

By Senator Bennett

21-239C-04

1                                   A bill to be entitled  
2           An act relating to construction services;  
3           amending s. 218.70, F.S.; providing a short  
4           title; amending s. 218.72, F.S.; redefining  
5           terms used in part VII of ch. 218, F.S.;  
6           amending s. 218.735, F.S.; revising provisions  
7           relating to timely payment for purchases of  
8           construction services; revising deadlines for  
9           payment; providing procedures for project  
10          closeout and payment of retainage; providing  
11          requirements for local government construction  
12          retainage; providing that ss. 218.72-218.76,  
13          F.S., apply to the payment of any payment  
14          request for retainage; creating s. 255.0705,  
15          F.S.; providing a short title; amending s.  
16          255.071, F.S.; revising deadlines for the  
17          payment of subcontractors, sub-subcontractors,  
18          materialmen, and suppliers on construction  
19          contracts for public projects; creating ss.  
20          255.072, 255.073, 255.074, 255.075, 255.076,  
21          255.077, and 255.078, F.S.; providing  
22          definitions; providing for timely payment for  
23          purchases of construction services by a public  
24          entity; providing procedures for calculating  
25          payment due dates; providing procedures for  
26          handling improper payment requests; providing  
27          for the resolution of disputes; providing for  
28          payment of court costs and attorney's fees;  
29          providing for project closeout and payment of  
30          retainage; providing for public-construction  
31          retainage; providing that ss. 255.072-255.076,

1 F.S., apply to the payment of any payment  
2 request for retainage; amending s. 255.05,  
3 F.S.; providing requirements for certain  
4 notices of nonpayment served by a claimant who  
5 is not in privity with the contractor;  
6 providing limitations on a claimant's  
7 institution of certain actions against a  
8 contractor or surety; providing for certain  
9 notices to the claimant; creating s. 725.09,  
10 F.S.; prohibiting the inclusion in a contract  
11 for the purchase of construction materials or  
12 services a provision that conditions payment  
13 for such materials or services on the receipt  
14 of payment from any other entity; providing an  
15 effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Section 218.70, Florida Statutes, is  
20 amended to read:

21 218.70 Short title.--This part may be cited as the  
22 "Local Government ~~Florida~~ Prompt Payment Act."

23 Section 2. Subsections (2), (6), and (7) of section  
24 218.72, Florida Statutes, are amended to read:

25 218.72 Definitions.--As used in this part:

26 (2) "Local governmental entity" means a county or  
27 municipal government, school board, school district,  
28 authority, special taxing district, other political  
29 subdivision, community college, or any office, board, bureau,  
30 commission, department, branch, division, or institution  
31 thereof or any project supported by county or municipal funds.

1           (6) "Vendor" means any person who sells goods or  
2 services, sells or leases personal property, or leases real  
3 property directly to a local government entity. The term  
4 includes any person who provides waste-hauling services to  
5 residents or businesses located within the boundaries of a  
6 local government pursuant to a contract or local ordinance.

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

12           Section 3. Subsection (6) of section 218.735, Florida  
13 Statutes, is amended, present subsection (7) of that section  
14 is redesignated as subsection (9), and new subsections (7) and  
15 (8) are added to that section, to read:

16           218.735 Timely payment for purchases of construction  
17 services.--

18           (6) When a contractor receives payment from a local  
19 governmental entity for labor, services, or materials  
20 furnished by subcontractors and suppliers hired by the  
21 contractor, the contractor shall remit payment due to those  
22 subcontractors and suppliers within 10 ~~15~~ days after the  
23 contractor's receipt of payment. When a subcontractor receives  
24 payment from a contractor for labor, services, or materials  
25 furnished by subcontractors and suppliers hired by the  
26 subcontractor, the subcontractor shall remit payment due to  
27 those subcontractors and suppliers within 10 ~~15~~ days after the  
28 subcontractor's receipt of payment. Nothing herein shall  
29 prohibit a contractor or subcontractor from disputing,  
30 pursuant to the terms of the relevant contract, all or any  
31 portion of a payment alleged to be due to another party. In

1 the event of such a dispute, the contractor or subcontractor  
2 may withhold the disputed portion of any such payment if the  
3 contractor or subcontractor notifies the party whose payment  
4 is disputed, in writing, of the amount in dispute and the  
5 actions required to cure the dispute. The contractor or  
6 subcontractor must pay all undisputed amounts due within the  
7 time limits imposed by this section.

