

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. 287.0585, F.S.; providing an exemption for contractors

29 making late payment to subcontractors when the contract is  
 30 subject to the "Prompt Payment Act"; amending s. 95.11,  
 31 F.S., to conform a cross reference; providing that  
 32 specified sections of the act do not apply to certain  
 33 pending contracts and projects; providing an effective  
 34 date.

35

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

37

38 Section 1. Section 218.70, Florida Statutes, is amended to  
 39 read:

40 218.70 Popular name ~~Short title~~.--This part may be cited  
 41 as the "Local Government Florida Prompt Payment Act."

42 Section 2. Subsections (2), (6), and (7) of section  
 43 218.72, Florida Statutes, are amended, and subsection (10) is  
 44 added to said section, to read:

45 218.72 Definitions.--As used in this part:

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

52 (6) "Vendor" means any person who sells goods or services,  
 53 sells or leases personal property, or leases real property  
 54 directly to a local governmental entity. The term includes any  
 55 person who provides waste-hauling services to residents or

56 businesses located within the boundaries of a local government  
 57 pursuant to a contract or local ordinance.

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

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

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

70 218.735 Timely payment for purchases of construction  
 71 services.--

72 (6) When a contractor receives payment from a local  
 73 governmental entity for labor, services, or materials furnished  
 74 by subcontractors and suppliers hired by the contractor, the  
 75 contractor shall remit payment due to those subcontractors and  
 76 suppliers within 10 ~~15~~ days after the contractor's receipt of  
 77 payment. When a subcontractor receives payment from a contractor  
 78 for labor, services, or materials furnished by subcontractors  
 79 and suppliers hired by the subcontractor, the subcontractor  
 80 shall remit payment due to those subcontractors and suppliers  
 81 within 7 ~~15~~ days after the subcontractor's receipt of payment.  
 82 Nothing herein shall prohibit a contractor or subcontractor from  
 83 disputing, pursuant to the terms of the relevant contract, all

84 or any portion of a payment alleged to be due to another party-  
85 ~~In the event of such a dispute, the contractor or subcontractor~~  
86 ~~may withhold the disputed portion of any such payment~~ if the  
87 contractor or subcontractor notifies the party whose payment is  
88 disputed, in writing, of the amount in dispute and the actions  
89 required to cure the dispute. The contractor or subcontractor  
90 must pay all undisputed amounts due within the time limits  
91 imposed by this section.

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

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

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

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

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

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

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

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

140 contract between the contractor and its subcontractors and  
141 suppliers.

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

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

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

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

185        (c) After 50-percent completion of the construction  
186 services purchased pursuant to the contract, the contractor may  
187 elect to withhold retainage from payments to its subcontractors  
188 at a rate higher than 5 percent. The specific amount to be  
189 withheld must be determined on a case-by-case basis and must be  
190 based on the contractor's assessment of the subcontractor's past  
191 performance, the likelihood that such performance will continue,  
192 and the contractor's ability to rely on other safeguards. The  
193 contractor shall notify the subcontractor, in writing, of its  
194 determination to withhold more than 5 percent of the progress

195 payment and the reasons for making that determination, and the  
196 contractor may not request the release of such retained funds  
197 from the local governmental entity.

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

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



222 the contractor shall timely remit payment of such retainage to  
 223 those subcontractors and suppliers.

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

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

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

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

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

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

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

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

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

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

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

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

270           (c) The amount of the contract price.

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

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

274           (f) That the undisputed amount has remained due and  
 275 payable pursuant to the contract for more than 30 days after the

276 | date the labor or services were accepted or the materials were  
 277 | received.

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

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

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

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

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

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

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

302 | (5) "Public entity" means the state, or any office, board,  
 303 | bureau, commission, department, branch, division, or institution

304 thereof, but does not include a local governmental entity as  
305 defined in s. 218.72.

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

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

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

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

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

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

332 the actions required to cure the dispute. The contractor or  
333 subcontractor must pay all undisputed amounts due within the  
334 time limits imposed by this subsection.

