

By the Committee on Business Regulation & Consumer Affairs
and Representatives J. Miller, Farkas and Cantens

1 A bill to be entitled
2 An act relating to prompt payment and retainage
3 reform; amending s. 218.72, F.S.; redefining
4 the terms "purchase" and "construction
5 services" and defining the terms "payment
6 request" and "agent" for the purpose of the
7 Florida Prompt Payment Act; amending s. 218.73,
8 F.S.; providing for timely payment for
9 nonconstruction services; amending s. 218.735,
10 F.S.; revising language with respect to timely
11 payment for purchases of construction services;
12 providing for timely payment of undisputed
13 portions of a payment request or invoice;
14 providing for an interest rate on payments due
15 from a local government not made within a
16 certain time period; amending s. 218.74, F.S.;
17 revising language with respect to procedures
18 for calculation of payment due dates; amending
19 s. 218.75, F.S.; revising language with respect
20 to mandatory interest; amending s. 218.76,
21 F.S.; revising language with respect to
22 improper invoices and resolution of disputes;
23 providing for the recovery of court costs and
24 attorney's fees under certain circumstances;
25 creating s. 255.049, F.S.; providing for the
26 retention of funds on public construction
27 contracts under certain circumstances; amending
28 s. 255.05, F.S.; revising language with respect
29 to the bond of a contractor constructing public
30 buildings; amending s. 715.12, F.S.; revising
31 language with respect to the Construction

1 Contract Prompt Payment Law; providing an
2 effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Subsections (2), (5), and (7) of section
7 218.72, Florida Statutes, are amended, and subsections (8) and
8 (9) are added to said section, to read:

9

218.72 Definitions.--As used in this part:

10 (2) "Local governmental entity" means a county or
11 municipal government, school board, school district,
12 authority, special taxing district, other political
13 subdivision, community college, or any office, board, bureau,
14 commission, department, branch, division, or institution
15 thereof or any project supported by county or municipal funds.

16 (5) "Purchase" means the purchase of goods, ~~or~~
17 services, or construction services, the purchase or lease of
18 personal property, or the lease of real property by a local
19 governmental entity.

20 (7) "Construction services" means all labor, services,
21 and materials provided ~~performed~~ in connection with the
22 construction, alteration, repair, demolition, reconstruction,
23 or any other improvements to real property that require a
24 license under parts I and II of chapter 489.

25 (8) "Payment request" means a contractor's written
26 request for payment for construction services provided through
27 a date certain.

28 (9) "Agent" means project architect, project engineer,
29 or any other agency or person acting on behalf of the local
30 governmental entity.

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1 Section 2. Section 218.73, Florida Statutes, is
2 amended to read:
3 218.73 Timely payment for nonconstruction
4 services.--The time at which payment is due for a purchase
5 other than construction services by a local governmental
6 entity, except for the purchase of construction services, is
7 due must be calculated from:
8 (1) The date on which a proper invoice is received by
9 the chief disbursement officer of the local governmental
10 entity after approval by the governing body, if required; or
11 (2) If a proper invoice is not received by the local
12 governmental entity, the date:
13 (a) On which delivery of personal property is accepted
14 by the local governmental entity;
15 (b) On which services are completed;
16 (c) On which the rental period begins; or
17 (d) On which the local governmental entity and vendor
18 agree in a contract that provides dates relative to payment
19 periods;
20
21 whichever date is latest.

22 Section 3. Section 218.735, Florida Statutes, is
23 amended to read:
24 218.735 Timely payment for purchases of construction
25 services.--
26 (1) The due date for payment for the purchase of
27 construction services by a local governmental entity is
28 ~~determined as follows:~~
29 ~~(a) If the project architect or project engineer must~~
30 ~~approve the invoice prior to the invoice being submitted to~~
31 ~~the local governmental entity, payment is due 20 business days~~

1 after the date on which the payment request or ~~architect or~~
2 ~~engineer approves the invoice and the invoice is stamped as~~
3 ~~received as provided in s. 218.74(1).~~

4 ~~(b) If the project architect or project engineer need~~
5 ~~not approve the invoice which is submitted by the contractor,~~
6 ~~payment is due 20 business days after the date on which the~~
7 ~~invoice is stamped as received as provided in s. 218.74(1).~~

8 (2) The local governmental entity may reject the
9 payment request or invoice within 10 ~~20 business~~ days after
10 the date on which the payment request or invoice is stamped as
11 received as provided in s. 218.74(1). The rejection must be
12 written and must specify the deficiency in the payment request
13 or invoice and the action necessary to make the payment
14 request or invoice proper.

