



1 F.S., apply to the payment of any payment  
2 request for retainage; providing exceptions;  
3 amending s. 255.05, F.S.; providing  
4 requirements for certain notices of nonpayment  
5 served by a claimant who is not in privity with  
6 the contractor; providing limitations on a  
7 claimant's institution of certain actions  
8 against a contractor or surety; amending s.  
9 95.11, F.S., to conform a cross-reference;  
10 providing that specified sections of the act do  
11 not apply to certain pending contracts and  
12 projects; providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. Section 218.70, Florida Statutes, is  
17 amended to read:

18 218.70 Short title.--This part may be cited as the  
19 "Local Government Florida Prompt Payment Act."

20 Section 2. Subsections (2), (6), and (7) of section  
21 218.72, Florida Statutes, are amended, and subsection (10) is  
22 added to that section, to read:

23 218.72 Definitions.--As used in this part:

24 (2) "Local governmental entity" means a county or  
25 municipal government, school board, school district,  
26 authority, special taxing district, other political  
27 subdivision, or any office, board, bureau, commission,  
28 department, branch, division, or institution thereof ~~or any~~  
29 ~~project supported by county or municipal funds.~~

30 (6) "Vendor" means any person who sells goods or  
31 services, sells or leases personal property, or leases real

1 | property directly to a local governmental entity. The term  
2 | includes any person who provides waste-hauling services to  
3 | residents or businesses located within the boundaries of a  
4 | local government pursuant to a contract or local ordinance.

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

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

13 |         Section 3. Subsection (6) of section 218.735, Florida  
14 | Statutes, is amended, present subsection (7) of that section  
15 | is redesignated as subsection (9), and new subsections (7) and  
16 | (8) are added to that section, to read:

17 |             218.735 Timely payment for purchases of construction  
18 | services.--

19 |         (6) When a contractor receives payment from a local  
20 | governmental entity for labor, services, or materials  
21 | furnished by subcontractors and suppliers hired by the  
22 | contractor, the contractor shall remit payment due to those  
23 | subcontractors and suppliers within 10 ~~15~~ days after the  
24 | contractor's receipt of payment. When a subcontractor receives  
25 | payment from a contractor for labor, services, or materials  
26 | furnished by subcontractors and suppliers hired by the  
27 | subcontractor, the subcontractor shall remit payment due to  
28 | those subcontractors and suppliers within 7 ~~15~~ days after the  
29 | subcontractor's receipt of payment. Nothing herein shall  
30 | prohibit a contractor or subcontractor from disputing,  
31 | pursuant to the terms of the relevant contract, all or any

1 portion of a payment alleged to be due to another party. ~~In~~  
2 ~~the event of such a dispute, the contractor or subcontractor~~  
3 ~~may withhold the disputed portion of any such payment~~ if the  
4 contractor or subcontractor notifies the party whose payment  
5 is disputed, in writing, of the amount in dispute and the  
6 actions required to cure the dispute. The contractor or  
7 subcontractor must pay all undisputed amounts due within the  
8 time limits imposed by this section.

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

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

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

30 (b) If the contract between the local governmental  
31 entity and the contractor relates to the purchase of

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

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

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

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

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

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

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

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

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

26 (b) After 50-percent completion of the construction  
27 services purchased pursuant to the contract, the local  
28 governmental entity must reduce to 5 percent the amount of  
29 retainage withheld from each subsequent progress payment made  
30 to the contractor. For purposes of this subsection, the term  
31 "50-percent completion" has the meaning set forth in the

1 contract between the local governmental entity and the  
2 contractor or, if not defined in the contract, the point at  
3 which the local governmental entity has expended 50 percent of  
4 the total cost of the construction services purchased as  
5 identified in the contract together with all costs associated  
6 with existing change orders and other additions or  
7 modifications to the construction services provided for in the  
8 contract. However, notwithstanding this subsection, a  
9 municipality having a population of 25,000 or fewer, or a  
10 county having a population of 100,000 or fewer, may withhold  
11 retainage in an amount not exceeding 10 percent of each  
12 progress payment made to the contractor until final completion  
13 and acceptance of the project by the local governmental  
14 entity.

