

1 HB518
2 128683-2
3 By Representative Johnson (R)
4 RFD: Commerce and Small Business
5 First Read: 14-APR-11

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8 SYNOPSIS: Under existing law, prompt payment is
9 required on construction contracts for improvement
10 to real property. Public works contracts restrict
11 retainage, but payments of retainage to other
12 contractors is not defined or restricted in other
13 contracts.

14 This bill would amend the prompt payment law
15 related to construction contracts to define
16 retainage and to provide for the retainage
17 requirements in private construction contracts.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT

22
23 To amend Section 8-29-3 of the Code of Alabama 1975,
24 relating to prompt payment of construction contracts for
25 improvements to real property, to define retainage and to
26 provide for retainage in construction contracts covered by the
27 prompt pay act.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 8-29-3 of the Code of Alabama
3 1975, is amended to read as follows:

4 "§8-29-3.

5 "(a) When a contractor has performed pursuant to his
6 or her contract and submits an application or pay request for
7 payment or an invoice for materials, to the owner or owner's
8 representative, the owner shall timely pay the contractor by
9 mailing via first class mail or delivering the amount of the
10 pay request or invoice in accordance with the payment terms
11 agreed to by the owner and the contractor, the agreed upon
12 payment terms must be specified in all contract documents, but
13 if payment terms are not agreed to, then within 30 days after
14 receipt of the pay request or invoice.

15 "(b) When a subcontractor has performed pursuant to
16 his or her contract and submits an application or pay request
17 for payment or an invoice for materials to a contractor in
18 sufficient time to allow the contractor to include the
19 application, request, or invoice in his or her own pay request
20 submitted to an owner, the contractor shall timely pay to the
21 subcontractor in accordance with the payment terms agreed to
22 by the contractor and subcontractor, but if payment terms are
23 not agreed to, then within seven days of receipt of payment
24 from owner by mailing via first class mail or delivering the
25 amount received for the subcontractor's work and materials
26 based on work completed or service provided under the
27 contract.

1 "(c) When a sub-subcontractor has performed labor or
2 supplied materials for a subcontractor pursuant to his or her
3 contract and submits an application or pay request for payment
4 or an invoice for materials to a subcontractor in sufficient
5 time to allow the subcontractor to include the application,
6 request, or invoice in his or her own pay request submitted to
7 a contractor, the subcontractor shall timely pay the
8 sub-subcontractor in accordance with the payment terms agreed
9 to by the subcontractor and sub-subcontractor but if payment
10 terms are not agreed to, then within seven days of receipt of
11 payment from contractor by mailing via first class mail or
12 delivering the amount received for the sub-subcontractor's
13 work and materials based on work completed or service provided
14 under the contract.

15 "(d) If the owner, contractor, or subcontractor does
16 not make payment in compliance with this chapter, the owner,
17 contractor, or subcontractor shall be obligated to pay his or
18 her contractor, subcontractor, or sub-subcontractor interest
19 at the rate of one percent per month (12% per annum) on the
20 unpaid balance due.

21 "(e) A contractor who receives a payment under
22 subsection (a) or otherwise, from an owner in connection with
23 a contract shall pay each of its subcontractors the portion of
24 the owner's payment to the extent of that subcontractor's
25 interest in the owner's payment. The payment shall include
26 interest, if any, that is attributable to work performed or
27 materials suitably stored by that subcontractor if payment for

1 stored materials is provided for in the contract. The payment
2 required by this subsection shall be made not later than the
3 seventh day after the date the contractor receives the owner's
4 payment.

5 ~~"(f) The percentage of retainage on payments by the
6 contractor to the subcontractor shall not exceed the
7 percentage of retainage on payments made by the owner to the
8 contractor. Any percentage of retainage on payments made by
9 contractor to the subcontractor that exceeds the percentage of
10 retainage on payments made by the owner to the contractor
11 shall be subject to interest to be paid by the contractor to
12 the subcontractor at the rate of one percent per month (12%
13 per annum).~~

14 ~~"(g) The percentage of retainage on payments by the
15 subcontractor to the sub-subcontractor shall not exceed the
16 percentage of retainage on payments made by the contractor to
17 the subcontractor. Retainage on payments made by the
18 subcontractor to the sub-subcontractor that exceeds the
19 percentage of retainage on payments made by the contractor to
20 the subcontractor shall be subject to interest paid at the
21 rate of one percent per month (12% per annum).~~

22 "(f) For the purposes of this chapter, retainage
23 means that money, or other security as agreed to by the
24 parties to a construction contract, earned by the contractor,
25 subcontractor or lower tier sub-subcontractor, or supplier for
26 work properly performed which has been retained by the owner
27 conditioned on final completion and acceptance of all work in

1 connection with a project or projects by the contractor,
2 subcontractor or lower tier sub-subcontractor, or supplier.

3 "(g) A construction contract on any project in this
4 state may provide for the owner's withholding of retainage
5 from payments to its contractor for work performed by that
6 contractor on a construction project. There shall be retained
7 not more than five percent of the estimated amount of work
8 done and the value of materials stored on the site or suitably
9 stored and insured off-site, and after 50 percent completion
10 has been accomplished, no further retainage shall be withheld.
11 If an owner withholds an amount greater than that allowed by
12 this subsection, the owner shall be liable to the contractor
13 for interest accruing on the excess amount withheld at the
14 rate of one percent per month.

15 "(h) A construction contract on any project in this
16 state may provide for the contractor's withholding of
17 retainage from payments to its subcontractors for work
18 performed by the subcontractors on a construction project.
19 There shall be retained not more than five percent of the
20 estimated amount of work done and the value of materials
21 stored on the site or suitably stored and insured off-site,
22 and after 50 percent completion has been accomplished, no
23 further retainage shall be withheld. If a contractor withholds
24 an amount greater than that allowed by this subsection, the
25 contractor shall be liable to the subcontractor for interest
26 accruing on the excess amount withheld at the rate of one
27 percent per month.

1 "(i) A construction contract on any project in this
2 state may provide for the subcontractor's withholding of
3 retainage from payments to its sub-subcontractors or material
4 suppliers for work performed by such sub-subcontractors or
5 material suppliers on a construction project. There shall be
6 retained not more than five percent of the estimated amount of
7 work done and the value of materials stored on the site or
8 suitably stored and insured off-site, and after 50 percent
9 completion has been accomplished, no further retainage shall
10 be withheld. If a subcontractor withholds an amount greater
11 than that allowed by this subsection, the subcontractor shall
12 be liable to the sub-subcontractor or material supplier for
13 interest accruing on the excess amount withheld at the rate of
14 one percent per month.

15 "(j) (1) The owner shall release and pay retainage to
16 the contractor for work completed on any construction contract
17 no later than 60 days after the completion of the contractor's
18 work defined in its contract with the owner, or no later than
19 60 days of substantial completion of the project, whichever
20 occurs first. The contractor shall release and pay retainage
21 to its subcontractors for work completed pursuant to the terms
22 of this chapter.

23 "(2) For the purposes of this subsection,
24 substantial completion means the stage in the progress of the
25 project when the project or designated portion thereof is
26 sufficiently complete in accordance with the contract

1 documents so that the owner may occupy or utilize the project
2 for its intended purpose.

3 "(k) The provisions of subsections (f) through (j)
4 shall not apply to any electric utility project regulated by
5 the Public Service Commission."

6 Section 2. All laws or parts of laws which conflict
7 with this act are repealed.

8 Section 3. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.