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A bill to be entitled

An act relating to prompt payment for construction services; amending s. 218.70, F.S.; providing a popular name; amending s. 218.72, F.S.; redefining the term "local governmental entity," as used in pt. VII of ch. 218, F.S., to include community colleges; amending s. 218.735, F.S.; revising provisions relating to timely payment for purchases of construction services; revising deadlines for payment; providing procedures for project closeout and payment of retainage; providing requirements for local government construction retainage; providing that ss. 218.72-218.76, F.S., apply to the payment of any payment request for retainage; creating s. 255.0705, F.S.; providing a popular name; amending s. 255.071, F.S.; revising deadlines for the payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects; creating ss. 255.072, 255.073, 255.074, 255.075, 255.076, 255.077, and 255.078, F.S.; providing definitions; providing for timely payment for purchases of construction services by a public entity; providing procedures for calculating payment due dates; allowing collection of interest; providing procedures for handling improper payment requests; providing for the resolution of disputes; providing for project closeout and payment of retainage; providing for public construction retainage; providing that ss. 255.072-255.076, F.S., apply to the payment of any payment request for retainage; amending s. 255.05, F.S.; providing requirements for certain notices of nonpayment served by a claimant who is not in privity with the contractor; providing limitations



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31 on a claimant's institution of certain actions against a  
 32 contractor or surety; providing for the tolling of a  
 33 statute of limitations for bringing suit against a  
 34 contractor or surety; providing an effective date.

35  
 36 Be It Enacted by the Legislature of the State of Florida:

37  
 38 Section 1. Section 218.70, Florida Statutes, is amended to  
 39 read:

40 218.70 Popular name ~~Short title~~.--This part shall be known  
 41 by the popular name ~~may be cited as~~ the "Local Government  
 42 ~~Florida~~ Prompt Payment Act."

43 Section 2. Subsection (2) of section 218.72, Florida  
 44 Statutes, is amended to read:

45 218.72 Definitions.--As used in this part:

46 (2) "Local governmental entity" means a county or  
 47 municipal government, school board, school district, authority,  
 48 special taxing district, other political subdivision, community  
 49 college, or any office, board, bureau, commission, department,  
 50 branch, division, or institution thereof or any project  
 51 supported by county or municipal funds.

52 Section 3. Subsection (6) of section 218.735, Florida  
 53 Statutes, is amended, present subsection (7) is renumbered as  
 54 subsection (9), and new subsections (7) and (8) are added to  
 55 said section, to read:

56 218.735 Timely payment for purchases of construction  
 57 services.--

58 (6) When a contractor receives payment from a local  
 59 governmental entity for labor, services, or materials furnished  
 60 by subcontractors and suppliers hired by the contractor, the



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61 contractor shall remit payment due to those subcontractors and  
62 suppliers within 10 ~~15~~ days after the contractor's receipt of  
63 payment. When a subcontractor receives payment from a contractor  
64 for labor, services, or materials furnished by subcontractors  
65 and suppliers hired by the subcontractor, the subcontractor  
66 shall remit payment due to those subcontractors and suppliers  
67 within 10 ~~15~~ days after the subcontractor's receipt of payment.  
68 Nothing herein shall prohibit a contractor or subcontractor from  
69 disputing, pursuant to the terms of the relevant contract, all  
70 or any portion of a payment alleged to be due to another party.  
71 In the event of such a dispute, the contractor or subcontractor  
72 may withhold the disputed portion of any such payment if the  
73 contractor or subcontractor notifies the party whose payment is  
74 disputed, in writing, of the amount in dispute and the actions  
75 required to cure the dispute. The contractor or subcontractor  
76 must pay all undisputed amounts due within the time limits  
77 imposed by this section.

