

1 A bill to be entitled
2 An act relating to construction services;
3 amending s. 725.06, F.S.; providing conditions,
4 limitations, and exceptions for construction
5 contracts that limit indemnification; amending
6 s. 218.70, F.S.; providing a short title;
7 amending s. 218.72, F.S.; redefining terms used
8 in part VII of ch. 218, F.S.; amending s.
9 218.735, F.S.; revising provisions relating to
10 timely payment for purchases of construction
11 services; revising deadlines for payment;
12 providing procedures for project closeout and
13 payment of retainage; providing requirements
14 for local government construction retainage;
15 providing that ss. 218.72-218.76, F.S., apply
16 to the payment of any payment request for
17 retainage; creating s. 255.0705, F.S.;
18 providing a short title; amending s. 255.071,
19 F.S.; revising deadlines for the payment of
20 subcontractors, sub-subcontractors,
21 materialmen, and suppliers on construction
22 contracts for public projects; creating ss.
23 255.072, 255.073, 255.074, 255.075, 255.076,
24 255.077, 255.078, F.S.; providing definitions;
25 providing for timely payment for purchases of
26 construction services by a public entity;
27 providing procedures for calculating payment
28 due dates; providing procedures for handling
29 improper payment requests; providing for the
30 resolution of disputes; providing for project
31 closeout and payment of retainage; providing

1 for public-construction retainage; providing
2 that ss. 255.072-255.076, F.S., apply to the
3 payment of any payment request for retainage;
4 amending s. 255.05, F.S.; providing
5 requirements for certain notices of nonpayment
6 served by a claimant who is not in privity with
7 the contractor; providing limitations on a
8 claimant's institution of certain actions
9 against a contractor or surety; providing for
10 certain notices to the claimant; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 725.06, Florida Statutes, is
16 amended to read:

17 725.06 Construction contracts; limitation on
18 indemnification; agreements to insure--

19 (1) Except as otherwise provided in paragraphs (a),
20 (b), and (c), any portion of any agreement or contract for or
21 in connection with, or any guarantee of or in connection with,
22 any construction, alteration, repair, or demolition of a
23 building, structure, appurtenance, or appliance, including
24 moving and excavating associated therewith, between an ~~owner~~
25 ~~of real property and an~~ architect, engineer, general
26 contractor, subcontractor, sub-subcontractor, or materialman
27 or any combination thereof wherein any party referred to
28 herein promises to have someone named an additional insured
29 under the party's insurance policy or to indemnify, defend, or
30 hold harmless another person or party ~~the other party to the~~
31 agreement, contract, or guarantee for liability or for damages

1 to persons or property caused in whole or in part by any act,
2 omission, or default of the person or party being indemnified
3 ~~indemnitee arising from the contract or its performance~~, shall
4 be void and unenforceable as against public policy. However,
5 this provisions shall not be construed to place limits on
6 indemnity agreements that exist only between a general
7 contractor and the owner of real property as long as unless
8 the contract contains a monetary limitation on the extent of
9 the indemnification that bears a reasonable commercial
10 relationship to the contract and is part of the project
11 specifications or bid documents, if any. Notwithstanding the
12 foregoing, the monetary limitation on the extent of the
13 indemnification provided to the owner of real property by any
14 party in privity of contract with such owner shall not be less
15 than \$1 million per occurrence, unless otherwise agreed by the
16 parties. However, such indemnification shall not include
17 claims of, or damages resulting from, gross negligence or
18 willful, wanton, or intentional misconduct of the indemnitee
19 or its officers, directors, agents, or employees, or for
20 statutory violations or punitive damages except if, and to the
21 extent that the statutory violation or punitive damages are
22 caused by or result from the negligent acts, omissions, or
23 default of the indemnitor or any of the indemnitor's
24 contractors, subcontractors, sub-subcontractors, materialmen,
25 or agents of any tier or their respective employees.

