

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1053

By: Coates of the Senate

and

Newell of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to public buildings; amending 61
12 O.S. 2011, Sections 1 and 2, which relate to surety
13 bonds; requiring bonds for certain public and private
14 projects; providing applicability for certain
15 improvements or buildings; providing an effective
16 date; and declaring an emergency.

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

17 SECTION 1. AMENDATORY 61 O.S. 2011, Section 1, is
18 amended to read as follows:

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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 Department of Central Services prescribes, to be issued for the
5 benefit of the state by a financial institution insured by the
6 Federal Deposit Insurance Corporation in a sum not less than the
7 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), in lieu of a bond or irrevocable letter of credit, the
17 contractor shall submit an affidavit of the payment of all
18 indebtedness incurred by the contractor, the contractor's
19 subcontractors, and all suppliers of labor, material, rented
20 machinery or equipment, and repair of and parts for equipment used
21 or consumed in the performance of the contract. The execution of
22 the affidavit with knowledge that any of the contents of the
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1 affidavit are false, upon conviction, shall constitute perjury,
2 punishable as provided for by law.

3 SECTION 2. AMENDATORY 61 O.S. 2011, Section 2, is
4 amended to read as follows:

5 Section 2. A. Bonds shall be filed in the office of the
6 agency, institution, department, commission, municipality or
7 government instrumentality that is authorized by law and does enter
8 into contracts for the construction of public improvements or
9 buildings, or public or private improvements or buildings on a
10 public-private partnership project, or repairs to the same; and the
11 officer with whom the bond is filed shall furnish a copy thereof to
12 any person claiming any rights thereunder. Any person to whom there
13 is due any sum for labor, material or repair to machinery or
14 equipment, furnished as stated in Section 1 of this title, the heirs
15 or assigns of such person, may bring an action on the bond for the
16 recovery of the indebtedness, provided that no action shall be
17 brought on the bond after one (1) year from the day on which the
18 last of the labor was performed or material or parts furnished for
19 which the claim is made.

20 B. Any person having direct contractual relationship with a
21 subcontractor, regardless of tier, performing work on the contract,
22 but no contractual relationship express or implied with the
23 contractor furnishing the payment bond, shall have a right of action
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1 upon the payment bond only upon giving written notice to the
2 contractor and surety on the payment bond within ninety (90) days
3 from the date on which such person did or performed the last of the
4 labor or furnished or supplied the last of the material or parts for
5 which the claim is made, stating with substantial accuracy the
6 amount claimed and the name of the party to whom the material or
7 parts were furnished or supplied or for whom the labor was done or
8 performed. The notice shall be served by mailing the same by
9 registered or certified mail, postage prepaid, in an envelope
10 addressed to the contractor at any place the contractor maintains an
11 office or conducts business, together with a copy thereof to the
12 surety or sureties on the payment bond.

13 C. 1. The bond or irrevocable letter of credit issued to the
14 ~~Oklahoma~~ Department of Transportation or the Oklahoma Turnpike
15 Authority, pursuant to this section, shall also provide that the
16 contractor shall pay all state and local taxes accruing as a result
17 of the contract, any liquidated damages as provided by the contract
18 and any overpayment of progressive estimates resulting in a balance
19 due and owing the ~~Oklahoma~~ Department of Transportation or the
20 Oklahoma Turnpike Authority.

21 2. A claim against the bond or irrevocable letter of credit for
22 delinquent taxes shall be made by the public entity to which the tax
23 was payable. The claim shall be made within six (6) months from the
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1 date on which the tax became delinquent. Notice of the delinquent
2 tax shall be sent by certified mail to the surety, and a copy of the
3 notice shall be sent to the contractor. Nothing in this paragraph
4 shall be construed to release, at any time, the contractor from
5 responsibility for full payment of all taxes.

6 3. A claim against the bond or irrevocable letter of credit for
7 overpayment on progressive estimates shall be made by the public
8 entity within one (1) year from the date of final acceptance of the
9 project. Notice of the overpayment shall be sent by certified mail
10 to the surety and a copy of the notice shall be sent to the
11 contractor. Nothing in this paragraph shall be construed as to
12 release, at any time, the contractor from the responsibility of
13 refunding any amount overpaid on progressive estimates which are due
14 and owing the ~~Oklahoma~~ Department of Transportation.

15 SECTION 3. This act shall become effective July 1, 2012.

16 SECTION 4. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

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21 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND
22 FINANCIAL SERVICES, dated 03/29/2012 - DO PASS, As Amended.

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