78 (7)(a) A local governmental entity must present to the  
79 vendor a final punch list of all items required to render  
80 complete, satisfactory, and acceptable the construction services  
81 purchased, within 30 days after the earliest of the following:

82 1. Issuance of a temporary or final certificate of  
83 occupancy, if applicable;

84 2. Substantial completion of the construction services  
85 purchased, as defined in the contract; or

86 3. Beneficial occupancy or use of the structure, building,  
87 or facility that is the subject of the construction services  
88 purchased, as defined in the contract.

89 (b) If the purchase relates to construction services on  
90 more than one building or structure, the local governmental



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91 entity shall prepare a final punch list for each building or  
92 structure. The local governmental entity must present to the  
93 vendor a final punch list with regard to each building or  
94 structure within 30 days after the earliest of the following:

95 1. Issuance of a temporary or final certificate of  
96 occupancy on the particular building or structure, if  
97 applicable;

98 2. Substantial completion of the particular building or  
99 structure, as defined in the contract; or

100 3. Beneficial occupancy or use of the particular  
101 structure, building or facility, as defined in the contract.

102  
103 Unless the contract provides otherwise, the local governmental  
104 entity shall pay out retainage to the vendor based upon the  
105 value of the construction services rendered with regard to that  
106 structure or building as compared to the total value of the  
107 purchase.

108 (c) Upon completion of all items on the final punch list,  
109 or within 30 days, whichever occurs sooner, the vendor shall  
110 submit a payment request for the appropriate amount of  
111 retainage. Thereafter, this act applies to the payment of any  
112 payment request for retainage.

113 (d) If the local governmental entity fails to present to  
114 the vendor a final punch list within the time periods provided  
115 in paragraph (a) or paragraph (b), the project is considered to  
116 be complete and the vendor shall submit a payment request for  
117 the appropriate amount of retainage. Thereafter, this act  
118 applies to the payment of any payment request for retainage.

119 (e) All items that require correction and that are  
120 identified after the preparation and delivery of the final punch



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121 list must be considered warranty items or make-good items, and  
122 such items have no effect on the final payment of retainage  
123 provided in this section.

124 (8)(a) From the commencement of a local government  
125 construction project that is subject to this act until the  
126 project is 50-percent complete, as defined in the contract  
127 between the local governmental entity and the vendor, a local  
128 governmental entity may not withhold as retainage more than 10  
129 percent of each progress payment to the vendor. At 50-percent  
130 completion, the vendor may submit a payment request to the local  
131 governmental entity for up to one-half of the retainage withheld  
132 up to that time.

133 (b) After 50-percent completion, as defined in the  
134 contract between the local governmental entity and the vendor,  
135 the local governmental entity may not withhold as retainage more  
136 than 5 percent of each progress payment to the vendor. After 50-  
137 percent completion, however, the vendor may withhold retainage  
138 from payments to its subcontractors at a rate higher than 5  
139 percent, upon showing good cause and providing written notice to  
140 the subcontractor. The local governmental entity shall withhold  
141 from each progress payment to the vendor the same dollar amount  
142 of retainage which the vendor is withholding from that payment  
143 from those subcontractors whose work was included in the  
144 corresponding payment request.

145 (c) This section does not require the payment or release  
146 of amounts that are the subject of a good-faith dispute.

147 (d) This act applies to the payment of any payment request  
148 for retainage.

149 Section 4. Section 255.0705, Florida Statutes, is created  
150 to read:



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151 255.0705 Popular name.--Sections 255.0705-255.078 shall be  
 152 known by the popular name the "Florida Prompt Payment Act."

153 Section 5. Subsections (2) and (3) of section 255.071,  
 154 Florida Statutes, are amended to read:

155 255.071 Payment of subcontractors, sub-subcontractors,  
 156 materialmen, and suppliers on construction contracts for public  
 157 projects.--

158 (2) The failure to pay any undisputed obligations for such  
 159 labor, services, or materials within 30 days after the date the  
 160 labor, services, or materials were furnished and payment for  
 161 such labor, services, or materials became due, or within 10 ~~30~~  
 162 days after the date payment for such labor, services, or  
 163 materials is received, whichever last occurs, shall entitle any  
 164 person providing such labor, services, or materials to the  
 165 procedures specified in subsection (3) and the remedies provided  
 166 in subsection(4).

