

HB 0487

2004

1 A bill to be entitled

2 An act relating to construction services; amending s.
3 218.70, F.S.; revising a popular name; amending s. 218.72,
4 F.S.; redefining terms used in pt. VII of ch. 218, F.S.;
5 amending s. 218.735, F.S.; revising provisions relating to
6 timely payment for purchases of construction services;
7 revising deadlines for payment; providing procedures for
8 project closeout and payment of retainage; providing
9 requirements for local government construction retainage;
10 providing that s. 218.735, F.S., applies to the payment of
11 any payment request for retainage; creating s. 255.0705,
12 F.S.; providing a popular name; amending s. 255.071, F.S.;
13 revising deadlines for the payment of subcontractors, sub-
14 subcontractors, materialmen, and suppliers on construction
15 contracts for public projects; creating ss. 255.072,
16 255.073, 255.074, 255.075, 255.076, 255.077, and 255.078,
17 F.S.; providing definitions; providing for timely payment
18 for purchases of construction services by a public entity;
19 providing procedures for calculating payment due dates;
20 authorizing the collection of interest under certain
21 circumstances; providing procedures for handling improper
22 payment requests; providing for the resolution of
23 disputes; providing for payment of court costs and
24 attorney's fees; providing for project closeout and
25 payment of retainage; providing for public construction
26 retainage; providing that ss. 255.072-255.078, F.S., apply
27 to the payment of any payment request for retainage;
28 amending s. 255.05, F.S.; providing requirements for
29 certain notices of nonpayment served by a claimant who is

HB 0487

2004

30 not in privity with the contractor; providing limitations
 31 on a claimant's institution of certain actions against a
 32 contractor or surety; providing for certain notices to the
 33 claimant; creating s. 725.09, F.S.; prohibiting the
 34 inclusion in a contract for the purchase of construction
 35 materials or services a provision that conditions payment
 36 for such materials or services on the receipt of payment
 37 from any other entity; providing an effective date.
 38

39 Be It Enacted by the Legislature of the State of Florida:

40
 41 Section 1. Section 218.70, Florida Statutes, is amended to
 42 read:

43 218.70 Popular name ~~Short title~~.--This part may be cited
 44 by the popular name as the "Local Government Florida Prompt
 45 Payment Act."

46 Section 2. Subsections (2), (6), and (7) of section
 47 218.72, Florida Statutes, are amended to read:

48 218.72 Definitions.--As used in this part:

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

55 (6) "Vendor" means any person who sells goods or services,
 56 sells or leases personal property, or leases real property
 57 directly to a local governmental entity. The term includes any
 58 person who provides waste-hauling services to residents or

HB 0487

2004

59 businesses located within the boundaries of a local government
 60 pursuant to a contract or local ordinance.

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

66 Section 3. Subsection (6) of section 218.735, Florida
 67 Statutes, is amended, present subsection (7) is renumbered as
 68 subsection (9), and new subsections (7) and (8) are added to
 69 said section, to read:

70 218.735 Timely payment for purchases of construction
 71 services.--

72 (6) When a contractor receives payment from a local
 73 governmental entity for labor, services, or materials furnished
 74 by subcontractors and suppliers hired by the contractor, the
 75 contractor shall remit payment due to those subcontractors and
 76 suppliers within 10 ~~15~~ days after the contractor's receipt of
 77 payment. When a subcontractor receives payment from a contractor
 78 for labor, services, or materials furnished by subcontractors
 79 and suppliers hired by the subcontractor, the subcontractor
 80 shall remit payment due to those subcontractors and suppliers
 81 within 10 ~~15~~ days after the subcontractor's receipt of payment.
 82 Nothing herein shall prohibit a contractor or subcontractor from
 83 disputing, pursuant to the terms of the relevant contract, all
 84 or any portion of a payment alleged to be due to another party.
 85 In the event of such a dispute, the contractor or subcontractor
 86 may withhold the disputed portion of any such payment if the
 87 contractor or subcontractor notifies the party whose payment is

HB 0487

2004

88 | disputed, in writing, of the amount in dispute and the actions
 89 | required to cure the dispute. The contractor or subcontractor
 90 | must pay all undisputed amounts due within the time limits
 91 | imposed by this section.

