

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

1 exceptions; amending s. 255.05, F.S.; making  
2 certain restrictions in bonds issued for public  
3 works projects unenforceable; providing  
4 requirements for certain notices of nonpayment  
5 served by a claimant who is not in privity with  
6 the contractor; revising the form for a public  
7 construction bond; requiring the payment  
8 provisions of all public construction bonds to  
9 be construed as statutory bonds; prohibiting  
10 conversion to common law bonds; deleting  
11 obsolete language; deleting a requirement that  
12 bond forms used by public owners reference  
13 certain notice and time limitation provisions;  
14 providing limitations on a claimant's  
15 institution of certain actions against a  
16 contractor or surety; amending s. 95.11, F.S.,  
17 to conform a cross-reference; amending s.  
18 713.015, F.S.; revising a direct contract  
19 provision requirement; amending s. 713.02,  
20 F.S.; protecting the rights of certain persons  
21 to enforce certain contract, lien, or bond  
22 remedies or contractual obligations under  
23 certain circumstances; precluding certain  
24 defenses; amending s. 713.04, F.S.; revising  
25 certain final payment requirements; amending s.  
26 713.08, F.S.; requiring a claim of lien to be  
27 served on an owner; amending s. 713.13, F.S.;  
28 clarifying use of a payment bond as a transfer  
29 bond; amending s. 713.135, F.S., revising  
30 certain notice of commencement and  
31 applicability of lien requirements for certain

1 authorities issuing building permits; amending  
 2 s. 713.24, F.S.; preserving certain lien rights  
 3 when filing a transfer bond after commencing  
 4 certain lien enforcement proceedings; amending  
 5 s. 713.345, F.S.; increasing certain criminal  
 6 penalties for misapplication of construction  
 7 funds; amending s. 713.3471, F.S.; revising a  
 8 notice requirement concerning the disbursement  
 9 of payments on construction loans; requiring  
 10 that the notice be provided to the owner;  
 11 providing for application of specified sections  
 12 of the act to certain contracts and projects;  
 13 providing an effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17 Section 1. Section 218.70, Florida Statutes, is  
 18 amended to read:

19 218.70 Popular name ~~Short title~~.--This part may be  
 20 cited as the "Local Government Florida Prompt Payment Act."

21 Section 2. Subsections (2), (6), and (7) of section  
 22 218.72, Florida Statutes, are amended, and subsection (10) is  
 23 added to that section, to read:

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

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

31

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

31

1       (g) Retainage may not be held by a local governmental  
2 entity or a contractor to secure payment of insurance premiums  
3 under a consolidated insurance program or series of insurance  
4 policies issued to a local governmental entity or a contractor  
5 for a project or group of projects, and the final payment of  
6 retainage as provided in this section may not be delayed  
7 pending a final audit by the local governmental entity's or  
8 contractor's insurance provider.

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

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

29       (b) After 50-percent completion of the construction  
30 services purchased pursuant to the contract, the local  
31 governmental entity must reduce to 5 percent the amount of

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

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

31



1        (d) After 50-percent completion of the construction  
2 services purchased pursuant to the contract, the contractor  
3 may present to the local governmental entity a payment request  
4 for up to one-half of the retainage held by the local  
5 governmental entity. The local governmental entity shall  
6 promptly make payment to the contractor, unless the local  
7 governmental entity has grounds, pursuant to paragraph (f),  
8 for withholding the payment of retainage. If the local  
9 governmental entity makes payment of retainage to the  
10 contractor under this paragraph which is attributable to the  
11 labor, services, or materials supplied by one or more  
12 subcontractors or suppliers, the contractor shall timely remit  
13 payment of such retainage to those subcontractors and  
14 suppliers.

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

29        (f) This section does not require the local  
30 governmental entity to pay or release any amounts that are the  
31 subject of a good-faith dispute, the subject of an action

1 brought pursuant to s. 255.05, or otherwise the subject of a  
2 claim or demand by the local governmental entity or  
3 contractor.

4 (g) The time limitations set forth in this section for  
5 payment of payment requests apply to any payment request for  
6 retainage made pursuant to this section.

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

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

17 Section 4. Section 255.0705, Florida Statutes, is  
18 created to read:

19 255.0705 Popular name.--Sections 255.0705-255.078 may  
20 be cited as the "Florida Prompt Payment Act."

