

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

COMMITTEE SUBSTITUTE  
FOR

HOUSE BILL NO. 2305

By: Frix

COMMITTEE SUBSTITUTE

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.  
2018, Section 2), which relates to filing of bonds;  
providing for filing of claim; and providing an  
effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 2, as  
amended by Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp. 2018,  
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 improvements or  
buildings, or public or private improvements or buildings on a  
public-private partnership project, or repairs to the same; and the  
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.

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

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

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

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

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