

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

.
.
.



1 Representative Reagan offered the following:

2

3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

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

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

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

13 218.72 Definitions.--As used in this part:

14 (2) "Local governmental entity" means a county or
15 municipal government, school board, school district, authority,
16 special taxing district, other political subdivision, or any

806477

Amendment No. (for drafter's use only)

17 office, board, bureau, commission, department, branch, division,
18 or institution thereof ~~or any project supported by county or~~
19 ~~municipal funds.~~

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

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

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

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

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

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

806477

Amendment No. (for drafter's use only)

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

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

69 1. For construction projects with an estimated cost of
70 less than \$10 million, within 30 calendar days after reaching
71 substantial completion of the construction services purchased as

806477

Amendment No. (for drafter's use only)

72 defined in the contract, or, if not defined in the contract,
73 upon reaching beneficial occupancy or use; or

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

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

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

94 (d) Upon completion of all items on the list, the
95 contractor may submit a payment request for all remaining
96 retainage withheld by the local governmental entity pursuant to
97 this section. If a good-faith dispute exists as to whether one
98 or more items identified on the list have been completed
99 pursuant to the contract, the local governmental entity may

806477

Amendment No. (for drafter's use only)

100 continue to withhold an amount not to exceed 150 percent of the
101 total costs to complete such items.

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

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

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

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

806477

Amendment No. (for drafter's use only)

128 perform its contractual responsibilities, if any, with regard to
129 the development of the list or if paragraph (8)(f) applies.

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

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

806477

Amendment No. (for drafter's use only)

155 (c) After 50-percent completion of the construction
156 services purchased pursuant to the contract, the contractor may
157 elect to withhold retainage from payments to its subcontractors
158 at a rate higher than 5 percent. The specific amount to be
159 withheld must be determined on a case-by-case basis and must be
160 based on the contractor's assessment of the subcontractor's past
161 performance, the likelihood that such performance will continue,
162 and the contractor's ability to rely on other safeguards. The
163 contractor shall notify the subcontractor, in writing, of its
164 determination to withhold more than 5 percent of the progress
165 payment and the reasons for making that determination, and the
166 contractor may not request the release of such retained funds
167 from the local governmental entity.

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

181 (e) This section does not prohibit a local governmental
182 entity from withholding retainage at a rate less than 10 percent

806477

Amendment No. (for drafter's use only)

183 | of each progress payment, from incrementally reducing the rate
184 | of retainage pursuant to a schedule provided for in the
185 | contract, or from releasing at any point all or a portion of any
186 | retainage withheld by the local governmental entity which is
187 | attributable to the labor, services, or materials supplied by
188 | the contractor or by one or more subcontractors or suppliers. If
189 | a local governmental entity makes any payment of retainage to
190 | the contractor which is attributable to the labor, services, or
191 | materials supplied by one or more subcontractors or suppliers,
192 | the contractor shall timely remit payment of such retainage to
193 | those subcontractors and suppliers.

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

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

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

208 | (i) This subsection does not apply to any construction
209 | services purchased by a local governmental entity if the total

806477

Amendment No. (for drafter's use only)

210 cost of the construction services purchased as identified in the
211 contract is \$200,000 or less.

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

214 255.0705 Popular name.--Sections 255.0705-255.078 may be
215 known by the popular name the "Florida Prompt Payment Act."

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

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

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

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

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

Amendment No. (for drafter's use only)

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

240 (c) The amount of the contract price.

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

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

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

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

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

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

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

260 (2) "Construction services" means all labor, services, and
261 materials provided in connection with the construction,
262 alteration, repair, demolition, reconstruction, or any other
263 improvements to real property. The term "construction services"

Amendment No. (for drafter's use only)

264 does not include contracts or work performed for the Department
265 of Transportation.

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

268 (4) "Payment request" means a request for payment for
269 construction services which conforms with all statutory
270 requirements and with all requirements specified by the public
271 entity to which the payment request is submitted.