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

23 255.071 Payment of subcontractors, sub-subcontractors,  
24 materialmen, and suppliers on construction contracts for  
25 public projects.--

26 (2) The failure to pay any undisputed obligations for  
27 such labor, services, or materials within 30 days after the  
28 date the labor, services, or materials were furnished and  
29 payment for such labor, services, or materials became due, or  
30 within the time limitations set forth in s. 255.073(3) 30 days  
31 after the date payment for such labor, services, or materials

1 ~~is received~~, whichever last occurs, shall entitle any person  
2 providing such labor, services, or materials to the procedures  
3 specified in subsection (3) and the remedies provided in  
4 subsection (4).

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

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

12 (b) A description of the labor, services, or materials  
13 provided and alleging that the labor, services, or materials  
14 were provided in accordance with the contract.

15 (c) The amount of the contract price.

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

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

19 (f) That the undisputed amount has remained due and  
20 payable pursuant to the contract for more than 30 days after  
21 the date the labor or services were accepted or the materials  
22 were received.

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

29 Section 6. Section 255.072, Florida Statutes, is  
30 created to read:

31

1           255.072 Definitions.--As used in ss. 255.073-255.078,  
2 the term:

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

6           (2) "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. The term "construction  
10 services" does not include contracts or work performed for the  
11 Department of Transportation.

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

15           (4) "Payment request" means a request for payment for  
16 construction services which conforms with all statutory  
17 requirements and with all requirements specified by the public  
18 entity to which the payment request is submitted.

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

23           (6) "Purchase" means the purchase of construction  
24 services.

25           Section 7. Section 255.073, Florida Statutes, is  
26 created to read:

27           255.073 Timely payment for purchases of construction  
28 services.--

29           (1) Except as otherwise provided in ss.  
30 255.072-255.078, s. 215.422 governs the timely payment for  
31 construction services by a public entity.

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

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

22       (4) All payments due for the purchase of construction  
23 services and not made within the applicable time limits shall  
24 bear interest at the rate specified in s. 215.422. After July  
25 1, 2005, such payments shall bear interest at the rate of 1  
26 percent per month, to the extent that the Chief Financial  
27 Officer's replacement project for the state's accounting and  
28 cash management systems (Project ASPIRE) is operational for  
29 the particular affected public entities. After January 1,  
30 2006, all such payments due from public entities shall bear  
31 interest at the rate of 1 percent per month.

1           Section 8. Section 255.074, Florida Statutes, is  
2 created to read:

3           255.074 Procedures for calculation of payment due  
4 dates.--

5           (1) Each public entity shall establish procedures  
6 whereby each payment request received by the public entity is  
7 marked as received on the date on which it is delivered to an  
8 agent or employee of the public entity or of a facility or  
9 office of the public entity.

10           (2) If the terms under which a purchase is made allow  
11 for partial deliveries and a payment request is submitted for  
12 a partial delivery, the time for payment for the partial  
13 delivery must be calculated from the time of the partial  
14 delivery and the submission of the payment request.

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

18           Section 9. Section 255.075, Florida Statutes, is  
19 created to read:

20           255.075 Mandatory interest.--A contract between a  
21 public entity and a contractor may not prohibit the collection  
22 of late payment interest charges authorized under s.  
23 255.073(4).

24           Section 10. Section 255.076, Florida Statutes, is  
25 created to read:

26           255.076 Improper payment request; resolution of  
27 disputes.-- In an action to recover amounts due for  
28 construction services purchased by a public entity, the court  
29 shall award court costs and reasonable attorney's fees,  
30 including fees incurred through any appeal, to the prevailing  
31 party, if the court finds that the nonprevailing party

1 withheld any portion of the payment that is the subject of the  
2 action without any reasonable basis in law or fact to dispute  
3 the prevailing party's claim to those amounts.

4 Section 11. Section 255.077, Florida Statutes, is  
5 created to read:

6 255.077 Project closeout and payment of retainage.--

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

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

21 2. For construction projects with an estimated cost of  
22 \$10 million or more, within 30 calendar days, unless otherwise  
23 extended by contract not to exceed 60 calendar days, after  
24 reaching substantial completion of the construction services  
25 purchased as defined in the contract, or, if not defined in  
26 the contract, upon reaching beneficial occupancy or use.

27 (2) If the contract between the public entity and the  
28 contractor relates to the purchase of construction services on  
29 more than one building or structure, or involves a multiphased  
30 project, the contract shall provide for the development of a  
31 list of items required to render complete, satisfactory, and

1 acceptable all the construction services purchased pursuant to  
2 the contract for each building, structure, or phase of the  
3 project within the time limitations provided in subsection  
4 (1).

