

CHAMBER ACTION

1 The Committee on Local Government & Veterans' Affairs recommends  
2 the following:

3  
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to prompt payment for construction  
8 services; amending s. 218.70, F.S.; providing a popular  
9 name; amending s. 218.72, F.S.; redefining terms used in  
10 part VII of ch. 218, F.S.; amending s. 218.735, F.S.;  
11 revising provisions relating to timely payment for  
12 purchases of construction services; revising deadlines for  
13 payment; providing procedures for project closeout and  
14 payment of retainage; providing requirements for local  
15 government construction retainage; providing that ss.  
16 218.72-218.76, F.S., apply to the payment of any payment  
17 request for retainage; providing exceptions; creating s.  
18 255.0705, F.S.; providing a popular name; amending s.  
19 255.071, F.S.; revising deadlines for the payment of  
20 subcontractors, sub-subcontractors, materialmen, and  
21 suppliers on construction contracts for public projects;  
22 creating ss. 255.072, 255.073, 255.074, 255.075, 255.076,  
23 255.077, and 255.078, F.S.; providing definitions;

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24 providing for timely payment for purchases of construction  
 25 services by a public entity; providing procedures for  
 26 calculating payment due dates; authorizing the collection  
 27 of interest under certain circumstances; providing  
 28 procedures for handling improper payment requests;  
 29 providing for the resolution of disputes; providing for  
 30 project closeout and payment of retainage; providing that  
 31 ss. 255.072-255.076, F.S., apply to the payment of any  
 32 payment request for retainage; providing exceptions;  
 33 amending s. 255.05, F.S.; providing requirements for  
 34 certain notices of nonpayment served by a claimant who is  
 35 not in privity with the contractor; providing limitations  
 36 on a claimant's institution of certain actions against a  
 37 contractor or surety; creating s. 725.09, F.S.;  
 38 prohibiting a contract provision that makes payment  
 39 contingent upon certain conditions; amending s. 95.11,  
 40 F.S., to conform a cross reference; providing that this  
 41 act does not apply to contracts pending approval on the  
 42 effective date of the act or to projects advertised on or  
 43 before that date; providing an effective date.

44

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

46

47 Section 1. Section 218.70, Florida Statutes, is amended to  
 48 read:

49 218.70 Popular name ~~Short title~~.--This part may be cited  
 50 as the "Local Government ~~Florida~~ Prompt Payment Act."

51 Section 2. Subsections (2), (6), and (7) of section  
52 218.72, Florida Statutes, are amended, and subsection (10) is  
53 added to said section, to read:

54 218.72 Definitions.--As used in this part:

55 (2) "Local governmental entity" means a county or  
56 municipal government, district, authority, school board, school  
57 district, ~~authority,~~ special taxing district, other political  
58 subdivision or separate unit of local government created or  
59 established pursuant to law, or any office, board, bureau,  
60 commission, department, branch, division, or institution thereof  
61 ~~or any project supported by county or municipal funds.~~

62 (6) "Vendor" means any person who sells goods or services,  
63 sells or leases personal property, or leases real property  
64 directly to a local governmental entity. The term includes any  
65 person who provides waste-hauling services to residents or  
66 businesses located within the boundaries of a local government  
67 pursuant to a contract or local ordinance.

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

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

76 Section 3. Subsection (6) of section 218.735, Florida  
77 Statutes, is amended, present subsection (7) of said section is

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78 redesignated as subsection (9), and new subsections (7) and (8)  
79 are added to said section, to read:

80 218.735 Timely payment for purchases of construction  
81 services.--

82 (6) When a contractor receives payment from a local  
83 governmental entity for labor, services, or materials furnished  
84 by subcontractors and suppliers hired by the contractor, the  
85 contractor shall remit payment due to those subcontractors and  
86 suppliers within 10 ~~15~~ days after the contractor's receipt of  
87 payment. When a subcontractor receives payment from a contractor  
88 for labor, services, or materials furnished by subcontractors  
89 and suppliers hired by the subcontractor, the subcontractor  
90 shall remit payment due to those subcontractors and suppliers  
91 within 7 ~~15~~ days after the subcontractor's receipt of payment.  
92 Nothing herein shall prohibit a contractor or subcontractor from  
93 disputing, pursuant to the terms of the relevant contract, all  
94 or any portion of a payment alleged to be due to another party.  
95 ~~In the event of such a dispute, the contractor or subcontractor~~  
96 ~~may withhold the disputed portion of any such payment~~ if the  
97 contractor or subcontractor notifies the party whose payment is  
98 disputed, in writing, of the amount in dispute and the actions  
99 required to cure the dispute. The contractor or subcontractor  
100 must pay all undisputed amounts due within the time limits  
101 imposed by this section.

102 (7)(a) Each contract for construction services between a  
103 local governmental entity and a contractor must provide for the  
104 development of a list of items required to render complete,  
105 satisfactory, and acceptable the construction services purchased

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106 by the local governmental entity. The contract must specify the  
107 process for the development of the list, including  
108 responsibilities of the local governmental entity and the  
109 contractor in developing and reviewing the list and a reasonable  
110 time for developing the list, as follows:

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

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

122 (b) If the contract between the local governmental entity  
123 and the contractor relates to the purchase of construction  
124 services on more than one building or structure, or involves a  
125 multiphased project, the contract shall provide for the  
126 development of a list of items required to render complete,  
127 satisfactory, and acceptable all the construction services  
128 purchased pursuant to the contract for each building, structure,  
129 or phase of the project within the time limitations provided in  
130 paragraph (a).

131 (c) The failure to include any corrective work or pending  
132 items not yet completed on the list developed pursuant to this  
133 subsection does not alter the responsibility of the contractor

134 to complete all the construction services purchased pursuant to  
 135 the contract.

136 (d) Upon completion of all items on the list, the  
 137 contractor may submit a payment request for all remaining  
 138 retainage withheld by the local governmental entity pursuant to  
 139 this section. If a good-faith dispute exists as to whether one  
 140 or more items identified on the list have been completed  
 141 pursuant to the contract, the local governmental entity may  
 142 continue to withhold an amount not to exceed 150 percent of the  
 143 total costs to complete such items.

144 (e) All items that require correction under the contract  
 145 and that are identified after the preparation and delivery of  
 146 the list remain the obligation of the contractor as defined by  
 147 the contract.

148 (f) Warranty items may not affect the final payment of  
 149 retainage as provided in this section or as provided in the  
 150 contract between the contractor and its subcontractors and  
 151 suppliers.

152 (g) Retainage may not be held by a local governmental  
 153 entity or a contractor to secure payment of insurance premiums  
 154 under a consolidated insurance program or series of insurance  
 155 policies issued to a local governmental entity or a contractor  
 156 for a project or group of projects, and the final payment of  
 157 retainage as provided in this section may not be delayed pending  
 158 a final audit by the local governmental entity's or contractor's  
 159 insurance provider.

160 (h) If a local governmental entity fails to comply with  
 161 its responsibilities to develop the list required under

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162 paragraph (a) or paragraph (b), as defined in the contract,  
163 within the time limitations provided in paragraph (a), the  
164 contractor may submit a payment request for all remaining  
165 retainage withheld by the local governmental entity pursuant to  
166 this section. The local governmental entity need not pay or  
167 process any payment request for retainage if the contractor has,  
168 in whole or in part, failed to cooperate with the local  
169 governmental entity in the development of the list or failed to  
170 perform its contractual responsibilities, if any, with regard to  
171 the development of the list or if paragraph (8)(f) applies.

172 (8)(a) With regard to any contract for construction  
173 services, a local governmental entity may withhold from each  
174 progress payment made to the contractor an amount not exceeding  
175 10 percent of the payment as retainage to ensure the  
176 satisfactory completion of the construction services purchased  
177 pursuant to the contract until 50-percent completion of such  
178 services.