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

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

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

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

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

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

287 (3) When a contractor receives payment from a public
288 entity for labor, services, or materials furnished by
289 subcontractors and suppliers hired by the contractor, the
290 contractor shall remit payment due to those subcontractors and
291 suppliers within 10 days after the contractor's receipt of

806477

Amendment No. (for drafter's use only)

292 payment. When a subcontractor receives payment from a contractor
293 for labor, services, or materials furnished by subcontractors
294 and suppliers hired by the subcontractor, the subcontractor
295 shall remit payment due to those subcontractors and suppliers
296 within 7 days after the subcontractor's receipt of payment. This
297 subsection does not prohibit a contractor or subcontractor from
298 disputing, pursuant to the terms of the relevant contract, all
299 or any portion of a payment alleged to be due to another party
300 if the contractor or subcontractor notifies the party whose
301 payment is disputed, in writing, of the amount in dispute and
302 the actions required to cure the dispute. The contractor or
303 subcontractor must pay all undisputed amounts due within the
304 time limits imposed by this subsection.

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

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

317 255.074 Procedures for calculation of payment due dates.--

318 (1) Each public entity shall establish procedures whereby
319 each payment request received by the public entity is marked as

806477

Amendment No. (for drafter's use only)

320 received on the date on which it is delivered to an agent or
321 employee of the public entity or of a facility or office of the
322 public entity.

323 (2) If the terms under which a purchase is made allow for
324 partial deliveries and a payment request is submitted for a
325 partial delivery, the time for payment for the partial delivery
326 must be calculated from the time of the partial delivery and the
327 submission of the payment request.

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

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

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

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

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

806477

Amendment No. (for drafter's use only)

347 Section 11. Section 255.077, Florida Statutes, is created
348 to read:

349 255.077 Project closeout and payment of retainage.--

350 (1) Each contract for construction services between a
351 public entity and a contractor must provide for the development
352 of a list of items required to render complete, satisfactory,
353 and acceptable the construction services purchased by the public
354 entity. The contract must specify the process for the
355 development of the list, including responsibilities of the
356 public entity and the contractor in developing and reviewing the
357 list and a reasonable time for developing the list, as follows:

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

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

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

806477

Amendment No. (for drafter's use only)

375 the contract for each building, structure, or phase of the
376 project within the time limitations provided in subsection (1).

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

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

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

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

398 (7) Retainage may not be held by a public entity or a
399 contractor to secure payment of insurance premiums under a
400 consolidated insurance program or series of insurance policies
401 issued to a public entity or a contractor for a project or group
402 of projects, and the final payment of retainage as provided in

806477

Amendment No. (for drafter's use only)

403 this section may not be delayed pending a final audit by the
404 public entity's or contractor's insurance provider.

405 (8) If a public entity fails to comply with its
406 responsibilities to develop the list required under subsection
407 (1) or subsection (2), as defined in the contract, within the
408 time limitations provided in subsection (1), the contractor may
409 submit a payment request for all remaining retainage withheld by
410 the public entity pursuant to s. 255.078. The public entity need
411 not pay or process any payment request for retainage if the
412 contractor has, in whole or in part, failed to cooperate with
413 the public entity in the development of the list or failed to
414 perform its contractual responsibilities, if any, with regard to
415 the development of the list or if s. 255.078(6) applies.

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

418 255.078 Public construction retainage.--

419 (1) With regard to any contract for construction services,
420 a public entity may withhold from each progress payment made to
421 the contractor an amount not exceeding 10 percent of the payment
422 as retainage to ensure the satisfactory completion of the
423 construction services purchased pursuant to the contract until
424 50-percent completion of such services.

425 (2) After 50-percent completion of the construction
426 services purchased pursuant to the contract, the public entity
427 must reduce to 5 percent the amount of retainage withheld from
428 each subsequent progress payment made to the contractor. For
429 purposes of this section, the term "50-percent completion" has
430 the meaning set forth in the contract between the public entity

806477

Amendment No. (for drafter's use only)

431 and the contractor, or, if not defined in the contract, the
432 point at which the public entity has expended 50 percent of the
433 total cost of the construction services purchased as identified
434 in the contract together with all costs associated with existing
435 change orders and other additions or modifications to the
436 construction services provided for in the contract.

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

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

806477

Amendment No. (for drafter's use only)

459 supplied by one or more subcontractors or suppliers, the
460 contractor shall timely remit payment of such retainage to those
461 subcontractors and suppliers.

