SENATE FLOOR VERSION
February 29, 2012

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1517 By: Johnson (Rob) of the Senate

and

Schwartz of the House

[public contracts - modifying applicability - filing of certain bond - effective date]

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

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

Section 1. A. Prior to an award of a contract exceeding Fifty Thousand Dollars ($50,000.00) for construction or repair of a public <u>or private</u> building ~~or~~<u>,</u> structure, or improvement ~~to~~ <u>on public</u> real property <u>or private real property using public funds</u>, the person that receives the award shall:

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

2. Cause an irrevocable letter of credit, containing terms the Department of Central Services prescribes, to be issued for the benefit of the state by a financial institution insured by the

Federal Deposit Insurance Corporation in a sum not less than the total sum of the contract.

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

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

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

Section 2. A. Bonds shall be filed in the office of the agency, institution, department, commission, municipality or government instrumentality that is authorized by law and does enter

into contracts for the construction of public or private improvements or buildings, or repairs to the same or provides public funding for private projects, improvements or buildings, or repairs to the same; and the officer with whom the bond is filed shall furnish a copy thereof to any person claiming any rights thereunder. Any person to whom there is due any sum for labor, material or repair to machinery or equipment, furnished as stated in Section 1 of this title, the heirs or assigns of such person, may bring an action on the bond for the recovery of the indebtedness, provided that no action shall be brought on the bond ~~after~~ either:

1. After one (1) year from the day on which the last of the labor was performed or material or parts furnished for which the claim is made; or

2. After one (1) year from the date payment is contractually due to the person claiming any rights thereunder, whichever is later.

B. Any person having direct contractual relationship with a subcontractor, regardless of tier, performing work on the contract, but no contractual relationship express or implied with the contractor furnishing the payment bond, shall have a right of action upon the payment bond only upon giving written notice to the contractor and surety on the payment bond within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or parts for

which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material or parts were furnished or supplied or for whom the labor was done or performed. The notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, together with a copy thereof to the surety or sureties on the payment bond.

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

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

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

SECTION 3. This act shall become effective November 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-28-12 - DO PASS, As Amended and Coauthored.