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

29 (d) After 50-percent completion of the construction  
30 services purchased pursuant to the contract, the contractor  
31 may present to the local governmental entity a payment request

1 for up to one-half of the retainage held by the local  
2 governmental entity. The local governmental entity shall  
3 promptly make payment to the contractor, unless the local  
4 governmental entity has grounds, pursuant to paragraph (f),  
5 for withholding the payment of retainage. If the local  
6 governmental entity makes payment of retainage to the  
7 contractor under this paragraph which is attributable to the  
8 labor, services, or materials supplied by one or more  
9 subcontractors or suppliers, the contractor shall timely remit  
10 payment of such retainage to those subcontractors and  
11 suppliers.

12 (e) This section does not prohibit a local  
13 governmental entity from withholding retainage at a rate less  
14 than 10 percent of each progress payment, from incrementally  
15 reducing the rate of retainage pursuant to a schedule provided  
16 for in the contract, or from releasing at any point all or a  
17 portion of any retainage withheld by the local governmental  
18 entity which is attributable to the labor, services, or  
19 materials supplied by the contractor or by one or more  
20 subcontractors or suppliers. If a local governmental entity  
21 makes any payment of retainage to the contractor which is  
22 attributable to the labor, services, or materials supplied by  
23 one or more subcontractors or suppliers, the contractor shall  
24 timely remit payment of such retainage to those subcontractors  
25 and suppliers.

26 (f) This section does not require the local  
27 governmental entity to pay or release any amounts that are the  
28 subject of a good-faith dispute, the subject of an action  
29 brought pursuant to s. 255.05, or otherwise the subject of a  
30 claim or demand by the local governmental entity or  
31 contractor.



1           (g) The time limitations set forth in this section for  
2 payment of payment requests apply to any payment request for  
3 retainage made pursuant to this section.

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

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

14           Section 4. Section 255.0705, Florida Statutes, is  
15 created to read:

16           255.0705 Short title.--Sections 255.0705-255.078 may  
17 be cited as the "Florida Prompt Payment Act."

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

20           255.071 Payment of subcontractors, sub-subcontractors,  
21 materialmen, and suppliers on construction contracts for  
22 public projects.--

23           (2) The failure to pay any undisputed obligations for  
24 such labor, services, or materials within 30 days after the  
25 date the labor, services, or materials were furnished and  
26 payment for such labor, services, or materials became due, or  
27 within the time limitations set forth in s. 255.073(3) 30 days  
28 after the date payment for such labor, services, or materials  
29 is received, whichever last occurs, shall entitle any person  
30 providing such labor, services, or materials to the procedures  
31

1 specified in subsection (3) and the remedies provided in  
2 subsection (4).

3 (3) Any person providing labor, services, or materials  
4 for the construction of a public building, for the prosecution  
5 and completion of a public work, or for repairs upon a public  
6 building or public work improvements to real property may file  
7 a verified complaint alleging:

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

10 (b) A description of the labor, services, or materials  
11 provided and alleging that the labor, services, or materials  
12 were provided in accordance with the contract.

13 (c) The amount of the contract price.

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

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

17 (f) That the undisputed amount has remained due and  
18 payable pursuant to the contract for more than 30 days after  
19 the date the labor or services were accepted or the materials  
20 were received.

21 (g) That the person against whom the complaint was  
22 filed has received payment on account of the labor, services,  
23 or materials described in the complaint and, as of the date  
24 the complaint was filed, has failed to make payment within the  
25 time limitations set forth in s. 255.073(3) more than 30 days  
26 prior to the date the complaint was filed.

27 Section 6. Section 255.072, Florida Statutes, is  
28 created to read:

29 255.072 Definitions.--As used in ss. 255.073-255.078,  
30 the term:

31

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

4           (2) "Construction services" means all labor, services,  
5 and materials provided in connection with the construction,  
6 alteration, repair, demolition, reconstruction, or any other  
7 improvements to real property. The term "construction  
8 services" does not include contracts or work performed for the  
9 Department of Transportation.

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

13           (4) "Payment request" means a request for payment for  
14 construction services which conforms with all statutory  
15 requirements and with all requirements specified by the public  
16 entity to which the payment request is submitted.

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

21           (6) "Purchase" means the purchase of construction  
22 services.