179 (b) After 50-percent completion of the construction  
180 services purchased pursuant to the contract, the local  
181 governmental entity must reduce to 5 percent the amount of  
182 retainage withheld from each subsequent progress payment made to  
183 the contractor. For purposes of this subsection, the term "50-  
184 percent completion" has the meaning set forth in the contract  
185 between the local governmental entity and the contractor, or, if  
186 not defined in the contract, the point at which the local  
187 governmental entity has expended 50 percent of the total cost of  
188 the construction services purchased as identified in the  
189 contract together with all costs associated with existing change

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190 orders and other additions or modifications to the construction  
191 services provided for in the contract. However, notwithstanding  
192 this subsection, a municipality with a population of 25,000 or  
193 fewer, or a county with a population of 100,000 or fewer, may  
194 withhold retainage in an amount not exceeding 10 percent of each  
195 progress payment made to the contractor until final completion  
196 and acceptance of the project by the local governmental entity.

197 (c) After 50-percent completion of the construction  
198 services purchased pursuant to the contract, the contractor may  
199 elect to withhold retainage from payments to its subcontractors  
200 at a rate higher than 5 percent. The specific amount to be  
201 withheld must be determined on a case-by-case basis and must be  
202 based on the contractor's assessment of the subcontractor's past  
203 performance, the likelihood that such performance will continue,  
204 and the contractor's ability to rely on other safeguards. The  
205 contractor shall notify the subcontractor, in writing, of its  
206 determination to withhold more than 5 percent of the progress  
207 payment and the reasons for making that determination, and the  
208 contractor may not request the release of such retained funds  
209 from the local governmental entity.

210 (d) After 50-percent completion of the construction  
211 services purchased pursuant to the contract, the contractor may  
212 present to the local governmental entity a payment request for  
213 up to one-half of the retainage held by the local governmental  
214 entity. The local governmental entity shall promptly make  
215 payment to the contractor, unless the local governmental entity  
216 has grounds, pursuant to paragraph (f), for withholding the  
217 payment of retainage. If the local governmental entity makes



218 payment of retainage to the contractor under this paragraph  
 219 which is attributable to the labor, services, or materials  
 220 supplied by one or more subcontractors or suppliers, the  
 221 contractor shall timely remit payment of such retainage to those  
 222 subcontractors and suppliers.

223 (e) This section does not prohibit a local governmental  
 224 entity from withholding retainage at a rate less than 10 percent  
 225 of each progress payment, from incrementally reducing the rate  
 226 of retainage pursuant to a schedule provided for in the  
 227 contract, or from releasing at any point all or a portion of any  
 228 retainage withheld by the local governmental entity which is  
 229 attributable to the labor, services, or materials supplied by  
 230 the contractor or by one or more subcontractors or suppliers. If  
 231 a local governmental entity makes any payment of retainage to  
 232 the contractor which is attributable to the labor, services, or  
 233 materials supplied by one or more subcontractors or suppliers,  
 234 the contractor shall timely remit payment of such retainage to  
 235 those subcontractors and suppliers.

236 (f) This section does not require the local governmental  
 237 entity to pay or release any amounts that are the subject of a  
 238 good-faith dispute, the subject of an action brought pursuant to  
 239 s. 255.05, or otherwise the subject of a claim or demand by the  
 240 local governmental entity or contractor.

241 (g) The time limitations set forth in this section for  
 242 payment of payment requests apply to any payment request for  
 243 retainage made pursuant to this section.

244 (h) Paragraphs (a)-(d) do not apply to construction  
 245 services purchased by a local governmental entity which are paid

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246 | for, in whole or in part, with federal funds and are subject to  
 247 | federal grantor laws and regulations or requirements that are  
 248 | contrary to any provision of the Local Government Prompt Payment  
 249 | Act.

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

254 |       Section 4. Section 255.0705, Florida Statutes, is created  
 255 | to read:

256 |       255.0705 Popular name.--Sections 255.0705-255.078 may be  
 257 | cited as the "Florida Prompt Payment Act."

