

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2676

By: West (Kevin) and Fetgatter

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9 COMMITTEE SUBSTITUTE

10 An Act relating to public buildings and public works;
11 amending 61 O.S. 2011, Sections 113.1 and 226, which
12 relate to the Public Competitive Building Act of
13 1974; modifying retainage on certain public
14 contracts; and providing an effective date.

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

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

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

1 B. The Department of Transportation or the Oklahoma Turnpike
2 Authority shall not withhold retainage on public construction
3 contracts awarded by the Department or the Authority.

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

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

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

16 B. A subcontract ~~may~~ shall include a provision for either the
17 retainage of a portion of payment due or for providing payment for
18 performance and maintenance bonds. ~~Such~~ If retainage is to be
19 included in a subcontract, such retainage ~~is~~ shall not ~~to~~ exceed
20 five percent (5%) of the amount of the payment due. The holder of
21 the retainage shall be responsible for payment on all interest
22 accrued. If a subcontract is subject to a bond pursuant to Section
23 1 of this title, no retainage shall be withheld from the entity
24 posting the bond.

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

16 SECTION 3. This act shall become effective November 1, 2018.
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18 COMMITTEE REPORT BY: COMMITTEE ON BANKING AND BUSINESS, dated
19 02/26/2018 - DO PASS, As Amended and Coauthored.
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