

By the Committees on Governmental Oversight and Productivity;
Comprehensive Planning; and Senator Bennett

302-2221-04

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 providing exceptions; creating s. 255.0705,
16 F.S.; providing a short title; amending s.
17 255.071, F.S.; revising deadlines for the
18 payment of subcontractors, sub-subcontractors,
19 materialmen, and suppliers on construction
20 contracts for public projects; creating ss.
21 255.072, 255.073, 255.074, 255.075, 255.076,
22 255.077, and 255.078, F.S.; providing
23 definitions; providing for timely payment for
24 purchases of construction services by a public
25 entity; providing procedures for calculating
26 payment due dates; providing procedures for
27 handling improper payment requests; providing
28 for the resolution of disputes; providing for
29 project closeout and payment of retainage;
30 providing that ss. 255.072-255.076, F.S., apply
31 to the payment of any payment request for

1 retainage; providing exceptions; amending s.
2 255.05, F.S.; providing requirements for
3 certain notices of nonpayment served by a
4 claimant who is not in privity with the
5 contractor; providing limitations on a
6 claimant's institution of certain actions
7 against a contractor or surety; creating s.
8 725.09, F.S.; prohibiting a contract provision
9 that makes payment contingent upon certain
10 conditions; amending s. 95.11, F.S., to conform
11 a cross-reference; providing that this act does
12 not apply to contracts pending approval on the
13 effective date of the act or to projects
14 advertised on or before that date; 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 Popular name ~~Short title~~.--This part may be
22 cited as the "Local Government Florida Prompt Payment Act."

23 Section 2. Subsections (2), (6), and (7) of section
24 218.72, Florida Statutes, are amended, and subsection (10) is
25 added to that section, to read:

26 218.72 Definitions.--As used in this part:

27 (2) "Local governmental entity" means a county or
28 municipal government, district, authority, school board,
29 school district, ~~authority,~~ special taxing district, other
30 political subdivision or separate unit of local government
31 created or established pursuant to law, or any office, board,

1 bureau, commission, department, branch, division, or
2 institution thereof ~~or any project supported by county or~~
3 ~~municipal funds.~~

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

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

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

18 Section 3. Subsection (6) of section 218.735, Florida
19 Statutes, is amended, present subsection (7) of that section
20 is redesignated as subsection (9), and new subsections (7) and
21 (8) are added to that section, to read:

22 218.735 Timely payment for purchases of construction
23 services.--

24 (6) When a contractor receives payment from a local
25 governmental entity for labor, services, or materials
26 furnished by subcontractors and suppliers hired by the
27 contractor, the contractor shall remit payment due to those
28 subcontractors and suppliers within 10 ~~15~~ days after the
29 contractor's receipt of payment. When a subcontractor receives
30 payment from a contractor for labor, services, or materials
31 furnished by subcontractors and suppliers hired by the

1 subcontractor, the subcontractor shall remit payment due to
2 those subcontractors and suppliers within 7 ~~15~~ days after the
3 subcontractor's receipt of payment. Nothing herein shall
4 prohibit a contractor or subcontractor from disputing,
5 pursuant to the terms of the relevant contract, all or any
6 portion of a payment alleged to be due to another party. ~~In~~
7 ~~the event of such a dispute, the contractor or subcontractor~~
8 ~~may withhold the disputed portion of any such payment if the~~
9 contractor or subcontractor notifies the party whose payment
10 is disputed, in writing, of the amount in dispute and the
11 actions required to cure the dispute. The contractor or
12 subcontractor must pay all undisputed amounts due within the
13 time limits imposed by this section.

14 (7)(a) Each contract for construction services between
15 a local governmental entity and a contractor must provide for
16 the development of a list of items required to render
17 complete, satisfactory, and acceptable the construction
18 services purchased by the local governmental entity. The
19 contract must specify the process for the development of the
20 list, including responsibilities of the local governmental
21 entity and the contractor in developing and reviewing the list
22 and a reasonable time for developing the list, as follows:

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

28 2. For construction projects with an estimated cost of
29 \$10 million or more, within 30 calendar days, unless otherwise
30 extended by contract not to exceed 60 calendar days, after
31 reaching substantial completion of the construction services

1 purchased as defined in the contract, or, if not defined in
2 the contract, upon reaching beneficial occupancy or use.

