

An Act

ENROLLED HOUSE
BILL NO. 2861

By: Wallace and Moore of the
House

and

Rosino of the Senate

An Act relating to public buildings and public works; amending 61 O.S. 2011, Section 2, as last amended by Section 1, Chapter 407, O.S.L. 2019 (61 O.S. Supp. 2020, Section 2), which relates to subcontractors actions on bonds; providing a right of action against at-risk construction management payment bonds; limiting right of action; and providing an effective date.

SUBJECT: Public buildings and public works

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 2, as last amended by Section 1, Chapter 407, O.S.L. 2019 (61 O.S. Supp. 2020, 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 any person claiming any rights thereunder. Any person to whom there is due any sum for labor, material or repair to machinery or equipment, furnished as stated in Section 1 of this title, the heirs or assigns of such person, may file a claim or bring an action on the bond for the recovery of the indebtedness, provided that no

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

B. 1. Any person having direct contractual relationship with a subcontractor, regardless of tier, performing work on the contract, but no contractual relationship express or implied with the contractor furnishing the payment bond, shall have a right of action upon the payment bond only upon giving written notice to the contractor and surety on the payment bond within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or parts for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material or parts were furnished or supplied or for whom the labor was done or performed. The notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, together with a copy thereof to the surety or sureties on the payment bond.

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

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

2. A claim against the bond or irrevocable letter of credit for delinquent taxes shall be made by the public entity to which the tax

was payable. The claim shall be made within six (6) months from the date on which the tax became delinquent. Notice of the delinquent tax shall be sent by certified mail to the surety, and a copy of the notice shall be sent to the contractor. Nothing in this paragraph shall be construed to release, at any time, the contractor from responsibility for full payment of all taxes.

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

SECTION 2. This act shall become effective November 1, 2021.

Passed the House of Representatives the 18th day of February,
2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 20th day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____