

CHAMBER ACTION

1 The State Administration Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to prompt payment for construction
7 services; amending s. 218.70, F.S.; providing a popular
8 name; amending s. 218.72, F.S.; redefining terms used in
9 pt. VII of ch. 218, F.S.; amending s. 218.735, F.S.;
10 revising provisions relating to timely payment for
11 purchases of construction services; revising deadlines for
12 payment; providing procedures for project closeout and
13 payment of retainage; providing requirements for local
14 government construction retainage; providing exceptions;
15 creating s. 255.0705, F.S.; providing a popular name;
16 amending s. 255.071, F.S.; revising deadlines for the
17 payment of subcontractors, sub-subcontractors,
18 materialmen, and suppliers on construction contracts for
19 public projects; creating ss. 255.072, 255.073, 255.074,
20 255.075, 255.076, 255.077, and 255.078, F.S.; providing
21 definitions; providing for timely payment for purchases of
22 construction services by a public entity; providing
23 procedures for calculating payment due dates; authorizing

HB 509

2005
CS

24 the collection of interest under certain circumstances;
 25 providing for an award of court costs and attorney's fees;
 26 providing for project closeout and payment of retainage;
 27 providing exceptions; amending s. 255.05, F.S.; providing
 28 requirements for certain notices of nonpayment served by a
 29 claimant who is not in privity with the contractor;
 30 providing limitations on a claimant's institution of
 31 certain actions against a contractor or surety; amending
 32 s. 287.0585, F.S.; providing an exemption for contractors
 33 making late payment to subcontractors when the contract is
 34 subject to the "Prompt Payment Act"; amending s. 95.11,
 35 F.S., to conform a cross reference; providing that
 36 specified sections of the act do not apply to certain
 37 pending contracts and projects; providing an effective
 38 date.

39

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

41

42 Section 1. Section 218.70, Florida Statutes, is amended to
 43 read:

44 218.70 Popular name ~~Short title~~.--This part may be cited
 45 as the "Local Government ~~Florida~~ Prompt Payment Act."

46 Section 2. Subsections (2), (6), and (7) of section
 47 218.72, Florida Statutes, are amended, and subsection (10) is
 48 added to said section, to read:

49 218.72 Definitions.--As used in this part:

50 (2) "Local governmental entity" means a county or
 51 municipal government, school board, school district, authority,

HB 509

2005
CS

52 special taxing district, other political subdivision, or any
 53 office, board, bureau, commission, department, branch, division,
 54 or institution thereof ~~or any project supported by county or~~
 55 ~~municipal funds.~~

56 (6) "Vendor" means any person who sells goods or services,
 57 sells or leases personal property, or leases real property
 58 directly to a local governmental entity. The term includes any
 59 person who provides waste-hauling services to residents or
 60 businesses located within the boundaries of a local government
 61 pursuant to a contract or local ordinance.

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

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

70 Section 3. Subsection (6) of section 218.735, Florida
 71 Statutes, is amended, present subsection (7) of said section is
 72 redesignated as subsection (9), and new subsections (7) and (8)
 73 are added to said section, to read:

74 218.735 Timely payment for purchases of construction
 75 services.--

76 (6) When a contractor receives payment from a local
 77 governmental entity for labor, services, or materials furnished
 78 by subcontractors and suppliers hired by the contractor, the
 79 contractor shall remit payment due to those subcontractors and

HB 509

2005
CS

80 suppliers within 10 ~~15~~ days after the contractor's receipt of
 81 payment. When a subcontractor receives payment from a contractor
 82 for labor, services, or materials furnished by subcontractors
 83 and suppliers hired by the subcontractor, the subcontractor
 84 shall remit payment due to those subcontractors and suppliers
 85 within 7 ~~15~~ days after the subcontractor's receipt of payment.
 86 Nothing herein shall prohibit a contractor or subcontractor from
 87 disputing, pursuant to the terms of the relevant contract, all
 88 or any portion of a payment alleged to be due to another party-
 89 ~~In the event of such a dispute, the contractor or subcontractor~~
 90 ~~may withhold the disputed portion of any such payment~~ if the
 91 contractor or subcontractor notifies the party whose payment is
 92 disputed, in writing, of the amount in dispute and the actions
 93 required to cure the dispute. The contractor or subcontractor
 94 must pay all undisputed amounts due within the time limits
 95 imposed by this section.

