

By: Deuell

S.B. No. 1090

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of the practice of construction and  
3 program management for capital improvement projects of  
4 governmental entities.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Title 8, Occupations Code, is amended by adding  
7 Chapter 1306 to read as follows:

8 CHAPTER 1306. GOVERNMENTAL ENTITY CONSTRUCTION MANAGER-AGENTS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 1306.001. DEFINITIONS. In this chapter:

11 (1) "Commission" means the Texas Commission of  
12 Licensing and Regulation.

13 (2) "Construction and program management" means the  
14 management of the planning, design, and construction of a capital  
15 improvement project or a program of capital improvement projects,  
16 including project scope development, land acquisition, permitting,  
17 cash-flow management, design acquisition and management,  
18 recommendation of quality construction methods that are within the  
19 client's budget, cost estimation, the writing of bid packages, cost  
20 control, time and quality management, contract administration,  
21 risk management, and dispute avoidance and resolution.

22 (3) "Department" means the Texas Department of  
23 Licensing and Regulation.

24 (4) "Executive director" means the executive director

1 of the department.

2 (5) "Governmental entity construction manager-agent"  
3 means a person registered to engage in the practice of construction  
4 and program management for a governmental entity in this state on:

5 (A) a capital improvement project; or

6 (B) a program of capital improvement projects.

7 Sec. 1306.002. APPLICABILITY OF CHAPTER. This chapter  
8 applies to a governmental entity or quasi-governmental entity  
9 authorized by state law to enter into a public works contract,  
10 including:

11 (1) a state agency as defined by Section 2151.002,  
12 Government Code, including the Texas Facilities Commission;

13 (2) a local government, including:

14 (A) a county;

15 (B) a municipality;

16 (C) a school district;

17 (D) any other special district or authority,  
18 including a hospital district, a defense base development authority  
19 established under Chapter 379B, Local Government Code, an airport  
20 board or authority, a conservation and reclamation district,  
21 including a river authority, and any other type of water district;

22 and

23 (E) any other political subdivision of this  
24 state;

25 (3) a public junior college as defined by Section  
26 61.003, Education Code;

27 (4) any entity owned by a municipality; and

1           (5) any other entity that owns or operates a facility  
2 for the benefit of a municipality or county.

3           Sec. 1306.003. EXEMPTION. (a) This chapter does not apply  
4 to:

5           (1) a contract entered into by the Texas Department of  
6 Transportation; or

7           (2) a professional architect or professional engineer  
8 licensed in good standing in this state subject to Subsection (b).

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

13           [Sections 1306.004-1306.050 reserved for expansion]

14           SUBCHAPTER B. REGISTRATION REQUIREMENTS

15           Sec. 1306.051. REGISTRATION REQUIRED. A person may not  
16 engage in the practice of construction and program management as a  
17 construction manager-agent for a governmental entity in this state  
18 unless the person holds a certificate of registration issued under  
19 this chapter.

20           Sec. 1306.052. REGISTRATION APPLICATION; FEE. An applicant  
21 for registration under this chapter must:

22           (1) submit an application on a form prescribed by the  
23 executive director; and

24           (2) pay the application fee set by the commission.

25           Sec. 1306.053. ELIGIBILITY FOR REGISTRATION. To be  
26 eligible for registration as a governmental entity construction  
27 manager-agent, an applicant must:

1           (1) be certified by a national construction and  
2 program management organization recognized by the executive  
3 director;

4           (2) submit to the department the names and addresses  
5 of five governmental entity clients for which the applicant served  
6 as a construction manager to verify that the applicant has at least  
7 10 years' experience in the field of construction and program  
8 management; or

9           (3) hold:

10           (A) a bachelor's or graduate degree in  
11 construction management, architecture, engineering, or  
12 construction science and have at least five years of verified  
13 experience in construction and program management for governmental  
14 entities; or

15           (B) an associate's degree or certificate in  
16 construction management, architecture, engineering, or  
17 construction science and have at least seven years of verified  
18 experience in construction and program management for governmental  
19 entities.

20           Sec. 1306.054. ISSUANCE OF CERTIFICATE OF REGISTRATION.  
21 The executive director shall issue a certificate of registration to  
22 an applicant who qualifies for registration.

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

27           Sec. 1306.056. TERM OF CERTIFICATE OF REGISTRATION. A

1 certificate of registration is valid for a term established by the  
2 executive director.

