



CHAMBER ACTION

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The Committee on Local Government & Veterans' Affairs recommends the following:

Committee Substitute

Remove the entire bill and insert:

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 terms used in pt. VII of ch. 218, F.S.; 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



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29 | for purchases of construction services by a public entity;
30 | providing procedures for calculating payment due dates;
31 | permitting collection of interest; providing procedures
32 | for handling improper payment requests; providing for the
33 | resolution of disputes; providing for project closeout and
34 | payment of retainage; providing for public construction
35 | retainage; providing that ss. 255.072-255.076, F.S., apply
36 | to the payment of any payment request for retainage;
37 | amending s. 255.05, F.S.; providing requirements for
38 | certain notices of nonpayment served by a claimant who is
39 | not in privity with the contractor; providing limitations
40 | on a claimant's institution of certain actions against a
41 | contractor or surety; providing for the tolling of a
42 | statute of limitations for bringing suit against a
43 | contractor or surety; providing for liability; providing
44 | an effective date.

45

46 | Be It Enacted by the Legislature of the State of Florida:

47

48 | Section 1. Section 218.70, Florida Statutes, is amended to
49 | read:

50 | 218.70 Popular name ~~Short title~~.--This part shall be known
51 | by the popular name ~~may be cited as~~ the "Local Government
52 | ~~Florida~~ Prompt Payment Act."

53 | Section 2. Subsections (2), (6), and (7) of section

54 | 218.72, Florida Statutes, are amended to read:

55 | 218.72 Definitions.--As used in this part:



56 (2) "Local governmental entity" means a county or
 57 municipal government, school board, school district, authority,
 58 special taxing district, other political subdivision, community
 59 college, or any office, board, bureau, commission, department,
 60 branch, division, or institution thereof or any project
 61 supported by county or municipal funds.

62 (6) "Vendor" means any person who sells goods or services,
 63 sells or leases personal property, or leases real property
 64 directly to a local governmental entity.

65 (7) "Construction services" means all labor, services, and
 66 materials provided in connection with the construction,
 67 alteration, repair, demolition, reconstruction, or any other
 68 improvements to real property ~~that require a license under parts~~
 69 ~~I and II of chapter 489.~~

70 Section 3. Subsection (6) of section 218.735, Florida
 71 Statutes, is amended, present subsection (7) is renumbered as
 72 subsection (9), and new subsections (7) and (8) are added to
 73 said section, to read:

74 218.735 Timely payment for purchases of construction
 75 services.--

76 (6) When a contractor receives payment from a local
 77 governmental entity for labor, services, or materials furnished
 78 by subcontractors and suppliers hired by the contractor, the
 79 contractor shall remit payment due to those subcontractors and
 80 suppliers within 10 ~~15~~ days after the contractor's receipt of
 81 payment. When a subcontractor receives payment from a contractor
 82 for labor, services, or materials furnished by subcontractors
 83 and suppliers hired by the subcontractor, the subcontractor



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84 shall remit payment due to those subcontractors and suppliers
85 within 10 ~~15~~ days after the subcontractor's receipt of payment.
86 Nothing herein shall prohibit a contractor or subcontractor from
87 disputing, pursuant to the terms of the relevant contract, all
88 or any portion of a payment alleged to be due to another party.
89 In the event of such a dispute, the contractor or subcontractor
90 may withhold the disputed portion of any such payment if the
91 contractor or subcontractor notifies the party whose payment is
92 disputed, in writing, of the amount in dispute and the actions
93 required to cure the dispute. The contractor or subcontractor
94 must pay all undisputed amounts due within the time limits
95 imposed by this section.

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

100 1. Issuance of a temporary or final certificate of
101 occupancy, if applicable;

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

104 3. Beneficial occupancy or use of the structure, building,
105 facility, or improvement that is the subject of the construction
106 services purchased, as defined in the contract.

107 (b) If the purchase relates to construction services on
108 more than one building or structure, the local governmental
109 entity shall prepare a final punch list for each building or
110 structure. The local governmental entity must present to the



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111 vendor a final punch list with regard to each building or
112 structure within 30 days after the earliest of the following:

113 1. Issuance of a temporary or final certificate of
114 occupancy on the particular building or structure, if
115 applicable;

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

118 3. Beneficial occupancy or use of the particular
119 structure, building, facility, or improvement as defined in the
120 contract.

