

1 **SENATE FLOOR VERSION**

2 March 28, 2019

3 ENGROSSED HOUSE  
4 BILL NO. 2305

By: Frix of the House

5 and

6 Pemberton of the Senate

7  
8 An Act relating to public buildings and public works;  
9 amending 61 O.S. 2011, Section 2, as amended by  
10 Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp.  
11 2018, Section 2), which relates to filing of bonds;  
12 providing for filing of claim; authorizing certain  
13 action if prior claim has been filed; and providing  
14 an effective date.

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

16 SECTION 1. AMENDATORY 61 O.S. 2011, Section 2, as  
17 amended by Section 2, Chapter 241, O.S.L. 2012 (61 O.S. Supp. 2018,  
18 Section 2), is amended to read as follows:

19 Section 2. A. Bonds shall be filed in the office of the  
20 agency, institution, department, commission, municipality or  
21 government instrumentality that is authorized by law and does enter  
22 into contracts for the construction of public improvements or  
23 buildings, or public or private improvements or buildings on a  
24 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.

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

1 office or conducts business, together with a copy thereof to the  
2 surety or sureties on the payment bond.

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

11 2. A claim against the bond or irrevocable letter of credit for  
12 delinquent taxes shall be made by the public entity to which the tax  
13 was payable. The claim shall be made within six (6) months from the  
14 date on which the tax became delinquent. Notice of the delinquent  
15 tax shall be sent by certified mail to the surety, and a copy of the  
16 notice shall be sent to the contractor. Nothing in this paragraph  
17 shall be construed to release, at any time, the contractor from  
18 responsibility for full payment of all taxes.

19 3. A claim against the bond or irrevocable letter of credit for  
20 overpayment on progressive estimates shall be made by the public  
21 entity within one (1) year from the date of final acceptance of the  
22 project. Notice of the overpayment shall be sent by certified mail  
23 to the surety and a copy of the notice shall be sent to the  
24 contractor. Nothing in this paragraph shall be construed as to

1 release, at any time, the contractor from the responsibility of  
2 refunding any amount overpaid on progressive estimates which are due  
3 and owing the Department of Transportation.

4 SECTION 2. This act shall become effective November 1, 2019.

5 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
6 March 28, 2019 - DO PASS  
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