

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1012 By: Coates of the Senate
3 and
4 Sullivan of the House
5
6
7

8 (contracts - requiring progress payments be made for
9 certain private construction contracts -
10 codification -
11 effective date)
12
13

14 AUTHOR: Add the following House Coauthor: Morgan

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

17 "An Act relating to contracts; establishing
18 requirements for certain bid project contracts;
19 specifying language required on certain bid
20 contracts; providing for inclusion of certain
21 payment requirements on certain bid contracts;
22 specifying architects shall not be subject to
23 certain liability; providing for certain payment
24 failures; allowing reduction of payment in certain
circumstances; establishing requirements for certain
privately negotiated contracts; authorizing the
confidentiality of certain negotiations; specifying
requirements for certain invited bids; requiring
that payment terms for certain negotiated
subcontracts shall be the same as for contract;
establishing requirements for the suspension of work

1 in certain circumstances; providing requirements for
2 the resumption of work in certain circumstances;
3 specifying certain dwellings shall not be subject to
4 act; specifying unenforceable provisions in certain
5 contracts; providing for codification; and declaring
6 an emergency.

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

7 SECTION 1. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 820 of Title 15, unless there is
9 created a duplication in numbering, reads as follows:

10 A. Bid Projects.

11 1. On all private construction projects in which a set of plans
12 or specifications or both plans and specifications are issued for
13 bid, the owner shall specify in writing the frequency and time
14 period for payments to the prime contractor. The general
15 specifications and the first page of all bid plans shall include the
16 following, or substantially similar, language:

17 OWNER SHALL ISSUE PAYMENTS WITH A FREQUENCY OF _____.

18 OWNER SHALL ISSUE EACH PAYMENT TO THE PRIME CONTRACTOR WITHIN
19 _____ DAYS AFTER RECEIPT OF CONTRACTOR'S BILLING.

20 Any resulting contract shall include the payment frequency and time
21 period prescribed in the general specifications and bid plans. An
22 architect, engineer, or other entity preparing the plans and
23 specifications for the owner shall not be liable for the failure to
24

1 include the payment terms on a set of plans or specifications used
2 for bidding purposes.

3 2. If the owner fails to comply with the provisions of
4 paragraph 1 of this subsection, the following shall be applicable:

5 a. the owner shall make monthly progress payments, and

6 b. payments shall be due within twenty-eight (28)
7 calendar days after receipt of billing.

8 3. The owner may reduce the progress payment as provided for in
9 the contract.

10 4. Subcontractors shall be paid by the prime contractor within
11 ten (10) calendar days of payment from the owner, or as otherwise
12 agreed to by the parties. Payment may be reduced as provided for in
13 the subcontract.

14 B. Private Negotiated Projects.

15 1. The provisions of subsection A of this section shall not be
16 applicable to private negotiated projects.

17 2. An owner may choose to negotiate a construction contract
18 with a contractor, and may also choose to keep the payment terms of
19 that contract private.

20 3. If a contractor invites a subcontractor to bid on any
21 portion of a negotiated project, the contractor shall clearly define
22 the contractor's payment term upon issuance of the invitation to
23 bid. Such payment term shall be defined as to the frequency that
24

1 payments shall be made, and a specific day of the month that the
2 subcontractor shall expect to receive each payment.

3 4. Any subcontract negotiated pursuant to this subsection shall
4 include the same payment terms as were represented by the prime
5 contractor to the subcontractor prior to the acceptance of the bid
6 of the subcontractor. Payment may be reduced as provided for in the
7 subcontract.

8 C. Suspension of Work for Bid Projects and Private Negotiated
9 Projects.

10 1. The prime contractor may suspend work:

11 a. when payment has not been received within ten (10)
12 calendar days of the date payment should have been
13 received,

14 b. if the prime contractor has complied with the
15 contract, and

16 c. if the prime contractor has given the owner ten (10)
17 calendar days written notice of work suspension
18 delivered by certified mail or other verifiable
19 service.

20 2. Subcontractors may suspend work:

21 a. when payment has not been received within ten (10)
22 calendar days of the date payment should have been
23 received,

24

- 1 b. if the subcontractor has complied with the
2 subcontract, and
3 c. if the subcontractor has given the prime contractor
4 ten (10) calendar days written notice of work
5 suspension delivered by certified mail or other
6 verifiable service.

7 D. Resumption of Work.

8 No prime contractor or subcontractor shall be required to resume
9 work until:

- 10 1. Receipt of full payment of undisputed portions of
11 outstanding billing;
12 2. The contracted work schedule is extended the number of days
13 of delay; and
14 3. A change order is issued for the verifiable direct cost of
15 suspension, delay and start-up.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 821 of Title 15, unless there is
18 created a duplication in numbering, reads as follows:

19 A. This act shall not apply to any contract relating to a
20 single-, two-, three-, or four-family dwelling.

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

- 23 1. A provision, covenant, clause or understanding in,
24 collateral to or affecting a construction contract that makes the

1 contract subject to the laws of another state or that requires any
2 litigation, arbitration or other dispute resolution proceeding
3 arising from the contract to be conducted in another state; and

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

8 SECTION 3. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval."

12 Passed the House of Representatives the 7th day of April, 2010.

13

14

15

Presiding Officer of the House of
Representatives

16

17

Passed the Senate the ____ day of _____, 2010.

18

19

20

Presiding Officer of the Senate

21

22

23

24