

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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.

1 Representative Reagan offered the following:

2  
3 **Amendment (with title amendment)**

4 On page 19, line 3, through page 31, line 25,  
5 remove: all of said lines

6  
7 and insert:

8 Section 13. Subsections (2) and (4) of section 255.05,  
9 Florida Statutes, are amended, and subsection (10) is added to  
10 said section, to read:

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

734869

Amendment No. (for drafter's use only)

16 | this section may be commenced by recording in the clerk's office  
17 | a notice in substantially the following form:

18 |

19 |                                   NOTICE OF CONTEST OF CLAIM  
20 | AGAINST PAYMENT BOND

21 |

22 | To: . . . (Name and address of claimant) . . .

23 |

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

29 |

30 |         DATED on \_\_\_\_\_, \_\_\_\_\_.

31 |

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

33 |

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

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

Amendment No. (for drafter's use only)

44 45 days after commencing to furnish labor, materials, or  
45 supplies for the prosecution of the work, furnish the contractor  
46 with a notice that he or she intends to look to the bond for  
47 protection. A claimant who is not in privity with the contractor  
48 and who has not received payment for his or her labor,  
49 materials, or supplies shall deliver to the contractor and to  
50 the surety written notice of the performance of the labor or  
51 delivery of the materials or supplies and of the nonpayment. The  
52 notice of nonpayment may be served at any time during the  
53 progress of the work or thereafter but not before 45 days after  
54 the first furnishing of labor, services, or materials, and not  
55 later than 90 days after the final furnishing of the labor,  
56 services, or materials by the claimant or, with respect to  
57 rental equipment, not later than 90 days after the date that the  
58 rental equipment was last on the job site available for use. Any  
59 notice of nonpayment served by a claimant who is not in privity  
60 with the contractor which includes sums for retainage must  
61 specify the portion of the amount claimed for retainage. No  
62 action for the labor, materials, or supplies may be instituted  
63 against the contractor or the surety unless both notices have  
64 been given. Notices required or permitted under this section may  
65 be served in accordance with s. 713.18. ~~An action, except for an~~  
66 ~~action exclusively for recovery of retainage, must be instituted~~  
67 ~~against the contractor or the surety on the payment bond or the~~  
68 ~~payment provisions of a combined payment and performance bond~~  
69 ~~within 1 year after the performance of the labor or completion~~  
70 ~~of delivery of the materials or supplies. An action exclusively~~  
71 ~~for recovery of retainage must be instituted against the~~

734869

Amendment No. (for drafter's use only)

72 ~~contractor or the surety within 1 year after the performance of~~  
73 ~~the labor or completion of delivery of the materials or~~  
74 ~~supplies, or within 90 days after receipt of final payment (or~~  
75 ~~the payment estimate containing the owner's final reconciliation~~  
76 ~~of quantities if no further payment is earned and due as a~~  
77 ~~result of deductive adjustments) by the contractor or surety,~~  
78 ~~whichever comes last.~~ A claimant may not waive in advance his or  
79 her right to bring an action under the bond against the surety.  
80 In any action brought to enforce a claim against a payment bond  
81 under this section, the prevailing party is entitled to recover  
82 a reasonable fee for the services of his or her attorney for  
83 trial and appeal or for arbitration, in an amount to be  
84 determined by the court, which fee must be taxed as part of the  
85 prevailing party's costs, as allowed in equitable actions. The  
86 time periods for service of a notice of nonpayment or for  
87 bringing an action against a contractor or a surety shall be  
88 measured from the last day of furnishing labor, services, or  
89 materials by the claimant and shall not be measured by other  
90 standards, such as the issuance of a certificate of occupancy or  
91 the issuance of a certificate of substantial completion.

