

ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 250

By: Stipe of the Senate
and
Adair of the House

An Act relating to public works; amending 61 O.S.
1991, Sections 1, as amended by Section 1, Chapter
239, O.S.L. 1992, 2 and 113.1 (61 O.S. Supp. 1994,
Section 1), which relate to bond furnished on
public works contracts, filing of bonds and
retainage; * * * repealing 69 O.S. 1991, Section
1103, as amended by Section 1, Chapter 203, O.S.L.
1994 (69 O.S. Supp. 1994, Section 1103), which
relates to retention of monies due under contract;
and declaring an emergency.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

"An Act relating to public works; amending 61 O.S. 1991,
Sections 2 and 113.1, which relate to filing of bonds and
retainage; requiring bond to provide for payment of
certain taxes or overpayment of certain estimates;
providing for certain claim for delinquent taxes or
overpayment of certain estimates; requiring time limit;
requiring certain notice; prohibiting Oklahoma Department
of Transportation from withholding retainage on certain
contracts under certain circumstances; repealing 69 O.S.
1991, Section 1103, as amended by Section 1, Chapter 203,
O.S.L. 1994 (69 O.S. Supp. 1994, Section 1103), which
relates to retention of monies due under contract; and
declaring an emergency.

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

SECTION 1. AMENDATORY 61 O.S. 1991, Section 2, is amended to read as follows:

Section 2. ~~Such bond~~ 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 repairs to the same; and the officer with whom the bond is filed shall furnish a copy thereof to any person claiming any rights thereunder. Any person to whom there is due any sum for labor, material or repair to machinery or equipment, furnished as stated in the preceding section, ~~his~~ the heirs or assigns of such person, may bring an action on ~~said the~~ the bond for the recovery of ~~said the~~ the indebtedness, provided that no action shall be brought on ~~said the~~ the bond after one (1) year from the day on which the last of the labor was performed or material or parts furnished for which ~~such the~~ the claim is made.

~~Provided, however, that any~~ B. Any person having direct contractual relationship with a subcontractor performing work on ~~said the~~ the contract, but no contractual relationship express or implied with the contractor furnishing ~~said the~~ the payment bond, shall have a right of action upon the ~~said the~~ the payment bond only upon giving written notice to ~~said the~~ the contractor and surety on ~~said the~~ the payment bond within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or parts for which ~~such the~~ the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material or parts were furnished or supplied or for whom the labor was done or performed. ~~Such~~ The notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place ~~he~~ the contractor maintains an office or

conducts ~~his~~ business, together with a copy thereof to the surety or sureties on ~~said~~ the payment bond.

C. 1. The bond or irrevocable letter of credit issued to the Oklahoma Department of Transportation, pursuant to this section, shall also provide that the contractor shall pay all state and local taxes accruing as a result of the contract and any overpayment of progressive estimates resulting in a balance due and owing the Oklahoma Department of Transportation.

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

3. A claim against the bond or irrevocable letter of credit for overpayment on progressive estimates shall be made by the public entity within six (6) months from the date of final acceptance of the project. Notice of the overpayment shall be sent by certified mail to the surety and a copy of the notice shall be sent to the contractor. Nothing in this provision shall be construed as to release, at any time, the contractor from the responsibility of refunding any amount overpaid on progressive estimates which are due and owing the Oklahoma Department of Transportation.

SECTION 2. AMENDATORY 61 O.S. 1991, Section 113.1, is amended to read as follows:

Section 113.1 A. A public construction contract shall provide for partial payment based upon work completed. The contract shall provide that up to ten percent (10%) of all ~~such~~ partial payments made shall be withheld as retainage. At any time the contractor has completed in excess of fifty percent (50%) of the total contract

amount, the retainage shall be reduced to five percent (5%) of the amount earned to date if the owner or owner's duly authorized representative has determined that satisfactory progress is being made, and upon approval by the surety.

B. The Oklahoma Department of Transportation ~~may prescribe its own policy and procedures for~~ shall withhold no retainage on public construction contracts awarded by ~~said~~ the Department unless the contractor performing the work is subject to the liquidated damages provision as set forth by the contract.

SECTION 3. REPEALER 69 O.S. 1991, Section 1103, as amended by Section 1, Chapter 203, O.S.L. 1994 (69 O.S. Supp. 1994, Section 1103), is hereby repealed.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 6th day of April, 1995.

Speaker of the House of Representatives

Passed the Senate the _____ day of _____, 1995.

President of the Senate