

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 573

By: Coates

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5
6 AS INTRODUCED

7 An Act relating to the Fair Pay for Construction Act;
8 amending Section 6, Chapter 256, O.S.L. 2004, as
9 amended by Section 4, Chapter 92, O.S.L. 2005, and as
10 renumbered by Section 6, Chapter 92, O.S.L. 2005 (61
11 O.S. Supp. 2008, Section 226), which relates to
12 retainage; providing exception; allowing certain
13 release of retainage bond in lieu of retainage;
14 providing requirements for bond; providing for
15 codification; and providing an effective date.

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

17 SECTION 1. AMENDATORY Section 6, Chapter 256, O.S.L.
18 2004, as amended by Section 4, Chapter 92, O.S.L. 2005, and as
19 renumbered by Section 6, Chapter 92, O.S.L. 2005 (61 O.S. Supp.
20 2008, Section 226), is amended to read as follows:

21 Section 226. A. Except as provided by Section 2 of this act,
22 a construction contract may include a provision for the retainage of
23 a portion of payment due. Such retainage is not to exceed ten
24 percent (10%) of the amount of the payment due. When the gross
proper invoice of the prime contractor first ~~equal~~ equals or ~~exceed~~
exceeds fifty percent (50%) of the value of the contract, the amount

1 of retainage withheld thereafter shall not exceed five percent (5%)
2 of the value of the contract.

3 B. A Except as provided in Section 2 of this act, a subcontract
4 may include a provision for the retainage of a portion of payment
5 due. Such retainage is not to exceed ten percent (10%) of the
6 amount of the payment due. When the gross proper invoice of the
7 subcontractor or sub-subcontractor first ~~equal~~ equals or ~~exceed~~
8 exceeds fifty percent (50%) of the value of the subcontract, the
9 retainage percentage withheld shall not exceed that percentage
10 withheld from the entity withholding retainage.

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

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1 the share of those funds that have been withheld from other
2 entities.

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

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

20 1. The obligations of the contract shall be faithfully
21 performed;

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

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

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

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