

By Senator Bradley

5-00387D-21

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1                                   A bill to be entitled  
2       An act relating to payment for construction services;  
3       amending s. 218.735, F.S.; increasing the interest  
4       rate for certain payments for purchases of  
5       construction services; amending s. 255.071, F.S.;  
6       specifying that a person, firm, or corporation who  
7       fails to make certain payments relating to public  
8       projects commits a misapplication of constructions  
9       funds and is subject to criminal penalties; amending  
10      s. 255.073, F.S.; increasing the interest rate for  
11      overdue payments for the purchase of construction  
12      services; amending s. 489.129, F.S.; expanding the  
13      list of actions for which a licensee may be  
14      disciplined by the Construction Industry Licensing  
15      Board; requiring the board to suspend certain licenses  
16      for a minimum period of time under certain  
17      circumstances; providing construction; amending s.  
18      713.345, F.S.; specifying that a contractor,  
19      subcontractor, sub-subcontractor, or other person  
20      licensed under ch. 489, F.S., is subject to certain  
21      discipline if convicted of misapplication of  
22      construction funds; amending s. 713.346, F.S.;  
23      specifying that a person, firm, or corporation who  
24      fails to make certain payments relating to  
25      construction contracts commits a misapplication of  
26      constructions funds and is subject to criminal  
27      penalties; amending s. 715.12, F.S.; increasing the  
28      interest rate for certain payments due under the  
29      Construction Contract Prompt Payment Law; conforming a

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30 provision to changes made by the act; reenacting s.  
31 218.76(2)(b), F.S., relating to improper payment  
32 requests or invoices, to incorporate the amendment  
33 made by this act to s. 218.735, F.S., in a reference  
34 thereto; reenacting s. 255.075, F.S., relating to  
35 mandatory interest, to incorporate the amendment made  
36 by this act to s. 255.073, F.S., in a reference  
37 thereto; providing applicability; providing an  
38 effective date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Subsection (9) of section 218.735, Florida  
43 Statutes, is amended to read:

44 218.735 Timely payment for purchases of construction  
45 services.—

46 (9) All payments due under this section and not made within  
47 the time periods specified by this section shall bear interest  
48 at the rate of 2 ± percent per month, or the rate specified by  
49 contract, whichever is greater.

50 Section 2. Subsection (1) of section 255.071, Florida  
51 Statutes, is amended to read:

52 255.071 Payment of subcontractors, sub-subcontractors,  
53 materialmen, and suppliers on construction contracts for public  
54 projects.—

55 (1) Any person, firm, or corporation who receives a payment  
56 from the state or any county, city, or political subdivision of  
57 the state, or other public authority, for the construction of a  
58 public building, for the prosecution and completion of a public

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59 work, or for repairs upon a public building or public work shall  
60 pay, in accordance with the contract terms, the undisputed  
61 contract obligations for labor, services, or materials provided  
62 on account of such improvements. A person, firm, or corporation  
63 who knowingly and intentionally fails to make the payment  
64 required under this subsection commits a misapplication of  
65 construction funds, punishable as provided in s. 713.345.

66 Section 3. Subsection (4) of section 255.073, Florida  
67 Statutes, is amended to read:

68 255.073 Timely payment for purchases of construction  
69 services.—

70 (4) All payments due for the purchase of construction  
71 services and not made within the applicable time limits shall  
72 bear interest at the rate of 2 ~~specified in s. 215.422. After~~  
73 ~~July 1, 2006, such payments shall bear interest at the rate of 1~~  
74 ~~percent per month, to the extent that the Chief Financial~~  
75 ~~Officer's replacement project for the state's accounting and~~  
76 ~~cash management systems is operational for the particular~~  
77 ~~affected public entity. After January 1, 2007, all such payments~~  
78 ~~due from public entity shall bear interest at the rate of 1~~  
79 percent per month.

80 Section 4. Paragraph (r) is added to subsection (1) of  
81 section 489.129, Florida Statutes, to read:

82 489.129 Disciplinary proceedings.—

83 (1) The board may take any of the following actions against  
84 any certificateholder or registrant: place on probation or  
85 reprimand the licensee, revoke, suspend, or deny the issuance or  
86 renewal of the certificate or registration, require financial  
87 restitution to a consumer for financial harm directly related to

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88 a violation of a provision of this part, impose an  
89 administrative fine not to exceed \$10,000 per violation, require  
90 continuing education, or assess costs associated with  
91 investigation and prosecution, if the contractor, financially  
92 responsible officer, or business organization for which the  
93 contractor is a primary qualifying agent, a financially  
94 responsible officer, or a secondary qualifying agent responsible  
95 under s. 489.1195 is found guilty of any of the following acts:

96 (r) Committing misapplication of construction funds in  
97 violation of s. 713.345. If a contractor, subcontractor, sub-  
98 subcontractor, or other person licensed by the board under this  
99 chapter is convicted of misapplication of construction funds,  
100 the board must suspend all licenses issued to such licensee  
101 under this chapter for a minimum of 1 year from the date of  
102 conviction. The suspension required under this paragraph is not  
103 exclusive, and the board may impose any additional penalties set  
104 forth in this subsection.

