

## BILL ANALYSIS

Senate Research Center  
81R8767 YDB-D

S.B. 1090  
By: Deuell  
Government Organization  
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As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, construction manager-agents are one of the few remaining professional services for which there are no required minimum qualifications even though it is a significant project delivery method representing hundreds of millions of dollars of public funds. This lack of standards allows individuals or entities with nominal or no experience to represent themselves to governmental entities as competent and qualified to provide management and construction expertise for state agencies, counties, municipalities, school districts, public junior colleges, and other special districts and authorities on their capital improvement projects.

As proposed, S.B. 1090 amends current law relating to the regulation of the practice of construction and program management for capital improvement projects of governmental entities.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 8, Occupations Code, by adding Chapter 1306, as follows:

#### CHAPTER 1306. GOVERNMENTAL ENTITY CONSTRUCTION MANAGER-AGENTS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1306.001. DEFINITIONS. Defines "commission," "construction and program management," "department," "executive director," and "governmental entity construction manager-agent."

Sec. 1306.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies to a governmental entity or quasi-governmental entity authorized by state law to enter into a public works contract, including a state agency as defined by Section 2151.002 (Sunset Provision), Government Code, including the Texas Facilities Commission; certain local governments; a public junior college as defined by Section 61.003 (Definitions), Education Code; any entity owned by a municipality; and any other entity that owns or operates a facility for the benefit of a municipality or county.

Sec. 1306.003. EXEMPTION. (a) Provides that this chapter does not apply to a contract entered into by the Texas Department of Transportation or a professional architect or professional engineer licensed in good standing in this state subject to Subsection (b).

(b) Requires a professional architect or professional engineer who is licensed in this state and is providing construction or program management services as a construction manager-agent to a governmental entity to comply with Section 1306.055.

[Reserves Sections 1306.004-1306.050 for expansion.]

##### SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 1306.051. REGISTRATION REQUIRED. Prohibits a person from engaging in the practice of construction and program management as a manager-agent for a governmental entity in this state unless the person holds a certificate of registration issued under this chapter.

Sec. 1306.052. REGISTRATION APPLICATION; FEE. Requires an applicant for registration under this chapter to submit an application on a form prescribed by the executive director of the Texas Department of Licensing and Regulation (executive director) (TDLR) and pay the application fee set by the Texas Commission of Licensing and Regulation (commission).

Sec. 1306.053. ELIGIBILITY FOR REGISTRATION. Requires an applicant, to be eligible for registration as a governmental entity construction manager-agent, to:

- (1) be certified by a national construction and program management organization recognized by the executive director;
- (2) submit to TDLR the names and addresses of five governmental entity clients for which the applicant served as a construction manager to verify that the applicant has at least 10 years' experience in the field of construction and program management; or
- (3) hold a upper-level degree or certificate in construction management, architecture, engineering, or construction science and have at least a certain amount of years of verified experience in construction and program management for governmental entities.

Sec. 1306.054. ISSUANCE OF CERTIFICATE OF REGISTRATION. Requires the executive director to issue a certificate of registration to an applicant who qualifies for registration.

Sec. 1306.055. REQUIRED INSURANCE. Requires a holder of a certificate of registration under this chapter or the firm employing the person to maintain professional liability insurance in the amount of at least \$1 million for each occurrence.

Sec. 1306.056. TERM OF CERTIFICATE OF REGISTRATION. Provides that a certificate of registration is valid for a term established by the executive director.

[Reserves Sections 1306.057-1306.100 for expansion.]

#### SUBCHAPTER C. RENEWAL OF CERTIFICATE OF REGISTRATION

Sec. 1306.101. PROCEDURE FOR RENEWAL. (a) Authorizes a person who is otherwise eligible to renew a certificate of registration to renew an unexpired certificate by paying the required renewal fee to TDLR before the expiration date of the certificate. Prohibits a person whose certificate has expired from engaging in activities that require a certificate until the certificate has been renewed.

- (b) Authorizes a person whose certificate has been expired for 90 days or less to renew the certificate by paying to TDLR a renewal fee that is equal to 1-1/2 times the normally required renewal fee.
- (c) Authorizes a person whose certificate has been expired for more than 90 days but less than one year to renew the certificate by paying to TDLR a renewal fee that is equal to two times the normally required renewal fee.
- (d) Prohibits a person whose certificate has been expired for one year or more from renewing the certificate. Authorizes a person to obtain a new certificate by complying with the requirements and procedures for an original certificate.