335 (4) All payments due for the purchase of construction  
336 services and not made within the applicable time limits shall  
337 bear interest at the rate specified in s. 215.422. After July 1,  
338 2006, such payments shall bear interest at the rate of 1 percent  
339 per month, to the extent that the Chief Financial Officer's  
340 replacement project for the state's accounting and cash  
341 management systems is operational for the particular affected  
342 public entity. After January 1, 2007, all such payments due from  
343 public entity shall bear interest at the rate of 1 percent per  
344 month.

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

347 255.074 Procedures for calculation of payment due dates.--

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

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

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

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

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

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

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

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

378       255.077 Project closeout and payment of retainage.--

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

385 public entity and the contractor in developing and reviewing the  
386 list and a reasonable time for developing the list, as follows:

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

392 (b) For construction projects having an estimated cost of  
393 \$10 million or more, within 30 calendar days, unless otherwise  
394 extended by contract not to exceed 60 calendar days, after  
395 reaching substantial completion of the construction services  
396 purchased as defined in the contract, or, if not defined in the  
397 contract, upon reaching beneficial occupancy or use.

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

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

411 (4) Upon completion of all items on the list, the  
412 contractor may submit a payment request for all remaining

413 retainage withheld by the public entity pursuant to s. 255.078.  
414 If a good-faith dispute exists as to whether one or more items  
415 identified on the list have been completed pursuant to the  
416 contract, the public entity may continue to withhold an amount  
417 not to exceed 150 percent of the total costs to complete such  
418 items.

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

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

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

434 (8) If a public entity fails to comply with its  
435 responsibilities to develop the list required under subsection  
436 (1) or subsection (2), as defined in the contract, within the  
437 time limitations provided in subsection (1), the contractor may  
438 submit a payment request for all remaining retainage withheld by  
439 the public entity pursuant to s. 255.078. The public entity need  
440 not pay or process any payment request for retainage if the



441 contractor has, in whole or in part, failed to cooperate with  
442 the public entity in the development of the list or failed to  
443 perform its contractual responsibilities, if any, with regard to  
444 the development of the list or if s. 255.078(6) applies.

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

447 255.078 Public construction retainage.--

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

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

464 (3) After 50-percent completion of the construction  
465 services purchased pursuant to the contract, the contractor may  
466 elect to withhold retainage from payments to its subcontractors  
467 at a rate higher than 5 percent. The specific amount to be  
468 withheld must be determined on a case-by-case basis and must be

469 based on the contractor's assessment of the subcontractor's past  
470 performance, the likelihood that such performance will continue,  
471 and the contractor's ability to rely on other safeguards. The  
472 contractor shall notify the subcontractor, in writing, of its  
473 determination to withhold more than 5 percent of the progress  
474 payment and the reasons for making that determination, and the  
475 contractor may not request the release of such retained funds  
476 from the public entity.

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

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

497 makes any payment of retainage to the contractor which is  
498 attributable to the labor, services, or materials supplied by  
499 one or more subcontractors or suppliers, the contractor shall  
500 timely remit payment of such retainage to those subcontractors  
501 and suppliers.

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

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

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

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

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

522 255.05 Bond of contractor constructing public buildings;  
523 form; action by materialmen.--

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

531  
 532 NOTICE OF CONTEST OF CLAIM  
 533 AGAINST PAYMENT BOND  
 534

535 To: . . . (Name and address of claimant) . . .  
 536

537 You are notified that the undersigned contests your notice  
 538 of nonpayment, dated \_\_\_\_\_, \_\_\_\_\_, and served on the  
 539 undersigned on \_\_\_\_\_, \_\_\_\_\_, and that the time within  
 540 which you may file suit to enforce your claim is limited to 60  
 541 days after the date of service of this notice.  
 542

543 DATED on \_\_\_\_\_, \_\_\_\_\_.  
 544

545 Signed: . . . (Contractor or Attorney) . . .  
 546

547 The claim of any claimant upon whom such notice is served and  
 548 who fails to institute a suit to enforce his or her claim  
 549 against the payment bond within 60 days after service of such  
 550 notice shall be extinguished automatically. The clerk shall mail  
 551 a copy of the notice of contest to the claimant at the address

552 shown in the notice of nonpayment or most recent amendment  
553 thereto and shall certify to such service on the face of such  
554 notice and record the notice. Service is complete upon mailing.

