



HB 0141A

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1 A bill to be entitled

2 An act relating to construction services; amending s.
3 725.06, F.S.; providing conditions, limitations, and
4 exceptions for construction contracts that limit
5 indemnification; amending s. 218.70, F.S.; providing a
6 popular name; amending s. 218.72, F.S.; redefining terms
7 used in pt. VII of ch. 218, F.S.; amending s. 218.735,
8 F.S.; revising provisions relating to timely payment for
9 purchases of construction services; revising deadlines for
10 payment; providing procedures for project closeout and
11 payment of retainage; providing requirements for local
12 government construction retainage; providing a definition;
13 providing for application of timeframes for payment of
14 payment requests for retainage; creating s. 255.0705,
15 F.S.; providing a popular name; amending s. 255.071, F.S.;
16 revising deadlines for the payment of subcontractors, sub-
17 subcontractors, materialmen, and suppliers on construction
18 contracts for public projects; creating ss. 255.072,
19 255.073, 255.074, 255.075, 255.076, 255.077, and 255.078,
20 F.S.; providing definitions; providing for timely payment
21 for purchases of construction services by a public entity;
22 providing procedures for calculating payment due dates;
23 providing for collection of mandatory interest; providing
24 procedures for handling improper payment requests;
25 providing for the resolution of disputes; providing for
26 project closeout and payment of retainage; providing for
27 public-construction retainage; providing that ss. 255.072-
28 255.076, F.S., apply to the payment of any payment request
29 for retainage; amending s. 255.05, F.S.; providing
30 requirements for certain notices of nonpayment served by a



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31 claimant who is not in privity with the contractor;
 32 providing limitations on a claimant's institution of
 33 certain actions against a contractor or surety; providing
 34 for certain notices to the claimant; providing for
 35 construction of the act in pari materia with laws enacted
 36 during the 2003 Regular Session of the Legislature;
 37 providing an effective date.

38
 39 Be It Enacted by the Legislature of the State of Florida:

40
 41 Section 1. Section 725.06, Florida Statutes, is amended to
 42 read:

43 725.06 Construction contracts; limitation on
 44 indemnification; agreements to insure.--

45 (1) Except as otherwise provided in paragraphs (a), (b),
 46 and (c), any portion of any agreement or contract for or in
 47 connection with, or any guarantee of or in connection with, any
 48 construction, alteration, repair, or demolition of a building,
 49 structure, appurtenance, or appliance, including moving and
 50 excavating associated therewith, between an ~~owner of real~~
 51 ~~property and an~~ architect, engineer, general contractor,
 52 subcontractor, sub-subcontractor, or materialman or any
 53 combination thereof wherein any party referred to herein
 54 promises to have someone named an additional insured under the
 55 party's insurance policy or to indemnify, defend, or hold
 56 harmless another person or party ~~the other party to the~~
 57 ~~agreement, contract, or guarantee~~ for liability or for damages
 58 to persons or property caused in whole or in part by any act,
 59 omission, or default of the person or party being indemnified
 60 ~~indemnitee arising from the contract or its performance, shall~~



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61 be void and unenforceable as against public policy. However,
62 this provision shall not be construed to place limits on
63 indemnity agreements that exist only between a general
64 contractor and the owner of real property as long as ~~unless~~ the
65 contract contains a monetary limitation on the extent of the
66 indemnification that bears a reasonable commercial relationship
67 to the contract and is part of the project specifications or bid
68 documents, if any. Notwithstanding the foregoing, the monetary
69 limitation on the extent of the indemnification provided to the
70 owner of real property by any party in privity of contract with
71 such owner shall not be less than \$1 million per occurrence,
72 unless otherwise agreed by the parties. However, such
73 indemnification shall not include claims of, or damages
74 resulting from, gross negligence or willful, wanton, or
75 intentional misconduct of the indemnitee or its officers,
76 directors, agents, or employees, or for statutory violations or
77 punitive damages except if and to the extent that the statutory
78 violation or punitive damages are caused by or result from the
79 negligent acts, omissions, or default of the indemnitor or any
80 of the indemnitor's contractors, subcontractors, sub-
81 subcontractors, materialmen, or agents of any tier or their
82 respective employees.