15 (3) If a payment request or an invoice is rejected
16 under subsection (2) ~~or this subsection~~ and the contractor
17 submits a corrected payment request or invoice which corrects
18 the deficiency specified in writing by the local governmental
19 entity, the corrected payment request or invoice must be paid
20 or rejected within 10 ~~on the later of:~~

21 ~~(a) Ten business~~ days after the date the corrected
22 payment request or invoice is stamped as received as provided
23 in s. 218.74(1) ~~+~~ ~~or~~

24 ~~(b) If the governing body is required by ordinance,~~
25 ~~charter, or other law to approve or reject the corrected~~
26 ~~invoice, the first business day after the next regularly~~
27 ~~scheduled meeting of the governing body held after the~~
28 ~~corrected invoice is stamped as received as provided in s.~~
29 ~~218.74(1).~~

30 (4) If a dispute between the local governmental entity
31 and the contractor cannot be resolved by the procedure in

1 subsection (3), the dispute must be resolved in accordance
2 with the dispute resolution procedure prescribed in the
3 construction contract or in any applicable ordinance. In the
4 absence of a prescribed procedure, the dispute must be
5 resolved by the procedure specified in s. 218.76(2).

6 (5) If a local governmental entity disputes a portion
7 of a payment request or an invoice, the undisputed portion
8 shall be paid timely, in accordance with subsection (1).~~The~~
9 ~~payment time periods provided in this section for construction~~
10 ~~services purchased by a local governmental entity shall not~~
11 ~~affect contractual provisions or contractual covenants of a~~
12 ~~local governmental entity in effect on September 30, 1995.~~

13 (6) All payments due from a local governmental entity
14 and not made within the time periods ~~period~~ specified by this
15 section shall bear interest at the rate of 1 percent per
16 month, or the rate specified by contract, whichever is greater
17 as specified in s. 218.74(4).

18 Section 4. Section 218.74, Florida Statutes, is
19 amended to read:

20 218.74 Procedures for calculation of payment due
21 dates.--

22 (1) Each local governmental entity shall establish
23 procedures whereby each payment request or invoice received by
24 the local governmental entity is marked as received on the
25 date on which it is delivered to an agent or employee of the
26 local governmental entity or of a facility or office of the
27 local governmental entity.

28 (2) The payment due date for a local governmental
29 entity for the purchase of goods or services other than
30 construction services is 45 days after the date specified in
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1 s. 218.73. The payment due date for the purchase of
2 construction services is specified in s. 218.735.

3 (3) If the terms under which a purchase is made allow
4 for partial deliveries and a payment request or proper invoice
5 is submitted for a partial delivery, the time for payment for
6 the partial delivery must be calculated from the time of the
7 partial delivery and the submission of the payment request or
8 invoice in the same manner as provided in s. 218.73 or s.
9 218.735.

10 (4) All payments, other than payments for construction
11 services, due from a local governmental entity and not made
12 within the time specified by this section bear interest from
13 30 days after the due date at the rate of 1 percent per month
14 on the unpaid balance. The vendor must invoice the local
15 governmental entity for any interest accrued in order to
16 receive the interest payment. Any overdue period of less than
17 1 month is considered as 1 month in computing interest.
18 Unpaid interest is compounded monthly. ~~With respect to each~~
19 ~~past due payment, interest ceases to accrue after interest on~~
20 ~~that payment has accrued for 12 months.~~For the purposes of
21 this section, the term "1 month" means a period beginning on
22 any day of one month and ending on the same day of the
23 following month.

24 Section 5. Section 218.75, Florida Statutes, is
25 amended to read:

26 218.75 Mandatory interest.--No contract between a
27 local governmental entity and a vendor or a provider of
28 construction services shall prohibit the collection of vendor
29 from invoicing the local governmental entity for late payment
30 interest charges allowable under this part.

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1 Section 6. Section 218.76, Florida Statutes, is
2 amended to read:

3 218.76 Improper invoice; resolution of disputes.--

4 (1) In any case in which an improper invoice is
5 submitted by a vendor, the local governmental entity shall,
6 within 10 days after the improper invoice is received by it,
7 notify the vendor that the invoice is improper and indicate
8 what corrective action on the part of the vendor is needed to
9 make the invoice proper.

