

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

1/AD/2R
04/26/2004 05:30 PM

.
. .
. .
. .
. .
. .

Senator Bennett moved the following amendment:

Senate Amendment

On page 1, lines 13-16, delete those lines

and insert:

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

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

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

218.72 Definitions.--As used in this part:

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

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

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

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

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

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

14 Section 3. Subsection (6) of section 218.735, Florida
15 Statutes, is amended, present subsection (7) of that section
16 is redesignated as subsection (9), and new subsections (7) and
17 (8) are added to that section, to read:

18 218.735 Timely payment for purchases of construction
19 services.--

20 (6) When a contractor receives payment from a local
21 governmental entity for labor, services, or materials
22 furnished by subcontractors and suppliers hired by the
23 contractor, the contractor shall remit payment due to those
24 subcontractors and suppliers within 10 ~~15~~ days after the
25 contractor's receipt of payment. When a subcontractor receives
26 payment from a contractor for labor, services, or materials
27 furnished by subcontractors and suppliers hired by the
28 subcontractor, the subcontractor shall remit payment due to
29 those subcontractors and suppliers within 7 ~~15~~ days after the
30 subcontractor's receipt of payment. Nothing herein shall
31 prohibit a contractor or subcontractor from disputing,

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

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

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

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

24 2. For construction projects with an estimated cost of
25 \$10 million or more, within 30 calendar days, unless otherwise
26 extended by contract not to exceed 60 calendar days, after
27 reaching substantial completion of the construction services
28 purchased as defined in the contract, or, if not defined in
29 the contract, upon reaching beneficial occupancy or use.

30 (b) If the contract between the local governmental
31 entity and the contractor relates to the purchase of

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 construction services on more than one building or structure,
2 or involves a multiphased project, the contract shall provide
3 for the development of a list of items required to render
4 complete, satisfactory, and acceptable all the construction
5 services purchased pursuant to the contract for each building,
6 structure, or phase of the project within the time limitations
7 provided in paragraph (a).

8 (c) The failure to include any corrective work or
9 pending items not yet completed on the list developed pursuant
10 to this subsection does not alter the responsibility of the
11 contractor to complete all the construction services purchased
12 pursuant to the contract.

13 (d) Upon completion of all items on the list, the
14 contractor may submit a payment request for all remaining
15 retainage withheld by the local governmental entity pursuant
16 to this section. If a good-faith dispute exists as to whether
17 one or more items identified on the list have been completed
18 pursuant to the contract, the local governmental entity may
19 continue to withhold an amount not to exceed 150 percent of
20 the total costs to complete such items.

21 (e) All items that require correction under the
22 contract and that are identified after the preparation and
23 delivery of the list remain the obligation of the contractor
24 as defined by the contract.

25 (f) Warranty items may not affect the final payment of
26 retainage as provided in this section or as provided in the
27 contract between the contractor and its subcontractors and
28 suppliers.

29 (g) Retainage may not be held by a local governmental
30 entity or a contractor to secure payment of insurance premiums
31 under a consolidated insurance program or series of insurance

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 policies issued to a local governmental entity or a contractor
2 for a project or group of projects, and the final payment of
3 retainage as provided in this section may not be delayed
4 pending a final audit by the local governmental entity's or
5 contractor's insurance provider.

6 (h) If a local governmental entity fails to comply
7 with its responsibilities to develop the list required under
8 paragraph (a) or paragraph (b), as defined in the contract,
9 within the time limitations provided in paragraph (a), the
10 contractor may submit a payment request for all remaining
11 retainage withheld by the local governmental entity pursuant
12 to this section. The local governmental entity need not pay or
13 process any payment request for retainage if the contractor
14 has, in whole or in part, failed to cooperate with the local
15 governmental entity in the development of the list or failed
16 to perform its contractual responsibilities, if any, with
17 regard to the development of the list or if paragraph (8)(f)
18 applies.

19 (8)(a) With regard to any contract for construction
20 services, a local governmental entity may withhold from each
21 progress payment made to the contractor an amount not
22 exceeding 10 percent of the payment as retainage to ensure the
23 satisfactory completion of the construction services purchased
24 pursuant to the contract until 50-percent completion of such
25 services.