83 (a) Indemnification provisions in any such agreements,
84 contracts, or guarantees may ~~not~~ require that the indemnitor
85 indemnify the indemnitee for damages to persons or property
86 caused ~~in whole or in part~~ by any act, omission, or default of a
87 ~~party other than:~~

88 1.(a) The indemnitor; or

89 2.(b) Any of the indemnitor's contractors, subcontractors,
90 sub-subcontractors, materialmen, or agents of any tier or their



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91 respective employees. ~~;~~ or

92 ~~(c) The indemnitee or its officers, directors, agents, or~~
93 ~~employees. However, such indemnification shall not include~~
94 ~~claims of, or damages resulting from, gross negligence, or~~
95 ~~willful, wanton or intentional misconduct of the indemnitee or~~
96 ~~its officers, directors, agents or employees, or for statutory~~
97 ~~violation or punitive damages except and to the extent the~~
98 ~~statutory violation or punitive damages are caused by or result~~
99 ~~from the acts or omissions of the indemnitor or any of the~~
100 ~~indemnitor's contractors, subcontractors, sub-subcontractors,~~
101 ~~materialmen, or agents of any tier or their respective~~
102 ~~employees.~~

103 (b)(2) A construction contract for a public agency or in
104 connection with a public agency's project may require a party to
105 that contract to indemnify and hold harmless the other party to
106 the contract, and their officers and employees, from
107 liabilities, damages, losses and costs, including, but not
108 limited to, reasonable attorney's fees, to the extent caused by
109 the negligence, recklessness, or intentional wrongful misconduct
110 of the indemnifying party and persons employed or utilized by
111 the indemnifying party in the performance of the construction
112 contract.

113 (c) Any portion of any agreement or contract for or in
114 connection with, or any guarantee of or in connection with, any
115 construction, alteration, repair, or demolition of a building,
116 structure, appurtenance, or appliance, including moving and
117 excavating associated therewith, between an entity regulated by
118 the Florida Public Service Commission and an architect,
119 engineer, general contractor, subcontractor, sub-subcontractor,
120 or materialman or any combination thereof wherein any party



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121 referred to herein promises to indemnify or hold harmless the
122 other party to the agreement, contract, or guarantee for
123 liability for damages to persons or property caused in whole or
124 in part by any negligent act, omission, or default of the
125 indemnitee arising from the contract or its performance shall be
126 void and unenforceable unless the contract contains a monetary
127 limitation on the extent of the indemnification which bears a
128 reasonable commercial relationship to the contract and is part
129 of the project specifications or bid documents, if any.
130 Notwithstanding the foregoing, the monetary limitation on the
131 extent of the indemnification provided to the owner of real
132 property by any party in privity of contract with such owner
133 shall not be less than \$1 million per occurrence, unless
134 otherwise agreed by the parties. Indemnification provisions in
135 any such agreements, contracts, or guarantees may not require
136 that the indemnitor indemnify the indemnitee for damages to
137 persons or property caused in whole or in part by any act,
138 omission, or default of a party other than:

- 139 1. The indemnitor;
- 140 2. Any of the indemnitor's contractors, subcontractors,
141 sub-subcontractors, materialmen, or agents of any tier or their
142 respective employees; or
- 143 3. The indemnitee or its officers, directors, agents, or
144 employees. However, such indemnification shall not include
145 claims of, or damages resulting from, gross negligence or
146 willful, wanton, or intentional misconduct of the indemnitee or
147 its officers, directors, agents, or employees, or for statutory
148 violation or punitive damages except if, and to the extent that,
149 the statutory violation or punitive damages are caused by or
150 result from the acts or omissions of the indemnitor or any of



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151 the indemnitor's contractors, subcontractors, sub-
152 subcontractors, materialmen, or agents of any tier or their
153 respective employees.

154 (2) If, as part of any agreement or contract for or in
155 connection with, or any guarantee of or in connection with, any
156 construction, alteration, repair, or demolition of a building,
157 structure, appurtenance, or appliance, including moving and
158 excavating associated with such activities, between or among an
159 architect, engineer, general contractor, subcontractor, sub-
160 subcontractor, or materialman or any combination of such
161 persons, a policy of insurance extends certain coverage rights
162 to an additional insured for liability arising out of the acts,
163 errors, or omissions of the named insured, such additional
164 insured coverage shall provide liability protection only to the
165 additional insured for the imputed or vicarious liability
166 imposed on the additional insured as a direct consequence of the
167 negligent acts or omissions of the named insured.

