

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 1114

By: West (Kevin) of the House
and
Pederson of the Senate

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6
7 [public buildings and public works - modifying
8 retainage on certain public contracts - effective
9 date]

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11

12 AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

13

14 "[public buildings and public works - modifying
15 retainage on certain public contracts - effective
16 date]

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

18 SECTION 1. AMENDATORY 61 O.S. 2011, Section 226, is
19 amended to read as follows:

20 Section 226. A. A construction contract may include a
21 provision for the retainage of a portion of payment due. Such
22 retainage is not to exceed five percent (5%) of the amount of the
23 payment due until the work of the contractor has been determined by
24 the holder to be at least fifty percent (50%) complete, and with

1 respect to the balance of the work to be performed by the
2 contractor, the retainage amount shall be two and one-half percent
3 (2.5%).

4 B. A subcontract ~~may~~ shall include a provision for the
5 retainage of a portion of payment due. Such retainage ~~is not to~~
6 shall not exceed five percent (5%) of the amount of the payment due
7 until the work of the subcontractor has been determined by the
8 holder to be at least fifty percent (50%) complete, and with respect
9 to the balance of the work to be performed by the subcontractor, the
10 retainage amount shall be two and one-half percent (2.5%).

11 C. No later than twenty-one (21) calendar days after a
12 certificate of substantial completion is issued for the project or
13 separate usable phase of the project and upon adequate performance
14 of the prime contractor and with approval of any applicable surety,
15 retainage shall be released by the owner to the prime contractor
16 less an amount no greater than one hundred fifty percent (150%) of
17 the estimated costs to correct any incomplete or defective work as
18 identified, itemized, and attached to the certificate of substantial
19 completion. All remaining funds shall be released as each
20 deficiency is satisfactorily completed. The prime contractor shall
21 release within ten (10) calendar days of receipt, the share of those
22 funds that have been withheld from other entities. All other
23 entities shall release within seven (7) calendar days of receipt,
24

1 the share of those funds that have been withheld from other
2 entities.

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

4 and when the title is restored, amend the title to
5 conform

6 Passed the Senate the 23rd day of April, 2019.

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Presiding Officer of the Senate

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10 Passed the House of Representatives the ____ day of _____,
11 2019.

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Presiding Officer of the House
of Representatives

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1 ENGROSSED HOUSE
2 BILL NO. 1114

By: West (Kevin) of the House
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7 [public buildings and public works - modifying
8 retainage on certain public contracts - effective
9 date]
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13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 3. AMENDATORY 61 O.S. 2011, Section 1, as last
15 amended by Section 302, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
16 2018, Section 1), is amended to read as follows:

17 Section 1. A. Prior to an award of a contract exceeding ~~Fifty~~
18 ~~Thousand Dollars (\$50,000.00)~~ One Hundred Thousand Dollars
19 (\$100,000.00) for construction or repair of a public or private
20 building, structure, or improvement on public real property, the
21 person that receives the award shall:

22 1. Furnish a bond with good and sufficient sureties payable to
23 the state in a sum not less than the total sum of the contract; or
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1 2. Cause an irrevocable letter of credit, containing terms the
2 Office of Management and Enterprise Services prescribes, to be
3 issued for the benefit of the state by a financial institution
4 insured by the Federal Deposit Insurance Corporation in a sum not
5 less than the total sum of the contract.

6 B. The bond or irrevocable letter of credit shall ensure the
7 proper and prompt completion of the work in accordance with the
8 contract and shall ensure that the contractor shall pay all
9 indebtedness the contractor incurs for the contractor's
10 subcontractors and all suppliers of labor, material, rental of
11 machinery or equipment, and repair of and parts for equipment the
12 contract requires the contractor to furnish.

13 C. For a contract not exceeding ~~Fifty Thousand Dollars~~
14 ~~(\$50,000.00)~~ One Hundred Thousand Dollars (\$100,000.00), in lieu of
15 a bond or irrevocable letter of credit, the contractor shall submit
16 an affidavit of the payment of all indebtedness incurred by the
17 contractor, the contractor's subcontractors, and all suppliers of
18 labor, material, rented machinery or equipment, and repair of and
19 parts for equipment used or consumed in the performance of the
20 contract. The execution of the affidavit with knowledge that any of
21 the contents of the affidavit are false, upon conviction, shall
22 constitute perjury, punishable as provided for by law.

23 SECTION 4. AMENDATORY 61 O.S. 2011, Section 113.1, is
24 amended to read as follows:

1 Section 113.1 A. A public construction contract shall provide
2 for partial payment based upon work completed. ~~The~~ A contract
3 ~~shall,~~ not subject to a bond pursuant to Section 1 of this title,
4 may provide that up to five percent (5%) of all partial payments
5 made shall be withheld as retainage. If a public construction
6 contract is subject to a bond pursuant to Section 1 of this title,
7 no retainage shall be withheld from the entity posting the bond.

8 B. The Department of Transportation or the Oklahoma Turnpike
9 Authority shall not withhold retainage on public construction
10 contracts awarded by the Department or the Authority.

11 C. The Department of Transportation shall not withhold
12 retainage or require any bond on projects awarded to railroads on
13 the railroad's privately owned or operated rail property.

14 SECTION 5. AMENDATORY 61 O.S. 2011, Section 226, is
15 amended to read as follows:

16 Section 226. A. A construction contract, not subject to a bond
17 pursuant to Section 1 of this title, may include a provision for the
18 retainage of a portion of payment due. Such retainage is not to
19 exceed five percent (5%) of the amount of the payment due. If a
20 construction contract is subject to a bond pursuant to Section 1 of
21 this title, no retainage shall be withheld from the entity posting
22 the bond.

23 B. A subcontract ~~may~~ shall include a provision for the
24 retainage of a portion of payment due. ~~Such~~ Except as otherwise

1 provided in this subsection, such retainage ~~is~~ shall not ~~to~~ exceed
2 five percent (5%) of the amount of the payment due until the work of
3 the subcontractor has been determined by the holder to be at least
4 fifty percent (50%) complete, and with respect to the balance of the
5 work to be performed by the subcontractor, the retainage amount
6 shall be two and one-half percent (2.5%). The holder of the
7 retainage shall be responsible for payment on all interest accrued.

8 C. No later than twenty-one (21) calendar days after a
9 certificate of substantial completion is issued for the project or
10 separate usable phase of the project and upon adequate performance
11 of the prime contractor and with approval of any applicable surety,
12 retainage shall be released by the owner to the prime contractor
13 less an amount no greater than one hundred fifty percent (150%) of
14 the estimated costs to correct any incomplete or defective work as
15 identified, itemized, and attached to the certificate of substantial
16 completion. All remaining funds shall be released as each
17 deficiency is satisfactorily completed. The prime contractor shall
18 release within ten (10) calendar days of receipt, the share of those
19 funds that have been withheld from other entities. All other
20 entities shall release within seven (7) calendar days of receipt,
21 the share of those funds that have been withheld from other
22 entities.

23 SECTION 6. This act shall become effective November 1, 2019.
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1 Passed the House of Representatives the 13th day of March, 2019.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2019.

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8 _____
9 Presiding Officer of the Senate