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

260 |       255.071 Payment of subcontractors, sub-subcontractors,  
 261 | materialmen, and suppliers on construction contracts for public  
 262 | projects.--

263 |       (2) The failure to pay any undisputed obligations for such  
 264 | labor, services, or materials within 30 days after the date the  
 265 | labor, services, or materials were furnished and payment for  
 266 | such labor, services, or materials became due, or within the  
 267 | time limitations set forth in s. 255.073(3) ~~30 days after the~~  
 268 | ~~date payment for such labor, services, or materials is received,~~  
 269 | whichever last occurs, shall entitle any person providing such  
 270 | labor, services, or materials to the procedures specified in  
 271 | subsection (3) and the remedies provided in subsection (4).

272 |       (3) Any person providing labor, services, or materials for  
 273 | the construction of a public building, for the prosecution and

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274 completion of a public work, or for repairs upon a public  
275 building or public work improvements to real property may file a  
276 verified complaint alleging:

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

279 (b) A description of the labor, services, or materials  
280 provided and alleging that the labor, services, or materials  
281 were provided in accordance with the contract.

282 (c) The amount of the contract price.

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

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

286 (f) That the undisputed amount has remained due and  
287 payable pursuant to the contract for more than 30 days after the  
288 date the labor or services were accepted or the materials were  
289 received.

290 (g) That the person against whom the complaint was filed  
291 has received payment on account of the labor, services, or  
292 materials described in the complaint and, as of the date the  
293 complaint was filed, has failed to make payment within the time  
294 limitations set forth in s. 255.073(3) ~~more than 30 days prior~~  
295 to the date the complaint was filed.

296 Section 6. Section 255.072, Florida Statutes, is created  
297 to read:

298 255.072 Definitions.--As used in ss. 255.073-255.078, the  
299 term:

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

302        (2) "Construction services" means all labor, services, and  
 303 materials provided in connection with the construction,  
 304 alteration, repair, demolition, reconstruction, or any other  
 305 improvements to real property. The term "construction services"  
 306 does not include contracts or work performed for the Department  
 307 of Transportation.

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

310        (4) "Payment request" means a request for payment for  
 311 construction services which conforms with all statutory  
 312 requirements and with all requirements specified by the public  
 313 entity to which the payment request is submitted.

314        (5) "Public entity" means the state, a state university,  
 315 or any office, board, bureau, commission, department, branch,  
 316 division, or institution thereof, but does not include a local  
 317 governmental entity as defined in s. 218.72.

318        (6) "Purchase" means the purchase of construction  
 319 services.

320        Section 7. Section 255.073, Florida Statutes, is created  
 321 to read:

322        255.073 Timely payment for purchases of construction  
 323 services.--

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

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

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329       (3) When a contractor receives payment from a public  
 330 entity for labor, services, or materials furnished by  
 331 subcontractors and suppliers hired by the contractor, the  
 332 contractor shall remit payment due to those subcontractors and  
 333 suppliers within 10 days after the contractor's receipt of  
 334 payment. When a subcontractor receives payment from a contractor  
 335 for labor, services, or materials furnished by subcontractors  
 336 and suppliers hired by the subcontractor, the subcontractor  
 337 shall remit payment due to those subcontractors and suppliers  
 338 within 7 days after the subcontractor's receipt of payment. This  
 339 subsection does not prohibit a contractor or subcontractor from  
 340 disputing, pursuant to the terms of the relevant contract, all  
 341 or any portion of a payment alleged to be due to another party  
 342 if the contractor or subcontractor notifies the party whose  
 343 payment is disputed, in writing, of the amount in dispute and  
 344 the actions required to cure the dispute. The contractor or  
 345 subcontractor must pay all undisputed amounts due within the  
 346 time limits imposed by this subsection.

347       (4) All payments due for the purchase of construction  
 348 services and not made within the applicable time limits shall  
 349 bear interest at the rate of 1 percent per month, or the rate  
 350 specified by contract, whichever is greater.

351       Section 8. Section 255.074, Florida Statutes, is created  
 352 to read:

353       255.074 Procedures for calculation of payment due dates.--

354       (1) Each public entity shall establish procedures whereby  
 355 each payment request received by the public entity is marked as  
 356 received on the date on which it is delivered to an agent or

357 employee of the public entity or of a facility or office of the  
 358 public entity.

