

1 A bill to be entitled
2 An act relating to prompt payment for construction
3 services; amending s. 218.70, F.S.; providing a popular
4 name; amending s. 218.72, F.S.; redefining terms used in
5 pt. VII of ch. 218, F.S.; amending s. 218.735, F.S.;
6 revising provisions relating to timely payment for
7 purchases of construction services; revising deadlines for
8 payment; providing procedures for project closeout and
9 payment of retainage; providing requirements for local
10 government construction retainage; providing exceptions;
11 creating s. 255.0705, F.S.; providing a popular name;
12 amending s. 255.071, F.S.; revising deadlines for the
13 payment of subcontractors, sub-subcontractors,
14 materialmen, and suppliers on construction contracts for
15 public projects; creating ss. 255.072, 255.073, 255.074,
16 255.075, 255.076, 255.077, and 255.078, F.S.; providing
17 definitions; providing for timely payment for purchases of
18 construction services by a public entity; providing
19 procedures for calculating payment due dates; authorizing
20 the collection of interest under certain circumstances;
21 providing for an award of court costs and attorney's fees;
22 providing for project closeout and payment of retainage;
23 providing exceptions; amending s. 255.05, F.S.; providing
24 requirements for certain notices of nonpayment served by a
25 claimant who is not in privity with the contractor;
26 providing limitations on a claimant's institution of
27 certain actions against a contractor or surety; amending
28 s. 95.11, F.S., to conform a cross reference; providing

29 that specified sections of the act do not apply to certain
 30 pending contracts and projects; providing an effective
 31 date.

32

33 Be It Enacted by the Legislature of the State of Florida:

34

35 Section 1. Section 218.70, Florida Statutes, is amended to
 36 read:

37 218.70 Popular name ~~Short title~~.--This part may be cited
 38 as the "Local Government ~~Florida~~ Prompt Payment Act."

39 Section 2. Subsections (2), (6), and (7) of section
 40 218.72, Florida Statutes, are amended, and subsection (10) is
 41 added to said section, to read:

42 218.72 Definitions.--As used in this part:

43 (2) "Local governmental entity" means a county or
 44 municipal government, school board, school district, authority,
 45 special taxing district, other political subdivision, or any
 46 office, board, bureau, commission, department, branch, division,
 47 or institution thereof ~~or any project supported by county or~~
 48 ~~municipal funds.~~

49 (6) "Vendor" means any person who sells goods or services,
 50 sells or leases personal property, or leases real property
 51 directly to a local governmental entity. The term includes any
 52 person who provides waste-hauling services to residents or
 53 businesses located within the boundaries of a local government
 54 pursuant to a contract or local ordinance.

55 (7) "Construction services" means all labor, services, and
 56 materials provided in connection with the construction,

57 alteration, repair, demolition, reconstruction, or any other
 58 improvements to real property ~~that require a license under parts~~
 59 ~~I and II of chapter 489.~~

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

63 Section 3. Subsection (6) of section 218.735, Florida
 64 Statutes, is amended, present subsection (7) of said section is
 65 redesignated as subsection (9), and new subsections (7) and (8)
 66 are added to said section, to read:

67 218.735 Timely payment for purchases of construction
 68 services.--

69 (6) When a contractor receives payment from a local
 70 governmental entity for labor, services, or materials furnished
 71 by subcontractors and suppliers hired by the contractor, the
 72 contractor shall remit payment due to those subcontractors and
 73 suppliers within 10 ~~15~~ days after the contractor's receipt of
 74 payment. When a subcontractor receives payment from a contractor
 75 for labor, services, or materials furnished by subcontractors
 76 and suppliers hired by the subcontractor, the subcontractor
 77 shall remit payment due to those subcontractors and suppliers
 78 within 7 ~~15~~ days after the subcontractor's receipt of payment.
 79 Nothing herein shall prohibit a contractor or subcontractor from
 80 disputing, pursuant to the terms of the relevant contract, all
 81 or any portion of a payment alleged to be due to another party-
 82 ~~In the event of such a dispute, the contractor or subcontractor~~
 83 ~~may withhold the disputed portion of any such payment if the~~
 84 contractor or subcontractor notifies the party whose payment is

85 | disputed, in writing, of the amount in dispute and the actions
 86 | required to cure the dispute. The contractor or subcontractor
 87 | must pay all undisputed amounts due within the time limits
 88 | imposed by this section.