26 (a) Indemnification provisions in any such agreements,
27 contracts, or guarantees may ~~not~~ require that the indemnitor
28 indemnify the indemnitee for damages to persons or property
29 ~~caused in whole or in part~~ by any act, omission, or default of
30 ~~a party other than:~~

31 1.(a) The indemnitor; or

1 ~~2.(b)~~ Any of the indemnitor's contractors,
2 subcontractors, sub-subcontractors, materialmen, or agents of
3 any tier or their respective employees.~~7~~ or

4 ~~(c) The indemnitee or its officers, directors, agents,~~
5 ~~or employees. However, such indemnification shall not include~~
6 ~~claims of, or damages resulting from, gross negligence, or~~
7 ~~willful, wanton or intentional misconduct of the indemnitee or~~
8 ~~its officers, directors, agents or employees, or for statutory~~
9 ~~violation or punitive damages except and to the extent the~~
10 ~~statutory violation or punitive damages are caused by or~~
11 ~~result from the acts or omissions of the indemnitor or any of~~
12 ~~the indemnitor's contractors, subcontractors,~~
13 ~~sub-subcontractors, materialmen, or agents of any tier or~~
14 ~~their respective employees.~~

15 ~~(b)(2)~~ A construction contract for a public agency or
16 in connection with a public agency's project may require a
17 party to that contract to indemnify and hold harmless the
18 other party to the contract, their officers and employees,
19 from liabilities, damages, losses and costs, including, but
20 not limited to, reasonable attorney's fees, to the extent
21 caused by the negligence, recklessness, or intentional
22 wrongful misconduct of the indemnifying party and persons
23 employed or utilized by the indemnifying party in the
24 performance of the construction contract.

25 (c) Any portion of any agreement or contract for or in
26 connection with, or any guarantee of or in connection with,
27 any construction, alteration, repair, or demolition of a
28 building, structure, appurtenance, or appliance, including
29 moving and excavating associated therewith, between an entity
30 regulated by the Florida Public Service Commission and an
31 architect, engineer, general contractor, subcontractor,

1 sub-subcontractor, or materialman or any combination thereof
2 wherein any party referred to herein promises to indemnify or
3 hold harmless the other party to the agreement, contract, or
4 guarantee for liability for damages to persons or property
5 caused in whole or in part by any negligent act, omission, or
6 default of the indemnitee arising from the contract or its
7 performance shall be void and unenforceable unless the
8 contract contains a monetary limitation on the extent of the
9 indemnification which bears a reasonable commercial
10 relationship to the contract and is part of the project
11 specifications or bid documents, if any. Notwithstanding the
12 foregoing, the monetary limitation on the extent of the
13 indemnification provided to the owner of real property by any
14 party in privity of contract with such owner shall not be less
15 than \$1 million per occurrence, unless otherwise agreed by the
16 parties. Indemnification provisions in any such agreements,
17 contracts, or guarantees may not require that the indemnitor
18 indemnify the indemnitee for damages to persons or property
19 caused in whole or in part by any act, omission, or default of
20 a party other than:

- 21 1. The indemnitor;
- 22 2. Any of the indemnitor's contractors,
23 subcontractors, sub-subcontractors, materialmen, or agents of
24 any tier or their respective employees; or
- 25 3. The indemnitee or its officers, directors, agents,
26 or employees. However, such indemnification shall not include
27 claims of, or damages resulting from, gross negligence or
28 willful, wanton, or intentional misconduct of the indemnitee
29 or its officers, directors, agents, or employees, or for
30 statutory violation or punitive damages except if, and to the
31 extent that, the statutory violation or punitive damages are

1 caused by or result from the acts or omissions of the
2 indemnitor or any of the indemnitor's contractors,
3 subcontractors, sub-subcontractors, materialmen, or agents of
4 any tier or their respective employees.

5 (2) If, as part of any agreement or contract for or in
6 connection with, or any guarantee of or in connection with,
7 any construction, alteration, repair, or demolition of a
8 building, structure, appurtenance, or appliance, including
9 moving and excavating associated with such activities, between
10 or among an architect, engineer, general contractor,
11 subcontractor, sub-subcontractor, or materialman or any
12 combination of such persons, a policy of insurance extends
13 certain coverage rights to an additional insured for liability
14 arising out of the acts, errors, or omissions of the named
15 insured, such additional insured coverage shall provide
16 liability protection only to the additional insured for the
17 imputed or vicarious liability imposed on the additional
18 insured as a direct consequence of the negligent acts or
19 omissions of the named insured.