359 (2) If the terms under which a purchase is made allow for  
 360 partial deliveries and a payment request is submitted for a  
 361 partial delivery, the time for payment for the partial delivery  
 362 must be calculated from the time of the partial delivery and the  
 363 submission of the payment request.

364 (3) A public entity must submit a payment request to the  
 365 Chief Financial Officer for payment no more than 25 days after  
 366 receipt of the payment request.

367 Section 9. Section 255.075, Florida Statutes, is created  
 368 to read:

369 255.075 Mandatory interest.--A contract between a public  
 370 entity and a contractor may not prohibit the collection of late  
 371 payment interest charges authorized under s. 255.073(4).

372 Section 10. Section 255.076, Florida Statutes, is created  
 373 to read:

374 255.076 Improper payment request; resolution of  
 375 disputes.--

376 (1) If a contractor submits an improper payment request,  
 377 the public entity shall, within 10 days after receiving the  
 378 improper payment request, notify the contractor that the payment  
 379 request is improper and indicate what corrective action on the  
 380 part of the contractor is needed to make the payment request  
 381 proper.

382 (2) If a dispute occurs between a contractor and a public  
 383 entity concerning payment of a payment request, the dispute must  
 384 be submitted to a dispute resolution process established by the

385 public entity for this purpose. Under such a process,  
 386 proceedings to resolve the dispute must commence not later than  
 387 45 days after the date on which the public entity received the  
 388 payment request and must conclude by final decision of the  
 389 public entity not later than 60 days after the date on which the  
 390 public entity received the payment request. Such a dispute  
 391 resolution process is not subject to chapter 120 and does not  
 392 constitute an administrative proceeding that prohibits a court  
 393 from deciding de novo any action arising out of the dispute. If  
 394 the dispute is resolved in favor of the public entity, interest  
 395 charges begin to accrue 15 days after the public entity's final  
 396 decision. If the dispute is resolved in favor of the contractor,  
 397 interest begins to accrue as of the original date the payment  
 398 became due.

399 (3) In an action to recover amounts due for construction  
 400 services purchased by a public entity, the court shall award  
 401 court costs and reasonable attorney's fees, including fees  
 402 incurred through any appeal, to the prevailing party, if the  
 403 court finds that the nonprevailing party withheld any portion of  
 404 the payment that is the subject of the action without any  
 405 reasonable basis in law or fact to dispute the prevailing  
 406 party's claim to those amounts.

407 Section 11. Section 255.077, Florida Statutes, is created  
 408 to read:

409 255.077 Project closeout and payment of retainage.--

410 (1) Each contract for construction services between a  
 411 public entity and a contractor must provide for the development  
 412 of a list of items required to render complete, satisfactory,

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413 and acceptable the construction services purchased by the public  
414 entity. The contract must specify the process for the  
415 development of the list, including responsibilities of the  
416 public entity and the contractor in developing and reviewing the  
417 list and a reasonable time for developing the list, as follows:

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

423 (b) For construction projects with an estimated cost of  
424 \$10 million or more, within 30 calendar days, unless otherwise  
425 extended by contract not to exceed 60 calendar days, after  
426 reaching substantial completion of the construction services  
427 purchased as defined in the contract, or, if not defined in the  
428 contract, upon reaching beneficial occupancy or use.

429 (2) If the contract between the public entity and the  
430 contractor relates to the purchase of construction services on  
431 more than one building or structure, or involves a multiphased  
432 project, the contract shall provide for the development of a  
433 list of items required to render complete, satisfactory, and  
434 acceptable all the construction services purchased pursuant to  
435 the contract for each building, structure, or phase of the  
436 project within the time limitations provided in subsection (1).

437 (3) The failure to include any corrective work or pending  
438 items not yet completed on the list developed pursuant to  
439 subsection (1) or subsection (2) does not alter the



440 responsibility of the contractor to complete all the  
 441 construction services purchased pursuant to the contract.

