

1 ENGROSSED HOUSE  
2 BILL NO. 2862

By: Wallace of the House

3 and

4 Pemberton of the Senate  
5  
6

7 An Act relating to competitive bidding; amending 61  
8 O.S. 2011, Sections 102, as last amended by Section  
9 1, Chapter 186, O.S.L. 2013, 103, as last amended by  
10 Section 2, Chapter 405, O.S.L. 2019, 103.5, Section  
11 1, Chapter 288, O.S.L. 2014, 104, as last amended by  
12 Section 1, Chapter 40, O.S.L. 2017, 107, as amended  
13 by Section 313, Chapter 304, O.S.L. 2012, 113, as  
14 last amended by Section 3, Chapter 299, O.S.L. 2019,  
15 119.1 and 130, as last amended by Section 1, Chapter  
16 293, O.S.L. 2016 (61 O.S. Supp. 2020, Sections 102,  
17 103, 103.7, 104, 107, 113 and 130), which relate to  
18 the Public Competitive Bidding Act of 1974; defining  
19 term; modifying certain monetary limits for public  
20 construction contracts; establishing monetary limits  
21 for construction management trade contracts or  
22 subcontracts; and providing an effective date.  
23  
24

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 102, as last  
amended by Section 1, Chapter 186, O.S.L. 2013 (61 O.S. Supp. 2020,  
Section 102), is amended to read as follows:

Section 102. As used in the Public Competitive Bidding Act of  
1974:

1 1. "Administrator" means the State Construction Administrator  
2 of the Construction and Properties Division of the Office of  
3 Management and Enterprise Services;

4 2. "Awarding public agency" means the public agency which  
5 solicits and receives sealed bids on a particular public  
6 construction contract;

7 3. "Bidding documents" means the bid notice, instruction to  
8 bidders, plans and specifications, bidding form, bidding  
9 instructions, general conditions, special conditions and all other  
10 written instruments prepared by or on behalf of an awarding public  
11 agency for use by prospective bidders on a public construction  
12 contract;

13 4. "Chief administrative officer" means an individual  
14 responsible for directing the administration of a public agency.  
15 The term does not mean one or all of the individuals that make  
16 policy for a public agency;

17 5. "Construction management trade contract or subcontract"  
18 means any public construction contract exceeding Fifty Thousand  
19 Dollars (\$50,000.00) in amount that is awarded as a trade contract  
20 in an agency construction management contract or awarded as a  
21 subcontract in an at-risk construction management contract;

22 6. "Public agency" means the State of Oklahoma, and any county,  
23 city, town, school district or other political subdivision of the  
24 state, any public trust, any public entity specifically created by

1 the statutes of the State of Oklahoma or as a result of statutory  
2 authorization therefor, and any department, agency, board, bureau,  
3 commission, committee or authority of any of the foregoing public  
4 entities;

5 ~~6.~~ 7. "Public construction contract" or "contract" means any  
6 contract, exceeding One Hundred Thousand Dollars (\$100,000.00) in  
7 amount, or any construction management trade contracts or  
8 subcontracts exceeding Fifty Thousand Dollars (\$50,000.00) in  
9 amount, awarded by any public agency for the purpose of making any  
10 public improvements or constructing any public building or making  
11 repairs to or performing maintenance on the same except where the  
12 improvements, construction of any building or repairs to the same  
13 are improvements or buildings leased to a person or other legal  
14 entity exclusively for private and not for public use and no public  
15 tax revenues shall be expended on or for the contract unless the  
16 public tax revenues used for the project are authorized by a  
17 majority of the voters of the applicable public agency voting at an  
18 election held for that purpose and the public tax revenues do not  
19 exceed twenty-five percent (25%) of the total project cost. The  
20 amount of public tax dollars committed to the project will not  
21 exceed a fixed amount established by resolution of the governing  
22 body prior to or concurrent with approval of the project;

23 ~~7.~~ 8. "Public improvement" means any beneficial or valuable  
24 change or addition, betterment, enhancement or amelioration of or

1 upon any real property, or interest therein, belonging to a public  
2 agency, intended to enhance its value, beauty or utility or to adapt  
3 it to new or further purposes. The term does not include the direct  
4 purchase of materials, equipment or supplies by a public agency, or  
5 any personal property, including property as defined in paragraphs 1  
6 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma  
7 Statutes;

8 ~~8.~~ 9. "Purchasing cooperative" means an association of public  
9 entities working together to provide leverage in achieving best  
10 value and/or the best terms in contracts awarded through a  
11 competitive bidding process; and

12 ~~9.~~ 10. "Retainage" means the difference between the amount  
13 earned by the contractor on a public construction contract, with the  
14 work being accepted by the public agency, and the amount paid on  
15 said contract by the public agency.