89 | (7)(a) Each contract for construction services between a
 90 | local governmental entity and a contractor must provide for the
 91 | development of a list of items required to render complete,
 92 | satisfactory, and acceptable the construction services purchased
 93 | by the local governmental entity. The contract must specify the
 94 | process for the development of the list, including
 95 | responsibilities of the local governmental entity and the
 96 | contractor in developing and reviewing the list and a reasonable
 97 | time for developing the list, as follows:

98 | 1. For construction projects having an estimated cost of
 99 | less than \$10 million, within 30 calendar days after reaching
 100 | substantial completion of the construction services purchased as
 101 | defined in the contract, or, if not defined in the contract,
 102 | upon reaching beneficial occupancy or use; or

103 | 2. For construction projects having an estimated cost of
 104 | \$10 million or more, within 30 calendar days, unless otherwise
 105 | extended by contract not to exceed 60 calendar days, after
 106 | reaching substantial completion of the construction services
 107 | purchased as defined in the contract, or, if not defined in the
 108 | contract, upon reaching beneficial occupancy or use.

109 | (b) If the contract between the local governmental entity
 110 | and the contractor relates to the purchase of construction
 111 | services on more than one building or structure, or involves a
 112 | multiphased project, the contract must provide for the

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113 development of a list of items required to render complete,
114 satisfactory, and acceptable all the construction services
115 purchased pursuant to the contract for each building, structure,
116 or phase of the project within the time limitations provided in
117 paragraph (a).

118 (c) The failure to include any corrective work or pending
119 items not yet completed on the list developed pursuant to this
120 subsection does not alter the responsibility of the contractor
121 to complete all the construction services purchased pursuant to
122 the contract.

123 (d) Upon completion of all items on the list, the
124 contractor may submit a payment request for all remaining
125 retainage withheld by the local governmental entity pursuant to
126 this section. If a good-faith dispute exists as to whether one
127 or more items identified on the list have been completed
128 pursuant to the contract, the local governmental entity may
129 continue to withhold an amount not to exceed 150 percent of the
130 total costs to complete such items.

131 (e) All items that require correction under the contract
132 and that are identified after the preparation and delivery of
133 the list remain the obligation of the contractor as defined by
134 the contract.

135 (f) Warranty items may not affect the final payment of
136 retainage as provided in this section or as provided in the
137 contract between the contractor and its subcontractors and
138 suppliers.

139 (g) Retainage may not be held by a local governmental
140 entity or a contractor to secure payment of insurance premiums

141 under a consolidated insurance program or series of insurance
142 policies issued to a local governmental entity or a contractor
143 for a project or group of projects, and the final payment of
144 retainage as provided in this section may not be delayed pending
145 a final audit by the local governmental entity's or contractor's
146 insurance provider.

147 (h) If a local governmental entity fails to comply with
148 its responsibilities to develop the list required under
149 paragraph (a) or paragraph (b), as defined in the contract,
150 within the time limitations provided in paragraph (a), the
151 contractor may submit a payment request for all remaining
152 retainage withheld by the local governmental entity pursuant to
153 this section. The local governmental entity need not pay or
154 process any payment request for retainage if the contractor has,
155 in whole or in part, failed to cooperate with the local
156 governmental entity in the development of the list or failed to
157 perform its contractual responsibilities, if any, with regard to
158 the development of the list or if paragraph (8)(f) applies.

159 (8)(a) With regard to any contract for construction
160 services, a local governmental entity may withhold from each
161 progress payment made to the contractor an amount not exceeding
162 10 percent of the payment as retainage to ensure the
163 satisfactory completion of the construction services purchased
164 pursuant to the contract until 50-percent completion of such
165 services.

