

1 **SENATE FLOOR VERSION**

2 April 11, 2019

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL NO. 1114

By: West (Kevin) of the House

and

Pederson of the Senate

7  
8  
9 COMMITTEE SUBSTITUTE

10 [ public buildings and public works - modifying  
11 retainage on certain public contracts - effective  
12 date ]

13  
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 61 O.S. 2011, Section 1, as last  
16 amended by Section 302, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
17 2018, Section 1), is amended to read as follows:

18 Section 1. A. Prior to an award of a contract or subcontract  
19 exceeding Fifty Thousand Dollars (\$50,000.00) One Hundred Thousand  
20 Dollars (\$100,000.00) for construction or repair of a public or  
21 private building, structure, or improvement on public real property,  
22 and prior to an award of a contract or subcontract procured for at-  
23 risk construction management or agency construction management  
24 exceeding Fifty Thousand Dollars (\$50,000.00) for construction or

1 repair of a public or private building, structure, or improvement on  
2 public real property, the person that receives the award shall:

3 1. Furnish a bond with good and sufficient sureties payable to  
4 the state in a sum not less than the total sum of the contract; or

5 2. Cause an irrevocable letter of credit, containing terms the  
6 Office of Management and Enterprise Services or as the political  
7 subdivision prescribes, to be issued for the benefit of the state by  
8 a financial institution insured by the Federal Deposit Insurance  
9 Corporation in a sum not less than the total sum of the contract.

10 B. The bond or irrevocable letter of credit shall ensure the  
11 proper and prompt completion of the work in accordance with the  
12 contract and shall ensure that the contractor or subcontractor shall  
13 pay all indebtedness the contractor or subcontractor incurs for the  
14 contractor's or subcontractor's subcontractors and all suppliers of  
15 labor, material, rental of machinery or equipment, and repair of and  
16 parts for equipment the contract requires the contractor or  
17 subcontractor, that is directly contracted with the contractor or  
18 subcontractor to furnish.

19 C. For a contract not exceeding ~~Fifty Thousand Dollars~~  
20 ~~(\$50,000.00)~~ One Hundred Thousand Dollars (\$100,000.00), excluding  
21 at-risk construction management or agency construction management,  
22 in lieu of a bond or irrevocable letter of credit, the contractor  
23 shall submit an affidavit of the payment of all indebtedness  
24 incurred by the contractor, the contractor's subcontractors, and all

1 suppliers of labor, material, rented machinery or equipment, and  
2 repair of and parts for equipment used or consumed in the  
3 performance of the contract. The execution of the affidavit with  
4 knowledge that any of the contents of the affidavit are false, upon  
5 conviction, shall constitute perjury, punishable as provided for by  
6 law.

7 SECTION 2. AMENDATORY 61 O.S. 2011, Section 113.1, is  
8 amended to read as follows:

9 Section 113.1 A. A public construction contract or subcontract  
10 shall provide for partial payment based upon work completed. The  
11 contract or subcontract shall provide that up to five percent (5%)  
12 of all partial payments made shall be withheld as retainage as  
13 described in Section 226 of this act.

14 B. The Department of Transportation or the Oklahoma Turnpike  
15 Authority shall not withhold retainage on public construction  
16 contracts awarded by the Department or the Authority.

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

20 SECTION 3. AMENDATORY 61 O.S. 2011, Section 226, is  
21 amended to read as follows:

22 Section 226. A. A construction contract may include a  
23 provision for the retainage of a portion of payment due. Such  
24 retainage is not to exceed five percent (5%) of the amount of the

1 payment due until the work of the contractor has been determined by  
2 the holder to be at least fifty percent (50%) complete, and with  
3 respect to the balance of the work to be performed by the  
4 contractor, the retainage amount shall be two and one-half percent  
5 (2.5%). The holder of the retainage shall be responsible for  
6 payment on all interest accrued.

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

16 C. No later than twenty-one (21) calendar days after a  
17 certificate of substantial completion is issued for the project or  
18 separate usable phase of the project and upon adequate performance  
19 of the prime contractor and with approval of any applicable surety,  
20 retainage shall be released by the owner to the prime contractor  
21 less an amount no greater than one hundred fifty percent (150%) of  
22 the estimated costs to correct any incomplete or defective work as  
23 identified, itemized, and attached to the certificate of substantial  
24 completion. All remaining funds shall be released as each

1 deficiency is satisfactorily completed. The prime contractor shall  
2 release within ten (10) calendar days of receipt, the share of those  
3 funds that have been withheld from other entities. All other  
4 entities shall release within seven (7) calendar days of receipt,  
5 the share of those funds that have been withheld from other  
6 entities.

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

8 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM  
9 April 11, 2019 - DO PASS AS AMENDED

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24