10 (2) In the event a dispute occurs between a vendor and
11 a local governmental entity concerning payment of a payment
12 request or an invoice, such disagreement shall be finally
13 determined by the local governmental entity as provided in
14 this section. Each local governmental entity shall establish
15 a dispute resolution procedure to be followed by the local
16 governmental entity in cases of such disputes. Such procedure
17 shall provide that proceedings to resolve the dispute shall be
18 commenced not later than 45 days after the date on which the
19 payment request or proper invoice was received by the local
20 governmental entity and shall be concluded by final decision
21 of the local governmental entity not later than 60 days after
22 the date on which the payment request or proper invoice was
23 received by the local governmental entity. Such procedures
24 shall not be subject to chapter 120, and such procedures shall
25 not constitute an administrative proceeding which prohibits a
26 court from deciding de novo any action arising out of the
27 dispute. If the dispute is resolved in favor of the local
28 governmental entity, then interest charges shall begin to
29 accrue 10 ~~15~~ days after the local governmental entity's final
30 decision. If the dispute is resolved in favor of the vendor,
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1 then interest shall begin to accrue as of the original date
2 the payment became due.

3 (3) In an action to recover amounts due under ss.
4 218.70-218.75, the prevailing party shall be entitled to
5 recover court costs and attorney's fees at trial and on
6 appeal.

7 Section 7. Section 255.049, Florida Statutes, is
8 created to read:

9 255.049 Retention of funds on public construction
10 projects.--

11 (1) This section shall apply to all public
12 construction projects, including projects for which a payment
13 and performance bond is provided pursuant to s. 255.05 and
14 projects with local governmental entities as defined in s.
15 218.72(2) for which a payment and performance bond has been
16 provided. This section shall not apply to contracts with the
17 Department of Transportation for road and bridge construction
18 and maintenance, which are governed by chapter 337.

19 (2) If a project is exempt from the bond requirements
20 of s. 255.05 or the local governmental entity, the contractor
21 may elect to provide a payment bond in the amount of the
22 direct contract price, in which event the provisions of this
23 section shall apply.

24 (3) Nothing in this section shall be construed to
25 alter or amend the procedures for payment of vouchers by state
26 agencies and the judicial branch as set forth in s. 215.422.

27 (4) For purposes of this section, "payment request"
28 means a contractor's written request for payment for labor,
29 services, and materials provided through a date certain.

30 (5) When a governmental entity makes progress payments
31 under a construction contract, such progress payments shall be

1 made monthly, or at such more frequent intervals as stipulated
2 in the contract, and shall be based on the total value of the
3 work that the contractor has performed and the materials
4 furnished or properly stored to the date of the payment
5 request, less any amounts previously paid, and less any amount
6 to be retained. If the contractor has provided a payment bond
7 for the work to be performed, the amount retained shall not
8 exceed 5 percent of the amount to be paid pursuant to the
9 payment request.

10 (6) Any amounts retained by a governmental entity
11 pursuant to subsection (5) shall be released, as follows:

12 (a) Each individual subcontract shall be considered a
13 separate division of the contract for purposes of release of
14 retained amounts, and the governmental entity shall release
15 all retained amounts for each subcontract within 90 days after
16 the date the governmental entity receives a notice of
17 completion for that subcontract.

18 (b) A notice of completion shall be in substantially
19 the following form:

20 NOTICE OF COMPLETION

21 NOTICE IS HEREBY GIVEN that:

22 1. The undersigned is an owner or officer of a
23 contractor/subcontractor who has made improvements to the
24 following-described property located in ... County, Florida:

25 a. Street address, if known:

26 b. Legal description of the property, if known:

27 c. Description of the project:

28 2. The full name of the undersigned
29 contractor/subcontractor is:

30 3. The complete address of the undersigned
31 contractor/subcontractor is:

1 retain no greater percentage from a sub-subcontractor than the
2 contractor is retaining from the subcontractor for the
3 sub-subcontractor's work, and shall release all retained
4 amounts to the sub-subcontractor within 10 days after
5 receiving the retained amounts from the contractor.

6 (8) Any payment of retainage provided for in this
7 section which has not been made within 10 days after the due
8 date specified in this section shall bear interest at the rate
9 of 1 percent per month or the rate specified by contract,
10 whichever is greater, calculated from the date the payment is
11 due until the date the payment is made. This interest cannot
12 be waived, by contract or otherwise, prior to the date of
13 payment.