121

122 Unless the contract provides otherwise, the local governmental
123 entity shall pay out retainage to the vendor based upon the
124 value of the construction services rendered with regard to that
125 structure, building, facility, or improvement as compared to the
126 total value of the purchase.

127 (c) Upon completion of all items on the final punch list,
128 or within 30 days after issuance of the punch list, whichever
129 occurs sooner, the vendor shall submit a payment request for the
130 appropriate amount of retainage. The owner may withhold up to
131 150 percent of the cost to complete any incomplete final punch
132 list items. Thereafter, this act applies to the payment of any
133 payment request for retainage.

134 (d) If the local governmental entity fails to present to
135 the vendor a final punch list within the time periods provided
136 in paragraph (a) or paragraph (b), the project is considered to
137 be complete and the vendor shall submit a payment request for



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138 the appropriate amount of retainage. Thereafter, this act
139 applies to the payment of any payment request for retainage.

140 (e) All items that require correction under the contract
141 and that are identified after the preparation and delivery of
142 the final punch list must be considered warranty items or make-
143 good items, and such items have no effect on the final payment
144 of retainage provided in this section.

145 (8)(a) From the commencement of a local government
146 construction project that is subject to this act until 50
147 percent of the contract value has been earned, a local
148 governmental entity may not withhold as retainage more than 10
149 percent of each progress payment to the vendor. When 50 percent
150 of the contract value has been earned, the vendor may submit a
151 payment request to the local governmental entity for up to one-
152 half of the retainage withheld up to that time.

153 (b) After 50 percent of the contract value has been
154 earned, the local governmental entity may not withhold as
155 retainage more than 5 percent of each progress payment to the
156 vendor. However, the vendor may withhold retainage from payments
157 to its subcontractors at a rate higher than 5 percent. The
158 specific amount to be withheld must be determined on a case-by-
159 case basis and must be based on the vendor's assessment of the
160 subcontractor's past performance, the likelihood that such
161 performance will continue, and the vendor's ability to rely on
162 other safeguards. The vendor shall notify the subcontractor, in
163 writing, of its determination to withhold more than 5 percent of
164 the progress payment and the reasons for making that
165 determination.



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

168 (d) This act applies to the payment of any payment request
 169 for retainage.

170 Section 4. Section 255.0705, Florida Statutes, is created
 171 to read:

172 255.0705 Popular name.--Sections 255.0705-255.078 shall be
 173 known by the popular name the "Florida Prompt Payment Act."

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

176 255.071 Payment of subcontractors, sub-subcontractors,
 177 materialmen, and suppliers on construction contracts for public
 178 projects.--

179 (2) The failure to pay any undisputed obligations for such
 180 labor, services, or materials within 30 days after the date the
 181 labor, services, or materials were furnished and payment for
 182 such labor, services, or materials became due, or within 10 ~~30~~
 183 days after the date payment for such labor, services, or
 184 materials is received, whichever last occurs, shall entitle any
 185 person providing such labor, services, or materials to the
 186 procedures specified in subsection (3) and the remedies provided
 187 in subsection (4).

188 (3) Any person providing labor, services, or materials for
 189 the construction of a public building, for the prosecution and
 190 completion of a public work, or for repairs upon a public
 191 building or public work improvements to real property may file a
 192 verified complaint alleging:



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

195 (b) A description of the labor, services, or materials
196 provided and alleging that the labor, services, or materials
197 were provided in accordance with the contract.

198 (c) The amount of the contract price.

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

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

202 (f) That the undisputed amount has remained due and
203 payable pursuant to the contract for more than 30 days after the
204 date the labor or services were accepted or the materials were
205 received.

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

210 Section 6. Section 255.072, Florida Statutes, is created
211 to read:

212 255.072 Definitions.--As used in ss. 255.073-255.078, the
213 term:

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

216 (2) "Construction services" means all labor, services, and
217 materials provided in connection with the construction,
218 alteration, repair, demolition, reconstruction, or any other
219 improvements to real property. The term "construction services"



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220 does not include contracts or work performed for the Department
221 of Transportation.

222 (3) "Payment request" means an invoice or request for
223 payment for construction services that conforms with all
224 statutory requirements and with all requirements specified by
225 the public entity to which the payment request is submitted.

226 (4) "Public entity" means the state, a state university,
227 or any office, board, bureau, commission, department, branch,
228 division, or institution thereof, or any project supported by
229 state funds.

