

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Regulatory Reform
2 Subcommittee

3 Representative DiCeglie offered the following:

4

5 **Amendment**

6 Remove everything after the enacting clause and insert:

7

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

10 218.735 Timely payment for purchases of construction
11 services.—

12 (9) All payments due under this section and not made
13 within the time periods specified by this section shall bear
14 interest at the rate of 1.5 ± percent per month, or the rate
15 specified by contract, whichever is greater.

16 Section 2. Subsection (1) of section 255.071, Florida

Amendment No. 1.

17 Statutes, is amended to read:

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

21 (1) Any person, firm, or corporation who receives a
22 payment from the state or any county, city, or political
23 subdivision of the state, or other public authority, for the
24 construction of a public building, for the prosecution and
25 completion of a public work, or for repairs upon a public
26 building or public work shall pay, in accordance with the
27 contract terms, the undisputed contract obligations for labor,
28 services, or materials provided on account of such improvements.
29 A person, firm, or corporation who knowingly and intentionally
30 fails to make the payment required under this subsection commits
31 a misapplication of construction funds, punishable as provided
32 in s. 713.345.

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

35 255.073 Timely payment for purchases of construction
36 services.—

37 (4) All payments due for the purchase of construction
38 services and not made within the applicable time limits shall
39 bear interest at the rate of 1.5 ~~specified in s. 215.422. After~~
40 ~~July 1, 2006, such payments shall bear interest at the rate of 1~~
41 ~~percent per month, to the extent that the Chief Financial~~

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Amendment No. 1.

42 ~~Officer's replacement project for the state's accounting and~~
43 ~~cash management systems is operational for the particular~~
44 ~~affected public entity. After January 1, 2007, all such payments~~
45 ~~due from public entity shall bear interest at the rate of 1~~
46 ~~percent per month.~~

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

49 489.129 Disciplinary proceedings.—

50 (1) The board may take any of the following actions
51 against any certificateholder or registrant: place on probation
52 or reprimand the licensee, revoke, suspend, or deny the issuance
53 or renewal of the certificate or registration, require financial
54 restitution to a consumer for financial harm directly related to
55 a violation of a provision of this part, impose an
56 administrative fine not to exceed \$10,000 per violation, require
57 continuing education, or assess costs associated with
58 investigation and prosecution, if the contractor, financially
59 responsible officer, or business organization for which the
60 contractor is a primary qualifying agent, a financially
61 responsible officer, or a secondary qualifying agent responsible
62 under s. 489.1195 is found guilty of any of the following acts:

63 (r) Committing misapplication of construction funds in
64 violation of s. 713.345. If a contractor, subcontractor, sub-
65 subcontractor, or other person licensed by the board under this
66 chapter is convicted of misapplication of construction funds,

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Published On: 3/1/2021 3:46:31 PM

Amendment No. 1.

67 the board must suspend all licenses issued to such licensee
68 under this part for a minimum of 1 year from the date of
69 conviction. The suspension required under this paragraph is not
70 exclusive, and the board may impose any additional penalties set
71 forth in this subsection.

72
73 For the purposes of this subsection, construction is considered
74 to be commenced when the contract is executed and the contractor
75 has accepted funds from the customer or lender. A contractor
76 does not commit a violation of this subsection when the
77 contractor relies on a building code interpretation rendered by
78 a building official or person authorized by s. 553.80 to enforce
79 the building code, absent a finding of fraud or deceit in the
80 practice of contracting, or gross negligence, repeated
81 negligence, or negligence resulting in a significant danger to
82 life or property on the part of the building official, in a
83 proceeding under chapter 120.

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

86 713.345 Moneys received for real property improvements;
87 penalty for misapplication.-

88 (1)

89 (e) If a contractor, subcontractor, sub-subcontractor, or
90 other person who is licensed under chapter 489 is convicted of
91 misapplication of construction funds under this section, the

Amendment No. 1.

92 licensee is subject to discipline under s. 489.129(1)(r).

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

95 713.346 Payment on construction contracts.—

96 (1) Any person who receives a payment for constructing or
97 altering permanent improvements to real property shall pay, in
98 accordance with the contract terms, the undisputed contract
99 obligations for labor, services, or materials provided on
100 account of such improvements. A person, firm, or corporation who
101 knowingly and intentionally fails to make the payment required
102 under this subsection commits a misapplication of construction
103 funds, punishable as provided in s. 713.345.

104 Section 7. Paragraph (a) of subsection (5) and paragraph
105 (a) of subsection (6) of section 715.12, Florida Statutes, are
106 amended, and subsections (4) and (7) of that section are
107 republished, to read:

108 715.12 Construction Contract Prompt Payment Law.—

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

111 (a) The obligee is entitled to a payment at the time and
112 under the terms specified in the contract between the obligor
113 and the obligee, and the obligee has furnished the obligor with
114 a written request for payment; and

115 (b) The obligor, except an owner, has been paid for the
116 obligee's labor, services, or materials described in the

Amendment No. 1.

117 obligee's request for payment by the person immediately above
118 the obligor in the chain of contracts; and

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

122 (5) (a) Any payment due under the provisions of subsection
123 (4), excluding any amounts withheld pursuant to subsection (7),
124 shall bear interest at the rate specified in s. 55.03 plus 1
125 percent per annum, computed beginning on the 14th day after
126 payment is due pursuant to subsection (4).

127 (6) (a) The right to receive interest on a payment under
128 this section is not an exclusive remedy. This section does not
129 modify the remedies available to any person under the terms of a
130 contract or under any other statute. This section does not
131 modify the rights of any person to recover prejudgment interest
132 awarded to the prevailing party in any civil action or
133 arbitration case. During the period that interest accrues under
134 this section, the interest rate shall be the rate specified in
135 s. 55.03 plus 1 percent per annum or the rate specified in the
136 contract, whichever is greater. A person shall not be entitled
137 to receive both the contract interest and the statutory interest
138 specified in this section.