555 2. A claimant, except a laborer, who is not in privity  
556 with the contractor shall, before commencing or not later than  
557 45 days after commencing to furnish labor, materials, or  
558 supplies for the prosecution of the work, furnish the contractor  
559 with a notice that he or she intends to look to the bond for  
560 protection. A claimant who is not in privity with the contractor  
561 and who has not received payment for his or her labor,  
562 materials, or supplies shall deliver to the contractor and to  
563 the surety written notice of the performance of the labor or  
564 delivery of the materials or supplies and of the nonpayment. The  
565 notice of nonpayment may be served at any time during the  
566 progress of the work or thereafter but not before 45 days after  
567 the first furnishing of labor, services, or materials, and not  
568 later than 90 days after the final furnishing of the labor,  
569 services, or materials by the claimant or, with respect to  
570 rental equipment, not later than 90 days after the date that the  
571 rental equipment was last on the job site available for use. Any  
572 notice of nonpayment served by a claimant who is not in privity  
573 with the contractor which includes sums for retainage must  
574 specify the portion of the amount claimed for retainage. No  
575 action for the labor, materials, or supplies may be instituted  
576 against the contractor or the surety unless both notices have  
577 been given. Notices required or permitted under this section may  
578 be served in accordance with s. 713.18. ~~An action, except for an~~  
579 ~~action exclusively for recovery of retainage, must be instituted~~

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

605 (10) An action, except an action for recovery of  
606 retainage, must be instituted against the contractor or the  
607 surety on the payment bond or the payment provisions of a

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

615 (a) The public entity has paid out the claimant's  
616 retainage to the contractor, and the time provided under s.  
617 218.735 or s. 255.073(3) for payment of that retainage to the  
618 claimant has expired;

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

622 (c) At least 160 days have passed since reaching  
623 substantial completion of the construction services purchased,  
624 as defined in the contract, or if not defined in the contract,  
625 since reaching beneficial occupancy or use of the project.

626 (d) The claimant has asked the contractor, in writing, for  
627 any of the following information and the contractor has failed  
628 to respond to the claimant's request, in writing, within 10 days  
629 after receipt of the request:

630 1. Whether the project has reached substantial completion,  
631 as that term is defined in the contract, or if not defined in  
632 the contract, if beneficial occupancy or use of the project has  
633 occurred.

634        2. Whether the contractor has received payment of the  
635 claimant's retainage, and if so, the date the retainage was  
636 received by the contractor.

637        3. Whether the contractor has sent its final payment  
638 request to the public entity, and if so, the date on which the  
639 final payment request was sent.

640

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

647        Section 14. Subsection (2) of section 287.0585, Florida  
648 Statutes, is amended to read:

649        287.0585 Late payments by contractors to subcontractors  
650 and suppliers; penalty.--

651        (2) This section shall not apply when the contract between  
652 the contractor and subcontractors or subvendors provides  
653 otherwise, or when payments under the contract are otherwise  
654 governed by ss. 255.0705-255.078.

655        Section 15. Paragraph (b) of subsection (2) of section  
656 95.11, Florida Statutes, is amended to read:

657        95.11 Limitations other than for the recovery of real  
658 property.--Actions other than for recovery of real property  
659 shall be commenced as follows:

660        (2) WITHIN FIVE YEARS.--



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

666 Section 16. Neither the amendments to sections 95.11,  
667 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and  
668 subsection (2) of section 255.05, Florida Statutes, as provided  
669 in this act, nor subsection (10) of section 255.05, Florida  
670 Statutes, and section 255.078, Florida Statutes, as created by  
671 this act, apply to any existing construction contract pending  
672 approval by a local governmental entity or public entity, or to  
673 any project advertised for bid by the local governmental entity  
674 or public entity, on or before October 1, 2005.

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