230 (5) "Purchase" means the purchase of construction
231 services.

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

234 Section 7. Section 255.073, Florida Statutes, is created
235 to read:

236 255.073 Timely payment for purchases of construction
237 services.--

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

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

244 (3) When a vendor receives payment from a public entity
245 for labor, services, or materials furnished by subcontractors
246 and suppliers hired by the vendor, the vendor shall remit
247 payment due to those subcontractors and suppliers within 10 days



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248 after the vendor's receipt of payment. When a subcontractor
249 receives payment from a vendor for labor, services, or materials
250 furnished by subcontractors and suppliers hired by the
251 subcontractor, the subcontractor shall remit payment due to
252 those subcontractors and suppliers within 10 days after the
253 subcontractor's receipt of payment. This subsection does not
254 prohibit a vendor or subcontractor from disputing, pursuant to
255 the terms of the relevant contract, all or any portion of a
256 payment alleged to be due to another party. If such a dispute
257 occurs, the vendor or subcontractor may withhold the disputed
258 portion of any such payment if the vendor or subcontractor
259 notifies the party whose payment is disputed, in writing, of the
260 amount in dispute and the actions required to cure the dispute.
261 The vendor or subcontractor must pay all undisputed amounts due
262 within the time limits imposed by this section.

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

267 Section 8. Section 255.074, Florida Statutes, is created
268 to read:

269 255.074 Procedures for calculation of payment due dates.--

270 (1) Each public entity shall establish procedures whereby
271 each payment request received by the public entity is marked as
272 received on the date on which it is delivered to an agent or
273 employee of the public entity or of a facility or office of the
274 public entity.



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275 (2) If the terms under which a purchase is made allow for
276 partial deliveries and a payment request is submitted for a
277 partial delivery, the time for payment for the partial delivery
278 must be calculated from the time of the partial delivery and the
279 submission of the payment request in the same manner as provided
280 in s. 255.073.

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

284 Section 9. Section 255.075, Florida Statutes, is created
285 to read:

286 255.075 Mandatory interest.--A contract between a public
287 entity and a vendor or a provider of construction services may
288 not prohibit the collection of late payment interest charges
289 allowable under ss. 255.072-255.078.

290 Section 10. Section 255.076, Florida Statutes, is created
291 to read:

292 255.076 Improper payment request; resolution of
293 disputes.--

294 (1) If a vendor submits an improper payment request, the
295 public entity shall, within 10 days after receiving the improper
296 payment request, notify the vendor that the payment request is
297 improper and indicate what corrective action on the part of the
298 vendor is needed to make the payment request proper.

299 (2) If a dispute occurs between a vendor and a public
300 entity concerning payment of a payment request, the dispute must
301 be resolved as provided in this section. Each public entity
302 shall establish a dispute resolution procedure to be followed by



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303 the public entity if such a dispute occurs. The procedure must
304 provide that proceedings to resolve the dispute must commence no
305 later than 45 days after the date on which the public entity
306 received the payment request and must conclude by final decision
307 of the public entity no later than 60 days after the date on
308 which the public entity received the payment request. Such
309 procedures are not subject to chapter 120 and do not constitute
310 an administrative proceeding that prohibits a court from
311 deciding de novo any action arising out of the dispute. If the
312 dispute is resolved in favor of the public entity, interest
313 charges begin to accrue 15 days after the public entity's final
314 decision. If the dispute is resolved in favor of the vendor,
315 interest begins to accrue as of the original date the payment
316 became due.

317 (3) In an action to recover amounts due under ss. 255.072-
318 255.078, the court shall award court costs and reasonable
319 attorney's fees, including fees incurred through any appeal, to
320 the prevailing party if the court finds that the nonprevailing
321 party withheld any portion of the payment that is the subject of
322 the action without any reasonable basis in law or fact to
323 dispute the prevailing party's claim to those amounts.

324 Section 11. Section 255.077, Florida Statutes, is created
325 to read:

326 255.077 Project closeout and payment of retainage.--

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



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331 (a) Issuance of a temporary or final certificate of
332 occupancy, if applicable;

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

335 (c) Beneficial occupancy or use of the structure,
336 building, facility, or improvement that is the subject of the
337 construction services purchased, as defined in the contract.