442 (4) Upon completion of all items on the list, the  
 443 contractor may submit a payment request for all remaining  
 444 retainage withheld by the public entity pursuant to s. 255.078.  
 445 If a good-faith dispute exists as to whether one or more items  
 446 identified on the list have been completed pursuant to the  
 447 contract, the public entity may continue to withhold an amount  
 448 not to exceed 150 percent of the total costs to complete such  
 449 items.

450 (5) All items that require correction under the contract  
 451 and that are identified after the preparation and delivery of  
 452 the list remain the obligation of the contractor as defined by  
 453 the contract.

454 (6) Warranty items may not affect the final payment of  
 455 retainage as provided in this section or as provided in the  
 456 contract between the contractor and its subcontractors and  
 457 suppliers.

458 (7) Retainage may not be held by a public entity or a  
 459 contractor to secure payment of insurance premiums under a  
 460 consolidated insurance program or series of insurance policies  
 461 issued to a public entity or a contractor for a project or group  
 462 of projects, and the final payment of retainage as provided in  
 463 this section may not be delayed pending a final audit by the  
 464 public entity's or contractor's insurance provider.

465 (8) If a public entity fails to comply with its  
 466 responsibilities to develop the list required under subsection  
 467 (1) or subsection (2), as defined in the contract, within the

468 time limitations provided in subsection (1), the contractor may  
 469 submit a payment request for all remaining retainage withheld by  
 470 the public entity pursuant to s. 255.078. The public entity need  
 471 not pay or process any payment request for retainage if the  
 472 contractor has, in whole or in part, failed to cooperate with  
 473 the public entity in the development of the list or failed to  
 474 perform its contractual responsibilities, if any, with regard to  
 475 the development of the list or if s. 255.078(6) applies.

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

478 255.078 Public construction retainage.--

479 (1) With regard to any contract for construction services,  
 480 a public entity may withhold from each progress payment made to  
 481 the contractor an amount not exceeding 10 percent of the payment  
 482 as retainage to ensure the satisfactory completion of the  
 483 construction services purchased pursuant to the contract until  
 484 50-percent completion of such services.

485 (2) After 50-percent completion of the construction  
 486 services purchased pursuant to the contract, the public entity  
 487 must reduce to 5 percent the amount of retainage withheld from  
 488 each subsequent progress payment made to the contractor. For  
 489 purposes of this section, the term "50-percent completion" has  
 490 the meaning set forth in the contract between the public entity  
 491 and the contractor, or, if not defined in the contract, the  
 492 point at which the public entity has expended 50 percent of the  
 493 total cost of the construction services purchased as identified  
 494 in the contract together with all costs associated with existing

495 change orders and other additions or modifications to the  
496 construction services provided for in the contract.

497 (3) After 50-percent completion of the construction  
498 services purchased pursuant to the contract, the contractor may  
499 elect to withhold retainage from payments to its subcontractors  
500 at a rate higher than 5 percent. The specific amount to be  
501 withheld must be determined on a case-by-case basis and must be  
502 based on the contractor's assessment of the subcontractor's past  
503 performance, the likelihood that such performance will continue,  
504 and the contractor's ability to rely on other safeguards. The  
505 contractor shall notify the subcontractor, in writing, of its  
506 determination to withhold more than 5 percent of the progress  
507 payment and the reasons for making that determination, and the  
508 contractor may not request the release of such retained funds  
509 from the public entity.

510 (4) After 50-percent completion of the construction  
511 services purchased pursuant to the contract, the contractor may  
512 present to the public entity a payment request for up to one-  
513 half of the retainage held by the public entity. The public  
514 entity shall promptly make payment to the contractor, unless the  
515 public entity has grounds, pursuant to subsection (6), for  
516 withholding the payment of retainage. If the public entity makes  
517 payment of retainage to the contractor under this subsection  
518 which is attributable to the labor, services, or materials  
519 supplied by one or more subcontractors or suppliers, the  
520 contractor shall timely remit payment of such retainage to those  
521 subcontractors and suppliers.

