

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
 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
 47 | within the time periods specified by this section shall bear
 48 | interest at the rate of 2 ~~1~~ percent per month, or the rate
 49 | specified by 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
56 payment from the state or any county, city, or political
57 subdivision of the state, or other public authority, for the
58 construction of a public building, for the prosecution and
59 completion of a public work, or for repairs upon a public
60 building or public work shall pay, in accordance with the
61 contract terms, the undisputed contract obligations for labor,
62 services, or materials provided on account of such improvements.
63 A person, firm, or corporation who knowingly and intentionally
64 fails to make the payment required under this subsection commits
65 a misapplication of construction funds, punishable as provided
66 in s. 713.345.

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

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

71 (4) All payments due for the purchase of construction
72 services and not made within the applicable time limits shall
73 bear interest at the rate of 2 ~~specified in s. 215.422. After~~
74 ~~July 1, 2006, such payments shall bear interest at the rate of 1~~
75 ~~percent per month, to the extent that the Chief Financial~~

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

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

83 489.129 Disciplinary proceedings.—

84 (1) The board may take any of the following actions
 85 against any certificateholder or registrant: place on probation
 86 or reprimand the licensee, revoke, suspend, or deny the issuance
 87 or renewal of the certificate or registration, require financial
 88 restitution to a consumer for financial harm directly related to
 89 a violation of a provision of this part, impose an
 90 administrative fine not to exceed \$10,000 per violation, require
 91 continuing education, or assess costs associated with
 92 investigation and prosecution, if the contractor, financially
 93 responsible officer, or business organization for which the
 94 contractor is a primary qualifying agent, a financially
 95 responsible officer, or a secondary qualifying agent responsible
 96 under s. 489.1195 is found guilty of any of the following acts:

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

101 the board must suspend all licenses issued to such licensee
102 under this chapter for a minimum of 1 year from the date of
103 conviction. The suspension required under this paragraph is not
104 exclusive, and the board may impose any additional penalties set
105 forth in this subsection.

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

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

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

122 (1)

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

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

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

129 | 713.346 Payment on construction contracts.—

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

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

142 | 715.12 Construction Contract Prompt Payment Law.—

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

145 | (a) The obligee is entitled to a payment at the time and
 146 | under the terms specified in the contract between the obligor
 147 | and the obligee, and the obligee has furnished the obligor with
 148 | a written request for payment; and

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

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

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

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

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

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

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

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

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

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

196

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

201 contract between the owner and the contractor does not provide a
202 time period for the owner to submit a written punchlist to the
203 contractor, the time period shall be 15 days from the issuance
204 of the certificate of substantial completion, the issuance of
205 the certificate of occupancy, or the date the owner or the
206 owner's tenant takes possession of the project, whichever first
207 occurs. If no written punchlist is given to the contractor
208 within the time provided in this subsection, interest begins to
209 accrue 14 days after the issuance of the certificate of
210 substantial completion, the issuance of the certificate of
211 occupancy, or the date the owner or the owner's tenant takes
212 possession of the project, whichever first occurs. For
213 construction projects that are to be built in phases, this
214 subsection applies to each phase of the total project. The
215 contract between the owner and the contractor may specify a
216 shorter time period for disbursing all or any portion of the
217 final payment and the retainage.

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

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

226 | portion of the amount retained from progress payments upon
227 | depositing with the obligor:

228 | 1. United States Treasury bonds, United States Treasury
229 | notes, United States Treasury certificates of indebtedness, or
230 | United States Treasury bills;

231 | 2. Bonds or notes of the State of Florida; or

232 | 3. Certificates of deposit, within the insured limits,
233 | from a state or national bank or state or federal savings and
234 | loan association authorized to do business in this state.

235 |

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

251 materials from the person immediately above the obligor in the
 252 chain of contracts.

253 Section 8. For the purpose of incorporating the amendment
 254 made by this act to section 218.735, Florida Statutes, in a
 255 reference thereto, paragraph (b) of subsection (2) of section
 256 218.76, Florida Statutes, is reenacted to read:

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

259 (2)

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

275 Section 9. For the purpose of incorporating the amendment

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276 made by this act to section 255.073, Florida Statutes, in a
277 reference thereto, section 255.075, Florida Statutes, is
278 reenacted to read:

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

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

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