20 (3) If a written contract requires a subcontractor,
21 sub-subcontractor, or materialman to provide a policy of
22 insurance or a certificate of insurance to a general
23 contractor or subcontractor, extending specific coverage
24 rights to an additional insured:

25 (a) The general contractor or subcontractor may at any
26 point prior to the date the subcontractor, sub-subcontractor,
27 or materialman commences work or delivers material to the
28 project accept or reject the policy as being nonconforming;

29 (b) If the policy is not rejected, the general
30 contractor or subcontractor shall be deemed to have accepted
31 the policy; and

1 (c) The general contractor or subcontractor may not
2 use the lack of conforming insurance as a reason to reject
3 work already completed by a subcontractor or
4 sub-subcontractor, or material already supplied by the
5 materialman, or withhold payment to the subcontractor,
6 sub-subcontractor, or materialman for work already completed
7 or material already supplied ~~Except as specifically provided~~
8 ~~in subsection (2), a construction contract for a public agency~~
9 ~~or in connection with a public agency's project may not~~
10 ~~require one party to indemnify, defend, or hold harmless the~~
11 ~~other party, its employees, officers, directors, or agents~~
12 ~~from any liability, damage, loss, claim, action, or~~
13 ~~proceeding, and any such contract provision is void as against~~
14 ~~public policy of this state.~~

15 (4) This section does not affect any contracts,
16 agreements, or guarantees entered into before the effective
17 date of this section ~~or any renewals thereof.~~

18 Section 2. Section 218.70, Florida Statutes, is
19 amended to read:

20 218.70 Popular name ~~Short title~~.--This part may be
21 cited as the "Local Government ~~Florida~~ Prompt Payment Act."

22 Section 3. Subsections (2), (6), and (7) of section
23 218.72, Florida Statutes, are amended to read:

24 218.72 Definitions.--As used in this part:

25 (2) "Local governmental entity" means a county or
26 municipal government, school board, school district,
27 authority, special taxing district, other political
28 subdivision, community college, or any office, board, bureau,
29 commission, department, branch, division, or institution
30 thereof or any project supported by county or municipal funds.

31

1 (6) "Vendor" means any person who sells goods or
2 services, sells or leases personal property, or leases real
3 property directly to a local government entity. The term
4 includes any person who provides waste-hauling services to
5 residents or businesses located within the boundaries of a
6 local government pursuant to a contract or local ordinance.

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

12 Section 4. Subsection (6) of section 218.735, Florida
13 Statutes, is amended, present subsection (7) of that section
14 is redesignated as subsection (9), and new subsections (7) and
15 (8) are added to that section, to read:

16 218.735 Timely payment for purchases of construction
17 services.--

18 (6) When a contractor receives payment from a local
19 governmental entity for labor, services, or materials
20 furnished by subcontractors and suppliers hired by the
21 contractor, the contractor shall remit payment due to those
22 subcontractors and suppliers within 10 ~~15~~ days after the
23 contractor's receipt of payment. When a subcontractor receives
24 payment from a contractor for labor, services, or materials
25 furnished by subcontractors and suppliers hired by the
26 subcontractor, the subcontractor shall remit payment due to
27 those subcontractors and suppliers within 10 ~~15~~ days after the
28 subcontractor's receipt of payment. Nothing herein shall
29 prohibit a contractor or subcontractor from disputing,
30 pursuant to the terms of the relevant contract, all or any
31 portion of a payment alleged to be due to another party. In

1 the event of such a dispute, the contractor or subcontractor
2 may withhold the disputed portion of any such payment if the
3 contractor or subcontractor notifies the party whose payment
4 is disputed, in writing, of the amount in dispute and the
5 actions required to cure the dispute. The contractor or
6 subcontractor must pay all undisputed amounts due within the
7 time limits imposed by this section.

8 (7)(a) Each contract for construction services between
9 a local government entity and vendor must provide for the
10 development of a list of items required to render complete,
11 satisfactory, and acceptable the construction services
12 purchased by the local government. The contract must specify
13 the process for the development of the list, including
14 responsibilities of the local government and vendor in
15 developing and reviewing the list and a reasonable time for
16 developing such list as follows:

17 1. For construction projects with an estimated cost
18 less than \$10 million, within 30 days after reaching
19 substantial completion of the construction services purchased
20 as defined in the contract, or, if not defined in the
21 contract, upon reaching beneficial occupancy or use; or

22 2. For construction projects with an estimated cost of
23 \$10 million or more, within 30 days, unless otherwise extended
24 by contract not to exceed 90 days, after reaching substantial
25 completion of the construction services purchased as defined
26 in the contract, or, if not defined in the contract, upon
27 reaching beneficial occupancy or use.

