

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: H2/17/15 H2/24/15 H3/3/15*
90th General Assembly **A Bill**
Regular Session, 2015

HOUSE BILL 1008

By: Representative Murdock

For An Act To Be Entitled

AN ACT TO REGULATE THE FAIRNESS IN THE BIDDING PRACTICES FOR THE CONSTRUCTION OF PUBLICLY FUNDED PROJECTS; TO MODIFY THE RETAINAGE LAWS OF THE STATE OF ARKANSAS; AND FOR OTHER PURPOSES.

Subtitle

TO REGULATE THE FAIRNESS IN THE BIDDING PRACTICES FOR THE CONSTRUCTION OF PUBLICLY FUNDED PROJECTS; AND TO MODIFY THE RETAINAGE LAWS OF THE STATE OF ARKANSAS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. Arkansas Code § 22-9-604 is amended to read as follows:
22-9-604. Procedure.*

(a)(1)(A) In the case of a construction contract entered into between a public agency and a contractor who is required to furnish a performance and payment bond, the contractor shall be entitled to payment of ninety-five percent (95%) of the earned progress payments when due, with the public agency retaining five percent (5%) to assure faithful performance of the construction contract.

(B)(i) A public agency may forego withholding retainage of the progress payments if:

(a) The construction contract is fifty-percent complete;

(b) The contractor has provided the work in a



satisfactory manner; and

(c) The design professional and public agency agree with and approve of subdivisions (a)(1)(B)(i)(a) and (b) of this section.

(ii) This subdivision (a)(1)(B) does not prohibit a public agency from withholding retainage throughout the project.

(2) If the construction contract allows for phased work in which completion may occur on a partial occupancy, any retention proceeds withheld and retained under this section shall be partially released within thirty (30) days under the same conditions under this section in direct proportion to the value of the part of the capital improvement completed.

(b)(1) In the case of a construction subcontract entered into between a contractor for a public agency and a subcontractor who is required by the contractor to furnish a performance and payment bond, the subcontractor shall be entitled to payment of ninety-five percent (95%) of the earned progress payments when due, with the contractor retaining five percent (5%) to assure faithful performance of the construction subcontract.

(2) Upon the approval of the contractor, if the subcontractor completes fifty percent (50%) of the construction subcontract the contractor shall not retain any further moneys.

~~(b)(c)~~ All sums withheld by the public agency shall be paid to the contractor within thirty (30) days after the construction contract has been completed.

~~(e)(d)~~ In the event the construction contract requires the contractor to purchase and furnish materials or equipment that will be stored on the job site or in a bonded warehouse by the contractor and used in the job as required by the construction contract, no retainage ~~will~~ shall be withheld on that amount of the submitted progress payment pertaining to the cost of these stored materials or equipment.

/s/Murdock