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

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Published On: 3/1/2021 3:46:31 PM

Amendment No. 1.

142 owner shall pay the contractor the balance of the contract
143 price, including the amounts withheld from the progress
144 payments, within 14 days after any of the following events
145 occur.

146 1. Pursuant to the terms of the contract, an architect or
147 engineer certifies that the project is substantially complete
148 and, within the time provided in the contract between the owner
149 and the contractor, the owner submits a written punchlist to the
150 contractor and the contractor substantially completes all of the
151 items on the punchlist.

152 2. The issuance of a certificate of occupancy for the
153 project, and within the time provided in the contract between
154 the owner and the contractor, the owner submits a written
155 punchlist to the contractor and the contractor substantially
156 completes all of the items on the punchlist.

157 3. The owner or a tenant of the owner takes possession of
158 the construction project and, within the time provided in the
159 contract between the owner and the contractor, the owner submits
160 a written punchlist to the contractor and the contractor
161 substantially completes all of the items on the punchlist.

162

163 Any funds retained by the owner beyond the time period specified
164 in this subsection shall accrue interest at the rate specified
165 in subsection (5), computed from the date the payment is due to
166 the date the payment is received by the contractor. If the

839647 - h0585-strike.docx

Published On: 3/1/2021 3:46:31 PM

Amendment No. 1.

167 contract between the owner and the contractor does not provide a
168 time period for the owner to submit a written punchlist to the
169 contractor, the time period shall be 15 days from the issuance
170 of the certificate of substantial completion, the issuance of
171 the certificate of occupancy, or the date the owner or the
172 owner's tenant takes possession of the project, whichever first
173 occurs. If no written punchlist is given to the contractor
174 within the time provided in this subsection, interest begins to
175 accrue 14 days after the issuance of the certificate of
176 substantial completion, the issuance of the certificate of
177 occupancy, or the date the owner or the owner's tenant takes
178 possession of the project, whichever first occurs. For
179 construction projects that are to be built in phases, this
180 subsection applies to each phase of the total project. The
181 contract between the owner and the contractor may specify a
182 shorter time period for disbursing all or any portion of the
183 final payment and the retainage.

184 (b) Except as provided in paragraph (a), an obligor and
185 obligee may agree to a provision that allows the obligor to
186 withhold a portion of each progress payment until completion of
187 the entire project. The amounts withheld shall bear interest 14
188 days after payment of such amounts are due under the terms of
189 the contract between the obligor and obligee and the other
190 requirements of subsection (4) have been satisfied.

191 (c) An obligee may, from time to time, withdraw all or any

Amendment No. 1.

192 portion of the amount retained from progress payments upon
193 depositing with the obligor:

194 1. United States Treasury bonds, United States Treasury
195 notes, United States Treasury certificates of indebtedness, or
196 United States Treasury bills;

197 2. Bonds or notes of the State of Florida; or

198 3. Certificates of deposit, within the insured limits,
199 from a state or national bank or state or federal savings and
200 loan association authorized to do business in this state.

201

202 Amounts may not be withdrawn in excess of the market value of
203 the securities listed in subparagraphs 1., 2., and 3. at the
204 time of such withdrawal or in excess of the par value of such
205 securities, whichever is less. The obligee shall execute and
206 deliver all documents reasonably required to allow the obligor
207 to document the transfer and the obligee shall pay any recording
208 or registration costs incurred by the obligor in connection with
209 the transfer. The obligor shall pay the obligee any interest or
210 income earned on the securities so deposited within 30 days
211 after the date such interest or income is received by the
212 obligor. If the deposit is in the form of coupon bonds, the
213 obligor shall deliver each coupon to the obligee within 30 days
214 after the date the coupon matures. An obligee may withdraw funds
215 retained from progress payments only to the extent the obligor
216 has withdrawn such funds for the obligee's labor, services, or

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Published On: 3/1/2021 3:46:31 PM

Amendment No. 1.

217 materials from the person immediately above the obligor in the
218 chain of contracts.

219 Section 8. For the purpose of incorporating the amendment
220 made by this act to section 218.735, Florida Statutes, in a
221 reference thereto, paragraph (b) of subsection (2) of section
222 218.76, Florida Statutes, is reenacted to read:

223 218.76 Improper payment request or invoice; resolution of
224 disputes.—

225 (2)

226 (b) If the local governmental entity does not commence the
227 dispute resolution procedure within the time required, a
228 contractor may give written notice to the local governmental
229 entity of the failure to timely commence its dispute resolution
230 procedure. If the local governmental entity fails to commence
231 the dispute resolution procedure within 4 business days after
232 such notice, any amounts resolved in the contractor's favor
233 shall bear mandatory interest, as set forth in s. 218.735(9),
234 from the date the payment request or invoice containing the
235 disputed amounts was submitted to the local governmental entity.
236 If the dispute resolution procedure is not commenced within 4
237 business days after the notice, the objection to the payment
238 request or invoice shall be deemed waived. The waiver of an
239 objection pursuant to this paragraph does not relieve a
240 contractor of its contractual obligations.

241 Section 9. For the purpose of incorporating the amendment

Amendment No. 1.

242 made by this act to section 255.073, Florida Statutes, in a
243 reference thereto, section 255.075, Florida Statutes, is
244 reenacted to read:

245 255.075 Mandatory interest.—A contract between a public
246 entity and a contractor may not prohibit the collection of late
247 payment interest charges authorized under s. 255.073(4).

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

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

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