

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 2861

By: Wallace

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 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

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

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

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

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

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

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

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

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

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

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