

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Dean offered the following:

2

3 **Amendment (with title amendment)**

4 Remove the entire body and insert:

5 Section 1. Section 218.70, Florida Statutes, is amended to
6 read:

7 218.70 Popular name ~~Short title~~.--This part may be cited
8 as the "Local Government ~~Florida~~ Prompt Payment Act."

9 Section 2. Subsections (2), (6), and (7) of section
10 218.72, Florida Statutes, are amended, and subsection (10) is
11 added to that section, to read:

12 218.72 Definitions.--As used in this part:

13 (2) "Local governmental entity" means a county or
14 municipal government, school board, school district, authority,
15 special taxing district, other political subdivision, or any
16 office, board, bureau, commission, department, branch, division,

Amendment No. (for drafter's use only)

17 or institution thereof ~~or any project supported by county or~~
18 ~~municipal funds.~~

19 (6) "Vendor" means any person who sells goods or services,
20 sells or leases personal property, or leases real property
21 directly to a local governmental entity. The term includes any
22 person who provides waste-hauling services to residents or
23 businesses located within the boundaries of a local government
24 pursuant to a contract or local ordinance.

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

30 (10) "Contractor" or "provider of construction services"
31 means any person who contracts directly with a local
32 governmental entity to provide construction services.

33 Section 3. Subsection (6) of section 218.735, Florida
34 Statutes, is amended, present subsection (7) of that section is
35 redesignated as subsection (9), and new subsections (7) and (8)
36 are added to that section, to read:

37 218.735 Timely payment for purchases of construction
38 services.--

39 (6) When a contractor receives payment from a local
40 governmental entity for labor, services, or materials furnished
41 by subcontractors and suppliers hired by the contractor, the
42 contractor shall remit payment due to those subcontractors and
43 suppliers within 10 ~~15~~ days after the contractor's receipt of
44 payment. When a subcontractor receives payment from a contractor

942015

Amendment No. (for drafter's use only)

45 for labor, services, or materials furnished by subcontractors
46 and suppliers hired by the subcontractor, the subcontractor
47 shall remit payment due to those subcontractors and suppliers
48 within 7 ~~15~~ days after the subcontractor's receipt of payment.
49 Nothing herein shall prohibit a contractor or subcontractor from
50 disputing, pursuant to the terms of the relevant contract, all
51 or any portion of a payment alleged to be due to another party-
52 ~~In the event of such a dispute, the contractor or subcontractor~~
53 ~~may withhold the disputed portion of any such payment~~ if the
54 contractor or subcontractor notifies the party whose payment is
55 disputed, in writing, of the amount in dispute and the actions
56 required to cure the dispute. The contractor or subcontractor
57 must pay all undisputed amounts due within the time limits
58 imposed by this section.

59 (7)(a) Each contract for construction services between a
60 local governmental entity and a contractor must provide for the
61 development of a list of items required to render complete,
62 satisfactory, and acceptable the construction services purchased
63 by the local governmental entity. The contract must specify the
64 process for the development of the list, including
65 responsibilities of the local governmental entity and the
66 contractor in developing and reviewing the list and a reasonable
67 time for developing the list, as follows:

68 1. For construction projects with an estimated cost of
69 less than \$10 million, within 30 calendar days after reaching
70 substantial completion of the construction services purchased as
71 defined in the contract, or, if not defined in the contract,
72 upon reaching beneficial occupancy or use; or

942015

Amendment No. (for drafter's use only)

73 2. For construction projects with an estimated cost of \$10
74 million or more, within 30 calendar days, unless otherwise
75 extended by contract not to exceed 60 calendar days, after
76 reaching substantial completion of the construction services
77 purchased as defined in the contract, or, if not defined in the
78 contract, upon reaching beneficial occupancy or use.

79 (b) If the contract between the local governmental entity
80 and the contractor relates to the purchase of construction
81 services on more than one building or structure, or involves a
82 multiphased project, the contract shall provide for the
83 development of a list of items required to render complete,
84 satisfactory, and acceptable all the construction services
85 purchased pursuant to the contract for each building, structure,
86 or phase of the project within the time limitations provided in
87 paragraph (a).

88 (c) The failure to include any corrective work or pending
89 items not yet completed on the list developed pursuant to this
90 subsection does not alter the responsibility of the contractor
91 to complete all the construction services purchased pursuant to
92 the contract.

93 (d) Upon completion of all items on the list, the
94 contractor may submit a payment request for all remaining
95 retainage withheld by the local governmental entity pursuant to
96 this section. If a good-faith dispute exists as to whether one
97 or more items identified on the list have been completed
98 pursuant to the contract, the local governmental entity may
99 continue to withhold an amount not to exceed 150 percent of the
100 total costs to complete such items.

942015

Amendment No. (for drafter's use only)

101 (e) All items that require correction under the contract
102 and that are identified after the preparation and delivery of
103 the list remain the obligation of the contractor as defined by
104 the contract.

105 (f) Warranty items may not affect the final payment of
106 retainage as provided in this section or as provided in the
107 contract between the contractor and its subcontractors and
108 suppliers.

109 (g) Retainage may not be held by a local governmental
110 entity or a contractor to secure payment of insurance premiums
111 under a consolidated insurance program or series of insurance
112 policies issued to a local governmental entity or a contractor
113 for a project or group of projects, and the final payment of
114 retainage as provided in this section may not be delayed pending
115 a final audit by the local governmental entity's or contractor's
116 insurance provider.

117 (h) If a local governmental entity fails to comply with
118 its responsibilities to develop the list required under
119 paragraph (a) or paragraph(b), as defined in the contract,
120 within the time limitations provided in paragraph (a), the
121 contractor may submit a payment request for all remaining
122 retainage withheld by the local governmental entity pursuant to
123 this section. The local governmental entity need not pay or
124 process any payment request for retainage if the contractor has,
125 in whole or in part, failed to cooperate with the local
126 governmental entity in the development of the list or failed to
127 perform its contractual responsibilities, if any, with regard to
128 the development of the list or if paragraph (8)(f) applies.

942015

Amendment No. (for drafter's use only)

129 (8)(a) With regard to any contract for construction
130 services, a local governmental entity may withhold from each
131 progress payment made to the contractor an amount not exceeding
132 10 percent of the payment as retainage to ensure the
133 satisfactory completion of the construction services purchased
134 pursuant to the contract until 50-percent completion of such
135 services.