462 (5) Neither this section nor s. 255.077 prohibits a public
463 entity from withholding retainage at a rate less than 10 percent
464 of each progress payment, from incrementally reducing the rate
465 of retainage pursuant to a schedule provided for in the
466 contract, or from releasing at any point all or a portion of any
467 retainage withheld by the public entity which is attributable to
468 the labor, services, or materials supplied by the contractor or
469 by one or more subcontractors or suppliers. If a public entity
470 makes any payment of retainage to the contractor which is
471 attributable to the labor, services, or materials supplied by
472 one or more subcontractors or suppliers, the contractor shall
473 timely remit payment of such retainage to those subcontractors
474 and suppliers.

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

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

483 (8) Subsections (1)-(4) do not apply to construction
484 services purchased by a public entity which are paid for, in
485 whole or in part, with federal funds and are subject to federal

806477

Amendment No. (for drafter's use only)

486 grantor laws and regulations or requirements that are contrary
487 to any provision of the Florida Prompt Payment Act.

488 (9) This section does not apply to any construction
489 services purchased by a public entity if the total cost of the
490 construction services purchased as identified in the contract is
491 \$200,000 or less.

492 Section 13. Section 255.05, Florida Statutes, is amended
493 to read:

494 255.05 Bond of contractor constructing public buildings;
495 form; action by materialmen.--

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

806477

HOUSE AMENDMENT

Bill No. HB 487 CS

Amendment No. (for drafter's use only)

514 legal description or the street address of the property being
515 improved, and a general description of the improvement. Such
516 bond shall be conditioned upon the contractor's performance of
517 the construction work in the time and manner prescribed in the
518 contract and promptly making payments to all persons defined in
519 s. 713.01 who furnish labor, services, or materials for the
520 prosecution of the work provided for in the contract. Any
521 claimant may apply to the governmental entity having charge of
522 the work for copies of the contract and bond and shall thereupon
523 be furnished with a certified copy of the contract and bond. The
524 claimant shall have a right of action against the contractor and
525 surety for the amount due him or her, including unpaid finance
526 charges due under the claimant's contract. Such action shall not
527 involve the public authority in any expense. When such work is
528 done for the state and the contract is for \$100,000 or less, no
529 payment and performance bond shall be required. At the
530 discretion of the official or board awarding such contract when
531 such work is done for any county, city, political subdivision,
532 or public authority, any person entering into such a contract
533 which is for \$200,000 or less may be exempted from executing the
534 payment and performance bond. When such work is done for the
535 state, the Secretary of the Department of Management Services
536 may delegate to state agencies the authority to exempt any
537 person entering into such a contract amounting to more than
538 \$100,000 but less than \$200,000 from executing the payment and
539 performance bond. In the event such exemption is granted, the
540 officer or officials shall not be personally liable to persons
541 suffering loss because of granting such exemption. The

806477

Amendment No. (for drafter's use only)

542 Department of Management Services shall maintain information on
543 the number of requests by state agencies for delegation of
544 authority to waive the bond requirements by agency and project
545 number and whether any request for delegation was denied and the
546 justification for the denial.

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

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

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

561
562 The state shall not be held liable to any laborer, materialman,
563 or subcontractor for any amounts greater than the pro rata share
564 as determined under this section.

565 (2)(a)1. If a claimant is no longer furnishing labor,
566 services, or materials on a project, a contractor or the
567 contractor's agent or attorney may elect to shorten the
568 prescribed time in this paragraph within which an action to
569 enforce any claim against a payment bond provided pursuant to

806477

Amendment No. (for drafter's use only)

570 this section may be commenced by recording in the clerk's office
571 a notice in substantially the following form:

572
573 NOTICE OF CONTEST OF CLAIM
574 AGAINST PAYMENT BOND
575

576 To: . . . (Name and address of claimant) . . .
577

578 You are notified that the undersigned contests your notice
579 of nonpayment, dated _____, _____, and served on the
580 undersigned on _____, _____, and that the time within
581 which you may file suit to enforce your claim is limited to 60
582 days after the date of service of this notice.

583
584 DATED on _____, _____.
585

586 Signed: . . . (Contractor or Attorney) . . .
587

588 The claim of any claimant upon whom such notice is served and
589 who fails to institute a suit to enforce his or her claim
590 against the payment bond within 60 days after service of such
591 notice shall be extinguished automatically. The clerk shall mail
592 a copy of the notice of contest to the claimant at the address
593 shown in the notice of nonpayment or most recent amendment
594 thereto and shall certify to such service on the face of such
595 notice and record the notice. Service is complete upon mailing.

