

Bill No. SB 2754

Amendment No. ____ Barcode 481972

CHAMBER ACTION

Senate

House

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Senator Bennett moved the following amendment:

Senate Amendment (with title amendment)

On page 2, line 7, through
page 4, line 11, 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.~~

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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

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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 (b) If the contract between the local governmental

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

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

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

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

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

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

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

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

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

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

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

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

29 (d) After 50-percent completion of the construction
30 services purchased pursuant to the contract, the contractor
31 may present to the local governmental entity a payment request

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

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

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

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1 (g) The time limitations set forth in this section for
2 payment of payment requests apply to any payment request for
3 retainage made pursuant to this section.

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

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

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

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

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

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

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

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1 subsection (4).

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

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

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

12 (c) The amount of the contract price.

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

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

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

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

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

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

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

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1 entity.

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

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

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

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

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

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

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

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

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

30 (3) When a contractor receives payment from a public
31 entity for labor, services, or materials furnished by

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

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

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

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

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

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

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

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

16 255.075 Mandatory interest.--A contract between a
17 public entity and a contractor may not prohibit the collection
18 of late payment interest charges authorized under s.
19 255.073(4).

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

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

31 Section 11. Section 255.077, Florida Statutes, is

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1 created to read:

2 255.077 Project closeout and payment of retainage.--

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

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

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

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

31 (1).

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

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

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

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

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

30 (8) If a public entity fails to comply with its
31 responsibilities to develop the list required under subsection

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

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

13 255.078 Public construction retainage.--

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

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

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1 contract.

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

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

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

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

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

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

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

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

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

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

31 (1)(a) Any person entering into a formal contract with

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

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

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

29 1. Procedures for retaining up to 10 percent of each
30 request for payment submitted by a contractor and procedures
31 for determining disbursements from the amount retained on a

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1 pro rata basis to laborers, materialmen, and subcontractors,
2 as defined in s. 713.01.

3 2. Procedures for requiring certification from
4 laborers, materialmen, and subcontractors, as defined in s.
5 713.01, prior to final payment to the contractor that such
6 laborers, materialmen, and subcontractors have no claims
7 against the contractor resulting from the completion of the
8 work provided for in the contract.

9
10 The state shall not be held liable to any laborer,
11 materialman, or subcontractor for any amounts greater than the
12 pro rata share as determined under this section.

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

20
21 NOTICE OF CONTEST OF CLAIM
22 AGAINST PAYMENT BOND
23

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

25
26 You are notified that the undersigned contests your
27 notice of nonpayment, dated,, and served
28 on the undersigned on,, and that the
29 time within which you may file suit to enforce your claim is
30 limited to 60 days after the date of service of this notice.
31

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1 DATED on,

2

3 Signed:...(Contractor or Attorney)...

4

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

14 2. A claimant, except a laborer, who is not in privity
15 with the contractor shall, before commencing or not later than
16 45 days after commencing to furnish labor, materials, or
17 supplies for the prosecution of the work, furnish the
18 contractor with a notice that he or she intends to look to the
19 bond for protection. A claimant who is not in privity with the
20 contractor and who has not received payment for his or her
21 labor, materials, or supplies shall deliver to the contractor
22 and to the surety written notice of the performance of the
23 labor or delivery of the materials or supplies and of the
24 nonpayment. The notice of nonpayment may be served at any time
25 during the progress of the work or thereafter but not before
26 45 days after the first furnishing of labor, services, or
27 materials, and not later than 90 days after the final
28 furnishing of the labor, services, or materials by the
29 claimant or, with respect to rental equipment, not later than
30 90 days after the date that the rental equipment was last on
31 the job site available for use. Any notice of nonpayment

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

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1 claimant and shall not be measured by other standards, such as
2 the issuance of a certificate of occupancy or the issuance of
3 a certificate of substantial completion.

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

8
9 WAIVER OF RIGHT TO CLAIM
10 AGAINST THE PAYMENT BOND
11 (PROGRESS PAYMENT)
12

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

19
20 (description of project)
21

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

24
25 DATED ON,
26 ... (Claimant) ...
27 By:

28
29 (c) When a person is required to execute a waiver of
30 his or her right to make a claim against the payment bond, in
31 exchange for, or to induce payment of, the final payment, the

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1 waiver may be in substantially the following form:

2

3

WAIVER OF RIGHT TO CLAIM

4

AGAINST THE PAYMENT BOND (FINAL PAYMENT)

5

6

The undersigned, in consideration of the final payment

7

in the amount of \$...., hereby waives its right to claim

8

against the payment bond for labor, services, or materials

9

furnished to ...(insert the name of your customer)... on the

10

job of ...(insert the name of the owner)..., for improvements

11

to the following described project:

12

13

(description of project)

14

15

DATED ON,

16

...(Claimant)...