136 (b) After 50-percent completion of the construction
137 services purchased pursuant to the contract, the local
138 governmental entity must reduce to 5 percent the amount of
139 retainage withheld from each subsequent progress payment made to
140 the contractor. For purposes of this subsection, the term "50-
141 percent completion" has the meaning set forth in the contract
142 between the local governmental entity and the contractor, or, if
143 not defined in the contract, the point at which the local
144 governmental entity has expended 50 percent of the total cost of
145 the construction services purchased as identified in the
146 contract together with all costs associated with existing change
147 orders and other additions or modifications to the construction
148 services provided for in the contract. However, notwithstanding
149 this subsection, a municipality with a population of 25,000 or
150 fewer, or a county with a population of 100,000 or fewer, may
151 withhold retainage in an amount not exceeding 10 percent of each
152 progress payment made to the contractor until final completion
153 and acceptance of the project by the local governmental entity.

154 (c) After 50-percent completion of the construction
155 services purchased pursuant to the contract, the contractor may
156 elect to withhold retainage from payments to its subcontractors

942015

Amendment No. (for drafter's use only)

157 | at a rate higher than 5 percent. The specific amount to be
158 | withheld must be determined on a case-by-case basis and must be
159 | based on the contractor's assessment of the subcontractor's past
160 | performance, the likelihood that such performance will continue,
161 | and the contractor's ability to rely on other safeguards. The
162 | contractor shall notify the subcontractor, in writing, of its
163 | determination to withhold more than 5 percent of the progress
164 | payment and the reasons for making that determination, and the
165 | contractor may not request the release of such retained funds
166 | from the local governmental entity.

167 | (d) After 50-percent completion of the construction
168 | services purchased pursuant to the contract, the contractor may
169 | present to the local governmental entity a payment request for
170 | up to one-half of the retainage held by the local governmental
171 | entity. The local governmental entity shall promptly make
172 | payment to the contractor, unless the local governmental entity
173 | has grounds, pursuant to paragraph (f), for withholding the
174 | payment of retainage. If the local governmental entity makes
175 | payment of retainage to the contractor under this paragraph
176 | which is attributable to the labor, services, or materials
177 | supplied by one or more subcontractors or suppliers, the
178 | contractor shall timely remit payment of such retainage to those
179 | subcontractors and suppliers.

180 | (e) This section does not prohibit a local governmental
181 | entity from withholding retainage at a rate less than 10 percent
182 | of each progress payment, from incrementally reducing the rate
183 | of retainage pursuant to a schedule provided for in the
184 | contract, or from releasing at any point all or a portion of any

942015

Amendment No. (for drafter's use only)

185 retainage withheld by the local governmental entity which is
186 attributable to the labor, services, or materials supplied by
187 the contractor or by one or more subcontractors or suppliers. If
188 a local governmental entity makes any payment of retainage to
189 the contractor which is attributable to the labor, services, or
190 materials supplied by one or more subcontractors or suppliers,
191 the contractor shall timely remit payment of such retainage to
192 those subcontractors and suppliers.

193 (f) This section does not require the local governmental
194 entity to pay or release any amounts that are the subject of a
195 good-faith dispute, the subject of an action brought pursuant to
196 s. 255.05, or otherwise the subject of a claim or demand by the
197 local governmental entity or contractor.

198 (g) The time limitations set forth in this section for
199 payment of payment requests apply to any payment request for
200 retainage made pursuant to this section.

201 (h) Paragraphs (a)-(d) do not apply to construction
202 services purchased by a local governmental entity which are paid
203 for, in whole or in part, with federal funds and are subject to
204 federal grantor laws and regulations or requirements that are
205 contrary to any provision of the Local Government Prompt Payment
206 Act.

207 (i) This subsection does not apply to any construction
208 services purchased by a local governmental entity if the total
209 cost of the construction services purchased as identified in the
210 contract is \$200,000 or less.

211 Section 4. Section 255.0705, Florida Statutes, is created
212 to read:

942015

Amendment No. (for drafter's use only)

213 255.0705 Popular name.--Sections 255.0705-255.078 may be
214 cited as the "Florida Prompt Payment Act."

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

217 255.071 Payment of subcontractors, sub-subcontractors,
218 materialmen, and suppliers on construction contracts for public
219 projects.--

220 (2) The failure to pay any undisputed obligations for such
221 labor, services, or materials within 30 days after the date the
222 labor, services, or materials were furnished and payment for
223 such labor, services, or materials became due, or within the
224 time limitations set forth in s. 255.073(3) 30 days after the
225 date payment for such labor, services, or materials is received,
226 whichever last occurs, shall entitle any person providing such
227 labor, services, or materials to the procedures specified in
228 subsection (3) and the remedies provided in subsection (4).

229 (3) Any person providing labor, services, or materials for
230 the construction of a public building, for the prosecution and
231 completion of a public work, or for repairs upon a public
232 building or public work improvements to real property may file a
233 verified complaint alleging:

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

236 (b) A description of the labor, services, or materials
237 provided and alleging that the labor, services, or materials
238 were provided in accordance with the contract.

239 (c) The amount of the contract price.

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

942015

Amendment No. (for drafter's use only)

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

243 (f) That the undisputed amount has remained due and
244 payable pursuant to the contract for more than 30 days after the
245 date the labor or services were accepted or the materials were
246 received.

247 (g) That the person against whom the complaint was filed
248 has received payment on account of the labor, services, or
249 materials described in the complaint and, as of the date the
250 complaint was filed, has failed to make payment within the time
251 limitations set forth in s. 255.073(3) ~~more than 30 days prior~~
252 to the date the complaint was filed.

253 Section 6. Section 255.072, Florida Statutes, is created
254 to read:

255 255.072 Definitions.--As used in ss. 255.073-255.078, the
256 term:

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

259 (2) "Construction services" means all labor, services, and
260 materials provided in connection with the construction,
261 alteration, repair, demolition, reconstruction, or any other
262 improvements to real property. The term "construction services"
263 does not include contracts or work performed for the Department
264 of Transportation.

265 (3) "Contractor" means any person who contracts directly
266 with a public entity to provide construction services.

267 (4) "Payment request" means a request for payment for
268 construction services which conforms with all statutory

942015

Amendment No. (for drafter's use only)

269 requirements and with all requirements specified by the public
270 entity to which the payment request is submitted.

271 (5) "Public entity" means the state, or any office, board,
272 bureau, commission, department, branch, division, or institution
273 thereof, but does not include a local governmental entity as
274 defined in s. 218.72.

275 (6) "Purchase" means the purchase of construction
276 services.

277 Section 7. Section 255.073, Florida Statutes, is created
278 to read:

279 255.073 Timely payment for purchases of construction
280 services.--

281 (1) Except as otherwise provided in ss. 255.072-255.078,
282 s. 215.422 governs the timely payment for construction services
283 by a public entity.

284 (2) If a public entity disputes a portion of a payment
285 request, the undisputed portion must be timely paid.

