

By the Committee on Comprehensive Planning; and Senator
Bennett

316-2030-04

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

1 255.05, F.S.; providing requirements for
2 certain notices of nonpayment served by a
3 claimant who is not in privity with the
4 contractor; providing limitations on a
5 claimant's institution of certain actions
6 against a contractor or surety; amending s.
7 95.11, F.S., to conform a cross-reference;
8 providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 218.70, Florida Statutes, is
13 amended to read:

14 218.70 Popular name ~~Short title~~.--This part may be
15 cited as the "Local Government Florida Prompt Payment Act."

16 Section 2. Subsections (2), (6), and (7) of section
17 218.72, Florida Statutes, are amended, and subsection (10) is
18 added to that section, to read:

19 218.72 Definitions.--As used in this part:

20 (2) "Local governmental entity" means a county or
21 municipal government, district, authority, school board,
22 school district, ~~authority,~~ special taxing district, other
23 political subdivision or separate unit of local government
24 created or established pursuant to law, community college, or
25 any office, board, bureau, commission, department, branch,
26 division, or institution thereof ~~or any project supported by~~
27 ~~county or municipal funds.~~

28 (6) "Vendor" means any person who sells goods or
29 services, sells or leases personal property, or leases real
30 property directly to a local governmental entity. The term
31 includes any person who provides waste-hauling services to

1 residents or businesses located within the boundaries of a
2 local government pursuant to a contract or local ordinance.

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

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

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

15 218.735 Timely payment for purchases of construction
16 services.--

17 (6) When a contractor receives payment from a local
18 governmental entity for labor, services, or materials
19 furnished by subcontractors and suppliers hired by the
20 contractor, the contractor shall remit payment due to those
21 subcontractors and suppliers within 10 ~~15~~ days after the
22 contractor's receipt of payment. When a subcontractor receives
23 payment from a contractor for labor, services, or materials
24 furnished by subcontractors and suppliers hired by the
25 subcontractor, the subcontractor shall remit payment due to
26 those subcontractors and suppliers within 7 ~~15~~ days after the
27 subcontractor's receipt of payment. Nothing herein shall
28 prohibit a contractor or subcontractor from disputing,
29 pursuant to the terms of the relevant contract, all or any
30 portion of a payment alleged to be due to another party. ~~In~~
31 ~~the event of such a dispute, the contractor or subcontractor~~

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

7 (7)(a) Each contract for construction services between
8 a local governmental entity and a contractor must provide for
9 the development of a list of items required to render
10 complete, satisfactory, and acceptable all the construction
11 services purchased pursuant to the contract. The contract must
12 specify the process for the development of the list, including
13 the respective responsibilities of the local governmental
14 entity and the contractor in developing and reviewing the
15 list. The list must be completed within 30 days after the
16 earliest of the following:

17 1. Issuance of a temporary or final certificate of
18 occupancy, if applicable;

19 2. Substantial completion of the construction services
20 purchased, as defined in the contract; or

21 3. Beneficial occupancy or use of the improvement that
22 is the subject of the construction services purchased, as
23 defined in the contract.

24
25 For construction projects with an estimated cost of \$10
26 million or more, the deadline for completion of the list may
27 be extended for up to 15 additional days if provided for in
28 the contract.

29 (b) If the contract between the local governmental
30 entity and the contractor relates to the purchase of
31 construction services on more than one building or structure,

1 or involves a multiphased project, the contract shall provide
2 for the development of a list of items required to render
3 complete, satisfactory, and acceptable all the construction
4 services purchased pursuant to the contract for each building,
5 structure, or phase of the project within the time limitations
6 provided in paragraph (a).

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

12 (d) Upon completion of all items on the list, the
13 contractor may submit a payment request for all remaining
14 retainage withheld by the local governmental entity pursuant
15 to this section. If a good-faith dispute exists as to whether
16 one or more items identified on the list have been completed
17 pursuant to the contract, the local governmental entity may
18 continue to withhold an amount not to exceed 150 percent of
19 the total costs to complete such items.

20 (e) All items that require correction under the
21 contract and that are identified after the preparation and
22 delivery of the list remain the obligation of the contractor
23 as defined by the contract.

24 (f) Warranty items may not affect the final payment of
25 retainage as provided in this section or as provided in the
26 contract between the contractor and its subcontractors and
27 suppliers.