167 (3) Any person providing labor, services, or materials for  
 168 the construction of a public building, for the prosecution and  
 169 completion of a public work, or for repairs upon a public  
 170 building or public work improvements to real property may file a  
 171 verified complaint alleging:

172 (a) The existence of a contract for providing such labor,  
 173 services, or materials to improve real property.

174 (b) A description of the labor, services, or materials  
 175 provided and alleging that the labor, services, or materials  
 176 were provided in accordance with the contract.

177 (c) The amount of the contract price.

178 (d) The amount, if any, paid pursuant to the contract.

179 (e) The amount that remains unpaid pursuant to the  
 180 contract and the amount thereof that is undisputed.



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181 (f) That the undisputed amount has remained due and  
 182 payable pursuant to the contract for more than 30 days after the  
 183 date the labor or services were accepted or the materials were  
 184 received.

185 (g) That the person against whom the complaint was filed  
 186 has received payment on account of the labor, services, or  
 187 materials described in the complaint more than 10 ~~30~~ days prior  
 188 to the date the complaint was filed.

189 Section 6. Section 255.072, Florida Statutes, is created  
 190 to read:

191 255.072 Definitions.--As used in ss. 255.073-255.078, the  
 192 term:

193 (1) "Agent" means project architect, project engineer, or  
 194 any other agency or person acting on behalf of a public entity.

195 (2) "Construction services" means all labor, services, and  
 196 materials provided in connection with the construction,  
 197 alteration, repair, demolition, reconstruction, or any other  
 198 improvements to real property that require a license under part  
 199 I or part II of chapter 489.

200 (3) "Payment request" means an invoice or request for  
 201 payment for construction services which conforms with all  
 202 statutory requirements and with all requirements specified by  
 203 the public entity to which the payment request is submitted.

204 (4) "Public entity" means the state, a state university,  
 205 or any office, board, bureau, commission, department, branch,  
 206 division, or institution thereof, or any project supported by  
 207 state funds.

208 (5) "Purchase" means the purchase of construction  
 209 services.



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210 (6) "Vendor" means any person providing construction  
211 services to a public entity.

212 Section 7. Section 255.073, Florida Statutes, is created  
213 to read:

214 255.073 Timely payment for purchases of construction  
215 services.--

216 (1) Except as otherwise provided in ss. 255.072-255.078,  
217 s. 215.422 governs the timely payment for construction services  
218 by a public entity under this act.

219 (2) If a public entity disputes a portion of a payment  
220 request, the undisputed portion must be timely paid, in  
221 accordance with subsection (1).

222 (3) When a vendor receives payment from a public entity  
223 for labor, services, or materials furnished by subcontractors  
224 and suppliers hired by the vendor, the vendor shall remit  
225 payment due to those subcontractors and suppliers within 10 days  
226 after the vendor's receipt of payment. When a subcontractor  
227 receives payment from a vendor for labor, services, or materials  
228 furnished by subcontractors and suppliers hired by the  
229 subcontractor, the subcontractor shall remit payment due to  
230 those subcontractors and suppliers within 10 days after the  
231 subcontractor's receipt of payment. This subsection does not  
232 prohibit a vendor or subcontractor from disputing, pursuant to  
233 the terms of the relevant contract, all or any portion of a  
234 payment alleged to be due to another party. If such a dispute  
235 occurs, the vendor or subcontractor may withhold the disputed  
236 portion of any such payment if the vendor or subcontractor  
237 notifies the party whose payment is disputed, in writing, of the  
238 amount in dispute and the actions required to cure the dispute.





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239 The vendor or subcontractor must pay all undisputed amounts due  
 240 within the time limits imposed by this section.

241 (4) All payments due under this section and not made  
 242 within the time periods specified by this section shall bear  
 243 interest at the rate of 1 percent per month, or the rate  
 244 specified by contract, whichever is greater.