26 (b) After 50-percent completion of the construction
27 services purchased pursuant to the contract, the local
28 governmental entity must reduce to 5 percent the amount of
29 retainage withheld from each subsequent progress payment made
30 to the contractor. For purposes of this subsection, the term
31 "50-percent completion" has the meaning set forth in the

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 contract between the local governmental entity and the
2 contractor, or, if not defined in the contract, the point at
3 which the local governmental entity has expended 50 percent of
4 the total cost of the construction services purchased as
5 identified in the contract together with all costs associated
6 with existing change orders and other additions or
7 modifications to the construction services provided for in the
8 contract. However, notwithstanding this subsection, a
9 municipality with a population of 25,000 or fewer, or a county
10 with a population of 100,000 or fewer, may withhold retainage
11 in an amount not exceeding 10 percent of each progress payment
12 made to the contractor until final completion and acceptance
13 of the project by the local governmental entity.

14 (c) After 50-percent completion of the construction
15 services purchased pursuant to the contract, the contractor
16 may elect to withhold retainage from payments to its
17 subcontractors at a rate higher than 5 percent. The specific
18 amount to be withheld must be determined on a case-by-case
19 basis and must be based on the contractor's assessment of the
20 subcontractor's past performance, the likelihood that such
21 performance will continue, and the contractor's ability to
22 rely on other safeguards. The contractor shall notify the
23 subcontractor, in writing, of its determination to withhold
24 more than 5 percent of the progress payment and the reasons
25 for making that determination, and the contractor may not
26 request the release of such retained funds from the local
27 governmental entity.

28 (d) After 50-percent completion of the construction
29 services purchased pursuant to the contract, the contractor
30 may present to the local governmental entity a payment request
31 for up to one-half of the retainage held by the local

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 governmental entity. The local governmental entity shall
2 promptly make payment to the contractor, unless the local
3 governmental entity has grounds, pursuant to paragraph (f),
4 for withholding the payment of retainage. If the local
5 governmental entity makes payment of retainage to the
6 contractor under this paragraph which is attributable to the
7 labor, services, or materials supplied by one or more
8 subcontractors or suppliers, the contractor shall timely remit
9 payment of such retainage to those subcontractors and
10 suppliers.

11 (e) This section does not prohibit a local
12 governmental entity from withholding retainage at a rate less
13 than 10 percent of each progress payment, from incrementally
14 reducing the rate of retainage pursuant to a schedule provided
15 for in the contract, or from releasing at any point all or a
16 portion of any retainage withheld by the local governmental
17 entity which is attributable to the labor, services, or
18 materials supplied by the contractor or by one or more
19 subcontractors or suppliers. If a local governmental entity
20 makes any payment of retainage to the contractor which is
21 attributable to the labor, services, or materials supplied by
22 one or more subcontractors or suppliers, the contractor shall
23 timely remit payment of such retainage to those subcontractors
24 and suppliers.

25 (f) This section does not require the local
26 governmental entity to pay or release any amounts that are the
27 subject of a good-faith dispute, the subject of an action
28 brought pursuant to s. 255.05, or otherwise the subject of a
29 claim or demand by the local governmental entity or
30 contractor.

31 (g) The time limitations set forth in this section for

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 payment of payment requests apply to any payment request for
2 retainage made pursuant to this section.

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

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

13 Section 4. Section 255.0705, Florida Statutes, is
14 created to read:

15 255.0705 Popular name.--Sections 255.0705-255.078 may
16 be cited as the "Florida Prompt Payment Act."

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

19 255.071 Payment of subcontractors, sub-subcontractors,
20 materialmen, and suppliers on construction contracts for
21 public projects.--

22 (2) The failure to pay any undisputed obligations for
23 such labor, services, or materials within 30 days after the
24 date the labor, services, or materials were furnished and
25 payment for such labor, services, or materials became due, or
26 within the time limitations set forth in s. 255.073(3) 30 days
27 after the date payment for such labor, services, or materials
28 is received, whichever last occurs, shall entitle any person
29 providing such labor, services, or materials to the procedures
30 specified in subsection (3) and the remedies provided in
31 subsection (4).

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 (3) Any person providing labor, services, or materials
2 for the construction of a public building, for the prosecution
3 and completion of a public work, or for repairs upon a public
4 building or public work improvements to real property may file
5 a verified complaint alleging:

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

8 (b) A description of the labor, services, or materials
9 provided and alleging that the labor, services, or materials
10 were provided in accordance with the contract.

11 (c) The amount of the contract price.