168 (3) If a written contract requires a subcontractor, sub-
169 subcontractor, or materialman to provide a policy of insurance
170 or a certificate of insurance to a general contractor or
171 subcontractor, extending specific coverage rights to an
172 additional insured:

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

177 (b) If the policy is not rejected, the general contractor
178 or subcontractor shall be deemed to have accepted the policy;
179 and

180 (c) The general contractor or subcontractor may not use



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181 the lack of conforming insurance as a reason to reject work
 182 already completed by a subcontractor or sub-subcontractor, or
 183 material already supplied by the materialman, or withhold
 184 payment to the subcontractor, sub-subcontractor, or materialman
 185 for work already completed or material already supplied ~~Except~~
 186 ~~as specifically provided in subsection (2), a construction~~
 187 ~~contract for a public agency or in connection with a public~~
 188 ~~agency's project may not require one party to indemnify, defend,~~
 189 ~~or hold harmless the other party, its employees, officers,~~
 190 ~~directors, or agents from any liability, damage, loss, claim,~~
 191 ~~action, or proceeding, and any such contract provision is void~~
 192 ~~as against public policy of this state.~~

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

196 Section 2. Section 218.70, Florida Statutes, is amended to
 197 read:

198 218.70 Popular name ~~Short title~~.--This part shall be known
 199 by the popular name ~~may be cited as~~ the "Local Government
 200 Florida Prompt Payment Act."

201 Section 3. Subsections (2), (6), and (7) of section
 202 218.72, Florida Statutes, are amended to read:

203 218.72 Definitions.--As used in this part:

204 (2) "Local governmental entity" means a county or
 205 municipal government, school board, school district, authority,
 206 special taxing district, other political subdivision, community
 207 college, or any office, board, bureau, commission, department,
 208 branch, division, or institution thereof or any project
 209 supported by county or municipal funds.

210 (6) "Vendor" means any person who sells goods or services,



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211 sells or leases personal property, or leases real property
 212 directly to a local governmental entity. The term includes any
 213 person who provides waste-hauling services to residents or
 214 businesses located within the boundaries of a local government
 215 pursuant to a contract or local ordinance.

216 (7) "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 ~~that require a license under parts~~
 220 ~~I and II of chapter 489.~~

221 Section 4. Subsection (6) of section 218.735, Florida
 222 Statutes, is amended, present subsection (7) of said section is
 223 renumbered as subsection (9), and new subsections (7) and (8)
 224 are added to said section, to read:

225 218.735 Timely payment for purchases of construction
 226 services.--

227 (6) When a contractor receives payment from a local
 228 governmental entity for labor, services, or materials furnished
 229 by subcontractors and suppliers hired by the contractor, the
 230 contractor shall remit payment due to those subcontractors and
 231 suppliers within 10 ~~15~~ days after the contractor's receipt of
 232 payment. When a subcontractor receives payment from a contractor
 233 for labor, services, or materials furnished by subcontractors
 234 and suppliers hired by the subcontractor, the subcontractor
 235 shall remit payment due to those subcontractors and suppliers
 236 within 10 ~~15~~ days after the subcontractor's receipt of payment.
 237 Nothing herein shall prohibit a contractor or subcontractor from
 238 disputing, pursuant to the terms of the relevant contract, all
 239 or any portion of a payment alleged to be due to another party.
 240 In the event of such a dispute, the contractor or subcontractor



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241 may withhold the disputed portion of any such payment if the
242 contractor or subcontractor notifies the party whose payment is
243 disputed, in writing, of the amount in dispute and the actions
244 required to cure the dispute. The contractor or subcontractor
245 must pay all undisputed amounts due within the time limits
246 imposed by this section.

247 (7)(a) Each contract for construction services between a
248 local governmental entity and vendor must provide for the
249 development of a list of items required to render complete,
250 satisfactory, and acceptable the construction services purchased
251 by the local government. The contract must specify the process
252 for the development of the list, including responsibilities of
253 the local government and vendor in developing and reviewing the
254 list and a reasonable time for developing such list as follows:

255 1. For construction projects with an estimated cost of
256 less than \$10 million, within 30 days after reaching substantial
257 completion of the construction services purchased as defined in
258 the contract or, if not defined in the contract, upon reaching
259 beneficial occupancy or use; or

260 2. For construction projects with an estimated cost of \$10
261 million or more, within 30 days, unless otherwise extended by a
262 contract not to exceed 90 days, after reaching substantial
263 completion of the construction services purchased as defined in
264 the contract or, if not defined in the contract, upon reaching
265 beneficial occupancy or use.