245 Section 8. Section 255.074, Florida Statutes, is created  
 246 to read:

247 255.074 Procedures for calculation of payment due dates.--

248 (1) Each public entity shall establish procedures whereby  
 249 each payment request received by the public entity is marked as  
 250 received on the date on which it is delivered to an agent or  
 251 employee of the public entity or of a facility or office of the  
 252 public entity.

253 (2) If the terms under which a purchase is made allow for  
 254 partial deliveries and a payment request is submitted for a  
 255 partial delivery, the time for payment for the partial delivery  
 256 must be calculated from the time of the partial delivery and the  
 257 submission of the payment request in the same manner as provided  
 258 in s. 255.073.

259 (3) The public entity must submit a payment request to the  
 260 Chief Financial Officer for payment no more than 25 days after  
 261 receipt of the payment request.

262 Section 9. Section 255.075, Florida Statutes, is created  
 263 to read:

264 255.075 Mandatory interest.--A contract between a public  
 265 entity and a vendor or a provider of construction services may  
 266 not prohibit the collection of late payment interest charges  
 267 allowable under ss. 255.072-255.078.



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268 Section 10. Section 255.076, Florida Statutes, is created  
269 to read:

270 255.076 Improper payment request; resolution of  
271 disputes.--

272 (1) If a vendor submits an improper payment request, the  
273 public entity shall, within 10 days after receiving the improper  
274 payment request, notify the vendor that the payment request is  
275 improper and indicate what corrective action on the part of the  
276 vendor is needed to make the payment request proper.

277 (2) If a dispute occurs between a vendor and a public  
278 entity concerning payment of a payment request, the dispute must  
279 be resolved as provided in this section. Each public entity  
280 shall establish a dispute resolution procedure to be followed by  
281 the public entity if such a dispute occurs. The procedure must  
282 provide that proceedings to resolve the dispute must commence  
283 not later than 45 days after the date on which the public entity  
284 received the payment request and must conclude by final decision  
285 of the public entity not later than 60 days after the date on  
286 which the public entity received the payment request. Such  
287 procedures are not subject to chapter 120 and do not constitute  
288 an administrative proceeding that prohibits a court from  
289 deciding de novo any action arising out of the dispute. If the  
290 dispute is resolved in favor of the public entity, interest  
291 charges begin to accrue 15 days after the public entity's final  
292 decision. If the dispute is resolved in favor of the vendor,  
293 interest begins to accrue as of the original date the payment  
294 became due.

295 (3) In an action to recover amounts due under ss. 255.072-  
296 255.078, the court shall award court costs and reasonable  
297 attorney's fees, including fees incurred through any appeal, to



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298 the prevailing party, if the court finds that the nonprevailing  
299 party withheld any portion of the payment that is the subject of  
300 the action without any reasonable basis in law or fact to  
301 dispute the prevailing party's claim to those amounts.

302 Section 11. Section 255.077, Florida Statutes, is created  
303 to read:

304 255.077 Project closeout and payment of retainage.--

305 (1) A public entity must present to the vendor a final  
306 punch list of all items required to render complete,  
307 satisfactory, and acceptable the construction services  
308 purchased, within 30 days after the earliest of the following:

309 (a) Issuance of a temporary or final certificate of  
310 occupancy, if applicable;

311 (b) Substantial completion of the construction services  
312 purchased, as defined in the contract; or

313 (c) Beneficial occupancy or use of the structure,  
314 building, or facility that is the subject of the construction  
315 services purchased, as defined in the contract.

316 (2) If the purchase relates to construction services on  
317 more than one building or structure, the public entity shall  
318 prepare a final punch list for each building or structure. The  
319 public entity must present to the vendor a final punch list with  
320 regard to each building or structure within 30 days after the  
321 earliest of the following:

322 (a) Issuance of a temporary or final certificate of  
323 occupancy on the particular building or structure, if  
324 applicable;

325 (b) Substantial completion of the particular building or  
326 structure, as defined in the contract; or



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327 (c) Beneficial occupancy or use of the particular  
328 structure, building, or facility, as defined in the contract.

