

By the Committee on Governmental Oversight and Accountability;
and Senator Bradley

585-02181-21

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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 construction
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 an
158 additional 12 percent per annum, computed beginning on the 14th
159 day after payment is due 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 an additional 12 percent per annum or the rate
169 specified in the contract, whichever is greater. A person shall
170 not be entitled to receive both the contract interest and the
171 statutory interest specified 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.