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STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 2861 By: Wallace of the House

By: Wallace of the House

and

**Rosino** of the Senate

## AS INTRODUCED

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.

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 2, as amended by Section 1, Chapter 407, O.S.L. 2019 (61 O.S. Supp. 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 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.

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, 2021.  
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20 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated  
21 02/04/2021 - DO PASS, As Coauthored.  
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