23           Section 7. Section 255.073, Florida Statutes, is  
24 created to read:

25           255.073 Timely payment for purchases of construction  
26 services.--

27           (1) Except as otherwise provided in ss.  
28 255.072-255.078, s. 215.422 governs the timely payment for  
29 construction services by a public entity.

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

1           (3) When a contractor receives payment from a public  
2 entity for labor, services, or materials furnished by  
3 subcontractors and suppliers hired by the contractor, the  
4 contractor shall remit payment due to those subcontractors and  
5 suppliers within 10 days after the contractor's receipt of  
6 payment. When a subcontractor receives payment from a  
7 contractor for labor, services, or materials furnished by  
8 subcontractors and suppliers hired by the subcontractor, the  
9 subcontractor shall remit payment due to those subcontractors  
10 and suppliers within 7 days after the subcontractor's receipt  
11 of payment. This subsection does not prohibit a contractor or  
12 subcontractor from disputing, pursuant to the terms of the  
13 relevant contract, all or any portion of a payment alleged to  
14 be due to another party if the contractor or subcontractor  
15 notifies the party whose payment is disputed, in writing, of  
16 the amount in dispute and the actions required to cure the  
17 dispute. The contractor or subcontractor must pay all  
18 undisputed amounts due within the time limits imposed by this  
19 subsection.

20           (4) All payments due for the purchase of construction  
21 services and not made within the applicable time limits shall  
22 bear interest at the rate specified in s. 215.422. After July  
23 1, 2006, such payments shall bear interest at the rate of 1  
24 percent per month, to the extent that the Chief Financial  
25 Officer's replacement project for the state's accounting and  
26 cash management systems is operational for the particular  
27 affected public entity. After January 1, 2007, all such  
28 payments due from public entity shall bear interest at the  
29 rate of 1 percent per month.

30           Section 8. Section 255.074, Florida Statutes, is  
31 created to read:

1           255.074 Procedures for calculation of payment-due  
2 dates.--

3           (1) Each public entity shall establish procedures  
4 whereby each payment request received by the public entity is  
5 marked as received on the date on which it is delivered to an  
6 agent or employee of the public entity or of a facility or  
7 office of the public entity.

8           (2) If the terms under which a purchase is made allow  
9 for partial deliveries and a payment request is submitted for  
10 a partial delivery, the time for payment for the partial  
11 delivery must be calculated from the time of the partial  
12 delivery and the submission of the payment request.

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

16           Section 9. Section 255.075, Florida Statutes, is  
17 created to read:

18           255.075 Mandatory interest.--A contract between a  
19 public entity and a contractor may not prohibit the collection  
20 of late payment interest charges authorized under s.  
21 255.073(4).

22           Section 10. Section 255.076, Florida Statutes, is  
23 created to read:

24           255.076 Improper payment request; resolution of  
25 disputes.--In an action to recover amounts due for  
26 construction services purchased by a public entity, the court  
27 shall award court costs and reasonable attorney's fees,  
28 including fees incurred through any appeal, to the prevailing  
29 party, if the court finds that the nonprevailing party  
30 withheld any portion of the payment that is the subject of the  
31

1 action without any reasonable basis in law or fact to dispute  
2 the prevailing party's claim to those amounts.

3 Section 11. Section 255.077, Florida Statutes, is  
4 created to read:

5 255.077 Project closeout and payment of retainage.--

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

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

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

27 (2) If the contract between the public entity and the  
28 contractor relates to the purchase of construction services on  
29 more than one building or structure, or involves a multiphased  
30 project, the contract must provide for the development of a  
31 list of items required to render complete, satisfactory, and

1 acceptable all the construction services purchased pursuant to  
2 the contract for each building, structure, or phase of the  
3 project within the time limitations provided in subsection  
4 (1).

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

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

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

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

26 (7) Retainage may not be held by a public entity or a  
27 contractor to secure payment of insurance premiums under a  
28 consolidated insurance program or series of insurance policies  
29 issued to a public entity or a contractor for a project or  
30 group of projects, and the final payment of retainage as  
31 provided in this section may not be delayed pending a final

1 audit by the public entity's or contractor's insurance  
2 provider.

