

SB 573

3 Senate Bill No. 573
4 As Amended

5 SENATE BILL NO. 573 - By: Coates, Leftwich, Myers and Rice of the
6 Senate and Sullivan of the House.

7 [Fair Pay for Construction Act - providing requirements for
8 bond - codification - effective date]

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

10 SECTION 1. AMENDATORY Section 6, Chapter 256, O.S.L.

11 2004, as amended by Section 4, Chapter 92, O.S.L. 2005, and as
12 renumbered by Section 6, Chapter 92, O.S.L. 2005 (61 O.S. Supp.
13 2008, Section 226), is amended to read as follows:

14 Section 226. A. A Except as provided by Section 2 of this act,
15 a construction contract may include a provision for the retainage of
16 a portion of payment due. Such retainage is not to exceed ten
17 percent (10%) of the amount of the payment due. When the gross
18 proper invoice of the prime contractor first ~~equal~~ equals or ~~exceed~~
19 exceeds fifty percent (50%) of the value of the contract, the amount
20 of retainage withheld thereafter shall not exceed five percent (5%)
21 of the value of the contract.

22 B. A Except as provided in Section 2 of this act, a subcontract
23 may include a provision for the retainage of a portion of payment
24 due. Such retainage is not to exceed ten percent (10%) of the

1 amount of the payment due. When the gross proper invoice of the
2 subcontractor or sub-subcontractor first ~~equal~~ equals or ~~exceed~~
3 exceeds fifty percent (50%) of the value of the subcontract, the
4 retainage percentage withheld shall not exceed that percentage
5 withheld from the entity withholding retainage.

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

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 228 of Title 61, unless there is
23 created a duplication in numbering, reads as follows:

1 In lieu of retainage, a prime contractor, subcontractor or sub-
2 subcontractor may execute and deliver to the owner, prime contractor
3 or subcontractor before the commencement of construction for which
4 the prime contractor, subcontractor or sub-subcontractor will be
5 responsible for performing a good and sufficient release of
6 retainage bond in an amount equal to ten percent (10%) of the
7 contract or subcontract price. The term of the bond required under
8 this subsection shall extend to include the period during which
9 claims of lien or notices of other encumbrances based on the
10 construction performed under the contract may be filed under
11 applicable law. The bond must be approved by the owner, prime
12 contractor or subcontractor entitled to withhold retainage. A
13 release of retainage bond delivered under this section shall
14 include, but not be limited to, provisions to the effect that:

15 1. The obligations of the contract shall be faithfully
16 performed;

17 2. Payment shall promptly be made to all persons supplying
18 labor or materials to the prime contractor or subcontractor for
19 prosecution of the work provided in the contract; and

20 3. All state and federal withholdings, including unemployment
21 compensation in connection with the performance of the contract,
22 shall promptly be made.

23 SECTION 3. This act shall become effective November 1, 2009.

1 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 2-9-09 -
2 DO PASS, As Amended and Coauthored.