166 (b) After 50-percent completion of the construction
167 services purchased pursuant to the contract, the local
168 governmental entity must reduce to 5 percent the amount of

169 retainage withheld from each subsequent progress payment made to
170 the contractor. For purposes of this subsection, the term "50-
171 percent completion" has the meaning set forth in the contract
172 between the local governmental entity and the contractor or, if
173 not defined in the contract, the point at which the local
174 governmental entity has expended 50 percent of the total cost of
175 the construction services purchased as identified in the
176 contract together with all costs associated with existing change
177 orders and other additions or modifications to the construction
178 services provided for in the contract. However, notwithstanding
179 this subsection, a municipality having a population of 25,000 or
180 fewer, or a county having a population of 100,000 or fewer, may
181 withhold retainage in an amount not exceeding 10 percent of each
182 progress payment made to the contractor until final completion
183 and acceptance of the project by the local governmental entity.

184 (c) After 50-percent completion of the construction
185 services purchased pursuant to the contract, the contractor may
186 elect to withhold retainage from payments to its subcontractors
187 at a rate higher than 5 percent. The specific amount to be
188 withheld must be determined on a case-by-case basis and must be
189 based on the contractor's assessment of the subcontractor's past
190 performance, the likelihood that such performance will continue,
191 and the contractor's ability to rely on other safeguards. The
192 contractor shall notify the subcontractor, in writing, of its
193 determination to withhold more than 5 percent of the progress
194 payment and the reasons for making that determination, and the
195 contractor may not request the release of such retained funds
196 from the local governmental entity.

197 (d) After 50-percent completion of the construction
 198 services purchased pursuant to the contract, the contractor may
 199 present to the local governmental entity a payment request for
 200 up to one-half of the retainage held by the local governmental
 201 entity. The local governmental entity shall promptly make
 202 payment to the contractor, unless the local governmental entity
 203 has grounds, pursuant to paragraph (f), for withholding the
 204 payment of retainage. If the local governmental entity makes
 205 payment of retainage to the contractor under this paragraph
 206 which is attributable to the labor, services, or materials
 207 supplied by one or more subcontractors or suppliers, the
 208 contractor shall timely remit payment of such retainage to those
 209 subcontractors and suppliers.

210 (e) This section does not prohibit a local governmental
 211 entity from withholding retainage at a rate less than 10 percent
 212 of each progress payment, from incrementally reducing the rate
 213 of retainage pursuant to a schedule provided for in the
 214 contract, or from releasing at any point all or a portion of any
 215 retainage withheld by the local governmental entity which is
 216 attributable to the labor, services, or materials supplied by
 217 the contractor or by one or more subcontractors or suppliers. If
 218 a local governmental entity makes any payment of retainage to
 219 the contractor which is attributable to the labor, services, or
 220 materials supplied by one or more subcontractors or suppliers,
 221 the contractor shall timely remit payment of such retainage to
 222 those subcontractors and suppliers.

223 (f) This section does not require the local governmental
 224 entity to pay or release any amounts that are the subject of a

225 good-faith dispute, the subject of an action brought pursuant to
 226 s. 255.05, or otherwise the subject of a claim or demand by the
 227 local governmental entity or contractor.

228 (g) The time limitations set forth in this section for
 229 payment of payment requests apply to any payment request for
 230 retainage made pursuant to this section.

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

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

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

243 255.0705 Popular name.--Sections 255.0705-255.078 may be
 244 cited as the "Florida Prompt Payment Act."

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

247 255.071 Payment of subcontractors, sub-subcontractors,
 248 materialmen, and suppliers on construction contracts for public
 249 projects.--

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

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

259 (3) Any person providing labor, services, or materials for
 260 the construction of a public building, for the prosecution and
 261 completion of a public work, or for repairs upon a public
 262 building or public work improvements to real property may file a
 263 verified complaint alleging:

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

266 (b) A description of the labor, services, or materials
 267 provided and alleging that the labor, services, or materials
 268 were provided in accordance with the contract.

269 (c) The amount of the contract price.

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

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

273 (f) That the undisputed amount has remained due and
 274 payable pursuant to the contract for more than 30 days after the
 275 date the labor or services were accepted or the materials were
 276 received.