266 (b) If the contract between the local governmental entity
267 and the vendor relates to the purchase of construction services
268 on more than one building or structure, or involves a
269 multiphased project, the contract shall provide for the
270 development of a list of items required to render complete,



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271 satisfactory, and acceptable the construction services purchased
272 for each building, structure, or phase of the project in
273 accordance with the timeframes specified in subparagraph (a)1.
274 or subparagraph (a)2.

275 (c) The failure to include any corrective work or pending
276 items not yet completed on the list developed pursuant to this
277 subsection shall not alter the responsibility of the vendor to
278 complete all the purchased construction services as defined in
279 the contract.

280 (d) Upon completion of all items on the list, or such
281 other time defined in the contract, the vendor may submit a
282 payment request for the appropriate amount of retainage. The
283 local government may withhold an amount not to exceed 150
284 percent of the total costs to complete any incomplete items on
285 the list.

286 (e) All items that require correction under the contract
287 and that are identified after the preparation and delivery of
288 the list shall remain the obligation of the vendor as defined by
289 the contract.

290 (f) Warranty items may not affect the final payment of
291 retainage as provided in this section or as may be provided in
292 the contract between the vendor and its subcontractors and
293 suppliers.

294 (g) If a local governmental entity fails to comply with
295 its responsibilities to develop the list required under
296 paragraph (a) or paragraph (b), as defined in the contract, and
297 the timeframes provided in subparagraph (a)1. or subparagraph
298 (a)2., the vendor may submit a payment request for the
299 appropriate amount of retainage. The local governmental entity
300 shall not be required to pay or process any request for payment



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301 of retainage if the vendor has, in whole or in part, failed to
302 cooperate with the local government in the development of the
303 list, failed to perform its contractual responsibilities, if
304 any, with regard to the development of the list, or if paragraph
305 (8)(d) applies.

306 (8)(a) In any public construction project, a local
307 governmental entity may withhold an amount not exceeding 10
308 percent of each progress payment made to the vendor until the
309 local government project has reached 50-percent completion.
310 After reaching 50-percent completion, the local government must
311 reduce to 5 percent the amount of retainage withheld from each
312 subsequent progress payment made to the vendor. However,
313 notwithstanding the provisions of this subsection, a
314 municipality with a population of 25,000 or fewer, or a county
315 with a population of 100,000 or fewer, may withhold retainage in
316 an amount not exceeding 10 percent of each progress payment made
317 to the vendor until final completion and acceptance of the
318 project by the local government. For purposes of this
319 subsection, the term "50-percent completion" means as defined in
320 the contract between the local governmental entity and the
321 vendor, or, if not defined in the contract, the point at which
322 the local government has expended 50 percent of the total
323 project costs identified in the contract, plus all change orders
324 and other additions issued subsequent to the approval of the
325 contract by the governing body of the local government, and the
326 level of actual project construction is equivalent to such
327 expenditure of funds.

328 (b) After 50-percent completion, the vendor may present to
329 the local governmental entity a payment request for up to one-
330 half of the retainage amount held by the local government. The



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331 local governmental entity shall promptly make payment to the
332 vendor, unless the local government has grounds, pursuant to the
333 contract or as provided in paragraph (d), for withholding the
334 payment of retainage. If the local government makes payment of
335 retainage to the vendor under this paragraph, the vendor shall
336 timely remit payment of such retainage to the appropriate
337 subcontractors and suppliers.

338 (c) After 50-percent completion, the vendor may elect to
339 withhold retainage from payments to its subcontractors at a rate
340 higher than 5 percent. The specific amount to be withheld must
341 be determined on a case-by-case basis and must be based on the
342 vendor's assessment of the subcontractor's past performance, the
343 likelihood that such performance will continue, and the vendor's
344 ability to rely on other safeguards. The vendor shall notify the
345 subcontractor, in writing, of its determination to withhold more
346 than 5 percent of the progress payment and the reasons for
347 making that determination, and the vendor may not request the
348 release of such retained funds from the local government.

349 (d) Nothing in this section requires the local government
350 to pay or release any amounts that are the subject of a good-
351 faith dispute, the subject of an action brought pursuant to s.
352 255.05, or otherwise the subject of a claim or demand by the
353 local government or vendor.

