

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1561

By: Coates of the Senate

and

Paulk of the House

COMMITTEE SUBSTITUTE

[contracts - Fair Pay for Construction Act -
codification -

effective date]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 621 of Title 15, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Fair Pay for Construction Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 622 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in the Fair Pay for Construction Act:

1. "Construction contract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, moving or demolition of any building, structure or improvement or relating to the excavation of or other development or improvement to land. A subcontract shall be included under this definition;

2. "Contractor" means any entity that has a direct contract with an owner to perform work under a construction contract;

3. "Material supplier" means any entity that supplies materials, services, or equipment to be used in conjunction with the performance of work on a construction contract;

4. "Owner" means any state government entity, municipality, township, public trust or any other publicly funded entity in this state, or any entity designated by the owner to act on the owner's behalf, that requests work to be performed by a contractor under a construction contract;

5. "Retainage" means funds due and payable for satisfactory performance under a construction contract, but withheld until substantial completion, or as set forth in the construction contract documents;

6. "Subcontractor" means any entity that has a direct contract with a contractor to perform a portion of the work under a construction contract; and

7. "Sub-subcontractor" means any entity that has a direct contract with another subcontractor to perform a portion of the work under a construction contract.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 623 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. On all construction contracts exceeding Twenty-five Thousand Dollars (\$25,000.00) in value an owner shall make progress payments to the contractor for work performed and materials stored, within thirty (30) calendar days after a billing is submitted to the owner or a representative designated by the owner.

B. An owner may not reduce a contractor's billing without detailing and forwarding to contractor, within seven (7) calendar days of receipt of billing, the reasons for reduction. The reduction may not be more than an amount that is reasonable to correct any items, current or past, as set forth in writing.

C. If a contracting entity has had its billing reduced by another entity, all other affected entities having a construction contract with the contracting entity shall be notified within seven (7) calendar days. Otherwise, a contracting entity may not reduce another entity's billing without detailing and forwarding to the other entity, within seven (7) calendar days of receipt of billing, the reasons for reduction. A contracting entity may also reduce another entity's payment from a previous billing. Any such reductions may not be more than an amount that is reasonable to correct any items, current or past, as set forth in writing. Any contracting entity may be exempt from notifying another affected entity if that entity's reduction is less than one percent (1%) of its net billing or is due to mathematical errors.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 624 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. If a subcontractor has performed in accordance with the provisions of a construction contract, that subcontractor shall be entitled to receive payment no later than ten (10) calendar days after the contractor receives its corresponding payment for the work performed.

B. If a sub-subcontractor or material supplier has performed in accordance with the provisions of a construction contract, that entity shall be entitled to receive payment no later than seven (7) calendar days after subcontractor receives its corresponding payment for the work performed.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 625 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Any contractor that performs work under a construction contract may suspend performance of the work or may terminate a construction contract if the contractor is not properly paid within

forty-nine (49) calendar days of the date that the corresponding billing is submitted. Written notice must be provided to the owner at least seven (7) calendar days before any such intended suspension or termination.

B. Any contracting entity that suspends performance as provided in this act, including those entities that suspend performance due to contractor's suspension, is not required to furnish further performance until such entity is paid for the full amount of work performed, material supplied, or services rendered, together with any costs incurred for mobilization resulting from the shutdown and start-up of a project.

C. Any entity that suspends performance of the work or terminates a construction contract for nonpayment under this act shall not be held in breach of the construction contract.

D. If the owner delays in making payments to the contractor, any agreed-upon schedule or completion date and their resulting penalties, damages, bonuses, or rewards shall be extended by the same amount of calendar days that payments were late.

E. If a payment to any entity is received later than as specified in this act, that entity shall be entitled to receive interest at the rate of one and one-half percent (1 1/2%) per month. In any action brought to seek enforcement pursuant to this act, the prevailing party may not be precluded from seeking dispute costs in a reasonable amount.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 626 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. A construction contract may include a provision for the retainage of a portion of payment due. Such retainage is not to exceed ten percent (10%) of the amount of the payment due.

B. A subcontract may include a provision for the retainage of a portion of payment due. Such retainage is not to exceed ten percent (10%) of the amount of the payment due.

C. No later than twenty-one (21) calendar days after a certificate of substantial completion is issued for the project or separate usable phase of the project, retainage shall be released by the owner to the contractor less an amount no greater than one hundred fifty percent (150%) of the estimated costs to correct any incomplete or defective work as identified, itemized, and attached to the certificate of substantial completion. All remaining funds shall be released as each deficiency is satisfactorily completed. Contractor shall release, within ten (10) calendar days of receipt, the share of those funds that has been withheld from other entities. All other entities shall release, within seven (7) calendar days of receipt, the share of those funds that has been withheld from other entities.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 627 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. This act shall not apply to highway construction.

B. The following are against this state's public policy and are void and unenforceable:

1. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state; and

2. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that disallows or alters the rights of any contractor, subcontractor, sub-subcontractor, or material supplier to receive and enforce any and all rights under this act.

SECTION 8. This act shall become effective November 1, 2004.

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