28 (g) Retainage may not be held by a local governmental
29 entity or a contractor to secure payment of insurance premiums
30 under a consolidated insurance program or series of insurance
31 policies issued to a local governmental entity or a contractor

1 for a project or group of projects, and the final payment of
2 retainage as provided in this section may not be delayed
3 pending a final audit by the local governmental entity's or
4 contractor's insurance provider.

5 (h) If a local governmental entity fails to comply
6 with its responsibilities to develop the list required under
7 paragraph (a) or paragraph (b), as defined in the contract,
8 within the time limitations provided in paragraph (a), the
9 contractor may submit a payment request for all remaining
10 retainage withheld by the local governmental entity pursuant
11 to this section. The local governmental entity need not pay or
12 process any payment request for retainage if the contractor
13 has, in whole or in part, failed to cooperate with the local
14 governmental entity in the development of the list or failed
15 to perform its contractual responsibilities, if any, with
16 regard to the development of the list or if paragraph (8)(f)
17 applies.

18 (8)(a) With regard to any contract for construction
19 services, a local governmental entity may withhold from each
20 progress payment made to the contractor an amount not
21 exceeding 10 percent of the payment as retainage to ensure the
22 satisfactory completion of the construction services purchased
23 pursuant to the contract until 50-percent completion of such
24 services.

25 (b) After 50-percent completion of the construction
26 services purchased pursuant to the contract, the local
27 governmental entity must reduce to 5 percent the amount of
28 retainage withheld from each subsequent progress payment made
29 to the contractor. For purposes of this subsection, the term
30 "50-percent completion" has the meaning set forth in the
31 contract between the local governmental entity and the

1 contractor, or, if not defined in the contract, the point at
2 which the local governmental entity has expended 50 percent of
3 the total project cost identified in the contract together
4 with all costs associated with existing change orders and
5 other additions or modifications to the construction services
6 provided for in the contract. However, notwithstanding this
7 subsection, a municipality with a population of 25,000 or
8 fewer, or a county with a population of 100,000 or fewer, may
9 withhold retainage in an amount not exceeding 10 percent of
10 each progress payment made to the contractor until final
11 completion and acceptance of the project by the local
12 governmental entity.

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

27 (d) After 50-percent completion of the construction
28 services purchased pursuant to the contract, the contractor
29 may present to the local governmental entity a payment request
30 for up to one-half of the retainage held by the local
31 governmental entity. The local governmental entity shall

1 promptly make payment to the contractor, unless the local
2 governmental entity has grounds, pursuant to paragraph (f),
3 for withholding the payment of retainage. If the local
4 governmental entity makes payment of retainage to the
5 contractor under this paragraph which is attributable to the
6 labor, services, or materials supplied by one or more
7 subcontractors or suppliers, the contractor shall timely remit
8 payment of such retainage to those subcontractors and
9 suppliers.

10 (e) This section does not prohibit a local
11 governmental entity from withholding retainage at a rate less
12 than 10 percent of each progress payment, from incrementally
13 reducing the rate of retainage pursuant to a schedule provided
14 for in the contract, or from releasing at any point all or a
15 portion of any retainage withheld by the local governmental
16 entity which is attributable to the labor, services, or
17 materials supplied by the contractor or by one or more
18 subcontractors or suppliers. If a local governmental entity
19 makes any payment of retainage to the contractor which is
20 attributable to the labor, services, or materials supplied by
21 one or more subcontractors or suppliers, the contractor shall
22 timely remit payment of such retainage to those subcontractors
23 and suppliers.

24 (f) This section does not require the local
25 governmental entity to pay or release any amounts that are the
26 subject of a good-faith dispute, the subject of an action
27 brought pursuant to s. 255.05, or otherwise the subject of a
28 claim or demand by the local governmental entity or
29 contractor.

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1 (g) The time limitations set forth in this section for
2 payment of payment requests apply to any payment request for
3 retainage made pursuant to this section.

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

6 255.0705 Popular name.--Sections 255.0705-255.078 may
7 be cited as the "Florida Prompt Payment Act."

