

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; revising the form for a public
 6 construction bond; requiring the payment
 7 provisions of all public construction bonds to
 8 be construed as statutory bonds; prohibiting
 9 conversion to common law bonds; deleting a
 10 requirement that bond forms used by public
 11 owners reference certain notice and time
 12 limitation provisions; providing limitations on
 13 a claimant's institution of certain actions
 14 against a contractor or surety; amending s.
 15 95.11, F.S., to conform a cross-reference;
 16 providing for application of specified sections
 17 of the act to certain contracts and projects;
 18 providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 218.70, Florida Statutes, is
 23 amended to read:

24 218.70 Popular name ~~Short title~~.--This part may be
 25 cited as the "Local Government Florida Prompt Payment Act."

26 Section 2. Subsections (2), (6), and (7) of section
 27 218.72, Florida Statutes, are amended, and subsection (10) is
 28 added to that section, to read:

29 218.72 Definitions.--As used in this part:

30 (2) "Local governmental entity" means a county or
 31 municipal government, school board, school district,

1 authority, special taxing district, other political
2 subdivision, or any office, board, bureau, commission,
3 department, branch, division, or institution thereof ~~or any~~
4 ~~project supported by county or municipal funds.~~

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

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

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

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

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

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

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

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

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

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

1 reaching substantial completion of the construction services
2 purchased as defined in the contract, or, if not defined in
3 the contract, upon reaching beneficial occupancy or use.

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

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

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

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

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

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.

31

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.

31

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, or any office,
22 board, bureau, commission, department, branch, division, or
23 institution thereof, but does not include a local governmental
24 entity as defined in s. 218.72.

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

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

29 255.073 Timely payment for purchases of construction
30 services.--

31

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 specified in s. 215.422. After July
28 1, 2005, such payments shall bear interest at the rate of 1
29 percent per month, to the extent that the Chief Financial
30 Officer's replacement project for the state's accounting and
31 cash management systems (Project ASPIRE) is operational for

1 the particular affected public entities. After January 1,
2 2006, all such payments due from public entities shall bear
3 interest at the rate of 1 percent per month.

4 Section 8. Section 255.074, Florida Statutes, is
5 created to read:

6 255.074 Procedures for calculation of payment due
7 dates.--

8 (1) Each public entity shall establish procedures
9 whereby each payment request received by the public entity is
10 marked as received on the date on which it is delivered to an
11 agent or employee of the public entity or of a facility or
12 office of the public entity.

13 (2) If the terms under which a purchase is made allow
14 for partial deliveries and a payment request is submitted for
15 a partial delivery, the time for payment for the partial
16 delivery must be calculated from the time of the partial
17 delivery and the submission of the payment request.

18 (3) A public entity must submit a payment request to
19 the Chief Financial Officer for payment no more than 20 days
20 after receipt of the payment request.

21 Section 9. Section 255.075, Florida Statutes, is
22 created to read:

23 255.075 Mandatory interest.--A contract between a
24 public entity and a contractor may not prohibit the collection
25 of late payment interest charges authorized under s.
26 255.073(4).

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

29 255.076 Improper payment request; resolution of
30 disputes.-- In an action to recover amounts due for
31 construction services purchased by a public entity, the court

1 shall award court costs and reasonable attorney's fees,
2 including fees incurred through any appeal, to the prevailing
3 party, if the court finds that the nonprevailing party
4 withheld any portion of the payment that is the subject of the
5 action without any reasonable basis in law or fact to dispute
6 the prevailing party's claim to those amounts.

7 Section 11. Section 255.077, Florida Statutes, is
8 created to read:

9 255.077 Project closeout and payment of retainage.--

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

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

24 2. For construction projects with an estimated cost of
25 \$10 million or more, within 30 calendar days, unless otherwise
26 extended by contract not to exceed 60 calendar days, after
27 reaching substantial completion of the construction services
28 purchased as defined in the contract, or, if not defined in
29 the contract, upon reaching beneficial occupancy or use.