277 (g) That the person against whom the complaint was filed
 278 has received payment on account of the labor, services, or
 279 materials described in the complaint and, as of the date the
 280 complaint was filed, has failed to make payment within the time

281 limitations set forth in s. 255.073(3) ~~more than 30 days prior~~
 282 ~~to the date the complaint was filed.~~

283 Section 6. Section 255.072, Florida Statutes, is created
 284 to read:

285 255.072 Definitions.--As used in ss. 255.073-255.078, the
 286 term:

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

289 (2) "Construction services" means all labor, services, and
 290 materials provided in connection with the construction,
 291 alteration, repair, demolition, reconstruction, or any other
 292 improvements to real property. The term "construction services"
 293 does not include contracts or work performed for the Department
 294 of Transportation.

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

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

301 (5) "Public entity" means the state, or any office, board,
 302 bureau, commission, department, branch, division, or institution
 303 thereof, but does not include a local governmental entity as
 304 defined in s. 218.72.

305 (6) "Purchase" means the purchase of construction
 306 services.

307 Section 7. Section 255.073, Florida Statutes, is created
 308 to read:

309 255.073 Timely payment for purchases of construction
310 services.--

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

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

316 (3) When a contractor receives payment from a public
317 entity for labor, services, or materials furnished by
318 subcontractors and suppliers hired by the contractor, the
319 contractor shall remit payment due to those subcontractors and
320 suppliers within 10 days after the contractor's receipt of
321 payment. When a subcontractor receives payment from a contractor
322 for labor, services, or materials furnished by subcontractors
323 and suppliers hired by the subcontractor, the subcontractor
324 shall remit payment due to those subcontractors and suppliers
325 within 7 days after the subcontractor's receipt of payment. This
326 subsection does not prohibit a contractor or subcontractor from
327 disputing, pursuant to the terms of the relevant contract, all
328 or any portion of a payment alleged to be due to another party
329 if the contractor or subcontractor notifies the party whose
330 payment is disputed, in writing, of the amount in dispute and
331 the actions required to cure the dispute. The contractor or
332 subcontractor must pay all undisputed amounts due within the
333 time limits imposed by this subsection.

334 (4) All payments due for the purchase of construction
335 services and not made within the applicable time limits shall
336 bear interest at the rate specified in s. 215.422. After July 1,

337 2006, such payments shall bear interest at the rate of 1 percent
 338 per month, to the extent that the Chief Financial Officer's
 339 replacement project for the state's accounting and cash
 340 management systems is operational for the particular affected
 341 public entity. After January 1, 2007, all such payments due from
 342 public entity shall bear interest at the rate of 1 percent per
 343 month.

344 Section 8. Section 255.074, Florida Statutes, is created
 345 to read:

346 255.074 Procedures for calculation of payment due dates.--

347 (1) Each public entity shall establish procedures whereby
 348 each payment request received by the public entity is marked as
 349 received on the date on which it is delivered to an agent or
 350 employee of the public entity or of a facility or office of the
 351 public entity.

352 (2) If the terms under which a purchase is made allow for
 353 partial deliveries and a payment request is submitted for a
 354 partial delivery, the time for payment for the partial delivery
 355 must be calculated from the time of the partial delivery and the
 356 submission of the payment request.

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

360 Section 9. Section 255.075, Florida Statutes, is created
 361 to read:

362 255.075 Mandatory interest.--A contract between a public
 363 entity and a contractor may not prohibit the collection of late
 364 payment interest charges authorized under s. 255.073(4).

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

367 255.076 Award of court costs and attorney's fees.--In an
 368 action to recover amounts due for construction services
 369 purchased by a public entity, the court shall award court costs
 370 and reasonable attorney's fees, including fees incurred through
 371 any appeal, to the prevailing party, if the court finds that the
 372 nonprevailing party withheld any portion of the payment that is
 373 the subject of the action without any reasonable basis in law or
 374 fact to dispute the prevailing party's claim to those amounts.