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

15 Section 12. Section 255.078, Florida Statutes, is  
16 created to read:

17 255.078 Public construction retainage.--

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

24 (2) After 50-percent completion of the construction  
25 services purchased pursuant to the contract, the public entity  
26 must reduce to 5 percent the amount of retainage withheld from  
27 each subsequent progress payment made to the contractor. For  
28 purposes of this section, the term "50-percent completion" has  
29 the meaning set forth in the contract between the public  
30 entity and the contractor or, if not defined in the contract,  
31 the point at which the public entity has expended 50 percent



1 of the total cost of the construction services purchased as  
2 identified in the contract together with all costs associated  
3 with existing change orders and other additions or  
4 modifications to the construction services provided for in the  
5 contract.

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

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

1           (5) Neither this section nor s. 255.077 prohibits a  
2 public entity from withholding retainage at a rate less than  
3 10 percent of each progress payment, from incrementally  
4 reducing the rate of retainage pursuant to a schedule provided  
5 for in the contract, or from releasing at any point all or a  
6 portion of any retainage withheld by the public entity which  
7 is attributable to the labor, services, or materials supplied  
8 by the contractor or by one or more subcontractors or  
9 suppliers. If a public entity makes any payment of retainage  
10 to the contractor which is attributable to the labor,  
11 services, or materials supplied by one or more subcontractors  
12 or suppliers, the contractor shall timely remit payment of  
13 such retainage to those subcontractors and suppliers.

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

19           (7) The same time limits for payment of a payment  
20 request apply regardless of whether the payment request is  
21 for, or includes, retainage.

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

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

31

1           Section 13. Paragraph (a) of subsection (2) of section  
2 255.05, Florida Statutes, is amended and subsection (10) is  
3 added to that section, to read:

4           255.05 Bond of contractor constructing public  
5 buildings; form; action by materialmen.--

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

13  
14                               NOTICE OF CONTEST OF CLAIM  
15                               AGAINST PAYMENT BOND  
16

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

18  
19           You are notified that the undersigned contests your  
20 notice of nonpayment, dated ....., ....., and served  
21 on the undersigned on ....., ....., and that the  
22 time within which you may file suit to enforce your claim is  
23 limited to 60 days after the date of service of this notice.

24  
25           DATED on ....., .....

26  
27 Signed:...(Contractor or Attorney)...

28  
29 The claim of any claimant upon whom such notice is served and  
30 who fails to institute a suit to enforce his or her claim  
31 against the payment bond within 60 days after service of such

1 notice shall be extinguished automatically. The clerk shall  
2 mail a copy of the notice of contest to the claimant at the  
3 address shown in the notice of nonpayment or most recent  
4 amendment thereto and shall certify to such service on the  
5 face of such notice and record the notice. Service is complete  
6 upon mailing.

7           2. A claimant, except a laborer, who is not in privity  
8 with the contractor shall, before commencing or not later than  
9 45 days after commencing to furnish labor, materials, or  
10 supplies for the prosecution of the work, furnish the  
11 contractor with a notice that he or she intends to look to the  
12 bond for protection. A claimant who is not in privity with the  
13 contractor and who has not received payment for his or her  
14 labor, materials, or supplies shall deliver to the contractor  
15 and to the surety written notice of the performance of the  
16 labor or delivery of the materials or supplies and of the  
17 nonpayment. The notice of nonpayment may be served at any time  
18 during the progress of the work or thereafter but not before  
19 45 days after the first furnishing of labor, services, or  
20 materials, and not later than 90 days after the final  
21 furnishing of the labor, services, or materials by the  
22 claimant or, with respect to rental equipment, not later than  
23 90 days after the date that the rental equipment was last on  
24 the job site available for use. Any notice of nonpayment  
25 served by a claimant who is not in privity with the contractor  
26 which includes sums for retainage must specify the portion of  
27 the amount claimed for retainage. No action for the labor,  
28 materials, or supplies may be instituted against the  
29 contractor or the surety unless both notices have been given.  
30 Notices required or permitted under this section may be served  
31 in accordance with s. 713.18. ~~An action, except for an action~~