92 | (7)(a) Each contract for construction services between a
 93 | local governmental entity and a vendor must provide for the
 94 | development of a list of items required to render complete,
 95 | satisfactory, and acceptable the construction services purchased
 96 | by the local government. The contract must specify the process
 97 | for the development of the list, including the respective
 98 | responsibilities of the local government and the vendor in
 99 | developing and reviewing the list and a reasonable timeframe for
 100 | developing the list as follows:

101 | 1. For construction projects with an estimated cost of
 102 | less than \$10 million, within 30 days after reaching substantial
 103 | completion of the construction services purchased as defined in
 104 | the contract or, if not defined in the contract, upon reaching
 105 | beneficial occupancy or use; or

106 | 2. For construction projects with an estimated cost of \$10
 107 | million or more, within 30 days, unless otherwise extended by
 108 | contract not to exceed 90 days, after reaching substantial
 109 | completion of the construction services purchased as defined in
 110 | the contract or, if not defined in the contract, upon reaching
 111 | beneficial occupancy or use.

112 | (b) If the contract between the local governmental entity
 113 | and the vendor relates to the purchase of construction services
 114 | on more than one building or structure or involves a multiphased
 115 | project, the contract must provide for the development of a list
 116 | of items required to render complete, satisfactory, and

HB 0487

2004

117 acceptable the construction services purchased for each
118 building, structure, or phase of the project in accordance with
119 the timeframes specified in subparagraph (a)1. or subparagraph
120 (a)2.

121 (c) The failure to include any corrective work or pending
122 items not yet completed on the list developed pursuant to this
123 subsection does not alter the responsibility of the vendor to
124 complete all the purchased construction services as defined in
125 the contract.

126 (d) Upon completion of all items on the list, or at such
127 other time as defined in the contract, the vendor may submit a
128 payment request for the appropriate amount of retainage. The
129 local government may withhold an amount not to exceed 150
130 percent of the total costs to complete any incomplete items on
131 the list.

132 (e) All items that require correction under the contract
133 and that are identified after the preparation and delivery of
134 the list remain the obligation of the vendor as defined by the
135 contract.

136 (f) Warranty items may not affect the final payment of
137 retainage as provided in this section or as provided in the
138 contract between the vendor and its subcontractors and
139 suppliers.

140 (g) Retainage may not be held by a local governmental
141 entity or a vendor to secure payment of insurance premiums under
142 a consolidated insurance program or series of insurance policies
143 issued to a public agency or a contractor for a project or group
144 of projects, and the final payment of retainage as provided in

HB 0487

2004

145 this section may not be delayed pending a final audit by the
146 local governmental entity's or the vendor's insurance provider.

147 (h) If a local governmental entity fails to comply with
148 its responsibilities to develop the list required under
149 paragraph (a) or paragraph (b) as defined in the contract, and
150 the timeframes provided in subparagraph(a)1. or subparagraph
151 (a)2., the vendor may submit a payment request for the
152 appropriate amount of retainage. The local governmental entity
153 need not pay or process any request for payment of retainage if
154 the vendor has, in whole or in part, failed to cooperate with
155 the local government in the development of the list or failed to
156 perform its contractual responsibilities, if any, with regard to
157 the development of the list or if paragraph (8)(d) applies.

158 (8)(a) In any public construction project that is subject
159 to ss. 218.72-218.78, a local governmental entity may withhold
160 an amount not exceeding 10 percent of each progress payment made
161 to the vendor until the local governmental project has reached
162 50-percent completion. After the project has reached 50-percent
163 completion, the local government must reduce to 5 percent the
164 amount of retainage withheld from each subsequent progress
165 payment made to the vendor. However, notwithstanding the
166 provisions of this subsection, a municipality with a population
167 of 25,000 or fewer, or a county with a population of 100,000 or
168 fewer, may withhold retainage in an amount not exceeding 10
169 percent of each progress payment made to the vendor until final
170 completion and acceptance of the project by the local
171 government. For purposes of this subsection, the term "50-
172 percent completion" means as defined in the contract between the
173 local governmental entity and the vendor or, if not defined in

HB 0487

2004

174 the contract, the point at which the local government has
175 expended 50 percent of the total project costs identified in the
176 contract, plus all change orders and other additions issued
177 subsequent to the approval of the contract by the governing body
178 of the local government, and the level of actual project
179 construction is equivalent to such expenditure of funds.

180 (b) After the project has reached 50-percent completion,
181 the vendor may present to the local governmental entity a
182 payment request for up to one-half of the retainage amount held
183 by the local government. The local governmental entity shall
184 promptly make payment to the vendor, unless the local government
185 has grounds, pursuant to the contract or as provided in
186 paragraph (d), for withholding the payment of retainage. If the
187 local government makes payment of retainage to the vendor under
188 this paragraph, the vendor shall timely remit payment of such
189 retainage to the appropriate subcontractors and suppliers.