3 (b) If the contract between the local governmental
4 entity and the contractor relates to the purchase of
5 construction services on more than one building or structure,
6 or involves a multiphased project, the contract shall provide
7 for the development of a list of items required to render
8 complete, satisfactory, and acceptable all the construction
9 services purchased pursuant to the contract for each building,
10 structure, or phase of the project within the time limitations
11 provided in paragraph (a).

12 (c) The failure to include any corrective work or
13 pending items not yet completed on the list developed pursuant
14 to this subsection does not alter the responsibility of the
15 contractor to complete all the construction services purchased
16 pursuant to the contract.

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

25 (e) All items that require correction under the
26 contract and that are identified after the preparation and
27 delivery of the list remain the obligation of the contractor
28 as defined by the contract.

29 (f) Warranty items may not affect the final payment of
30 retainage as provided in this section or as provided in the
31

1 contract between the contractor and its subcontractors and
2 suppliers.

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

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

24 (8)(a) With regard to any contract for construction
25 services, a local governmental entity may withhold from each
26 progress payment made to the contractor an amount not
27 exceeding 10 percent of the payment as retainage to ensure the
28 satisfactory completion of the construction services purchased
29 pursuant to the contract until 50-percent completion of such
30 services.

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1 (b) After 50-percent completion of the construction
2 services purchased pursuant to the contract, the local
3 governmental entity must reduce to 5 percent the amount of
4 retainage withheld from each subsequent progress payment made
5 to the contractor. For purposes of this subsection, the term
6 "50-percent completion" has the meaning set forth in the
7 contract between the local governmental entity and the
8 contractor, or, if not defined in the contract, the point at
9 which the local governmental entity has expended 50 percent of
10 the total cost of the construction services purchased as
11 identified in the contract together with all costs associated
12 with existing change orders and other additions or
13 modifications to the construction services provided for in the
14 contract. However, notwithstanding this subsection, a
15 municipality with a population of 25,000 or fewer, or a county
16 with a population of 100,000 or fewer, may withhold retainage
17 in an amount not exceeding 10 percent of each progress payment
18 made to the contractor until final completion and acceptance
19 of the project by the local governmental entity.

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

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

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

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

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

7 (g) The time limitations set forth in this section for
8 payment of payment requests apply to any payment request for
9 retainage made pursuant to this section.

10 (h) Paragraphs (a)-(d) do not apply to construction
11 services purchased by a local governmental entity which are
12 paid for, in whole or in part, with federal funds and are
13 subject to federal grantor laws and regulations or
14 requirements that are contrary to any provision of the Local
15 Government Prompt Payment Act.

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

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

22 255.0705 Popular name.--Sections 255.0705-255.078 may
23 be cited as the "Florida Prompt Payment Act."

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

26 255.071 Payment of subcontractors, sub-subcontractors,
27 materialmen, and suppliers on construction contracts for
28 public projects.--

29 (2) The failure to pay any undisputed obligations for
30 such labor, services, or materials within 30 days after the
31 date the labor, services, or materials were furnished and

1 payment for such labor, services, or materials became due, or
2 within the time limitations set forth in s. 255.073(3)~~30 days~~
3 ~~after the date payment for such labor, services, or materials~~
4 ~~is received~~, whichever last occurs, shall entitle any person
5 providing such labor, services, or materials to the procedures
6 specified in subsection (3) and the remedies provided in
7 subsection (4).

8 (3) Any person providing labor, services, or materials
9 for the construction of a public building, for the prosecution
10 and completion of a public work, or for repairs upon a public
11 building or public work improvements to real property may file
12 a verified complaint alleging:

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

15 (b) A description of the labor, services, or materials
16 provided and alleging that the labor, services, or materials
17 were provided in accordance with the contract.

18 (c) The amount of the contract price.

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

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

22 (f) That the undisputed amount has remained due and
23 payable pursuant to the contract for more than 30 days after
24 the date the labor or services were accepted or the materials
25 were received.