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

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

15 (f) That the undisputed amount has remained due and
16 payable pursuant to the contract for more than 30 days after
17 the date the labor or services were accepted or the materials
18 were received.

19 (g) That the person against whom the complaint was
20 filed has received payment on account of the labor, services,
21 or materials described in the complaint and, as of the date
22 the complaint was filed, has failed to make payment within the
23 time limitations set forth in s. 255.073(3) more than 30 days
24 prior to the date the complaint was filed.

25 Section 6. Section 255.072, Florida Statutes, is
26 created to read:

27 255.072 Definitions.--As used in ss. 255.073-255.078,
28 the term:

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

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 (2) "Construction services" means all labor, services,
2 and materials provided in connection with the construction,
3 alteration, repair, demolition, reconstruction, or any other
4 improvements to real property. The term "construction
5 services" does not include contracts or work performed for the
6 Department of Transportation.

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

10 (4) "Payment request" means a request for payment for
11 construction services which conforms with all statutory
12 requirements and with all requirements specified by the public
13 entity to which the payment request is submitted.

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

18 (6) "Purchase" means the purchase of construction
19 services.

20 Section 7. Section 255.073, Florida Statutes, is
21 created to read:

22 255.073 Timely payment for purchases of construction
23 services.--

24 (1) Except as otherwise provided in ss.
25 255.072-255.078, s. 215.422 governs the timely payment for
26 construction services by a public entity.

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

29 (3) When a contractor receives payment from a public
30 entity for labor, services, or materials furnished by
31 subcontractors and suppliers hired by the contractor, the

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 contractor shall remit payment due to those subcontractors and
2 suppliers within 10 days after the contractor's receipt of
3 payment. When a subcontractor receives payment from a
4 contractor for labor, services, or materials furnished by
5 subcontractors and suppliers hired by the subcontractor, the
6 subcontractor shall remit payment due to those subcontractors
7 and suppliers within 7 days after the subcontractor's receipt
8 of payment. This subsection does not prohibit a contractor or
9 subcontractor from disputing, pursuant to the terms of the
10 relevant contract, all or any portion of a payment alleged to
11 be due to another party if the contractor or subcontractor
12 notifies the party whose payment is disputed, in writing, of
13 the amount in dispute and the actions required to cure the
14 dispute. The contractor or subcontractor must pay all
15 undisputed amounts due within the time limits imposed by this
16 subsection.

17 (4) All payments due for the purchase of construction
18 services and not made within the applicable time limits shall
19 bear interest at the rate specified in s. 215.422. After July
20 1, 2005, such payments shall bear interest at the rate of 1
21 percent per month, to the extent that the Chief Financial
22 Officer's replacement project for the state's accounting and
23 cash management systems (Project ASPIRE) is operational for
24 the particular affected public entities. After January 1,
25 2006, all such payments due from public entities shall bear
26 interest at the rate of 1 percent per month.

27 Section 8. Section 255.074, Florida Statutes, is
28 created to read:

29 255.074 Procedures for calculation of payment due
30 dates.--

31 (1) Each public entity shall establish procedures

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 whereby each payment request received by the public entity is
2 marked as received on the date on which it is delivered to an
3 agent or employee of the public entity or of a facility or
4 office of the public entity.

5 (2) If the terms under which a purchase is made allow
6 for partial deliveries and a payment request is submitted for
7 a partial delivery, the time for payment for the partial
8 delivery must be calculated from the time of the partial
9 delivery and the submission of the payment request.

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

13 Section 9. Section 255.075, Florida Statutes, is
14 created to read:

15 255.075 Mandatory interest.--A contract between a
16 public entity and a contractor may not prohibit the collection
17 of late payment interest charges authorized under s.
18 255.073(4).

19 Section 10. Section 255.076, Florida Statutes, is
20 created to read:

21 255.076 Improper payment request; resolution of
22 disputes.-- In an action to recover amounts due for
23 construction services purchased by a public entity, the court
24 shall award court costs and reasonable attorney's fees,
25 including fees incurred through any appeal, to the prevailing
26 party, if the court finds that the nonprevailing party
27 withheld any portion of the payment that is the subject of the
28 action without any reasonable basis in law or fact to dispute
29 the prevailing party's claim to those amounts.