16 SECTION 2. AMENDATORY 61 O.S. 2011, Section 103, as last  
17 amended by Section 2, Chapter 405, O.S.L. 2019 (61 O.S. Supp. 2020,  
18 Section 103), is amended to read as follows:

19 Section 103. A. Unless otherwise provided by law, all public  
20 construction contracts exceeding One Hundred Thousand Dollars  
21 (\$100,000.00) or construction management trade contracts or  
22 subcontracts exceeding Fifty Thousand Dollars (\$50,000.00) shall be  
23 let and awarded to the lowest responsible bidder, by open  
24 competitive bidding after solicitation for sealed bids, in

1 accordance with the provisions of the Public Competitive Bidding Act  
2 of 1974. No work shall be commenced until a written contract is  
3 executed and all required bonds and insurance have been provided by  
4 the contractor to the awarding public agency.

5 B. Notwithstanding subsection A of this section, in awarding  
6 public construction contracts exceeding One Hundred Thousand Dollars  
7 (\$100,000.00) or construction management trade contracts or  
8 subcontracts exceeding Fifty Thousand Dollars (\$50,000.00),  
9 counties, cities, other local units of government and any public  
10 trust with a county or a municipality as its sole beneficiary may  
11 provide for a local bid preference of not more than five percent  
12 (5%) of the bid price if the awarding public agency determines that  
13 there is an economic benefit to the local area or economy.  
14 Provided, however, the local bidder or contractor must agree to  
15 perform the contract for the same price and terms as the bid  
16 proposed by the nonlocal bidder or contractor. Any bid preference  
17 granted hereunder must be in accordance with an established policy  
18 adopted by the governing body of the awarding public agency to  
19 clearly demonstrate the economic benefit to the local area or  
20 economy. Provided, further, no local bid preference shall be  
21 granted unless the local bidding entity is the second lowest  
22 qualified bid on the contract. The bid specifications shall clearly  
23 state that the bid is subject to a local bidder preference law. For  
24 purposes of this section, "local bid" means the bidding person is

1 authorized to transact business in this state and maintains a bona  
2 fide establishment for transacting such business within this state.  
3 This provision does not apply to any construction contract for which  
4 federal funds are available for expenditure when its provisions may  
5 be in conflict with federal law or regulation.

6 C. Except as provided in subsection E of this section, other  
7 construction contracts for the purpose of making any public  
8 improvements or constructing any public building or making repairs  
9 to the same for ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred  
10 Thousand Dollars (\$100,000.00) or less shall be let and awarded to  
11 the lowest responsible bidder by receipt of written bids or awarded  
12 on the basis of competitive quotes to the lowest responsible  
13 qualified contractor. Work may be commenced in accordance with the  
14 purchasing policies of the public agency.

15 D. Except as provided in subsection E of this section, other  
16 construction contracts for less than ~~Five Thousand Dollars~~  
17 ~~(\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00) may be negotiated with  
18 a qualified contractor. Work may be commenced in accordance with  
19 the purchasing policies of the public agency.

20 E. The provisions of this subsection shall apply to public  
21 construction for minor maintenance or minor repair work to public  
22 school district property. Other construction contracts for less  
23 than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated  
24 with a qualified contractor. Construction contracts equal to or

1 greater than ~~Twenty-five Thousand Dollars (\$25,000.00)~~ Fifty  
2 Thousand Dollars (\$50,000.00) but less than ~~Fifty Thousand Dollars~~  
3 ~~(\$50,000.00)~~ One Hundred Thousand Dollars (\$100,000.00) shall be let  
4 and awarded to the lowest responsible bidder by receipt of written  
5 bids. No work shall be commenced on any construction contract until  
6 a written contract is executed and proof of insurance has been  
7 provided by the contractor to the awarding public agency.