96 (7)(a) Each contract for construction services between a
 97 local governmental entity and a contractor must provide for the
 98 development of a list of items required to render complete,
 99 satisfactory, and acceptable the construction services purchased
 100 by the local governmental entity. The contract must specify the
 101 process for the development of the list, including
 102 responsibilities of the local governmental entity and the
 103 contractor in developing and reviewing the list and a reasonable
 104 time for developing the list, as follows:

105 1. For construction projects having an estimated cost of
 106 less than \$10 million, within 30 calendar days after reaching
 107 substantial completion of the construction services purchased as

HB 509

2005
CS

108 defined in the contract, or, if not defined in the contract,
109 upon reaching beneficial occupancy or use; or

110 2. For construction projects having an estimated cost of
111 \$10 million or more, within 30 calendar days, unless otherwise
112 extended by contract not to exceed 60 calendar days, after
113 reaching substantial completion of the construction services
114 purchased as defined in the contract, or, if not defined in the
115 contract, upon reaching beneficial occupancy or use.

116 (b) If the contract between the local governmental entity
117 and the contractor relates to the purchase of construction
118 services on more than one building or structure, or involves a
119 multiphased project, the contract must provide for the
120 development of a list of items required to render complete,
121 satisfactory, and acceptable all the construction services
122 purchased pursuant to the contract for each building, structure,
123 or phase of the project within the time limitations provided in
124 paragraph (a).

125 (c) The failure to include any corrective work or pending
126 items not yet completed on the list developed pursuant to this
127 subsection does not alter the responsibility of the contractor
128 to complete all the construction services purchased pursuant to
129 the contract.

130 (d) Upon completion of all items on the list, the
131 contractor may submit a payment request for all remaining
132 retainage withheld by the local governmental entity pursuant to
133 this section. If a good-faith dispute exists as to whether one
134 or more items identified on the list have been completed
135 pursuant to the contract, the local governmental entity may

HB 509

2005
CS

136 continue to withhold an amount not to exceed 150 percent of the
137 total costs to complete such items.

138 (e) All items that require correction under the contract
139 and that are identified after the preparation and delivery of
140 the list remain the obligation of the contractor as defined by
141 the contract.

142 (f) Warranty items may not affect the final payment of
143 retainage as provided in this section or as provided in the
144 contract between the contractor and its subcontractors and
145 suppliers.

146 (g) Retainage may not be held by a local governmental
147 entity or a contractor to secure payment of insurance premiums
148 under a consolidated insurance program or series of insurance
149 policies issued to a local governmental entity or a contractor
150 for a project or group of projects, and the final payment of
151 retainage as provided in this section may not be delayed pending
152 a final audit by the local governmental entity's or contractor's
153 insurance provider.

154 (h) If a local governmental entity fails to comply with
155 its responsibilities to develop the list required under
156 paragraph (a) or paragraph (b), as defined in the contract,
157 within the time limitations provided in paragraph (a), the
158 contractor may submit a payment request for all remaining
159 retainage withheld by the local governmental entity pursuant to
160 this section. The local governmental entity need not pay or
161 process any payment request for retainage if the contractor has,
162 in whole or in part, failed to cooperate with the local
163 governmental entity in the development of the list or failed to

Page 6 of 25

HB 509

2005
CS

164 perform its contractual responsibilities, if any, with regard to
165 the development of the list or if paragraph (8)(f) applies.

166 (8)(a) With regard to any contract for construction
167 services, a local governmental entity may withhold from each
168 progress payment made to the contractor an amount not exceeding
169 10 percent of the payment as retainage until 50-percent
170 completion of such services.

171 (b) After 50-percent completion of the construction
172 services purchased pursuant to the contract, the local
173 governmental entity must reduce to 5 percent the amount of
174 retainage withheld from each subsequent progress payment made to
175 the contractor. For purposes of this subsection, the term "50-
176 percent completion" has the meaning set forth in the contract
177 between the local governmental entity and the contractor or, if
178 not defined in the contract, the point at which the local
179 governmental entity has expended 50 percent of the total cost of
180 the construction services purchased as identified in the
181 contract together with all costs associated with existing change
182 orders and other additions or modifications to the construction
183 services provided for in the contract. However, notwithstanding
184 this subsection, a municipality having a population of 25,000 or
185 fewer, or a county having a population of 100,000 or fewer, may
186 withhold retainage in an amount not exceeding 10 percent of each
187 progress payment made to the contractor until final completion
188 and acceptance of the project by the local governmental entity.

