

1 **SENATE FLOOR VERSION**

2 February 24, 2014

3 **AS AMENDED**

4 SENATE BILL NO. 1582

By: Loveless of the Senate

and

Wesselhoft of the House

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6
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8 **[public buildings - requirements based on valuation**
9 **- public building bonding requirements -**
10 **emergency]**

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 59 O.S. 2011, Section 46.21b, is
14 amended to read as follows:

15 Section 46.21b. A. An architect shall be required to plan,
16 design and prepare plans and specifications for the following
17 building types except where specifically exempt from the provisions
18 of the State Architectural and Registered Interior Designers Act.
19 All use groups in this section are defined by the 2003 International
20 Building Code.

21 B. The construction, addition or alteration of a building of
22 any size or occupancy in the following Code Use Groups shall be
23 subject to the provisions of the State Architectural and Registered
24 Interior Designers Act:

- 1 1. Code Use Group I – Institutional;
- 2 2. Code Use Group R-2 – Residential, limited to dormitories,
- 3 fraternities and sororities, and monasteries and convents;
- 4 3. Code Use Group A-1 – Assembly and theaters;
- 5 4. Code Use Group A-4 – Assembly, arenas and courts;
- 6 5. Code Use Group A-5 – Assembly, bleachers and grandstands;
- 7 and
- 8 6. Buildings for which the designated Code Use Group changes
- 9 are not exempt from the State Architectural and Registered Interior
- 10 Designers Act.

11 C. The following shall be exempt from the provisions of the
12 State Architectural and Registered Interior Designers Act; provided
13 that, for the purposes of this subsection, a basement is not to be
14 counted as a story for the purpose of counting stories of a building
15 for height regulations:

16 1. The construction, addition or alteration of a building no
17 more than two stories in height and with a code-defined occupancy of
18 no more than fifty (50) persons for the Code Use Groups A-2 and A-3
19 – Assembly and Code Use Group E – Education;

20 2. The construction, addition or alteration of a building no
21 more than two stories in height and no more than sixty-four
22 transient lodging units per building for the Code Use Group R1 –
23 Residential, including, but not limited to, hotels and motels;

24

1 3. The construction, addition or alteration of a building no
2 more than two stories in height and with a gross square footage not
3 exceeding one hundred thousand (100,000) in the Code Use Group B -
4 Business;

5 4. The construction, addition or alteration of a building no
6 more than two stories in height and with a gross square footage not
7 exceeding two hundred thousand (200,000) in the Code Use Group M -
8 Mercantile; and

9 5. The construction, addition or alteration of a building no
10 more than two stories in height in the following Code Use Groups or
11 buildings:

- 12 a. Code Use Group U - Utility,
- 13 b. Code Use Group F - Factory and Industrial,
- 14 c. Code Use Group H - High hazard,
- 15 d. Code Use Group S - Storage,
- 16 e. Code Use Group R2 - Residential, including apartments
17 containing no more than thirty-two dwelling units or
18 thirty-two guest units per building,
- 19 f. Code Use Groups R3 and R4 - Residential,
- 20 g. all buildings used by a municipality, county, state,
21 public trust, public agency or the federal government
22 with a construction value under ~~One Hundred Fifty-~~
23 ~~eight Thousand Dollars (\$158,000.00)~~ One Hundred Fifty
24 Thousand Dollars (\$150,000.00),

- 1 h. incidental buildings or appurtenances associated with
2 paragraphs 1 through 5 of this subsection, and
3 i. all uninhabitable, privately owned agricultural
4 buildings.

5 D. The renovation or alteration of a building where the
6 intended use is exempt as new construction shall be exempt from the
7 provisions of the State Architectural and Registered Interior
8 Designers Act.

9 E. Addition, renovation or alteration of buildings where the
10 intended use is not exempt from the provisions of this act, but
11 where the planned addition or alteration, as determined by the
12 applicable building official, does not affect the primary
13 structural, mechanical, or electrical systems, life-safety systems
14 or exit passageways shall be exempt from the provisions of the State
15 Architectural and Registered Interior Designers Act.