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

10 255.071 Payment of subcontractors, sub-subcontractors,
11 materialmen, and suppliers on construction contracts for
12 public projects.--

13 (2) The failure to pay any undisputed obligations for
14 such labor, services, or materials within 30 days after the
15 date the labor, services, or materials were furnished and
16 payment for such labor, services, or materials became due, or
17 within the time limitations set forth in s. 255.073(3)~~30 days~~
18 ~~after the date payment for such labor, services, or materials~~
19 ~~is received~~, whichever last occurs, shall entitle any person
20 providing such labor, services, or materials to the procedures
21 specified in subsection (3) and the remedies provided in
22 subsection (4).

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

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

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

4 (c) The amount of the contract price.

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

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

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

12 (g) That the person against whom the complaint was
13 filed has received payment on account of the labor, services,
14 or materials described in the complaint and, as of the date
15 the complaint was filed, has failed to make payment within the
16 time limitations set forth in s. 255.073(3)~~more than 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) "Contractor" means any person who contracts
2 directly with a public entity to provide construction
3 services.

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

8 (5) "Public entity" means the state, a state
9 university, or any office, board, bureau, commission,
10 department, branch, division, or institution thereof, but does
11 not include a local governmental entity as defined in s.
12 218.72.

13 (6) "Purchase" means the purchase of construction
14 services.

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

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

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

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

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

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

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

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

18 255.074 Procedures for calculation of payment due
19 dates.--

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

25 (2) If the terms under which a purchase is made allow
26 for partial deliveries and a payment request is submitted for
27 a partial delivery, the time for payment for the partial
28 delivery must be calculated from the time of the partial
29 delivery and the submission of the payment request.

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1 (3) A 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 contractor may not prohibit the collection
8 of late payment interest charges authorized under s.
9 255.073(4).

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

20 (2) If a dispute occurs between a contractor and a
21 public entity concerning payment of a payment request, the
22 dispute must be submitted to a dispute resolution process
23 established by the public entity for this purpose. Under such
24 a process, proceedings to resolve the dispute must commence
25 not later than 45 days after the date on which the public
26 entity received the payment request and must conclude by final
27 decision of the public entity not later than 60 days after the
28 date on which the public entity received the payment request.
29 Such a dispute resolution process is not subject to chapter
30 120 and does not constitute an administrative proceeding that
31 prohibits a court from deciding de novo any action arising out

1 of the dispute. If the dispute is resolved in favor of the
2 public entity, interest charges begin to accrue 15 days after
3 the public entity's final decision. If the dispute is resolved
4 in favor of the contractor, interest begins to accrue as of
5 the original date the payment became due.

6 (3) In an action to recover amounts due for
7 construction services purchased by a public entity, the court
8 shall award court costs and reasonable attorney's fees,
9 including fees incurred through any appeal, to the prevailing
10 party, if the court finds that the nonprevailing party
11 withheld any portion of the payment that is the subject of the
12 action without any reasonable basis in law or fact to dispute
13 the prevailing party's claim to those amounts.

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

16 255.077 Project closeout and payment of retainage.--

17 (1) Each contract for construction services between a
18 public entity and a contractor must provide for the
19 development of a list of items required to render complete,
20 satisfactory, and acceptable all the construction services
21 purchased pursuant to the contract. The contract must specify
22 the process for the development of the list, including
23 responsibilities of the public entity and the contractor in
24 developing and reviewing the list. The list must be completed
25 within 30 days after the earliest of the following:

26 1. Issuance of a temporary or final certificate of
27 occupancy, if applicable;

28 2. Substantial completion of the construction services
29 purchased, as defined in the contract; or
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1 3. Beneficial occupancy or use of the improvement that
2 is the subject of the construction services purchased, as
3 defined in the contract.

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5 For construction projects with an estimated cost of \$10
6 million or more, the deadline for completion of the list may
7 be extended for up to 15 additional days if provided for in
8 the contract.

9 (2) If the contract between the public entity and the
10 contractor relates to the purchase of construction services on
11 more than one building or structure, or involves a multiphased
12 project, the contract shall provide for the development of a
13 list of items required to render complete, satisfactory, and
14 acceptable all the construction services purchased pursuant to
15 the contract for each building, structure, or phase of the
16 project within the time limitations provided in subsection
17 (1).

18 (3) The failure to include any corrective work or
19 pending items not yet completed on the list developed pursuant
20 to subsection (1) or subsection (2) does not alter the
21 responsibility of the contractor to complete all the
22 construction services purchased pursuant to the contract.