189 (c) After 50-percent completion of the construction
190 services purchased pursuant to the contract, the contractor may
191 elect to withhold retainage from payments to its subcontractors

Page 7 of 25

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0509-01-c1

192 at a rate higher than 5 percent. The specific amount to be
 193 withheld must be determined on a case-by-case basis and must be
 194 based on the contractor's assessment of the subcontractor's past
 195 performance, the likelihood that such performance will continue,
 196 and the contractor's ability to rely on other safeguards. The
 197 contractor shall notify the subcontractor, in writing, of its
 198 determination to withhold more than 5 percent of the progress
 199 payment and the reasons for making that determination, and the
 200 contractor may not request the release of such retained funds
 201 from the local governmental entity.

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

215 (e) This section does not prohibit a local governmental
 216 entity from withholding retainage at a rate less than 10 percent
 217 of each progress payment, from incrementally reducing the rate
 218 of retainage pursuant to a schedule provided for in the
 219 contract, or from releasing at any point all or a portion of any

HB 509

2005
CS

220 retainage withheld by the local governmental entity which is
 221 attributable to the labor, services, or materials supplied by
 222 the contractor or by one or more subcontractors or suppliers. If
 223 a local governmental entity makes any payment of retainage to
 224 the contractor which is attributable to the labor, services, or
 225 materials supplied by one or more subcontractors or suppliers,
 226 the contractor shall timely remit payment of such retainage to
 227 those subcontractors and suppliers.

228 (f) This section does not require the local governmental
 229 entity to pay or release any amounts that are the subject of a
 230 good-faith dispute, the subject of a claim brought pursuant to
 231 s. 255.05, or otherwise the subject of a claim or demand by the
 232 local governmental entity or contractor.

233 (g) The time limitations set forth in this section for
 234 payment of payment requests apply to any payment request for
 235 retainage made pursuant to this section.

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

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

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

HB 509

2005
CS

248 255.0705 Popular name.--Sections 255.0705-255.078 may be
 249 cited as the "Florida Prompt Payment Act."

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

252 255.071 Payment of subcontractors, sub-subcontractors,
 253 materialmen, and suppliers on construction contracts for public
 254 projects.--

255 (2) The failure to pay any undisputed obligations for such
 256 labor, services, or materials within 30 days after the date the
 257 labor, services, or materials were furnished and payment for
 258 such labor, services, or materials became due, or within the
 259 time limitations set forth in s. 255.073(3) ~~30 days after the~~
 260 ~~date payment for such labor, services, or materials is received,~~
 261 whichever last occurs, shall entitle any person providing such
 262 labor, services, or materials to the procedures specified in
 263 subsection (3) and the remedies provided in subsection (4).

264 (3) Any person providing labor, services, or materials for
 265 the construction of a public building, for the prosecution and
 266 completion of a public work, or for repairs upon a public
 267 building or public work improvements to real property may file a
 268 verified complaint alleging:

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

271 (b) A description of the labor, services, or materials
 272 provided and alleging that the labor, services, or materials
 273 were provided in accordance with the contract.

274 (c) The amount of the contract price.

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

HB 509

2005
CS

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

278 (f) That the undisputed amount has remained due and
279 payable pursuant to the contract for more than 30 days after the
280 date the labor or services were accepted or the materials were
281 received.

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

288 Section 6. Section 255.072, Florida Statutes, is created
289 to read:

290 255.072 Definitions.--As used in ss. 255.073-255.078, the
291 term:

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

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

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

302 (4) "Payment request" means a request for payment for
303 construction services which conforms with all statutory

HB 509

2005
CS

304 requirements and with all requirements specified by the public
 305 entity to which the payment request is submitted.

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

310 (6) "Purchase" means the purchase of construction
 311 services.

312 Section 7. Section 255.073, Florida Statutes, is created
 313 to read:

314 255.073 Timely payment for purchases of construction
 315 services.--

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

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

321 (3) When a contractor receives payment from a public
 322 entity for labor, services, or materials furnished by
 323 subcontractors and suppliers hired by the contractor, the
 324 contractor shall remit payment due to those subcontractors and
 325 suppliers within 10 days after the contractor's receipt of
 326 payment. When a subcontractor receives payment from a contractor
 327 for labor, services, or materials furnished by subcontractors
 328 and suppliers hired by the subcontractor, the subcontractor
 329 shall remit payment due to those subcontractors and suppliers
 330 within 7 days after the subcontractor's receipt of payment. This
 331 subsection does not prohibit a contractor or subcontractor from

HB 509

2005
CS

332 disputing, pursuant to the terms of the relevant contract, all
 333 or any portion of a payment alleged to be due to another party
 334 if the contractor or subcontractor notifies the party whose
 335 payment is disputed, in writing, of the amount in dispute and
 336 the actions required to cure the dispute. The contractor or
 337 subcontractor must pay all undisputed amounts due within the
 338 time limits imposed by this subsection.