190 (c) After the project has reached 50-percent completion,
191 the vendor may elect to withhold retainage from payments to its
192 subcontractors at a rate higher than 5 percent. The specific
193 amount to be withheld must be determined on a case-by-case basis
194 and must be based on the vendor's assessment of the
195 subcontractor's past performance, the likelihood that such
196 performance will continue, and the vendor's ability to rely on
197 other safeguards. The vendor shall notify the subcontractor, in
198 writing, of its determination to withhold more than 5 percent of
199 the progress payment and the reasons for making that
200 determination, and the vendor may not request the release of
201 such retained funds from the local government.

HB 0487

2004

202 (d) This section does not require the local government to
 203 pay or release any amounts that are the subject of a good faith
 204 dispute, the subject of an action brought under s. 255.05, or
 205 otherwise the subject of a claim or demand by the local
 206 government or vendor.

207 (e) The timeframes set forth in this section for payment
 208 of payment requests apply to any payment request for retainage
 209 made pursuant to this subsection.

210 Section 4. Section 255.0705, Florida Statutes, is created
 211 to read:

212 255.0705 Popular name.--Sections 255.0705-255.078 may be
 213 cited by the popular name the "Florida Prompt Payment Act."

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

216 255.071 Payment of subcontractors, sub-subcontractors,
 217 materialmen, and suppliers on construction contracts for public
 218 projects.--

219 (2) The failure to pay any undisputed obligations for such
 220 labor, services, or materials within 30 days after the date the
 221 labor, services, or materials were furnished and payment for
 222 such labor, services, or materials became due, or within 10 ~~30~~
 223 days after the date payment for such labor, services, or
 224 materials is received, whichever last occurs, shall entitle any
 225 person providing such labor, services, or materials to the
 226 procedures specified in subsection (3) and the remedies provided
 227 in subsection (4).

228 (3) Any person providing labor, services, or materials for
 229 the construction of a public building, for the prosecution and
 230 completion of a public work, or for repairs upon a public

HB 0487

2004

231 building or public work improvements to real property may file a
 232 verified complaint alleging:

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

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

238 (c) The amount of the contract price.

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

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

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

246 (g) That the person against whom the complaint was filed
 247 has received payment on account of the labor, services, or
 248 materials described in the complaint more than 10 ~~30~~ days prior
 249 to the date the complaint was filed.

250 Section 6. Section 255.072, Florida Statutes, is created
 251 to read:

252 255.072 Definitions.--As used in ss. 255.073-255.078, the
 253 term:

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

256 (2) "Construction services" means all labor, services, and
 257 materials provided in connection with the construction,
 258 alteration, repair, demolition, reconstruction, or any other
 259 improvement to real property. The term "construction services"

HB 0487

2004

260 does not include contracts or work performed for the Department
 261 of Transportation.

262 (3) "Payment request" means an invoice or request for
 263 payment for construction services which conforms with all
 264 statutory requirements and with all requirements specified by
 265 the public entity to which the payment request is submitted.

266 (4) "Public entity" means the state, a state university,
 267 or any office, board, bureau, commission, department, branch,
 268 division, or institution thereof, or any project supported by
 269 state funds, but does not include a local governmental entity as
 270 defined in s. 218.72.

271 (5) "Purchase" means the purchase of construction
 272 services.

273 (6) "Vendor" means any person providing construction
 274 services directly to a public entity.

275 Section 7. Section 255.073, Florida Statutes, is created
 276 to read:

277 255.073 Timely payment for purchases of construction
 278 services.--

279 (1) Except as otherwise provided in ss. 255.072-255.078,
 280 s. 215.422 governs the timely payment for construction services
 281 by a public entity under this act.

282 (2) If a public entity disputes a portion of a payment
 283 request, the undisputed portion must be timely paid in
 284 accordance with subsection (1).