354 (e) The timeframes set forth in this section for payment
355 of payment requests apply to any payment request for retainage
356 made pursuant to this subsection.

357 Section 5. Section 255.0705, Florida Statutes, is created
358 to read:

359 255.0705 Popular name.--Sections 255.0705-255.078 shall be
360 known by the popular name the "Florida Prompt Payment Act."



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

363 255.071 Payment of subcontractors, sub-subcontractors,
364 materialmen, and suppliers on construction contracts for public
365 projects.--

366 (2) The failure to pay any undisputed obligations for such
367 labor, services, or materials within 30 days after the date the
368 labor, services, or materials were furnished and payment for
369 such labor, services, or materials became due, or within 10 ~~30~~
370 days after the date payment for such labor, services, or
371 materials is received, whichever last occurs, shall entitle any
372 person providing such labor, services, or materials to the
373 procedures specified in subsection (3) and the remedies provided
374 in subsection (4).

375 (3) Any person providing labor, services, or materials for
376 the construction of a public building, for the prosecution and
377 completion of a public work, or for repairs upon a public
378 building or public work improvements to real property may file a
379 verified complaint alleging:

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

382 (b) A description of the labor, services, or materials
383 provided and alleging that the labor, services, or materials
384 were provided in accordance with the contract.

385 (c) The amount of the contract price.

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

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

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



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391 date the labor or services were accepted or the materials were
392 received.

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

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

399 255.072 Definitions.--As used in ss. 255.073-255.078, the
400 term:

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

404 (2) "Construction services" means all labor, services, and
405 materials provided in connection with the construction,
406 alteration, repair, demolition, reconstruction, or any other
407 improvements to real property. The term "construction services"
408 does not include contracts or work performed for the Department
409 of Transportation.

410 (3) "Payment request" means an invoice or request for
411 payment for construction services which conforms with all
412 statutory requirements and with all requirements specified by
413 the public entity to which the payment request is submitted.

414 (4) "Public entity" means the state, a state university,
415 or any office, board, bureau, commission, department, branch,
416 division, or institution thereof, or any project supported by
417 state funds, but does not include a local governmental entity as
418 defined in s. 218.72.

419 (5) "Purchase" means the purchase of construction
420 services.



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

423 Section 8. Section 255.073, Florida Statutes, is created
424 to read:

425 255.073 Timely payment for purchases of construction
426 services.--

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

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

433 (3) When a vendor receives payment from a public entity
434 for labor, services, or materials furnished by subcontractors
435 and suppliers hired by the vendor, the vendor shall remit
436 payment due to those subcontractors and suppliers within 10 days
437 after the vendor's receipt of payment. When a subcontractor
438 receives payment from a vendor for labor, services, or materials
439 furnished by subcontractors and suppliers hired by the
440 subcontractor, the subcontractor shall remit payment due to
441 those subcontractors and suppliers within 10 days after the
442 subcontractor's receipt of payment. This subsection does not
443 prohibit a vendor or subcontractor from disputing, pursuant to
444 the terms of the relevant contract, all or any portion of a
445 payment alleged to be due to another party. If such a dispute
446 occurs, the vendor or subcontractor may withhold the disputed
447 portion of any such payment if the vendor or subcontractor
448 notifies the party whose payment is disputed, in writing, of the
449 amount in dispute and the actions required to cure the dispute.
450 The vendor or subcontractor must pay all undisputed amounts due



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451 within the time limits imposed by this section.

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

456 Section 9. Section 255.074, Florida Statutes, is created
457 to read:

458 255.074 Procedures for calculation of payment due dates.--

459 (1) Each public entity shall establish procedures whereby
460 each payment request received by the public entity is marked as
461 received on the date on which it is delivered to an agent or
462 employee of the public entity or of a facility or office of the
463 public entity.

464 (2) If the terms under which a purchase is made allow for
465 partial deliveries and a payment request is submitted for a
466 partial delivery, the time for payment for the partial delivery
467 must be calculated from the time of the partial delivery and the
468 submission of the payment request in the same manner as provided
469 in s. 255.073.

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

473 Section 10. Section 255.075, Florida Statutes, is created
474 to read:

475 255.075 Mandatory interest.--A contract between a public
476 entity and a vendor or a provider of construction services may
477 not prohibit the collection of late payment interest charges
478 allowable under ss. 255.072-255.078.

