

By the Committees on Regulated Industries; Community Affairs;  
and Senators Bennett and King

580-2132-05

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.  
9 287.0585, F.S.; providing an exemption for  
10 contractors making late payment to  
11 subcontractors when the contract is subject to  
12 the "Prompt Payment Act"; amending s. 95.11,  
13 F.S., to conform a cross-reference; providing  
14 that specified sections of the act do not apply  
15 to certain pending contracts and projects;  
16 providing an effective date.

17

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

19

20 Section 1. Section 218.70, Florida Statutes, is  
21 amended to read:

22 218.70 Short title.--This part may be cited as the  
23 "Local Government Florida Prompt Payment Act."

24 Section 2. Subsections (2), (6), and (7) of section  
25 218.72, Florida Statutes, are amended, and subsection (10) is  
26 added to that section, to read:

27 218.72 Definitions.--As used in this part:

28 (2) "Local governmental entity" means a county or  
29 municipal government, school board, school district,  
30 authority, special taxing district, other political  
31 subdivision, or any office, board, bureau, commission,

1 department, branch, division, or institution thereof ~~or any~~  
2 ~~project supported by county or municipal funds.~~

3 (6) "Vendor" means any person who sells goods or  
4 services, sells or leases personal property, or leases real  
5 property directly to a local governmental entity. The term  
6 includes any person who provides waste-hauling services to  
7 residents or businesses located within the boundaries of a  
8 local government pursuant to a contract or local ordinance.

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

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

17 Section 3. Subsection (6) of section 218.735, Florida  
18 Statutes, is amended, present subsection (7) of that section  
19 is redesignated as subsection (9), and new subsections (7) and  
20 (8) are added to that section, to read:

21 218.735 Timely payment for purchases of construction  
22 services.--

23 (6) When a contractor receives payment from a local  
24 governmental entity for labor, services, or materials  
25 furnished by subcontractors and suppliers hired by the  
26 contractor, the contractor shall remit payment due to those  
27 subcontractors and suppliers within 10 ~~15~~ days after the  
28 contractor's receipt of payment. When a subcontractor receives  
29 payment from a contractor for labor, services, or materials  
30 furnished by subcontractors and suppliers hired by the  
31 subcontractor, the subcontractor shall remit payment due to

1 | those subcontractors and suppliers within ~~7~~ 15 days after the  
2 | subcontractor's receipt of payment. Nothing herein shall  
3 | prohibit a contractor or subcontractor from disputing,  
4 | pursuant to the terms of the relevant contract, all or any  
5 | portion of a payment alleged to be due to another party. ~~In~~  
6 | ~~the event of such a dispute, the contractor or subcontractor~~  
7 | ~~may withhold the disputed portion of any such payment~~ if the  
8 | contractor or subcontractor notifies the party whose payment  
9 | is disputed, in writing, of the amount in dispute and the  
10 | actions required to cure the dispute. The contractor or  
11 | subcontractor must pay all undisputed amounts due within the  
12 | time limits imposed by this section.

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

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

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

1 defined in the contract, upon reaching beneficial occupancy or  
2 use.

3 (b) If the contract between the local governmental  
4 entity and the contractor relates to the purchase of  
5 construction services on more than one building or structure,  
6 or involves a multiphased project, the contract must provide  
7 for the development of a list of items required to render  
8 complete, satisfactory, and acceptable all the construction  
9 services purchased pursuant to the contract for each building,  
10 structure, or phase of the project within the time limitations  
11 provided in paragraph (a).

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

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

25 (e) All items that require correction under the  
26 contract and that are identified after the preparation and  
27 delivery of the list remain the obligation of the contractor  
28 as defined by the contract.

29 (f) Warranty items may not affect the final payment of  
30 retainage as provided in this section or as provided in the  
31

1 contract between the contractor and its subcontractors and  
2 suppliers.

3 (g) Retainage may not be held by a local governmental  
4 entity or a contractor to secure payment of insurance premiums  
5 under a consolidated insurance program or series of insurance  
6 policies issued to a local governmental entity or a contractor  
7 for a project or group of projects, and the final payment of  
8 retainage as provided in this section may not be delayed  
9 pending a final audit by the local governmental entity's or  
10 contractor's insurance provider.

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

24 (8)(a) With regard to any contract for construction  
25 services, a local governmental entity may withhold from each  
26 progress payment made to the contractor an amount not  
27 exceeding 10 percent of the payment as retainage until  
28 50-percent completion of such services.

29 (b) After 50-percent completion of the construction  
30 services purchased pursuant to the contract, the local  
31 governmental entity must reduce to 5 percent the amount of

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

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

1           (d) After 50-percent completion of the construction  
2 services purchased pursuant to the contract, the contractor  
3 may present to the local governmental entity a payment request  
4 for up to one-half of the retainage held by the local  
5 governmental entity. The local governmental entity shall  
6 promptly make payment to the contractor, unless the local  
7 governmental entity has grounds, pursuant to paragraph (f),  
8 for withholding the payment of retainage. If the local  
9 governmental entity makes payment of retainage to the  
10 contractor under this paragraph which is attributable to the  
11 labor, services, or materials supplied by one or more  
12 subcontractors or suppliers, the contractor shall timely remit  
13 payment of such retainage to those subcontractors and  
14 suppliers.

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

29           (f) This section does not require the local  
30 governmental entity to pay or release any amounts that are the  
31 subject of a good-faith dispute, the subject of a claim



1 brought pursuant to s. 255.05, or otherwise the subject of a  
2 claim or demand by the local governmental entity or  
3 contractor.