23 (4) Upon completion of all items on the list, the
24 contractor may submit a payment request for all remaining
25 retainage withheld by the public entity pursuant to s.
26 255.078. If a good-faith dispute exists as to whether one or
27 more items identified on the list have been completed pursuant
28 to the contract, the public entity may continue to withhold an
29 amount not to exceed 150 percent of the total costs to
30 complete such items.

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1 (5) All items that require correction under the
2 contract and that are identified after the preparation and
3 delivery of the list remain the obligation of the contractor
4 as defined by the contract.

5 (6) Warranty items may not affect the final payment of
6 retainage as provided in this section or as provided in the
7 contract between the contractor and its subcontractors and
8 suppliers.

9 (7) Retainage may not be held by a public entity or a
10 contractor to secure payment of insurance premiums under a
11 consolidated insurance program or series of insurance policies
12 issued to a public entity or a contractor for a project or
13 group of projects, and the final payment of retainage as
14 provided in this section may not be delayed pending a final
15 audit by the public entity's or contractor's insurance
16 provider.

17 (8) If a public entity fails to comply with its
18 responsibilities to develop the list required under subsection
19 (1) or subsection (2), as defined in the contract, within the
20 time limitations provided in subsection (1), the contractor
21 may submit a payment request for all remaining retainage
22 withheld by the public entity pursuant to s. 255.078. The
23 public entity need not pay or process any payment request for
24 retainage if the contractor has, in whole or in part, failed
25 to cooperate with the public entity in the development of the
26 list or failed to perform its contractual responsibilities, if
27 any, with regard to the development of the list or if s.
28 255.078(6) applies.

29 Section 12. Section 255.078, Florida Statutes, is
30 created to read:

31 255.078 Public construction retainage.--

1 (1) With regard to any contract for construction
2 services, a public entity may withhold from each progress
3 payment made to the contractor an amount not exceeding 10
4 percent of the payment as retainage to ensure the satisfactory
5 completion of the construction services purchased pursuant to
6 the contract until 50-percent completion of such services.

7 (2) After 50-percent completion of the construction
8 services purchased pursuant to the contract, the public entity
9 must reduce to 5 percent the amount of retainage withheld from
10 each subsequent progress payment made to the contractor. For
11 purposes of this section, the term "50-percent completion" has
12 the meaning set forth in the contract between the public
13 entity and the contractor, or, if not defined in the contract,
14 the point at which the public entity has expended 50 percent
15 of the total project cost identified in the contract together
16 with all costs associated with existing change orders and
17 other additions or modifications to the construction services
18 provided for in the contract.

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

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1 request the release of such retained funds from the public
2 entity.

3 (4) After 50-percent completion of the construction
4 services purchased pursuant to the contract, the contractor
5 may present to the public entity a payment request for up to
6 one-half of the retainage held by the public entity. The
7 public entity shall promptly make payment to the contractor,
8 unless the public entity has grounds, pursuant to subsection
9 (6), for withholding the payment of retainage. If the public
10 entity makes payment of retainage to the contractor under this
11 subsection which is attributable to the labor, services, or
12 materials supplied by one or more subcontractors or suppliers,
13 the contractor shall timely remit payment of such retainage to
14 those subcontractors and suppliers.

15 (5) Neither this section nor s. 255.077 prohibits a
16 public entity from withholding retainage at a rate less than
17 10 percent of each progress payment, from incrementally
18 reducing the rate of retainage pursuant to a schedule provided
19 for in the contract, or from releasing at any point all or a
20 portion of any retainage withheld by the public entity which
21 is attributable to the labor, services, or materials supplied
22 by the contractor or by one or more subcontractors or
23 suppliers. If a public entity makes any payment of retainage
24 to the contractor which is attributable to the labor,
25 services, or materials supplied by one or more subcontractors
26 or suppliers, the contractor shall timely remit payment of
27 such retainage to those subcontractors and suppliers.

28 (6) Neither this section nor s. 255.077 requires the
29 public entity to pay or release any amounts that are the
30 subject of a good-faith dispute, the subject of an action

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1 brought pursuant to s. 255.05, or otherwise the subject of a
2 claim or demand by the public entity or contractor.

3 (7) The same time limits for payment of a payment
4 request apply regardless of whether the payment request is
5 for, or includes, retainage.