329  
330 Unless the contract provides otherwise, the public entity shall  
331 pay out retainage to the vendor based upon the value of the  
332 construction services rendered with regard to that structure or  
333 building as compared to the total value of the purchase.

334 (3) Upon completion of all items on the final punch list  
335 or within 30 days, whichever occurs sooner, the vendor shall  
336 submit a payment request for the appropriate amount of  
337 retainage. Thereafter, ss. 255.072-255.076 apply to the payment  
338 of any payment request for retainage.

339 (4) If the public entity fails to present to the vendor a  
340 final punch list within the time periods provided in subsection  
341 (1) or subsection (2), the project is considered to be complete  
342 and the vendor shall submit a payment request for the  
343 appropriate amount of retainage. Thereafter, ss. 255.072-255.076  
344 apply to the payment of any payment request for retainage.

345 (5) All items that require correction which are identified  
346 subsequent to preparation and delivery of the final punch list  
347 must be considered warranty items or make-good items, and such  
348 items have no effect on the final payment of retainage provided  
349 in this section.

350 Section 12. Section 255.078, Florida Statutes, is created  
351 to read:

352 255.078 Public construction retainage.--

353 (1) From the commencement of a public construction project  
354 that is subject to ss. 255.072-255.078 until the project is 50-  
355 percent complete, as defined in the contract between the public  
356 entity and the vendor, a public entity may not withhold as



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357 retainage more than 10 percent of each progress payment to the  
358 vendor. At 50-percent completion, the vendor may submit a  
359 payment request to the public entity for up to one-half of the  
360 retainage withheld up to that time.

361 (2) After 50-percent completion, as defined in the  
362 contract between the public entity and the vendor, the public  
363 entity may not withhold as retainage more than 5 percent of each  
364 progress payment to the vendor. After 50-percent completion,  
365 however, the vendor may withhold retainage from payments to its  
366 subcontractors at a rate higher than 5 percent, upon showing  
367 good cause and providing written notice to the subcontractor.  
368 The public entity shall withhold from each progress payment to  
369 the vendor the same dollar amount of retainage the vendor is  
370 withholding from that payment from those subcontractors whose  
371 work was included in the corresponding payment request.

372 (3) This section does not require the payment or release  
373 of amounts that are the subject of a good-faith dispute.

374 (4) Sections 255.072-255.076 apply to the payment of any  
375 payment request for retainage.

376 Section 13. Paragraph (a) of subsection (2) of section  
377 255.05, Florida Statutes, is amended, and subsections (10) and  
378 (11) are added to said section, to read:

379 255.05 Bond of contractor constructing public buildings;  
380 form; action by materialmen.--

381 (2)(a)1. If a claimant is no longer furnishing labor,  
382 services, or materials on a project, a contractor or the  
383 contractor's agent or attorney may elect to shorten the  
384 prescribed time in this paragraph within which an action to  
385 enforce any claim against a payment bond provided pursuant to



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386 this section may be commenced by recording in the clerk's office  
 387 a notice in substantially the following form:

389 NOTICE OF CONTEST OF CLAIM  
 390 AGAINST PAYMENT BOND

391  
 392 To: . . . (Name and address of claimant) . . .

393  
 394 You are notified that the undersigned contests your notice  
 395 of nonpayment, dated \_\_\_\_\_, \_\_\_\_\_, and served on the  
 396 undersigned on \_\_\_\_\_, \_\_\_\_\_, and that the time within  
 397 which you may file suit to enforce your claim is limited to 60  
 398 days after the date of service of this notice.

399  
 400 DATED on \_\_\_\_\_, \_\_\_\_\_.

401  
 402  
 403 Signed: . . . (Contractor or Attorney) . . .