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

1 Section 6. Section 255.072, Florida Statutes, is
2 created to read:

3 255.072 Definitions.--As used in ss. 255.073-255.078,
4 the term:

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

8 (2) "Construction services" means all labor, services,
9 and materials provided in connection with the construction,
10 alteration, repair, demolition, reconstruction, or any other
11 improvements to real property. The term "construction
12 services" does not include contracts or work performed for the
13 Department of Transportation.

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

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

21 (5) "Public entity" means the state, a state
22 university, or any office, board, bureau, commission,
23 department, branch, division, or institution thereof, but does
24 not include a local governmental entity as defined in s.
25 218.72.

26 (6) "Purchase" means the purchase of construction
27 services.

28 Section 7. Section 255.073, Florida Statutes, is
29 created to read:

30 255.073 Timely payment for purchases of construction
31 services.--

1 (1) Except as otherwise provided in ss.

2 255.072-255.078, s. 215.422 governs the timely payment for
3 construction services by a public entity.

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

6 (3) When a contractor receives payment from a public
7 entity for labor, services, or materials furnished by
8 subcontractors and suppliers hired by the contractor, the
9 contractor shall remit payment due to those subcontractors and
10 suppliers within 10 days after the contractor's receipt of
11 payment. When a subcontractor receives payment from a
12 contractor for labor, services, or materials furnished by
13 subcontractors and suppliers hired by the subcontractor, the
14 subcontractor shall remit payment due to those subcontractors
15 and suppliers within 7 days after the subcontractor's receipt
16 of payment. This subsection does not prohibit a contractor or
17 subcontractor from disputing, pursuant to the terms of the
18 relevant contract, all or any portion of a payment alleged to
19 be due to another party if the contractor or subcontractor
20 notifies the party whose payment is disputed, in writing, of
21 the amount in dispute and the actions required to cure the
22 dispute. The contractor or subcontractor must pay all
23 undisputed amounts due within the time limits imposed by this
24 subsection.

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

29 Section 8. Section 255.074, Florida Statutes, is
30 created to read:

31

1 255.074 Procedures for calculation of payment due
2 dates.--

3 (1) Each public entity shall establish procedures
4 whereby each payment request received by the public entity is
5 marked as received on the date on which it is delivered to an
6 agent or employee of the public entity or of a facility or
7 office of the public entity.

8 (2) If the terms under which a purchase is made allow
9 for partial deliveries and a payment request is submitted for
10 a partial delivery, the time for payment for the partial
11 delivery must be calculated from the time of the partial
12 delivery and the submission of the payment request.

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

16 Section 9. Section 255.075, Florida Statutes, is
17 created to read:

18 255.075 Mandatory interest.--A contract between a
19 public entity and a contractor may not prohibit the collection
20 of late payment interest charges authorized under s.
21 255.073(4).

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

24 255.076 Improper payment request; resolution of
25 disputes.--

26 (1) If a contractor submits an improper payment
27 request, the public entity shall, within 10 days after
28 receiving the improper payment request, notify the contractor
29 that the payment request is improper and indicate what
30 corrective action on the part of the contractor is needed to
31 make the payment request proper.

1 (2) If a dispute occurs between a contractor and a
2 public entity concerning payment of a payment request, the
3 dispute must be submitted to a dispute resolution process
4 established by the public entity for this purpose. Under such
5 a process, proceedings to resolve the dispute must commence
6 not later than 45 days after the date on which the public
7 entity received the payment request and must conclude by final
8 decision of the public entity not later than 60 days after the
9 date on which the public entity received the payment request.
10 Such a dispute resolution process is not subject to chapter
11 120 and does not constitute an administrative proceeding that
12 prohibits a court from deciding de novo any action arising out
13 of the dispute. If the dispute is resolved in favor of the
14 public entity, interest charges begin to accrue 15 days after
15 the public entity's final decision. If the dispute is resolved
16 in favor of the contractor, interest begins to accrue as of
17 the original date the payment became due.

18 (3) In an action to recover amounts due for
19 construction services purchased by a public entity, the court
20 shall award court costs and reasonable attorney's fees,
21 including fees incurred through any appeal, to the prevailing
22 party, if the court finds that the nonprevailing party
23 withheld any portion of the payment that is the subject of the
24 action without any reasonable basis in law or fact to dispute
25 the prevailing party's claim to those amounts.