5 (3) The failure to include any corrective work or  
6 pending items not yet completed on the list developed pursuant  
7 to subsection (1) or subsection (2) does not alter the  
8 responsibility of the contractor to complete all the  
9 construction services purchased pursuant to the contract.

10 (4) Upon completion of all items on the list, the  
11 contractor may submit a payment request for all remaining  
12 retainage withheld by the public entity pursuant to s.  
13 255.078. If a good-faith dispute exists as to whether one or  
14 more items identified on the list have been completed pursuant  
15 to the contract, the public entity may continue to withhold an  
16 amount not to exceed 150 percent of the total costs to  
17 complete such items.

18 (5) All items that require correction under the  
19 contract and that are identified after the preparation and  
20 delivery of the list remain the obligation of the contractor  
21 as defined by the contract.

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

26 (7) Retainage may not be held by a public entity or a  
27 contractor to secure payment of insurance premiums under a  
28 consolidated insurance program or series of insurance policies  
29 issued to a public entity or a contractor for a project or  
30 group of projects, and the final payment of retainage as  
31 provided in this section may not be delayed pending a final



1 audit by the public entity's or contractor's insurance  
2 provider.

3 (8) If a public entity fails to comply with its  
4 responsibilities to develop the list required under subsection  
5 (1) or subsection (2), as defined in the contract, within the  
6 time limitations provided in subsection (1), the contractor  
7 may submit a payment request for all remaining retainage  
8 withheld by the public entity pursuant to s. 255.078. The  
9 public entity need not pay or process any payment request for  
10 retainage if the contractor has, in whole or in part, failed  
11 to cooperate with the public entity in the development of the  
12 list or failed to perform its contractual responsibilities, if  
13 any, with regard to the development of the list or if s.  
14 255.078(6) applies.

15 Section 12. Section 255.078, Florida Statutes, is  
16 created to read:

17 255.078 Public construction retainage.--

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

24 (2) After 50-percent completion of the construction  
25 services purchased pursuant to the contract, the public entity  
26 must reduce to 5 percent the amount of retainage withheld from  
27 each subsequent progress payment made to the contractor. For  
28 purposes of this section, the term "50-percent completion" has  
29 the meaning set forth in the contract between the public  
30 entity and the contractor, or, if not defined in the contract,  
31 the point at which the public entity has expended 50 percent

1 of the total cost of the construction services purchased as  
2 identified in the contract together with all costs associated  
3 with existing change orders and other additions or  
4 modifications to the construction services provided for in the  
5 contract.

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

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

1       (5) Neither this section nor s. 255.077 prohibits a  
2 public entity from withholding retainage at a rate less than  
3 10 percent of each progress payment, from incrementally  
4 reducing the rate of retainage pursuant to a schedule provided  
5 for in the contract, or from releasing at any point all or a  
6 portion of any retainage withheld by the public entity which  
7 is attributable to the labor, services, or materials supplied  
8 by the contractor or by one or more subcontractors or  
9 suppliers. If a public entity makes any payment of retainage  
10 to the contractor which is attributable to the labor,  
11 services, or materials supplied by one or more subcontractors  
12 or suppliers, the contractor shall timely remit payment of  
13 such retainage to those subcontractors and suppliers.

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

19       (7) The same time limits for payment of a payment  
20 request apply regardless of whether the payment request is  
21 for, or includes, retainage.

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

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

31

1           Section 13. Section 255.05, Florida Statutes, is  
2 amended to read:

3           255.05 Bond of contractor constructing public  
4 buildings; form; action by materialmen.--

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

1 the work for copies of the contract and bond and shall  
2 thereupon be furnished with a certified copy of the contract  
3 and bond. The claimant shall have a right of action against  
4 the contractor and surety for the amount due him or her,  
5 including unpaid finance charges due under the claimant's  
6 contract. Such action shall not involve the public authority  
7 in any expense. When such work is done for the state and the  
8 contract is for \$100,000 or less, no payment and performance  
9 bond shall be required. At the discretion of the official or  
10 board awarding such contract when such work is done for any  
11 county, city, political subdivision, or public authority, any  
12 person entering into such a contract which is for \$200,000 or  
13 less may be exempted from executing the payment and  
14 performance bond. When such work is done for the state, the  
15 Secretary of the Department of Management Services may  
16 delegate to state agencies the authority to exempt any person  
17 entering into such a contract amounting to more than \$100,000  
18 but less than \$200,000 from executing the payment and  
19 performance bond. In the event such exemption is granted, the  
20 officer or officials shall not be personally liable to persons  
21 suffering loss because of granting such exemption. The  
22 Department of Management Services shall maintain information  
23 on the number of requests by state agencies for delegation of  
24 authority to waive the bond requirements by agency and project  
25 number and whether any request for delegation was denied and  
26 the justification for the denial. Any provision in a bond  
27 furnished for public work contracts as provided by this  
28 subsection restricting the classes or persons protected by  
29 such bond or the venue of any proceeding relating to such bond  
30 is unenforceable.  
31

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

4 1. Procedures for retaining up to 10 percent of each  
5 request for payment submitted by a contractor and procedures  
6 for determining disbursements from the amount retained on a  
7 pro rata basis to laborers, materialmen, and subcontractors,  
8 as defined in s. 713.01.