285 (3) When a vendor receives payment from a public entity
 286 for labor, services, or materials furnished by subcontractors
 287 and suppliers hired by the vendor, the vendor shall remit
 288 payment due to those subcontractors and suppliers within 10 days

HB 0487

2004

289 after the vendor's receipt of payment. When a subcontractor
 290 receives payment from a vendor for labor, services, or materials
 291 furnished by subcontractors and suppliers hired by the
 292 subcontractor, the subcontractor shall remit payment due to
 293 those subcontractors and suppliers within 10 days after the
 294 subcontractor's receipt of payment. This subsection does not
 295 prohibit a vendor or subcontractor from disputing, pursuant to
 296 the terms of the relevant contract, all or any portion of a
 297 payment alleged to be due to another party. If such a dispute
 298 occurs, the vendor or subcontractor may withhold the disputed
 299 portion of any such payment if the vendor or subcontractor
 300 notifies the party whose payment is disputed, in writing, of the
 301 amount in dispute and the actions required to cure the dispute.
 302 The vendor or subcontractor must pay all undisputed amounts due
 303 within the time limits imposed by this section.

304 (4) All payments due under this section and not made
 305 within the time periods specified by this section shall bear
 306 interest at the rate of 1 percent per month, or the rate
 307 specified by contract, whichever is greater.

308 Section 8. Section 255.074, Florida Statutes, is created
 309 to read:

310 255.074 Procedures for calculation of payment due dates.--

311 (1) Each public entity shall establish procedures whereby
 312 each payment request received by the public entity is marked as
 313 received on the date on which it is delivered to an agent or
 314 employee of the public entity or of a facility or office of the
 315 public entity.

316 (2) If the terms under which a purchase is made allow for
 317 partial deliveries and a payment request is submitted for a

HB 0487

2004

318 partial delivery, the time for payment for the partial delivery
 319 must be calculated from the time of the partial delivery and the
 320 submission of the payment request in the same manner as provided
 321 in s. 255.073.

322 (3) The public entity must submit a payment request to the
 323 Chief Financial Officer for payment no more than 25 days after
 324 receipt of the payment request.

325 Section 9. Section 255.075, Florida Statutes, is created
 326 to read:

327 255.075 Mandatory interest.--A contract between a public
 328 entity and a vendor or a provider of construction services may
 329 not prohibit the collection of late payment interest charges
 330 allowable under ss. 255.072-255.078.

331 Section 10. Section 255.076, Florida Statutes, is created
 332 to read:

333 255.076 Improper payment request; resolution of
 334 disputes.--

335 (1) If a vendor submits an improper payment request, the
 336 public entity shall, within 10 days after receiving the improper
 337 payment request, notify the vendor that the payment request is
 338 improper and indicate what corrective action on the part of the
 339 vendor is needed to make the payment request proper.

340 (2) If a dispute occurs between a vendor and a public
 341 entity concerning payment of a payment request, the dispute must
 342 be resolved as provided in this section. Each public entity
 343 shall establish a dispute resolution procedure to be followed by
 344 the public entity if such a dispute occurs. The procedure must
 345 provide that proceedings to resolve the dispute must commence
 346 not later than 45 days after the date on which the public entity

HB 0487

2004

347 received the payment request and must conclude by final decision
 348 of the public entity not later than 60 days after the date on
 349 which the public entity received the payment request. Such
 350 procedures are not subject to chapter 120 and do not constitute
 351 an administrative proceeding that prohibits a court from
 352 deciding de novo any action arising out of the dispute. If the
 353 dispute is resolved in favor of the public entity, interest
 354 charges begin to accrue 15 days after the public entity's final
 355 decision. If the dispute is resolved in favor of the vendor,
 356 interest begins to accrue as of the original date the payment
 357 became due.

358 (3) In an action to recover amounts due under ss. 255.072-
 359 255.078, the court shall award court costs and reasonable
 360 attorney's fees, including fees incurred through any appeal, to
 361 the prevailing party if the court finds that the nonprevailing
 362 party withheld any portion of the payment that is the subject of
 363 the action without any reasonable basis in law or fact to
 364 dispute the prevailing party's claim to those amounts.

365 Section 11. Section 255.077, Florida Statutes, is created
 366 to read:

367 255.077 Project closeout and payment of retainage.--

368 (1) Each contract for construction services between a
 369 public entity and a vendor must provide for the development of a
 370 list of items required to render complete, satisfactory, and
 371 acceptable the construction services purchased by the public
 372 entity. The contract must specify the process for the
 373 development of the list, including the respective
 374 responsibilities of the public entity and the vendor in
 375 developing and reviewing the list. The list must be developed

HB 0487

2004

376 within 30 days after substantial completion of the construction
377 services purchased as defined in the contract or, if not defined
378 in the contract, within 30 days after beneficial occupancy or
379 use of the project.