26 Section 11. Section 255.077, Florida Statutes, is
27 created to read:

28 255.077 Project closeout and payment of retainage.--

29 (1) Each contract for construction services between a
30 public entity and a contractor must provide for the
31 development of a list of items required to render complete,

1 satisfactory, and acceptable the construction services
2 purchased by the public entity. The contract must specify the
3 process for the development of the list, including
4 responsibilities of the public entity and the contractor in
5 developing and reviewing the list and a reasonable time for
6 developing the list, as follows:

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

12 2. For construction projects with an estimated cost of
13 \$10 million or more, within 30 calendar days, unless otherwise
14 extended by contract not to exceed 60 calendar days, after
15 reaching substantial completion of the construction services
16 purchased as defined in the contract, or, if not defined in
17 the contract, upon reaching beneficial occupancy or use.

18 (2) If the contract between the public entity and the
19 contractor relates to the purchase of construction services on
20 more than one building or structure, or involves a multiphased
21 project, the contract shall provide for the development of a
22 list of items required to render complete, satisfactory, and
23 acceptable all the construction services purchased pursuant to
24 the contract for each building, structure, or phase of the
25 project within the time limitations provided in subsection
26 (1).

27 (3) The failure to include any corrective work or
28 pending items not yet completed on the list developed pursuant
29 to subsection (1) or subsection (2) does not alter the
30 responsibility of the contractor to complete all the
31 construction services purchased pursuant to the contract.

1 (4) Upon completion of all items on the list, the
2 contractor may submit a payment request for all remaining
3 retainage withheld by the public entity pursuant to s.
4 255.078. If a good-faith dispute exists as to whether one or
5 more items identified on the list have been completed pursuant
6 to the contract, the public entity may continue to withhold an
7 amount not to exceed 150 percent of the total costs to
8 complete such items.

9 (5) All items that require correction under the
10 contract and that are identified after the preparation and
11 delivery of the list remain the obligation of the contractor
12 as defined by the contract.

13 (6) Warranty items may not affect the final payment of
14 retainage as provided in this section or as provided in the
15 contract between the contractor and its subcontractors and
16 suppliers.

17 (7) Retainage may not be held by a public entity or a
18 contractor to secure payment of insurance premiums under a
19 consolidated insurance program or series of insurance policies
20 issued to a public entity or a contractor for a project or
21 group of projects, and the final payment of retainage as
22 provided in this section may not be delayed pending a final
23 audit by the public entity's or contractor's insurance
24 provider.

25 (8) If a public entity fails to comply with its
26 responsibilities to develop the list required under subsection
27 (1) or subsection (2), as defined in the contract, within the
28 time limitations provided in subsection (1), the contractor
29 may submit a payment request for all remaining retainage
30 withheld by the public entity pursuant to s. 255.078. The
31 public entity need not pay or process any payment request for

1 retainage if the contractor has, in whole or in part, failed
2 to cooperate with the public entity in the development of the
3 list or failed to perform its contractual responsibilities, if
4 any, with regard to the development of the list or if s.
5 255.078(6) applies.

6 Section 12. Section 255.078, Florida Statutes, is
7 created to read:

8 255.078 Public construction retainage.--

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

15 (2) After 50-percent completion of the construction
16 services purchased pursuant to the contract, the public entity
17 must reduce to 5 percent the amount of retainage withheld from
18 each subsequent progress payment made to the contractor. For
19 purposes of this section, the term "50-percent completion" has
20 the meaning set forth in the contract between the public
21 entity and the contractor, or, if not defined in the contract,
22 the point at which the public entity has expended 50 percent
23 of the total cost of the construction services purchased as
24 identified in the contract together with all costs associated
25 with existing change orders and other additions or
26 modifications to the construction services provided for in the
27 contract.

28 (3) After 50-percent completion of the construction
29 services purchased pursuant to the contract, the contractor
30 may elect to withhold retainage from payments to its
31 subcontractors at a rate higher than 5 percent. The specific

1 amount to be withheld must be determined on a case-by-case
2 basis and must be based on the contractor's assessment of the
3 subcontractor's past performance, the likelihood that such
4 performance will continue, and the contractor's ability to
5 rely on other safeguards. The contractor shall notify the
6 subcontractor, in writing, of its determination to withhold
7 more than 5 percent of the progress payment and the reasons
8 for making that determination, and the contractor may not
9 request the release of such retained funds from the public
10 entity.

