

1 **SENATE FLOOR VERSION**

2 April 9, 2018

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 2676

6 By: West (Kevin) and Fetgatter  
7 of the House

8 and

9 Leewright of the Senate

10 **[ public buildings and public works - Public  
11 Competitive Building Act of 1974 - contracts -  
12 effective date ]**

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

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

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

23 B. The Department of Transportation or the Oklahoma Turnpike  
24 Authority shall not withhold retainage on public construction  
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,  
11 the share of those funds that have been withheld from other  
12 entities.

13 SECTION 3. This act shall become effective November 1, 2018.

14 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
15 April 9, 2018 - DO PASS AS AMENDED  
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