8 (7)(a) Each contract for construction services between  
9 a local government entity and vendor must provide for the  
10 development of a list of items required to render complete,  
11 satisfactory, and acceptable the construction services  
12 purchased by the local government. The contract must specify  
13 the process for the development of the list, including the  
14 respective responsibilities of the local government and the  
15 vendor in developing and reviewing the list and a reasonable  
16 time for developing the list as follows:

17 1. For construction projects with an estimated cost of  
18 less than \$10 million, within 30 days after reaching  
19 substantial completion of the construction services purchased  
20 as defined in the contract, or, if not defined in the  
21 contract, upon reaching beneficial occupancy or use; or

22 2. For construction projects with an estimated cost of  
23 \$10 million or more, within 30 days, unless otherwise extended  
24 by contract not to exceed 90 days, after reaching substantial  
25 completion of the construction services purchased as defined  
26 in the contract, or, if not defined in the contract, upon  
27 reaching beneficial occupancy or use.

28 (b) If the contract between the local government  
29 entity and vendor relates to the purchase of construction  
30 services on more than one building or structure or involves a  
31 multiphased project, the contract must provide for the

1 development of a list of items required to render complete,  
2 satisfactory, and acceptable the construction services  
3 purchased for each building, structure, or phase of the  
4 project in accordance with the timeframes specified in  
5 subparagraph (a)1. or subparagraph (a)2.

6 (c) The failure to include any corrective work or  
7 pending items not yet completed on the list developed pursuant  
8 to this subsection does not alter the responsibility of the  
9 vendor to complete all the purchased construction services as  
10 defined in the contract.

11 (d) Upon completion of all items on the list, or such  
12 other time as defined in the contract, the vendor may submit a  
13 payment request for the appropriate amount of retainage. The  
14 local government may withhold an amount not to exceed 150  
15 percent of the total costs to complete any incomplete items on  
16 the list.

17 (e) All items that require correction under the  
18 contract and that are identified after the preparation and  
19 delivery of the list remain the obligation of the vendor as  
20 defined by the contract.

21 (f) Warranty items may not affect the final payment of  
22 retainage as provided in this section or as provided in the  
23 contract between the vendor and its subcontractors and  
24 suppliers.

25 (g) Retainage may not be held by a local governmental  
26 entity or a vendor to secure payment of insurance premiums  
27 under a consolidated insurance program or series of insurance  
28 policies issued to a public agency or a contractor for a  
29 project or group of projects, and the final payment of  
30 retainage as provided in this section may not be delayed  
31

1 pending a final audit by the local governmental entity's or  
2 vendor's insurance provider.

3 (h) If a local government entity fails to comply with  
4 its responsibilities to develop the list required under  
5 paragraph (a) or paragraph (b), as defined in the contract,  
6 and the timeframes provided in subparagraph (a)1. or  
7 subparagraph (a)2., the vendor may submit a payment request  
8 for the appropriate amount of retainage. The local government  
9 entity need not pay or process any request for payment of  
10 retainage if the vendor has, in whole or in part, failed to  
11 cooperate with the local government in the development of the  
12 list or failed to perform its contractual responsibilities, if  
13 any, with regard to the development of the list or if  
14 paragraph (8)(d) applies.

15 (8)(a) In any public construction project, a local  
16 government entity may withhold an amount not exceeding 10  
17 percent of each progress payment made to the vendor until the  
18 local government project has reached 50-percent completion.  
19 After the project has reached 50-percent completion, the local  
20 government must reduce to 5 percent the amount of retainage  
21 withheld from each subsequent progress payment made to the  
22 vendor. However, notwithstanding the provisions of this  
23 subsection, a municipality with a population of 25,000 or  
24 fewer, or a county with a population of 100,000 or fewer, may  
25 withhold retainage in an amount not exceeding 10 percent of  
26 each progress payment made to the vendor until final  
27 completion and acceptance of the project by the local  
28 government. For purposes of this subsection, the term  
29 "50-percent completion" means as defined in the contract  
30 between the local government entity and the vendor, or, if not  
31 defined in the contract, the point at which the local

1 government has expended 50 percent of the total project costs  
2 identified in the contract, plus all change orders and other  
3 additions issued subsequent to the approval of the contract by  
4 the governing body of the local government, and the level of  
5 actual project construction is equivalent to such expenditure  
6 of funds.