9 2. Procedures for requiring certification from  
10 laborers, materialmen, and subcontractors, as defined in s.  
11 713.01, prior to final payment to the contractor that such  
12 laborers, materialmen, and subcontractors have no claims  
13 against the contractor resulting from the completion of the  
14 work provided for in the contract.

15  
16 The state shall not be held liable to any laborer,  
17 materialman, or subcontractor for any amounts greater than the  
18 pro rata share as determined under this section.

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

26  
27 NOTICE OF CONTEST OF CLAIM  
28 AGAINST PAYMENT BOND  
29

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

31

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

6  
 7           DATED on ....., .....

8  
 9 Signed:...(Contractor or Attorney)...

10  
 11 The claim of any claimant upon whom such notice is served and  
 12 who fails to institute a suit to enforce his or her claim  
 13 against the payment bond within 60 days after service of such  
 14 notice shall be extinguished automatically. The clerk shall  
 15 mail a copy of the notice of contest to the claimant at the  
 16 address shown in the notice of nonpayment or most recent  
 17 amendment thereto and shall certify to such service on the  
 18 face of such notice and record the notice. Service is complete  
 19 upon mailing.

20           2. A claimant, except a laborer, who is not in privity  
 21 with the contractor shall, before commencing or not later than  
 22 45 days after commencing to furnish labor, materials, or  
 23 supplies for the prosecution of the work, furnish the  
 24 contractor with a notice that he or she intends to look to the  
 25 bond for protection. A claimant who is not in privity with the  
 26 contractor and who has not received payment for his or her  
 27 labor, materials, or supplies shall deliver to the contractor  
 28 and to the surety written notice of the performance of the  
 29 labor or delivery of the materials or supplies and of the  
 30 nonpayment. The notice of nonpayment may be served at any time  
 31 during the progress of the work or thereafter but not before

1 45 days after the first furnishing of labor, services, or  
2 materials, and not later than 90 days after the final  
3 furnishing of the labor, services, or materials by the  
4 claimant or, with respect to rental equipment, not later than  
5 90 days after the date that the rental equipment was last on  
6 the job site available for use. Any notice of nonpayment  
7 served by a claimant who is not in privity with the contractor  
8 which includes sums for retainage must specify the portion of  
9 the amount claimed for retainage. No action for the labor,  
10 materials, or supplies may be instituted against the  
11 contractor or the surety unless both notices have been given.  
12 Notices required or permitted under this section may be served  
13 in accordance with s. 713.18. ~~An action, except for an action~~  
14 ~~exclusively for recovery of retainage, must be instituted~~  
15 ~~against the contractor or the surety on the payment bond or~~  
16 ~~the payment provisions of a combined payment and performance~~  
17 ~~bond within 1 year after the performance of the labor or~~  
18 ~~completion of delivery of the materials or supplies. An action~~  
19 ~~exclusively for recovery of retainage must be instituted~~  
20 ~~against the contractor or the surety within 1 year after the~~  
21 ~~performance of the labor or completion of delivery of the~~  
22 ~~materials or supplies, or within 90 days after receipt of~~  
23 ~~final payment (or the payment estimate containing the owner's~~  
24 ~~final reconciliation of quantities if no further payment is~~  
25 ~~earned and due as a result of deductive adjustments) by the~~  
26 ~~contractor or surety, whichever comes last.~~ A claimant may not  
27 waive in advance his or her right to bring an action under the  
28 bond against the surety. In any action brought to enforce a  
29 claim against a payment bond under this section, the  
30 prevailing party is entitled to recover a reasonable fee for  
31 the services of his or her attorney for trial and appeal or



1 for arbitration, in an amount to be determined by the court,  
 2 which fee must be taxed as part of the prevailing party's  
 3 costs, as allowed in equitable actions. The time periods for  
 4 service of a notice of nonpayment or for bringing an action  
 5 against a contractor or a surety shall be measured from the  
 6 last day of furnishing labor, services, or materials by the  
 7 claimant and shall not be measured by other standards, such as  
 8 the issuance of a certificate of occupancy or the issuance of  
 9 a certificate of substantial completion.

