

# An Act

ENROLLED SENATE  
BILL NO. 1520

By: Murdock of the Senate

and

West (Kevin) of the House

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

SUBJECT: Public buildings and public works

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

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

Section 113.1. A. A public construction contract shall provide for partial payment based upon work completed. The contract shall provide that up to five percent (5%) of all partial payments made shall be withheld as retainage. At any time the contractor has completed in excess of fifty percent (50%) of the total contract amount, the retainage shall be reduced to two and one-half percent (2.5%) of the amount earned to date once the public agency has determined that satisfactory progress is being made.

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

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

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

Section 226. A. ~~A public construction contract may include a provision for the retainage of a portion of payment due. Such retainage is not to exceed five percent (5%) of the amount of the payment due. If a construction contract is subject to a bond pursuant to this title and when the work of the contractor has been determined by the holder to be at least fifty percent (50%) complete, and with respect to the balance of the work to be performed by the contractor, the retainage amount shall be two and one-half percent (2.5%)~~ shall provide for partial payment based upon work completed. The contract shall provide that up to five percent (5%) of all partial payments made shall be withheld as retainage. At any time the contractor has completed in excess of fifty percent (50%) of the total contract amount, the retainage shall be reduced to two and one-half percent (2.5%) of the amount earned to date once the owner or owner's duly authorized representative has determined that satisfactory progress is being made.

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

C. No later than twenty-one (21) calendar days after a certificate of substantial completion is issued for the project or separate usable phase of the project and upon adequate performance of the prime contractor and with approval of any applicable surety, retainage shall be released by the owner to the prime contractor

less an amount no greater than one hundred fifty percent (150%) of the estimated costs to correct any incomplete or defective work as identified, itemized, and attached to the certificate of substantial completion. All remaining funds shall be released as each deficiency is satisfactorily completed. The prime contractor shall release within ten (10) calendar days of receipt the share of those funds that have been withheld from other entities. All other entities shall release within seven (7) calendar days of receipt the share of those funds that have been withheld from other entities.

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

Passed the Senate the 12th day of May, 2022.

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Presiding Officer of the Senate

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

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Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_