8 F. The Construction and Properties Division of the Office of  
9 Management and Enterprise Services may award contracts using best  
10 value competitive proposals. As used in this subsection, "best  
11 value" means an optional contract award system which can evaluate  
12 and rank submitted competitive performance proposals to identify the  
13 proposal with the greatest value to the state. The Office of  
14 Management and Enterprise Services, pursuant to the Administrative  
15 Procedures Act, shall promulgate rules necessary to implement the  
16 provisions of this subsection.

17 G. 1. A public agency shall not let or award a public  
18 construction contract exceeding One Hundred Thousand Dollars  
19 (\$100,000.00) or a construction management trade contract or  
20 subcontract exceeding Fifty Thousand Dollars (\$50,000.00) to any  
21 contractor affiliated with a purchasing cooperative unless the  
22 purchasing cooperative and the contractor have complied with all of  
23 the provisions of the Public Competitive Bidding Act of 1974,  
24 including but not limited to open competitive bidding after

1 solicitation for sealed bids. A public agency shall not let or  
2 award a public construction contract exceeding ~~Five Thousand Dollars~~  
3 ~~(\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00) up to ~~Fifty Thousand~~  
4 ~~Dollars (\$50,000.00)~~ One Hundred Thousand Dollars (\$100,000.00) to  
5 any contractor affiliated with a purchasing cooperative unless the  
6 purchasing cooperative and the contractor have complied with all of  
7 the provisions of the Public Competitive Bidding Act of 1974,  
8 including submission of a written bid upon notice of competitive  
9 bidding.

10 2. A purchasing cooperative and its affiliated contractors  
11 shall not be allowed to bid on any public construction contract  
12 exceeding One Hundred Thousand Dollars (\$100,000.00) or any  
13 construction management trade contract or subcontract exceeding  
14 Fifty Thousand Dollars (\$50,000.00) unless the purchasing  
15 cooperative and its affiliated contractors have complied with all of  
16 the provisions of the Public Competitive Bidding Act of 1974,  
17 including but not limited to open competitive bidding after  
18 solicitation for sealed bids. A purchasing cooperative and its  
19 affiliated contractors shall not be allowed to bid on any public  
20 construction contract exceeding ~~Two Thousand Five Hundred Dollars~~  
21 ~~(\$2,500.00)~~ Five Thousand Dollars (\$5,000.00) unless the purchasing  
22 cooperative and its affiliated contractors have complied with all of  
23 the provisions of the Public Competitive Bidding Act of 1974,  
24



1 including submission of a written bid upon notice of open  
2 competitive bidding.

3 SECTION 3. AMENDATORY 61 O.S. 2011, Section 103.5, is  
4 amended to read as follows:

5 Section 103.5 For purposes of the provisions of the Public  
6 Competitive Bidding Act of 1974, contracts not exceeding ~~Fifty~~  
7 ~~Thousand Dollars (\$50,000.00)~~ One Hundred Thousand Dollars  
8 (\$100,000.00) entered into solely for right-of-way clearance by the  
9 Transportation Commission and the Oklahoma Transportation Authority  
10 for the exclusive purpose of demolition and removal of buildings,  
11 foundations, slab floors, stem walls, steps, brush, shrubs,  
12 brickbats or stone and all rubbish, scrap iron, fencing, and debris,  
13 and the installation of new right-of-way fencing, shall not be  
14 considered to be public construction contracts and shall not be  
15 required to be open for competitive bidding.

16 SECTION 4. AMENDATORY Section 1, Chapter 288, O.S.L.  
17 2014 (61 O.S. Supp. 2020, Section 103.7), is amended to read as  
18 follows:

19 Section 103.7 For purposes of the provisions of the Public  
20 Competitive Bidding Act of 1974, contracts entered into solely for  
21 projects and activities by the Oklahoma Department of Wildlife  
22 Conservation relating to fish and wildlife conservation shall be let  
23 and awarded using the competitive bidding process as set forth in  
24 the Public Competitive Bidding Act of 1974. However, for contracts

1 of ~~Twenty-five Thousand Dollars (\$25,000.00)~~ Fifty Thousand Dollars  
2 (\$50,000.00) or less the Department may administer the competitive  
3 bidding process and let and award the contract itself rather than  
4 the Construction and Properties Division of the Office of Management  
5 and Enterprise Services.