30 Section 11. Section 255.077, Florida Statutes, is
31 created to read:

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 255.077 Project closeout and payment of retainage.--

2 (1) Each contract for construction services between a
3 public entity and a contractor must provide for the
4 development of a list of items required to render complete,
5 satisfactory, and acceptable the construction services
6 purchased by the public entity. The contract must specify the
7 process for the development of the list, including
8 responsibilities of the public entity and the contractor in
9 developing and reviewing the list and a reasonable time for
10 developing the list, as follows:

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

16 2. For construction projects with an estimated cost of
17 \$10 million or more, within 30 calendar days, unless otherwise
18 extended by contract not to exceed 60 calendar days, after
19 reaching substantial completion of the construction services
20 purchased as defined in the contract, or, if not defined in
21 the contract, upon reaching beneficial occupancy or use.

22 (2) If the contract between the public entity and the
23 contractor relates to the purchase of construction services on
24 more than one building or structure, or involves a multiphased
25 project, the contract shall provide for the development of a
26 list of items required to render complete, satisfactory, and
27 acceptable all the construction services purchased pursuant to
28 the contract for each building, structure, or phase of the
29 project within the time limitations provided in subsection
30 (1).

31 (3) The failure to include any corrective work or

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 pending items not yet completed on the list developed pursuant
2 to subsection (1) or subsection (2) does not alter the
3 responsibility of the contractor to complete all the
4 construction services purchased pursuant to the contract.

5 (4) Upon completion of all items on the list, the
6 contractor may submit a payment request for all remaining
7 retainage withheld by the public entity pursuant to s.
8 255.078. If a good-faith dispute exists as to whether one or
9 more items identified on the list have been completed pursuant
10 to the contract, the public entity may continue to withhold an
11 amount not to exceed 150 percent of the total costs to
12 complete such items.

13 (5) All items that require correction under the
14 contract and that are identified after the preparation and
15 delivery of the list remain the obligation of the contractor
16 as defined by the contract.

17 (6) Warranty items may not affect the final payment of
18 retainage as provided in this section or as provided in the
19 contract between the contractor and its subcontractors and
20 suppliers.

21 (7) Retainage may not be held by a public entity or a
22 contractor to secure payment of insurance premiums under a
23 consolidated insurance program or series of insurance policies
24 issued to a public entity or a contractor for a project or
25 group of projects, and the final payment of retainage as
26 provided in this section may not be delayed pending a final
27 audit by the public entity's or contractor's insurance
28 provider.

29 (8) If a public entity fails to comply with its
30 responsibilities to develop the list required under subsection
31 (1) or subsection (2), as defined in the contract, within the

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 time limitations provided in subsection (1), the contractor
2 may submit a payment request for all remaining retainage
3 withheld by the public entity pursuant to s. 255.078. The
4 public entity need not pay or process any payment request for
5 retainage if the contractor has, in whole or in part, failed
6 to cooperate with the public entity in the development of the
7 list or failed to perform its contractual responsibilities, if
8 any, with regard to the development of the list or if s.
9 255.078(6) applies.

10 Section 12. Section 255.078, Florida Statutes, is
11 created to read:

12 255.078 Public construction retainage.--

13 (1) With regard to any contract for construction
14 services, a public entity may withhold from each progress
15 payment made to the contractor an amount not exceeding 10
16 percent of the payment as retainage to ensure the satisfactory
17 completion of the construction services purchased pursuant to
18 the contract until 50-percent completion of such services.

19 (2) After 50-percent completion of the construction
20 services purchased pursuant to the contract, the public entity
21 must reduce to 5 percent the amount of retainage withheld from
22 each subsequent progress payment made to the contractor. For
23 purposes of this section, the term "50-percent completion" has
24 the meaning set forth in the contract between the public
25 entity and the contractor, or, if not defined in the contract,
26 the point at which the public entity has expended 50 percent
27 of the total cost of the construction services purchased as
28 identified in the contract together with all costs associated
29 with existing change orders and other additions or
30 modifications to the construction services provided for in the
31 contract.

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 (3) After 50-percent completion of the construction
2 services purchased pursuant to the contract, the contractor
3 may elect to withhold retainage from payments to its
4 subcontractors at a rate higher than 5 percent. The specific
5 amount to be withheld must be determined on a case-by-case
6 basis and must be based on the contractor's assessment of the
7 subcontractor's past performance, the likelihood that such
8 performance will continue, and the contractor's ability to
9 rely on other safeguards. The contractor shall notify the
10 subcontractor, in writing, of its determination to withhold
11 more than 5 percent of the progress payment and the reasons
12 for making that determination, and the contractor may not
13 request the release of such retained funds from the public
14 entity.