SECTION 2. Amends Section 44.031, Education Code, by adding Subsection (f-1), to authorize a school district to contract for professional services rendered by a construction manager-agent in the manner provided by Section 2254.004 (Contract for Professional Services of Architect, Engineer, or Surveyor), Government Code, in lieu of complying with the methods provided by this section.

SECTION 3. Amends Section 44.037, Education Code, by amending Subsections (a), (b), (c), and (e), and adding Subsections (b-1) and (b-2), as follows:

(a) Authorizes a school district to use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility in a construction project or a program of multiple construction projects.

(b) Provides that a construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that complies with Chapter 1306, Occupations Code, and that provides consultation to the school district regarding construction, rehabilitation, alteration, or repair of the facility. Authorizes a district using the construction manager-agent method, under the contract between the district and the construction manager-agent, to require the construction manager-agent to provide any service defined as construction and program management under Section 1306.001, Occupations Code. Makes nonsubstantive changes.

(b-1) Creates this subsection from existing text. Provides that a construction manager-agent is not a contractor. Prohibits a school district from requiring a construction manager-agent to provide performance and payment bonds.

(b-2) Prohibits a construction manager-agent from performing any aspect of the construction, rehabilitation, alteration, or repair of the facility; being a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or providing project bonding for the construction, rehabilitation, alteration, or repair of the facility.

(c) Requires the district to select or designate an engineer or architect who is required to prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 (Engineers) or 1051 (Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects), Occupations Code, as applicable, rather than requiring the district before or concurrently with selecting a construction manager-agent to select or designate an engineer or architect.

(e) Requires a district using the construction manager-agent method to procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will provide performance and payment bonds to the district in accordance with applicable law. Makes nonsubstantive changes.

SECTION 4. Amends Section 51.781, Education Code, by amending Subsections (a), (b), (c), and (e) and adding Subsections (b-1) and (b-2), as follows:

(a) Authorizes an institution to use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility in a construction project or a program of multiple construction projects.

(b) Provides that a construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that complies with Chapter 1306, Occupations Code, and that provides consultation to the institution regarding construction, rehabilitation, alteration, or repair of a facility. Authorizes an institution using the construction manager-agent method, under the contract between the institution and the construction manager-agent, to require the construction manager-agent to provide any service defined as construction and program management under Section 1306.001, Occupations Code. Makes nonsubstantive changes.

(b-1) Creates this subsection from existing text. Provides that a construction manager-agent is not a contractor. Prohibits a governing body of an institution (board) from requiring a construction manager-agent to provide performance and payment bonds.

(b-2) Prohibits a construction manager-agent from performing any aspect of the construction, rehabilitation, alteration, or repair of the facility; being a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or providing project bonding for the construction, rehabilitation, alteration, or repair of the facility.

(c) Requires the board to select or designate an engineer or architect who is required to perform certain duties and has certain responsibility, rather than requires the board to select or designate an engineer or architect who is required to perform certain duties and has certain responsibility before or concurrently with selecting a construction manager-agent.

(e) Requires a board using the construction manager-agent method to procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will provide performance and payment bonds to the district in accordance with applicable law. Makes nonsubstantive changes.

SECTION 5. Amends Section 2166.2535, Government Code, by amending Subsections (a), (b), (c), and (e) and adding Subsections (b-1) and (b-2), as follows:

(a) Authorizes the Texas Facilities Commission (TFC) to use the construction manager-agent method for a project or a program of multiple projects.

(b) Provides that a construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that complies with Chapter 1306, Occupations Code, and that provide consultation to TFC regarding construction, rehabilitation, alteration, or repair of a facility. Authorizes TFC, when using the construction manager-agent method, under the contract between the institution and the construction manager-agent, to require the construction manager-agent to provide any service defined as construction and program management under Section 1306.001, Occupations Code. Makes nonsubstantive changes.

(b-1) Creates this subsection from existing text. Provides that a construction manager-agent is not a contractor. Prohibits TFC from requiring a construction manager-agent to provide performance and payment bonds.