7 (b) After the project has reached 50-percent  
8 completion, the vendor may present to the local government  
9 entity a payment request for up to one-half of the retainage  
10 amount held by the local government. The local government  
11 entity shall promptly make payment to the vendor, unless the  
12 local government has grounds, pursuant to the contract or as  
13 provided in paragraph (d), for withholding the payment of  
14 retainage. If the local government makes payment of retainage  
15 to the vendor under this paragraph, the vendor shall timely  
16 remit payment of such retainage to the appropriate  
17 subcontractors and suppliers.

18 (c) After the project has reached 50-percent  
19 completion, the vendor may elect to withhold retainage from  
20 payments to its subcontractors at a rate higher than 5  
21 percent. The specific amount to be withheld must be determined  
22 on a case-by-case basis and must be based on the vendor's  
23 assessment of the subcontractor's past performance, the  
24 likelihood that such performance will continue, and the  
25 vendor's ability to rely on other safeguards. The vendor shall  
26 notify the subcontractor, in writing, of its determination to  
27 withhold more than 5 percent of the progress payment and the  
28 reasons for making that determination, and the vendor may not  
29 request the release of such retained funds from the local  
30 government.

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1           (d) This section does not require the local government  
2 to pay or release any amounts that are the subject of a  
3 good-faith dispute, the subject of an action brought under s.  
4 255.05, or otherwise the subject of a claim or demand by the  
5 local government or vendor.

6           (e) The timeframes set forth in this section for  
7 payment of payment requests apply to any payment request for  
8 retainage made pursuant to this subsection.

9           Section 4. Section 255.0705, Florida Statutes, is  
10 created to read:

11           255.0705 Short title.--Sections 255.0705-255.078 may  
12 be cited as the "Florida Prompt Payment Act."

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

15           255.071 Payment of subcontractors, sub-subcontractors,  
16 materialmen, and suppliers on construction contracts for  
17 public projects.--

18           (2) The failure to pay any undisputed obligations for  
19 such labor, services, or materials within 30 days after the  
20 date the labor, services, or materials were furnished and  
21 payment for such labor, services, or materials became due, or  
22 within 10 ~~30~~ days after the date payment for such labor,  
23 services, or materials is received, whichever last occurs,  
24 shall entitle any person providing such labor, services, or  
25 materials to the procedures specified in subsection (3) and  
26 the remedies provided in subsection (4).

27           (3) Any person providing labor, services, or materials  
28 for the construction of a public building, for the prosecution  
29 and completion of a public work, or for repairs upon a public  
30 building or public work improvements to real property may file  
31 a verified complaint alleging:



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

3 (b) A description of the labor, services, or materials  
4 provided and alleging that the labor, services, or materials  
5 were provided in accordance with the contract.

6 (c) The amount of the contract price.

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

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

10 (f) That the undisputed amount has remained due and  
11 payable pursuant to the contract for more than 30 days after  
12 the date the labor or services were accepted or the materials  
13 were received.

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

18 Section 6. Section 255.072, Florida Statutes, is  
19 created to read:

20 255.072 Definitions.--As used in ss. 255.073-255.078,  
21 the term:

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

25 (2) "Construction services" means all labor, services,  
26 and materials provided in connection with the construction,  
27 alteration, repair, demolition, reconstruction, or any other  
28 improvements to real property. The term "construction  
29 services" does not include contracts or work performed for the  
30 Department of Transportation.

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

5           (4) "Public entity" means the state, a state  
6 university, or any office, board, bureau, commission,  
7 department, branch, division, or institution thereof, or any  
8 project supported by state funds, but does not include a local  
9 government entity as defined in s. 218.72.

10           (5) "Purchase" means the purchase of construction  
11 services.

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

14           Section 7. Section 255.073, Florida Statutes, is  
15 created to read:

16           255.073 Timely payment for purchases of construction  
17 services.--

18           (1) Except as otherwise provided in ss.  
19 255.072-255.078, s. 215.422 governs the timely payment for  
20 construction services by a public entity under this act.