339 (4) All payments due for the purchase of construction
 340 services and not made within the applicable time limits shall
 341 bear interest at the rate specified in s. 215.422. After July 1,
 342 2006, such payments shall bear interest at the rate of 1 percent
 343 per month, to the extent that the Chief Financial Officer's
 344 replacement project for the state's accounting and cash
 345 management systems is operational for the particular affected
 346 public entity. After January 1, 2007, all such payments due from
 347 public entity shall bear interest at the rate of 1 percent per
 348 month.

349 Section 8. Section 255.074, Florida Statutes, is created
 350 to read:

351 255.074 Procedures for calculation of payment due dates.--

352 (1) Each public entity shall establish procedures whereby
 353 each payment request received by the public entity is marked as
 354 received on the date on which it is delivered to an agent or
 355 employee of the public entity or of a facility or office of the
 356 public entity.

357 (2) If the terms under which a purchase is made allow for
 358 partial deliveries and a payment request is submitted for a
 359 partial delivery, the time for payment for the partial delivery

HB 509

2005
CS

360 must be calculated from the time of the partial delivery and the
 361 submission of the payment request.

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

365 Section 9. Section 255.075, Florida Statutes, is created
 366 to read:

367 255.075 Mandatory interest.--A contract between a public
 368 entity and a contractor may not prohibit the collection of late
 369 payment interest charges authorized under s. 255.073(4).

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

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

380 Section 11. Section 255.077, Florida Statutes, is created
 381 to read:

382 255.077 Project closeout and payment of retainage.--

383 (1) Each contract for construction services between a
 384 public entity and a contractor must provide for the development
 385 of a list of items required to render complete, satisfactory,
 386 and acceptable the construction services purchased by the public
 387 entity. The contract must specify the process for the

HB 509

2005
CS

388 development of the list, including responsibilities of the
389 public entity and the contractor in developing and reviewing the
390 list and a reasonable time for developing the list, as follows:

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

396 (b) For construction projects having an estimated cost of
397 \$10 million or more, within 30 calendar days, unless otherwise
398 extended by contract not to exceed 60 calendar days, after
399 reaching substantial completion of the construction services
400 purchased as defined in the contract, or, if not defined in the
401 contract, upon reaching beneficial occupancy or use.

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

410 (3) The failure to include any corrective work or pending
411 items not yet completed on the list developed pursuant to
412 subsection (1) or subsection (2) does not alter the
413 responsibility of the contractor to complete all the
414 construction services purchased pursuant to the contract.

HB 509

2005
CS

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

423 (5) All items that require correction under the contract
424 and that are identified after the preparation and delivery of
425 the list remain the obligation of the contractor as defined by
426 the contract.

427 (6) Warranty items may not affect the final payment of
428 retainage as provided in this section or as provided in the
429 contract between the contractor and its subcontractors and
430 suppliers.

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

438 (8) If a public entity fails to comply with its
439 responsibilities to develop the list required under subsection
440 (1) or subsection (2), as defined in the contract, within the
441 time limitations provided in subsection (1), the contractor may
442 submit a payment request for all remaining retainage withheld by

HB 509

2005
CS

443 the public entity pursuant to s. 255.078. The public entity need
 444 not pay or process any payment request for retainage if the
 445 contractor has, in whole or in part, failed to cooperate with
 446 the public entity in the development of the list or failed to
 447 perform its contractual responsibilities, if any, with regard to
 448 the development of the list or if s. 255.078(6) applies.

449 Section 12. Section 255.078, Florida Statutes, is created
 450 to read:

451 255.078 Public construction retainage.--

452 (1) With regard to any contract for construction services,
 453 a public entity may withhold from each progress payment made to
 454 the contractor an amount not exceeding 10 percent of the payment
 455 as retainage until 50-percent completion of such services.