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

23 (5) Neither this section nor s. 255.077 prohibits a
24 public entity from withholding retainage at a rate less than
25 10 percent of each progress payment, from incrementally
26 reducing the rate of retainage pursuant to a schedule provided
27 for in the contract, or from releasing at any point all or a
28 portion of any retainage withheld by the public entity which
29 is attributable to the labor, services, or materials supplied
30 by the contractor or by one or more subcontractors or
31 suppliers. If a public entity makes any payment of retainage

1 to the contractor which is attributable to the labor,
2 services, or materials supplied by one or more subcontractors
3 or suppliers, the contractor shall timely remit payment of
4 such retainage to those subcontractors and suppliers.

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

10 (7) The same time limits for payment of a payment
11 request apply regardless of whether the payment request is
12 for, or includes, retainage.

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

18 (9) This section does not apply to any construction
19 services purchased by a public entity if the total cost of the
20 construction services purchased as identified in the contract
21 is \$200,000 or less.

22 Section 13. Paragraph (a) of subsection (2) and
23 subsection (4) of section 255.05, Florida Statutes, are
24 amended, and subsection (10) is added to that section, to
25 read:

26 255.05 Bond of contractor constructing public
27 buildings; form; action by materialmen.--

28 (2)(a)1. If a claimant is no longer furnishing labor,
29 services, or materials on a project, a contractor or the
30 contractor's agent or attorney may elect to shorten the
31 prescribed time in this paragraph within which an action to

1 enforce any claim against a payment bond provided pursuant to
2 this section may be commenced by recording in the clerk's
3 office a notice in substantially the following form:

4
5 NOTICE OF CONTEST OF CLAIM
6 AGAINST PAYMENT BOND
7

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

9
10 You are notified that the undersigned contests your
11 notice of nonpayment, dated,, and served
12 on the undersigned on,, and that the
13 time within which you may file suit to enforce your claim is
14 limited to 60 days after the date of service of this notice.

15
16 DATED on,

17
18 Signed:...(Contractor or Attorney)...

19
20 The claim of any claimant upon whom such notice is served and
21 who fails to institute a suit to enforce his or her claim
22 against the payment bond within 60 days after service of such
23 notice shall be extinguished automatically. The clerk shall
24 mail a copy of the notice of contest to the claimant at the
25 address shown in the notice of nonpayment or most recent
26 amendment thereto and shall certify to such service on the
27 face of such notice and record the notice. Service is complete
28 upon mailing.

29 2. A claimant, except a laborer, who is not in privity
30 with the contractor shall, before commencing or not later than
31 45 days after commencing to furnish labor, materials, or

1 supplies for the prosecution of the work, furnish the
2 contractor with a notice that he or she intends to look to the
3 bond for protection. A claimant who is not in privity with the
4 contractor and who has not received payment for his or her
5 labor, materials, or supplies shall deliver to the contractor
6 and to the surety written notice of the performance of the
7 labor or delivery of the materials or supplies and of the
8 nonpayment. The notice of nonpayment may be served at any time
9 during the progress of the work or thereafter but not before
10 45 days after the first furnishing of labor, services, or
11 materials, and not later than 90 days after the final
12 furnishing of the labor, services, or materials by the
13 claimant or, with respect to rental equipment, not later than
14 90 days after the date that the rental equipment was last on
15 the job site available for use. Any notice of nonpayment
16 served by a claimant who is not in privity with the contractor
17 which includes sums for retainage must specify the portion of
18 the amount claimed for retainage.No action for the labor,
19 materials, or supplies may be instituted against the
20 contractor or the surety unless both notices have been given.
21 Notices required or permitted under this section may be served
22 in accordance with s. 713.18. ~~An action, except for an action~~
23 ~~exclusively for recovery of retainage, must be instituted~~
24 ~~against the contractor or the surety on the payment bond or~~
25 ~~the payment provisions of a combined payment and performance~~
26 ~~bond within 1 year after the performance of the labor or~~
27 ~~completion of delivery of the materials or supplies. An action~~
28 ~~exclusively for recovery of retainage must be instituted~~
29 ~~against the contractor or the surety within 1 year after the~~
30 ~~performance of the labor or completion of delivery of the~~
31 ~~materials or supplies, or within 90 days after receipt of~~