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

96  
97 WAIVER OF RIGHT TO CLAIM AGAINST THE PAYMENT BOND (PROGRESS  
98 PAYMENT)  
99

Amendment No. (for drafter's use only)

100 The undersigned, in consideration of the sum of \$\_\_\_\_,  
 101 hereby waives its right to claim against the payment bond for  
 102 labor, services, or materials furnished through . . . (insert  
 103 date) . . . to . . . (insert the name of your customer) . . .  
 104 on the job of . . . (insert the name of the owner) . . . , for  
 105 improvements to the following described project:

106  
 107 (description of project)  
 108

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

111  
 112 DATED ON \_\_\_\_\_, \_\_\_\_.  
 113 . . . (Claimant) . . .  
 114 By: \_\_\_\_\_  
 115

116 (c) When a person is required to execute a waiver of his  
 117 or her right to make a claim against the payment bond, in  
 118 exchange for, or to induce payment of, the final payment, the  
 119 waiver may be in substantially the following form:

120  
 121 WAIVER OF RIGHT TO CLAIM AGAINST THE PAYMENT BOND (FINAL  
 122 PAYMENT)  
 123

124 The undersigned, in consideration of the final payment in  
 125 the amount of \$\_\_\_\_, hereby waives its right to claim against  
 126 the payment bond for labor, services, or materials furnished to  
 127 . . . (insert the name of your customer) . . . on the job of .

Amendment No. (for drafter's use only)

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

130  
131 (description of project)

132  
133 DATED ON \_\_\_\_\_, \_\_\_\_\_.  
134 . . . (Claimant) . . .  
135 By: \_\_\_\_\_

136  
137 (d) A person may not require a claimant to furnish a  
138 waiver that is different from the forms in paragraphs (b) and  
139 (c).

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

142 (f) A waiver that is not substantially similar to the  
143 forms in this subsection is enforceable in accordance with its  
144 terms.

145 (4) The payment provisions of all bonds furnished for  
146 public work contracts described in subsection (1) shall,  
147 regardless of form, be construed and deemed statutory bond  
148 provisions, subject to all requirements of subsections  
149 subsection (2) and (10).

150 (10) An action, except for an action for recovery of  
151 retainage, must be instituted against the contractor or the  
152 surety on the payment bond or the payment provisions of a  
153 combined payment and performance bond within 1 year after the  
154 performance of the labor or completion of delivery of the  
155 materials or supplies. An action for recovery of retainage must

Amendment No. (for drafter's use only)

156 be instituted against the contractor or the surety within 1 year  
157 after the performance of the labor or completion of delivery of  
158 the materials or supplies, provided that such an action may not  
159 be instituted until one of the following conditions is  
160 satisfied:

161 (a) The public entity has paid out the claimant's  
162 retainage to the contractor, and the time provided under s.  
163 255.073(3) for payment of that retainage to the claimant has  
164 expired;

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

168 (c) The claimant has asked the contractor, in writing,  
169 when the contractor received payment of the claimant's retainage  
170 or when the contractor sent its final payment request to the  
171 public entity, and the contractor has failed to respond to this  
172 request, in writing, within 10 days after receipt.

173  
174 If none of the conditions described in paragraph (a), paragraph  
175 (b), or paragraph (c) is satisfied and an action for recovery of  
176 retainage therefore cannot be instituted within the 1-year  
177 limitation period set forth in this subsection, this limitation  
178 period shall be extended until 120 days after one of these  
179 conditions is satisfied.

180 Section 14. Paragraph (b) of subsection (2) of section  
181 95.11, Florida Statutes, is amended to read:

Amendment No. (for drafter's use only)

182 95.11 Limitations other than for the recovery of real  
183 property.--Actions other than for recovery of real property  
184 shall be commenced as follows:

185 (2) WITHIN FIVE YEARS.--

186 (b) A legal or equitable action on a contract, obligation,  
187 or liability founded on a written instrument, except for an  
188 action to enforce a claim against a payment bond, which shall be  
189 governed by the applicable provisions of ss. 255.05(10)  
190 ~~255.05(2)(a)2.~~ and 713.23(1)(e).

191 Section 15. Neither the amendments to sections 95.11,  
192 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and  
193 subsection (2) of section 255.05, Florida Statutes, as provided  
194 in this act, nor subsection (10) of section 255.05, Florida  
195 Statutes, and section 255.078, Florida Statutes, as created by  
196 this act, applies to any existing construction contract pending  
197 approval by a local governmental entity or public entity, or to  
198 any project advertised for bid by the local government entity or  
199 public entity, on or before the effective date of this act.

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

201 On page 2, lines 5-12,  
202 remove: all of said lines

203  
204 and insert: contractor; providing limitations on