596 2. A claimant, except a laborer, who is not in privity
597 with the contractor shall, before commencing or not later than

HOUSE AMENDMENT

Bill No. HB 487 CS

Amendment No. (for drafter's use only)

598 45 days after commencing to furnish labor, materials, or
599 supplies for the prosecution of the work, furnish the contractor
600 with a notice that he or she intends to look to the bond for
601 protection. A claimant who is not in privity with the contractor
602 and who has not received payment for his or her labor,
603 materials, or supplies shall deliver to the contractor and to
604 the surety written notice of the performance of the labor or
605 delivery of the materials or supplies and of the nonpayment. The
606 notice of nonpayment may be served at any time during the
607 progress of the work or thereafter but not before 45 days after
608 the first furnishing of labor, services, or materials, and not
609 later than 90 days after the final furnishing of the labor,
610 services, or materials by the claimant or, with respect to
611 rental equipment, not later than 90 days after the date that the
612 rental equipment was last on the job site available for use. Any
613 notice of nonpayment served by a claimant who is not in privity
614 with the contractor which includes sums for retainage must
615 specify the portion of the amount claimed for retainage. No
616 action for the labor, materials, or supplies may be instituted
617 against the contractor or the surety unless both notices have
618 been given. Notices required or permitted under this section may
619 be served in accordance with s. 713.18. ~~An action, except for an~~
620 ~~action exclusively for recovery of retainage, must be instituted~~
621 ~~against the contractor or the surety on the payment bond or the~~
622 ~~payment provisions of a combined payment and performance bond~~
623 ~~within 1 year after the performance of the labor or completion~~
624 ~~of delivery of the materials or supplies. An action exclusively~~
625 ~~for recovery of retainage must be instituted against the~~

806477

Amendment No. (for drafter's use only)

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

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

650
651 WAIVER OF RIGHT TO CLAIM AGAINST THE PAYMENT BOND (PROGRESS
652 PAYMENT)
653

Amendment No. (for drafter's use only)

654 The undersigned, in consideration of the sum of \$____,
655 hereby waives its right to claim against the payment bond for
656 labor, services, or materials furnished through . . . (insert
657 date) . . . to . . . (insert the name of your customer) . . .
658 on the job of . . . (insert the name of the owner) . . . , for
659 improvements to the following described project:

660
661 (description of project)

662
663 This waiver does not cover any retention or any labor, services,
664 or materials furnished after the date specified.

665
666 DATED ON _____, ____.
667 . . . (Claimant) . . .
668 By: _____

669
670 (c) When a person is required to execute a waiver of his
671 or her right to make a claim against the payment bond, in
672 exchange for, or to induce payment of, the final payment, the
673 waiver may be in substantially the following form:

674
675 WAIVER OF RIGHT TO CLAIM AGAINST THE PAYMENT BOND (FINAL
676 PAYMENT)

677
678 The undersigned, in consideration of the final payment in
679 the amount of \$____, hereby waives its right to claim against
680 the payment bond for labor, services, or materials furnished to
681 . . . (insert the name of your customer) . . . on the job of .

Amendment No. (for drafter's use only)

682 . . (insert the name of the owner) . . . , for improvements to
683 the following described project:

684
685 (description of project)

686
687 DATED ON _____, _____.
688 . . . (Claimant) . . .
689 By: _____

690
691 (d) A person may not require a claimant to furnish a
692 waiver that is different from the forms in paragraphs (b) and
693 (c).

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

696 (f) A waiver that is not substantially similar to the
697 forms in this subsection is enforceable in accordance with its
698 terms.

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

701
702 PUBLIC CONSTRUCTION BOND

703
704 Bond No. (enter bond number)

705
706 BY THIS BOND, We _____, as Principal and _____, a
707 corporation, as Surety, are bound to _____, herein called Owner,
708 in the sum of \$_____, for payment of which we bind ourselves,

Amendment No. (for drafter's use only)

709 our heirs, personal representatives, successors, and assigns,
710 jointly and severally.

711 THE CONDITION OF THIS BOND is that if Principal:

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

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

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

725 4. Performs the guarantee of all work and materials
726 furnished under the contract for the time specified in the
727 contract, then this bond is void; otherwise it remains in full
728 force.

