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March 25, 2021

ENGROSSED 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.

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

1 officer with whom the bond is filed shall furnish a copy thereof to  
2 any person claiming any rights thereunder. Any person to whom there  
3 is due any sum for labor, material or repair to machinery or  
4 equipment, furnished as stated in Section 1 of this title, the heirs  
5 or assigns of such person, may file a claim or bring an action on  
6 the bond for the recovery of the indebtedness, provided that no  
7 action shall be brought on the bond after one (1) year from the day  
8 on which the last of the labor was performed or material or parts  
9 furnished for which the claim is made unless a prior claim has been  
10 filed within one (1) year from the day on which the labor was  
11 performed or material or parts furnished, in which case, no action  
12 shall be brought on the bond after two (2) years from the day on  
13 which the last of the labor was performed or material or parts  
14 furnished for which the claim is made.

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

1 parts were furnished or supplied or for whom the labor was done or  
2 performed. The notice shall be served by mailing the same by  
3 registered or certified mail, postage prepaid, in an envelope  
4 addressed to the contractor at any place the contractor maintains an  
5 office or conducts business, together with a copy thereof to the  
6 surety or sureties on the payment bond.

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

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

22 2. A claim against the bond or irrevocable letter of credit for  
23 delinquent taxes shall be made by the public entity to which the tax  
24 was payable. The claim shall be made within six (6) months from the

1 date on which the tax became delinquent. Notice of the delinquent  
2 tax shall be sent by certified mail to the surety, and a copy of the  
3 notice shall be sent to the contractor. Nothing in this paragraph  
4 shall be construed to release, at any time, the contractor from  
5 responsibility for full payment of all taxes.

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
17 March 25, 2021 - DO PASS  
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