

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1053

By: Coates

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5
6 AS INTRODUCED

7 An Act relating to public building; amending 61 O.S.
8 2011, Sections 1 and 2, which relate to surety bonds;
9 requiring bonds for certain public and private
10 projects; conforming language relating to certain
11 public and private projects; providing an effective
12 date; and declaring an emergency.

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

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

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

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

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

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

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

10 C. For a contract not exceeding Fifty Thousand Dollars
11 (\$50,000.00), in lieu of a bond or irrevocable letter of credit, the
12 contractor shall submit an affidavit of the payment of all
13 indebtedness incurred by the contractor, the contractor's
14 subcontractors, and all suppliers of labor, material, rented
15 machinery or equipment, and repair of and parts for equipment used
16 or consumed in the performance of the contract. The execution of
17 the affidavit with knowledge that any of the contents of the
18 affidavit are false, upon conviction, shall constitute perjury,
19 punishable

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

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

1 into contracts for the construction of public or private
2 improvements or buildings, or repairs to the same or provides public
3 funding for private projects, improvements or buildings, or repairs
4 to the same; and the officer with whom the bond is filed shall
5 furnish a copy thereof to any person claiming any rights thereunder.
6 Any person to whom there is due any sum for labor, material or
7 repair to machinery or equipment, furnished as stated in Section 1
8 of this title, the heirs or assigns of such person, may bring an
9 action on the bond for the recovery of the indebtedness, provided
10 that no action shall be brought on the bond after one (1) year from
11 the day on which the last of the labor was performed or material or
12 parts furnished for which the claim is made.

13 B. Any person having direct contractual relationship with a
14 subcontractor, regardless of tier, performing work on the contract,
15 but no contractual relationship express or implied with the
16 contractor furnishing the payment bond, shall have a right of action
17 upon the payment bond only upon giving written notice to the
18 contractor and surety on the payment bond within ninety (90) days
19 from the date on which such person did or performed the last of the
20 labor or furnished or supplied the last of the material or parts for
21 which the claim is made, stating with substantial accuracy the
22 amount claimed and the name of the party to whom the material or
23 parts were furnished or supplied or for whom the labor was done or
24 performed. The notice shall be served by mailing the same by

1 registered or certified mail, postage prepaid, in an envelope
2 addressed to the contractor at any place the contractor maintains an
3 office or conducts business, together with a copy thereof to the
4 surety or sureties on the payment bond.

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

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

21 3. A claim against the bond or irrevocable letter of credit for
22 overpayment on progressive estimates shall be made by the public
23 entity within one (1) year from the date of final acceptance of the
24 project. Notice of the overpayment shall be sent by certified mail

1 to the surety and a copy of the notice shall be sent to the
2 contractor. Nothing in this paragraph shall be construed as to
3 release, at any time, the contractor from the responsibility of
4 refunding any amount overpaid on progressive estimates which are due
5 and owing the Oklahoma Department of Transportation.

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

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

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