16 SECTION 2. AMENDATORY 61 O.S. 2011, Section 1, as last
17 amended by Section 302, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
18 2013, Section 1), is amended to read as follows:

19 Section 1. A. Prior to an award of a contract exceeding ~~Fifty~~
20 ~~Thousand Dollars (\$50,000.00)~~ One Hundred Fifty Thousand Dollars
21 (\$150,000.00) for construction or repair of a public or private
22 building, structure, or improvement on public real property, the
23 person that receives the award shall:
24

1 1. Furnish a bond with good and sufficient sureties payable to
2 the state in a sum not less than the total sum of the contract; or

3 2. Cause an irrevocable letter of credit, containing terms the
4 Office of Management and Enterprise Services prescribes, to be
5 issued for the benefit of the state by a financial institution
6 insured by the Federal Deposit Insurance Corporation in a sum not
7 less than the total sum of the contract.

8 B. The bond or irrevocable letter of credit shall ensure the
9 proper and prompt completion of the work in accordance with the
10 contract and shall ensure that the contractor shall pay all
11 indebtedness the contractor incurs for the contractor's
12 subcontractors and all suppliers of labor, material, rental of
13 machinery or equipment, and repair of and parts for equipment the
14 contract requires the contractor to furnish.

15 C. For a contract not exceeding ~~Fifty Thousand Dollars~~
16 ~~(\$50,000.00)~~ One Hundred Fifty Thousand Dollars (\$150,000.00), in
17 lieu of a bond or irrevocable letter of credit, the contractor shall
18 submit an affidavit of the payment of all indebtedness incurred by
19 the contractor, the contractor's subcontractors, and all suppliers
20 of labor, material, rented machinery or equipment, and repair of and
21 parts for equipment used or consumed in the performance of the
22 contract. The execution of the affidavit with knowledge that any of
23 the contents of the affidavit are false, upon conviction, shall
24 constitute perjury, punishable as provided for by law.

1 SECTION 3. AMENDATORY 61 O.S. 2011, Section 107, as
2 amended by Section 313, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
3 2013, Section 107), is amended to read as follows:

4 Section 107. A. A bidder on a public construction contract
5 exceeding ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred Fifty
6 Thousand Dollars (\$150,000.00) shall accompany the bid with:

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

10 2. An irrevocable letter of credit containing terms the
11 Construction and Properties Division of the Office of Management and
12 Enterprise Services prescribes, issued by a financial institution
13 insured by the Federal Deposit Insurance Corporation or the Federal
14 Savings and Loan Insurance Corporation for the benefit of the state,
15 on behalf of the awarding public agency, in an amount equal to five
16 percent (5%) of the bid. The awarding public agency shall deposit
17 the irrevocable letter of credit with the Division.

18 B. The cost of republication of the notice to bidders, actual
19 expenses incurred by reason of the bidder's default and the
20 difference between the low bid of the defaulting bidder and the
21 amount of the bid of the bidder to whom the contract is subsequently
22 awarded, but not to exceed the amount of the certified check,
23 cashier's check, bid bond or irrevocable letter of credit may, at
24 the discretion of the awarding public agency, be forfeited to the

1 awarding public agency in the event the apparently successful bidder
2 fails to execute the contract or fails to provide the required bonds
3 or irrevocable letters of credit and insurance to the awarding
4 public agency.

5 C. The public agency shall, upon receipt of notice from the
6 awarding public agency, return a certified or cashier's check, bid
7 bond, or irrevocable letter of credit to the successful bidder on
8 execution and delivery of the contract and required bonds or
9 irrevocable letters of credit and insurance. Checks of unsuccessful
10 bidders shall be returned to them in accordance with the terms of
11 the bid solicitation.

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

19 SECTION 4. AMENDATORY 61 O.S. 2011, Section 113, as
20 amended by Section 314, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
21 2013, Section 113), is amended to read as follows:

22 Section 113. A. Except as otherwise provided by law, within
23 the period of time, not to exceed sixty (60) days, specified in the
24 bid notice by the awarding public agency, a contract embodying the

1 terms set forth in the bidding documents shall be executed by the
2 awarding public agency and the successful bidder. No bidder shall
3 obtain any property right in a contract awarded under the provisions
4 of the Public Competitive Bidding Act of 1974 until the contract has
5 been fully executed by both the bidder and the awarding public
6 agency.

