

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.; providing
2 that certain restrictions in bonds issued for
3 public works projects are unenforceable;
4 providing requirements for certain notices of
5 nonpayment served by a claimant who is not in
6 privity with the contractor; revising the form
7 for a public construction bond; requiring the
8 payment provisions of all public construction
9 bonds to be construed as statutory bonds;
10 prohibiting conversion to common law bonds;
11 deleting obsolete language; deleting a
12 requirement that bond forms used by public
13 owners reference certain notice and time
14 limitation provisions; providing limitations on
15 a claimant's institution of certain actions
16 against a contractor or surety; amending s.
17 95.11, F.S., to conform a cross-reference;
18 amending s. 713.015, F.S.; revising a direct
19 contract provision requirement; amending s.
20 713.02, F.S.; protecting the rights of certain
21 persons to enforce certain contract, lien, or
22 bond 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.~~

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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

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.

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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.

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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.

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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:

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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 the
29 bond or the venue of any proceeding relating to the bond is
30 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,

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

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

10
11 DATED ON _____, _____.

12
13 ... (Name of Principal) ...

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

15 ... (Name of Surety) ...
16

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

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

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

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

17 713.02 Types of lienors and exemptions.--

18 (7) Notwithstanding any other provision of this part,
 19 no lien shall exist in favor of any contractor, subcontractor,
 20 or sub-subcontractor who is unlicensed as provided in s.
 21 489.128 or s. 489.532. Notwithstanding any other provision of
 22 this part, if a contract is rendered unenforceable by an
 23 unlicensed contractor, subcontractor, or sub-subcontractor
 24 pursuant to s. 489.128 or s. 489.532, such unenforceability
 25 shall not affect the rights of any other persons to enforce
 26 contract, lien, or bond remedies and shall not affect the
 27 obligations of a surety that has provided a bond on behalf of
 28 the unlicensed contractor, subcontractor, or
 29 sub-subcontractor. It shall not be a defense to any claim on a
 30 bond or indemnity agreement that the principal or indemnitor
 31 is unlicensed as provided in s. 489.128 or s. 489.532.

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

4 713.04 Subdivision improvements.--

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

10 (4) The owner shall make final payment on account of a
11 direct contract only after the contractor complies with s.
12 713.06(3)(d). Any such payment not complying with such
13 requirement shall not qualify as a proper payment under this
14 chapter.

15 Section 18. Paragraph (c) of subsection (4) of section
16 713.08, Florida Statutes, is amended to read:

17 713.08 Claim of lien.--

18 (4)

19 (c) The claim of lien shall be served on the owner.
20 Failure to serve any claim of lien in the manner provided in
21 s. 713.18 before recording or within 15 days after recording
22 shall render the claim of lien voidable to the extent that the
23 failure or delay is shown to have been prejudicial to any
24 person entitled to rely on the service.

25 Section 19. Paragraph (e) of subsection (1) of section
26 713.13, Florida Statutes, is amended to read:

27 713.13 Notice of commencement.--

28 (1)

29 (e) A copy of any bond must be attached at the time of
30 recordation of the notice of commencement. The failure to
31 attach a copy of the bond to the notice of commencement when

1 the notice is recorded negates the exemption provided in s.
2 713.02(6). However, if such a bond exists but is not recorded,
3 the bond may be used as a transfer bond pursuant to s. 713.24.
4 The bond shall be deemed a transfer bond under s. 713.24 for
5 all purposes at the time of recordation of the notice of bond
6 and the clerk's mailing as provided in s. 713.23(2). The
7 notice requirements of s. 713.23 apply to any claim against
8 the bond; however, the time limits for serving the notice
9 shall run from the later of the time specified in s. 713.23 or
10 the date the notice of bond is served on the lienor.

11 Section 20. Paragraph (b) of subsection (1) and
12 subsection (4) of section 713.135, Florida Statutes, are
13 amended, and paragraph (e) is added to subsection (1) of that
14 section, to read:

15 713.135 Notice of commencement and applicability of
16 lien.--

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

19 (b) Provide the applicant and the owner of the real
20 property upon which improvements are to be constructed with a
21 printed statement stating that the right, title, and interest
22 of the person who has contracted for the improvement may be
23 subject to attachment under the Construction Lien Law. The
24 Department of Business and Professional Regulation shall
25 furnish, for distribution, the statement described in this
26 paragraph, and the statement must be a summary of the
27 Construction Lien Law and must include an explanation of the
28 provisions of the Construction Lien Law relating to the
29 recording, and the posting of copies, of notices of
30 commencement and a statement encouraging the owner to record a
31 notice of commencement and post a copy of the notice of

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

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

19 (4) The several boards of county commissioners,
20 municipal councils, or other similar bodies may by ordinance
21 or resolution establish reasonable fees for furnishing copies
22 of the forms and the printed statement provided in paragraphs
23 (1)(b) and paragraph (1)(d) in an amount not to exceed \$5 to
24 be paid by the applicant for each permit in addition to all
25 other costs of the permit; however, no forms or statement need
26 be furnished, mailed, or otherwise provided to, nor may such
27 additional fee be obtained from, applicants for permits in
28 those cases in which the owner of a legal or equitable
29 interest (including that of ownership of stock of a corporate
30 landowner) of the real property to be improved is engaged in
31 the business of construction of buildings for sale to others

1 and intends to make the improvements authorized by the permit
2 on the property and upon completion will offer the improved
3 real property for sale.

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

6 713.24 Transfer of liens to security.--

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

19 Section 22. Paragraph (b) of subsection (1) of section
20 713.345, Florida Statutes, is amended to read:

21 713.345 Moneys received for real property
22 improvements; penalty for misapplication.--

23 (1)

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

27 1. If the amount of payments misapplied has an
28 aggregate value of \$100,000 or more, the violator is guilty of
29 a felony of the first degree, punishable as provided in s.
30 775.082, s. 775.083, or s. 775.084.

31

1 2. If the amount of payments misapplied has an
2 aggregate value of \$20,000 or more but less than \$100,000, the
3 violator is guilty of a felony of the second degree,
4 punishable as provided in s. 775.082, s. 775.083, or s.
5 775.084.

6 ~~3. If the amount of payments misapplied has an~~
7 ~~aggregate value of less than \$20,000, the violator is guilty~~
8 ~~of a felony of the third degree, punishable as provided in s.~~
9 ~~775.082, s. 775.083, or s. 775.084.~~

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

12 713.3471 Lender responsibilities with construction
13 loans.--

14 (1) Prior to a lender making the first any loan
15 disbursement on any construction loan secured by residential
16 property directly to the owner, which for purposes of this
17 section means an individual owner only, or jointly to the
18 owner and any other party, the lender shall give the following
19 written notice to the owner borrowers in bold type larger than
20 any other type on the page:

21
22 WARNING!

23
24 YOUR LENDER IS MAKING A LOAN DISBURSEMENT
25 DIRECTLY TO YOU AS THE OWNER BORROWER, OR
26 JOINTLY TO YOU AND ANOTHER PARTY. TO PROTECT
27 YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME
28 LABOR, SERVICES, OR MATERIALS USED IN MAKING
29 THE IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT
30 YOU REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN
31 RELEASES FROM EACH LIENOR WHO HAS SENT YOU A

1 NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO
2 YOUR CONTRACTOR.

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

17 Section 25. This act shall take effect October 1,
18 2004.

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