10 (b) When a person is required to execute a waiver of  
 11 his or her right to make a claim against the payment bond in  
 12 exchange for, or to induce payment of, a progress payment, the  
 13 waiver may be in substantially the following form:

14  
 15 WAIVER OF RIGHT TO CLAIM  
 16 AGAINST THE PAYMENT BOND  
 17 (PROGRESS PAYMENT)  
 18

19 The undersigned, in consideration of the sum of \$....,  
 20 hereby waives its right to claim against the payment bond for  
 21 labor, services, or materials furnished through ...(insert  
 22 date)... to ...(insert the name of your customer)... on the  
 23 job of ...(insert the name of the owner)..., for improvements  
 24 to the following described project:

25  
 26 (description of project)  
 27

28 This waiver does not cover any retention or any labor,  
 29 services, or materials furnished after the date specified.  
 30

31 DATED ON ....., .....

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

...(Claimant)...

By:.....

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

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

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

(description of project)

DATED ON ....., .....

...(Claimant)...

By:.....

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

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

1 (f) A waiver that is not substantially similar to the  
2 forms in this subsection is enforceable in accordance with its  
3 terms.

4 (3) The bond required in subsection (1) may be in  
5 substantially the following form:

6  
7 PUBLIC CONSTRUCTION BOND

8  
9 Bond No. (enter bond number)

10  
11 BY THIS BOND, We . . . . , as Principal and . . . . , a  
12 corporation, as Surety, are bound to . . . . , herein called  
13 Owner, in the sum of \$. . . . , for payment of which we bind  
14 ourselves, our heirs, personal representatives, successors,  
15 and assigns, jointly and severally.

16 THE CONDITION OF THIS BOND is that if Principal:

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

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

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

30 4. Performs the guarantee of all work and materials  
31 furnished under the contract for the time specified in the

1 contract, then this bond is void; otherwise it remains in full  
2 force.

3  
4 Any action instituted by a claimant under this bond for  
5 payment must be in accordance with the notice and time  
6 limitation provisions in Section 255.05, Florida Statutes.

7 Any changes in or under the contract documents and  
8 compliance or noncompliance with any formalities connected  
9 with the contract or the changes does not affect Surety's  
10 obligation under this bond.

11  
12 DATED ON \_\_\_\_\_, \_\_\_\_\_.

13  
14 ... (Name of Principal) ...  
15 By ... (As Attorney in Fact) ...  
16 ... (Name of Surety) ...

17  
18 (4) The payment provisions of all bonds required by  
19 ~~furnished for public work contracts described in subsection~~  
20 (1) shall, regardless of form, be construed and deemed  
21 statutory bonds furnished pursuant to this section and such  
22 bonds shall not under any circumstances be converted into  
23 common law bonds ~~and provisions, subject to all requirements~~  
24 ~~of subsection (2).~~

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

30 ~~(6) All bonds executed pursuant to this section shall~~  
31 ~~make reference to this section by number and shall contain~~

1 ~~reference to the notice and time limitation provisions of this~~  
2 ~~section.~~

3 (6)~~(7)~~ In lieu of the bond required by this section, a  
4 contractor may file with the state, county, city, or other  
5 political authority an alternative form of security in the  
6 form of cash, a money order, a certified check, a cashier's  
7 check, an irrevocable letter of credit, or a security of a  
8 type listed in part II of chapter 625. Any such alternative  
9 form of security shall be for the same purpose and be subject  
10 to the same conditions as those applicable to the bond  
11 required by this section. The determination of the value of  
12 an alternative form of security shall be made by the  
13 appropriate state, county, city, or other political  
14 subdivision.

15 (7)~~(8)~~ When a contractor has furnished a payment bond  
16 pursuant to this section, he or she may, when the state,  
17 county, municipality, political subdivision, or other public  
18 authority makes any payment to the contractor or directly to a  
19 claimant, serve a written demand on any claimant who is not in  
20 privity with the contractor for a written statement under oath  
21 of his or her account showing the nature of the labor or  
22 services performed and to be performed, if any; the materials  
23 furnished; the materials to be furnished, if known; the amount  
24 paid on account to date; the amount due; and the amount to  
25 become due, if known, as of the date of the statement by the  
26 claimant. Any such demand to a claimant who is not in privity  
27 with the contractor must be served on the claimant at the  
28 address and to the attention of any person who is designated  
29 to receive the demand in the notice to contractor served by  
30 the claimant. The failure or refusal to furnish the statement  
31 does not deprive the claimant of his or her rights under the