1 ~~exclusively for recovery of retainage, must be instituted~~  
2 ~~against the contractor or the surety on the payment bond or~~  
3 ~~the payment provisions of a combined payment and performance~~  
4 ~~bond within 1 year after the performance of the labor or~~  
5 ~~completion of delivery of the materials or supplies. An action~~  
6 ~~exclusively for recovery of retainage must be instituted~~  
7 ~~against the contractor or the surety within 1 year after the~~  
8 ~~performance of the labor or completion of delivery of the~~  
9 ~~materials or supplies, or within 90 days after receipt of~~  
10 ~~final payment (or the payment estimate containing the owner's~~  
11 ~~final reconciliation of quantities if no further payment is~~  
12 ~~earned and due as a result of deductive adjustments) by the~~  
13 ~~contractor or surety, whichever comes last. A claimant may not~~  
14 ~~waive in advance his or her right to bring an action under the~~  
15 ~~bond against the surety. In any action brought to enforce a~~  
16 ~~claim against a payment bond under this section, the~~  
17 ~~prevailing party is entitled to recover a reasonable fee for~~  
18 ~~the services of his or her attorney for trial and appeal or~~  
19 ~~for arbitration, in an amount to be determined by the court,~~  
20 ~~which fee must be taxed as part of the prevailing party's~~  
21 ~~costs, as allowed in equitable actions. The time periods for~~  
22 ~~service of a notice of nonpayment or for bringing an action~~  
23 ~~against a contractor or a surety shall be measured from the~~  
24 ~~last day of furnishing labor, services, or materials by the~~  
25 ~~claimant and shall not be measured by other standards, such as~~  
26 ~~the issuance of a certificate of occupancy or the issuance of~~  
27 ~~a certificate of substantial completion.~~

28 (10) An action, except an action for recovery of  
29 retainage, must be instituted against the contractor or the  
30 surety on the payment bond or the payment provisions of a  
31 combined payment and performance bond within 1 year after the

1 performance of the labor or completion of delivery of the  
2 materials or supplies. An action for recovery of retainage  
3 must be instituted against the contractor or the surety within  
4 1 year after the performance of the labor or completion of  
5 delivery of the materials or supplies; however, such an action  
6 may not be instituted until one of the following conditions is  
7 satisfied:

8 (a) The public entity has paid out the claimant's  
9 retainage to the contractor, and the time provided under s.  
10 255.073(3) for payment of that retainage to the claimant has  
11 expired;

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

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

21  
22 If none of the conditions described in paragraph (a),  
23 paragraph (b), or paragraph (c) is satisfied and an action for  
24 recovery of retainage therefore cannot be instituted within  
25 the 1-year limitation period set forth in this subsection,  
26 this limitation period shall be extended until 120 days after  
27 one of these conditions is satisfied.

28 Section 14. Paragraph (b) of subsection (2) of section  
29 95.11, Florida Statutes, is amended to read:

1           95.11 Limitations other than for the recovery of real  
2 property.--Actions other than for recovery of real property  
3 shall be commenced as follows:

4           (2) WITHIN FIVE YEARS.--

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

10           Section 15. Neither the amendments to sections 95.11,  
11 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and  
12 subsection (2) of section 255.05, Florida Statutes, as  
13 provided in this act, nor subsection (10) of section 255.05,  
14 Florida Statutes, and section 255.078, Florida Statutes, as  
15 created by this act, applies to any existing construction  
16 contract pending approval by a local governmental entity or  
17 public entity, or to any project advertised for bid by the  
18 local government entity or public entity, on or before October  
19 1, 2005.

20           Section 16. This act shall take effect October 1,  
21 2005.

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SENATE SUMMARY

Creates the "Local Government Prompt Payment Act."  
Redefines terms used in part VII of ch. 218, F.S. Revises  
provisions relating to timely payment for purchases of  
construction services. Revises deadlines for payment.  
Provides procedures for project closeout and payment of  
retainage. Provides requirements for local government  
construction retainage. Provides that ss. 218.72-218.76,  
F.S., apply to the payment of any payment request for  
retainage. Revises deadlines for the payment of  
subcontractors, sub-subcontractors, materialmen, and  
suppliers on construction contracts for public projects.  
Provides for timely payment for purchases of construction  
services by a public entity. Provides procedures for  
calculating payment due dates. Provides procedures for  
handling improper payment requests. Provides for the  
resolution of disputes. Provides for public-construction  
retainage. Provides limitations on a claimant's  
institution of certain actions against a contractor or  
surety. Provides for certain notices to the claimant.