338 (2) If the purchase relates to construction services on
339 more than one building or structure, the public entity shall
340 prepare a final punch list for each building or structure. The
341 public entity must present to the vendor a final punch list with
342 regard to each building or structure within 30 days after the
343 earliest of the following:

344 (a) Issuance of a temporary or final certificate of
345 occupancy on the particular building or structure, if
346 applicable;

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

349 (c) Beneficial occupancy or use of the particular
350 structure, building, facility, or improvement as defined in the
351 contract.

352

353 Unless the contract provides otherwise, the public entity shall
354 pay out retainage to the vendor based upon the value of the
355 construction services rendered with regard to that structure,
356 building, facility, or improvement as compared to the total
357 value of the purchase.



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358 (3) Upon completion of all items on the final punch list
359 or within 30 days after issuance of the punch list, whichever
360 occurs sooner, the vendor shall submit a payment request for the
361 appropriate amount of retainage. The owner may withhold up to
362 150 percent of the cost to complete any incomplete final punch
363 list items. Thereafter, ss. 255.072-255.076 apply to the payment
364 of any payment request for retainage.

365 (4) If the public entity fails to present to the vendor a
366 final punch list within the time period provided in subsection
367 (1) or subsection (2), the project is considered to be complete
368 and the vendor shall submit a payment request for the
369 appropriate amount of retainage. Thereafter, ss. 255.072-255.076
370 apply to the payment of any payment request for retainage.

371 (5) All items that require correction under the contract
372 that are identified subsequent to preparation and delivery of
373 the final punch list must be considered warranty items or make-
374 good items, and such items have no effect on the final payment
375 of retainage provided in this section.

376 Section 12. Section 255.078, Florida Statutes, is created
377 to read:

378 255.078 Public construction retainage.--

379 (1) From the commencement of a public construction project
380 that is subject to ss. 255.072-255.078 until 50 percent of the
381 contract value has been earned, a public entity may not withhold
382 as retainage more than 10 percent of each progress payment to
383 the vendor. When 50 percent of the contract value has been
384 earned, the vendor may submit a payment request to the public



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385 entity for up to one-half of the retainage withheld up to that
386 time.

387 (2) After 50 percent of the contract value has been
388 earned, the public entity may not withhold as retainage more
389 than 5 percent of each progress payment to the vendor. However,
390 the vendor may withhold retainage from payments to its
391 subcontractors at a rate higher than 5 percent. The specific
392 amount to be withheld must be determined on a case-by-case basis
393 and must be based on the vendor's assessment of the
394 subcontractor's past performance, the likelihood that such
395 performance will continue, and the vendor's ability to rely on
396 other safeguards. The vendor shall notify the subcontractor, in
397 writing, of its determination to withhold more than 5 percent of
398 the progress payment and the reasons for making that
399 determination.

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

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

404 Section 13. Paragraph (a) of subsection (2) of section
405 255.05, Florida Statutes, is amended, and subsections (10),
406 (11), (12), and (13) are added to said section, to read:

407 255.05 Bond of contractor constructing public buildings;
408 form; action by materialmen.--

409 (2)(a)1. If a claimant is no longer furnishing labor,
410 services, or materials on a project, a contractor or the
411 contractor's agent or attorney may elect to shorten the
412 prescribed time in this paragraph within which an action to



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413 enforce any claim against a payment bond provided pursuant to
414 this section may be commenced by recording in the clerk's office
415 a notice in substantially the following form:

416
417 NOTICE OF CONTEST OF CLAIM
418 AGAINST PAYMENT BOND

419
420 To: . . . (Name and address of claimant) . . .

421
422 You are notified that the undersigned contests your notice
423 of nonpayment, dated _____, _____, and served on the
424 undersigned on _____, _____, and that the time within
425 which you may file suit to enforce your claim is limited to 60
426 days after the date of service of this notice.

427
428 DATED on _____, _____.

429
430
431 Signed: . . . (Contractor or Attorney) . . .

432
433 The claim of any claimant upon whom such notice is served and
434 who fails to institute a suit to enforce his or her claim
435 against the payment bond within 60 days after service of such
436 notice shall be extinguished automatically. The clerk shall mail
437 a copy of the notice of contest to the claimant at the address
438 shown in the notice of nonpayment or most recent amendment
439 thereto and shall certify to such service on the face of such
440 notice and record the notice. Service is complete upon mailing.



