

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3876

By: Wallace of the House

and

Rosino of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to public buildings and public works;
12 amending 61 O.S. 2011, Section 2, as last amended by
13 Section 1, Chapter 407, O.S.L. 2019 (61 O.S. Supp.
14 2019, Section 2), which relates to subcontractors
15 actions on bonds; providing a right of action against
16 at-risk construction management payment bonds;
17 limiting right of action; and providing an effective
18 date.

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

20 SECTION 1. AMENDATORY 61 O.S. 2011, Section 2, as last
21 amended by Section 1, Chapter 407, O.S.L. 2019 (61 O.S. Supp. 2019,
22 Section 2), is amended to read as follows:

23 Section 2. A. Bonds shall be filed in the office of the
24 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

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 unless a prior claim has been
12 filed within one (1) year from the day on which the labor was
13 performed or material or parts furnished, in which case, no action
14 shall be brought on the bond after two (2) years from the day on
15 which the last of the labor was performed or material or parts
16 furnished for which the claim is made.

17 B. 1. Any person having direct contractual relationship with a
18 subcontractor, regardless of tier, performing work on the contract,
19 but no contractual relationship express or implied with the
20 contractor furnishing the payment bond, shall have a right of action
21 upon the payment bond only upon giving written notice to the
22 contractor and surety on the payment bond within ninety (90) days
23 from the date on which such person did or performed the last of the
24 labor or furnished or supplied the last of the material or parts for

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

9 2. With regard to an at-risk construction management contract,
10 under which the at-risk construction manager, or a trade contractor
11 under either an agency or an at-risk construction management
12 contract, is required to furnish a payment bond, only persons having
13 a direct contractual relationship with the party furnishing the
14 payment bond shall have a right of action upon the payment bond in
15 the same manner as set forth in subsection A of this section.

16 C. 1. The bond or irrevocable letter of credit issued to the
17 Department of Transportation or the Oklahoma Turnpike Authority,
18 pursuant to this section, shall also provide that the contractor
19 shall pay all state and local taxes accruing as a result of the
20 contract, any liquidated damages as provided by the contract and any
21 overpayment of progressive estimates resulting in a balance due and
22 owing the Department of Transportation or the Oklahoma Turnpike
23 Authority.
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1 2. A claim against the bond or irrevocable letter of credit for
2 delinquent taxes shall be made by the public entity to which the tax
3 was payable. The claim shall be made within six (6) months from the
4 date on which the tax became delinquent. Notice of the delinquent
5 tax shall be sent by certified mail to the surety, and a copy of the
6 notice shall be sent to the contractor. Nothing in this paragraph
7 shall be construed to release, at any time, the contractor from
8 responsibility for full payment of all taxes.

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

18 SECTION 2. This act shall become effective November 1, 2020.
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20 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT EFFICIENCY, dated
21 02/12/2020 - DO PASS, As Amended and Coauthored.
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