14 (9) The provisions of this section are not intended to
15 impair the rights of any governmental entity, contractor, or
16 subcontractor, in the event of a good faith dispute, to
17 withhold payment without incurring any obligation to pay
18 interest. The retaining party shall notify the party whose
19 retainage is being withheld, in writing, of the amount of
20 payment withheld and the reason for nonpayment. For purposes
21 of this section, a "good faith dispute" means a documented
22 dispute concerning:

23 (a) Unsatisfactory job progress;

24 (b) Defective work not remedied;

25 (c) Third-party claims filed or reasonable evidence
26 that claims will be filed;

27 (d) Failure to make timely payments for labor,
28 equipment, or materials;

29 (e) Damage to the governmental entity, the prime
30 contractor, or a subcontractor; or

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1 (f) Reasonable evidence that the contract or
2 subcontract cannot be completed for the unpaid balance of the
3 contract or subcontract.

4 (10) Retainage shall not be held to secure the
5 performance of work which is not included on the initial
6 punchlist or defective work list and is covered under a
7 warranty provided by a contractor, a subcontractor, a
8 sub-subcontractor, or a manufacturer.

9 (11) In any action for payment of retained amounts due
10 under this section, the prevailing party shall be entitled to
11 recover court costs and attorney's fees, at trial and on
12 appeal.

13 Section 8. Paragraph (a) of subsection (1) and
14 paragraph (a) of subsection (2) of section 255.05, Florida
15 Statutes, are amended to read:

16 255.05 Bond of contractor constructing public
17 buildings; form; action by materialmen.--

18 (1)(a) Any person entering into a formal contract with
19 the state or any county, city, or political subdivision
20 thereof, or other public authority, for the construction of a
21 public building, for the prosecution and completion of a
22 public work, or for repairs upon a public building or public
23 work shall be required, before commencing the work or before
24 recommencing the work after a default or abandonment, to
25 execute, deliver to the public owner, and record in the public
26 records of the county where the improvement is located, a
27 payment and performance bond with a surety insurer authorized
28 to do business in this state as surety. The bond must state on
29 its front page: the name, principal business address, and
30 phone number of the contractor, the surety, the owner of the
31 property being improved, and, if different from the owner, the

1 contracting public entity; the contract number assigned by the
2 contracting public entity; and a description of the project
3 sufficient to identify it, such as ~~including, if applicable,~~a
4 legal description or ~~and~~ the street address of the property
5 being improved, and a general description of the improvement.
6 Such bond shall be conditioned solely upon the contractor's
7 performance of the construction work ~~that the contractor~~
8 ~~perform the contract~~ in the time and manner prescribed in the
9 contract and the contractor's prompt payment ~~promptly make~~
10 ~~payments~~ to all persons defined in s. 713.01 who furnished
11 labor, services, or materials for ~~whose claims derive directly~~
12 ~~or indirectly from~~ the prosecution of the work provided for in
13 the contract. Any claimant may apply to the governmental
14 entity having charge of the work for copies of the contract
15 and bond and shall thereupon be furnished with a certified
16 copy of the contract and bond. The claimant shall have a right
17 of action against the contractor and surety for the amount due
18 him or her, including unpaid finance charges due under the
19 claimant's contract. Such action shall not involve the public
20 authority in any expense. When such work is done for the
21 state and the contract is for \$100,000 or less, no payment and
22 performance bond shall be required. At the discretion of the
23 official or board awarding such contract when such work is
24 done for any county, city, political subdivision, or public
25 authority, any person entering into such a contract which is
26 for \$200,000 or less may be exempted from executing the
27 payment and performance bond. When such work is done for the
28 state, the Secretary of the Department of Management Services
29 may delegate to state agencies the authority to exempt any
30 person entering into such a contract amounting to more than
31 \$100,000 but less than \$200,000 from executing the payment and

1 performance bond. In the event such exemption is granted, the
2 officer or officials shall not be personally liable to persons
3 suffering loss because of granting such exemption. The
4 Department of Management Services shall maintain information
5 on the number of requests by state agencies for delegation of
6 authority to waive the bond requirements by agency and project
7 number and whether any request for delegation was denied and
8 the justification for the denial.

