

**REVENUE: No revenue impact**

**FISCAL: No fiscal impact**

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| <b>Action:</b>        | Do Pass  |
| <b>Vote:</b>          | 8 - 0 - 0  |
| <b>Yeas:</b>          | Conger, Doherty, Esquivel, Hoyle, Johnson, Matthews, Garrett, Kennemer |
| <b>Nays:</b>          | 0  |
| <b>Exc.:</b>          | 0  |
| <b>Prepared By:</b>   | Theresa Van Winkle, Administrator                                      |
| <b>Meeting Dates:</b> | 2/1  |

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**WHAT THE MEASURE DOES:** Changes the applicable interest rate for a contractor's failure to make a timely payment in accordance with a public improvement contract to nine percent per annum. Requires that a public improvement contract obligate a contractor to provide a first-tier subcontractor with a standard payment claim form and that the contractor use the same form and regular administrative procedures to process payments during the entire term of a public improvement contract. Permits a contractor to change the form or administrative procedure if the subcontractor is notified of the new or changed form or procedure and includes in the notice the new or changed form or a description of new or changed procedure. Establishes an operative date of 91 days after the measure's effective date. Declares emergency, effective on passage.

**ISSUES DISCUSSED:**

- What happens if subcontractors do not follow through with contract terms regarding delivering materials or services
- Level of cooperation in developing the measure and resolving long-standing issues surrounding prompt pay within public improvement contracts

**EFFECT OF COMMITTEE AMENDMENT:** No amendment.

**BACKGROUND:** Under the state's Public Contracting Code, every public improvement contract must include a clause or condition that if a contractor or first-tier subcontractor does not promptly pay a person that provides labor or materials in connection with the contract within 30 days after receiving payment from the contracting agency or a contractor, unless the payment is subject to dispute, that person is owed the amount due plus interest charges beginning at the end of the 10-day period in which the contractor is to pay a first-tier subcontractor out of amounts paid to the contractor by the contracting agency and ending upon final payment. However, as a method to avoid paying subcontractors in a timely fashion, statute allows a contractor to change the payment request process during the contract term without adequate notification to the subcontractor.

House Bill 4034 requires public improvement contracts to include clauses which require contractors to provide a first-tier contractor with either a standard form that can be used as an application for payment or as another method to claim a payment due from the contractor, and requires the contractor to use the same form and regular administrative procedures for processing payments during the term of the subcontract. The contractor can change the form or procedures used for processing payments if the subcontractor is notified in writing at least 45 days before the date in which the change is made, and a copy of the new or changed form or description of the new or changed procedure is included in the written notice.

The measure also changes the statutory formula by which interest charges are incurred for not paying subcontractors in a timely manner. Current statute provides a formula how the interest rate is calculated, with a maximum rate of 30 percent. House Bill 4034 establishes the interest rate to be nine percent per annum.

2/2/2012 10:03:00 AM

*This summary has not been adopted or officially endorsed by action of the committee.*