6 SECTION 5. AMENDATORY 61 O.S. 2011, Section 104, as last  
7 amended by Section 1, Chapter 40, O.S.L. 2017 (61 O.S. Supp. 2020,  
8 Section 104), is amended to read as follows:

9 Section 104. All proposals to award public construction  
10 contracts shall be made equally and uniformly known by the awarding  
11 public agency to all prospective bidders and the public in the  
12 following manner:

13 1. Notice thereof shall be given by publication in a newspaper  
14 of general circulation and published in the county where the work,  
15 or the major part of it, is to be done, such notice by publication  
16 to be published in two consecutive weekly issues of the newspaper,  
17 with the first publication thereof to be at least twenty-one (21)  
18 days prior to the date set for opening bids; and

19 2. Notice thereof shall be sent to one in-state trade or  
20 construction publication for their use and information whenever the  
21 estimated cost of the public construction contract exceeds One  
22 Hundred Thousand Dollars (\$100,000.00) or the cost of the  
23 construction management trade contract or subcontract exceeds Fifty  
24 Thousand Dollars (\$50,000.00); provided, however, this section shall

1 not be construed to require the publication of the notice in such  
2 trade or construction publication or the requirement to provide the  
3 notice to more than one in-state trade or construction publication  
4 or to any out-of-state trade or construction publications.

5 SECTION 6. AMENDATORY 61 O.S. 2011, Section 107, as  
6 amended by Section 313, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
7 2020, Section 107), is amended to read as follows:

8 Section 107. A. A bidder on a public construction contract  
9 exceeding One Hundred Thousand Dollars (\$100,000.00) or a  
10 construction management trade contract or subcontract exceeding  
11 Fifty Thousand Dollars (\$50,000.00) shall accompany the bid with:

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

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

23 B. The cost of republication of the notice to bidders, actual  
24 expenses incurred by reason of the bidder's default and the

1 difference between the low bid of the defaulting bidder and the  
2 amount of the bid of the bidder to whom the contract is subsequently  
3 awarded, but not to exceed the amount of the certified check,  
4 cashier's check, bid bond or irrevocable letter of credit may, at  
5 the discretion of the awarding public agency, be forfeited to the  
6 awarding public agency in the event the apparently successful bidder  
7 fails to execute the contract or fails to provide the required bonds  
8 or irrevocable letters of credit and insurance to the awarding  
9 public agency.

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

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

24

1 SECTION 7. AMENDATORY 61 O.S. 2011, Section 113, as last  
2 amended by Section 3, Chapter 299, O.S.L. 2019 (61 O.S. Supp. 2020,  
3 Section 113), is amended to read as follows:

4 Section 113. A. Except as otherwise provided by law, within  
5 the period of time, not to exceed sixty (60) days, specified in the  
6 bid notice by the awarding public agency, a contract embodying the  
7 terms set forth in the bidding documents shall be executed by the  
8 awarding public agency or, where construction management at-risk is  
9 the project delivery method, by the construction manager and the  
10 successful bidder. No bidder shall obtain any property right in a  
11 contract awarded under the provisions of the Public Competitive  
12 Bidding Act of 1974 until the contract has been fully executed by  
13 both the bidder and the awarding public agency.

14 B. Except as otherwise provided by law, within the period of  
15 time specified in subsection A of this section, the following shall  
16 be provided by the contractor to the awarding public agency for  
17 public construction contracts exceeding One Hundred Thousand Dollars  
18 (\$100,000.00) or construction management trade contracts or  
19 subcontracts exceeding Fifty Thousand Dollars (\$50,000.00):

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

22 2. A bond in a sum equal to the contract price, with adequate  
23 surety, or an irrevocable letter of credit containing terms  
24 prescribed by the Construction and Properties Division of the Office