3 [Sections 1306.057-1306.100 reserved for expansion]

4 SUBCHAPTER C. RENEWAL OF CERTIFICATE OF REGISTRATION

5 Sec. 1306.101. PROCEDURE FOR RENEWAL. (a) A person who is  
6 otherwise eligible to renew a certificate of registration may renew  
7 an unexpired certificate by paying the required renewal fee to the  
8 department before the expiration date of the certificate. A person  
9 whose certificate has expired may not engage in activities that  
10 require a certificate until the certificate has been renewed.

11 (b) A person whose certificate has been expired for 90 days  
12 or less may renew the certificate by paying to the department a  
13 renewal fee that is equal to 1-1/2 times the normally required  
14 renewal fee.

15 (c) A person whose certificate has been expired for more  
16 than 90 days but less than one year may renew the certificate by  
17 paying to the department a renewal fee that is equal to two times  
18 the normally required renewal fee.

19 (d) A person whose certificate has been expired for one year  
20 or more may not renew the certificate. The person may obtain a new  
21 certificate by complying with the requirements and procedures for  
22 an original certificate.

23 SECTION 2. Section 44.031, Education Code, is amended by  
24 adding Subsection (f-1) to read as follows:

25 (f-1) A school district may contract for professional  
26 services rendered by a construction manager-agent in the manner  
27 provided by Section 2254.004, Government Code, in lieu of complying

1 with the methods provided by this section.

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

5 (a) A school district may use the construction  
6 manager-agent method for the construction, rehabilitation,  
7 alteration, or repair of a facility in a construction project or a  
8 program of multiple construction projects. In using that method  
9 and in entering into a contract for the services of a construction  
10 manager-agent, a district shall follow the procedures prescribed by  
11 this section.

12 (b) A construction manager-agent is a sole proprietorship,  
13 partnership, corporation, or other legal entity that complies with  
14 Chapter 1306, Occupations Code, and that provides consultation to  
15 the school district regarding construction, rehabilitation,  
16 alteration, or repair of the facility. A district using the  
17 construction manager-agent method may, under the contract between  
18 the district and the construction manager-agent, require the  
19 construction manager-agent to provide:

20 (1) any service defined as construction and program  
21 management under Section 1306.001, Occupations Code;

22 (2) administrative personnel;

23 (3) [~~7~~] equipment necessary to perform duties under  
24 this section; [~~7~~] and

25 (4) on-site management and other services specified in  
26 the contract.

27 (b-1) A construction manager-agent represents the district

1 in a fiduciary capacity. A construction manager-agent is not a  
2 contractor. A school district may not require a construction  
3 manager-agent to provide performance and payment bonds.

4 (b-2) A construction manager-agent may not:

5 (1) perform any aspect of the construction,  
6 rehabilitation, alteration, or repair of the facility;

7 (2) be a party to a construction subcontract for the  
8 construction, rehabilitation, alteration, or repair of the  
9 facility; or

10 (3) provide project bonding for the construction,  
11 rehabilitation, alteration, or repair of the facility.

12 (c) The [~~Before or concurrently with selecting a~~  
13 ~~construction manager-agent, the~~] district shall select or  
14 designate an engineer or architect who shall prepare the  
15 construction documents for the project and who has full  
16 responsibility for complying with Chapter 1001 or 1051, Occupations  
17 Code, as applicable. If the engineer or architect is not a  
18 full-time employee of the district, the district shall select the  
19 engineer or architect on the basis of demonstrated competence and  
20 qualifications as provided by Section 2254.004, Government Code.  
21 The district's engineer or architect may not serve, alone or in  
22 combination with another person, as the construction manager-agent  
23 unless the engineer or architect is hired to serve as the  
24 construction manager-agent under a separate or concurrent  
25 procurement conducted in accordance with this subchapter. This  
26 subsection does not prohibit the district's engineer or architect  
27 from providing customary construction phase services under the

1 engineer's or architect's original professional service agreement  
2 in accordance with applicable licensing laws.

3 (e) A district using the construction manager-agent method  
4 shall procure, in accordance with applicable law and in any manner  
5 authorized by this chapter, a general contractor, trade  
6 contractors, or subcontractors who:

7 (1) will serve as the prime contractor for their  
8 specific portion of the work; and

9 (2) will provide performance and payment bonds to the  
10 district in accordance with applicable law.