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

1 more than one building or structure, or involves a multiphased
2 project, the contract shall provide for the development of a
3 list of items required to render complete, satisfactory, and
4 acceptable all the construction services purchased pursuant to
5 the contract for each building, structure, or phase of the
6 project within the time limitations provided in subsection
7 (1).

8 (3) The failure to include any corrective work or
9 pending items not yet completed on the list developed pursuant
10 to subsection (1) or subsection (2) does not alter the
11 responsibility of the contractor to complete all the
12 construction services purchased pursuant to the contract.

13 (4) Upon completion of all items on the list, the
14 contractor may submit a payment request for all remaining
15 retainage withheld by the public entity pursuant to s.
16 255.078. If a good-faith dispute exists as to whether one or
17 more items identified on the list have been completed pursuant
18 to the contract, the public entity may continue to withhold an
19 amount not to exceed 150 percent of the total costs to
20 complete such items.

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

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

29 (7) Retainage may not be held by a public entity or a
30 contractor to secure payment of insurance premiums under a
31 consolidated insurance program or series of insurance policies

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

6 (8) If a public entity fails to comply with its
7 responsibilities to develop the list required under subsection
8 (1) or subsection (2), as defined in the contract, within the
9 time limitations provided in subsection (1), the contractor
10 may submit a payment request for all remaining retainage
11 withheld by the public entity pursuant to s. 255.078. The
12 public entity need not pay or process any payment request for
13 retainage if the contractor has, in whole or in part, failed
14 to cooperate with the public entity in the development of the
15 list or failed to perform its contractual responsibilities, if
16 any, with regard to the development of the list or if s.
17 255.078(6) applies.

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

20 255.078 Public construction retainage.--

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

27 (2) After 50-percent completion of the construction
28 services purchased pursuant to the contract, the public entity
29 must reduce to 5 percent the amount of retainage withheld from
30 each subsequent progress payment made to the contractor. For
31 purposes of this section, the term "50-percent completion" has

1 the meaning set forth in the contract between the public
2 entity and the contractor, or, if not defined in the contract,
3 the point at which the public entity has expended 50 percent
4 of the total cost of the construction services purchased as
5 identified in the contract together with all costs associated
6 with existing change orders and other additions or
7 modifications to the construction services provided for in the
8 contract.

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

23 (4) After 50-percent completion of the construction
24 services purchased pursuant to the contract, the contractor
25 may present to the public entity a payment request for up to
26 one-half of the retainage held by the public entity. The
27 public entity shall promptly make payment to the contractor,
28 unless the public entity has grounds, pursuant to subsection
29 (6), for withholding the payment of retainage. If the public
30 entity makes payment of retainage to the contractor under this
31 subsection which is attributable to the labor, services, or

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

4 (5) Neither this section nor s. 255.077 prohibits a
5 public entity from withholding retainage at a rate less than
6 10 percent of each progress payment, from incrementally
7 reducing the rate of retainage pursuant to a schedule provided
8 for in the contract, or from releasing at any point all or a
9 portion of any retainage withheld by the public entity which
10 is attributable to the labor, services, or materials supplied
11 by the contractor or by one or more subcontractors or
12 suppliers. If a public entity makes any payment of retainage
13 to the contractor which is attributable to the labor,
14 services, or materials supplied by one or more subcontractors
15 or suppliers, the contractor shall timely remit payment of
16 such retainage to those subcontractors and suppliers.

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

22 (7) The same time limits for payment of a payment
23 request apply regardless of whether the payment request is
24 for, or includes, retainage.