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

24           (3) When a vendor receives payment from a public  
25 entity for labor, services, or materials furnished by  
26 subcontractors and suppliers hired by the vendor, the vendor  
27 shall remit payment due to those subcontractors and suppliers  
28 within 10 days after the vendor's receipt of payment. When a  
29 subcontractor receives payment from a vendor for labor,  
30 services, or materials furnished by subcontractors and  
31 suppliers hired by the subcontractor, the subcontractor shall

1 remit payment due to those subcontractors and suppliers within  
2 10 days after the subcontractor's receipt of payment. This  
3 subsection does not prohibit a vendor or subcontractor from  
4 disputing, pursuant to the terms of the relevant contract, all  
5 or any portion of a payment alleged to be due to another  
6 party. If such a dispute occurs, the vendor or subcontractor  
7 may withhold the disputed portion of any such payment if the  
8 vendor or subcontractor notifies the party whose payment is  
9 disputed, in writing, of the amount in dispute and the actions  
10 required to cure the dispute. The vendor or subcontractor must  
11 pay all undisputed amounts due within the time limits imposed  
12 by this section.

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

17 Section 8. Section 255.074, Florida Statutes, is  
18 created to read:

19 255.074 Procedures for calculation of payment due  
20 dates.--

21 (1) Each public entity shall establish procedures  
22 whereby each payment request received by the public entity is  
23 marked as received on the date on which it is delivered to an  
24 agent or employee of the public entity or of a facility or  
25 office of the public entity.

26 (2) If the terms under which a purchase is made allow  
27 for partial deliveries and a payment request is submitted for  
28 a partial delivery, the time for payment for the partial  
29 delivery must be calculated from the time of the partial  
30 delivery and the submission of the payment request in the same  
31 manner as provided in s. 255.073.

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

4           Section 9. Section 255.075, Florida Statutes, is  
5 created to read:

6           255.075 Mandatory interest.--A contract between a  
7 public entity and a vendor or a provider of construction  
8 services may not prohibit the collection of late payment  
9 interest charges allowable under ss. 255.072-255.078.

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

12          255.076 Improper payment request; resolution of  
13 disputes.--

14           (1) If a vendor submits an improper payment request,  
15 the public entity shall, within 10 days after receiving the  
16 improper payment request, notify the vendor that the payment  
17 request is improper and indicate what corrective action on the  
18 part of the vendor is needed to make the payment request  
19 proper.

20           (2) If a dispute occurs between a vendor and a public  
21 entity concerning payment of a payment request, the dispute  
22 must be resolved as provided in this section. Each public  
23 entity shall establish a dispute resolution procedure to be  
24 followed by the public entity if such a dispute occurs. The  
25 procedure must provide that proceedings to resolve the dispute  
26 must commence not later than 45 days after the date on which  
27 the public entity received the payment request and must  
28 conclude by final decision of the public entity not later than  
29 60 days after the date on which the public entity received the  
30 payment request. Such procedures are not subject to chapter  
31 120 and do not constitute an administrative proceeding that

1 prohibits a court from deciding de novo any action arising out  
2 of the dispute. If the dispute is resolved in favor of the  
3 public entity, interest charges begin to accrue 15 days after  
4 the public entity's final decision. If the dispute is resolved  
5 in favor of the vendor, interest begins to accrue as of the  
6 original date the payment became due.

7 (3) In an action to recover amounts due under ss.  
8 255.072-255.078, the court shall award court costs and  
9 reasonable attorney's fees, including fees incurred through  
10 any appeal, to the prevailing party, if the court finds that  
11 the nonprevailing party withheld any portion of the payment  
12 that is the subject of the action without any reasonable basis  
13 in law or fact to dispute the prevailing party's claim to  
14 those amounts.

15 Section 11. Section 255.077, Florida Statutes, is  
16 created to read:

17 255.077 Project closeout and payment of retainage.--

18 (1) Each contract for construction services between a  
19 public entity and a vendor must provide for the development of  
20 a list of items required to render complete, satisfactory, and  
21 acceptable the construction services purchased by the public  
22 entity. The contract must specify the process for the  
23 development of the list, including the respective  
24 responsibilities of the public entity and the vendor in  
25 developing and reviewing the list. The list must be developed  
26 within 30 days after substantial completion of the  
27 construction services purchased, as defined in the contract,  
28 or, if not defined in the contract, within 30 days after  
29 beneficial occupancy or use of the project.