28 (b) If the contract between the local government
29 entity and vendor relates to the purchase of construction
30 services on more than one building or structure, or involves a
31 multiphased project, the contract shall provide for the

1 development of a list of items required to render complete,
2 satisfactory, and acceptable the construction services
3 purchased for each building, structure, or phase of the
4 project in accordance with the timeframes specified in
5 subparagraph (a)1. or subparagraph (a)2.

6 (c) The failure to include any corrective work or
7 pending items not yet completed on the list developed pursuant
8 to this subsection shall not alter the responsibility of the
9 vendor to complete all the purchased construction services as
10 defined in the contract.

11 (d) Upon completion of all items on the list, or such
12 other time defined in the contract, the vendor may submit a
13 payment request for the appropriate amount of retainage. The
14 local government may withhold an amount not to exceed 150
15 percent of the total costs to complete any incomplete items on
16 the list.

17 (e) All items that require correction under the
18 contract and that are identified after the preparation and
19 delivery of the list shall remain the obligation of the vendor
20 as defined by the contract.

21 (f) Warranty items may not affect the final payment of
22 retainage as provided in this section or as may be provided in
23 the contract between the vendor and its subcontractors and
24 suppliers.

25 (g) If a local government entity fails to comply with
26 its responsibilities to develop the list required under
27 paragraph (a) or paragraph (b), as defined in the contract,
28 and the timeframes provided in subparagraph (a)1. or
29 subparagraph (a)2., the vendor may submit a payment request
30 for the appropriate amount of retainage. The local government
31 entity shall not be required to pay or process any request for

1 payment of retainage if the vendor has, in whole or in part,
2 failed to cooperate with the local government in the
3 development of the list; failed to perform its contractual
4 responsibilities, if any, with regard to the development of
5 the list; or if paragraph (8)(d) applies.

6 (8)(a) In any public construction project, a local
7 government entity may withhold an amount not exceeding 10
8 percent of each progress payment made to the vendor until the
9 local government project has reached 50-percent completion.
10 After reaching 50-percent completion, the local government
11 must reduce to 5 percent the amount of retainage withheld from
12 each subsequent progress payment made to the vendor. However,
13 notwithstanding the provisions of this subsection, a
14 municipality with a population of 25,000 or fewer, or a county
15 with a population of 100,000 or fewer, may withhold retainage
16 in an amount not exceeding 10 percent of each progress payment
17 made to the vendor until final completion and acceptance of
18 the project by the local government. For purposes of this
19 subsection, the term "50-percent completion" means as defined
20 in the contract between the local government entity and the
21 vendor, or, if not defined in the contract, the point at which
22 the local government has expended 50 percent of the total
23 project costs identified in the contract, plus all change
24 orders and other additions issued subsequent to the approval
25 of the contract by the governing body of the local government,
26 and the level of actual project construction is equivalent to
27 such expenditure of funds.

28 (b) After 50-percent completion, the vendor may
29 present to the local government entity a payment request for
30 up to one-half of the retainage amount held by the local
31 government. The local government entity shall promptly make

1 payment to the vendor, unless the local government has
2 grounds, pursuant to the contract or as provided in paragraph
3 (d), for withholding the payment of retainage. If the local
4 government makes payment of retainage to the vendor under this
5 paragraph, the vendor shall timely remit payment of such
6 retainage to the appropriate subcontractors and suppliers.

7 (c) After 50-percent completion, the vendor may elect
8 to withhold retainage from payments to its subcontractors at a
9 rate higher than 5 percent. The specific amount to be withheld
10 must be determined on a case-by-case basis and must be based
11 on the vendor's assessment of the subcontractor's past
12 performance, the likelihood that such performance will
13 continue, and the vendor's ability to rely on other
14 safeguards. The vendor shall notify the subcontractor, in
15 writing, of its determination to withhold more than 5 percent
16 of the progress payment and the reasons for making that
17 determination, and the vendor may not request the release of
18 such retained funds from the local government.

19 (d) Nothing in this section requires the local
20 government to pay or release any amounts that are the subject
21 of a good-faith dispute, the subject of an action brought
22 pursuant to s. 255.05, or otherwise the subject of a claim or
23 demand by the local government or vendor.

24 (e) The timeframes set forth in this section for
25 payment of payment requests apply to any payment request for
26 retainage made pursuant to this subsection.