7 B. Except as otherwise provided by law, within the period of
8 time specified in subsection A of this section, the following shall
9 be provided by the contractor to the awarding public agency for
10 contracts exceeding ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred
11 Fifty Thousand Dollars (\$150,000.00):

12 1. A bond or irrevocable letter of credit complying with the
13 provisions of Section 1 of this title;

14 2. A bond in a sum equal to the contract price, with adequate
15 surety, or an irrevocable letter of credit containing terms
16 prescribed by the Construction and Properties Division of the Office
17 of Management and Enterprise Services issued by a financial
18 institution insured by the Federal Deposit Insurance Corporation or
19 the Federal Savings and Loan Insurance Corporation for the benefit
20 of the state, on behalf of the awarding public agency, in a sum
21 equal to the contract price, to ensure the proper and prompt
22 completion of the work in accordance with the provisions of the
23 contract and bidding documents;

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1 3. A bond in a sum equal to the contract price or an
2 irrevocable letter of credit containing terms as prescribed by the
3 Division issued by a financial institution insured by the Federal
4 Deposit Insurance Corporation or the Federal Savings and Loan
5 Insurance Corporation for the benefit of the state, on behalf of the
6 awarding public agency, in a sum equal to the contract price, to
7 protect the awarding public agency against defective workmanship and
8 materials for a period of one (1) year after acceptance of the
9 project; and

10 4. Public liability and workers' compensation insurance during
11 construction in reasonable amounts. A public agency may require the
12 contractor to name the public agency and its architects or
13 engineers, or both, as an additional assured under the public
14 liability insurance, which requirement, if made, shall be
15 specifically set forth in the bidding documents.

16 C. A single irrevocable letter of credit may be used to satisfy
17 paragraphs 1, 2 and 3 of subsection B of this section, provided such
18 single irrevocable letter of credit meets all applicable
19 requirements of subsection B of this section.

20 If the contractor needs additional time in which to obtain the
21 bond required pursuant to subsection B of this section, the
22 contractor may request and the awarding agency may allow the
23 contractor an additional sixty (60) days in which to obtain the
24 bond.

1 D. 1. After the award of a contract, but prior to its
2 execution, an awarding public agency, upon discovery of an
3 administrative error in the award process that would void an
4 otherwise valid award, may suspend the time of execution of the
5 contract. The agency may rescind the award and readvertise for
6 bids, or may direct correction of the error and award the contract
7 to the lowest responsible bidder, whichever shall be in the best
8 interests of the state.

9 2. If the awarding public agency has a governing body, the
10 agency shall, at the next regularly scheduled public business
11 meeting of the governing body of the agency, upon the record,
12 present to the governing body that an error has been made in the
13 award process and shall state the nature of the error. The
14 governing body, upon presentation of the facts of the error, may
15 rescind the award and readvertise for bids, or may direct correction
16 of the error and award the contract to the lowest responsible
17 bidder, whichever shall be in the best interests of the state.

18 E. No public agency shall require for any public construction
19 project, nor shall any general contractor submit a project bid based
20 on acquiring or participating in, any wrap-up, wrap-around, or
21 controlled insurance program. For the purposes of this subsection,
22 "wrap-up, wrap-around, or controlled insurance program" means any
23 insurance program that has the effect of disabling or rendering
24 inapplicable any workers' compensation, commercial general

1 liability, builders' risk, completed operations, or excess liability
2 insurance coverage carried by a subcontractor that is engaged or to
3 be engaged on a public construction project unless this is a cost
4 savings to the public or the need exists for a specialized or
5 complex insurance program and shall not apply to contracts less than
6 Seventy-five Million Dollars (\$75,000,000.00).

7 F. This act shall not apply to the public construction projects
8 of constitutional agencies which had authorized a wrap-up, wrap-
9 around, or controlled insurance program on or before April 11, 2000.

10 SECTION 5. It being immediately necessary for the preservation
11 of the public peace, health and safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

14 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT
15 February 24, 2014 - DO PASS AS AMENDED
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