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

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

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

3 Section 13. Section 255.05, Florida Statutes, is
4 amended to read:

5 255.05 Bond of contractor constructing public
6 buildings; form; action by materialmen.--

7 (1)(a) Any person entering into a formal contract with
8 the state or any county, city, or political subdivision
9 thereof, or other public authority, for the construction of a
10 public building, for the prosecution and completion of a
11 public work, or for repairs upon a public building or public
12 work shall be required, before commencing the work or before
13 recommencing the work after a default or abandonment, to
14 execute, deliver to the public owner, and record in the public
15 records of the county where the improvement is located, a
16 payment and performance bond with a surety insurer authorized
17 to do business in this state as surety. A public entity may
18 not require a contractor to secure a surety bond under this
19 section from a specific agent or bonding company. The bond
20 must state on its front page: the name, principal business
21 address, and phone number of the contractor, the surety, the
22 owner of the property being improved, and, if different from
23 the owner, the contracting public entity; the contract number
24 assigned by the contracting public entity; and a description
25 of the project sufficient to identify it, such as a legal
26 description or the street address of the property being
27 improved, and a general description of the improvement. Such
28 bond shall be conditioned upon the contractor's performance of
29 the construction work in the time and manner prescribed in the
30 contract and promptly making payments to all persons defined
31 in s. 713.01 who furnish labor, services, or materials for the

1 prosecution of the work provided for in the contract. Any
2 claimant may apply to the governmental entity having charge of
3 the work for copies of the contract and bond and shall
4 thereupon be furnished with a certified copy of the contract
5 and bond. The claimant shall have a right of action against
6 the contractor and surety for the amount due him or her,
7 including unpaid finance charges due under the claimant's
8 contract. Such action shall not involve the public authority
9 in any expense. When such work is done for the state and the
10 contract is for \$100,000 or less, no payment and performance
11 bond shall be required. At the discretion of the official or
12 board awarding such contract when such work is done for any
13 county, city, political subdivision, or public authority, any
14 person entering into such a contract which is for \$200,000 or
15 less may be exempted from executing the payment and
16 performance bond. When such work is done for the state, the
17 Secretary of the Department of Management Services may
18 delegate to state agencies the authority to exempt any person
19 entering into such a contract amounting to more than \$100,000
20 but less than \$200,000 from executing the payment and
21 performance bond. In the event such exemption is granted, the
22 officer or officials shall not be personally liable to persons
23 suffering loss because of granting such exemption. The
24 Department of Management Services shall maintain information
25 on the number of requests by state agencies for delegation of
26 authority to waive the bond requirements by agency and project
27 number and whether any request for delegation was denied and
28 the justification for the denial.

29 (b) The Department of Management Services shall adopt
30 rules with respect to all contracts for \$200,000 or less, to
31 provide:

1 1. Procedures for retaining up to 10 percent of each
 2 request for payment submitted by a contractor and procedures
 3 for determining disbursements from the amount retained on a
 4 pro rata basis to laborers, materialmen, and subcontractors,
 5 as defined in s. 713.01.

6 2. Procedures for requiring certification from
 7 laborers, materialmen, and subcontractors, as defined in s.
 8 713.01, prior to final payment to the contractor that such
 9 laborers, materialmen, and subcontractors have no claims
 10 against the contractor resulting from the completion of the
 11 work provided for in the contract.

12
 13 The state shall not be held liable to any laborer,
 14 materialman, or subcontractor for any amounts greater than the
 15 pro rata share as determined under this section.

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

23
 24 NOTICE OF CONTEST OF CLAIM
 25 AGAINST PAYMENT BOND

26
 27 To: ...(Name and address of claimant)...

28
 29 You are notified that the undersigned contests your
 30 notice of nonpayment, dated,, and served
 31 on the undersigned on,, and that the

1 time within which you may file suit to enforce your claim is
2 limited to 60 days after the date of service of this notice.

3

4 DATED on,

5

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

7

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

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

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

1 service of a notice of nonpayment or for bringing an action
 2 against a contractor or a surety shall be measured from the
 3 last day of furnishing labor, services, or materials by the
 4 claimant and shall not be measured by other standards, such as
 5 the issuance of a certificate of occupancy or the issuance of
 6 a certificate of substantial completion.