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522        (5) Neither this section nor s. 255.077 prohibits a public  
523 entity from withholding retainage at a rate less than 10 percent  
524 of each progress payment, from incrementally reducing the rate  
525 of retainage pursuant to a schedule provided for in the  
526 contract, or from releasing at any point all or a portion of any  
527 retainage withheld by the public entity which is attributable to  
528 the labor, services, or materials supplied by the contractor or  
529 by one or more subcontractors or suppliers. If a public entity  
530 makes any payment of retainage to the contractor which is  
531 attributable to the labor, services, or materials supplied by  
532 one or more subcontractors or suppliers, the contractor shall  
533 timely remit payment of such retainage to those subcontractors  
534 and suppliers.

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

540        (7) The same time limits for payment of a payment request  
541 apply regardless of whether the payment request is for, or  
542 includes, retainage.

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

548        (9) This section does not apply to any construction  
549 services purchased by a public entity if the total cost of the

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550 construction services purchased as identified in the contract is  
551 \$200,000 or less.

552 Section 13. Paragraph (a) of subsection (2) and subsection  
553 (4) of section 255.05, Florida Statutes, are amended, and  
554 subsection (10) is added to said section, to read:

555 255.05 Bond of contractor constructing public buildings;  
556 form; action by materialmen.--

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

564  
565 NOTICE OF CONTEST OF CLAIM  
566 AGAINST PAYMENT BOND

567  
568 To: . . . (Name and address of claimant) . . .

569  
570 You are notified that the undersigned contests your notice  
571 of nonpayment, dated \_\_\_\_\_, \_\_\_\_\_, and served on the  
572 undersigned on \_\_\_\_\_, \_\_\_\_\_, and that the time within  
573 which you may file suit to enforce your claim is limited to 60  
574 days after the date of service of this notice.

575  
576 DATED on \_\_\_\_\_, \_\_\_\_\_.

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

579

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

588       2. A claimant, except a laborer, who is not in privity  
 589 with the contractor shall, before commencing or not later than  
 590 45 days after commencing to furnish labor, materials, or  
 591 supplies for the prosecution of the work, furnish the contractor  
 592 with a notice that he or she intends to look to the bond for  
 593 protection. A claimant who is not in privity with the contractor  
 594 and who has not received payment for his or her labor,  
 595 materials, or supplies shall deliver to the contractor and to  
 596 the surety written notice of the performance of the labor or  
 597 delivery of the materials or supplies and of the nonpayment. The  
 598 notice of nonpayment may be served at any time during the  
 599 progress of the work or thereafter but not before 45 days after  
 600 the first furnishing of labor, services, or materials, and not  
 601 later than 90 days after the final furnishing of the labor,  
 602 services, or materials by the claimant or, with respect to  
 603 rental equipment, not later than 90 days after the date that the  
 604 rental equipment was last on the job site available for use. Any  
 605 notice of nonpayment served by a claimant who is not in privity

606 with the contractor which includes sums for retainage must  
607 specify the portion of the amount claimed for retainage. No  
608 action for the labor, materials, or supplies may be instituted  
609 against the contractor or the surety unless both notices have  
610 been given. Notices required or permitted under this section may  
611 be served in accordance with s. 713.18. ~~An action, except for an~~  
612 ~~action exclusively for recovery of retainage, must be instituted~~  
613 ~~against the contractor or the surety on the payment bond or the~~  
614 ~~payment provisions of a combined payment and performance bond~~  
615 ~~within 1 year after the performance of the labor or completion~~  
616 ~~of delivery of the materials or supplies. An action exclusively~~  
617 ~~for recovery of retainage must be instituted against the~~  
618 ~~contractor or the surety within 1 year after the performance of~~  
619 ~~the labor or completion of delivery of the materials or~~  
620 ~~supplies, or within 90 days after receipt of final payment (or~~  
621 ~~the payment estimate containing the owner's final reconciliation~~  
622 ~~of quantities if no further payment is earned and due as a~~  
623 ~~result of deductive adjustments) by the contractor or surety,~~  
624 ~~whichever comes last.~~ A claimant may not waive in advance his or  
625 her right to bring an action under the bond against the surety.  
626 In any action brought to enforce a claim against a payment bond  
627 under this section, the prevailing party is entitled to recover  
628 a reasonable fee for the services of his or her attorney for  
629 trial and appeal or for arbitration, in an amount to be  
630 determined by the court, which fee must be taxed as part of the  
631 prevailing party's costs, as allowed in equitable actions. The  
632 time periods for service of a notice of nonpayment or for  
633 bringing an action against a contractor or a surety shall be