9 (2)(a)1. If a claimant is no longer furnishing labor,
10 services, or materials on a project, a contractor or the
11 contractor's agent or attorney may elect to shorten the
12 prescribed time in this paragraph within which an action to
13 enforce any claim against a payment bond provided pursuant to
14 this section may be commenced by recording in the clerk's
15 office a notice in substantially the following form:

16
17 NOTICE OF CONTEST OF CLAIM
18 AGAINST PAYMENT BOND
19

20
21 To: ...(Name and address of claimant)...

22 You are notified that the undersigned contests your
23 notice of nonpayment, dated,, and served
24 on the undersigned on,, and that the
25 time within which you may file suit to enforce your claim is
26 limited to 60 days after the date of service of this notice.

27
28 DATED on,

29
30
31 Signed:...(Contractor or Attorney)...

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2
3 The claim of any claimant upon whom such notice is served and
4 who fails to institute a suit to enforce his or her claim
5 against the payment bond within 60 days after service of such
6 notice shall be extinguished automatically. The clerk shall
7 mail a copy of the notice of contest to the claimant at the
8 address shown in the notice of nonpayment or most recent
9 amendment thereto and shall certify to such service on the
10 face of such notice and record the notice. Service is complete
11 upon mailing.

12 2. A claimant, except a laborer, who is not in privity
13 with the contractor shall, before commencing or not later than
14 45 days after commencing to furnish labor, materials, or
15 supplies for the prosecution of the work, furnish the
16 contractor with a notice that he or she intends to look to the
17 bond for protection. A claimant who is not in privity with the
18 contractor and who has not received payment for his or her
19 labor, materials, or supplies shall deliver to the contractor
20 and to the surety written notice of the performance of the
21 labor or delivery of the materials or supplies and of the
22 nonpayment. The notice of nonpayment may be served at any time
23 during the progress of the work or thereafter but ~~not before~~
24 ~~45 days after the first furnishing of labor, services, or~~
25 ~~materials, and~~ not later than 90 days after the final
26 furnishing of the labor, services, or materials by the
27 claimant or, with respect to rental equipment, not later than
28 90 days after the date that the rental equipment was last on
29 the job site available for use. No action for the labor,
30 materials, or supplies may be instituted against the
31 contractor or the surety unless both notices have been given.

1 Notices required or permitted under this section may be served
2 in accordance with s. 713.18. An action, except for an action
3 exclusively for recovery of retainage, must be instituted
4 against the contractor or the surety on the payment bond or
5 the payment provisions of a combined payment and performance
6 bond within 1 year after the performance of the labor or
7 completion of delivery of the materials or supplies. An action
8 exclusively for recovery of retainage must be instituted
9 against the contractor or the surety within 1 year after the
10 performance of the labor or completion of delivery of the
11 materials or supplies, or within 90 days after ~~the~~
12 ~~contractor's~~ receipt of final payment (or the payment estimate
13 containing the owner's final reconciliation of quantities if
14 no further payment is earned and due as a result of deductive
15 adjustments) by the contractor or surety, whichever comes
16 last. A claimant may not waive in advance his or her right to
17 bring an action under the bond against the surety. In any
18 action brought to enforce a claim against a payment bond under
19 this section, the prevailing party is entitled to recover a
20 reasonable fee for the services of his or her attorney for
21 trial and appeal or for arbitration, in an amount to be
22 determined by the court, which fee must be taxed as part of
23 the prevailing party's costs, as allowed in equitable actions.
24 The time periods for service of a notice of nonpayment or for
25 bringing an action against a contractor or a surety shall be
26 measured from the last day of furnishing labor, services, or
27 materials by the claimant and shall not be measured by other
28 standards, such as the issuance of a certificate of occupancy
29 or the issuance of a certificate of substantial completion.
30 Section 9. Section 715.12, Florida Statutes, is
31 amended to read:

1 715.12 Construction Contract Prompt Payment Law.--

2 (1) This section may be cited as the "Construction
3 Contract Prompt Payment Law."

4 (2) This section applies only to written contracts to
5 improve real property entered into after December 31, 1992,
6 and for which a construction lien or claim against the payment
7 bond is authorized under part I of chapter 713.

8 (3) The terms used in this section have the same
9 definitions as the terms defined in s. 713.01. As used in
10 this section, the term:

11 (a) "Obligor" means an owner, contractor,
12 subcontractor, or sub-subcontractor who has an obligation to
13 make payments under a contract that is subject to this
14 section.

15 (b) "Obligee" means a contractor, subcontractor,
16 sub-subcontractor, or materialman who is entitled to receive
17 payments under a contract that is subject to this section.