17

By:.....

18

19

(d) A person may not require a claimant to furnish a

20

waiver that is different from the forms in paragraphs (b) and

21

(c).

22

(e) A claimant who executes a waiver in exchange for a

23

check may condition the waiver on payment of the check.

24

(f) A waiver that is not substantially similar to the

25

forms in this subsection is enforceable in accordance with its

26

terms.

27

(3) The bond required in subsection (1) may be in

28

substantially the following form:

29

30

PUBLIC CONSTRUCTION BOND

31

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1 Bond No. (enter bond number)

2

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

8 THE CONDITION OF THIS BOND is that if Principal:

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

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

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

22 4. Performs the guarantee of all work and materials
23 furnished under the contract for the time specified in the
24 contract, then this bond is void; otherwise it remains in full
25 force.

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

29 Any changes in or under the contract documents and
30 compliance or noncompliance with any formalities connected
31 with the contract or the changes does not affect Surety's

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1 obligation under this bond.

2

3 DATED ON _____, _____.

4

5 ... (Name of Principal) ...

6 By ... (As Attorney in Fact) ...

7 ... (Name of Surety) ...

8

9 (4) The payment provisions of all bonds required by
10 ~~furnished for public work contracts described in~~ subsection
11 (1) shall, regardless of form, be construed and deemed
12 statutory bonds furnished pursuant to this section and such
13 bonds shall not under any circumstances be converted into
14 common law bonds bond provisions, subject to all requirements
15 ~~of subsection (2).~~

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

21 ~~(6) All bonds executed pursuant to this section shall~~
22 ~~make reference to this section by number and shall contain~~
23 ~~reference to the notice and time limitation provisions of this~~
24 ~~section.~~

25 ~~(6)(7)~~ In lieu of the bond required by this section, a
26 contractor may file with the state, county, city, or other
27 political authority an alternative form of security in the
28 form of cash, a money order, a certified check, a cashier's
29 check, an irrevocable letter of credit, or a security of a
30 type listed in part II of chapter 625. Any such alternative
31 form of security shall be for the same purpose and be subject

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1 to the same conditions as those applicable to the bond
2 required by this section. The determination of the value of
3 an alternative form of security shall be made by the
4 appropriate state, county, city, or other political
5 subdivision.

6 ~~(7)(8)~~ When a contractor has furnished a payment bond
7 pursuant to this section, he or she may, when the state,
8 county, municipality, political subdivision, or other public
9 authority makes any payment to the contractor or directly to a
10 claimant, serve a written demand on any claimant who is not in
11 privity with the contractor for a written statement under oath
12 of his or her account showing the nature of the labor or
13 services performed and to be performed, if any; the materials
14 furnished; the materials to be furnished, if known; the amount
15 paid on account to date; the amount due; and the amount to
16 become due, if known, as of the date of the statement by the
17 claimant. Any such demand to a claimant who is not in privity
18 with the contractor must be served on the claimant at the
19 address and to the attention of any person who is designated
20 to receive the demand in the notice to contractor served by
21 the claimant. The failure or refusal to furnish the statement
22 does not deprive the claimant of his or her rights under the
23 bond if the demand is not served at the address of the
24 claimant or directed to the attention of the person designated
25 to receive the demand in the notice to contractor. The failure
26 to furnish the statement within 30 days after the demand, or
27 the furnishing of a false or fraudulent statement, deprives
28 the claimant who fails to furnish the statement, or who
29 furnishes the false or fraudulent statement, of his or her
30 rights under the bond. If the contractor serves more than one
31 demand for statement of account on a claimant and none of the

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1 information regarding the account has changed since the
2 claimant's last response to a demand, the failure or refusal
3 to furnish such statement does not deprive the claimant of his
4 or her rights under the bond. The negligent inclusion or
5 omission of any information deprives the claimant of his or
6 her rights under the bond to the extent that the contractor
7 can demonstrate prejudice from such act or omission by the
8 claimant. The failure to furnish a response to a demand for
9 statement of account does not affect the validity of any claim
10 on the bond being enforced in a lawsuit filed before the date
11 the demand for statement of account is received by the
12 claimant.

