surveyor* above the previously established maximum for the project.

Sec. 13. K.S.A. 2007 Supp. 75-1264 is hereby amended to read as follows: 75-1264. (a) The secretary of administration shall issue monthly reports of progress and advise, consult with and cooperate with the joint committee on state building construction.

(b) Change orders or changes in plans involving cost increases of less than ~~\$75,000~~ \$125,000 and any change order or change in plans involving a cost reduction, other than a change in the proposed use of any new or remodeled building, may be authorized or approved by the secretary of administration without prior consultation with the joint committee on state building construction. The secretary of administration shall report to the joint committee on state building construction all action relating to such change orders or changes in plans.

(c) No change order or change in plans involving any cost increases of ~~\$75,000~~ \$125,000 or more and no change in the proposed use of any new or remodeled building shall be authorized or approved by the secretary of administration without having first advised and consulted with the joint committee on state building construction.

(d) (1) If the secretary of administration determines that it is in the best interest of the state to authorize or approve a change order, a change in plans or a change in the proposed use of any new or remodeled building that the secretary is required by this section to first advise and consult with the joint committee on state building construction prior to issuing such approval and if no meeting of the joint committee is scheduled to take place within the next 10 business days, then the secretary may use

the procedure authorized by this subsection in lieu of advising and consulting with the joint committee at a meeting. In any such case, the secretary of administration shall mail a summary description of the proposed change order, change in plans or change in the proposed use of any new or remodeled building to each member of the joint committee on state building construction and to the director of the legislative research department. Each such summary description shall include a notice specifying the date it was mailed.

(2) After receiving any such summary description, each member shall review the information about the proposed change order, change in plans or change in proposed use and may request a presentation and review of the proposed change order, change in plans or change in proposed use at a meeting of the joint committee. If two or more members of the joint committee contact the director of the legislative research department within seven business days of the date specified in the summary description and request such presentation and review, then the director of the legislative research department shall notify the secretary of administration and the chairperson of the joint committee that a meeting has been requested for such presentation and review. Upon receiving such notification, the chairperson shall call a meeting of the joint committee as soon as practicable for the purpose of such presentation and review and shall furnish the secretary of administration with notice of the time, date and place of the meeting. In any such case, the secretary of administration shall not authorize or approve such proposed change order, change in plans or change in proposed use without having first advised and consulted with the joint committee at a meeting.

(3) If less than two members of the joint committee contact the director of the legislative research department within seven business days of the date the summary description was mailed and request a presentation and review of any such proposed change order, change in plans or change in use at a meeting of the joint committee, then the secretary of administration shall be deemed to have advised and consulted with the joint committee about such proposed change order, change in plans or change in proposed use and may authorize or approve such proposed change order, change in plans or change in proposed use.

Sec. 14. K.S.A. 75-1265 is hereby amended to read as follows: 75-1265. Whenever the negotiating committee and the secretary of administration, with the advice of the state building advisory commission, agree with regard to a specific project that the best interests of the state would be served, the ~~negotiating committee~~ *secretary of administration or state agency* may enter into a contract with any qualified company or person for construction management services for such project. Such services may include: Detail cost estimating, critical path method scheduling and monitoring, drafting contract documents for necessary phasing and grouping, drafting contracts and change orders, full-time inspection and checking and approving shop drawings, color schedules, and materials. The fee for services under this section shall be negotiated by the negotiating committee but shall not exceed ~~one percent (1%)~~ *1%* of the estimated cost of the project, and such fees shall be in addition to fees authorized under K.S.A. 75-1263, and amendments thereto.

Sec. 15. K.S.A. 75-1267 is hereby amended to read as follows: 75-1267. (a) The secretary of administration shall obtain and maintain copies of all drawings, specifications, contracts, change orders, field orders, warranties and other documents relating to all capital improvement projects for the construction of buildings or for major repairs or improvements to buildings for state agencies. It is the responsibility of the secretary of administration to prepare all of the necessary documentation to support claims by the state against any project architect, *engineer, land surveyor*, contractor, manufacturer, supplier or other person regarding any such capital improvement project.

(b) It is the responsibility of each state agency for which such a capital improvement project was completed to initially refer all claims on behalf of the state arising from the project to the secretary of administration. The secretary of administration shall attempt to ~~effect~~ *attain* an informal or formal resolution of all such claims in a manner satisfactory to the interests of the state. Failing such a resolution, the secretary of administration shall refer and the state agency for which the project was com-



pleted may refer all such claims to the attorney general for action. Written notice of each such referral to the attorney general shall be given to the governor by the secretary of administration and the state agency making such referral. Upon each such referral, the attorney general shall institute and prosecute all appropriate legal proceedings regarding such claims.

(c) On or before November 15 each year, the secretary of administration shall report to the joint committee on state building construction as to the nature and status of all claims made on behalf of the state arising from state projects for the construction of buildings or major repairs or improvements to buildings which are referred to or acted on by the secretary of administration under this section, and shall include in such report any recommendations deemed appropriate by the secretary of administration.