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

732 Any changes in or under the contract documents and
733 compliance or noncompliance with any formalities connected with
734 the contract or the changes does not affect Surety's obligation
735 under this bond.

736

806477

Amendment No. (for drafter's use only)

737 DATED ON _____, _____.

738

739 ... (Name of Principal) ...

740

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

742

743 ... (Name of Surety) ...

744

745 (4) The payment provisions of all bonds required by
746 ~~furnished for public work contracts described in~~ subsection (1)
747 shall, regardless of form, be construed and deemed statutory
748 bonds furnished pursuant to this section and such bonds shall
749 not under any circumstances be converted into common law bonds
750 ~~bond provisions, subject to all requirements of subsection (2).~~

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

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

759 (6)(7) In lieu of the bond required by this section, a
760 contractor may file with the state, county, city, or other
761 political authority an alternative form of security in the form
762 of cash, a money order, a certified check, a cashier's check, an
763 irrevocable letter of credit, or a security of a type listed in
764 part II of chapter 625. Any such alternative form of security

806477

Amendment No. (for drafter's use only)

765 shall be for the same purpose and be subject to the same
766 conditions as those applicable to the bond required by this
767 section. The determination of the value of an alternative form
768 of security shall be made by the appropriate state, county,
769 city, or other political subdivision.

770 (7)~~(8)~~ When a contractor has furnished a payment bond
771 pursuant to this section, he or she may, when the state, county,
772 municipality, political subdivision, or other public authority
773 makes any payment to the contractor or directly to a claimant,
774 serve a written demand on any claimant who is not in privity
775 with the contractor for a written statement under oath of his or
776 her account showing the nature of the labor or services
777 performed and to be performed, if any; the materials furnished;
778 the materials to be furnished, if known; the amount paid on
779 account to date; the amount due; and the amount to become due,
780 if known, as of the date of the statement by the claimant. Any
781 such demand to a claimant who is not in privity with the
782 contractor must be served on the claimant at the address and to
783 the attention of any person who is designated to receive the
784 demand in the notice to contractor served by the claimant. The
785 failure or refusal to furnish the statement does not deprive the
786 claimant of his or her rights under the bond if the demand is
787 not served at the address of the claimant or directed to the
788 attention of the person designated to receive the demand in the
789 notice to contractor. The failure to furnish the statement
790 within 30 days after the demand, or the furnishing of a false or
791 fraudulent statement, deprives the claimant who fails to furnish
792 the statement, or who furnishes the false or fraudulent

806477

HOUSE AMENDMENT

Bill No. HB 487 CS

Amendment No. (for drafter's use only)

793 statement, of his or her rights under the bond. If the
794 contractor serves more than one demand for statement of account
795 on a claimant and none of the information regarding the account
796 has changed since the claimant's last response to a demand, the
797 failure or refusal to furnish such statement does not deprive
798 the claimant of his or her rights under the bond. The negligent
799 inclusion or omission of any information deprives the claimant
800 of his or her rights under the bond to the extent that the
801 contractor can demonstrate prejudice from such act or omission
802 by the claimant. The failure to furnish a response to a demand
803 for statement of account does not affect the validity of any
804 claim on the bond being enforced in a lawsuit filed before the
805 date the demand for statement of account is received by the
806 claimant.

807 ~~(8)~~(9) On any public works project for which the public
808 authority requires a performance and payment bond, suits at law
809 and in equity may be brought and maintained by and against the
810 public authority on any contract claim arising from breach of an
811 express provision or an implied covenant of a written agreement
812 or a written directive issued by the public authority pursuant
813 to the written agreement. In any such suit, the public
814 authority and the contractor shall have all of the same rights
815 and obligations as a private person under a like contract except
816 that no liability may be based on an oral modification of either
817 the written contract or written directive. Nothing herein shall
818 be construed to waive the sovereign immunity of the state and
819 its political subdivisions from equitable claims and equitable

806477

Amendment No. (for drafter's use only)

820 remedies. The provisions of this subsection shall apply only to
821 contracts entered into on or after July 1, 1999.

