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Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) J. Miller, Ogles, and Pruitt offered the following:

Amendment (with title amendment)

On page 3, line 7, through page 7, line 15, remove from the bill: all of said lines

and insert in lieu thereof:

Section 1. Subsections (2), (5), and (7) of section 218.72, Florida Statutes, are amended, and subsections (8) and (9) are added to said section, to read:

218.72 Definitions.--As used in this part:

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

(5) "Purchase" means the purchase of goods, or services, or construction services, the purchase or lease of personal property, or the lease of real property by a local

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1 governmental entity.

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

7 (8) "Payment request" means a request for payment for
8 construction services which conforms with all statutory
9 requirements and with all requirements specified by the local
10 governmental entity to which the payment request is submitted
11 if:

12 (a) Such requirements have been adopted by formal
13 action of the local governmental entity taken prior to the
14 transaction to which the payment request applies.

15 (b) The local governmental entity made such
16 requirements available to vendors.

17 (9) "Agent" means project architect, project engineer,
18 or any other agency or person acting on behalf of the local
19 governmental entity.

20 Section 2. Section 218.73, Florida Statutes, is
21 amended to read:

22 218.73 Timely payment for nonconstruction
23 services.--The time at which payment is due for a purchase
24 other than construction services by a local governmental
25 entity, ~~except for the purchase of construction services, is~~
26 ~~due~~ must be calculated from:

27 (1) The date on which a proper invoice is received by
28 the chief disbursement officer of the local governmental
29 entity after approval by the governing body, if required; or

30 (2) If a proper invoice is not received by the local
31 governmental entity, the date:

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- 1 (a) On which delivery of personal property is accepted
- 2 by the local governmental entity;
- 3 (b) On which services are completed;
- 4 (c) On which the rental period begins; or
- 5 (d) On which the local governmental entity and vendor
- 6 agree in a contract that provides dates relative to payment
- 7 periods;
- 8
- 9 whichever date is latest.

10 Section 3. Section 218.735, Florida Statutes, is
11 amended to read:

12 218.735 Timely payment for purchases of construction
13 services.--

14 (1) The due date for payment for the purchase of
15 construction services by a local governmental entity is
16 determined as follows:

17 (a) If an agent ~~the project architect or project~~
18 ~~engineer~~ must approve the payment request or invoice prior to
19 the payment request or invoice being submitted to the local
20 governmental entity, payment is due 25 ~~20~~ business days after
21 the date on which the payment request or ~~architect or engineer~~
22 ~~approves the invoice and the~~ invoice is stamped as received as
23 provided in s. 218.74(1).

24 (b) If an agent ~~the project architect or project~~
25 ~~engineer~~ need not approve the payment request or invoice which
26 is submitted by the contractor, payment is due 20 business
27 days after the date on which the payment request or invoice is
28 stamped as received as provided in s. 218.74(1).

29 (2) The local governmental entity may reject the
30 payment request or invoice within 20 business days after the
31 date on which the payment request or invoice is stamped as

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1 received as provided in s. 218.74(1). The rejection must be
2 written and must specify the deficiency in the payment request
3 or invoice and the action necessary to make the payment
4 request or invoice proper.

5 (3) If a payment request or an invoice is rejected
6 under subsection (2) ~~or this subsection~~ and the contractor
7 submits a corrected payment request or invoice which corrects
8 the deficiency specified in writing by the local governmental
9 entity, the corrected payment request or invoice must be paid
10 or rejected on the later of:

11 (a) Ten business days after the date the corrected
12 payment request or invoice is stamped as received as provided
13 in s. 218.74(1); or

14 (b) If the governing body is required by ordinance,
15 charter, or other law to approve or reject the corrected
16 payment request or invoice, the first business day after the
17 next regularly scheduled meeting of the governing body held
18 after the corrected payment request or invoice is stamped as
19 received as provided in s. 218.74(1).

20 (4) If a dispute between the local governmental entity
21 and the contractor cannot be resolved by the procedure in
22 subsection (3), the dispute must be resolved in accordance
23 with the dispute resolution procedure prescribed in the
24 construction contract or in any applicable ordinance. In the
25 absence of a prescribed procedure, the dispute must be
26 resolved by the procedure specified in s. 218.76(2).