1 bond if the demand is not served at the address of the  
2 claimant or directed to the attention of the person designated  
3 to receive the demand in the notice to contractor. The failure  
4 to furnish the statement within 30 days after the demand, or  
5 the furnishing of a false or fraudulent statement, deprives  
6 the claimant who fails to furnish the statement, or who  
7 furnishes the false or fraudulent statement, of his or her  
8 rights under the bond. If the contractor serves more than one  
9 demand for statement of account on a claimant and none of the  
10 information regarding the account has changed since the  
11 claimant's last response to a demand, the failure or refusal  
12 to furnish such statement does not deprive the claimant of his  
13 or her rights under the bond. The negligent inclusion or  
14 omission of any information deprives the claimant of his or  
15 her rights under the bond to the extent that the contractor  
16 can demonstrate prejudice from such act or omission by the  
17 claimant. The failure to furnish a response to a demand for  
18 statement of account does not affect the validity of any claim  
19 on the bond being enforced in a lawsuit filed before the date  
20 the demand for statement of account is received by the  
21 claimant.

22 (8)~~(9)~~ On any public works project for which the  
23 public authority requires a performance and payment bond,  
24 suits at law and in equity may be brought and maintained by  
25 and against the public authority on any contract claim arising  
26 from breach of an express provision or an implied covenant of  
27 a written agreement or a written directive issued by the  
28 public authority pursuant to the written agreement. In any  
29 such suit, the public authority and the contractor shall have  
30 all of the same rights and obligations as a private person  
31 under a like contract except that no liability may be based on

1 an oral modification of either the written contract or written  
2 directive. Nothing herein shall be construed to waive the  
3 sovereign immunity of the state and its political subdivisions  
4 from equitable claims and equitable remedies. The provisions  
5 of this subsection shall apply only to contracts entered into  
6 on or after July 1, 1999.

7 (9) An action, except an action for recovery of  
8 retainage, must be instituted against the contractor or the  
9 surety on the payment bond or the payment provisions of a  
10 combined payment and performance bond within 1 year after the  
11 performance of the labor or completion of delivery of the  
12 materials or supplies. An action for recovery of retainage  
13 must be instituted against the contractor or the surety within  
14 1 year after the performance of the labor or completion of  
15 delivery of the materials or supplies, provided that such an  
16 action may not be instituted until one of the following  
17 conditions is satisfied:

18 (a) The public entity has paid out the claimant's  
19 retainage to the contractor, and the time provided under s.  
20 255.073(3) for payment of that retainage to the claimant has  
21 expired;

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

25 (c) The claimant has asked the contractor, in writing,  
26 when the contractor received payment of the claimant's  
27 retainage or when the contractor sent its final payment  
28 request to the public entity, and the contractor has failed to  
29 respond to this request, in writing, within 10 days after  
30 receipt.

31

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

7 Section 14. Paragraph (b) of subsection (2) of section  
 8 95.11, Florida Statutes, is amended to read:

9 95.11 Limitations other than for the recovery of real  
 10 property.--Actions other than for recovery of real property  
 11 shall be commenced as follows:

12 (2) WITHIN FIVE YEARS.--

13 (b) A legal or equitable action on a contract,  
 14 obligation, or liability founded on a written instrument,  
 15 except for an action to enforce a claim against a payment  
 16 bond, which shall be governed by the applicable provisions of  
 17 ss. 255.05(9) ~~255.05(2)(a)2.~~ and 713.23(1)(e).

18 Section 15. Section 713.015, Florida Statutes, is  
 19 amended to read:

20 713.015 Mandatory provisions for direct  
 21 contracts.--Any direct contract between an owner and a  
 22 contractor, related to improvements to real property  
 23 consisting of single or multiple family dwellings up to and  
 24 including four units, must contain the following provision  
 25 printed in capital letters no less than the same size  
 26 ~~18 point, capitalized, boldfaced~~ type used in the body of the  
 27 contract:

28  
 29 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS  
 30 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR  
 31 PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A



1 RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR  
2 PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR  
3 CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS,  
4 SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE  
5 OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY  
6 MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID  
7 YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR,  
8 YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS  
9 MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST  
10 YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT  
11 YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY.  
12 FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS  
13 RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU  
14 CONSULT AN ATTORNEY.