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

468 (3) After 50-percent completion of the construction
 469 services purchased pursuant to the contract, the contractor may
 470 elect to withhold retainage from payments to its subcontractors

HB 509

2005
CS

471 at a rate higher than 5 percent. The specific amount to be
472 withheld must be determined on a case-by-case basis and must be
473 based on the contractor's assessment of the subcontractor's past
474 performance, the likelihood that such performance will continue,
475 and the contractor's ability to rely on other safeguards. The
476 contractor shall notify the subcontractor, in writing, of its
477 determination to withhold more than 5 percent of the progress
478 payment and the reasons for making that determination, and the
479 contractor may not request the release of such retained funds
480 from the public entity.

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

493 (5) Neither this section nor s. 255.077 prohibits a public
494 entity from withholding retainage at a rate less than 10 percent
495 of each progress payment, from incrementally reducing the rate
496 of retainage pursuant to a schedule provided for in the
497 contract, or from releasing at any point all or a portion of any
498 retainage withheld by the public entity which is attributable to

HB 509

2005
CS

499 the labor, services, or materials supplied by the contractor or
 500 by one or more subcontractors or suppliers. If a public entity
 501 makes any payment of retainage to the contractor which is
 502 attributable to the labor, services, or materials supplied by
 503 one or more subcontractors or suppliers, the contractor shall
 504 timely remit payment of such retainage to those subcontractors
 505 and suppliers.

506 (6) Neither this section nor s. 255.077 requires the
 507 public entity to pay or release any amounts that are the subject
 508 of a good-faith dispute, the subject of a claim brought pursuant
 509 to s. 255.05, or otherwise the subject of a claim or demand by
 510 the public entity or contractor.

511 (7) The same time limits for payment of a payment request
 512 apply regardless of whether the payment request is for, or
 513 includes, retainage.

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

519 (9) This section does not apply to any construction
 520 services purchased by a public entity if the total cost of the
 521 construction services purchased as identified in the contract is
 522 \$200,000 or less.

523 Section 13. Paragraph (a) of subsection (2) of section
 524 255.05, Florida Statutes, is amended, and subsection (10) is
 525 added to said section, to read:

HB 509

2005
CS

526 | 255.05 Bond of contractor constructing public buildings;
527 | form; action by materialmen.--

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

535 |
536 | NOTICE OF CONTEST OF CLAIM
537 | AGAINST PAYMENT BOND
538 |

539 | To: . . . (Name and address of claimant) . . .
540 |

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

546 |
547 | DATED on _____, _____.
548 |

549 | Signed: . . . (Contractor or Attorney) . . .
550 |

551 | The claim of any claimant upon whom such notice is served and
552 | who fails to institute a suit to enforce his or her claim
553 | against the payment bond within 60 days after service of such

HB 509

2005
CS

554 notice shall be extinguished automatically. The clerk shall mail
555 a copy of the notice of contest to the claimant at the address
556 shown in the notice of nonpayment or most recent amendment
557 thereto and shall certify to such service on the face of such
558 notice and record the notice. Service is complete upon mailing.

559 2. A claimant, except a laborer, who is not in privity
560 with the contractor shall, before commencing or not later than
561 45 days after commencing to furnish labor, materials, or
562 supplies for the prosecution of the work, furnish the contractor
563 with a notice that he or she intends to look to the bond for
564 protection. A claimant who is not in privity with the contractor
565 and who has not received payment for his or her labor,
566 materials, or supplies shall deliver to the contractor and to
567 the surety written notice of the performance of the labor or
568 delivery of the materials or supplies and of the nonpayment. The
569 notice of nonpayment may be served at any time during the
570 progress of the work or thereafter but not before 45 days after
571 the first furnishing of labor, services, or materials, and not
572 later than 90 days after the final furnishing of the labor,
573 services, or materials by the claimant or, with respect to
574 rental equipment, not later than 90 days after the date that the
575 rental equipment was last on the job site available for use. Any
576 notice of nonpayment served by a claimant who is not in privity
577 with the contractor which includes sums for retainage must
578 specify the portion of the amount claimed for retainage. No
579 action for the labor, materials, or supplies may be instituted
580 against the contractor or the surety unless both notices have
581 been given. Notices required or permitted under this section may

