

By Representative Bennett

1 A bill to be entitled
2 An act relating to retainage; amending s.
3 255.071, F.S.; revising provisions relating to
4 payment of contractors, subcontractors,
5 sub-subcontractors, materialmen, and suppliers
6 on construction contracts for public projects;
7 providing for retainage of a percentage of
8 payment under specified circumstances;
9 requiring amounts retained to be held in
10 interest-bearing escrow accounts; providing an
11 exception; providing an effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Section 255.071, Florida Statutes, is
16 amended to read:

17 255.071 Payment of contractors,subcontractors,
18 sub-subcontractors, materialmen, and suppliers on construction
19 contracts for public projects.--

20 (1) Any person, firm, or corporation who receives a
21 payment from the state or any county, city, or political
22 subdivision of the state, or other public authority, for the
23 construction of a public building, for the prosecution and
24 completion of a public work, or for repairs upon a public
25 building or public work shall pay, in accordance with the
26 contract terms, the undisputed contract obligations for labor,
27 services, or materials provided on account of such
28 improvements.

29 (2) The failure to pay any undisputed obligations for
30 such labor, services, or materials within 30 days after the
31 date the labor, services, or materials were furnished and

1 payment for such labor, services, or materials became due, or
2 within 30 days after the date payment for such labor,
3 services, or materials is received, whichever last occurs,
4 shall entitle any person providing such labor, services, or
5 materials to the procedures specified in subsection (3) and
6 the remedies provided in subsection (4).

7 (3) Any person providing labor, services, or materials
8 for the construction of a public building, for the prosecution
9 and completion of a public work, or for repairs upon a public
10 building or public work improvements to real property may file
11 a verified complaint alleging:

12 (a) The existence of a contract for providing such
13 labor, services, or materials to improve real property.

14 (b) A description of the labor, services, or materials
15 provided and alleging that the labor, services, or materials
16 were provided in accordance with the contract.

17 (c) The amount of the contract price.

18 (d) The amount, if any, paid pursuant to the contract.

19 (e) The amount that remains unpaid pursuant to the
20 contract and the amount thereof that is undisputed.

21 (f) That the undisputed amount has remained due and
22 payable pursuant to the contract for more than 30 days after
23 the date the labor or services were accepted or the materials
24 were received.

25 (g) That the person against whom the complaint was
26 filed has received payment on account of the labor, services,
27 or materials described in the complaint more than 30 days
28 prior to the date the complaint was filed.

29 (4) After service of the complaint, the court shall
30 conduct an evidentiary hearing on the complaint, upon not less
31 than 15 days' written notice. The person providing labor,

1 services, or materials is entitled to the following remedies
2 to the extent of the undisputed amount due for labor or
3 services performed or materials supplied, and upon proof of
4 each allegation in the complaint:

5 (a) An accounting of the use of any such payment from
6 the person who received such payment.

7 (b) A temporary injunction against the person who
8 received the payment, subject to the bond requirements
9 specified in the Florida Rules of Civil Procedure.

10 (c) Prejudgment attachment against the person who
11 received the payment, in accordance with each of the
12 requirements of chapter 76.

13 (d) Such other legal or equitable remedies as may be
14 appropriate in accordance with the requirements of the law.

15 (5) The remedies specified in subsection (4) must be
16 granted without regard to any other remedy at law and without
17 regard to whether or not irreparable damage has occurred or
18 will occur.

19 (6) The remedies specified in subsection (4) do not
20 apply:

21 (a) To the extent of a bona fide dispute regarding any
22 portion of the contract price.

23 (b) In the event the plaintiff has committed a
24 material breach of the contract which would relieve the
25 defendant from the obligations under the contract.

26 (7) The prevailing party in any proceeding under this
27 section is entitled to recover costs, including a reasonable
28 attorney's fee, at trial and on appeal.

29 (8) The provisions of this section shall also apply to
30 any contract between a subcontractor and a sub-subcontractor
31 or supplier and any contract between a sub-subcontractor and

1 supplier on any project for the construction of a public
2 building, for the prosecution and completion of a public work,
3 or for repairs upon a public building or public work.

4 (9) When satisfactory progress has not been achieved
5 by a contractor or subcontractor during any period for which a
6 progress payment is to be made, a percentage of the progress
7 payment may be retained. Retainage shall not be used as a
8 substitute for good contract management and the contracting
9 parties shall not withhold funds without cause. Determinations
10 to retain a percentage of the progress payment and the
11 specific amount to be withheld shall be made by the
12 contracting parties on a case-by-case basis, based on an
13 assessment of past performance and the likelihood that such
14 performance will continue. The amount of retainage withheld
15 shall not exceed 10 percent of the approved estimated amount
16 in accordance with the terms of the contract and may be
17 adjusted as the contract approaches completion to recognize
18 better than expected performance, the ability to rely on
19 alternative safeguards, and other factors. Upon completion of
20 all contract requirements, retained amounts shall be paid
21 promptly.

22 (10) Any amounts retained pursuant to subsection (9)
23 shall be held in an interest-bearing escrow account insured by
24 the Federal Deposit Insurance Corporation, with interest
25 accruing for the benefit of the contractors and subcontractors
26 whose money is retained, to be distributed on a pro rata basis
27 upon release. An owner, contractor, or subcontractor who fails
28 to deposit funds pursuant to this subsection within 5 business
29 days after making each progress payment shall pay to each
30 contractor, subcontractor, or sub-subcontractor interest at
31 the rate specified in s. 55.03 or the rate specified by

1 contract, whichever is greater, and an additional penalty of
2 1.5 percent per month.

3 (11) Notwithstanding the other provisions of this
4 section and other applicable law, no retainage shall be
5 withheld from a contractor or subcontractor who provides a
6 payment and performance bond in the amount of its contract.

7 Section 2. This act shall take effect July 1, 2002.

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HOUSE SUMMARY

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12 Revises provisions relating to payment of contractors,
13 subcontractors, sub-subcontractors, materialmen, and
14 suppliers on construction contracts for public projects.
15 Provides for retainage of a percentage of payment under
16 specified circumstances. Requires amounts retained to be
17 held in interest-bearing escrow accounts and provides an
18 exception.

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