11 SECTION 4. Section 51.781, Education Code, is amended by  
12 amending Subsections (a), (b), (c), and (e) and adding Subsections  
13 (b-1) and (b-2) to read as follows:

14 (a) An institution may use the construction manager-agent  
15 method for the construction, rehabilitation, alteration, or repair  
16 of a facility in a construction project or a program of multiple  
17 construction projects. In using that method and in entering into a  
18 contract for the services of a construction manager-agent, a board  
19 shall follow the procedures prescribed by this section.

20 (b) A construction manager-agent is a sole proprietorship,  
21 partnership, corporation, or other legal entity that complies with  
22 Chapter 1306, Occupations Code, and that provides consultation to  
23 the institution regarding construction, rehabilitation,  
24 alteration, or repair of the facility. An institution using the  
25 construction manager-agent method may, under the contract between  
26 the institution and the construction manager-agent, require the  
27 construction manager-agent to provide:



1           (1) any service defined as construction and program  
2 management under Section 1306.001, Occupations Code;

3           (2) administrative personnel;

4           (3) [✓] equipment necessary to perform duties under  
5 this section; [✓] and

6           (4) on-site management and other services specified in  
7 the contract.

8           (b-1) A construction manager-agent represents the  
9 institution in a fiduciary capacity. A construction manager-agent  
10 is not a contractor. A board may not require a construction  
11 manager-agent to provide performance and payment bonds.

12           (b-2) A construction manager-agent may not:

13           (1) perform any aspect of the construction,  
14 rehabilitation, alteration, or repair of the facility;

15           (2) be a party to a construction subcontract for the  
16 construction, rehabilitation, alteration, or repair of the  
17 facility; or

18           (3) provide project bonding for the construction,  
19 rehabilitation, alteration, or repair of the facility.

20           (c) The [~~Before or concurrently with selecting a~~  
21 ~~construction manager-agent, the~~] board shall select or designate an  
22 engineer or architect who shall prepare the construction documents  
23 for the project and who has full responsibility for complying with  
24 Chapter 1001 or 1051, Occupations Code, as applicable. If the  
25 engineer or architect is not a full-time employee of the  
26 institution, the board shall select the engineer or architect on  
27 the basis of demonstrated competence and qualifications as provided

1 by Section 2254.004, Government Code. The institution's engineer  
2 or architect may not serve, alone or in combination with another  
3 person, as the construction manager-agent unless the engineer or  
4 architect is hired to serve as the construction manager-agent under  
5 a separate or concurrent procurement conducted in accordance with  
6 this subchapter. This subsection does not prohibit the  
7 institution's engineer or architect from providing customary  
8 construction phase services under the engineer's or architect's  
9 original professional service agreement in accordance with  
10 applicable licensing laws.

11 (e) A board using the construction manager-agent method  
12 shall procure, in accordance with applicable law and in any manner  
13 authorized by this chapter, a general contractor, trade  
14 contractors, or subcontractors who:

15 (1) will serve as the prime contractor for their  
16 specific portion of the work; and

17 (2) will provide performance and payment bonds to the  
18 institution in accordance with applicable law.

19 SECTION 5. Section 2166.2535, Government Code, is amended  
20 by amending Subsections (a), (b), (c), and (e) and adding  
21 Subsections (b-1) and (b-2) to read as follows:

22 (a) The commission may use the construction manager-agent  
23 method for a project or a program of multiple projects. In using  
24 that method and in entering into a contract for the services of a  
25 construction manager-agent, the commission shall follow the  
26 procedures prescribed by this section.

27 (b) A construction manager-agent is a sole proprietorship,

1 partnership, corporation, or other legal entity that complies with  
2 Chapter 1306, Occupations Code, and that provides consultation to  
3 the commission regarding construction, rehabilitation, alteration,  
4 or repair of a facility. The commission, when using the  
5 construction manager-agent method, may, under the contract between  
6 the commission and the construction manager-agent, require the  
7 construction manager-agent to provide:

8 (1) any service defined as construction and program  
9 management under Section 1306.001, Occupations Code;

10 (2) administrative personnel;

11 (3) [~~τ~~] equipment necessary to perform duties under  
12 this section;[~~τ~~] and

13 (4) on-site management and other services specified in  
14 the contract.

15 (b-1) A construction manager-agent represents the  
16 commission in a fiduciary capacity. A construction manager-agent  
17 is not a contractor. The commission may not require a construction  
18 manager-agent to provide performance and payment bonds.