1 of Management and Enterprise Services issued by a financial  
2 institution insured by the Federal Deposit Insurance Corporation or  
3 the Federal Savings and Loan Insurance Corporation for the benefit  
4 of the state, on behalf of the awarding public agency, in a sum  
5 equal to the contract price, to ensure the proper and prompt  
6 completion of the work in accordance with the provisions of the  
7 contract and bidding documents;

8 3. A bond in a sum equal to the contract price or an  
9 irrevocable letter of credit containing terms as prescribed by the  
10 Division issued by a financial institution insured by the Federal  
11 Deposit Insurance Corporation or the Federal Savings and Loan  
12 Insurance Corporation for the benefit of the state, on behalf of the  
13 awarding public agency, in a sum equal to the contract price, to  
14 protect the awarding public agency against defective workmanship and  
15 materials for a period of one (1) year after acceptance of the  
16 project, except when the awarding public agency is the Department of  
17 Transportation or the Oklahoma Turnpike Authority, in such case the  
18 period shall be for one (1) year after project completion; and

19 4. Public liability and workers' compensation insurance during  
20 construction in reasonable amounts. A public agency may require the  
21 contractor to name the public agency and its architects or  
22 engineers, or both, as an additional assured under the public  
23 liability insurance, which requirement, if made, shall be  
24 specifically set forth in the bidding documents.

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

5 If the contractor needs additional time in which to obtain the  
6 bond required pursuant to subsection B of this section, the  
7 contractor may request and the awarding agency may allow the  
8 contractor an additional sixty (60) days in which to obtain the  
9 bond.

10 D. 1. After the award of a contract, but prior to its  
11 execution, an awarding public agency, upon discovery of an  
12 administrative error in the award process that would void an  
13 otherwise valid award, may suspend the time of execution of the  
14 contract. The agency may rescind the award and readvertise for  
15 bids, or may direct correction of the error and award the contract  
16 to the lowest responsible bidder, whichever shall be in the best  
17 interests of the state.

18 2. If the awarding public agency has a governing body, the  
19 agency shall, at the next regularly scheduled public business  
20 meeting of the governing body of the agency, upon the record,  
21 present to the governing body that an error has been made in the  
22 award process and shall state the nature of the error. The  
23 governing body, upon presentation of the facts of the error, may  
24 rescind the award and readvertise for bids, or may direct correction

1 of the error and award the contract to the lowest responsible  
2 bidder, whichever shall be in the best interests of the state.

3 E. No public agency shall require for any public construction  
4 project, nor shall any general contractor submit a project bid based  
5 on acquiring or participating in, any wrap-up, wrap-around, or  
6 controlled insurance program. For the purposes of this subsection,  
7 "wrap-up, wrap-around, or controlled insurance program" means any  
8 insurance program that has the effect of disabling or rendering  
9 inapplicable any workers' compensation, commercial general  
10 liability, builders' risk, completed operations, or excess liability  
11 insurance coverage carried by a subcontractor that is engaged or to  
12 be engaged on a public construction project unless this is a cost  
13 savings to the public or the need exists for a specialized or  
14 complex insurance program and shall not apply to contracts less than  
15 Seventy-five Million Dollars (\$75,000,000.00).

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

19 SECTION 8. AMENDATORY 61 O.S. 2011, Section 119.1, is  
20 amended to read as follows:

21 Section 119.1 A. If no timely bid is received after bid  
22 notices have been published on any proposed public construction  
23 contract which does not exceed One Hundred Thousand Dollars  
24 (\$100,000.00) or on any proposed construction management trade



1 contract or subcontract which does not exceed Fifty Thousand Dollars  
2 (\$50,000.00):

3 1. The governing body of a county, city, town or school  
4 district may direct its employees or agents to negotiate the  
5 contract with a prospective contractor; or

6 2. The state agency, as defined in Section 202 of this title,  
7 shall request the State Construction Administrator of the  
8 Construction and Properties Division to negotiate a contract on its  
9 behalf.

