

By the Committee on Community Affairs; and Senators Bennett and King

578-1913-05

1 A bill to be entitled
 2 An act relating to prompt payment for
 3 construction services; amending s. 218.70,
 4 F.S.; providing a short title; amending s.
 5 218.72, F.S.; redefining terms used in part VII
 6 of ch. 218, F.S.; amending s. 218.735, F.S.;
 7 revising provisions relating to timely payment
 8 for purchases of construction services;
 9 revising deadlines for payment; providing
 10 procedures for project closeout and payment of
 11 retainage; providing requirements for local
 12 government construction retainage; providing
 13 that ss. 218.72-218.76, F.S., apply to the
 14 payment of any payment request for retainage;
 15 providing exceptions; creating s. 255.0705,
 16 F.S.; providing a short title; amending s.
 17 255.071, F.S.; revising deadlines for the
 18 payment of subcontractors, sub-subcontractors,
 19 materialmen, and suppliers on construction
 20 contracts for public projects; creating ss.
 21 255.072, 255.073, 255.074, 255.075, 255.076,
 22 255.077, and 255.078, F.S.; providing
 23 definitions; providing for timely payment for
 24 purchases of construction services by a public
 25 entity; providing procedures for calculating
 26 payment-due dates; providing procedures for
 27 handling improper payment requests; providing
 28 for an award of court costs and attorney's
 29 fees; providing for the resolution of disputes;
 30 providing for project closeout and payment of
 31 retainage; providing that ss. 255.072-255.076,

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 until
23 50-percent completion of such services.

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

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

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

27 (d) After 50-percent completion of the construction
28 services purchased pursuant to the contract, the contractor
29 may present to the local governmental entity a payment request
30 for up to one-half of the retainage held by the local
31 governmental entity. The local governmental entity shall

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

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

24 (f) This section does not require the local
25 governmental entity to pay or release any amounts that are the
26 subject of a good-faith dispute, the subject of a claim
27 brought pursuant to s. 255.05, or otherwise the subject of a
28 claim or demand by the local governmental entity or
29 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 Award of court costs and attorney's fees.--In
25 an action to recover amounts due for construction services
26 purchased by a public entity, the court shall award court
27 costs and reasonable attorney's fees, including fees incurred
28 through any appeal, to the prevailing party, if the court
29 finds that the nonprevailing party withheld any portion of the
30 payment that is the subject of the action without any
31

1 reasonable basis in law or fact to dispute the prevailing
2 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 (a) 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 (b) 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 until 50-percent
22 completion of such services.

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

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

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

19 (4) After 50-percent completion of the construction
20 services purchased pursuant to the contract, the contractor
21 may present to the public entity a payment request for up to
22 one-half of the retainage held by the public entity. The
23 public entity shall promptly make payment to the contractor,
24 unless the public entity has grounds, pursuant to subsection
25 (6), for withholding the payment of retainage. If the public
26 entity makes payment of retainage to the contractor under this
27 subsection which is attributable to the labor, services, or
28 materials supplied by one or more subcontractors or suppliers,
29 the contractor shall timely remit payment of such retainage to
30 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 a claim
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) or s. 218.735(6) for payment of that retainage to
11 the claimant has 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;

15 (c) One hundred and sixty days have passed since
16 reaching substantial completion of the construction services
17 purchased, as defined in the contract, or if not defined in
18 the contract, since reaching beneficial occupancy or use of
19 the project; or

20 (d) The claimant has asked the contractor, in writing,
21 for any of the following information and the contractor has
22 failed to respond to the claimant's request, in writing,
23 within 10 days after receipt of the request:

24 1. Whether the project has reached substantial
25 completion, as that term is defined in the contract, or if not
26 defined in the contract, if beneficial occupancy or use of the
27 project has occurred.

28 2. Whether the contractor has received payment of the
29 claimant's retainage, and if so, the date the retainage was
30 received by the contractor.

31

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

4
5 If none of the conditions described in paragraphs (a) through
6 (d) is satisfied and an action for recovery of retainage
7 therefore cannot be instituted within the 1-year limitation
8 period set forth in this subsection, this limitation period
9 shall be extended until 120 days after one of these conditions
10 is satisfied.

11 Section 14. Paragraph (b) of subsection (2) of section
12 95.11, Florida Statutes, is amended to read:

13 95.11 Limitations other than for the recovery of real
14 property.--Actions other than for recovery of real property
15 shall be commenced as follows:

16 (2) WITHIN FIVE YEARS.--

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

22 Section 15. Neither the amendments to sections 95.11,
23 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and
24 subsection (2) of section 255.05, Florida Statutes, as
25 provided in this act, nor subsection (10) of section 255.05,
26 Florida Statutes, and section 255.078, Florida Statutes, as
27 created by this act, applies to any existing construction
28 contract pending approval by a local governmental entity or
29 public entity, or to any project advertised for bid by the
30 local government entity or public entity, on or before October
31 1, 2005.

1 Section 16. This act shall take effect October 1,
2 2005.

3
4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 Senate Bill 632

7 The CS eliminates the stated rationale for retaining 10 percent
8 of funds until 50 percent completion of the construction
9 project.

10 The CS clarifies that a local government or other public
11 entity does not need to release any retainage that is part of
12 a "claim" rather than an "action" against the contractor.

13 The CS prohibits a claimant(a subcontractor or supplier) from
14 initiating an action for the sole purpose of recovery of
15 retainage against the contractor or against the surety
16 providing payment or performance bond until after the timely
17 payment for purposes of construction services has expired.
18 Similarly, the CS provides that such claims cannot be pursued
19 until 160 days following substantial completion of the
20 construction services, or the claimant has unsuccessfully
21 requested certain information in writing from the contractor.

22 The CS implements several technical corrections to comply with
23 statutory construction requirements.
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