

1 ENGROSSED SENATE AMENDMENT  
TO  
2 ENGROSSED HOUSE  
BILL NO. 2305

By: Frix of the House

and

Pemberton of the Senate

7 An Act relating to public buildings and public works;  
amending 61 O.S. 2011, Section 2, as amended by  
8 Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp.  
2018, Section 2), which relates to filing of bonds;  
9 providing for filing of claim; authorizing certain  
action if prior claim has been filed; and providing  
10 an effective date.

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13 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
entire bill and insert

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15 "An Act relating to public buildings and public  
works; amending 61 O.S. 2011, Section 2, as amended  
by Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp.  
16 2018, Section 2), which relates to filing of bonds;  
providing for filing of claim; authorizing certain  
17 action if prior claim has been filed; prohibiting  
action on bond within certain period following  
18 performance of labor; and providing an effective  
date.

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

22 SECTION 1. AMENDATORY 61 O.S. 2011, Section 2, as  
23 amended by Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp. 2018,  
24 Section 2), is amended to read as follows:

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

21       B. Any person having direct contractual relationship with a  
22 subcontractor, regardless of tier, performing work on the contract,  
23 but no contractual relationship express or implied with the  
24 contractor furnishing the payment bond, shall have a right of action

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 Department of Transportation or the Oklahoma Turnpike Authority,  
15 pursuant to this section, shall also provide that the contractor  
16 shall pay all state and local taxes accruing as a result of the  
17 contract, any liquidated damages as provided by the contract and any  
18 overpayment of progressive estimates resulting in a balance due and  
19 owing the Department of Transportation or the Oklahoma Turnpike  
20 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  
24 date on which the tax became delinquent. Notice of the delinquent

1 tax shall be sent by certified mail to the surety, and a copy of the  
2 notice shall be sent to the contractor. Nothing in this paragraph  
3 shall be construed to release, at any time, the contractor from  
4 responsibility for full payment of all taxes.

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

14 SECTION 2. This act shall become effective November 1, 2019."

15 Passed the Senate the 17th day of April, 2019.

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Presiding Officer of the Senate

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19 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
20 2019.

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Presiding Officer of the House  
of Representatives

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2 BILL NO. 2305

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7 An Act relating to public buildings and public works;  
8 amending 61 O.S. 2011, Section 2, as amended by  
9 Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp.  
10 2018, Section 2), which relates to filing of bonds;  
11 providing for filing of claim; authorizing certain  
12 action if prior claim has been filed; and providing  
13 an effective date.

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

15 SECTION 3. AMENDATORY 61 O.S. 2011, Section 2, as  
16 amended by Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp. 2018,  
17 Section 2), is amended to read as follows:

18 Section 2. A. Bonds shall be filed in the office of the  
19 agency, institution, department, commission, municipality or  
20 government instrumentality that is authorized by law and does enter  
21 into contracts for the construction of public improvements or  
22 buildings, or public or private improvements or buildings on a  
23 public-private partnership project, or repairs to the same; and the  
24 officer with whom the bond is filed shall furnish a copy thereof to

1 any person claiming any rights thereunder. Any person to whom there  
2 is due any sum for labor, material or repair to machinery or  
3 equipment, furnished as stated in Section 1 of this title, the heirs  
4 or assigns of such person, may file a claim or bring an action on  
5 the bond for the recovery of the indebtedness, provided that no  
6 action shall be brought on the bond after one (1) year from the day  
7 on which the last of the labor was performed or material or parts  
8 furnished for which the claim is made unless a prior claim has been  
9 filed within one (1) year from the day on which the labor was  
10 performed or material or parts furnished.

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

1 office or conducts business, together with a copy thereof to the  
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3 C. 1. The bond or irrevocable letter of credit issued to the  
4 Department of Transportation or the Oklahoma Turnpike Authority,  
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24 contractor. Nothing in this paragraph shall be construed as to

1 release, at any time, the contractor from the responsibility of  
2 refunding any amount overpaid on progressive estimates which are due  
3 and owing the Department of Transportation.

4 SECTION 4. This act shall become effective November 1, 2019.

5 Passed the House of Representatives the 4th day of March, 2019.

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8 Presiding Officer of the House  
of Representatives

9 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2019.

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12 Presiding Officer of the Senate