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HB 509, Engrossed 1

2005 Legislature

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

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

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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

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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

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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.

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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

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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.

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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

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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,

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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:

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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.--

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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

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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~~

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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

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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.

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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.--

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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.