

1 ENGROSSED HOUSE
2 BILL NO. 2676

By: West (Kevin) and Fetgatter
of the House

3 and

4 Leewright of the Senate

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6
7 An Act relating to public buildings and public works;
8 amending 61 O.S. 2011, Sections 113.1 and 226, which
9 relate to the Public Competitive Building Act of
10 1974; modifying retainage on certain public
11 contracts; and providing an effective date.

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

13 SECTION 1. AMENDATORY 61 O.S. 2011, Section 113.1, is
14 amended to read as follows:

15 Section 113.1 A. A public construction contract shall provide
16 for partial payment based upon work completed. ~~The~~ A contract
17 ~~shall, not subject to a bond pursuant to Section 1 of this title,~~
18 may provide that up to five percent (5%) of all partial payments
19 made shall be withheld as retainage. If a public construction
20 contract is subject to a bond pursuant to Section 1 of this title,
21 no retainage shall be withheld from the entity posting the bond.

22 B. The Department of Transportation or the Oklahoma Turnpike
23 Authority shall not withhold retainage on public construction
24 contracts awarded by the Department or the Authority.

1 C. The Department of Transportation shall not withhold
2 retainage or require any bond on projects awarded to railroads on
3 the railroad's privately owned or operated rail property.

4 SECTION 2. AMENDATORY 61 O.S. 2011, Section 226, is
5 amended to read as follows:

6 Section 226. A. A construction contract, not subject to a bond
7 pursuant to Section 1 of this title, may include a provision for the
8 retainage of a portion of payment due. Such retainage is not to
9 exceed five percent (5%) of the amount of the payment due. If a
10 construction contract is subject to a bond pursuant to Section 1 of
11 this title, no retainage shall be withheld from the entity posting
12 the bond.

13 B. A subcontract ~~may~~ shall include a provision for either the
14 retainage of a portion of payment due or for providing payment for
15 performance and maintenance bonds. ~~Such~~ If retainage is to be
16 included in a subcontract, such retainage ~~is~~ shall not ~~to~~ exceed
17 five percent (5%) of the amount of the payment due. The holder of
18 the retainage shall be responsible for payment on all interest
19 accrued. If a subcontract is subject to a bond pursuant to Section
20 1 of this title, no retainage shall be withheld from the entity
21 posting the bond.

22 C. No later than twenty-one (21) calendar days after a
23 certificate of substantial completion is issued for the project or
24 separate usable phase of the project and upon adequate performance

1 of the prime contractor and with approval of any applicable surety,
2 retainage shall be released by the owner to the prime contractor
3 less an amount no greater than one hundred fifty percent (150%) of
4 the estimated costs to correct any incomplete or defective work as
5 identified, itemized, and attached to the certificate of substantial
6 completion. All remaining funds shall be released as each
7 deficiency is satisfactorily completed. The prime contractor shall
8 release within ten (10) calendar days of receipt, the share of those
9 funds that have been withheld from other entities. All other
10 entities shall release within seven (7) calendar days of receipt, the share of those funds that have been withheld from other
11 entities.
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13 SECTION 3. This act shall become effective November 1, 2018.

14 Passed the House of Representatives the 12th day of March, 2018.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ____ day of _____, 2018.

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Presiding Officer of the Senate

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