30 (2) If the contract between the public entity and the  
31 vendor relates to the purchase of construction services on

1 more than one building or structure or involves a multiphased  
2 project, the contract must provide for the development of a  
3 list of items required to render complete, satisfactory, and  
4 acceptable the construction services purchased for each  
5 building, structure, or phase of the project. Each list must  
6 be developed within 30 days after substantial completion of  
7 the construction services purchased, as defined in the  
8 contract, for each building, structure, or phase of the  
9 project, or, if not defined in the contract, within 30 days  
10 after beneficial occupancy or use of each building, structure,  
11 or phase of the project.

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

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

23 (5) All items that require correction under the  
24 contract and that are identified after the preparation and  
25 delivery of the list remain the obligation of the vendor as  
26 defined by the contract.

27 (6) Warranty items may not affect the final payment of  
28 retainage as provided in this section or as provided in the  
29 contract between the vendor and its subcontractors and  
30 suppliers.

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1           (7) Retainage may not be held by a public entity or a  
2 vendor to secure payment of insurance premiums under a  
3 consolidated insurance program or series of insurance policies  
4 issued to a public agency or a contractor for a project or  
5 group of projects, and the final payment of retainage as  
6 provided in this section may not be delayed pending a final  
7 audit by the public entity's or vendor's insurance provider.

8           (8) If a public entity fails to comply with its  
9 responsibilities to develop the list required under subsection  
10 (1) or subsection (2), the vendor may submit a payment request  
11 for the appropriate amount of retainage. The public entity  
12 need not pay or process any request for payment of retainage  
13 if the vendor has, in whole or in part, failed to cooperate  
14 with the public entity in the development of the list or  
15 failed to perform its contractual responsibilities, if any,  
16 with regard to the development of the list.

17           Section 12. Section 255.078, Florida Statutes, is  
18 created to read:

19           255.078 Public construction retainage.--

20           (1) In any public construction project that is subject  
21 to ss. 255.072-255.078, a public entity may withhold an amount  
22 not exceeding 10 percent of each progress payment made to the  
23 vendor until the project has reached 50-percent completion.  
24 After the project has reached 50-percent completion, the  
25 public entity must reduce to 5 percent the amount of retainage  
26 withheld from each subsequent progress payment made to the  
27 vendor. As used in this section, the term "50-percent  
28 completion" means as defined in the contract between the  
29 public entity and the vendor, or, if not defined in the  
30 contract, the point at which the public entity has expended 50  
31 percent of the amount of the total project costs identified in

1 the contract, plus all change orders and other additions  
2 issued after the approval of the contract by the public  
3 entity, and the level of actual project construction is  
4 equivalent to such expenditure of funds.

5 (2) After the project has reached 50-percent  
6 completion, the vendor may present to the public entity a  
7 payment request for up to one-half of the retainage amount  
8 held by the public entity. The public entity shall promptly  
9 make payment to the vendor unless the public entity has  
10 grounds, under the contract or as provided in subsection (4),  
11 for withholding the payment of retainage. If the public entity  
12 makes payment of retainage to the vendor under this  
13 subsection, the vendor shall timely remit payment of such  
14 retainage to the appropriate subcontractors and suppliers.

15 (3) After the project has reached 50-percent  
16 completion, the vendor may elect to withhold retainage from  
17 payments to its subcontractors at a rate higher than 5  
18 percent. The specific amount to be withheld must be determined  
19 on a case-by-case basis and must be based on the vendor's  
20 assessment of the subcontractor's past performance, the  
21 likelihood that such performance will continue, and the  
22 vendor's ability to rely on other safeguards. The vendor shall  
23 notify the subcontractor, in writing, of its determination to  
24 withhold more than 5 percent of the progress payment and the  
25 reasons for making that determination, and the vendor may not  
26 request the release of such withheld funds from the public  
27 entity.

28 (4) This section does not require the public entity to  
29 pay or release any amounts that are the subject of a  
30 good-faith dispute, the subject of an action brought under s.  
31



1 255.05, or otherwise the subject of a claim or demand by the  
2 public entity or vendor.