27 (5) If a local governmental entity disputes a portion
28 of a payment request or an invoice, the undisputed portion
29 shall be paid timely, in accordance with subsection (1).~~The~~
30 ~~payment time periods provided in this section for construction~~
31 ~~services purchased by a local governmental entity shall not~~

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1 ~~affect contractual provisions or contractual covenants of a~~
2 ~~local governmental entity in effect on September 30, 1995.~~
3 (6) When a contractor receives payment from a local
4 governmental entity for labor, services, or materials
5 furnished by subcontractors and suppliers hired by the
6 contractor, the contractor shall remit payment due to those
7 subcontractors and suppliers within 15 days after the
8 contractor's receipt of payment. When a subcontractor
9 receives payment from a contractor for labor, services, or
10 materials furnished by subcontractors and suppliers hired by
11 the subcontractor, the subcontractor shall remit payment due
12 to those subcontractors and suppliers within 15 days after the
13 subcontractor's receipt of payment. Nothing herein shall
14 prohibit a contractor or subcontractor from disputing,
15 pursuant to the terms of the relevant contract, all or any
16 portion of a payment alleged to be due to another party. In
17 the event of such a dispute, the contractor or subcontractor
18 may withhold the disputed portion of any such payment but the
19 undisputed portion must be remitted within the time limits
20 imposed by this subsection.

21 (7)(6) All payments due under this section from a
22 local governmental entity and not made within the time periods
23 period specified by this section shall bear interest at the
24 rate of 1 percent per month, or the rate specified by
25 contract, whichever is greater as specified in s. 218.74(4).

26 Section 4. Section 218.74, Florida Statutes, is
27 amended to read:

28 218.74 Procedures for calculation of payment due
29 dates.--

30 (1) Each local governmental entity shall establish
31 procedures whereby each payment request or invoice received by

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1 the local governmental entity is marked as received on the
2 date on which it is delivered to an agent or employee of the
3 local governmental entity or of a facility or office of the
4 local governmental entity.

5 (2) The payment due date for a local governmental
6 entity for the purchase of goods or services other than
7 construction services is 45 days after the date specified in
8 s. 218.73. The payment due date for the purchase of
9 construction services is specified in s. 218.735.

10 (3) If the terms under which a purchase is made allow
11 for partial deliveries and a payment request or proper invoice
12 is submitted for a partial delivery, the time for payment for
13 the partial delivery must be calculated from the time of the
14 partial delivery and the submission of the payment request or
15 invoice in the same manner as provided in s. 218.73 or s.
16 218.735.

17 (4) All payments, other than payments for construction
18 services, due from a local governmental entity and not made
19 within the time specified by this section bear interest from
20 30 days after the due date at the rate of 1 percent per month
21 on the unpaid balance. The vendor must invoice the local
22 governmental entity for any interest accrued in order to
23 receive the interest payment. Any overdue period of less than
24 1 month is considered as 1 month in computing interest.
25 Unpaid interest is compounded monthly. ~~With respect to each~~
26 ~~past due payment, interest ceases to accrue after interest on~~
27 ~~that payment has accrued for 12 months.~~ For the purposes of
28 this section, the term "1 month" means a period beginning on
29 any day of one month and ending on the same day of the
30 following month.

31 Section 5. Section 218.75, Florida Statutes, is

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1 amended to read:

2 218.75 Mandatory interest.--No contract between a
3 local governmental entity and a vendor or a provider of
4 construction services shall prohibit the collection of vendor
5 from invoicing the local governmental entity for late payment
6 interest charges allowable under this part.

7 Section 6. Section 218.76, Florida Statutes, is
8 amended to read:

9 218.76 Improper payment request or invoice; resolution
10 of disputes.--

11 (1) In any case in which an improper payment request
12 or invoice is submitted by a vendor, the local governmental
13 entity shall, within 10 days after the improper payment
14 request or invoice is received by it, notify the vendor that
15 the payment request or invoice is improper and indicate what
16 corrective action on the part of the vendor is needed to make
17 the payment request or invoice proper.