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

11
 12 WAIVER OF RIGHT TO CLAIM
 13 AGAINST THE PAYMENT BOND
 14 (PROGRESS PAYMENT)
 15

16 The undersigned, in consideration of the sum of \$....,
 17 hereby waives its right to claim against the payment bond for
 18 labor, services, or materials furnished through ...(insert
 19 date)... to ...(insert the name of your customer)... on the
 20 job of ...(insert the name of the owner)..., for improvements
 21 to the following described project:

22
 23 (description of project)
 24

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

27
 28 DATED ON,

29 ... (Claimant) ...
 30 By:

31

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

5
 6 WAIVER OF RIGHT TO CLAIM
 7 AGAINST THE PAYMENT BOND (FINAL PAYMENT)
 8

9 The undersigned, in consideration of the final payment
 10 in the amount of \$...., hereby waives its right to claim
 11 against the payment bond for labor, services, or materials
 12 furnished to ...(insert the name of your customer)... on the
 13 job of ...(insert the name of the owner)..., for improvements
 14 to the following described project:

15
 16 (description of project)
 17

18 DATED ON,

19 ... (Claimant)...

20 By:.....
 21

22 (d) A person may not require a claimant to furnish a
 23 waiver that is different from the forms in paragraphs (b) and
 24 (c).

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

27 (f) A waiver that is not substantially similar to the
 28 forms in this subsection is enforceable in accordance with its
 29 terms.

30 (3) The bond required in subsection (1) may be in
 31 substantially the following form:

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PUBLIC CONSTRUCTION BOND

Bond No. (enter bond number)

BY THIS BOND, We _____, as Principal and _____, a corporation, as Surety, are bound to _____, herein called Owner, in the sum of \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated _____, _____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and

3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and

4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05, Florida Statutes.

1 Any changes in or under the contract documents and
2 compliance or noncompliance with any formalities connected
3 with the contract or the changes does not affect Surety's
4 obligation under this bond.

5
6 DATED ON _____, _____.
7

8 ... (Name of Principal) ...
9 By ... (As Attorney in Fact) ...
10 ... (Name of Surety) ...
11

12 (4) The payment provisions of all bonds required by
13 ~~furnished for public work contracts described in~~ subsection
14 (1) shall, regardless of form, be construed and deemed
15 statutory bonds furnished pursuant to this section and such
16 bonds shall not under any circumstances be converted into
17 common law bonds ~~and provisions, subject to all requirements~~
18 ~~of subsection (2).~~

19 (5) In addition to the provisions of chapter 47, any
20 action authorized under this section may be brought in the
21 county in which the public building or public work is being
22 constructed or repaired. This subsection shall not apply to
23 an action instituted prior to May 17, 1977.

24 ~~(6) All bonds executed pursuant to this section shall~~
25 ~~make reference to this section by number and shall contain~~
26 ~~reference to the notice and time limitation provisions of this~~
27 ~~section.~~

28 ~~(6)(7)~~ In lieu of the bond required by this section, a
29 contractor may file with the state, county, city, or other
30 political authority an alternative form of security in the
31 form of cash, a money order, a certified check, a cashier's

1 check, an irrevocable letter of credit, or a security of a
2 type listed in part II of chapter 625. Any such alternative
3 form of security shall be for the same purpose and be subject
4 to the same conditions as those applicable to the bond
5 required by this section. The determination of the value of
6 an alternative form of security shall be made by the
7 appropriate state, county, city, or other political
8 subdivision.

