

1 HB547  
2 159410-1  
3 By Representatives Rogers, Moore (M), Robinson (O), Knight,  
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5 Buskey, Baker, Shiver, Bracy, Boyd, Grimsley, England,  
6 Roberts, Lee, Chesteen, Buttram, Newton, Lindsey, Black,  
7 Robinson (J), Drake, Melton, Ison, Holmes (M), Brown, Faust,  
8 McClammy, Standridge, McCampbell, Morrow, Wren, Wallace,  
9 Beech, Greeson, Hurst, Johnson (R), Scott, Coleman-Evans,  
10 Sessions, Givan, Long, Wilcox, Baughn, Gaston, Carns, Collins,  
11 Nordgren and Shedd  
12 RFD: Commerce and Small Business  
13 First Read: 26-FEB-14

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8 SYNOPSIS: Under existing law, an owner is required to  
9 timely pay a contractor for work performed pursuant  
10 to contract.

11 This bill would require a contractor to  
12 timely pay a subcontractor for work completed on  
13 public works contracts.

14  
15 A BILL  
16 TO BE ENTITLED  
17 AN ACT  
18

19 To amend Section 8-29-3, Code of Alabama 1975,  
20 relating to timely payments to contractors; to require a  
21 contractor to timely pay a subcontractor for work completed on  
22 public works contracts.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Section 8-29-3 of the Code of Alabama  
25 1975, is amended to read as follows:

26 "§8-29-3.

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

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

24           "(c) When a sub-subcontractor has performed labor or  
25 supplied materials for a subcontractor pursuant to his or her  
26 contract and submits an application or pay request for payment  
27 or an invoice for materials to a subcontractor in sufficient

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

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

17 "(e) A contractor who receives a payment under  
18 subsection (a) or otherwise, from an owner in connection with  
19 a contract shall pay each of its subcontractors the portion of  
20 the owner's payment to the extent of that subcontractor's  
21 interest in the owner's payment. The payment shall include  
22 interest, if any, that is attributable to work properly  
23 performed or materials suitably stored by that subcontractor  
24 if payment for stored materials is provided for in the  
25 contract. The payment required by this subsection shall be  
26 made not later than the seventh day after the date the  
27 contractor receives the owner's payment.

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

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

18           "(h) For the purposes of this chapter, retainage  
19 means that money, or other security as agreed to by the  
20 parties to a construction contract, earned by the contractor,  
21 subcontractor or lower tier sub-subcontractor, or supplier for  
22 work properly performed or materials suitably stored if  
23 payment for stored materials is provided for in the contract,  
24 which has been retained by the owner conditioned on final  
25 completion and acceptance of all work in connection with a  
26 project or projects by the contractor, subcontractor or lower  
27 tier sub-subcontractor, or supplier.

1           "(i) A construction contract on any project in this  
2 state may provide for the owner's withholding of retainage  
3 from payments to its contractor for work performed by that  
4 contractor on a construction project. There shall be retained  
5 not more than 10 percent of the estimated amount of work  
6 properly done and the value of materials stored on the site or  
7 suitably stored and insured off-site, and after 50 percent  
8 completion has been accomplished, no further retainage shall  
9 be withheld. If an owner withholds an amount greater than that  
10 allowed by this subsection, the owner shall be liable to the  
11 contractor for interest accruing on the excess amount withheld  
12 at the rate of one percent per month. Nothing herein is  
13 intended to limit or alter the paying party's right to  
14 withhold or not approve payment on grounds set forth in the  
15 parties' contract or the grounds set forth in Section 8-29-4  
16 or otherwise for work not properly performed or payment not  
17 earned; rather, this section is intended only to establish a  
18 maximum amount of retainage, establish the timing for release  
19 of retainage, and provide for the payment of interest for  
20 improperly held retainage.

21           "(j) A construction contract on any project in this  
22 state may provide for the contractor's withholding of  
23 retainage from payments to its subcontractors for work  
24 performed by the subcontractors on a construction project.  
25 There shall be retained not more than 10 percent of the  
26 estimated amount of work properly done and the value of  
27 materials stored on the site or suitably stored and insured

1 off-site, and after 50 percent completion has been  
2 accomplished, no further retainage shall be withheld. If a  
3 contractor withholds an amount greater than that allowed by  
4 this subsection, the contractor shall be liable to the  
5 subcontractor for interest accruing on the excess amount  
6 withheld at the rate of one percent per month.

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

21 "(l) (1) The owner shall release and pay retainage to  
22 the contractor for work completed on any construction contract  
23 no later than 60 days after the completion of the contractor's  
24 work defined in its contract with the owner, or no later than  
25 60 days after substantial completion of the project, whichever  
26 occurs first, and in both events, with all necessary  
27 certificates of occupancy having been issued. The contractor

1 shall release and pay retainage to its subcontractors for work  
2 completed pursuant to the terms of this chapter.

3 "(2) For the purposes of this subsection,  
4 substantial completion means the stage in the progress of the  
5 project when the project or designated portion thereof is  
6 sufficiently complete in accordance with the contract  
7 documents with all necessary certificates of occupancy having  
8 been issued so that the owner may occupy or utilize the  
9 project for its intended purpose.

10 "(m) The provisions of subsections (h) through (l)  
11 shall not apply to any construction project for or by an  
12 electric utility regulated by the Public Service Commission.

13 "(n) Nothing herein limits or alters the paying  
14 party's right to withhold or not approve payment on grounds  
15 set forth in the party's contract or the grounds set forth in  
16 Section 8-29-4 or otherwise for work not properly performed or  
17 payment not earned; rather, this section is intended only to  
18 establish a maximum amount of retainage, establish the timing  
19 for release of retainage, and provide for the payment of  
20 interest for improperly held retainage. Also, the paying party  
21 may condition payment on the receipt of a full release of any  
22 lien of the contractor, subcontractor, or sub-subcontractor  
23 for the amount of work being paid.

24 "(o) All loans and loan proceeds related to a  
25 construction project, and the disbursement and use thereof,  
26 are governed solely by the terms of the documents evidencing  
27 and securing the loan, and contractors, subcontractors, and



1 sub-subcontractors have no lien or rights in any such loan,  
2 loan proceeds, or the disbursement or use thereof.

3 "(p) Subsection (b) to the contrary notwithstanding,  
4 all work performed by subcontractors on projects being  
5 completed pursuant to a contract for public works shall be  
6 paid by the contractor within 10 business days of the  
7 contractor receiving funds for the completion of that portion  
8 of the contract."

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