286 (3) When a contractor receives payment from a public
287 entity for labor, services, or materials furnished by
288 subcontractors and suppliers hired by the contractor, the
289 contractor shall remit payment due to those subcontractors and
290 suppliers within 10 days after the contractor's receipt of
291 payment. When a subcontractor receives payment from a contractor
292 for labor, services, or materials furnished by subcontractors
293 and suppliers hired by the subcontractor, the subcontractor
294 shall remit payment due to those subcontractors and suppliers
295 within 7 days after the subcontractor's receipt of payment. This
296 subsection does not prohibit a contractor or subcontractor from

942015

Amendment No. (for drafter's use only)

297 disputing, pursuant to the terms of the relevant contract, all
298 or any portion of a payment alleged to be due to another party
299 if the contractor or subcontractor notifies the party whose
300 payment is disputed, in writing, of the amount in dispute and
301 the actions required to cure the dispute. The contractor or
302 subcontractor must pay all undisputed amounts due within the
303 time limits imposed by this subsection.

304 (4) All payments due for the purchase of construction
305 services and not made within the applicable time limits shall
306 bear interest at the rate specified in s. 215.422. After July 1,
307 2005, such payments shall bear interest at the rate of 1 percent
308 per month, to the extent that the Chief Financial Officer's
309 replacement project for the state's accounting and cash
310 management systems (Project ASPIRE) is operational for the
311 particular affected public entities. After January 1, 2006, all
312 such payments due from public entities shall bear interest at
313 the rate of 1 percent per month.

314 Section 8. Section 255.074, Florida Statutes, is created
315 to read:

316 255.074 Procedures for calculation of payment due dates.--

317 (1) Each public entity shall establish procedures whereby
318 each payment request received by the public entity is marked as
319 received on the date on which it is delivered to an agent or
320 employee of the public entity or of a facility or office of the
321 public entity.

322 (2) If the terms under which a purchase is made allow for
323 partial deliveries and a payment request is submitted for a
324 partial delivery, the time for payment for the partial delivery

942015

Amendment No. (for drafter's use only)

325 must be calculated from the time of the partial delivery and the
326 submission of the payment request.

327 (3) A public entity must submit a payment request to the
328 Chief Financial Officer for payment no more than 20 days after
329 receipt of the payment request.

330 Section 9. Section 255.075, Florida Statutes, is created
331 to read:

332 255.075 Mandatory interest.--A contract between a public
333 entity and a contractor may not prohibit the collection of late
334 payment interest charges authorized under s. 255.073(4).

335 Section 10. Section 255.076, Florida Statutes, is created
336 to read:

337 255.076 Improper payment request; resolution of disputes.-
338 - In an action to recover amounts due for construction services
339 purchased by a public entity, the court shall award court costs
340 and reasonable attorney's fees, including fees incurred through
341 any appeal, to the prevailing party, if the court finds that the
342 nonprevailing party withheld any portion of the payment that is
343 the subject of the action without any reasonable basis in law or
344 fact to dispute the prevailing party's claim to those amounts.

345 Section 11. Section 255.077, Florida Statutes, is created
346 to read:

347 255.077 Project closeout and payment of retainage.--

348 (1) Each contract for construction services between a
349 public entity and a contractor must provide for the development
350 of a list of items required to render complete, satisfactory,
351 and acceptable the construction services purchased by the public
352 entity. The contract must specify the process for the

942015

Amendment No. (for drafter's use only)

353 development of the list, including responsibilities of the
354 public entity and the contractor in developing and reviewing the
355 list and a reasonable time for developing the list, as follows:

356 1. For construction projects with an estimated cost of
357 less than \$10 million, within 30 calendar days after reaching
358 substantial completion of the construction services purchased as
359 defined in the contract, or, if not defined in the contract,
360 upon reaching beneficial occupancy or use; or

361 2. For construction projects with an estimated cost of \$10
362 million or more, within 30 calendar days, unless otherwise
363 extended by contract not to exceed 60 calendar days, after
364 reaching substantial completion of the construction services
365 purchased as defined in the contract, or, if not defined in the
366 contract, upon reaching beneficial occupancy or use.

367 (2) If the contract between the public entity and the
368 contractor relates to the purchase of construction services on
369 more than one building or structure, or involves a multiphased
370 project, the contract shall provide for the development of a
371 list of items required to render complete, satisfactory, and
372 acceptable all the construction services purchased pursuant to
373 the contract for each building, structure, or phase of the
374 project within the time limitations provided in subsection (1).

375 (3) The failure to include any corrective work or pending
376 items not yet completed on the list developed pursuant to
377 subsection (1) or subsection(2) does not alter the
378 responsibility of the contractor to complete all the
379 construction services purchased pursuant to the contract.

942015

Amendment No. (for drafter's use only)

380 (4) Upon completion of all items on the list, the
381 contractor may submit a payment request for all remaining
382 retainage withheld by the public entity pursuant to s. 255.078.
383 If a good-faith dispute exists as to whether one or more items
384 identified on the list have been completed pursuant to the
385 contract, the public entity may continue to withhold an amount
386 not to exceed 150 percent of the total costs to complete such
387 items.

388 (5) All items that require correction under the contract
389 and that are identified after the preparation and delivery of
390 the list remain the obligation of the contractor as defined by
391 the contract.

392 (6) Warranty items may not affect the final payment of
393 retainage as provided in this section or as provided in the
394 contract between the contractor and its subcontractors and
395 suppliers.

396 (7) Retainage may not be held by a public entity or a
397 contractor to secure payment of insurance premiums under a
398 consolidated insurance program or series of insurance policies
399 issued to a public entity or a contractor for a project or group
400 of projects, and the final payment of retainage as provided in
401 this section may not be delayed pending a final audit by the
402 public entity's or contractor's insurance provider.

403 (8) If a public entity fails to comply with its
404 responsibilities to develop the list required under subsection
405 (1) or subsection (2), as defined in the contract, within the
406 time limitations provided in subsection (1), the contractor may
407 submit a payment request for all remaining retainage withheld by

942015

Amendment No. (for drafter's use only)

408 the public entity pursuant to s. 255.078. The public entity need
409 not pay or process any payment request for retainage if the
410 contractor has, in whole or in part, failed to cooperate with
411 the public entity in the development of the list or failed to
412 perform its contractual responsibilities, if any, with regard to
413 the development of the list or if s. 255.078(6) applies.

414 Section 12. Section 255.078, Florida Statutes, is created
415 to read:

416 255.078 Public construction retainage.--

417 (1) With regard to any contract for construction services,
418 a public entity may withhold from each progress payment made to
419 the contractor an amount not exceeding 10 percent of the payment
420 as retainage to ensure the satisfactory completion of the
421 construction services purchased pursuant to the contract until
422 50-percent completion of such services.

