



CHAMBER ACTION

The Committee on Business Regulation 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 for purchases of construction services by a public entity;



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

44
 45 Be It Enacted by the Legislature of the State of Florida:

46
 47 Section 1. Section 218.70, Florida Statutes, is amended to
 48 read:

49 218.70 Popular name ~~Short title~~.--This part shall be known
 50 by the popular name ~~may be cited as~~ the "Local Government
 51 ~~Florida~~ Prompt Payment Act."

52 Section 2. Subsections (2), (6), and (7) of section
 53 218.72, Florida Statutes, are amended to read:

54 218.72 Definitions.--As used in this part:
 55 (2) "Local governmental entity" means a county or
 56 municipal government, school board, school district, authority,



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57 | special taxing district, other political subdivision, community
58 | college, or any office, board, bureau, commission, department,
59 | branch, division, or institution thereof or any project
60 | supported by county or municipal funds.

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

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

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

73 | 218.735 Timely payment for purchases of construction
74 | services.--

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



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

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

- 99 1. Issuance of a temporary or final certificate of
100 occupancy, if applicable;
101 2. Substantial completion of the construction services
102 purchased, as defined in the contract; or
103 3. Beneficial occupancy or use of the structure, building,
104 facility, or improvement that is the subject of the construction
105 services purchased, as defined in the contract.

106 (b) If the purchase relates to construction services on
107 more than one building or structure, the local governmental
108 entity shall prepare a final punch list for each building or
109 structure. The local governmental entity must present to the
110 vendor a final punch list with regard to each building or
111 structure within 30 days after the earliest of the following:



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- 112 1. Issuance of a temporary or final certificate of
113 occupancy on the particular building or structure, if
114 applicable;
- 115 2. Substantial completion of the particular building or
116 structure, as defined in the contract; or
- 117 3. Beneficial occupancy or use of the particular
118 structure, building, facility, or improvement as defined in the
119 contract.

120

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

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

133 (d) If the local governmental entity fails to present to
134 the vendor a final punch list within the time periods provided
135 in paragraph (a) or paragraph (b), the project is considered to
136 be complete and the vendor shall submit a payment request for
137 the appropriate amount of retainage. Thereafter, this act
138 applies to the payment of any payment request for retainage.



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

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

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

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



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

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

171 255.0705 Popular name.--Sections 255.0705-255.078 shall be
172 known by the popular name the "Florida Prompt Payment Act."

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

175 255.071 Payment of subcontractors, sub-subcontractors,
176 materialmen, and suppliers on construction contracts for public
177 projects.--

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

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

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



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

197 (c) The amount of the contract price.

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

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

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

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

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

211 255.072 Definitions.--As used in ss. 255.073-255.078, the
212 term:

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

215 (2) "Construction services" means all labor, services, and
216 materials provided in connection with the construction,
217 alteration, repair, demolition, reconstruction, or any other
218 improvements to real property. The term "construction services"
219 does not include contracts or work performed for the Department
220 of Transportation.



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

225 (4) "Public entity" means the state, a state university,
226 or any office, board, bureau, commission, department, branch,
227 division, or institution thereof, or any project supported by
228 state funds. The term does not include a local governmental
229 entity as defined in s. 218.72(2).

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
248 after the vendor's receipt of payment. When a subcontractor



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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.

275 (2) If the terms under which a purchase is made allow for
276 partial deliveries and a payment request is submitted for a



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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
303 the public entity if such a dispute occurs. The procedure must
304 provide that proceedings to resolve the dispute must commence no



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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:

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



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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.

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



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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
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



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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
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:
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NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

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

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

DATED on _____, _____.

Signed: . . . (Contractor or Attorney) . . .

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

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor



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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
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



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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:

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



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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 business days after receipt of a written request from that
507 claimant, 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.

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.



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