9 (7)~~(8)~~ When a contractor has furnished a payment bond
10 pursuant to this section, he or she may, when the state,
11 county, municipality, political subdivision, or other public
12 authority makes any payment to the contractor or directly to a
13 claimant, serve a written demand on any claimant who is not in
14 privity with the contractor for a written statement under oath
15 of his or her account showing the nature of the labor or
16 services performed and to be performed, if any; the materials
17 furnished; the materials to be furnished, if known; the amount
18 paid on account to date; the amount due; and the amount to
19 become due, if known, as of the date of the statement by the
20 claimant. Any such demand to a claimant who is not in privity
21 with the contractor must be served on the claimant at the
22 address and to the attention of any person who is designated
23 to receive the demand in the notice to contractor served by
24 the claimant. The failure or refusal to furnish the statement
25 does not deprive the claimant of his or her rights under the
26 bond if the demand is not served at the address of the
27 claimant or directed to the attention of the person designated
28 to receive the demand in the notice to contractor. The failure
29 to furnish the statement within 30 days after the demand, or
30 the furnishing of a false or fraudulent statement, deprives
31 the claimant who fails to furnish the statement, or who

1 | furnishes the false or fraudulent statement, of his or her
2 | rights under the bond. If the contractor serves more than one
3 | demand for statement of account on a claimant and none of the
4 | information regarding the account has changed since the
5 | claimant's last response to a demand, the failure or refusal
6 | to furnish such statement does not deprive the claimant of his
7 | or her rights under the bond. The negligent inclusion or
8 | omission of any information deprives the claimant of his or
9 | her rights under the bond to the extent that the contractor
10 | can demonstrate prejudice from such act or omission by the
11 | claimant. The failure to furnish a response to a demand for
12 | statement of account does not affect the validity of any claim
13 | on the bond being enforced in a lawsuit filed before the date
14 | the demand for statement of account is received by the
15 | claimant.

16 | ~~(8)(9)~~ On any public works project for which the
17 | public authority requires a performance and payment bond,
18 | suits at law and in equity may be brought and maintained by
19 | and against the public authority on any contract claim arising
20 | from breach of an express provision or an implied covenant of
21 | a written agreement or a written directive issued by the
22 | public authority pursuant to the written agreement. In any
23 | such suit, the public authority and the contractor shall have
24 | all of the same rights and obligations as a private person
25 | under a like contract except that no liability may be based on
26 | an oral modification of either the written contract or written
27 | directive. Nothing herein shall be construed to waive the
28 | sovereign immunity of the state and its political subdivisions
29 | from equitable claims and equitable remedies. The provisions
30 | of this subsection shall apply only to contracts entered into
31 | on or after July 1, 1999.

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

12 (a) The public entity has paid out the claimant's
13 retainage to the contractor, and the time provided under s.
14 255.073(3) for payment of that retainage to the claimant has
15 expired;

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

19 (c) The claimant has asked the contractor, in writing,
20 when the contractor received payment of the claimant's
21 retainage or when the contractor sent its final payment
22 request to the public entity, and the contractor has failed to
23 respond to this request, in writing, within 10 days after
24 receipt.

25
26 If none of the conditions described in paragraph (a),
27 paragraph (b), or paragraph (c) is satisfied and an action for
28 recovery of retainage therefore cannot be instituted within
29 the 1-year limitation period set forth in this subsection,
30 this limitation period shall be extended until 120 days after
31 one of these conditions is satisfied.

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

3 95.11 Limitations other than for the recovery of real
4 property.--Actions other than for recovery of real property
5 shall be commenced as follows:

6 (2) WITHIN FIVE YEARS.--

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

12 Section 15. Neither the amendments to sections 95.11,
13 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and
14 subsection (2) of section 255.05, Florida Statutes, as
15 provided in this act, nor subsection (9) of section 255.05,
16 Florida Statutes, and section 255.078, Florida Statutes, as
17 created by this act, applies to any existing construction
18 contract pending approval by a local governmental entity or
19 public entity, or to any project advertised for bid by the
20 local government entity or public entity, on or before the
21 effective date of this act. The amendments to subsections (3),
22 (4), and (6) of section 255.05, Florida Statutes, as provided
23 in this act, apply to public construction bonds issued for
24 contracts entered into on or after the effective date of this
25 act.

26 Section 16. This act shall take effect October 1,
27 2004.