423 (2) After 50-percent completion of the construction
424 services purchased pursuant to the contract, the public entity
425 must reduce to 5 percent the amount of retainage withheld from
426 each subsequent progress payment made to the contractor. For
427 purposes of this section, the term "50-percent completion" has
428 the meaning set forth in the contract between the public entity
429 and the contractor, or, if not defined in the contract, the
430 point at which the public entity has expended 50 percent of the
431 total cost of the construction services purchased as identified
432 in the contract together with all costs associated with existing
433 change orders and other additions or modifications to the
434 construction services provided for in the contract.

942015

Amendment No. (for drafter's use only)

435 (3) After 50-percent completion of the construction
436 services purchased pursuant to the contract, the contractor may
437 elect to withhold retainage from payments to its subcontractors
438 at a rate higher than 5 percent. The specific amount to be
439 withheld must be determined on a case-by-case basis and must be
440 based on the contractor's assessment of the subcontractor's past
441 performance, the likelihood that such performance will continue,
442 and the contractor's ability to rely on other safeguards. The
443 contractor shall notify the subcontractor, in writing, of its
444 determination to withhold more than 5 percent of the progress
445 payment and the reasons for making that determination, and the
446 contractor may not request the release of such retained funds
447 from the public entity.

448 (4) After 50-percent completion of the construction
449 services purchased pursuant to the contract, the contractor may
450 present to the public entity a payment request for up to one-
451 half of the retainage held by the public entity. The public
452 entity shall promptly make payment to the contractor, unless the
453 public entity has grounds, pursuant to subsection (6), for
454 withholding the payment of retainage. If the public entity makes
455 payment of retainage to the contractor under this subsection
456 which is attributable to the labor, services, or materials
457 supplied by one or more subcontractors or suppliers, the
458 contractor shall timely remit payment of such retainage to those
459 subcontractors and suppliers.

460 (5) Neither this section nor s. 255.077 prohibits a public
461 entity from withholding retainage at a rate less than 10 percent
462 of each progress payment, from incrementally reducing the rate

942015

Amendment No. (for drafter's use only)

463 of retainage pursuant to a schedule provided for in the
464 contract, or from releasing at any point all or a portion of any
465 retainage withheld by the public entity which is attributable to
466 the labor, services, or materials supplied by the contractor or
467 by one or more subcontractors or suppliers. If a public entity
468 makes any payment of retainage to the contractor which is
469 attributable to the labor, services, or materials supplied by
470 one or more subcontractors or suppliers, the contractor shall
471 timely remit payment of such retainage to those subcontractors
472 and suppliers.

473 (6) Neither this section nor s. 255.077 requires the
474 public entity to pay or release any amounts that are the subject
475 of a good-faith dispute, the subject of an action brought
476 pursuant to s. 255.05, or otherwise the subject of a claim or
477 demand by the public entity or contractor.

478 (7) The same time limits for payment of a payment request
479 apply regardless of whether the payment request is for, or
480 includes, retainage.

481 (8) Subsections (1)-(4) do not apply to construction
482 services purchased by a public entity which are paid for, in
483 whole or in part, with federal funds and are subject to federal
484 grantor laws and regulations or requirements that are contrary
485 to any provision of the Florida Prompt Payment Act.

486 (9) This section does not apply to any construction
487 services purchased by a public entity if the total cost of the
488 construction services purchased as identified in the contract is
489 \$200,000 or less.

942015

HOUSE AMENDMENT

Bill No.HB 1427 CS

Amendment No. (for drafter's use only)

490 Section 13. Section 255.05, Florida Statutes, is amended
491 to read:

492 255.05 Bond of contractor constructing public buildings;
493 form; action by materialmen.--

494 (1)(a) Any person entering into a formal contract with the
495 state or any county, city, or political subdivision thereof, or
496 other public authority, for the construction of a public
497 building, for the prosecution and completion of a public work,
498 or for repairs upon a public building or public work shall be
499 required, before commencing the work or before recommencing the
500 work after a default or abandonment, to execute, deliver to the
501 public owner, and record in the public records of the county
502 where the improvement is located, a payment and performance bond
503 with a surety insurer authorized to do business in this state as
504 surety. A public entity may not require a contractor to secure a
505 surety bond under this section from a specific agent or bonding
506 company. The bond must state on its front page: the name,
507 principal business address, and phone number of the contractor,
508 the surety, the owner of the property being improved, and, if
509 different from the owner, the contracting public entity; the
510 contract number assigned by the contracting public entity; and a
511 description of the project sufficient to identify it, such as a
512 legal description or the street address of the property being
513 improved, and a general description of the improvement. Such
514 bond shall be conditioned upon the contractor's performance of
515 the construction work in the time and manner prescribed in the
516 contract and promptly making payments to all persons defined in
517 s. 713.01 who furnish labor, services, or materials for the

942015

Amendment No. (for drafter's use only)

518 prosecution of the work provided for in the contract. Any
519 claimant may apply to the governmental entity having charge of
520 the work for copies of the contract and bond and shall thereupon
521 be furnished with a certified copy of the contract and bond. The
522 claimant shall have a right of action against the contractor and
523 surety for the amount due him or her, including unpaid finance
524 charges due under the claimant's contract. Such action shall not
525 involve the public authority in any expense. When such work is
526 done for the state and the contract is for \$100,000 or less, no
527 payment and performance bond shall be required. At the
528 discretion of the official or board awarding such contract when
529 such work is done for any county, city, political subdivision,
530 or public authority, any person entering into such a contract
531 which is for \$200,000 or less may be exempted from executing the
532 payment and performance bond. When such work is done for the
533 state, the Secretary of the Department of Management Services
534 may delegate to state agencies the authority to exempt any
535 person entering into such a contract amounting to more than
536 \$100,000 but less than \$200,000 from executing the payment and
537 performance bond. In the event such exemption is granted, the
538 officer or officials shall not be personally liable to persons
539 suffering loss because of granting such exemption. The
540 Department of Management Services shall maintain information on
541 the number of requests by state agencies for delegation of
542 authority to waive the bond requirements by agency and project
543 number and whether any request for delegation was denied and the
544 justification for the denial. Any provision in a bond furnished
545 for public work contracts as provided by this subsection

942015

Amendment No. (for drafter's use only)

546 restricting the classes or persons protected by the bond or the
547 venue of any proceeding relating to the bond is unenforceable.

548 (b) The Department of Management Services shall adopt
549 rules with respect to all contracts for \$200,000 or less, to
550 provide:

551 1. Procedures for retaining up to 10 percent of each
552 request for payment submitted by a contractor and procedures for
553 determining disbursements from the amount retained on a pro rata
554 basis to laborers, materialmen, and subcontractors, as defined
555 in s. 713.01.

556 2. Procedures for requiring certification from laborers,
557 materialmen, and subcontractors, as defined in s. 713.01, prior
558 to final payment to the contractor that such laborers,
559 materialmen, and subcontractors have no claims against the
560 contractor resulting from the completion of the work provided
561 for in the contract.