13 ~~(8)(9)~~ On any public works project for which the
14 public authority requires a performance and payment bond,
15 suits at law and in equity may be brought and maintained by
16 and against the public authority on any contract claim arising
17 from breach of an express provision or an implied covenant of
18 a written agreement or a written directive issued by the
19 public authority pursuant to the written agreement. In any
20 such suit, the public authority and the contractor shall have
21 all of the same rights and obligations as a private person
22 under a like contract except that no liability may be based on
23 an oral modification of either the written contract or written
24 directive. Nothing herein shall be construed to waive the
25 sovereign immunity of the state and its political subdivisions
26 from equitable claims and equitable remedies. The provisions
27 of this subsection shall apply only to contracts entered into
28 on or after July 1, 1999.

29 (9) An action, except an action for recovery of
30 retainage, must be instituted against the contractor or the
31 surety on the payment bond or the payment provisions of a

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1 combined payment and performance bond within 1 year after the
2 performance of the labor or completion of delivery of the
3 materials or supplies. An action for recovery of retainage
4 must be instituted against the contractor or the surety within
5 1 year after the performance of the labor or completion of
6 delivery of the materials or supplies, provided that such an
7 action may not be instituted until one of the following
8 conditions is satisfied:

9 (a) The public entity has paid out the claimant's
10 retainage to the contractor, and the time provided under s.
11 255.073(3) for payment of that retainage to the claimant has
12 expired;

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

16 (c) The claimant has asked the contractor, in writing,
17 when the contractor received payment of the claimant's
18 retainage or when the contractor sent its final payment
19 request to the public entity, and the contractor has failed to
20 respond to this request, in writing, within 10 days after
21 receipt.

22
23 If none of the conditions described in paragraph (a),
24 paragraph (b), or paragraph (c) is satisfied and an action for
25 recovery of retainage therefore cannot be instituted within
26 the 1-year limitation period set forth in this subsection,
27 this limitation period shall be extended until 120 days after
28 one of these conditions is satisfied.

29 Section 14. Paragraph (b) of subsection (2) of section
30 95.11, Florida Statutes, is amended to read:

31 95.11 Limitations other than for the recovery of real

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1 property.--Actions other than for recovery of real property
2 shall be commenced as follows:

3 (2) WITHIN FIVE YEARS.--

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

9
10 (Redesignate subsequent sections.)

11

12

13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 On page 1, lines 3 through 6, delete those lines

16

17 and insert:

18 amending s. 218.70, F.S.; providing a short
19 title; amending s. 218.72, F.S.; redefining
20 terms used in part VII of ch. 218, F.S.;
21 amending s. 218.735, F.S.; revising provisions
22 relating to timely payment for purchases of
23 construction services; revising deadlines for
24 payment; providing procedures for project
25 closeout and payment of retainage; providing
26 requirements for local government construction
27 retainage; providing that ss. 218.72-218.76,
28 F.S., apply to the payment of any payment
29 request for retainage; providing exceptions;
30 creating s. 255.0705, F.S.; providing a short
31 title; amending s. 255.071, F.S.; revising

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1 deadlines for the payment of subcontractors,
2 sub-subcontractors, materialmen, and suppliers
3 on construction contracts for public projects;
4 creating ss. 255.072, 255.073, 255.074,
5 255.075, 255.076, 255.077, and 255.078, F.S.;
6 providing definitions; providing for timely
7 payment for purchases of construction services
8 by a public entity; providing procedures for
9 calculating payment due dates; providing
10 procedures for handling improper payment
11 requests; providing for the resolution of
12 disputes; providing for project closeout and
13 payment of retainage; providing that ss.
14 255.072-255.076, F.S., apply to the payment of
15 any payment request for retainage; providing
16 exceptions; amending s. 255.05, F.S.; providing
17 that certain restrictions in bonds issued for
18 public works projects are unenforceable;
19 providing requirements for certain notices of
20 nonpayment served by a claimant who is not in
21 privity with the contractor; revising the form
22 for a public construction bond; requiring the
23 payment provisions of all public construction
24 bonds to be construed as statutory bonds;
25 prohibiting conversion to common law bonds;
26 deleting obsolete language; deleting a
27 requirement that bond forms used by public
28 owners reference certain notice and time
29 limitation provisions; providing limitations on
30 a claimant's institution of certain actions
31 against a contractor or surety; amending s.

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95.11, F.S., to conform a cross-reference;