

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 part I of ch. 489, F.S., is subject to
21 certain 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 construction 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 1.5 ± 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 1.5 ~~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 part is convicted of misapplication of construction funds, the

101 board must suspend all licenses issued to such licensee under
 102 this part for a minimum of 1 year from the date of conviction.
 103 The suspension required under this paragraph is not exclusive,
 104 and the board may impose any additional penalties set forth in
 105 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 part I of chapter 489 is
 125 convicted of misapplication of construction funds under this

126 section, the licensee is subject to discipline under s.
 127 489.129(1)(r).

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

130 713.346 Payment on construction contracts.—

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

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

143 715.12 Construction Contract Prompt Payment Law.—

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

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

150 (b) The obligor, except an owner, has been paid for the

151 obligee's labor, services, or materials described in the
152 obligee's request for payment by the person immediately above
153 the obligor in the chain of contracts; and

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

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

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

174 (7) (a) An owner and a contractor may agree to a provision
175 that allows the owner to withhold a portion of each progress

176 | payment until substantial completion of the entire project. The
177 | owner shall pay the contractor the balance of the contract
178 | price, including the amounts withheld from the progress
179 | payments, within 14 days after any of the following events
180 | occur.

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

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

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

197 |

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

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

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

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

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

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

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

236

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

251 has withdrawn such funds for the obligee's labor, services, or
252 materials from the person immediately above the obligor in the
253 chain of contracts.

254 Section 8. For the purpose of incorporating the amendment
255 made by this act to section 218.735, Florida Statutes, in a
256 reference thereto, paragraph (b) of subsection (2) of section
257 218.76, Florida Statutes, is reenacted to read:

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

260 (2)

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

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

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

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

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