562

563

564 The state shall not be held liable to any laborer, materialman,
565 or subcontractor for any amounts greater than the pro rata share
566 as determined under this section.

567 (2)(a)1. If a claimant is no longer furnishing labor,
568 services, or materials on a project, a contractor or the
569 contractor's agent or attorney may elect to shorten the
570 prescribed time in this paragraph within which an action to
571 enforce any claim against a payment bond provided pursuant to
572 this section may be commenced by recording in the clerk's office
573 a notice in substantially the following form:

942015

Amendment No. (for drafter's use only)

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NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

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.

Amendment No. (for drafter's use only)

602 2. A claimant, except a laborer, who is not in privity
603 with the contractor shall, before commencing or not later than
604 45 days after commencing to furnish labor, materials, or
605 supplies for the prosecution of the work, furnish the contractor
606 with a notice that he or she intends to look to the bond for
607 protection. A claimant who is not in privity with the contractor
608 and who has not received payment for his or her labor,
609 materials, or supplies shall deliver to the contractor and to
610 the surety written notice of the performance of the labor or
611 delivery of the materials or supplies and of the nonpayment. The
612 notice of nonpayment may be served at any time during the
613 progress of the work or thereafter but not before 45 days after
614 the first furnishing of labor, services, or materials, and not
615 later than 90 days after the final furnishing of the labor,
616 services, or materials by the claimant or, with respect to
617 rental equipment, not later than 90 days after the date that the
618 rental equipment was last on the job site available for use. Any
619 notice of nonpayment served by a claimant who is not in privity
620 with the contractor which includes sums for retainage must
621 specify the portion of the amount claimed for retainage. No
622 action for the labor, materials, or supplies may be instituted
623 against the contractor or the surety unless both notices have
624 been given. Notices required or permitted under this section may
625 be served in accordance with s. 713.18. ~~An action, except for an~~
626 ~~action exclusively for recovery of retainage, must be instituted~~
627 ~~against the contractor or the surety on the payment bond or the~~
628 ~~payment provisions of a combined payment and performance bond~~
629 ~~within 1 year after the performance of the labor or completion~~

942015

Amendment No. (for drafter's use only)

630 ~~of delivery of the materials or supplies. An action exclusively~~
631 ~~for recovery of retainage must be instituted against the~~
632 ~~contractor or the surety within 1 year after the performance of~~
633 ~~the labor or completion of delivery of the materials or~~
634 ~~supplies, or within 90 days after receipt of final payment (or~~
635 ~~the payment estimate containing the owner's final reconciliation~~
636 ~~of quantities if no further payment is earned and due as a~~
637 ~~result of deductive adjustments) by the contractor or surety,~~
638 ~~whichever comes last.~~ A claimant may not waive in advance his or
639 her right to bring an action under the bond against the surety.
640 In any action brought to enforce a claim against a payment bond
641 under this section, the prevailing party is entitled to recover
642 a reasonable fee for the services of his or her attorney for
643 trial and appeal or for arbitration, in an amount to be
644 determined by the court, which fee must be taxed as part of the
645 prevailing party's costs, as allowed in equitable actions. The
646 time periods for service of a notice of nonpayment or for
647 bringing an action against a contractor or a surety shall be
648 measured from the last day of furnishing labor, services, or
649 materials by the claimant and shall not be measured by other
650 standards, such as the issuance of a certificate of occupancy or
651 the issuance of a certificate of substantial completion.

652 (b) When a person is required to execute a waiver of his
653 or her right to make a claim against the payment bond in
654 exchange for, or to induce payment of, a progress payment, the
655 waiver may be in substantially the following form:
656
657

942015

Amendment No. (for drafter's use only)

658 WAIVER OF RIGHT TO CLAIM AGAINST THE PAYMENT BOND (PROGRESS
659 PAYMENT)
660

661 The undersigned, in consideration of the sum of \$____,
662 hereby waives its right to claim against the payment bond for
663 labor, services, or materials furnished through . . . (insert
664 date) . . . to . . . (insert the name of your customer) . . .
665 on the job of . . . (insert the name of the owner) . . . , for
666 improvements to the following described project:

667
668
669 (description of project)
670

671
672 This waiver does not cover any retention or any labor,
673 services, or materials furnished after the date specified.

674
675 DATED ON _____, _____.
676 . . . (Claimant) . . .
677 By: _____
678

679 (c) When a person is required to execute a waiver of his
680 or her right to make a claim against the payment bond, in
681 exchange for, or to induce payment of, the final payment, the
682 waiver may be in substantially the following form:
683
684

Amendment No. (for drafter's use only)

685 WAIVER OF RIGHT TO CLAIM AGAINST THE PAYMENT BOND (FINAL
686 PAYMENT)
687

688 The undersigned, in consideration of the final payment in
689 the amount of \$____, hereby waives its right to claim against
690 the payment bond for labor, services, or materials furnished to
691 . . . (insert the name of your customer) . . . on the job of .
692 . . (insert the name of the owner) . . . , for improvements to
693 the following described project:

694
695
696 (description of project)
697

698 DATED ON _____, ____.
699 . . . (Claimant) . . .
700 By: _____
701

702 (d) A person may not require a claimant to furnish a
703 waiver that is different from the forms in paragraphs (b) and
704 (c).

705 (e) A claimant who executes a waiver in exchange for a
706 check may condition the waiver on payment of the check.

707 (f) A waiver that is not substantially similar to the
708 forms in this subsection is enforceable in accordance with its
709 terms.

710 (3) The bond required in subsection (1) may be in
711 substantially the following form:
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Amendment No. (for drafter's use only)

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PUBLIC CONSTRUCTION BOND

Bond No. (enter bond number)

BY THIS BOND, We _____, as Principal and _____, a corporation, as Surety, are bound to _____, herein called Owner, in the sum of \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated _____, _____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and

3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and

Amendment No. (for drafter's use only)

740 4. Performs the guarantee of all work and materials
741 furnished under the contract for the time specified in the
742 contract, then this bond is void; otherwise it remains in full
743 force.

744 Any action instituted by a claimant under this bond for
745 payment must be in accordance with the notice and time
746 limitation provisions in Section 255.05, Florida Statutes.

747 Any changes in or under the contract documents and
748 compliance or noncompliance with any formalities connected with
749 the contract or the changes does not affect Surety's obligation
750 under this bond.

751
752 DATED ON _____, _____.

753
754
755 ... (Name of Principal) ...

756
757 By ... (As Attorney in Fact) ...

758
759 ... (Name of Surety) ...