380 (2) If the contract between the public entity and the
381 vendor relates to the purchase of construction services on more
382 than one building or structure or involves a multiphased
383 project, the contract must provide for the development of a list
384 of items required to render complete, satisfactory, and
385 acceptable the construction services purchased for each
386 building, structure, or phase of the project. Each list must be
387 developed within 30 days after substantial completion of the
388 construction services purchased as defined in the contract for
389 each building, structure, or phase of the project or, if not
390 defined in the contract, within 30 days after beneficial
391 occupancy or use of each building, structure, or phase of the
392 project.

393 (3) The failure to include any corrective work or pending
394 items not yet completed on the list developed under this section
395 does not alter the responsibility of the vendor to complete all
396 the purchased construction services as defined in the contract.

397 (4) Upon completion of all items on the list, or at such
398 other time as defined in the contract, the vendor may submit a
399 payment request for the appropriate amount of retainage. The
400 public entity may withhold an amount not to exceed 150 percent
401 of the total costs to complete any incomplete items on the list.

402 (5) All items that require correction under the contract
403 and that are identified after the preparation and delivery of

HB 0487

2004

404 the list remain the obligation of the vendor as defined by the
 405 contract.

406 (6) Warranty items may not affect the final payment of
 407 retainage as provided in this section or as provided in the
 408 contract between the vendor and its subcontractors and
 409 suppliers.

410 (7) Retainage may not be held by a public entity or a
 411 vendor to secure payment of insurance premiums under a
 412 consolidated insurance program or series of insurance policies
 413 issued to a public agency or a contractor for a project or group
 414 of projects, and the final payment of retainage as provided in
 415 this section may not be delayed pending a final audit by the
 416 public entity's or the vendor's insurance provider.

417 (8) If a public entity fails to comply with its
 418 responsibilities to develop the list required under subsection
 419 (1) or subsection (2), the vendor may submit a payment request
 420 for the appropriate amount of retainage. The public entity need
 421 not pay or process any request for payment of retainage if the
 422 vendor has, in whole or in part, failed to cooperate with the
 423 public entity in the development of the list or failed to
 424 perform its contractual responsibilities, if any, with regard to
 425 the development of the list.

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

428 255.078 Public construction retainage.--

429 (1) In any public construction project that is subject to
 430 ss. 255.072-255.078, a public entity may withhold an amount not
 431 exceeding 10 percent of each progress payment made to the vendor
 432 until the project has reached 50-percent completion. After the

HB 0487

2004

433 project has reached 50-percent completion, the public entity
434 must reduce to 5 percent the amount of retainage withheld from
435 each subsequent progress payment made to the vendor. As used in
436 this section, the term "50-percent completion" means as defined
437 in the contract between the public entity and the vendor or, if
438 not defined in the contract, the point at which the public
439 entity has expended 50 percent of the amount of the total
440 project costs identified in the contract, plus all change orders
441 and other additions issued after the approval of the contract by
442 the public entity, and the level of actual project construction
443 is equivalent to such expenditure of funds.

444 (2) After the project has reached 50-percent completion,
445 the vendor may present to the public entity a payment request
446 for up to one-half of the retainage amount held by the public
447 entity. The public entity shall promptly make payment to the
448 vendor unless the public entity has grounds, under the contract
449 or as provided in subsection (4), for withholding the payment of
450 retainage. If the public entity makes payment of retainage to
451 the vendor under this subsection, the vendor shall timely remit
452 payment of such retainage to the appropriate subcontractors and
453 suppliers.

454 (3) After the project has reached 50-percent completion,
455 the vendor may elect to withhold retainage from payments to its
456 subcontractors at a rate higher than 5 percent. The specific
457 amount to be withheld must be determined on a case-by-case basis
458 and must be based on the vendor's assessment of the
459 subcontractor's past performance, the likelihood that such
460 performance will continue, and the vendor's ability to rely on
461 other safeguards. The vendor shall notify the subcontractor, in

HB 0487

2004

462 writing, of its determination to withhold more than 5 percent of
 463 the progress payment and the reasons for making that
 464 determination, and the vendor may not request the release of
 465 such withheld funds from the public entity.

466 (4) This section does not require the public entity to pay
 467 or release any amounts that are the subject of a good faith
 468 dispute, the subject of an action brought under s. 255.05, or
 469 otherwise the subject of a claim or demand by the public entity
 470 or vendor.

471 (5) The timeframes set forth in ss. 255.072-255.078 for
 472 payment of payment requests apply to any payment request for
 473 retainage made pursuant to this section.