15 (4) After 50-percent completion of the construction
16 services purchased pursuant to the contract, the contractor
17 may present to the public entity a payment request for up to
18 one-half of the retainage held by the public entity. The
19 public entity shall promptly make payment to the contractor,
20 unless the public entity has grounds, pursuant to subsection
21 (6), for withholding the payment of retainage. If the public
22 entity makes payment of retainage to the contractor under this
23 subsection which is attributable to the labor, services, or
24 materials supplied by one or more subcontractors or suppliers,
25 the contractor shall timely remit payment of such retainage to
26 those subcontractors and suppliers.

27 (5) Neither this section nor s. 255.077 prohibits a
28 public entity from withholding retainage at a rate less than
29 10 percent of each progress payment, from incrementally
30 reducing the rate of retainage pursuant to a schedule provided
31 for in the contract, or from releasing at any point all or a

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 portion of any retainage withheld by the public entity which
2 is attributable to the labor, services, or materials supplied
3 by the contractor or by one or more subcontractors or
4 suppliers. If a public entity makes any payment of retainage
5 to the contractor which is attributable to the labor,
6 services, or materials supplied by one or more subcontractors
7 or suppliers, the contractor shall timely remit payment of
8 such retainage to those subcontractors and suppliers.

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

14 (7) The same time limits for payment of a payment
15 request apply regardless of whether the payment request is
16 for, or includes, retainage.

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

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

26 Section 13. Section 255.05, Florida Statutes, is
27 amended to read:

28 255.05 Bond of contractor constructing public
29 buildings; form; action by materialmen.--

30 (1)(a) Any person entering into a formal contract with
31 the state or any county, city, or political subdivision

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 | thereof, or other public authority, for the construction of a
2 | public building, for the prosecution and completion of a
3 | public work, or for repairs upon a public building or public
4 | work shall be required, before commencing the work or before
5 | recommencing the work after a default or abandonment, to
6 | execute, deliver to the public owner, and record in the public
7 | records of the county where the improvement is located, a
8 | payment and performance bond with a surety insurer authorized
9 | to do business in this state as surety. A public entity may
10 | not require a contractor to secure a surety bond under this
11 | section from a specific agent or bonding company. The bond
12 | must state on its front page: the name, principal business
13 | address, and phone number of the contractor, the surety, the
14 | owner of the property being improved, and, if different from
15 | the owner, the contracting public entity; the contract number
16 | assigned by the contracting public entity; and a description
17 | of the project sufficient to identify it, such as a legal
18 | description or the street address of the property being
19 | improved, and a general description of the improvement. Such
20 | bond shall be conditioned upon the contractor's performance of
21 | the construction work in the time and manner prescribed in the
22 | contract and promptly making payments to all persons defined
23 | in s. 713.01 who furnish labor, services, or materials for the
24 | prosecution of the work provided for in the contract. Any
25 | claimant may apply to the governmental entity having charge of
26 | the work for copies of the contract and bond and shall
27 | thereupon be furnished with a certified copy of the contract
28 | and bond. The claimant shall have a right of action against
29 | the contractor and surety for the amount due him or her,
30 | including unpaid finance charges due under the claimant's
31 | contract. Such action shall not involve the public authority

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 | in any expense. When such work is done for the state and the
2 | contract is for \$100,000 or less, no payment and performance
3 | bond shall be required. At the discretion of the official or
4 | board awarding such contract when such work is done for any
5 | county, city, political subdivision, or public authority, any
6 | person entering into such a contract which is for \$200,000 or
7 | less may be exempted from executing the payment and
8 | performance bond. When such work is done for the state, the
9 | Secretary of the Department of Management Services may
10 | delegate to state agencies the authority to exempt any person
11 | entering into such a contract amounting to more than \$100,000
12 | but less than \$200,000 from executing the payment and
13 | performance bond. In the event such exemption is granted, the
14 | officer or officials shall not be personally liable to persons
15 | suffering loss because of granting such exemption. The
16 | Department of Management Services shall maintain information
17 | on the number of requests by state agencies for delegation of
18 | authority to waive the bond requirements by agency and project
19 | number and whether any request for delegation was denied and
20 | the justification for the denial.