19 (b-2) A construction manager-agent may not:

20 (1) perform any aspect of the construction,  
21 rehabilitation, alteration, or repair of the facility;

22 (2) be a party to a construction subcontract for the  
23 construction, rehabilitation, alteration, or repair of the  
24 facility; or

25 (3) provide project bonding for the construction,  
26 rehabilitation, alteration, or repair of the facility.

27 (c) The [~~Before or concurrently with selecting a~~

1 ~~construction manager-agent, the]~~ commission shall select or  
2 designate an engineer or architect who shall prepare the  
3 construction documents for the project and who has full  
4 responsibility for complying with Chapter 1001 or 1051, Occupations  
5 Code, as applicable. If the engineer or architect is not a  
6 full-time employee of the commission, the commission shall select  
7 the engineer or architect on the basis of demonstrated competence  
8 and qualifications as provided by Section 2254.004. A commission  
9 engineer or architect may not serve, alone or in combination with  
10 another person, as the construction manager-agent unless the  
11 engineer or architect is hired to serve as the construction  
12 manager-agent under a separate or concurrent procurement conducted  
13 in accordance with this subchapter. This subsection does not  
14 prohibit a commission engineer or architect from providing  
15 customary construction phase services under the engineer's or  
16 architect's original professional service agreement in accordance  
17 with applicable licensing laws.

18 (e) When using the construction manager-agent method, the  
19 commission shall procure, in accordance with applicable law and in  
20 any manner authorized by this chapter, a general contractor, trade  
21 contractors, or subcontractors who:

22 (1) will serve as the prime contractor for their  
23 specific portion of the work; and

24 (2) will provide performance and payment bonds to the  
25 commission in accordance with applicable law.

26 SECTION 6. Section 271.117, Local Government Code, is  
27 amended by amending Subsections (a), (b), (c), (d), and (e) and

1 adding Subsections (b-1) and (b-2) to read as follows:

2 (a) A governmental entity may use the construction  
3 manager-agent method for the construction, rehabilitation,  
4 alteration, or repair of a facility in a construction project or a  
5 program of multiple construction projects. In using that method  
6 and in entering into a contract for the services of a construction  
7 manager-agent, a governmental entity shall follow the procedures  
8 prescribed by this section.

9 (b) A construction manager-agent is a sole proprietorship,  
10 partnership, corporation, or other legal entity that complies with  
11 Chapter 1306, Occupations Code, and that provides consultation to  
12 the governmental entity regarding construction, rehabilitation,  
13 alteration, or repair of the facility. A governmental entity using  
14 the construction manager-agent method may, under the contract  
15 between the governmental entity and the construction  
16 manager-agent, require the construction manager-agent to provide:

17 (1) any service defined as construction and program  
18 management under Section 1306.001, Occupations Code;

19 (2) administrative personnel;

20 (3) [ ] equipment necessary to perform duties under  
21 this section; [ ] and

22 (4) on-site management and other services specified in  
23 the contract.

24 (b-1) A construction manager-agent represents the  
25 governmental entity in a fiduciary capacity. A construction  
26 manager-agent is not a contractor. A governmental entity may not  
27 require a construction manager-agent to provide performance and

1 payment bonds.

2 (b-2) A construction manager-agent may not:

3 (1) perform any aspect of the construction,  
4 rehabilitation, alteration, or repair of the facility;

5 (2) be a party to a construction subcontract for the  
6 construction, rehabilitation, alteration, or repair of the  
7 facility; or

8 (3) provide project bonding for the construction,  
9 rehabilitation, alteration, or repair of the facility.

10 (c) The [~~Before or concurrently with selecting a~~  
11 ~~construction manager-agent, the~~] governmental entity shall select  
12 or designate an engineer or architect who shall prepare the  
13 construction documents for the project and who has full  
14 responsibility for complying with Chapter 1001 or 1051, Occupations  
15 Code, as applicable. If the engineer or architect is not a  
16 full-time employee of the governmental entity, the governmental  
17 entity shall select the engineer or architect on the basis of  
18 demonstrated competence and qualifications as provided by Section  
19 2254.004, Government Code. The governmental entity's engineer or  
20 architect may not serve, alone or in combination with another  
21 person, as the construction manager-agent unless the engineer or  
22 architect is hired to serve as the construction manager-agent under  
23 a separate or concurrent procurement conducted in accordance with  
24 this subchapter. This subsection does not prohibit the  
25 governmental entity's engineer or architect from providing  
26 customary construction phase services under the engineer's or  
27 architect's original professional service agreement in accordance

1 with applicable licensing laws.

