

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

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

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

1 "(d) If the owner, contractor, or subcontractor does
2 not make payment in compliance with this chapter, the owner,
3 contractor, or subcontractor shall be obligated to pay his or
4 her contractor, subcontractor, or sub-subcontractor interest
5 at the rate of one percent per month (12% per annum) on the
6 unpaid balance due.

7 "(e) A contractor who receives a payment under
8 subsection (a) or otherwise, from an owner in connection with
9 a contract shall pay each of its subcontractors the portion of
10 the owner's payment to the extent of that subcontractor's
11 interest in the owner's payment. The payment shall include
12 interest, if any, that is attributable to work properly
13 performed or materials suitably stored by that subcontractor
14 if payment for stored materials is provided for in the
15 contract. The payment required by this subsection shall be
16 made not later than the seventh day after the date the
17 contractor receives the owner's payment.

18 "(f) The percentage of retainage on payments by the
19 contractor to the subcontractor shall not exceed the
20 percentage of retainage on payments made by the owner to the
21 contractor. Any percentage of retainage on payments made by
22 contractor to the subcontractor that exceeds the percentage of
23 retainage on payments made by the owner to the contractor
24 shall be subject to interest to be paid by the contractor to
25 the subcontractor at the rate of one percent per month (12%
26 per annum).

1 "(g) The percentage of retainage on payments by the
2 subcontractor to the sub-subcontractor shall not exceed the
3 percentage of retainage on payments made by the contractor to
4 the subcontractor. Retainage on payments made by the
5 subcontractor to the sub-subcontractor that exceeds the
6 percentage of retainage on payments made by the contractor to
7 the subcontractor shall be subject to interest paid at the
8 rate of one percent per month (12% per annum).

9 ~~"(f)~~ (h) For the purposes of this chapter, retainage
10 means that money, or other security as agreed to by the
11 parties to a construction contract, earned by the contractor,
12 subcontractor or lower tier sub-subcontractor, or supplier for
13 work properly performed or materials suitably stored, if
14 payment for stored materials is provided for in the contract,
15 which has been retained by the owner conditioned on final
16 completion and acceptance of all work in connection with a
17 project or projects by the contractor, subcontractor or lower
18 tier sub-subcontractor, or supplier.

19 ~~"(g)~~ (i) A construction contract on any project in
20 this state may provide for the owner's withholding of
21 retainage from payments to its contractor for work performed
22 by that contractor on a construction project. There shall be
23 retained not more than ~~five~~ ten percent of the estimated
24 amount of work properly done and the value of materials stored
25 on the site or suitably stored and insured off-site, and after
26 50 percent completion has been accomplished, no further
27 retainage shall be withheld. If an owner withholds an amount

1 greater than that allowed by this subsection, the owner shall
2 be liable to the contractor for interest accruing on the
3 excess amount withheld at the rate of one percent per month.

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

17 "(i)(k) A construction contract on any project in
18 this state may provide for the subcontractor's withholding of
19 retainage from payments to its sub-subcontractors or material
20 suppliers for work performed by such sub-subcontractors or
21 material suppliers on a construction project. There shall be
22 retained not more than ~~five~~ ten percent of the estimated
23 amount of work properly done and the value of materials stored
24 on the site or suitably stored and insured off-site, and after
25 50 percent completion has been accomplished, no further
26 retainage shall be withheld. If a subcontractor withholds an
27 amount greater than that allowed by this subsection, the

1 subcontractor shall be liable to the sub-subcontractor or
2 material supplier for interest accruing on the excess amount
3 withheld at the rate of one percent per month.

4 ~~"(j)~~ (1) (1) The owner shall release and pay
5 retainage to the contractor for work completed on any
6 construction contract no later than 60 days after the
7 completion of the contractor's work defined in its contract
8 with the owner, or no later than 60 days of after substantial
9 completion of the project, whichever occurs first, and in both
10 events, with all necessary certificates of occupancy having
11 been issued. The contractor shall release and pay retainage to
12 its subcontractors for work completed pursuant to the terms of
13 this chapter.

14 "(2) For the purposes of this subsection,
15 substantial completion means the stage in the progress of the
16 project when the project or designated portion thereof is
17 sufficiently complete in accordance with the contract
18 documents with all necessary certificates of occupancy having
19 been issued so that the owner may occupy or utilize the
20 project for its intended purpose.

21 ~~"(k)~~ (m) The provisions of subsections (f) through
22 (j) shall not apply to any electric utility project
23 construction project for or by an electric utility regulated
24 by the Public Service Commission."

25 ~~"(l)~~ "(n) Nothing herein limits or alters the paying
26 party's right to withhold or not approve payment on grounds
27 set forth in the party's contract or the grounds set forth in

1 Section 8-29-4 or otherwise for work not properly performed or
2 payment not earned; rather, this section is intended only to
3 establish a maximum amount of retainage, establish the timing
4 for release of retainage, and provide for the payment of
5 interest for improperly held retainage. Also, the paying party
6 may condition payment on the receipt of a full release of any
7 lien of the contractor, subcontractor, or sub-subcontractor
8 for the amount of work being paid.

9 " ~~(m)~~(o) All loans and loan proceeds related to a
10 construction project, and the disbursement and use thereof,
11 are governed solely by the terms of the documents evidencing
12 and securing the loan, and contractors, subcontractors, and
13 sub-subcontractors have no lien or rights in any such loan,
14 loan proceeds, or the disbursement or use thereof."

15 Section 2. The provisions of this amendatory act
16 shall apply only to contracts entered into on or after the
17 effective date of this act.

18 Section 3. All laws or parts of laws which conflict
19 with this act are repealed.

20 Section 4. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Commerce and
Small Business..... 14-APR-11

Read for the second time and placed
on the calendar 2 amendments 21-APR-11

Read for the third time and passed
as amended..... 24-MAY-11

Yeas 97, Nays 0, Abstains 0

Greg Pappas
Clerk