474 Section 13. Paragraph (a) of subsection (2) of section
 475 255.05, Florida Statutes, is amended, and subsections (10) and
 476 (11) are added to said section, to read:

477 255.05 Bond of contractor constructing public buildings;
 478 form; action by materialmen.--

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

487 NOTICE OF CONTEST OF CLAIM
 488 AGAINST PAYMENT BOND

489
 490 To: . . . (Name and address of claimant) . . .

HB 0487

2004

491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519

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

DATED on _____, _____.

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

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

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or

HB 0487

2004

520 delivery of the materials or supplies and of the nonpayment. The
 521 notice of nonpayment may be served at any time during the
 522 progress of the work or thereafter but not before 45 days after
 523 the first furnishing of labor, services, or materials, and not
 524 later than 90 days after the final furnishing of the labor,
 525 services, or materials by the claimant or, with respect to
 526 rental equipment, not later than 90 days after the date that the
 527 rental equipment was last on the job site available for use. Any
 528 notice of nonpayment served by a claimant who is not in privity
 529 with the contractor which includes sums for retainage must
 530 specify the portion of the amount claimed for retainage. No
 531 action for the labor, materials, or supplies may be instituted
 532 against the contractor or the surety unless both notices have
 533 been given. Notices required or permitted under this section may
 534 be served in accordance with s. 713.18. An action, except for an
 535 action exclusively for recovery of retainage, must be instituted
 536 against the contractor or the surety on the payment bond or the
 537 payment provisions of a combined payment and performance bond
 538 within 1 year after the performance of the labor or completion
 539 of delivery of the materials or supplies. An action exclusively
 540 for recovery of retainage must be instituted against the
 541 contractor or the surety within 1 year after the performance of
 542 the labor or completion of delivery of the materials or
 543 supplies, or within 90 days after receipt of final payment (or
 544 the payment estimate containing the owner's final reconciliation
 545 of quantities if no further payment is earned and due as a
 546 result of deductive adjustments) by the contractor or surety,
 547 whichever comes last. A claimant may not waive in advance his or
 548 her right to bring an action under the bond against the surety.

HB 0487

2004

549 In any action brought to enforce a claim against a payment bond
 550 under this section, the prevailing party is entitled to recover
 551 a reasonable fee for the services of his or her attorney for
 552 trial and appeal or for arbitration, in an amount to be
 553 determined by the court, which fee must be taxed as part of the
 554 prevailing party's costs, as allowed in equitable actions. The
 555 time periods for service of a notice of nonpayment or for
 556 bringing an action against a contractor or a surety shall be
 557 measured from the last day of furnishing labor, services, or
 558 materials by the claimant and shall not be measured by other
 559 standards, such as the issuance of a certificate of occupancy or
 560 the issuance of a certificate of substantial completion.

561 (10) Notwithstanding any other provision of law to the
 562 contrary, a claimant may not institute an action for the sole
 563 purpose of recovery of retainage against the contractor or
 564 against the surety issuing a payment or performance bond
 565 pursuant to this section until:

566 (a) The public entity has paid out that retainage to the
 567 contractor and the time provided under ss. 218.70-218.76 or ss.
 568 255.072-255.078 for payment of that retainage to the claimant
 569 has expired;

570 (b) The claimant has completed all work required under its
 571 contract and 90 days have passed since the owner's receipt of
 572 the contractor's last payment request; or

573 (c) The claimant has made the written request to the owner
 574 as provided in subsection (11) and has not timely received the
 575 requested information from the owner.

576 (11) An owner shall furnish in writing to a claimant who
 577 has provided labor, services, or materials to a project, within

HB 0487

2004

578 5 business days after receipt of a written request from that
 579 claimant, the following information:

580 (a) The dates of all payment requests received by the
 581 owner from the contractor.

582 (b) The dates of all payments made by the owner to the
 583 contractor.

584 (c) Whether the owner has received the contractor's final
 585 payment request and, if so, the date the final payment request
 586 was submitted by the contractor to the owner.

587 Section 14. Section 725.09, Florida Statutes, is created
 588 to read:

589 725.09 Construction contracts; contingent payment
 590 provisions.--An entity may not enter into a contract for the
 591 purchase of construction materials or services which conditions
 592 payment for such materials or services on the receipt of payment
 593 from any other entity. Any such conditional payment provision is
 594 void as a violation of the public policy of this state.

595 Section 15. This act shall take effect July 1, 2004.