4 (g) The time limitations set forth in this section for  
5 payment of payment requests apply to any payment request for  
6 retainage made pursuant to this section.

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

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

17 Section 4. Section 255.0705, Florida Statutes, is  
18 created to read:

19 255.0705 Short title.--Sections 255.0705-255.078 may  
20 be cited as the "Florida Prompt Payment Act."

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

23 255.071 Payment of subcontractors, sub-subcontractors,  
24 materialmen, and suppliers on construction contracts for  
25 public projects.--

26 (2) The failure to pay any undisputed obligations for  
27 such labor, services, or materials within 30 days after the  
28 date the labor, services, or materials were furnished and  
29 payment for such labor, services, or materials became due, or  
30 within the time limitations set forth in s. 255.073(3) 30 days  
31 after the date payment for such labor, services, or materials

1 ~~is received~~, whichever last occurs, shall entitle any person  
2 providing such labor, services, or materials to the procedures  
3 specified in subsection (3) and the remedies provided in  
4 subsection (4).

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

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

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

15 (c) The amount of the contract price.

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

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

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

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

29 Section 6. Section 255.072, Florida Statutes, is  
30 created to read:

31

1           255.072 Definitions.--As used in ss. 255.073-255.078,  
2 the term:

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

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

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

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

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

23           (6) "Purchase" means the purchase of construction  
24 services.

25           Section 7. Section 255.073, Florida Statutes, is  
26 created to read:

27           255.073 Timely payment for purchases of construction  
28 services.--

29           (1) Except as otherwise provided in ss.  
30 255.072-255.078, s. 215.422 governs the timely payment for  
31 construction services by a public entity.

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

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

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

1           Section 8. Section 255.074, Florida Statutes, is  
2 created to read:

3           255.074 Procedures for calculation of payment-due  
4 dates.--

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

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

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

18           Section 9. Section 255.075, Florida Statutes, is  
19 created to read:

20           255.075 Mandatory interest.--A contract between a  
21 public entity and a contractor may not prohibit the collection  
22 of late payment interest charges authorized under s.  
23 255.073(4).

24           Section 10. Section 255.076, Florida Statutes, is  
25 created to read:

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

1 payment that is the subject of the action without any  
2 reasonable basis in law or fact to dispute the prevailing  
3 party's claim to those amounts.

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

6 255.077 Project closeout and payment of retainage.--

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

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

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

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

1 list of items required to render complete, satisfactory, and  
2 acceptable all the construction services purchased pursuant to  
3 the contract for each building, structure, or phase of the  
4 project within the time limitations provided in subsection  
5 (1).

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

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

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

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

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

1 provided in this section may not be delayed pending a final  
2 audit by the public entity's or contractor's insurance  
3 provider.

4 (8) If a public entity fails to comply with its  
5 responsibilities to develop the list required under subsection  
6 (1) or subsection (2), as defined in the contract, within the  
7 time limitations provided in subsection (1), the contractor  
8 may submit a payment request for all remaining retainage  
9 withheld by the public entity pursuant to s. 255.078. The  
10 public entity need not pay or process any payment request for  
11 retainage if the contractor has, in whole or in part, failed  
12 to cooperate with the public entity in the development of the  
13 list or failed to perform its contractual responsibilities, if  
14 any, with regard to the development of the list or if s.  
15 255.078(6) applies.

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

18 255.078 Public construction retainage.--

19 (1) With regard to any contract for construction  
20 services, a public entity may withhold from each progress  
21 payment made to the contractor an amount not exceeding 10  
22 percent of the payment as retainage until 50-percent  
23 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 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. Subsection (2) of section 287.0585,  
12 Florida Statutes, is amended to read:

13           287.0585 Late payments by contractors to  
14 subcontractors and suppliers; penalty.--

15           (2) This section does ~~shall~~ not apply when the  
16 contract between the contractor and subcontractors or  
17 subvendors provides otherwise or when payments under the  
18 contract are otherwise governed by ss. 255.0705-255.078.

19           Section 15. Paragraph (b) of subsection (2) of section  
20 95.11, Florida Statutes, is amended to read:

21           95.11 Limitations other than for the recovery of real  
22 property.--Actions other than for recovery of real property  
23 shall be commenced as follows:

24           (2) WITHIN FIVE YEARS.--

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

30           Section 16. Neither the amendments to sections 95.11,  
31 218.70, 218.72, 218.735, and 255.071, Florida Statutes, and

1 subsection (2) of section 255.05, Florida Statutes, as  
2 provided in this act, nor subsection (10) of section 255.05,  
3 Florida Statutes, and section 255.078, Florida Statutes, as  
4 created by this act, applies to any existing construction  
5 contract pending approval by a local governmental entity or  
6 public entity, or to any project advertised for bid by the  
7 local government entity or public entity, on or before October  
8 1, 2005.

9           Section 17. This act shall take effect October 1,  
10 2005.

11  
12                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
13                   COMMITTEE SUBSTITUTE FOR  
14                   CS for Senate Bill 632

15 The CS for CS amends s. 287.0585, F.S., (which governs late  
16 payments by contractors to subcontractors and penalties in  
17 contracts between a contractor and a state agency), to provide  
18 that the section is not applicable when payments under a  
19 contract are governed by the newly created "Florida Prompt  
20 Payment Act" in ss. 255.0705-255.078, F.S.  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31