18 (c) "Chain of contracts" means the contracts between
19 the owner and the contractor, the contractor and any
20 subcontractor or materialman, the subcontractor and any
21 sub-subcontractor or materialman, and the sub-subcontractor
22 and any materialman.

23 (d) "Payment request" means an obligee's written
24 request for payment for labor, services, and materials
25 provided through a date certain.

26 (4) Payment is due from an obligor to ~~must pay~~ an
27 obligee with whom the obligor has a contract within 10 days
28 after the date ~~when~~ all of the following events have occurred:

29 (a) The obligee is entitled to a payment at the time
30 and under the terms specified in the contract between the
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1 obligor and the obligee, and the obligee has furnished the
2 obligor with a written payment request ~~for payment~~; and
3 (b) The obligor, except an owner, has been paid for
4 the obligee's labor, services, or materials described in the
5 obligee's payment request ~~for payment~~ by the person
6 immediately above the obligor in the chain of contracts; and
7 (c) The obligee has furnished the obligor with all
8 affidavits or waivers required for the owner to make proper
9 payments under s. 713.06. This provision shall not be
10 interpreted to require an obligee to waive lien rights or bond
11 rights in advance of receiving payment.
12 (5)(a) Any payment due under the provisions of this
13 section ~~subsection (4)~~, excluding any amounts withheld
14 pursuant to subsection ~~(10)(7)~~, shall bear interest at the
15 rate of 1 percent per month or the rate specified in the
16 contract, whichever is greater ~~specified in s. 55.03~~, computed
17 beginning on the 10th ~~14th~~ day after payment is due pursuant
18 to subsection (4).
19 (b) If the payment request ~~for payment~~ is incomplete
20 or contains an error, the obligor has 10 ~~14~~ days within which
21 to return the payment request ~~for payment~~ to the obligee for
22 completion or correction. The obligor must specify in writing
23 the reasons for the return of the payment request and the
24 action necessary to correct the payment request for payment.
25 If the obligor does not return the payment request ~~for~~
26 ~~payment~~, together with the specified reasons within 10 days
27 after the obligor's receipt of the payment refusal ~~the time~~
28 ~~provided in paragraph (a)~~, the obligor must pay interest as
29 provided in paragraph (a). If the obligor does return the
30 payment request ~~for payment~~ within the time provided in this
31 ~~paragraph(a)~~, the time period for computing interest begins

1 to run on the 10th ~~14th~~ day after the obligor receives a
2 corrected payment request which corrects the deficiency
3 specified in writing by the obligor,~~request for payment is~~
4 ~~completed or corrected~~ and payment is otherwise due pursuant
5 to subsection (4).

6 (6)(a) The right to receive interest on a payment
7 under this section is not an exclusive remedy. This section
8 does not modify the remedies available to any person under the
9 terms of a contract or under any other statute. This section
10 does not modify the rights of any person to recover
11 prejudgment interest awarded to the prevailing party in any
12 civil action or arbitration case. ~~During the period that~~
13 ~~interest accrues under this section, the interest rate shall~~
14 ~~be the rate specified in s. 55.03 or the rate specified in the~~
15 ~~contract, whichever is greater.~~A person shall not be entitled
16 to receive both the contract interest and the statutory
17 interest specified in this section.

18 ~~(b) This section does not create a separate cause of~~
19 ~~action other than for the collection of interest due pursuant~~
20 ~~to subsection (5).~~

21 (b)(c) If an obligor pays an amount less than the full
22 amount due under the contract between the obligor and the
23 obligee, the obligor may designate the portion of the labor,
24 services, or materials to which the payment applies. In the
25 absence of such a designation by the obligor, the obligee may
26 apply the payment in any manner the obligee deems appropriate.
27 This paragraph does not modify the obligation to make or
28 demand a designation under the provisions of s. 713.14.

29 (c)(d) An obligee may not waive the right to receive
30 interest before a payment is due under a contract subject to
31 this section. An obligee may waive the interest due on any

1 late payment on or after the date the payment is due ~~under~~
2 ~~subsection (4)~~.

3 ~~(d)(e) Unless the contract specifically provides to~~
4 ~~the contrary,~~A dispute between an obligor and obligee does
5 not permit the obligor to withhold any payment due under this
6 section, including payment of retainage, payment from the
7 obligee or from any other obligee for labor, services, or
8 materials provided to the obligor and which are not subject to
9 or affected by the dispute.