27 Section 5. Section 255.0705, Florida Statutes, is
28 created to read:

29 255.0705 Short title.--Sections 255.0705-255.078 may
30 be cited as the "Florida Prompt Payment Act."

31

1 Section 6. Subsections (2) and (3) of section 255.071,
2 Florida Statutes, are amended to read:

3 255.071 Payment of subcontractors, sub-subcontractors,
4 materialmen, and suppliers on construction contracts for
5 public projects.--

6 (2) The failure to pay any undisputed obligations for
7 such labor, services, or materials within 30 days after the
8 date the labor, services, or materials were furnished and
9 payment for such labor, services, or materials became due, or
10 within 10 ~~30~~ days after the date payment for such labor,
11 services, or materials is received, whichever last occurs,
12 shall entitle any person providing such labor, services, or
13 materials to the procedures specified in subsection (3) and
14 the remedies provided in subsection (4).

15 (3) Any person providing labor, services, or materials
16 for the construction of a public building, for the prosecution
17 and completion of a public work, or for repairs upon a public
18 building or public work improvements to real property may file
19 a verified complaint alleging:

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

22 (b) A description of the labor, services, or materials
23 provided and alleging that the labor, services, or materials
24 were provided in accordance with the contract.

25 (c) The amount of the contract price.

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

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

29 (f) That the undisputed amount has remained due and
30 payable pursuant to the contract for more than 30 days after
31

1 the date the labor or services were accepted or the materials
2 were received.

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

7 Section 7. Section 255.072, Florida Statutes, is
8 created to read:

9 255.072 Definitions.--As used in ss. 255.073-255.078,
10 the term:

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

14 (2) "Construction services" means all labor, services,
15 and materials provided in connection with the construction,
16 alteration, repair, demolition, reconstruction, or any other
17 improvements to real property. The term "construction
18 services" does not include contracts or work performed for the
19 Department of Transportation.

20 (3) "Payment request" means an invoice or request for
21 payment for construction services which conforms with all
22 statutory requirements and with all requirements specified by
23 the public entity to which the payment request is submitted.

24 (4) "Public entity" means the state, a state
25 university, or any office, board, bureau, commission,
26 department, branch, division, or institution thereof, or any
27 project supported by state funds, but does not include a local
28 government entity as defined in s. 218.72.

29 (5) "Purchase" means the purchase of construction
30 services.

31

1 (6) "Vendor" means any person providing construction
2 services directly to a public entity.

3 Section 8. Section 255.073, Florida Statutes, is
4 created to read:

5 255.073 Timely payment for purchases of construction
6 services.--

7 (1) Except as otherwise provided in ss.
8 255.072-255.078, s. 215.422 governs the timely payment for
9 construction services by a public entity under this act.

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

13 (3) When a vendor receives payment from a public
14 entity for labor, services, or materials furnished by
15 subcontractors and suppliers hired by the vendor, the vendor
16 shall remit payment due to those subcontractors and suppliers
17 within 10 days after the vendor's receipt of payment. When a
18 subcontractor receives payment from a vendor for labor,
19 services, or materials furnished by subcontractors and
20 suppliers hired by the subcontractor, the subcontractor shall
21 remit payment due to those subcontractors and suppliers within
22 10 days after the subcontractor's receipt of payment. This
23 subsection does not prohibit a vendor or subcontractor from
24 disputing, pursuant to the terms of the relevant contract, all
25 or any portion of a payment alleged to be due to another
26 party. If such a dispute occurs, the vendor or subcontractor
27 may withhold the disputed portion of any such payment if the
28 vendor or subcontractor notifies the party whose payment is
29 disputed, in writing, of the amount in dispute and the actions
30 required to cure the dispute. The vendor or subcontractor must

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1 pay all undisputed amounts due within the time limits imposed
2 by this section.

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

7 Section 9. Section 255.074, Florida Statutes, is
8 created to read:

9 255.074 Procedures for calculation of payment due
10 dates.--

11 (1) Each public entity shall establish procedures
12 whereby each payment request received by the public entity is
13 marked as received on the date on which it is delivered to an
14 agent or employee of the public entity or of a facility or
15 office of the public entity.

16 (2) If the terms under which a purchase is made allow
17 for partial deliveries and a payment request is submitted for
18 a partial delivery, the time for payment for the partial
19 delivery must be calculated from the time of the partial
20 delivery and the submission of the payment request in the same
21 manner as provided in s. 255.073.

