

ENROLLED SENATE
BILL NO. 242

By: Stipe of the Senate

and

Glover and Perry of the
House

An Act relating to public buildings and works;
amending 61 O.S. 1991, Section 107, as last
amended by Section 1, Chapter 293, O.S.L. 1993
(61 O.S. Supp. 1994, Section 107), which relates
to the Public Competitive Bidding Act of 1974;
providing for exoneration from liability;
providing an effective date; and declaring an
emergency.

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

SECTION 1. AMENDATORY 61 O.S. 1991, Section 107, as last
amended by Section 1, Chapter 293, O.S.L. 1993 (61 O.S. Supp. 1994,
Section 107), is amended to read as follows:

Section 107. A. Each bidder on a public construction contract
exceeding Thirteen Thousand Five Hundred Dollars (\$13,500.00) shall
accompany his bid with:

1. A certified check, cashier's check or bid bond equal to five
percent (5%) of the bid, which shall be deposited with the awarding
public agency as a guaranty; or

2. An irrevocable letter of credit containing such terms as may
be prescribed by the Department of Central Services issued by a
financial institution insured by the Federal Deposit Insurance
Corporation or the Federal Savings and Loan Insurance Corporation
for the benefit of the state, on behalf of the awarding public
agency, in an amount equal to five percent (5%) of the bid. The
awarding public agency shall deposit such irrevocable letter of
credit with the Department of Central Services.

B. The cost of republication of the notice to bidders, all
actual expenses incurred by reason of the bidder's default and the
difference between the low bid of the defaulting bidder and the
amount of the bid of the bidder to whom the contract is subsequently
awarded, but not to exceed the amount of the certified check,
cashier's check, bid bond or irrevocable letter of credit may, at
the discretion of the awarding public agency, be forfeited to the
awarding public agency in the event the apparently successful bidder
fails to execute the contract or fails to provide the required bonds
or irrevocable letters of credit and insurance to the awarding
public agency.

C. Said certified or cashier's check, bid bond or irrevocable
letter of credit shall be returned to the successful bidder on
execution and delivery of the contract and required bonds or
irrevocable letters of credit and insurance. Checks of unsuccessful
bidders shall be returned to them in accordance with the terms of
the proposal.

D. Nothing contained herein shall be construed so as to prevent the awarding public agency or the courts from exonerating the bidder and other parties to the bid security document from liability upon a timely showing that the bidder committed what the courts have determined under the common law to be an excusable bidding error and for that reason it would not be equitable to enforce the bid security.

SECTION 2. This act shall become effective July 1, 1995.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 25th day of April, 1995.

President of the Senate

Passed the House of Representatives the 12th day of April, 1995.

Speaker of the House of Representatives