21 | (b) The Department of Management Services shall adopt
22 | rules with respect to all contracts for \$200,000 or less, to
23 | provide:

24 | 1. Procedures for retaining up to 10 percent of each
25 | request for payment submitted by a contractor and procedures
26 | for determining disbursements from the amount retained on a
27 | pro rata basis to laborers, materialmen, and subcontractors,
28 | as defined in s. 713.01.

29 | 2. Procedures for requiring certification from
30 | laborers, materialmen, and subcontractors, as defined in s.
31 | 713.01, prior to final payment to the contractor that such

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 laborers, materialmen, and subcontractors have no claims
2 against the contractor resulting from the completion of the
3 work provided for in the contract.

4
5 The state shall not be held liable to any laborer,
6 materialman, or subcontractor for any amounts greater than the
7 pro rata share as determined under this section.

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

15
16 NOTICE OF CONTEST OF CLAIM
17 AGAINST PAYMENT BOND

18
19 To: ...(Name and address of claimant)...

20
21 You are notified that the undersigned contests your
22 notice of nonpayment, dated,, and served
23 on the undersigned on,, and that the
24 time within which you may file suit to enforce your claim is
25 limited to 60 days after the date of service of this notice.

26
27 DATED on,

28
29 Signed:...(Contractor or Attorney)...

30
31 The claim of any claimant upon whom such notice is served and

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

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

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

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 Notices required or permitted under this section may be served
2 in accordance with s. 713.18. ~~An action, except for an action~~
3 ~~exclusively for recovery of retainage, must be instituted~~
4 ~~against the contractor or the surety on the payment bond or~~
5 ~~the payment provisions of a combined payment and performance~~
6 ~~bond within 1 year after the performance of the labor or~~
7 ~~completion of delivery of the materials or supplies. An action~~
8 ~~exclusively for recovery of retainage must be instituted~~
9 ~~against the contractor or the surety within 1 year after the~~
10 ~~performance of the labor or completion of delivery of the~~
11 ~~materials or supplies, or within 90 days after receipt of~~
12 ~~final payment (or the payment estimate containing the owner's~~
13 ~~final reconciliation of quantities if no further payment is~~
14 ~~earned and due as a result of deductive adjustments) by the~~
15 ~~contractor or surety, whichever comes last. A claimant may not~~
16 ~~waive in advance his or her right to bring an action under the~~
17 ~~bond against the surety. In any action brought to enforce a~~
18 ~~claim against a payment bond under this section, the~~
19 ~~prevailing party is entitled to recover a reasonable fee for~~
20 ~~the services of his or her attorney for trial and appeal or~~
21 ~~for arbitration, in an amount to be determined by the court,~~
22 ~~which fee must be taxed as part of the prevailing party's~~
23 ~~costs, as allowed in equitable actions. The time periods for~~
24 ~~service of a notice of nonpayment or for bringing an action~~
25 ~~against a contractor or a surety shall be measured from the~~
26 ~~last day of furnishing labor, services, or materials by the~~
27 ~~claimant and shall not be measured by other standards, such as~~
28 ~~the issuance of a certificate of occupancy or the issuance of~~
29 ~~a certificate of substantial completion.~~

30 (b) When a person is required to execute a waiver of
31 his or her right to make a claim against the payment bond in

Bill No. CS for SB 1600

Amendment No. ____ Barcode 814636

1 exchange for, or to induce payment of, a progress payment, the
2 waiver may be in substantially the following form:

3

4 WAIVER OF RIGHT TO CLAIM
5 AGAINST THE PAYMENT BOND
6 (PROGRESS PAYMENT)

7

8 The undersigned, in consideration of the sum of \$....,
9 hereby waives its right to claim against the payment bond for
10 labor, services, or materials furnished through ...(insert
11 date)... to ...(insert the name of your customer)... on the
12 job of ...(insert the name of the owner)..., for improvements
13 to the following described project:

14

15 (description of project)

16

17 This waiver does not cover any retention or any labor,
18 services, or materials furnished after the date specified.

19

20 DATED ON,

21

...(Claimant)...

22

By:.....

23

24 (c) When a person is required to execute a waiver of
25 his or her right to make a claim against the payment bond, in
26 exchange for, or to induce payment of, the final payment, the
27 waiver may be in substantially the following form:

28

29 WAIVER OF RIGHT TO CLAIM
30 AGAINST THE PAYMENT BOND (FINAL PAYMENT)

31