15  
16 Nothing in this section shall be construed to adversely affect  
17 the lien and bond rights of lienors who are not in privity  
18 with the owner. This section does not apply when the owner is  
19 also a licensed contractor or a construction professional who  
20 is in the business of developing property.

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

23 713.02 Types of lienors and exemptions.--

24 (7) Notwithstanding any other provision of this part,  
25 no lien shall exist in favor of any contractor, subcontractor,  
26 or sub-subcontractor who is unlicensed as provided in s.  
27 489.128 or s. 489.532. Notwithstanding any other provision of  
28 this part, if a contract is rendered unenforceable by an  
29 unlicensed contractor, subcontractor, or sub-subcontractor  
30 pursuant to s. 489.128 or s. 489.532, such unenforceability  
31 shall not affect the rights of any other persons to enforce

1 contract, lien, or bond remedies and shall not affect the  
2 obligations of a surety that has provided a bond on behalf of  
3 the unlicensed contractor, subcontractor, or  
4 sub-subcontractor. It shall not be a defense to any claim on a  
5 bond or indemnity agreement that the principal or indemnitor  
6 is unlicensed as provided in s. 489.128 or s. 489.532.

7 Section 17. Subsection (3) of section 713.04, Florida  
8 Statutes, is amended, and subsection (4) is added to that  
9 section, to read:

10 713.04 Subdivision improvements.--

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

16 (4) The owner shall make final payment on account of a  
17 direct contract only after the contractor complies with s.  
18 713.06(3)(d). Any such payment not complying with such  
19 requirement shall not qualify as a proper payment under this  
20 chapter.

21 Section 18. Paragraph (c) of subsection (4) of section  
22 713.08, Florida Statutes, is amended to read:

23 713.08 Claim of lien.--

24 (4)

25 (c) The claim of lien shall be served on the owner.  
26 Failure to serve any claim of lien in the manner provided in  
27 s. 713.18 before recording or within 15 days after recording  
28 shall render the claim of lien voidable to the extent that the  
29 failure or delay is shown to have been prejudicial to any  
30 person entitled to rely on the service.

31

1           Section 19. Paragraph (e) of subsection (1) of section  
2 713.13, Florida Statutes, is amended to read:

3           713.13 Notice of commencement.--

4           (1)

5           (e) A copy of any bond must be attached at the time of  
6 recordation of the notice of commencement. The failure to  
7 attach a copy of the bond to the notice of commencement when  
8 the notice is recorded negates the exemption provided in s.  
9 713.02(6). However, if such a bond exists but is not recorded,  
10 the bond may be used as a transfer bond pursuant to s. 713.24.  
11 The bond shall be deemed a transfer bond under s. 713.24 for  
12 all purposes at the time of recordation of the notice of bond  
13 and the clerk's mailing as provided in s. 713.23(2). The  
14 notice requirements of s. 713.23 apply to any claim against  
15 the bond; however, the time limits for serving the notice  
16 shall run from the latter of the time specified in s. 713.23  
17 or the date the notice of bond is served on the lienor.

18           Section 20. Paragraph (b) of subsection (1) and  
19 subsection (4) of section 713.135, Florida Statutes, are  
20 amended, and paragraph (e) is added to subsection (1) of that  
21 section, to read:

22           713.135 Notice of commencement and applicability of  
23 lien.--

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

26           (b) Provide the applicant and the owner of the real  
27 property upon which improvements are to be constructed with a  
28 printed statement stating that the right, title, and interest  
29 of the person who has contracted for the improvement may be  
30 subject to attachment under the Construction Lien Law. The  
31 Department of Business and Professional Regulation shall

1 furnish, for distribution, the statement described in this  
2 paragraph, and the statement must be a summary of the  
3 Construction Lien Law and must include an explanation of the  
4 provisions of the Construction Lien Law relating to the  
5 recording, and the posting of copies, of notices of  
6 commencement and a statement encouraging the owner to record a  
7 notice of commencement and post a copy of the notice of  
8 commencement in accordance with s. 713.13. The statement must  
9 also contain an explanation of the owner's rights if a lienor  
10 fails to furnish the owner with a notice as provided in s.  
11 713.06(2) and an explanation of the owner's rights as provided  
12 in s. 713.22. The authority that issues the building permit  
13 must obtain from the Department of Business and Professional  
14 Regulation the statement required by this paragraph and must  
15 mail, deliver by electronic mail or other electronic format or  
16 facsimile, or personally deliver that statement to the owner  
17 or, in the case in which the owner is required to personally  
18 appear to obtain the permit, provide that statement to any  
19 owner making improvements to real property consisting of a  
20 single or multiple family dwelling up to and including four  
21 units. However, the failure by the authorities to provide the  
22 summary does not subject the issuing authority to liability.

