

CHAPTER 2021-124

Committee Substitute for Senate Bill No. 378

An act relating to payment for construction services; amending s. 218.735, F.S.; increasing the interest rate for certain payments for purchases of construction services; amending s. 255.071, F.S.; specifying that a person, firm, or corporation who fails to make certain payments relating to public projects commits a misapplication of construction funds and is subject to criminal penalties; amending s. 255.073, F.S.; increasing the interest rate for overdue payments for the purchase of construction services; amending s. 489.129, F.S.; expanding the list of actions for which a licensee may be disciplined by the Construction Industry Licensing Board; requiring the board to suspend certain licenses for a minimum period of time under certain circumstances; providing construction; amending s. 713.345, F.S.; specifying that a contractor, subcontractor, sub-subcontractor, or other person licensed under ch. 489, F.S., is subject to certain discipline if convicted of misapplication of construction funds; amending s. 713.346, F.S.; specifying that a person, firm, or corporation who fails to make certain payments relating to construction contracts commits a misapplication of constructions funds and is subject to criminal penalties; amending s. 715.12, F.S.; increasing the interest rate for certain payments due under the Construction Contract Prompt Payment Law; conforming a provision to changes made by the act; reenacting s. 218.76(2)(b), F.S., relating to improper payment requests or invoices, to incorporate the amendment made by this act to s. 218.735, F.S., in a reference thereto; reenacting s. 255.075, F.S., relating to mandatory interest, to incorporate the amendment made by this act to s. 255.073, F.S., in a reference thereto; providing applicability; providing an effective date.

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

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

218.735 Timely payment for purchases of construction services.—

(9) All payments due under this section and not made within the time periods specified by this section shall bear interest at the rate of 2 1 percent per month, or the rate specified by contract, whichever is greater.

Section 2. Subsection (1) of section 255.071, Florida Statutes, is amended to read:

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

(1) Any person, firm, or corporation who receives a payment from the state or any county, city, or political subdivision of the state, or other public

authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements. A person, firm, or corporation who knowingly and intentionally fails to make the payment required under this subsection commits a misapplication of construction funds, punishable as provided in s. 713.345.

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

255.073 Timely payment for purchases of construction services.—

(4) All payments due for the purchase of construction services and not made within the applicable time limits shall bear interest at the rate of 2 ~~specified in s. 215.422. After July 1, 2006, such payments shall bear interest at the rate of 1 percent per month, to the extent that the Chief Financial Officer's replacement project for the state's accounting and cash management systems is operational for the particular affected public entity. After January 1, 2007, all such payments due from public entity shall bear interest at the rate of 1 percent per month.~~

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

489.129 Disciplinary proceedings.—

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

(r) Committing misapplication of construction funds in violation of s. 713.345. If a contractor, subcontractor, sub-subcontractor, or other person licensed by the board under this chapter is convicted of misapplication of construction funds, the board must suspend all licenses issued to such licensee under this chapter for a minimum of 1 year from the date of conviction. The suspension required under this paragraph is not exclusive, and the board may impose any additional penalties set forth in this subsection.

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

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

713.345 Moneys received for real property improvements; penalty for misapplication.—

(1)

(e) If a contractor, subcontractor, sub-subcontractor, or other person who is licensed under chapter 489 is convicted of misapplication of construction funds under this section, the licensee is subject to discipline under s. 489.129(1)(r).

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

713.346 Payment on construction contracts.—

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

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

715.12 Construction Contract Prompt Payment Law.—

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

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

(b) The obligor, except an owner, has been paid for the obligee's labor, services, or materials described in the obligee's request for payment by the person immediately above the obligor in the chain of contracts; and

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

(5)(a) Any payment due under the provisions of subsection (4), excluding any amounts withheld pursuant to subsection (7), shall bear interest at the rate specified in s. 55.03 plus an additional 12 percent per annum, computed beginning on the 14th day after payment is due pursuant to subsection (4).

(6)(a) The right to receive interest on a payment under this section is not an exclusive remedy. This section does not modify the remedies available to any person under the terms of a contract or under any other statute. This section does not modify the rights of any person to recover prejudgment interest awarded to the prevailing party in any civil action or arbitration case. During the period that interest accrues under this section, the interest rate shall be the rate specified in s. 55.03 plus an additional 12 percent per annum or the rate specified in the contract, whichever is greater. A person shall not be entitled to receive both the contract interest and the statutory interest specified in this section.

(7)(a) An owner and a contractor may agree to a provision that allows the owner to withhold a portion of each progress payment until substantial completion of the entire project. The owner shall pay the contractor the balance of the contract price, including the amounts withheld from the progress payments, within 14 days after any of the following events occur.

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

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

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

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

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

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

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

1. United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;
2. Bonds or notes of the State of Florida; or
3. Certificates of deposit, within the insured limits, from a state or national bank or state or federal savings and loan association authorized to do business in this state.

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

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

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

(2)

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

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

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

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

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

Approved by the Governor June 21, 2021.

Filed in Office Secretary of State June 21, 2021.