10 (e) An obligor shall not withhold any payment due
11 under this section, including payment of retainage, for work
12 which is not included on the initial punchlist or defective
13 work list and is covered under a warranty of the obligee, any
14 other obligee, or a manufacturer.

15 ~~(7)(a)~~ An owner and a contractor may agree to a
16 provision that allows the owner to withhold a portion of each
17 progress payment, which shall be released as follows:

18 (a) If the contractor has provided a payment bond for
19 the work to be performed, the amount retained shall not exceed
20 5 percent of the amount to be paid pursuant to the payment
21 request. Each individual subcontract shall be considered a
22 separate division of the contract for purposes of release of
23 retained amounts, and the owner shall release all retained
24 amounts for each subcontract within 30 days after the date the
25 owner receives a notice of completion for that subcontract.

26 (b) If the contractor has not provided a payment bond
27 for the work to be performed, the owner may withhold a portion
28 of each progress payment until substantial completion of the
29 entire project, and shall pay the balance of all moneys owed
30 on the project in accordance with subsection (8).

31

1 (c) A notice of completion shall be in substantially
2 the following form:

3 NOTICE OF COMPLETION

4 NOTICE IS HEREBY GIVEN that:

5 1. The undersigned is an owner or officer of a
6 contractor/subcontractor who has made improvements to the
7 following-described property located in ... County, Florida:

8 a. Street address, if known:

9 b. Legal description of the property, if known:

10 c. Description of the project:

11 2. The full name of the undersigned
12 contractor/subcontractor is:

13 3. The complete address of the undersigned
14 contractor/subcontractor is:

15 4. The amount of money remaining due the undersigned
16 contractor/subcontractor, including retainage, is \$.....

17 5. The name of the party with whom the undersigned
18 contracted:

19 6. The contractor's/subcontractor's work was completed
20 on ...[date completed]...

21 The undersigned certifies that he/she is the ...[insert
22 owner or title of corporate officer]... of the undersigned
23 contractor/subcontractor, has read the foregoing Notice of
24 Completion, and the facts stated herein are true and correct.

25 DATED

26

27 Signature of Owner/Corporate Officer

28

29 Printed Name of Owner/Corporate Officer

30 (d) For construction projects that are built in
31 phases, each phase shall be treated as a separate contract for

1 purposes of release of retained amounts pursuant to this
2 subsection, and retained amounts shall be released within 30
3 days after the date the owner receives a notice of completion
4 for the work performed by the subcontractor on that phase of
5 the project.

6 (e) A prime contractor shall retain no greater
7 percentage from a subcontractor than the owner is retaining
8 from the prime contractor for the subcontractor's work, and
9 shall release all retained amounts to the subcontractor within
10 10 days after receiving the retained amounts from the owner.

11 A subcontractor shall retain no greater percentage from a
12 sub-subcontractor than the contractor is retaining from the
13 subcontractor for the sub-subcontractor's work, and shall
14 release all retained amounts to the sub-subcontractor within
15 10 days after receiving the retained amounts from the
16 contractor.

17 (f) Any payment of retainage provided for in this
18 section which has not been made within 10 days after the due
19 date specified in this subsection shall bear interest at the
20 rate of 1 percent per month or the rate specified by contract,
21 whichever is greater, calculated from the date the payment is
22 due until the date the payment is made. This interest cannot
23 be waived, by contract or otherwise, prior to the date of
24 payment.

25 (8) An ~~The~~ owner shall pay a ~~the~~ contractor the
26 balance of the contract price, including all remaining ~~the~~
27 amounts withheld from the progress payments, within 14 days
28 after any of the following events occur:-

29 (a)~~1-~~ Pursuant to the terms of the contract, an
30 architect or engineer certifies that the project is
31 substantially complete and, within the time provided in the

1 contract between the owner and the contractor, the owner
2 submits a written punchlist to the contractor and the
3 contractor substantially completes all of the items on the
4 punchlist.

5 (b)2. The issuance of a certificate of occupancy for
6 the project, and within the time provided in the contract
7 between the owner and the contractor, the owner submits a
8 written punchlist to the contractor and the contractor
9 substantially completes all of the items on the punchlist.

10 (c)3. The owner or a tenant of the owner takes
11 possession of the construction project and, within the time
12 provided in the contract between the owner and the contractor,
13 the owner submits a written punchlist to the contractor and
14 the contractor substantially completes all of the items on the
15 punchlist.