6 Section 13. Paragraph (a) of subsection (2) and
7 subsection (4) of section 255.05, Florida Statutes, are
8 amended, and subsection (10) is added to that section, to
9 read:

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

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

19
20 NOTICE OF CONTEST OF CLAIM
21 AGAINST PAYMENT BOND
22

23 To: ...(Name and address of claimant)...

24
25 You are notified that the undersigned contests your
26 notice of nonpayment, dated,, and served
27 on the undersigned on,, and that the
28 time within which you may file suit to enforce your claim is
29 limited to 60 days after the date of service of this notice.
30

31 DATED on,

1
2 Signed:...(Contractor or Attorney)...
3
4 The claim of any claimant upon whom such notice is served and
5 who fails to institute a suit to enforce his or her claim
6 against the payment bond within 60 days after service of such
7 notice shall be extinguished automatically. The clerk shall
8 mail a copy of the notice of contest to the claimant at the
9 address shown in the notice of nonpayment or most recent
10 amendment thereto and shall certify to such service on the
11 face of such notice and record the notice. Service is complete
12 upon mailing.

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

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

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

3 (4) The payment provisions of all bonds furnished for
4 public work contracts described in subsection (1) shall,
5 regardless of form, be construed and deemed statutory bond
6 provisions, subject to all requirements of subsections
7 subsection (2) and (10).

8 (10) An action, except for an action for recovery of
9 retainage, must be instituted against the contractor or the
10 surety on the payment bond or the payment provisions of a
11 combined payment and performance bond within 1 year after the
12 performance of the labor or completion of delivery of the
13 materials or supplies. An action for recovery of retainage
14 must be instituted against the contractor or the surety within
15 1 year after the performance of the labor or completion of
16 delivery of the materials or supplies, provided that such an
17 action may not be instituted until one of the following
18 conditions is satisfied:

19 (a) The public entity has paid out the claimant's
20 retainage to the contractor, and the time provided under s.
21 255.073(3) for payment of that retainage to the claimant has
22 expired;

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

26 (c) The claimant has asked the contractor, in writing,
27 when the contractor received payment of the claimant's
28 retainage or when the contractor sent its final payment
29 request to the public entity, and the contractor has failed to
30 respond to this request, in writing, within 10 days after
31 receipt.

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2 If none of the conditions described in paragraph (a),
3 paragraph (b), or paragraph (c) is satisfied and an action for
4 recovery of retainage therefore cannot be instituted within
5 the 1-year limitation period set forth in this subsection,
6 this limitation period shall be extended until 120 days after
7 one of these conditions is satisfied.

8 Section 14. Section 725.09, Florida Statutes, is
9 created to read:

10 725.09 Construction contracts; contingent payment
11 provisions.--An entity may not enter into a contract for the
12 purchase of construction materials or services which
13 conditions payment for such materials or services on the
14 receipt of payment from any other entity. Any such conditional
15 payment provision is void as a violation of the public policy
16 of this state.

17 Section 15. Paragraph (b) of subsection (2) of section
18 95.11, Florida Statutes, is amended to read:

19 95.11 Limitations other than for the recovery of real
20 property.--Actions other than for recovery of real property
21 shall be commenced as follows:

22 (2) WITHIN FIVE YEARS.--

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

28 Section 16. This act shall take effect October 1,
29 2004.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 544

The CS differs from the bill as filed in that it:

- * Replaces the term "vender" throughout the bill with the term "contractor" or "provider of construction services;"
- * Reduces from 10 to 7 the days subcontractors have to remit payment to their suppliers and sub-subcontractors;
- * For projects costing more than \$10 million, restricts the contractual extension for the completion of the punch-list from 60 days to 15 days; in addition, it includes a third threshold (issuance of a temporary or final certificate of occupancy) from which the punch-list deadline commences;
- * Clarifies that there must be a "good faith dispute" between the local government and the contractor before the local government may withhold from the retainage;
- * Authorizes the local government to withhold retainage at a rate lower than 10% and to release the retainage to the contractor; the contractor is subsequently responsible for remitting such retainage to the subcontractors and suppliers; and
- * Reorganizes section 13, which prohibits a claimant from initiating an action to recover retainage against the contractor or against the surety providing a payment or the performance bond until certain conditions are met.
Substantive changes include
 - requiring the claimant to request retainage payment information from the contractor, rather than the building owner;
 - reducing a commencement deadline, from 90 to 70 days, for filing an action against the contractor; and
 - providing for a 120 day extension, under certain conditions, to the 1 year time-frame for filing an action against the contractor.