822 (9) An action, except an action for recovery of retainage,
823 must be instituted against the contractor or the surety on the
824 payment bond or the payment provisions of a combined payment and
825 performance bond within 1 year after the performance of the
826 labor or completion of delivery of the materials or supplies. An
827 action for recovery of retainage must be instituted against the
828 contractor or the surety within 1 year after the performance of
829 the labor or completion of delivery of the materials or
830 supplies, provided that such an action may not be instituted
831 until one of the following conditions is satisfied:

832 (a) The public entity has paid out the claimant's
833 retainage to the contractor, and the time provided under s.
834 255.073(3) for payment of that retainage to the claimant has
835 expired;

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

839 (c) The claimant has asked the contractor, in writing,
840 when the contractor received payment of the claimant's retainage
841 or when the contractor sent its final payment request to the
842 public entity, and the contractor has failed to respond to this
843 request, in writing, within 10 days after receipt.

844
845 If none of the conditions described in paragraph (a), paragraph
846 (b), or paragraph (c) is satisfied and an action for recovery of
847 retainage therefore cannot be instituted within the 1-year

806477

Amendment No. (for drafter's use only)

848 limitation period set forth in this subsection, this limitation
849 period shall be extended until 120 days after one of these
850 conditions is satisfied.

851 Section 14. Paragraph (b) of subsection (2) of section
852 95.11, Florida Statutes, is amended to read:

853 95.11 Limitations other than for the recovery of real
854 property.--Actions other than for recovery of real property
855 shall be commenced as follows:

856 (2) WITHIN FIVE YEARS.--

857 (b) A legal or equitable action on a contract, obligation,
858 or liability founded on a written instrument, except for an
859 action to enforce a claim against a payment bond, which shall be
860 governed by the applicable provisions of ss. 255.05(9)
861 255.05(2)(a)2. and 713.23(1)(e).

862 Section 15. Neither the amendments to sections 95.11,
863 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and
864 subsection (2) of section 255.05, Florida Statutes, as provided
865 in this act, nor subsection (9) of section 255.05, Florida
866 Statutes, and section 255.078, Florida Statutes, as created by
867 this act, applies to any existing construction contract pending
868 approval by a local governmental entity or public entity, or to
869 any project advertised for bid by the local government entity or
870 public entity, on or before the effective date of this act. The
871 amendments to subsections (3), (4), and (6) of section 255.05,
872 Florida Statutes, as provided in this act, apply to public
873 construction bonds issued for contracts entered into on or after
874 the effective date of this act.

875 Section 16. This act shall take effect October 1, 2004.

806477

Amendment No. (for drafter's use only)

876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903

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

Remove the entire title and insert:

A bill to be entitled

An act relating to prompt payment for construction services; amending s. 218.70, F.S.; providing a popular name; amending s. 218.72, F.S.; redefining terms used in pt. VII of ch. 218, F.S.; amending s. 218.735, F.S.; revising provisions relating to timely payment for purchases of construction services; revising deadlines for payment; providing procedures for project closeout and payment of retainage; providing requirements for local government construction retainage; providing that ss. 218.72-218.76, F.S., apply to the payment of any payment request for retainage; providing exceptions; creating s. 255.0705, F.S.; providing a popular name; amending s. 255.071, F.S.; revising deadlines for the payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects; creating ss. 255.072, 255.073, 255.074, 255.075, 255.076, 255.077, and 255.078, F.S.; providing definitions; providing for timely payment for purchases of construction services by a public entity; providing procedures for calculating payment due dates; authorizing the collection of interest under certain circumstances; providing procedures for handling improper payment requests; providing for the resolution of disputes; providing for project closeout and payment of retainage; providing that

806477

HOUSE AMENDMENT

Bill No. HB 487 CS

Amendment No. (for drafter's use only)

904 ss. 255.072-255.076, F.S., apply to the payment of any
905 payment request for retainage; providing exceptions;
906 amending s. 255.05, F.S.; providing requirements for
907 certain notices of nonpayment served by a claimant who is
908 not in privity with the contractor; revising the form for
909 a public construction bond; requiring the payment
910 provisions of all public construction bonds to be
911 construed as statutory bonds; prohibiting conversion to
912 common law bonds; deleting a requirement that bond forms
913 used by public owners reference certain notice and time
914 limitation provisions; providing limitations on a
915 claimant's institution of certain actions against a
916 contractor or surety; amending s. 95.11, F.S., to conform
917 a cross reference; providing for application of specified
918 sections of the act to certain contracts and projects;
919 providing an effective date.

806477