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

26 (4) The several boards of county commissioners,  
27 municipal councils, or other similar bodies may by ordinance  
28 or resolution establish reasonable fees for furnishing copies  
29 of the forms and the printed statement provided in paragraphs  
30 (1)(b) and ~~paragraph (1)~~(d) in an amount not to exceed \$5 to  
31 be paid by the applicant for each permit in addition to all

1 other costs of the permit; however, no forms or statement need  
2 be furnished, mailed, or otherwise provided to, nor may such  
3 additional fee be obtained from, applicants for permits in  
4 those cases in which the owner of a legal or equitable  
5 interest (including that of ownership of stock of a corporate  
6 landowner) of the real property to be improved is engaged in  
7 the business of construction of buildings for sale to others  
8 and intends to make the improvements authorized by the permit  
9 on the property and upon completion will offer the improved  
10 real property for sale.

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

13 713.24 Transfer of liens to security.--

14 (4) If a proceeding to enforce a transferred lien is  
15 not commenced within the time specified in s. 713.22 or if it  
16 appears that the transferred lien has been satisfied of  
17 record, the clerk shall return said security upon request of  
18 the person depositing or filing the same, or the insurer. If a  
19 proceeding to enforce a lien is commenced in a court of  
20 competent jurisdiction within the time specified in s. 713.22  
21 and, subsequent to the expiration of the proceeding, the lien  
22 is transferred pursuant to s. 713.24, an action commenced to  
23 recover against the security shall be deemed to have been  
24 brought as of the date of filing the action to enforce the  
25 lien.

26 Section 22. Paragraph (b) of subsection (1) of section  
27 713.345, Florida Statutes, is amended to read:

28 713.345 Moneys received for real property  
29 improvements; penalty for misapplication.--

30 (1)

31

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

4 1. If the amount of payments misapplied has an  
 5 aggregate value of \$100,000 or more, the violator is guilty of  
 6 a felony of the first degree, punishable as provided in s.  
 7 775.082, s. 775.083, or s. 775.084.

8 2. If the amount of payments misapplied has an  
 9 aggregate value of ~~\$20,000 or more but~~ less than \$100,000, the  
 10 violator is guilty of a felony of the second degree,  
 11 punishable as provided in s. 775.082, s. 775.083, or s.  
 12 775.084.

13 ~~3. If the amount of payments misapplied has an~~  
 14 ~~aggregate value of less than \$20,000, the violator is guilty~~  
 15 ~~of a felony of the third degree, punishable as provided in s.~~  
 16 ~~775.082, s. 775.083, or s. 775.084.~~

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

19 713.3471 Lender responsibilities with construction  
 20 loans.--

21 (1) Prior to a lender making the first any loan  
 22 disbursement on any construction loan secured by residential  
 23 property directly to the owner, which for purposes of this  
 24 section means an individual owner only, or jointly to the  
 25 owner and any other party, the lender shall give the following  
 26 written notice to the owner ~~borrowers~~ in bold type larger than  
 27 any other type on the page:

28  
 29 WARNING!  
 30  
 31

1 YOUR LENDER IS MAKING A LOAN DISBURSEMENT  
2 DIRECTLY TO YOU AS THE OWNER ~~BORROWER~~, OR  
3 JOINTLY TO YOU AND ANOTHER PARTY. TO PROTECT  
4 YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME  
5 LABOR, SERVICES, OR MATERIALS USED IN MAKING  
6 THE IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT  
7 YOU REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN  
8 RELEASES FROM EACH LIENOR WHO HAS SENT YOU A  
9 NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO  
10 YOUR CONTRACTOR.

11 Section 24. Neither the amendments to sections 95.11,  
12 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and  
13 subsection (2) of section 255.05, Florida Statutes, as  
14 provided in this act, nor subsection (9) of section 255.05,  
15 Florida Statutes, and section 255.078, Florida Statutes, as  
16 created by this act, applies to any existing construction  
17 contract pending approval by a local governmental entity or  
18 public entity, or to any project advertised for bid by the  
19 local government entity or public entity, on or before the  
20 effective date of this act. The amendments to subsections (3),  
21 (4), and (6) of section 255.05, Florida Statutes, as provided  
22 in this act, apply to public construction bonds issued for  
23 contracts entered into on or after the effective date of this  
24 act.

25 Section 25. This act shall take effect October 1,  
26 2004.

27  
28  
29  
30  
31