105  
106 For the purposes of this subsection, construction is considered  
107 to be commenced when the contract is executed and the contractor  
108 has accepted funds from the customer or lender. A contractor  
109 does not commit a violation of this subsection when the  
110 contractor relies on a building code interpretation rendered by  
111 a building official or person authorized by s. 553.80 to enforce  
112 the building code, absent a finding of fraud or deceit in the  
113 practice of contracting, or gross negligence, repeated  
114 negligence, or negligence resulting in a significant danger to  
115 life or property on the part of the building official, in a  
116 proceeding under chapter 120.

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117 Section 5. Paragraph (e) is added to subsection (1) of  
118 section 713.345, Florida Statutes, to read:

119 713.345 Moneys received for real property improvements;  
120 penalty for misapplication.-

121 (1)

122 (e) If a contractor, subcontractor, sub-subcontractor, or  
123 other person who is licensed under chapter 489 is convicted of  
124 misapplication of construction funds under this section, the  
125 licensee is subject to discipline under s. 489.129(1)(r).

126 Section 6. Subsection (1) of section 713.346, Florida  
127 Statutes, is amended to read:

128 713.346 Payment on construction contracts.-

129 (1) Any person who receives a payment for constructing or  
130 altering permanent improvements to real property shall pay, in  
131 accordance with the contract terms, the undisputed contract  
132 obligations for labor, services, or materials provided on  
133 account of such improvements. A person, firm, or corporation who  
134 knowingly and intentionally fails to make the payment required  
135 under this subsection commits a misapplication of construction  
136 funds, punishable as provided in s. 713.345.

137 Section 7. Paragraph (a) of subsection (5) and paragraph  
138 (a) of subsection (6) of section 715.12, Florida Statutes, are  
139 amended, and subsections (4) and (7) of that section are  
140 republished, to read:

141 715.12 Construction Contract Prompt Payment Law.-

142 (4) An obligor must pay an obligee with whom the obligor  
143 has a contract when all of the following events have occurred:

144 (a) The obligee is entitled to a payment at the time and  
145 under the terms specified in the contract between the obligor

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146 and the obligee, and the obligee has furnished the obligor with  
147 a written request for payment; and

148 (b) The obligor, except an owner, has been paid for the  
149 obligee's labor, services, or materials described in the  
150 obligee's request for payment by the person immediately above  
151 the obligor in the chain of contracts; and

152 (c) The obligee has furnished the obligor with all  
153 affidavits or waivers required for the owner to make proper  
154 payments under s. 713.06.

155 (5) (a) Any payment due under the provisions of subsection  
156 (4), excluding any amounts withheld pursuant to subsection (7),  
157 shall bear interest at the rate specified in s. 55.03 plus 1  
158 percent, computed beginning on the 14th day after payment is due  
159 pursuant to subsection (4).

160 (6) (a) The right to receive interest on a payment under  
161 this section is not an exclusive remedy. This section does not  
162 modify the remedies available to any person under the terms of a  
163 contract or under any other statute. This section does not  
164 modify the rights of any person to recover prejudgment interest  
165 awarded to the prevailing party in any civil action or  
166 arbitration case. During the period that interest accrues under  
167 this section, the interest rate shall be the rate specified in  
168 s. 55.03 plus 1 percent or the rate specified in the contract,  
169 whichever is greater. A person shall not be entitled to receive  
170 both the contract interest and the statutory interest specified  
171 in this section.

172 (7) (a) An owner and a contractor may agree to a provision  
173 that allows the owner to withhold a portion of each progress  
174 payment until substantial completion of the entire project. The

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175 owner shall pay the contractor the balance of the contract  
176 price, including the amounts withheld from the progress  
177 payments, within 14 days after any of the following events  
178 occur.

179 1. Pursuant to the terms of the contract, an architect or  
180 engineer certifies that the project is substantially complete  
181 and, within the time provided in the contract between the owner  
182 and the contractor, the owner submits a written punchlist to the  
183 contractor and the contractor substantially completes all of the  
184 items on the punchlist.

185 2. The issuance of a certificate of occupancy for the  
186 project, and within the time provided in the contract between  
187 the owner and the contractor, the owner submits a written  
188 punchlist to the contractor and the contractor substantially  
189 completes all of the items on the punchlist.