760
761 (4) The payment provisions of all bonds required by
762 ~~furnished for public work contracts described in subsection (1)~~
763 shall, regardless of form, be construed and deemed statutory
764 bonds furnished pursuant to this section and such bonds shall
765 not under any circumstances be converted into common law bonds
766 ~~bond provisions, subject to all requirements of subsection (2).~~

Amendment No. (for drafter's use only)

767 (5) In addition to the provisions of chapter 47, any
768 action authorized under this section may be brought in the
769 county in which the public building or public work is being
770 constructed or repaired. ~~This subsection shall not apply to an~~
771 ~~action instituted prior to May 17, 1977.~~

772 ~~(6) All bonds executed pursuant to this section shall make~~
773 ~~reference to this section by number and shall contain reference~~
774 ~~to the notice and time limitation provisions of this section.~~

775 (6)~~(7)~~ In lieu of the bond required by this section, a
776 contractor may file with the state, county, city, or other
777 political authority an alternative form of security in the form
778 of cash, a money order, a certified check, a cashier's check, an
779 irrevocable letter of credit, or a security of a type listed in
780 part II of chapter 625. Any such alternative form of security
781 shall be for the same purpose and be subject to the same
782 conditions as those applicable to the bond required by this
783 section. The determination of the value of an alternative form
784 of security shall be made by the appropriate state, county,
785 city, or other political subdivision.

786 (7)~~(8)~~ When a contractor has furnished a payment bond
787 pursuant to this section, he or she may, when the state, county,
788 municipality, political subdivision, or other public authority
789 makes any payment to the contractor or directly to a claimant,
790 serve a written demand on any claimant who is not in privity
791 with the contractor for a written statement under oath of his or
792 her account showing the nature of the labor or services
793 performed and to be performed, if any; the materials furnished;
794 the materials to be furnished, if known; the amount paid on

942015

Amendment No. (for drafter's use only)

795 account to date; the amount due; and the amount to become due,
796 if known, as of the date of the statement by the claimant. Any
797 such demand to a claimant who is not in privity with the
798 contractor must be served on the claimant at the address and to
799 the attention of any person who is designated to receive the
800 demand in the notice to contractor served by the claimant. The
801 failure or refusal to furnish the statement does not deprive the
802 claimant of his or her rights under the bond if the demand is
803 not served at the address of the claimant or directed to the
804 attention of the person designated to receive the demand in the
805 notice to contractor. The failure to furnish the statement
806 within 30 days after the demand, or the furnishing of a false or
807 fraudulent statement, deprives the claimant who fails to furnish
808 the statement, or who furnishes the false or fraudulent
809 statement, of his or her rights under the bond. If the
810 contractor serves more than one demand for statement of account
811 on a claimant and none of the information regarding the account
812 has changed since the claimant's last response to a demand, the
813 failure or refusal to furnish such statement does not deprive
814 the claimant of his or her rights under the bond. The negligent
815 inclusion or omission of any information deprives the claimant
816 of his or her rights under the bond to the extent that the
817 contractor can demonstrate prejudice from such act or omission
818 by the claimant. The failure to furnish a response to a demand
819 for statement of account does not affect the validity of any
820 claim on the bond being enforced in a lawsuit filed before the
821 date the demand for statement of account is received by the
822 claimant.

942015

Amendment No. (for drafter's use only)

823 ~~(8)~~(9) On any public works project for which the public
824 authority requires a performance and payment bond, suits at law
825 and in equity may be brought and maintained by and against the
826 public authority on any contract claim arising from breach of an
827 express provision or an implied covenant of a written agreement
828 or a written directive issued by the public authority pursuant
829 to the written agreement. In any such suit, the public
830 authority and the contractor shall have all of the same rights
831 and obligations as a private person under a like contract except
832 that no liability may be based on an oral modification of either
833 the written contract or written directive. Nothing herein shall
834 be construed to waive the sovereign immunity of the state and
835 its political subdivisions from equitable claims and equitable
836 remedies. The provisions of this subsection shall apply only to
837 contracts entered into on or after July 1, 1999.

838 (9) An action, except an action for recovery of retainage,
839 must be instituted against the contractor or the surety on the
840 payment bond or the payment provisions of a combined payment and
841 performance bond within 1 year after the performance of the
842 labor or completion of delivery of the materials or supplies. An
843 action for recovery of retainage must be instituted against the
844 contractor or the surety within 1 year after the performance of
845 the labor or completion of delivery of the materials or
846 supplies, provided that such an action may not be instituted
847 until one of the following conditions is satisfied:

848 (a) The public entity has paid out the claimant's
849 retainage to the contractor, and the time provided under s.

Amendment No. (for drafter's use only)

850 255.073(3) for payment of that retainage to the claimant has
851 expired;

852 (b) The claimant has completed all work required under its
853 contract and 70 days have passed since the contractor sent its
854 final payment request to the public entity; or

855 (c) The claimant has asked the contractor, in writing,
856 when the contractor received payment of the claimant's retainage
857 or when the contractor sent its final payment request to the
858 public entity, and the contractor has failed to respond to this
859 request, in writing, within 10 days after receipt.

860

861

862 If none of the conditions described in paragraph (a), paragraph
863 (b), or paragraph (c) is satisfied and an action for recovery of
864 retainage therefore cannot be instituted within the 1-year
865 limitation period set forth in this subsection, this limitation
866 period shall be extended until 120 days after one of these
867 conditions is satisfied.

868 Section 14. Paragraph (b) of subsection (2) of section
869 95.11, Florida Statutes, is amended to read:

870 95.11 Limitations other than for the recovery of real
871 property.--Actions other than for recovery of real property
872 shall be commenced as follows:

873 (2) WITHIN FIVE YEARS.--

874 (b) A legal or equitable action on a contract, obligation,
875 or liability founded on a written instrument, except for an
876 action to enforce a claim against a payment bond, which shall be

942015

Amendment No. (for drafter's use only)

877 governed by the applicable provisions of ss. 255.05(9)

878 ~~255.05(2)(a)2.~~ and 713.23(1)(e).

879 Section 15. Section 713.015, Florida Statutes, is amended
880 to read:

881 713.015 Mandatory provisions for direct contracts.--Any
882 direct contract between an owner and a contractor, related to
883 improvements to real property consisting of single or multiple
884 family dwellings up to and including four units, must contain
885 the following provision printed in capital letters no less than
886 the same size 18-point, capitalized, boldfaced type used in the
887 body of the contract:

888
889
890
891 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-
892 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR
893 PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO
894 ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS
895 CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A
896 SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS,
897 OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED
898 PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR
899 PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN
900 FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY
901 ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED
902 YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR,
903 MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A
904 SUBCONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION

942015

Amendment No. (for drafter's use only)

905 LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A
906 SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

907

908

909 Nothing in this section shall be construed to adversely affect
910 the lien and bond rights of lienors who are not in privity with
911 the owner. This section does not apply when the owner is also a
912 licensed contractor or a construction professional who is in the
913 business of developing property.

