

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1520 By: Murdock of the Senate
3 and
4 West (Kevin) of the House
5
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7 An Act relating to public buildings; amending 61 O.S.
8 2021, Section 226, which relates to retainage
9 provisions in certain contracts; specifying the
10 retainage amount for specific contracts; and
11 providing an effective date.

12 AMENDMENT NO. 1. Strike the title, enacting clause, and entire bill
13 and insert:

14 "An Act relating to public buildings and public
15 works; amending 61 O.S. 2021, Sections 113.1 and
16 226, which relate to the Public Competitive Bidding
17 Act of 1974; providing for partial payment;
18 authorizing reduction of certain retainage; and
19 providing an effective date.

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

21 SECTION 1. AMENDATORY 61 O.S. 2021, Section 113.1, is
22 amended to read as follows:

23 Section 113.1 A. A public construction contract shall provide
24 for partial payment based upon work completed. The contract shall
provide that up to five percent (5%) of all partial payments made

1 shall be withheld as retainage. At any time the contractor has
2 completed in excess of fifty percent (50%) of the total contract
3 amount, the retainage shall be reduced to two and one-half percent
4 (2.5%) of the amount earned to date once the public agency has
5 determined that satisfactory progress is being made.

6 B. The Department of Transportation or the Oklahoma Turnpike
7 Authority shall not withhold retainage on public construction
8 contracts awarded by the Department or the Authority.

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

12 SECTION 2. AMENDATORY 61 O.S. 2021, Section 226, is
13 amended to read as follows:

14 Section 226. A. A public construction contract ~~may include a~~
15 ~~provision for the retainage of a portion of payment due. Such~~
16 ~~retainage is not to exceed five percent (5%) of the amount of the~~
17 ~~payment due. If a construction contract is subject to a bond~~
18 ~~pursuant to this title and when the work of the contractor has been~~
19 ~~determined by the holder to be at least fifty percent (50%)~~
20 ~~complete, and with respect to the balance of the work to be~~
21 ~~performed by the contractor, the retainage amount shall be two and~~
22 ~~one-half percent (2.5%)~~ shall provide for partial payment based upon
23 work completed. The contract shall provide that up to five percent
24 (5%) of all partial payments made shall be withheld as retainage.

1 At any time the contractor has completed in excess of fifty percent
2 (50%) of the total contract amount, the retainage shall be reduced
3 to two and one-half percent (2.5%) of the amount earned to date once
4 the owner or owner's duly authorized representative has determined
5 that satisfactory progress is being made.

6 B. A subcontract shall include a provision for the retainage of
7 a portion of payment due. Such retainage shall not exceed five
8 percent (5%) of the amount of the payment due. ~~If a construction~~
9 ~~subcontract is subject to a bond pursuant to this title and when the~~
10 ~~work of the subcontractor has been determined by the holder to be at~~
11 ~~least fifty percent (50%) complete, and with respect to the balance~~
12 ~~of the work to be performed by the subcontractor, the retainage~~
13 ~~amount shall be two and one-half percent (2.5%)~~ When the work of the
14 subcontractor has been determined by the holder to be at least fifty
15 percent (50%) complete, the retainage shall be reduced to two and
16 one-half percent (2.5%) of the original contract amount.

17 C. No later than twenty-one (21) calendar days after a
18 certificate of substantial completion is issued for the project or
19 separate usable phase of the project and upon adequate performance
20 of the prime contractor and with approval of any applicable surety,
21 retainage shall be released by the owner to the prime contractor
22 less an amount no greater than one hundred fifty percent (150%) of
23 the estimated costs to correct any incomplete or defective work as
24 identified, itemized, and attached to the certificate of substantial

1 completion. All remaining funds shall be released as each
2 deficiency is satisfactorily completed. The prime contractor shall
3 release within ten (10) calendar days of receipt the share of those
4 funds that have been withheld from other entities. All other
5 entities shall release within seven (7) calendar days of receipt the
6 share of those funds that have been withheld from other entities.

7 SECTION 3. This act shall become effective November 1, 2022."

8 Passed the House of Representatives the 27th day of April, 2022.

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Presiding Officer of the House of
Representatives
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13 Passed the Senate the ____ day of _____, 2022.

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Presiding Officer of the Senate
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1 ENGROSSED SENATE
2 BILL NO. 1520

By: Murdock of the Senate

3 and

4 West (Kevin) of the House

5
6 An Act relating to public buildings; amending 61 O.S.
7 2021, Section 226, which relates to retainage
8 provisions in certain contracts; specifying the
9 retainage amount for specific contracts; and
10 providing an effective date.

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

12 SECTION 4. AMENDATORY 61 O.S. 2021, Section 226, is
13 amended to read as follows:

14 Section 226. A. A construction contract may include a
15 provision for the retainage of a portion of payment due. Such
16 retainage is not to exceed five percent (5%) of the amount of the
17 payment due. If a construction contract is subject to a bond
18 pursuant to this title and when the work of the contractor has been
19 determined by the holder to be at least fifty percent (50%)
20 complete, and with respect to the balance of the work to be
21 performed by the contractor, the retainage amount shall be two and
22 one-half percent (2.5%) of the original contract amount.

23 B. A subcontract shall include a provision for the retainage of
24 a portion of payment due. Such retainage shall not exceed five
percent (5%) of the amount of the payment due. If a construction

1 subcontract is subject to a bond pursuant to this title and when the
2 work of the subcontractor has been determined by the holder to be at
3 least fifty percent (50%) complete, and with respect to the balance
4 of the work to be performed by the subcontractor, the retainage
5 amount shall be two and one-half percent (2.5%) of the original
6 subcontract amount.

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

21 SECTION 5. This act shall become effective November 1, 2022.
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1 Passed the Senate the 14th day of March, 2022.

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4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2022.

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9 Presiding Officer of the House
10 of Representatives