404  
 405 The claim of any claimant upon whom such notice is served and  
 406 who fails to institute a suit to enforce his or her claim  
 407 against the payment bond within 60 days after service of such  
 408 notice shall be extinguished automatically. The clerk shall mail  
 409 a copy of the notice of contest to the claimant at the address  
 410 shown in the notice of nonpayment or most recent amendment  
 411 thereto and shall certify to such service on the face of such  
 412 notice and record the notice. Service is complete upon mailing.

413 2. A claimant, except a laborer, who is not in privity  
 414 with the contractor shall, before commencing or not later than  
 415 45 days after commencing to furnish labor, materials, or



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416 supplies for the prosecution of the work, furnish the contractor  
417 with a notice that he or she intends to look to the bond for  
418 protection. A claimant who is not in privity with the contractor  
419 and who has not received payment for his or her labor,  
420 materials, or supplies shall deliver to the contractor and to  
421 the surety written notice of the performance of the labor or  
422 delivery of the materials or supplies and of the nonpayment. The  
423 notice of nonpayment may be served at any time during the  
424 progress of the work or thereafter but not before 45 days after  
425 the first furnishing of labor, services, or materials, and not  
426 later than 90 days after the final furnishing of the labor,  
427 services, or materials by the claimant or, with respect to  
428 rental equipment, not later than 90 days after the date that the  
429 rental equipment was last on the job site available for use. Any  
430 notice of nonpayment served by a claimant who is not in privity  
431 with the contractor which includes sums for retainage must  
432 specify the portion of the amount claimed for retainage. No  
433 action for the labor, materials, or supplies may be instituted  
434 against the contractor or the surety unless both notices have  
435 been given. Notices required or permitted under this section may  
436 be served in accordance with s. 713.18. An action, except for an  
437 action exclusively for recovery of retainage, must be instituted  
438 against the contractor or the surety on the payment bond or the  
439 payment provisions of a combined payment and performance bond  
440 within 1 year after the performance of the labor or completion  
441 of delivery of the materials or supplies. An action exclusively  
442 for recovery of retainage must be instituted against the  
443 contractor or the surety within 1 year after the performance of  
444 the labor or completion of delivery of the materials or  
445 supplies, or within 90 days after receipt of final payment (or



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446 the payment estimate containing the owner's final reconciliation  
447 of quantities if no further payment is earned and due as a  
448 result of deductive adjustments) by the contractor or surety,  
449 whichever comes last. A claimant may not waive in advance his or  
450 her right to bring an action under the bond against the surety.  
451 In any action brought to enforce a claim against a payment bond  
452 under this section, the prevailing party is entitled to recover  
453 a reasonable fee for the services of his or her attorney for  
454 trial and appeal or for arbitration, in an amount to be  
455 determined by the court, which fee must be taxed as part of the  
456 prevailing party's costs, as allowed in equitable actions. The  
457 time periods for service of a notice of nonpayment or for  
458 bringing an action against a contractor or a surety shall be  
459 measured from the last day of furnishing labor, services, or  
460 materials by the claimant and shall not be measured by other  
461 standards, such as the issuance of a certificate of occupancy or  
462 the issuance of a certificate of substantial completion.

463 (10) Notwithstanding any other provision of law to the  
464 contrary, a claimant may not institute an action for the sole  
465 purpose of recovery of retainage against the contractor or  
466 against the surety issuing a payment or performance bond  
467 pursuant to this section until:

468 (a) The public entity has paid out that retainage to the  
469 contractor and the time provided under ss. 218.70-218.76 or ss.  
470 255.072-255.078 for payment of that retainage to the claimant  
471 has expired; or

472 (b) The claimant has completed all work under its  
473 contract, including the items identified on the owner's final  
474 punch list, and 60 days have passed since the owner's receipt of  
475 the contractor's final payment request.





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476           (11) Notwithstanding any other provision of law to the  
477 contrary, the statute of limitations for bringing suit against a  
478 contractor or a surety shall not run if the contractor has  
479 failed to comply with the payment provisions set forth in ss.  
480 255.072-255.078.

481           Section 14. This act shall take effect July 1, 2003.