2 (d) A governmental entity shall select a construction  
3 manager-agent on the basis of demonstrated competence and  
4 qualifications in the same manner as provided for the selection of  
5 engineers or architects under Section 2254.004, Government Code[~~7~~  
6 ~~except that notice must be published as provided by Section~~  
7 ~~271.112(d)~~].

8 (e) A governmental entity using the construction  
9 manager-agent method shall procure, in accordance with applicable  
10 law, a general contractor, trade contractors, or subcontractors  
11 who:

12 (1) will serve as the prime contractor for their  
13 specific portion of the work; and

14 (2) will provide performance and payment bonds to the  
15 governmental entity in accordance with applicable law.

16 SECTION 7. Section 60.461, Water Code, is amended by  
17 amending Subsections (a), (b), (c), and (e) and adding Subsections  
18 (b-1) and (b-2) to read as follows:

19 (a) A district may award a contract to a construction  
20 manager-agent for the construction, rehabilitation, alteration, or  
21 repair of a facility in a construction project or a program of  
22 multiple construction projects if [~~provided that~~] the construction  
23 manager-agent and the district comply with Chapter 1306,  
24 Occupations Code, and follow the procedures prescribed by this  
25 section.

26 (b) A district may, under the contract between the district  
27 and the construction manager-agent, require the construction

1 manager-agent to provide:

2 (1) any service defined as construction and program  
3 management under Section 1306.001, Occupations Code;

4 (2) administrative personnel;

5 (3) [ ] equipment necessary to perform duties under  
6 this section; [ ] and

7 (4) on-site management and other services specified in  
8 the contract.

9 (b-1) A construction manager-agent represents the district  
10 in a fiduciary capacity. A construction manager-agent is not a  
11 contractor. A district may not require a construction  
12 manager-agent to provide performance and payment bonds.

13 (b-2) A construction manager-agent may not:

14 (1) perform any aspect of the construction,  
15 rehabilitation, alteration, or repair of the facility;

16 (2) be a party to a construction subcontract for the  
17 construction, rehabilitation, alteration, or repair of the  
18 facility; or

19 (3) provide project bonding for the construction,  
20 rehabilitation, alteration, or repair of the facility.

21 (c) The [Before or concurrently with selecting a  
22 construction manager-agent, the] district shall select or  
23 designate an engineer or architect who shall prepare the  
24 construction documents for the project and who has full  
25 responsibility for complying with Chapter 1001 or 1051, Occupations  
26 Code, as applicable. If the engineer or architect is not a  
27 full-time employee of the district, the district shall select the



1 engineer or architect as provided by Section 2254.004, Government  
2 Code. The district's engineer or architect may not serve, alone or  
3 in combination with another person, as the construction  
4 manager-agent unless the engineer or architect is hired to serve as  
5 the construction manager-agent under a separate or concurrent  
6 procurement conducted in accordance with this subchapter. This  
7 subsection does not prohibit the district's engineer or architect  
8 from providing customary construction phase services under the  
9 engineer's or architect's original professional service agreement  
10 in accordance with applicable laws.

11 (e) A district contracting with a construction  
12 manager-agent shall procure, in accordance with applicable law, and  
13 in any manner authorized by this chapter, a general contractor,  
14 trade contractors, or subcontractors who:

15 (1) will serve as the prime contractor for their  
16 specific portion of the work; and

17 (2) will provide performance and payment bonds to the  
18 district in accordance with applicable law.

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

22 (b) Notwithstanding Subsection (a) of this section, a  
23 person who is engaged in the practice of construction and program  
24 management before January 1, 2010, and who applies for a  
25 certificate of registration under Chapter 1306, Occupations Code,  
26 as added by this Act, before that date may continue to engage in  
27 that practice until the executive director of the Texas Department

1 of Licensing and Regulation acts on the person's application.

2           SECTION 9. This Act takes effect immediately if it receives  
3 a vote of two-thirds of all the members elected to each house, as  
4 provided by Section 39, Article III, Texas Constitution. If this  
5 Act does not receive the vote necessary for immediate effect, this  
6 Act takes effect September 1, 2009.