479 Section 11. Section 255.076, Florida Statutes, is created
480 to read:



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481 255.076 Improper payment request; resolution of
482 disputes.--

483 (1) If a vendor submits an improper payment request, the
484 public entity shall notify the vendor within 10 days after
485 receiving the improper payment request that the payment request
486 is improper and indicate what corrective action on the part of
487 the vendor is needed to make the payment request proper.

488 (2) If a dispute occurs between a vendor and a public
489 entity concerning payment of a payment request, the dispute must
490 be resolved as provided in this section. Each public entity
491 shall establish a dispute resolution procedure to be followed by
492 the public entity if such a dispute occurs. The procedure must
493 provide that proceedings to resolve the dispute must commence
494 not later than 45 days after the date on which the public entity
495 received the payment request and must conclude by final decision
496 of the public entity not later than 60 days after the date on
497 which the public entity received the payment request. Such
498 procedures are not subject to chapter 120 and do not constitute
499 an administrative proceeding that prohibits a court from
500 deciding de novo any action arising out of the dispute. If the
501 dispute is resolved in favor of the public entity, interest
502 charges begin to accrue 15 days after the public entity's final
503 decision. If the dispute is resolved in favor of the vendor,
504 interest begins to accrue as of the original date the payment
505 became due.

506 (3) In an action to recover amounts due under ss. 255.072-
507 255.078, the court shall award court costs and reasonable
508 attorney's fees, including fees incurred through any appeal, to
509 the prevailing party if the court finds that the nonprevailing
510 party withheld any portion of the payment that is the subject of



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511 the action without any reasonable basis in law or fact to
 512 dispute the prevailing party's claim to those amounts.

513 Section 12. Section 255.077, Florida Statutes, is created
 514 to read:

515 255.077 Project closeout and payment of retainage.--

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

520 (a) Issuance of a temporary or final certificate of
 521 occupancy, if applicable;

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

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

527 (2) If the purchase relates to construction services on
 528 more than one building or structure, the public entity shall
 529 prepare a final punch list for each building or structure. The
 530 public entity must present to the vendor a final punch list with
 531 regard to each building or structure within 30 days after the
 532 earliest of the following:

533 (a) Issuance of a temporary or final certificate of
 534 occupancy on the particular building or structure, if
 535 applicable;

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

538 (c) Beneficial occupancy or use of the particular
 539 structure, building, facility, or improvement, as defined in the
 540 contract.



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542 Unless the contract provides otherwise, the public entity shall
543 pay out retainage to the vendor based upon the value of the
544 construction services rendered with regard to that structure,
545 building, facility, or improvement as compared to the total
546 value of the purchase.

547 (3) Upon completion of all items on the final punch list
548 or within 30 days after issuance of the punch list, whichever
549 occurs sooner, the vendor shall submit a payment request for the
550 appropriate amount of retainage. The owner may withhold up to
551 150 percent of the cost to complete any incomplete final punch
552 list items. Thereafter, ss. 255.072-255.076 apply to the payment
553 of any payment request for retainage.

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

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

565 Section 13. Section 255.078, Florida Statutes, is created
566 to read:

567 255.078 Public construction retainage.--

568 (1) From the commencement of a public construction project
569 that is subject to ss. 255.072-255.078 until 50-percent of the
570 contract value has been earned, a public entity may not withhold



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571 as retainage more than 10 percent of each progress payment to
572 the vendor. When 50-percent of the contract value has been
573 earned, the vendor may submit a payment request to the public
574 entity for up to one-half of the retainage withheld up to that
575 time.

576 (2) After 50-percent of the contract value has been
577 earned, the public entity may not withhold as retainage more
578 than 5 percent of each progress payment to the vendor. However,
579 the vendor may withhold retainage from payments to its
580 subcontractors at a rate higher than 5 percent. The specific
581 amount to be withheld must be determined on a case-by-case basis
582 and must be based on the vendor's assessment of the
583 subcontractor's past performance, the likelihood that such
584 performance will continue, and the vendor's ability to rely on
585 other safeguards. The vendor shall notify the subcontractor, in
586 writing, of its determination to withhold more than 5 percent of
587 the progress payment and the reasons for making that
588 determination.