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

25 Section 10. Section 255.075, Florida Statutes, is
26 created to read:

27 255.075 Mandatory interest.--A contract between a
28 public entity and a vendor or a provider of construction
29 services may not prohibit the collection of late payment
30 interest charges allowable under ss. 255.072-255.078.

31

1 Section 11. Section 255.076, Florida Statutes, is
2 created to read:

3 255.076 Improper payment request; resolution of
4 disputes.--

5 (1) If a vendor submits an improper payment request,
6 the public entity shall, within 10 days after receiving the
7 improper payment request, notify the vendor that the payment
8 request is improper and indicate what corrective action on the
9 part of the vendor is needed to make the payment request
10 proper.

11 (2) If a dispute occurs between a vendor and a public
12 entity concerning payment of a payment request, the dispute
13 must be resolved as provided in this section. Each public
14 entity shall establish a dispute resolution procedure to be
15 followed by the public entity if such a dispute occurs. The
16 procedure must provide that proceedings to resolve the dispute
17 must commence not later than 45 days after the date on which
18 the public entity received the payment request and must
19 conclude by final decision of the public entity not later than
20 60 days after the date on which the public entity received the
21 payment request. Such procedures are not subject to chapter
22 120 and do not constitute an administrative proceeding that
23 prohibits a court from deciding de novo any action arising out
24 of the dispute. If the dispute is resolved in favor of the
25 public entity, interest charges begin to accrue 15 days after
26 the public entity's final decision. If the dispute is resolved
27 in favor of the vendor, interest begins to accrue as of the
28 original date the payment became due.

29 (3) In an action to recover amounts due under ss.
30 255.072-255.078, the court shall award court costs and
31 reasonable attorney's fees, including fees incurred through

1 any appeal, to the prevailing party, if the court finds that
2 the nonprevailing party withheld any portion of the payment
3 that is the subject of the action without any reasonable basis
4 in law or fact to dispute the prevailing party's claim to
5 those amounts.

6 Section 12. Section 255.077, Florida Statutes, is
7 created to read:

8 255.077 Project closeout and payment of retainage.--

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

13 (a) Issuance of a temporary or final certificate of
14 occupancy, if applicable;

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

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

20 (2) If the purchase relates to construction services
21 on more than one building or structure, the public entity
22 shall prepare a final punch list for each building or
23 structure. The public entity must present to the vendor a
24 final punch list with regard to each building or structure
25 within 30 days after the earliest of the following:

26 (a) Issuance of a temporary or final certificate of
27 occupancy on the particular building or structure, if
28 applicable;

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

31

1 (c) Beneficial occupancy or use of the particular
2 structure, building, facility, or improvement, as defined in
3 the contract.

4
5 Unless the contract provides otherwise, the public entity
6 shall pay out retainage to the vendor based upon the value of
7 the construction services rendered with regard to that
8 structure, building, facility, or improvement as compared to
9 the total value of the purchase.

10 (3) Upon completion of all items on the final punch
11 list or within 30 days after issuance of the punch list,
12 whichever occurs sooner, the vendor shall submit a payment
13 request for the appropriate amount of retainage. The owner may
14 withhold up to 150 percent of the cost to complete any
15 incomplete final punchlist items. Thereafter, ss.
16 255.072-255.076 apply to the payment of any payment request
17 for retainage.

18 (4) If the public entity fails to present to the
19 vendor a final punch list within the time periods provided in
20 subsection (1) or subsection (2), the project is considered to
21 be complete and the vendor shall submit a payment request for
22 the appropriate amount of retainage. Thereafter, ss.
23 255.072-255.076 apply to the payment of any payment request
24 for retainage.

25 (5) All items that require correction under the
26 contract which are identified subsequent to preparation and
27 delivery of the final punch list must be considered warranty
28 items or make-good items, and such items have no effect on the
29 final payment of retainage provided in this section.

30 Section 13. Section 255.078, Florida Statutes, is
31 created to read:

1 255.078 Public construction retainage.--
2 (1) From the commencement of a public construction
3 project that is subject to ss. 255.072-255.078 until
4 50-percent of the contract value has been earned, a public
5 entity may not withhold as retainage more than 10 percent of
6 each progress payment to the vendor. When 50-percent of the
7 contract value has been earned, the vendor may submit a
8 payment request to the public entity for up to one-half of the
9 retainage withheld up to that time.