375 Section 11. Section 255.077, Florida Statutes, is created
 376 to read:

377 255.077 Project closeout and payment of retainage.--

378 (1) Each contract for construction services between a
 379 public entity and a contractor must provide for the development
 380 of a list of items required to render complete, satisfactory,
 381 and acceptable the construction services purchased by the public
 382 entity. The contract must specify the process for the
 383 development of the list, including responsibilities of the
 384 public entity and the contractor in developing and reviewing the
 385 list and a reasonable time for developing the list, as follows:

386 (a) For construction projects having an estimated cost of
 387 less than \$10 million, within 30 calendar days after reaching
 388 substantial completion of the construction services purchased as
 389 defined in the contract, or, if not defined in the contract,
 390 upon reaching beneficial occupancy or use; or

391 (b) For construction projects having an estimated cost of
 392 \$10 million or more, within 30 calendar days, unless otherwise

393 extended by contract not to exceed 60 calendar days, after
394 reaching substantial completion of the construction services
395 purchased as defined in the contract, or, if not defined in the
396 contract, upon reaching beneficial occupancy or use.

397 (2) If the contract between the public entity and the
398 contractor relates to the purchase of construction services on
399 more than one building or structure, or involves a multiphased
400 project, the contract must provide for the development of a list
401 of items required to render complete, satisfactory, and
402 acceptable all the construction services purchased pursuant to
403 the contract for each building, structure, or phase of the
404 project within the time limitations provided in subsection (1).

405 (3) The failure to include any corrective work or pending
406 items not yet completed on the list developed pursuant to
407 subsection (1) or subsection (2) does not alter the
408 responsibility of the contractor to complete all the
409 construction services purchased pursuant to the contract.

410 (4) Upon completion of all items on the list, the
411 contractor may submit a payment request for all remaining
412 retainage withheld by the public entity pursuant to s. 255.078.
413 If a good-faith dispute exists as to whether one or more items
414 identified on the list have been completed pursuant to the
415 contract, the public entity may continue to withhold an amount
416 not to exceed 150 percent of the total costs to complete such
417 items.

418 (5) All items that require correction under the contract
419 and that are identified after the preparation and delivery of
420 the list remain the obligation of the contractor as defined by

421 the contract.

422 (6) Warranty items may not affect the final payment of
 423 retainage as provided in this section or as provided in the
 424 contract between the contractor and its subcontractors and
 425 suppliers.

426 (7) Retainage may not be held by a public entity or a
 427 contractor to secure payment of insurance premiums under a
 428 consolidated insurance program or series of insurance policies
 429 issued to a public entity or a contractor for a project or group
 430 of projects, and the final payment of retainage as provided in
 431 this section may not be delayed pending a final audit by the
 432 public entity's or contractor's insurance provider.

433 (8) If a public entity fails to comply with its
 434 responsibilities to develop the list required under subsection
 435 (1) or subsection (2), as defined in the contract, within the
 436 time limitations provided in subsection (1), the contractor may
 437 submit a payment request for all remaining retainage withheld by
 438 the public entity pursuant to s. 255.078. The public entity need
 439 not pay or process any payment request for retainage if the
 440 contractor has, in whole or in part, failed to cooperate with
 441 the public entity in the development of the list or failed to
 442 perform its contractual responsibilities, if any, with regard to
 443 the development of the list or if s. 255.078(6) applies.

444 Section 12. Section 255.078, Florida Statutes, is created
 445 to read:

446 255.078 Public construction retainage.--

447 (1) With regard to any contract for construction services,
 448 a public entity may withhold from each progress payment made to

449 the contractor an amount not exceeding 10 percent of the payment
 450 as retainage to ensure the satisfactory completion of the
 451 construction services purchased pursuant to the contract until
 452 50-percent completion of such services.

453 (2) After 50-percent completion of the construction
 454 services purchased pursuant to the contract, the public entity
 455 must reduce to 5 percent the amount of retainage withheld from
 456 each subsequent progress payment made to the contractor. For
 457 purposes of this section, the term "50-percent completion" has
 458 the meaning set forth in the contract between the public entity
 459 and the contractor or, if not defined in the contract, the point
 460 at which the public entity has expended 50 percent of the total
 461 cost of the construction services purchased as identified in the
 462 contract together with all costs associated with existing change
 463 orders and other additions or modifications to the construction
 464 services provided for in the contract.

