

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2305

By: Frix of the House

and

7 **Pemberton** of the Senate

8
9
10 COMMITTEE SUBSTITUTE

11 An Act relating to public buildings and public works;
12 amending 61 O.S. 2011, Section 2, as amended by
13 Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp.
14 2018, Section 2), which relates to filing of bonds;
15 providing for filing of claim; and providing an
16 effective date.

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

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

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

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

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

1 addressed to the contractor at any place the contractor maintains an
2 office or conducts business, together with a copy thereof to the
3 surety or sureties on the payment bond.

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

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

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

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

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

6

7 COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION, dated 02/20/2019 -
8 DO PASS, As Amended and Coauthored.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24