10 B. The amount of a public construction contract which may be  
11 awarded by the governing body pursuant to this section shall not  
12 exceed One Hundred Thousand Dollars (\$100,000.00), nor shall the  
13 amount of a construction management trade contract or subcontract  
14 awarded by the governing body pursuant to this section exceed Fifty  
15 Thousand Dollars (\$50,000.00), and the work to be performed shall be  
16 as specified in the initial bidding documents. The contract shall  
17 be executed within six (6) months after the date initially set for  
18 opening of bids. The contract and contract procedure shall conform  
19 to all other applicable provisions of the Public Competitive Bidding  
20 Act of 1974.

21 SECTION 9. AMENDATORY 61 O.S. 2011, Section 130, as last  
22 amended by Section 1, Chapter 293, O.S.L. 2016 (61 O.S. Supp. 2020,  
23 Section 130), is amended to read as follows:

1 Section 130. A. The provisions of the Public Competitive  
2 Bidding Act of 1974 with reference to notice and bids shall not  
3 apply to an emergency if:

4 1. The governing body of a public agency declares by a two-  
5 thirds (2/3) majority vote of all of the members of the governing  
6 body that an emergency exists;

7 2. The Transportation Commission and the Oklahoma Tourism and  
8 Recreation Commission, by majority vote of all the members of each  
9 Commission, declare that an emergency exists; or

10 3. The chief administrative officer of a public agency without  
11 a governing body declares that an emergency exists.

12 B. The governing body of a public agency may, upon approval of  
13 two-thirds (2/3) majority of all of the members of the governing  
14 body, delegate to the chief administrative officer of a public  
15 agency the authority to declare an emergency whereby the provisions  
16 of the Public Competitive Bidding Act of 1974 with reference to  
17 notice and bids shall not apply to contracts less than ~~Seventy-five~~  
18 ~~Thousand Dollars (\$75,000.00)~~ One Hundred Fifty Thousand Dollars  
19 (\$150,000.00) in amount; provided, such authority of the Department  
20 of Transportation and the Oklahoma Turnpike Authority shall not  
21 extend to any contract exceeding Seven Hundred Fifty Thousand  
22 Dollars (\$750,000.00) in amount and such authority of the Department  
23 of Corrections shall not extend to any contract exceeding Two  
24 Hundred Fifty Thousand Dollars (\$250,000.00) in amount for

1 situations in which the emergency impacts the conditions of  
2 confinement, health and safety of correctional officers and inmates  
3 in the custody of the Department of Corrections.

4 C. Upon approval of a two-thirds (2/3) majority vote, the  
5 Oklahoma Conservation Commission may delegate to the Executive  
6 Director the authority to declare an emergency and set a monetary  
7 limit for the declaration. The provisions of this subsection may  
8 only be used for the purpose of responding to an emergency involving  
9 the reclamation of abandoned coal mines or the repair of damaged  
10 upstream floodwater retarding structures.

11 D. An emergency declared by the Board of Corrections pursuant  
12 to subsection C of Section 65 of this title shall exempt the  
13 Department of Corrections from the limits which would otherwise be  
14 imposed pursuant to subsection B of this section for the contracting  
15 and construction of new or expanded correctional facilities.

16 E. The chief administrative officer of a public agency with a  
17 governing body shall notify the governing body within ten (10) days  
18 of the declaration of an emergency if the governing body did not  
19 approve the emergency. The notification shall contain a statement  
20 of the reasons for the action, and shall be recorded in the official  
21 minutes of the governing body.

22 F. Emergency as used in this section shall be limited to  
23 conditions resulting from a sudden unexpected happening or  
24

1 unforeseen occurrence or condition whereby the public health or  
2 safety is endangered.

3 G. The chief administrative officer of a public agency shall  
4 report an emergency within ten (10) days of the emergency  
5 declaration and include the official minutes of the governing body  
6 of the public agency, if applicable, to the State Construction  
7 Administrator of the Construction and Properties Division of the  
8 Office of Management and Enterprise Services who shall compile an  
9 annual report detailing all emergencies declared pursuant to this  
10 section during the previous calendar year. The report shall be  
11 submitted to the Governor, the President Pro Tempore of the Senate,  
12 and the Speaker of the House of Representatives.

13 SECTION 10. This act shall become effective November 1, 2021.

14 Passed the House of Representatives the 2nd day of March, 2021.

15

16

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

17

18

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2021.

19

20

21

\_\_\_\_\_  
Presiding Officer of the Senate

22

23

24