3 (5) The timeframes set forth in ss. 255.072-255.076  
4 for payment of payment requests apply to any payment request  
5 for retainage made pursuant to this section.

6 Section 13. Paragraph (a) of subsection (2) of section  
7 255.05, Florida Statutes, is amended, and subsections (10) and  
8 (11) are added to that section, to read:

9 255.05 Bond of contractor constructing public  
10 buildings; form; action by materialmen.--

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  
16 this section may be commenced by recording in the clerk's  
17 office 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  
25 notice of nonpayment, dated ....., ....., and served  
26 on the undersigned on ....., ....., and that the  
27 time within which you may file suit to enforce your claim is  
28 limited to 60 days after the date of service of this notice.

29  
30 DATED on ....., .....

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

2

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

12           2. A claimant, except a laborer, who is not in privity  
13 with the contractor shall, before commencing or not later than  
14 45 days after commencing to furnish labor, materials, or  
15 supplies for the prosecution of the work, furnish the  
16 contractor with a notice that he or she intends to look to the  
17 bond for protection. A claimant who is not in privity with the  
18 contractor and who has not received payment for his or her  
19 labor, materials, or supplies shall deliver to the contractor  
20 and to the surety written notice of the performance of the  
21 labor or delivery of the materials or supplies and of the  
22 nonpayment. The notice of nonpayment may be served at any time  
23 during the progress of the work or thereafter but not before  
24 45 days after the first furnishing of labor, services, or  
25 materials, and not later than 90 days after the final  
26 furnishing of the labor, services, or materials by the  
27 claimant or, with respect to rental equipment, not later than  
28 90 days after the date that the rental equipment was last on  
29 the job site available for use. Any notice of nonpayment  
30 served by a claimant who is not in privity with the contractor  
31 which includes sums for retainage must specify the portion of

1 the amount claimed for retainage.No action for the labor,  
2 materials, or supplies may be instituted against the  
3 contractor or the surety unless both notices have been given.  
4 Notices required or permitted under this section may be served  
5 in accordance with s. 713.18. An action, except for an action  
6 exclusively for recovery of retainage, must be instituted  
7 against the contractor or the surety on the payment bond or  
8 the payment provisions of a combined payment and performance  
9 bond within 1 year after the performance of the labor or  
10 completion of delivery of the materials or supplies. An action  
11 exclusively for recovery of retainage must be instituted  
12 against the contractor or the surety within 1 year after the  
13 performance of the labor or completion of delivery of the  
14 materials or supplies, or within 90 days after receipt of  
15 final payment (or the payment estimate containing the owner's  
16 final reconciliation of quantities if no further payment is  
17 earned and due as a result of deductive adjustments) by the  
18 contractor or surety, whichever comes last. A claimant may not  
19 waive in advance his or her right to bring an action under the  
20 bond against the surety. In any action brought to enforce a  
21 claim against a payment bond under this section, the  
22 prevailing party is entitled to recover a reasonable fee for  
23 the services of his or her attorney for trial and appeal or  
24 for arbitration, in an amount to be determined by the court,  
25 which fee must be taxed as part of the prevailing party's  
26 costs, as allowed in equitable actions. The time periods for  
27 service of a notice of nonpayment or for bringing an action  
28 against a contractor or a surety shall be measured from the  
29 last day of furnishing labor, services, or materials by the  
30 claimant and shall not be measured by other standards, such as  
31

1 the issuance of a certificate of occupancy or the issuance of  
2 a certificate of substantial completion.

3 (10) Notwithstanding any other provision of law to the  
4 contrary, a claimant may not institute an action for the sole  
5 purpose of recovery of retainage against the contractor or  
6 against the surety issuing a payment or performance bond  
7 pursuant to this section until:

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

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

15 (c) The claimant has made the written request to the  
16 owner provided in subsection (11) and has not timely received  
17 the requested information from the owner.

18 (11) An owner shall furnish in writing to a claimant  
19 who has provided labor, services, or materials to a project,  
20 within 5 business days after receipt of a written request from  
21 that claimant, the following information:

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

24 (b) The dates of all payments made by the owner to the  
25 contractor.

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

29 Section 14. Section 725.09, Florida Statutes, is  
30 created to read:

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