Page 21 of 25

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0509-01-c1

HB 509

2005
CS

582 | be served in accordance with s. 713.18. ~~An action, except for an~~
583 | ~~action exclusively for recovery of retainage, must be instituted~~
584 | ~~against the contractor or the surety on the payment bond or the~~
585 | ~~payment provisions of a combined payment and performance bond~~
586 | ~~within 1 year after the performance of the labor or completion~~
587 | ~~of delivery of the materials or supplies. An action exclusively~~
588 | ~~for recovery of retainage must be instituted against the~~
589 | ~~contractor or the surety within 1 year after the performance of~~
590 | ~~the labor or completion of delivery of the materials or~~
591 | ~~supplies, or within 90 days after receipt of final payment (or~~
592 | ~~the payment estimate containing the owner's final reconciliation~~
593 | ~~of quantities if no further payment is earned and due as a~~
594 | ~~result of deductive adjustments) by the contractor or surety,~~
595 | ~~whichever comes last.~~ A claimant may not waive in advance his or
596 | her right to bring an action under the bond against the surety.
597 | In any action brought to enforce a claim against a payment bond
598 | under this section, the prevailing party is entitled to recover
599 | a reasonable fee for the services of his or her attorney for
600 | trial and appeal or for arbitration, in an amount to be
601 | determined by the court, which fee must be taxed as part of the
602 | prevailing party's costs, as allowed in equitable actions. The
603 | time periods for service of a notice of nonpayment or for
604 | bringing an action against a contractor or a surety shall be
605 | measured from the last day of furnishing labor, services, or
606 | materials by the claimant and shall not be measured by other
607 | standards, such as the issuance of a certificate of occupancy or
608 | the issuance of a certificate of substantial completion.

HB 509

2005
CS

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

619 (a) The public entity has paid out the claimant's
620 retainage to the contractor, and the time provided under s.
621 218.735 or s. 255.073(3) for payment of that retainage to the
622 claimant has expired;

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

626 (c) At least 160 days have passed since reaching
627 substantial completion of the construction services purchased,
628 as defined in the contract, or if not defined in the contract,
629 since reaching beneficial occupancy or use of the project.

630 (d) The claimant has asked the contractor, in writing, for
631 any of the following information and the contractor has failed
632 to respond to the claimant's request, in writing, within 10 days
633 after receipt of the request:

634 1. Whether the project has reached substantial completion,
635 as that term is defined in the contract, or if not defined in

HB 509

2005
CS

636 | the contract, if beneficial occupancy or use of the project has
637 | occurred.

638 | 2. Whether the contractor has received payment of the
639 | claimant's retainage, and if so, the date the retainage was
640 | received by the contractor.

641 | 3. Whether the contractor has sent its final payment
642 | request to the public entity, and if so, the date on which the
643 | final payment request was sent.

644 |
645 | If none of the conditions described in paragraph (a), paragraph
646 | (b), paragraph (c), or paragraph (d) is satisfied and an action
647 | for recovery of retainage cannot be instituted within the 1-year
648 | limitation period set forth in this subsection, this limitation
649 | period shall be extended until 120 days after one of these
650 | conditions is satisfied.

651 | Section 14. Subsection (2) of section 287.0585, Florida
652 | Statutes, is amended to read:

653 | 287.0585 Late payments by contractors to subcontractors
654 | and suppliers; penalty.--

655 | (2) This section shall not apply when the contract between
656 | the contractor and subcontractors or subvendors provides
657 | otherwise, or when payments under the contract are otherwise
658 | governed by ss. 255.0705-255.078.

659 | Section 15. Paragraph (b) of subsection (2) of section
660 | 95.11, Florida Statutes, is amended to read:

661 | 95.11 Limitations other than for the recovery of real
662 | property.--Actions other than for recovery of real property
663 | shall be commenced as follows:

HB 509

2005
CS

664 (2) WITHIN FIVE YEARS.--

665 (b) A legal or equitable action on a contract, obligation,
666 or liability founded on a written instrument, except for an
667 action to enforce a claim against a payment bond, which shall be
668 governed by the applicable provisions of ss. 255.05(10)
669 ~~255.05(2)(a)2.~~ and 713.23(1)(e).

670 Section 16. Neither the amendments to sections 95.11,
671 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and
672 subsection (2) of section 255.05, Florida Statutes, as provided
673 in this act, nor subsection (10) of section 255.05, Florida
674 Statutes, and section 255.078, Florida Statutes, as created by
675 this act, apply to any existing construction contract pending
676 approval by a local governmental entity or public entity, or to
677 any project advertised for bid by the local governmental entity
678 or public entity, on or before October 1, 2005.

679 Section 17. This act shall take effect October 1, 2005.