914 Section 16. Subsection (7) of section 713.02, Florida
915 Statutes, is amended to read:

916 713.02 Types of lienors and exemptions.--

917 (7) Notwithstanding any other provision of this part, no
918 lien shall exist in favor of any contractor, subcontractor, or
919 sub-subcontractor who is unlicensed as provided in s. 489.128 or
920 s. 489.532. Notwithstanding any other provision of this part, if
921 a contract is rendered unenforceable by an unlicensed
922 contractor, subcontractor, or sub-subcontractor pursuant to s.
923 489.128 or s. 489.532, such unenforceability shall not affect
924 the rights of any other persons to enforce contract, lien, or
925 bond remedies and shall not affect the obligations of a surety
926 that has provided a bond on behalf of the unlicensed contractor,
927 subcontractor, or sub-subcontractor. It shall not be a defense
928 to any claim on a bond or indemnity agreement that the principal
929 or indemnitor is unlicensed as provided in s. 489.128 or s.
930 489.532.

942015

Amendment No. (for drafter's use only)

931 Section 17. Subsection (3) of section 713.04, Florida
932 Statutes, is amended, and subsection(4) is added to that
933 section, to read:

934 713.04 Subdivision improvements.--

935 (3) The owner shall not pay any money on account of a
936 direct contract before actual furnishing of labor and services
937 or materials for subdivision improvements. Any such ~~The~~ payment
938 not complying with such requirement shall not qualify as a
939 proper payment under this chapter section.

940 (4) The owner shall make final payment on account of a
941 direct contract only after the contractor complies with s.
942 713.06(3)(d). Any such payment not complying with such
943 requirement shall not qualify as a proper payment under this
944 chapter.

945
946 Section 18. Paragraph (c) of subsection (4) of section
947 713.08, Florida Statutes, is amended to read:

948 713.08 Claim of lien.--

949 (4)

950 (c) The claim of lien shall be served on the owner.
951 Failure to serve any claim of lien in the manner provided in s.
952 713.18 before recording or within 15 days after recording shall
953 render the claim of lien voidable to the extent that the failure
954 or delay is shown to have been prejudicial to any person
955 entitled to rely on the service.

956 Section 19. Paragraph (e) of subsection (1) of section
957 713.13, Florida Statutes, is amended to read:

958 713.13 Notice of commencement.--

942015

Amendment No. (for drafter's use only)

959 (1)
960 (e) A copy of any bond must be attached at the time of
961 recordation of the notice of commencement. The failure to attach
962 a copy of the bond to the notice of commencement when the notice
963 is recorded negates the exemption provided in s. 713.02(6).
964 However, if such a bond exists but is not recorded, the bond may
965 be used as a transfer bond pursuant to s. 713.24. The bond shall
966 be deemed a transfer bond under s. 713.24 for all purposes at
967 the time of recordation of the notice of bond and the clerk's
968 mailing as provided in s. 713.23(2). The notice requirements of
969 s. 713.23 apply to any claim against the bond; however, the time
970 limits for serving the notice shall run from the later of the
971 time specified in s. 713.23 or the date the notice of bond is
972 served on the lienor.

973 Section 20. Paragraph (b) of subsection (1) and subsection
974 (4) of section 713.135, Florida Statutes, are amended, and
975 paragraph (e) is added to subsection (1) of that section, to
976 read:

977 713.135 Notice of commencement and applicability of lien.-
978 -

979 (1) When any person applies for a building permit, the
980 authority issuing such permit shall:

981 (b) Provide the applicant and the owner of the real
982 property upon which improvements are to be constructed with a
983 printed statement stating that the right, title, and interest of
984 the person who has contracted for the improvement may be subject
985 to attachment under the Construction Lien Law. The Department of
986 Business and Professional Regulation shall furnish, for

942015

Amendment No. (for drafter's use only)

987 distribution, the statement described in this paragraph, and the
988 statement must be a summary of the Construction Lien Law and
989 must include an explanation of the provisions of the
990 Construction Lien Law relating to the recording, and the posting
991 of copies, of notices of commencement and a statement
992 encouraging the owner to record a notice of commencement and
993 post a copy of the notice of commencement in accordance with s.
994 713.13. The statement must also contain an explanation of the
995 owner's rights if a lienor fails to furnish the owner with a
996 notice as provided in s. 713.06(2) and an explanation of the
997 owner's rights as provided in s. 713.22. The authority that
998 issues the building permit must obtain from the Department of
999 Business and Professional Regulation the statement required by
1000 this paragraph and must mail, deliver by electronic mail or
1001 other electronic format or facsimile, or personally deliver that
1002 statement to the owner or, in the case in which the owner is
1003 required to personally appear to obtain the permit, provide that
1004 statement to any owner making improvements to real property
1005 consisting of a single or multiple family dwelling up to and
1006 including four units. However, the failure by the authorities to
1007 provide the summary does not subject the issuing authority to
1008 liability.

1009 (e) Nothing in this subsection shall be construed to
1010 require a notice of commencement to be recorded as a condition
1011 to the issuance of a building permit.

1012 (4) The several boards of county commissioners, municipal
1013 councils, or other similar bodies may by ordinance or resolution
1014 establish reasonable fees for furnishing copies of the forms and

942015

Amendment No. (for drafter's use only)

1015 the printed statement provided in paragraphs (1)(b) and
1016 ~~paragraph (1)(d)~~ in an amount not to exceed \$5 to be paid by the
1017 applicant for each permit in addition to all other costs of the
1018 permit; however, no forms or statement need be furnished,
1019 mailed, or otherwise provided to, nor may such additional fee be
1020 obtained from, applicants for permits in those cases in which
1021 the owner of a legal or equitable interest (including that of
1022 ownership of stock of a corporate landowner) of the real
1023 property to be improved is engaged in the business of
1024 construction of buildings for sale to others and intends to make
1025 the improvements authorized by the permit on the property and
1026 upon completion will offer the improved real property for sale.

1027 Section 21. Subsection (4) of section 713.24, Florida
1028 Statutes, is amended to read:

1029 713.24 Transfer of liens to security.--

1030 (4) If a proceeding to enforce a transferred lien is not
1031 commenced within the time specified in s. 713.22 or if it
1032 appears that the transferred lien has been satisfied of record,
1033 the clerk shall return said security upon request of the person
1034 depositing or filing the same, or the insurer. If a proceeding
1035 to enforce a lien is commenced in a court of competent
1036 jurisdiction within the time specified in s. 713.22 and,
1037 subsequent to the expiration of the proceeding, the lien is
1038 transferred pursuant to s. 713.24, an action commenced to
1039 recover against the security shall be deemed to have been
1040 brought as of the date of filing the action to enforce the lien.