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634 measured from the last day of furnishing labor, services, or  
 635 materials by the claimant and shall not be measured by other  
 636 standards, such as the issuance of a certificate of occupancy or  
 637 the issuance of a certificate of substantial completion.

638 (4) The payment provisions of all bonds furnished for  
 639 public work contracts described in subsection (1) shall,  
 640 regardless of form, be construed and deemed statutory bond  
 641 provisions, subject to all requirements of subsections  
 642 ~~subsection~~ (2) and (10).

643 (10) An action, except for an action for recovery of  
 644 retainage, must be instituted against the contractor or the  
 645 surety on the payment bond or the payment provisions of a  
 646 combined payment and performance bond within 1 year after the  
 647 performance of the labor or completion of delivery of the  
 648 materials or supplies. An action for recovery of retainage must  
 649 be instituted against the contractor or the surety within 1 year  
 650 after the performance of the labor or completion of delivery of  
 651 the materials or supplies, provided that such an action may not  
 652 be instituted until one of the following conditions is  
 653 satisfied:

654 (a) The public entity has paid out the claimant's  
 655 retainage to the contractor, and the time provided under s.  
 656 255.073(3) for payment of that retainage to the claimant has  
 657 expired;

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



661       (c) The claimant has asked the contractor, in writing,  
 662 when the contractor received payment of the claimant's retainage  
 663 or when the contractor sent its final payment request to the  
 664 public entity, and the contractor has failed to respond to this  
 665 request, in writing, within 10 days after receipt.

666  
 667 If none of the conditions described in paragraph (a), paragraph  
 668 (b), or paragraph (c) is satisfied and an action for recovery of  
 669 retainage therefore cannot be instituted within the 1-year  
 670 limitation period set forth in this subsection, this limitation  
 671 period shall be extended until 120 days after one of these  
 672 conditions is satisfied.

673       Section 14. Section 725.09, Florida Statutes, is created  
 674 to read:

675       725.09 Construction contracts; contingent payment  
 676 provisions.--An entity may not enter into a contract for the  
 677 purchase of construction materials or services which conditions  
 678 payment for such materials or services on the receipt of payment  
 679 from any other entity. Any such conditional payment provision is  
 680 void as a violation of the public policy of this state.

681       Section 15. Paragraph (b) of subsection (2) of section  
 682 95.11, Florida Statutes, is amended to read:

683       95.11 Limitations other than for the recovery of real  
 684 property.--Actions other than for recovery of real property  
 685 shall be commenced as follows:

686       (2) WITHIN FIVE YEARS.--

687       (b) A legal or equitable action on a contract, obligation,  
 688 or liability founded on a written instrument, except for an

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689 | action to enforce a claim against a payment bond, which shall be  
690 | governed by the applicable provisions of ss. 255.05(10)  
691 | ~~255.05(2)(a)2.~~ and 713.23(1)(e).

692 |       Section 16. Neither the amendments to sections 95.11,  
693 | 218.70, 218.72, 218.735, 255.05, and 255.071, Florida Statutes,  
694 | as provided in this act, nor section 255.078, Florida Statutes,  
695 | as created by this act, applies to any existing construction  
696 | contract pending approval by a local governmental entity or  
697 | public entity, or to any project advertised for bid by the local  
698 | governmental entity or public entity, on or before the effective  
699 | date of this act.

700 |       Section 17. This act shall take effect October 1, 2004.