(b-2) Prohibits a construction manager-agent from performing any aspect of the construction, rehabilitation, alteration, or repair of the facility; being a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or providing project bonding for the construction, rehabilitation, alteration, or repair of the facility.

(c) Requires TFC to select or designate an engineer or architect who is required to prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable, rather than requiring the district before or concurrently with selecting a construction manager-agent to select or designate an engineer or architect.

(e) Requires TFC, when using the construction manager-agent method, to procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will provide performance and payment bonds to TFC in accordance with applicable law. Makes nonsubstantive changes.

SECTION 6. Amends Section 271.117, Local Government Code, by amending Subsections (a), (b), (c), (d), and (e) and adding Subsections (b-1) and (b-2), as follows:

(a) Authorizes a governmental entity to use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility in a construction project or a program of multiple construction projects.

(b) Provides that construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that complies with Chapter 1306, Occupations Code, and that provides consultation to the government entity regarding construction, rehabilitation, alteration, or repair of a facility. Authorizes a governmental entity using the construction manager-agent method, under the contract between the governmental entity and the construction manager-agent, to require the construction manager-agent to provide any service defined as construction and program management under Section 1306.001, Occupations Code. Makes nonsubstantive changes.

(b-1) Creates this subsection from existing text. Provides that a construction manager-agent is not a contractor. Prohibits a governmental entity from requiring a construction manager-agent to provide performance and payment bonds.

(b-2) Prohibits a construction manager-agent from performing any aspect of the construction, rehabilitation, alteration, or repair of the facility; being a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or providing project bonding for the construction, rehabilitation, alteration, or repair of the facility.

(c) Requires the governmental entity to select or designate an engineer or architect who is required to perform certain duties and has certain responsibility, rather than requires the governmental entity to select or designate an engineer or architect who is required to perform certain duties and has certain responsibility before or concurrently with selecting a manager-agent.

(d) Deletes existing text that requires that notice be published as provided by Section 271.112(d) (relating to the requirement of certain entities publishing notice of the time and place bids or proposals will be received and opened).

(e) Requires a governmental entity using the construction manager-agent method to procure, in accordance with applicable law, a general contractor, trade contractors, or subcontractors who will provide performance and payment bonds to the governmental entity in accordance with applicable law. Makes nonsubstantive changes.

SECTION 7. Amends Section 60.461, Water Code, by amending Subsections (a), (b), (c), and (e) and adding Subsections (b-1) and (b-2), as follows:

(a) Authorizes a navigation district or port authority (district) to award a contract to a construction manager-agent for the construction, rehabilitation, alteration, or repair of a facility in a construction project or a program of multiple construction projects if the construction manager-agent and the district comply with Chapter 1306, Occupations Code, and follow the procedures prescribed by this section, rather than provided that the construction manager-agent and the district follow the procedures prescribed by this section.

(b) Authorizes a district, under the contract between the district and the construction manager-agent, to require the construction manager-agent to provide any service defined as construction and program management under Section 1306.001, Occupations Code. Makes nonsubstantive changes.

(b-1) Creates this subsection from existing text. Provides that a construction manager-agent is not a contractor. Prohibits a district from requiring a construction manager-agent to provide performance and payment bonds.

(b-2) Prohibits a construction manager-agent from performing any aspect of the construction, rehabilitation, alteration, or repair of the facility; being a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or providing project bonding for the construction, rehabilitation, alteration, or repair of the facility.

(c) Requires the district to select or designate an engineer or architect who is required to prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable, rather than requiring the district before or concurrently with selecting a construction manager-agent to select or designate an engineer or architect.

(e) Requires a district contracting with a construction manager-agent to procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will provide performance and payment bonds to the district in accordance with applicable law. Makes nonsubstantive changes.

SECTION 8. (a) Provides that a person is not required to obtain a certificate of registration under Chapter 1306, Occupations Code, as added by this Act, until January 1, 2010.

(b) Authorizes a person who is engaged in the practice of construction and program management before January 1, 2010, and who applies for a certificate of registration under Chapter 1306, Occupations Code, as added by this Act, before that date, notwithstanding Subsection (a) of this section, to continue to engage in that practice until the executive director acts on the person's application.

SECTION 9. Effective date: upon passage or September 1, 2009.