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441 2. A claimant, except a laborer, who is not in privity
442 with the contractor shall, before commencing or not later than
443 45 days after commencing to furnish labor, materials, or
444 supplies for the prosecution of the work, furnish the contractor
445 with a notice that he or she intends to look to the bond for
446 protection. A claimant who is not in privity with the contractor
447 and who has not received payment for his or her labor,
448 materials, or supplies shall deliver to the contractor and to
449 the surety written notice of the performance of the labor or
450 delivery of the materials or supplies and of the nonpayment. The
451 notice of nonpayment may be served at any time during the
452 progress of the work or thereafter but not before 45 days after
453 the first furnishing of labor, services, or materials, and not
454 later than 90 days after the final furnishing of the labor,
455 services, or materials by the claimant or, with respect to
456 rental equipment, not later than 90 days after the date that the
457 rental equipment was last on the job site available for use. Any
458 notice of nonpayment served by a claimant who is not in privity
459 with the contractor that includes sums for retainage must
460 specify the portion of the amount claimed for retainage. No
461 action for the labor, materials, or supplies may be instituted
462 against the contractor or the surety unless both notices have
463 been given. Notices required or permitted under this section may
464 be served in accordance with s. 713.18. An action, except for an
465 action exclusively for recovery of retainage, must be instituted
466 against the contractor or the surety on the payment bond or the
467 payment provisions of a combined payment and performance bond
468 within 1 year after the performance of the labor or completion



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469 of delivery of the materials or supplies. An action exclusively
470 for recovery of retainage must be instituted against the
471 contractor or the surety within 1 year after the performance of
472 the labor or completion of delivery of the materials or
473 supplies, or within 90 days after receipt of final payment (or
474 the payment estimate containing the owner's final reconciliation
475 of quantities if no further payment is earned and due as a
476 result of deductive adjustments) by the contractor or surety,
477 whichever comes last. A claimant may not waive in advance his or
478 her right to bring an action under the bond against the surety.
479 In any action brought to enforce a claim against a payment bond
480 under this section, the prevailing party is entitled to recover
481 a reasonable fee for the services of his or her attorney for
482 trial and appeal or for arbitration, in an amount to be
483 determined by the court, which fee must be taxed as part of the
484 prevailing party's costs, as allowed in equitable actions. The
485 time periods for service of a notice of nonpayment or for
486 bringing an action against a contractor or a surety shall be
487 measured from the last day of furnishing labor, services, or
488 materials by the claimant and shall not be measured by other
489 standards, such as the issuance of a certificate of occupancy or
490 the issuance of a certificate of substantial completion.

491 (10) Notwithstanding any other provision of law to the
492 contrary, a claimant may not institute an action for the sole
493 purpose of recovery of retainage against the contractor or
494 against the surety issuing a payment or performance bond
495 pursuant to this section until:



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496 (a) The public entity has paid out that retainage to the
497 contractor and the time provided under ss. 218.70-218.76 or ss.
498 255.072-255.078 for payment of that retainage to the claimant
499 has expired; or

500 (b) The claimant has completed all work under its contract
501 and, if the contractor submitted its final payment request in
502 accordance with this act, 60 days have passed since the owner's
503 receipt of the contractor's final payment request.

504 (11) An owner shall furnish in writing to a claimant who
505 has provided labor, services, or materials to a project, within
506 5 days after receipt of a written request from that claimant,
507 the following information:

508 (a) The dates of all payment requests received by the
509 owner from the contractor.

510 (b) The dates of all payments made by the owner to the
511 contractor.

512 (c) Whether the owner has received the contractor's final
513 payment request and, if so, the date the final payment request
514 was submitted by the contractor to the owner.

515 (12) The owner has a duty to notify all claimants of
516 record for the project, in writing, that the final payment has
517 been made to the contractor or, if no further payment is earned
518 by the contractor, a statement that no further payment will be
519 made voluntarily by the owner to the contractor and the date on
520 which the owner provided the contractor with the owner's final
521 reconciliation of quantities. The notice to claimants must be
522 made in writing within 5 days after the date final payment is
523 made or the final reconciliation of quantities is given.



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524 (13) An owner who fails to furnish any information
525 required by this section is liable directly to a claimant for
526 damages sustained as a result of the failure to timely provide
527 the information, plus costs, interest, and attorney's fees.

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

529