465 (3) After 50-percent completion of the construction
 466 services purchased pursuant to the contract, the contractor may
 467 elect to withhold retainage from payments to its subcontractors
 468 at a rate higher than 5 percent. The specific amount to be
 469 withheld must be determined on a case-by-case basis and must be
 470 based on the contractor's assessment of the subcontractor's past
 471 performance, the likelihood that such performance will continue,
 472 and the contractor's ability to rely on other safeguards. The
 473 contractor shall notify the subcontractor, in writing, of its
 474 determination to withhold more than 5 percent of the progress
 475 payment and the reasons for making that determination, and the
 476 contractor may not request the release of such retained funds

477 from the public entity.

478 (4) After 50-percent completion of the construction
479 services purchased pursuant to the contract, the contractor may
480 present to the public entity a payment request for up to one-
481 half of the retainage held by the public entity. The public
482 entity shall promptly make payment to the contractor, unless the
483 public entity has grounds, pursuant to subsection (6), for
484 withholding the payment of retainage. If the public entity makes
485 payment of retainage to the contractor under this subsection
486 which is attributable to the labor, services, or materials
487 supplied by one or more subcontractors or suppliers, the
488 contractor shall timely remit payment of such retainage to those
489 subcontractors and suppliers.

490 (5) Neither this section nor s. 255.077 prohibits a public
491 entity from withholding retainage at a rate less than 10 percent
492 of each progress payment, from incrementally reducing the rate
493 of retainage pursuant to a schedule provided for in the
494 contract, or from releasing at any point all or a portion of any
495 retainage withheld by the public entity which is attributable to
496 the labor, services, or materials supplied by the contractor or
497 by one or more subcontractors or suppliers. If a public entity
498 makes any payment of retainage to the contractor which is
499 attributable to the labor, services, or materials supplied by
500 one or more subcontractors or suppliers, the contractor shall
501 timely remit payment of such retainage to those subcontractors
502 and suppliers.

503 (6) Neither this section nor s. 255.077 requires the
504 public entity to pay or release any amounts that are the subject

505 of a good-faith dispute, the subject of an action brought
 506 pursuant to s. 255.05, or otherwise the subject of a claim or
 507 demand by the public entity or contractor.

508 (7) The same time limits for payment of a payment request
 509 apply regardless of whether the payment request is for, or
 510 includes, retainage.

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

516 (9) This section does not apply to any construction
 517 services purchased by a public entity if the total cost of the
 518 construction services purchased as identified in the contract is
 519 \$200,000 or less.

520 Section 13. Paragraph (a) of subsection (2) of section
 521 255.05, Florida Statutes, is amended, and subsection (10) is
 522 added to said section, to read:

523 255.05 Bond of contractor constructing public buildings;
 524 form; action by materialmen.--

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

532

NOTICE OF CONTEST OF CLAIM
 AGAINST PAYMENT BOND

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

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

DATED on _____, _____.

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

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

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for

561 protection. A claimant who is not in privity with the contractor
 562 and who has not received payment for his or her labor,
 563 materials, or supplies shall deliver to the contractor and to
 564 the surety written notice of the performance of the labor or
 565 delivery of the materials or supplies and of the nonpayment. The
 566 notice of nonpayment may be served at any time during the
 567 progress of the work or thereafter but not before 45 days after
 568 the first furnishing of labor, services, or materials, and not
 569 later than 90 days after the final furnishing of the labor,
 570 services, or materials by the claimant or, with respect to
 571 rental equipment, not later than 90 days after the date that the
 572 rental equipment was last on the job site available for use. Any
 573 notice of nonpayment served by a claimant who is not in privity
 574 with the contractor which includes sums for retainage must
 575 specify the portion of the amount claimed for retainage. No
 576 action for the labor, materials, or supplies may be instituted
 577 against the contractor or the surety unless both notices have
 578 been given. Notices required or permitted under this section may
 579 be served in accordance with s. 713.18. ~~An action, except for an~~
 580 ~~action exclusively for recovery of retainage, must be instituted~~
 581 ~~against the contractor or the surety on the payment bond or the~~
 582 ~~payment provisions of a combined payment and performance bond~~
 583 ~~within 1 year after the performance of the labor or completion~~
 584 ~~of delivery of the materials or supplies. An action exclusively~~
 585 ~~for recovery of retainage must be instituted against the~~
 586 ~~contractor or the surety within 1 year after the performance of~~
 587 ~~the labor or completion of delivery of the materials or~~
 588 ~~supplies, or within 90 days after receipt of final payment (or~~