16
17 Any funds retained by the owner beyond the time period
18 specified in this subsection shall accrue interest at the rate
19 specified in subsection (5), computed from the date the
20 payment is due to the date the payment is received by the
21 contractor. If the contract between the owner and the
22 contractor does not provide a time period for the owner to
23 submit a written punchlist to the contractor, the time period
24 shall be 15 days from the issuance of the certificate of
25 substantial completion, the issuance of the certificate of
26 occupancy, or the date the owner or the owner's tenant takes
27 possession of the project, whichever first occurs. If no
28 written punchlist is given to the contractor within the time
29 provided in this subsection, interest begins to accrue 14 days
30 after the issuance of the certificate of substantial
31 completion, the issuance of the certificate of occupancy, or

1 the date the owner or the owner's tenant takes possession of
2 the project, whichever first occurs. For construction
3 projects that are to be built in phases, this subsection
4 applies to each phase of the total project. The contract
5 between the owner and the contractor may specify a shorter
6 time period for disbursing all or any portion of the final
7 payment and the retainage.

8 ~~(b) Except as provided in paragraph (a), an obligor~~
9 ~~and obligee may agree to a provision that allows the obligor~~
10 ~~to withhold a portion of each progress payment until~~
11 ~~completion of the entire project. The amounts withheld shall~~
12 ~~bear interest 14 days after payment of such amounts are due~~
13 ~~under the terms of the contract between the obligor and~~
14 ~~obligee and the other requirements of subsection (4) have been~~
15 ~~satisfied.~~

16 (9)(c) An obligee may, from time to time, withdraw all
17 or any portion of the amount retained from progress payments
18 upon depositing with the obligor:

- 19 1. United States Treasury bonds, United States
- 20 Treasury notes, United States Treasury certificates of
- 21 indebtedness, or United States Treasury bills;
- 22 2. Bonds or notes of the State of Florida; or
- 23 3. Certificates of deposit, within the insured limits,
- 24 from a state or national bank or state or federal savings and
- 25 loan association authorized to do business in this state.

26
27 Amounts may not be withdrawn in excess of the market value of
28 the securities listed in subparagraphs 1., 2., and 3. at the
29 time of such withdrawal or in excess of the par value of such
30 securities, whichever is less. The obligee shall execute and
31 deliver all documents reasonably required to allow the obligor

1 to document the transfer and the obligee shall pay any
2 recording or registration costs incurred by the obligor in
3 connection with the transfer. The obligor shall pay the
4 obligee any interest or income earned on the securities so
5 deposited within 30 days after the date such interest or
6 income is received by the obligor. If the deposit is in the
7 form of coupon bonds, the obligor shall deliver each coupon to
8 the obligee within 30 days after the date the coupon matures.
9 An obligee may withdraw funds retained from progress payments
10 only to the extent the obligor has withdrawn such funds for
11 the obligee's labor, services, or materials from the person
12 immediately above the obligor in the chain of contracts.

13 (10) The provisions of this section are not intended
14 to impair the rights of any obligor, in the event of a good
15 faith dispute, to withhold payment from an obligee without
16 incurring any obligation to pay a late payment interest
17 penalty. The obligor shall notify the obligee, in writing, of
18 the amount of payment withheld and the reason for nonpayment.
19 The time for payment of the amounts withheld, and the
20 subsequent calculation of time periods for accrual of late
21 payment interest penalties on the amounts, shall be calculated
22 from the date the obligee notifies the obligor, in writing,
23 that the reason for the good faith dispute has been cured and
24 payment is due. For purposes of this section, a "good faith
25 dispute" means a documented dispute concerning:

- 26 (a) Unsatisfactory job progress;
27 (b) Defective work not remedied;
28 (c) Third-party claims filed or reasonable evidence
29 that claims will be filed;
30 (d) Failure to make timely payments for labor,
31 equipment, or materials;

1 (e) Damage to the owner, the prime contractor, or a
2 subcontractor; or

3 (f) Reasonable evidence that the contract or
4 subcontract cannot be completed for the unpaid balance of the
5 contract or subcontract.

6 (11) In an action for payment of amounts due under
7 this section, the prevailing party shall be entitled to
8 recover court costs and attorney's fees, at trial and on
9 appeal.

10 Section 10. This act shall take effect July 1, 2000,
11 and shall apply to construction contracts entered into on or
12 after the effective date.

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