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

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

593 Section 14. Paragraph (a) of subsection (2) of section
594 255.05, Florida Statutes, is amended, and subsections (10) and
595 (11) are added to said section, to read:

596 255.05 Bond of contractor constructing public buildings;
597 form; action by materialmen.--

598 (2)(a)1. If a claimant is no longer furnishing labor,
599 services, or materials on a project, a contractor or the
600 contractor's agent or attorney may elect to shorten the



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601 prescribed time in this paragraph within which an action to
 602 enforce any claim against a payment bond provided pursuant to
 603 this section may be commenced by recording in the clerk's office
 604 a notice in substantially the following form:

605
 606 NOTICE OF CONTEST OF CLAIM
 607 AGAINST PAYMENT BOND
 608

609 To: . . . (Name and address of claimant) . . .
 610

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

616
 617 DATED on _____, _____.
 618

619 Signed: . . . (Contractor or Attorney) . . .
 620

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

629 2. A claimant, except a laborer, who is not in privity
 630 with the contractor shall, before commencing or not later than



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631 45 days after commencing to furnish labor, materials, or
632 supplies for the prosecution of the work, furnish the contractor
633 with a notice that he or she intends to look to the bond for
634 protection. A claimant who is not in privity with the contractor
635 and who has not received payment for his or her labor,
636 materials, or supplies shall deliver to the contractor and to
637 the surety written notice of the performance of the labor or
638 delivery of the materials or supplies and of the nonpayment. The
639 notice of nonpayment may be served at any time during the
640 progress of the work or thereafter but not before 45 days after
641 the first furnishing of labor, services, or materials, and not
642 later than 90 days after the final furnishing of the labor,
643 services, or materials by the claimant or, with respect to
644 rental equipment, not later than 90 days after the date that the
645 rental equipment was last on the job site available for use. Any
646 notice of nonpayment served by a claimant who is not in privity
647 with the contractor which includes sums for retainage must
648 specify the portion of the amount claimed for retainage. No
649 action for the labor, materials, or supplies may be instituted
650 against the contractor or the surety unless both notices have
651 been given. Notices required or permitted under this section may
652 be served in accordance with s. 713.18. An action, except for an
653 action exclusively for recovery of retainage, must be instituted
654 against the contractor or the surety on the payment bond or the
655 payment provisions of a combined payment and performance bond
656 within 1 year after the performance of the labor or completion
657 of delivery of the materials or supplies. An action exclusively
658 for recovery of retainage must be instituted against the
659 contractor or the surety within 1 year after the performance of
660 the labor or completion of delivery of the materials or



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661 supplies, or within 90 days after receipt of final payment (or
662 the payment estimate containing the owner's final reconciliation
663 of quantities if no further payment is earned and due as a
664 result of deductive adjustments) by the contractor or surety,
665 whichever comes last. A claimant may not waive in advance his or
666 her right to bring an action under the bond against the surety.
667 In any action brought to enforce a claim against a payment bond
668 under this section, the prevailing party is entitled to recover
669 a reasonable fee for the services of his or her attorney for
670 trial and appeal or for arbitration, in an amount to be
671 determined by the court, which fee must be taxed as part of the
672 prevailing party's costs, as allowed in equitable actions. The
673 time periods for service of a notice of nonpayment or for
674 bringing an action against a contractor or a surety shall be
675 measured from the last day of furnishing labor, services, or
676 materials by the claimant and shall not be measured by other
677 standards, such as the issuance of a certificate of occupancy or
678 the issuance of a certificate of substantial completion.

679 (10) Notwithstanding any other provision of law to the
680 contrary, a claimant may not institute an action for the sole
681 purpose of recovery of retainage against the contractor or
682 against the surety issuing a payment or performance bond
683 pursuant to this section until:

684 (a) The public entity has paid out that retainage to the
685 contractor and the time provided under ss. 218.70-218.76 or ss.
686 255.072-255.078 for payment of that retainage to the claimant
687 has expired;

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



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

694 (11) An owner shall furnish in writing to a claimant who
695 has provided labor, services, or materials to a project, within
696 5 business days after receipt of a written request from that
697 claimant, the following information:

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

700 (b) The dates of all payments made by the owner to the
701 contractor.

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

705 Section 15. If any law amended by this act was also
706 amended by a law enacted at the 2003 Regular Session of the
707 Legislature, such laws shall be construed as if they had been
708 enacted at the same session of the Legislature, and full effect
709 shall be given to each if possible.

710 Section 16. This act shall take effect July 1, 2003.