1041 Section 22. Paragraph (b) of subsection (1) of section
1042 713.345, Florida Statutes, is amended to read:

942015

Amendment No. (for drafter's use only)

1043 713.345 Moneys received for real property improvements;
1044 penalty for misapplication.--

1045 (1)

1046 (b) Any person who knowingly and intentionally fails to
1047 comply with paragraph (a) is guilty of misapplication of
1048 construction funds, punishable as follows:

1049 1. If the amount of payments misapplied has an aggregate
1050 value of \$100,000 or more, the violator is guilty of a felony of
1051 the first degree, punishable as provided in s. 775.082, s.
1052 775.083, or s. 775.084.

1053 2. If the amount of payments misapplied has an aggregate
1054 value of ~~\$20,000 or more but~~ less than \$100,000, the violator is
1055 guilty of a felony of the second degree, punishable as provided
1056 in s. 775.082, s. 775.083, or s. 775.084.

1057 ~~3. If the amount of payments misapplied has an aggregate~~
1058 ~~value of less than \$20,000, the violator is guilty of a felony~~
1059 ~~of the third degree, punishable as provided in s. 775.082, s.~~
1060 ~~775.083, or s. 775.084.~~

1061 Section 23. Subsection (1) of section 713.3471, Florida
1062 Statutes, is amended to read:

1063 713.3471 Lender responsibilities with construction loans.-

1064 -

1065 (1) Prior to a lender making the first any loan
1066 disbursement on any construction loan secured by residential
1067 property directly to the owner, which for purposes of this
1068 section means an individual owner only, or jointly to the owner
1069 and any other party, the lender shall give the following written

942015

Amendment No. (for drafter's use only)

1070 notice to the owner ~~borrowers~~ in bold type larger than any other
1071 type on the page:

1072 WARNING!

1073
1074 YOUR LENDER IS MAKING A LOAN DISBURSEMENT DIRECTLY TO YOU AS
1075 THE OWNER ~~BORROWER~~, OR JOINTLY TO YOU AND ANOTHER PARTY. TO
1076 PROTECT YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME LABOR,
1077 SERVICES, OR MATERIALS USED IN MAKING THE IMPROVEMENTS TO YOUR
1078 PROPERTY, BE SURE THAT YOU REQUIRE YOUR CONTRACTOR TO GIVE YOU
1079 LIEN RELEASES FROM EACH LIENOR WHO HAS SENT YOU A NOTICE TO
1080 OWNER EACH TIME YOU MAKE A PAYMENT TO YOUR CONTRACTOR.

1081 Section 24. Neither the amendments to sections 95.11,
1082 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and
1083 subsection (2) of section 255.05, Florida Statutes, as provided
1084 in this act, nor subsection (9) of section 255.05, Florida
1085 Statutes, and section 255.078, Florida Statutes, as created by
1086 this act, apply to any existing construction contract pending
1087 approval by a local governmental entity or public entity, or to
1088 any project advertised for bid by the local government entity or
1089 public entity, on or before the effective date of this act. The
1090 amendments to subsections (3), (4), and (6) of section 255.05,
1091 Florida Statutes, as provided in this act, apply to public
1092 construction bonds issued for contracts entered into on or after
1093 the effective date of this act.

1094 Section 25. This act shall take effect October 1, 2004.

1095
1096
1097 ===== T I T L E A M E N D M E N T =====

Amendment No. (for drafter's use only)

1098 Remove the entire title and insert:
1099 A bill to be entitled
1100 An act relating to construction contracting; amending s.
1101 218.70, F.S.; providing a short title; amending s. 218.72,
1102 F.S.; redefining terms used in part VII of ch. 218, F.S.;
1103 amending s. 218.735, F.S.; revising provisions relating to
1104 timely payment for purchases of construction services;
1105 revising deadlines for payment; providing procedures for
1106 project closeout and payment of retainage; providing
1107 requirements for local government construction retainage;
1108 providing that ss. 218.72-218.76, F.S., apply to the
1109 payment of any payment request for retainage; providing
1110 exceptions; creating s. 255.0705, F.S.; providing a short
1111 title; amending s. 255.071, F.S.; revising deadlines for
1112 the payment of subcontractors, sub-subcontractors,
1113 materialmen, and suppliers on construction contracts for
1114 public projects; creating ss. 255.072, 255.073, 255.074,
1115 255.075, 255.076, 255.077, and 255.078, F.S.; providing
1116 definitions; providing for timely payment for purchases of
1117 construction services by a public entity; providing
1118 procedures for calculating payment due dates; providing
1119 procedures for handling improper payment requests;
1120 providing for the resolution of disputes; providing for
1121 project closeout and payment of retainage; providing that
1122 ss. 255.072-255.076, F.S., apply to the payment of any
1123 payment request for retainage; providing exceptions;
1124 amending s. 255.05, F.S.; providing that certain
1125 restrictions in bonds issued for public works projects are

942015

Amendment No. (for drafter's use only)

1126 unenforceable; providing requirements for certain notices
1127 of nonpayment served by a claimant who is not in privity
1128 with the contractor; revising the form for a public
1129 construction bond; requiring the payment provisions of all
1130 public construction bonds to be construed as statutory
1131 bonds; prohibiting conversion to common law bonds;
1132 deleting obsolete language; deleting a requirement that
1133 bond forms used by public owners reference certain notice
1134 and time limitation provisions; providing limitations on a
1135 claimant's institution of certain actions against a
1136 contractor or surety; amending s. 95.11, F.S., to conform
1137 a cross-reference; amending s. 713.015, F.S.; revising a
1138 direct contract provision requirement; amending s. 713.02,
1139 F.S.; protecting the rights of certain persons to enforce
1140 certain contract, lien, or bond remedies or contractual
1141 obligations under certain circumstances; precluding
1142 certain defenses; amending s. 713.04, F.S.; revising
1143 certain final payment requirements; amending s. 713.08,
1144 F.S.; requiring a claim of lien to be served on an owner;
1145 amending s. 713.13, F.S.; clarifying use of a payment bond
1146 as a transfer bond; amending s. 713.135, F.S., revising
1147 certain notice of commencement and applicability of lien
1148 requirements for certain authorities issuing building
1149 permits; amending s. 713.24, F.S.; preserving certain lien
1150 rights when filing a transfer bond after commencing
1151 certain lien enforcement proceedings; amending s. 713.345,
1152 F.S.; increasing certain criminal penalties for
1153 misapplication of construction funds; amending s.

942015

HOUSE AMENDMENT

Bill No.HB 1427 CS

Amendment No. (for drafter's use only)

1154 | 713.3471, F.S.; revising a notice requirement concerning
1155 | the disbursement of payments on construction loans;
1156 | requiring that the notice be provided to the owner;
1157 | providing for application of specified sections of the act
1158 | to certain contracts and projects; providing an effective
1159 | date.

942015