589 ~~the payment estimate containing the owner's final reconciliation~~
 590 ~~of quantities if no further payment is earned and due as a~~
 591 ~~result of deductive adjustments) by the contractor or surety,~~
 592 ~~whichever comes last.~~ A claimant may not waive in advance his or
 593 her right to bring an action under the bond against the surety.
 594 In any action brought to enforce a claim against a payment bond
 595 under this section, the prevailing party is entitled to recover
 596 a reasonable fee for the services of his or her attorney for
 597 trial and appeal or for arbitration, in an amount to be
 598 determined by the court, which fee must be taxed as part of the
 599 prevailing party's costs, as allowed in equitable actions. The
 600 time periods for service of a notice of nonpayment or for
 601 bringing an action against a contractor or a surety shall be
 602 measured from the last day of furnishing labor, services, or
 603 materials by the claimant and shall not be measured by other
 604 standards, such as the issuance of a certificate of occupancy or
 605 the issuance of a certificate of substantial completion.

606 (10) An action, except an action for recovery of
 607 retainage, must be instituted against the contractor or the
 608 surety on the payment bond or the payment provisions of a
 609 combined payment and performance bond within 1 year after the
 610 performance of the labor or completion of delivery of the
 611 materials or supplies. An action for recovery of retainage must
 612 be instituted against the contractor or the surety within 1 year
 613 after the performance of the labor or completion of delivery of
 614 the materials or supplies; however, such an action may not be
 615 instituted until one of the following conditions is satisfied:

616 (a) The public entity has paid out the claimant's

617 retainage to the contractor, and the time provided under s.
 618 255.073(3) for payment of that retainage to the claimant has
 619 expired;

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

623 (c) The claimant has asked the contractor, in writing,
 624 when the contractor received payment of the claimant's retainage
 625 or when the contractor sent its final payment request to the
 626 public entity, and the contractor has failed to respond to this
 627 request, in writing, within 10 days after receipt.

628
 629 If none of the conditions described in paragraph (a), paragraph
 630 (b), or paragraph (c) is satisfied and therefore an action for
 631 recovery of retainage cannot be instituted within the 1-year
 632 limitation period set forth in this subsection, this limitation
 633 period shall be extended until 120 days after one of these
 634 conditions is satisfied.

635 Section 14. Paragraph (b) of subsection (2) of section
 636 95.11, Florida Statutes, is amended to read:

637 95.11 Limitations other than for the recovery of real
 638 property.--Actions other than for recovery of real property
 639 shall be commenced as follows:

640 (2) WITHIN FIVE YEARS.--

641 (b) A legal or equitable action on a contract, obligation,
 642 or liability founded on a written instrument, except for an
 643 action to enforce a claim against a payment bond, which shall be
 644 governed by the applicable provisions of ss. 255.05(10)

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645 ~~255.05(2)(a)2.~~ and 713.23(1)(e).

646 Section 15. Neither the amendments to sections 95.11,
647 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and
648 subsection (2) of section 255.05, Florida Statutes, as provided
649 in this act, nor subsection (10) of section 255.05, Florida
650 Statutes, and section 255.078, Florida Statutes, as created by
651 this act, applies to any existing construction contract pending
652 approval by a local governmental entity or public entity, or to
653 any project advertised for bid by the local governmental entity
654 or public entity, on or before October 1, 2005.

655 Section 16. This act shall take effect October 1, 2005.