190 3. The owner or a tenant of the owner takes possession of  
191 the construction project and, within the time provided in the  
192 contract between the owner and the contractor, the owner submits  
193 a written punchlist to the contractor and the contractor  
194 substantially completes all of the items on the punchlist.

195  
196 Any funds retained by the owner beyond the time period specified  
197 in this subsection shall accrue interest at the rate specified  
198 in subsection (5), computed from the date the payment is due to  
199 the date the payment is received by the contractor. If the  
200 contract between the owner and the contractor does not provide a  
201 time period for the owner to submit a written punchlist to the  
202 contractor, the time period shall be 15 days from the issuance  
203 of the certificate of substantial completion, the issuance of

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204 the certificate of occupancy, or the date the owner or the  
205 owner's tenant takes possession of the project, whichever first  
206 occurs. If no written punchlist is given to the contractor  
207 within the time provided in this subsection, interest begins to  
208 accrue 14 days after the issuance of the certificate of  
209 substantial completion, the issuance of the certificate of  
210 occupancy, or the date the owner or the owner's tenant takes  
211 possession of the project, whichever first occurs. For  
212 construction projects that are to be built in phases, this  
213 subsection applies to each phase of the total project. The  
214 contract between the owner and the contractor may specify a  
215 shorter time period for disbursing all or any portion of the  
216 final payment and the retainage.

217 (b) Except as provided in paragraph (a), an obligor and  
218 obligee may agree to a provision that allows the obligor to  
219 withhold a portion of each progress payment until completion of  
220 the entire project. The amounts withheld shall bear interest 14  
221 days after payment of such amounts are due under the terms of  
222 the contract between the obligor and obligee and the other  
223 requirements of subsection (4) have been satisfied.

224 (c) An obligee may, from time to time, withdraw all or any  
225 portion of the amount retained from progress payments upon  
226 depositing with the obligor:

- 227 1. United States Treasury bonds, United States Treasury  
228 notes, United States Treasury certificates of indebtedness, or  
229 United States Treasury bills;
- 230 2. Bonds or notes of the State of Florida; or
- 231 3. Certificates of deposit, within the insured limits, from  
232 a state or national bank or state or federal savings and loan

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233 association authorized to do business in this state.

234  
235 Amounts may not be withdrawn in excess of the market value of  
236 the securities listed in subparagraphs 1., 2., and 3. at the  
237 time of such withdrawal or in excess of the par value of such  
238 securities, whichever is less. The obligee shall execute and  
239 deliver all documents reasonably required to allow the obligor  
240 to document the transfer and the obligee shall pay any recording  
241 or registration costs incurred by the obligor in connection with  
242 the transfer. The obligor shall pay the obligee any interest or  
243 income earned on the securities so deposited within 30 days  
244 after the date such interest or income is received by the  
245 obligor. If the deposit is in the form of coupon bonds, the  
246 obligor shall deliver each coupon to the obligee within 30 days  
247 after the date the coupon matures. An obligee may withdraw funds  
248 retained from progress payments only to the extent the obligor  
249 has withdrawn such funds for the obligee's labor, services, or  
250 materials from the person immediately above the obligor in the  
251 chain of contracts.

252 Section 8. For the purpose of incorporating the amendment  
253 made by this act to section 218.735, Florida Statutes, in a  
254 reference thereto, paragraph (b) of subsection (2) of section  
255 218.76, Florida Statutes, is reenacted to read:

256 218.76 Improper payment request or invoice; resolution of  
257 disputes.—

258 (2)

259 (b) If the local governmental entity does not commence the  
260 dispute resolution procedure within the time required, a  
261 contractor may give written notice to the local governmental

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262 entity of the failure to timely commence its dispute resolution  
263 procedure. If the local governmental entity fails to commence  
264 the dispute resolution procedure within 4 business days after  
265 such notice, any amounts resolved in the contractor's favor  
266 shall bear mandatory interest, as set forth in s. 218.735(9),  
267 from the date the payment request or invoice containing the  
268 disputed amounts was submitted to the local governmental entity.  
269 If the dispute resolution procedure is not commenced within 4  
270 business days after the notice, the objection to the payment  
271 request or invoice shall be deemed waived. The waiver of an  
272 objection pursuant to this paragraph does not relieve a  
273 contractor of its contractual obligations.

274 Section 9. For the purpose of incorporating the amendment  
275 made by this act to section 255.073, Florida Statutes, in a  
276 reference thereto, section 255.075, Florida Statutes, is  
277 reenacted to read:

278 255.075 Mandatory interest.—A contract between a public  
279 entity and a contractor may not prohibit the collection of late  
280 payment interest charges authorized under s. 255.073(4).

281 Section 10. This act applies to contracts executed on or  
282 after July 1, 2021.

283 Section 11. This act shall take effect July 1, 2021.