1 ~~final payment (or the payment estimate containing the owner's~~
2 ~~final reconciliation of quantities if no further payment is~~
3 ~~earned and due as a result of deductive adjustments) by the~~
4 ~~contractor or surety, whichever comes last.~~A claimant may not
5 waive in advance his or her right to bring an action under the
6 bond against the surety. In any action brought to enforce a
7 claim against a payment bond under this section, the
8 prevailing party is entitled to recover a reasonable fee for
9 the services of his or her attorney for trial and appeal or
10 for arbitration, in an amount to be determined by the court,
11 which fee must be taxed as part of the prevailing party's
12 costs, as allowed in equitable actions. The time periods for
13 service of a notice of nonpayment or for bringing an action
14 against a contractor or a surety shall be measured from the
15 last day of furnishing labor, services, or materials by the
16 claimant and shall not be measured by other standards, such as
17 the issuance of a certificate of occupancy or the issuance of
18 a certificate of substantial completion.

19 (4) The payment provisions of all bonds furnished for
20 public work contracts described in subsection (1) shall,
21 regardless of form, be construed and deemed statutory bond
22 provisions, subject to all requirements of subsections
23 subsection (2) and (10).

24 (10) An action, except for an action for recovery of
25 retainage, must be instituted against the contractor or the
26 surety on the payment bond or the payment provisions of a
27 combined payment and performance bond within 1 year after the
28 performance of the labor or completion of delivery of the
29 materials or supplies. An action for recovery of retainage
30 must be instituted against the contractor or the surety within
31 1 year after the performance of the labor or completion of

1 delivery of the materials or supplies, provided that such an
2 action may not be instituted until one of the following
3 conditions is satisfied:

4 (a) The public entity has paid out the claimant's
5 retainage to the contractor, and the time provided under s.
6 255.073(3) for payment of that retainage to the claimant has
7 expired;

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

11 (c) The claimant has asked the contractor, in writing,
12 when the contractor received payment of the claimant's
13 retainage or when the contractor sent its final payment
14 request to the public entity, and the contractor has failed to
15 respond to this request, in writing, within 10 days after
16 receipt.

17
18 If none of the conditions described in paragraph (a),
19 paragraph (b), or paragraph (c) is satisfied and an action for
20 recovery of retainage therefore cannot be instituted within
21 the 1-year limitation period set forth in this subsection,
22 this limitation period shall be extended until 120 days after
23 one of these conditions is satisfied.

24 Section 14. Section 725.09, Florida Statutes, is
25 created to read:

26 725.09 Construction contracts; contingent payment
27 provisions.--An entity may not enter into a contract for the
28 purchase of construction materials or services which
29 conditions payment for such materials or services on the
30 receipt of payment from any other entity. Any such conditional
31

1 payment provision is void as a violation of the public policy
2 of this state.

3 Section 15. Paragraph (b) of subsection (2) of section
4 95.11, Florida Statutes, is amended to read:

5 95.11 Limitations other than for the recovery of real
6 property.--Actions other than for recovery of real property
7 shall be commenced as follows:

8 (2) WITHIN FIVE YEARS.--

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

14 Section 16. Neither the amendments to sections 95.11,
15 218.70, 218.72, 218.735, 255.05, and 255.071, Florida
16 Statutes, as provided in this act, nor section 255.078,
17 Florida Statutes, as created by this act, applies to any
18 existing construction contract pending approval by a local
19 governmental entity or public entity, or to any project
20 advertised for bid by the local governmental entity or public
21 entity, on or before the effective date of this act.

22 Section 17. This act shall take effect October 1,
23 2004.

24
25 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
26 COMMITTEE SUBSTITUTE FOR
27 CS for Senate Bill 544

28 Removes community colleges from the Local Government Prompt
29 Payment Act. Permits up to 60 days for the development of a
30 punch list for construction projects costing more than \$10
31 million. Provides that retainage requirements are not
applicable for certain contracts funded by federal money.
Provides that specified provisions of the bill do not apply to
contracts pending approval or to projects that have been
advertised for bid on or before the effective date of the act.