(d) No document required to be kept and maintained under this section which relates to any correctional institution, as defined by K.S.A. 75-5202 and amendments thereto, or any other facility under the jurisdiction and control of the secretary of corrections or to any secured area or other area where public access is limited, shall be open for public inspection or reproduction under K.S.A. 45-201 and 45-202, and amendments thereto. The secretary of administration may limit reproduction of any other documents required to be kept and maintained under this section which may be used for commercial or similar purposes to the extent deemed appropriate by the secretary in the best interests of the state, except that there shall be no limitation on the reproduction of documents pertaining to buildings on the state or national register of historic places unless inspection of any such document is prohibited by the terms of the preceding sentence.

Sec. 16. K.S.A. 75-1268 is hereby amended to read as follows: 75-1268. Whenever architectural, *engineering or land surveying* services are required by a state agency for any purpose, other than for a specific project for the construction of a building or for major repairs or improvements to a building, the secretary of administration ~~and the chief administrative officer of the~~ or the state agency may negotiate and enter into a contract with a qualified architect, *engineer or land surveyor* for the required ~~architectural~~ services. Such contracts shall not be subject to the provisions of K.S.A. 75-3739, and amendments thereto, or to the provisions of the acts contained in K.S.A. 75-1250 to 75-1268, *and amendments thereto*.

Sec. 17. K.S.A. 2007 Supp. 75-1269 is hereby amended to read as follows: 75-1269. (a) The provisions of this section shall apply to ~~the following capital improvement projects:~~

~~—(1) any capital improvement project that is funded from the Kansas educational building fund or state institutions building fund and for which the department of administration will provide architectural services, engineering services or management services;~~

~~—(2) any other state agency capital improvement project that is not financed, in whole or in part, by gifts, bequests or donations made by one or more private individuals or other private entities and for which the department of administration will provide architectural services, engineering services or management services; and~~

~~—(3) any other state agency capital improvement project that is partially financed by gifts, bequests or donations made by one or more private individuals or other private entities and for which the department of administration will provide architectural services, engineering services or management services, except that only that portion of the estimated cost of such capital improvement project that is not financed by such gifts, bequests or donations shall be subject to the provisions of this section.~~

(b) (1) When in-house architectural design services under K.S.A. 75-1254, and amendments thereto, or in-house engineering design services are provided by the department of administration for any project authorized pursuant to this section the secretary of administration or the secretary's designee shall negotiate a design fee with the state agency for which the project is being constructed. The negotiated design fee shall be fixed in an amount not to exceed the actual costs to the department of administration of providing those services.

(2) The secretary of administration is authorized to fix, charge and collect fees for all other architectural, engineering and management serv-

ices provided by the department of administration for projects authorized pursuant to this section. The secretary of administration shall use the projected cost of a project, the complexity of a project, the type of construction involved in a project and the level of services provided by the department of administration as factors in establishing the rate or amount of such fees. The state agency for which the project is being constructed shall remit the fees established under this paragraph to the secretary of administration or the secretary's designee according to the following schedule:

(A) For any project with a total estimated cost of less than \$3,000,000, the entire fee shall be paid at the time the construction contracts for the project are bid.

(B) For any project with a total estimated cost of \$3,000,000 or more, one-half of the fee shall be paid at the time the construction contracts for the project are bid, and the remaining one-half shall be paid when construction of the project is 50% complete.

(c) As used in this section:

(1) "Architectural services" has the meaning ascribed thereto by K.S.A. 75-1251 and amendments thereto;

(2) "engineering services" has the meaning ascribed thereto by K.S.A. 75-5802 and amendments thereto; and

(3) "management services" means management, consultation, direction, oversight, inspection and other services performed by the secretary of administration under K.S.A. 75-1250 to 75-1268, inclusive, 75-3740 to 75-3742, inclusive, 75-3783 to 75-3785, inclusive, and 75-5801 to 75-5807, inclusive, and any amendments to such statutes.

(d) All moneys received by the secretary of administration under this section shall be credited to the architectural services recovery fund, which is hereby created in the state treasury. All expenditures from the architectural services recovery fund shall be for operating expenditures of the department of administration in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of administration or by a person or persons designated by the secretary.

Sec. 18. K.S.A. 75-3784 is hereby amended to read as follows: 75-3784. The secretary of administration *or state agency* is hereby authorized to contract for ancillary technical services for any project for the construction of a building or for repairs or improvements to a building for a state agency which are not provided by any firm or state agency providing architectural services or engineering services for the project. Such ancillary technical services shall include but not be limited to geology services and other soil or subsurface investigation and testing services, surveying, adjusting and balancing of air conditioning, ventilating, heating and other mechanical building systems, testing and consultant services. Such contract shall not be subject to the provisions of K.S.A. 75-3739, and amendments thereto, or to the provisions of the acts contained in articles 54 or 58 of chapter 75 of the Kansas Statutes Annotated. Expenditures for such ancillary technical services shall be made from funds appropriated for the project or available therefor.

Sec. 19. K.S.A. 75-1250, 75-1252, 75-1254, 75-1257, 75-1258, 75-1259, 75-1260, 75-1261, 75-1263, 75-1265, 75-1267, 75-1268 and 75-3784 and K.S.A. 2007 Supp. 75-1251, 75-1253, 75-1262, 75-1264 and 75-1269 are hereby repealed.

Sec. 20. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

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\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*