10 (2) After 50-percent of the contract value has been
11 earned, the public entity may not withhold as retainage more
12 than 5 percent of each progress payment to the vendor.
13 However, the vendor may withhold retainage from payments to
14 its subcontractors at a rate higher than 5 percent. The
15 specific amount to be withheld must be determined on a
16 case-by-case basis and must be based on the vendor's
17 assessment of the subcontractor's past performance, the
18 likelihood that such performance will continue, and the
19 vendor's ability to rely on other safeguards. The vendor shall
20 notify the subcontractor, in writing, of its determination to
21 withhold more than 5 percent of the progress payment and the
22 reasons for making that determination.

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

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

28 Section 14. Paragraph (a) of subsection (2) is
29 amended, and subsections (10) and (11) are added to section
30 255.05, Florida Statutes, to read:

31

1 255.05 Bond of contractor constructing public
 2 buildings; form; action by materialmen.--
 3 (2)(a)1. If a claimant is no longer furnishing labor,
 4 services, or materials on a project, a contractor or the
 5 contractor's agent or attorney may elect to shorten the
 6 prescribed time in this paragraph within which an action to
 7 enforce any claim against a payment bond provided pursuant to
 8 this section may be commenced by recording in the clerk's
 9 office a notice in substantially the following form:

10
 11 NOTICE OF CONTEST OF CLAIM
 12 AGAINST PAYMENT BOND
 13

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

15
 16 You are notified that the undersigned contests your
 17 notice of nonpayment, dated,, and served
 18 on the undersigned on,, and that the
 19 time within which you may file suit to enforce your claim is
 20 limited to 60 days after the date of service of this notice.

21
 22 DATED on,

23
 24 Signed:...(Contractor or Attorney)...

25
 26 The claim of any claimant upon whom such notice is served and
 27 who fails to institute a suit to enforce his or her claim
 28 against the payment bond within 60 days after service of such
 29 notice shall be extinguished automatically. The clerk shall
 30 mail a copy of the notice of contest to the claimant at the
 31 address shown in the notice of nonpayment or most recent

1 amendment thereto and shall certify to such service on the
2 face of such notice and record the notice. Service is complete
3 upon mailing.

4 2. A claimant, except a laborer, who is not in privity
5 with the contractor shall, before commencing or not later than
6 45 days after commencing to furnish labor, materials, or
7 supplies for the prosecution of the work, furnish the
8 contractor with a notice that he or she intends to look to the
9 bond for protection. A claimant who is not in privity with the
10 contractor and who has not received payment for his or her
11 labor, materials, or supplies shall deliver to the contractor
12 and to the surety written notice of the performance of the
13 labor or delivery of the materials or supplies and of the
14 nonpayment. The notice of nonpayment may be served at any time
15 during the progress of the work or thereafter but not before
16 45 days after the first furnishing of labor, services, or
17 materials, and not later than 90 days after the final
18 furnishing of the labor, services, or materials by the
19 claimant or, with respect to rental equipment, not later than
20 90 days after the date that the rental equipment was last on
21 the job site available for use. Any notice of nonpayment
22 served by a claimant who is not in privity with the contractor
23 which includes sums for retainage must specify the portion of
24 the amount claimed for retainage.No action for the labor,
25 materials, or supplies may be instituted against the
26 contractor or the surety unless both notices have been given.
27 Notices required or permitted under this section may be served
28 in accordance with s. 713.18. An action, except for an action
29 exclusively for recovery of retainage, must be instituted
30 against the contractor or the surety on the payment bond or
31 the payment provisions of a combined payment and performance

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

25 (10) Notwithstanding any other provision of law to the
26 contrary, a claimant may not institute an action for the sole
27 purpose of recovery of retainage against the contractor or
28 against the surety issuing a payment or performance bond
29 pursuant to this section until:

30 (a) The public entity has paid out that retainage to
31 the contractor and the time provided under ss. 218.70-218.76

1 or ss. 255.072-255.078 for payment of that retainage to the
2 claimant has expired;

3 (b) The claimant has completed all work required under
4 its contract and 90 days have passed since the owner's receipt
5 of the contractor's last payment request; or

6 (c) The claimant has made the written request to the
7 owner provided in subsection (11) and has not timely received
8 the requested information from the owner.

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

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

15 (b) The dates of all payments made by the owner to the
16 contractor.

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

20 Section 15. This act shall take effect July 1, 2003.