

1 SB171
2 126412-1
3 By Senator Marsh
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 08-MAR-11

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8 SYNOPSIS: This bill would prohibit the waiver of
9 payment within 30 days after the completion of a
10 public contract and would provide for interest of
11 one percent to be added on any dollar amount
12 approved and unpaid for each month or fraction
13 thereof until final payment is made.

14 This bill would require certification and
15 proof of certification of the availability of funds
16 to remit payment once the party to the contract has
17 fully executed the responsibility under the
18 contract.

19 This bill would provide that in any civil
20 action, the owner, the contractor, or
21 sub-contractor in whose favor a judgment is
22 rendered would be entitled to recover attorneys'
23 fees and court costs.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 To amend Section 41-16-3 of the Code of Alabama
3 1975, relating to timely execution of state contracts; to
4 prohibit waiver of payment within 30 days; to provide for
5 interest of one percent to be added on any dollar amount
6 approved and unpaid; to require certification and proof of
7 certification of the availability of funds; and to provide for
8 the payment of attorneys' fees and court costs.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 41-16-3 of the Code of Alabama
11 1975, is amended to read as follows:

12 "§41-16-3.

13 "(a) Whenever the State of Alabama is a party to any
14 contract, the contract shall be executed by all parties in a
15 timely fashion. When a party to a contract, other than the
16 state, has fully executed the responsibility under the
17 contract and there remains only the payment of funds by the
18 state, payment shall be made in a timely manner. If the
19 amount due by the state is not in dispute, payment shall be
20 made within 30 days after the other party has completed his or
21 her portion of the contract and presented a proper invoice,
22 the 30 days in which payment shall be made shall not be waived
23 by either party to the contract. If the amount payable is not
24 paid within 30 days, interest of one percent on ~~the~~ any amount
25 approved and unpaid shall be added for each month or fraction
26 thereof until final payment is made ~~shall be charged.~~ The
27 contract shall certify that funds have been secured to remit

1 payment once the party to the contract has fully executed the
2 responsibility under the contract. The proof of availability
3 of funds shall be given to the party to the contract before
4 the party executes the responsibility under the contract. A
5 party who receives a payment from the state in connection with
6 a contract shall pay each of its subcontractors or
7 sub-subcontractors the portion of the state's payment to the
8 extent of that subcontractor's or sub-subcontractor's interest
9 in the state's payment in accordance with the payment terms
10 agreed to by the contractor and the subcontractor, but if
11 payment terms are not agreed to, then within seven days after
12 receipt of payment from the state. The payment shall include
13 interest, if any, that is attributable to work performed by
14 the subcontractor or sub-subcontractor. The interest rate
15 shall be the legal amount currently charged by the state.
16 Interest shall be paid from the same fund or source from which
17 the contract principal is paid. Nothing in this subsection
18 shall prevent the state, contractor, or subcontractor from
19 withholding payments if there is a bona fide dispute over one
20 or more of the following:

21 "(1) Unsatisfactory job progress.

22 "(2) Defective construction not remedied.

23 "(3) Disputed work.

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

1 "(5) Failure of the contractor, subcontractor, or
2 sub-subcontractor to make timely payments for labor, equipment
3 and materials.

4 "(6) Property damage to owner, contractor, or
5 subcontractor.

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

9 "(b) In the event that there is a bona fide dispute
10 over all or any portion of the amount due on a progress
11 payment from the owner, contractor, or subcontractor then the
12 owner, contractor, or subcontractor may withhold payment in an
13 amount not to exceed two times the disputed amount. In any
14 civil action, the owner, contractor, or sub-contractor in
15 whose favor a judgment is rendered shall be entitled to
16 recover payment of reasonable attorneys' fees and court costs.

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

23 "(d) The amount of retainage withheld by the
24 contractor to the subcontractor or the subcontractor to the
25 sub-subcontractor shall not exceed the retainage withheld by
26 the state unless interest is applied to the withheld amount."

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