

1 HB411
2 128097-1
3 By Representative Roberts
4 RFD: State Government
5 First Read: 31-MAR-11

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SYNOPSIS: This bill would prohibit the state from contractually increasing the time for payment for completed work beyond 30 days and would provide for interest of one percent per month to be added on any dollar amount approved and unpaid for until final payment is made.

 This bill would require certification and proof of certification of the availability of funds by the state to pay contractors for the work under the contract.

 This bill would provide that a contractor, subcontractor, or sub-subcontractor that is not paid to be entitled to recover reasonable attorneys' fees, costs, and reasonable expenses in connection with the non-payment.

A BILL
TO BE ENTITLED
AN ACT

1 To amend Section 41-16-3 of the Code of Alabama
2 1975, relating to timely execution and payment of state
3 contractors; to prohibit the state from contractually
4 increasing the time for payment for completing work beyond 30
5 days; to provide for interest of one percent per month to be
6 added on any dollar amount approved and unpaid for each month;
7 to require certification and proof of certification of the
8 availability of funds by the state to pay contractors for the
9 work under the contract; and to provide that a contractor,
10 subcontractor, or sub-subcontractor that is not paid should be
11 entitled to recover reasonable attorneys' fees, costs, and
12 reasonable expenses in connection with the non-payment.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Section 41-16-3 of the Code of Alabama
15 1975, is amended to read as follows:

16 "§41-16-3.

17 "(a) Whenever the State of Alabama is a party to any
18 contract, the contract shall be executed by all parties in a
19 timely fashion. When a party to a contract, other than the
20 state, has fully executed ~~the~~ its responsibility under the
21 contract and there remains only the payment of funds by the
22 state, payment shall be made in a timely manner. If the amount
23 due by the state is not in dispute, payment shall be made
24 within 30 days after the other party has completed his or her
25 portion of the contract and presented a proper invoice. Any
26 agreement to increase the 30-day period for payment is not
27 enforceable. If the amount payable is not paid within 30 days,

1 the party to whom payment is due shall also be entitled to
2 interest of one percent per month on the any amount shall be
3 charged approved and unpaid. The contract between the state
4 and a contractor that is executed pursuant to this chapter
5 must contain a certification from the state that the state has
6 funds sufficient to fulfill its obligations under the
7 contract. Before commencement of the work by the contractor,
8 the state must furnish to the contractor reasonable evidence
9 that financial arrangements have been made to fulfill the
10 state's obligations under the contract. After such evidence
11 has been furnished, the state shall not materially vary such
12 financial arrangements without prior notice to the contractor.

13 A party who receives a payment from the state in connection
14 with a contract shall pay each of its subcontractors or
15 sub-subcontractors the portion of the state's payment to the
16 extent of that subcontractor's or sub-subcontractor's interest
17 in the state's payment in accordance with the payment terms
18 agreed to by the contractor and the subcontractor, but if
19 payment terms are not agreed to, then within seven days after
20 receipt of payment from the state. The payment shall include
21 interest, if any, that is attributable to work performed by
22 the subcontractor or sub-subcontractor. The interest rate
23 shall be ~~the legal amount currently charged by the state~~ one
24 percent per month. Interest shall be paid from the same fund
25 or source from which the contract principal is paid. Nothing
26 in this subsection shall prevent the state, contractor, or

1 subcontractor from withholding payments if there is a bona
2 fide dispute over one or more of the following:

3 "(1) Unsatisfactory job progress.

4 "(2) Defective construction not remedied.

5 "(3) Disputed work.

6 "(4) Third party claims filed or reasonable evidence
7 that a claim will be filed.

8 "(5) Failure of the contractor, subcontractor, or
9 sub-subcontractor to make timely payments for labor, equipment
10 and materials.

11 "(6) Property damage to owner, contractor, or
12 subcontractor.

13 "(7) Reasonable evidence that the contract,
14 subcontract, or sub-subcontract cannot be completed for the
15 unpaid balance of the contract or contract sum.

16 "(b) In the event that there is a bona fide dispute
17 over all or any portion of the amount due on a progress
18 payment from the owner, contractor, or subcontractor then the
19 owner, contractor, or subcontractor may withhold payment in an
20 amount not to exceed two times the disputed amount.

21 "(c) An owner is required to notify a contractor in
22 writing within 15 days of receipt of any disputed request for
23 payment. A contractor, subcontractor, and sub-subcontractor
24 is required to provide written notification within five days
25 of disputed request for payment or notice of disputed request
26 for payment.

1 "(d) The amount of retainage withheld by the
2 contractor to the subcontractor or the subcontractor to the
3 sub-subcontractor shall not exceed the retainage withheld by
4 the state unless interest as provided in subsection (a) is
5 applied to the withheld amount.

6 "(e) If the state, a contractor, or a subcontractor
7 has not made payment in compliance with this chapter, the
8 party that did not receive timely payment shall be entitled,
9 in addition to the interest specified in this section and the
10 contract amount due, to reasonable attorneys' fees, costs, and
11 reaonable expenses incurred to collect the amount due."

12 Section 2. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.