18 (2) In the event a dispute occurs between a vendor and
19 a local governmental entity concerning payment of a payment
20 request or an invoice, such disagreement shall be finally
21 determined by the local governmental entity as provided in
22 this section. Each local governmental entity shall establish
23 a dispute resolution procedure to be followed by the local
24 governmental entity in cases of such disputes. Such procedure
25 shall provide that proceedings to resolve the dispute shall be
26 commenced not later than 45 days after the date on which the
27 payment request or proper invoice was received by the local
28 governmental entity and shall be concluded by final decision
29 of the local governmental entity not later than 60 days after
30 the date on which the payment request or proper invoice was
31 received by the local governmental entity. Such procedures

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1 shall not be subject to chapter 120, and such procedures shall
 2 not constitute an administrative proceeding which prohibits a
 3 court from deciding de novo any action arising out of the
 4 dispute. If the dispute is resolved in favor of the local
 5 governmental entity, then interest charges shall begin to
 6 accrue 10 ~~15~~ days after the local governmental entity's final
 7 decision. If the dispute is resolved in favor of the vendor,
 8 then interest shall begin to accrue as of the original date
 9 the payment became due.

10 (3) In an action to recover amounts due under s.
 11 218.70-218.80, the prevailing party shall be entitled to
 12 recover court costs and attorney's fees at trial and on
 13 appeal.

14 Section 7. Paragraph (a) of subsection (1) and
 15 paragraph (a) of subsection (2) of section 255.05, Florida
 16 Statutes, are amended to read:

17 255.05 Bond of contractor constructing public
 18 buildings; form; action by materialmen.--

19 (1)(a) Any person entering into a formal contract with
 20 the state or any county, city, or political subdivision
 21 thereof, or other public authority, for the construction of a
 22 public building, for the prosecution and completion of a
 23 public work, or for repairs upon a public building or public
 24 work shall be required, before commencing the work or before
 25 recommencing the work after a default or abandonment, to
 26 execute, deliver to the public owner, and record in the public
 27 records of the county where the improvement is located, a
 28 payment and performance bond with a surety insurer authorized
 29 to do business in this state as surety. The bond must state on
 30 its front page: the name, principal business address, and
 31 phone number of the contractor, the surety, the owner of the

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1 property being improved, and, if different from the owner, the
2 contracting public entity; the contract number assigned by the
3 contracting public entity; and a description of the project
4 sufficient to identify it, such as ~~including, if applicable,~~ a
5 legal description or ~~and~~ the street address of the property
6 being improved, and a general description of the improvement.
7 Such bond shall be conditioned solely upon the contractor's
8 performance of the construction work ~~that the contractor~~
9 ~~perform the contract~~ in the time and manner prescribed in the
10 contract and the contractor's prompt payment ~~promptly make~~
11 ~~payments~~ to all persons defined in s. 713.01 who furnished
12 labor, services, or materials for ~~whose claims derive directly~~
13 ~~or indirectly from~~ the prosecution of the work provided for in
14 the contract. Any claimant may apply to the governmental
15 entity having charge of the work for copies of the contract
16 and bond and shall thereupon be furnished with a certified
17 copy of the contract and bond. The claimant shall have a right
18 of action against the contractor and surety for the amount due
19 him or her, including unpaid finance charges due under the
20 claimant's contract. Such action shall not involve the public
21 authority in any expense. When such work is done for the
22 state and the contract is for \$100,000 or less, no payment and
23 performance bond shall be required. At the discretion of the
24 official or board awarding such contract when such work is
25 done for any county, city, political subdivision, or public
26 authority, any person entering into such a contract which is
27 for \$200,000 or less may be exempted from executing the
28 payment and performance bond. When such work is done for the
29 state, the Secretary of the Department of Management Services
30 may delegate to state agencies the authority to exempt any
31 person entering into such a contract amounting to more than

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1 \$100,000 but less than \$200,000 from executing the payment and
 2 performance bond. In the event such exemption is granted, the
 3 officer or officials shall not be personally liable to persons
 4 suffering loss because of granting such exemption. The
 5 Department of Management Services shall maintain information
 6 on the number of requests by state agencies for delegation of
 7 authority to waive the bond requirements by agency and project
 8 number and whether any request for delegation was denied and
 9 the justification for the denial.

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

17
 18 NOTICE OF CONTEST OF CLAIM
 19 AGAINST PAYMENT BOND
 20

21
 22 To: ...(Name and address of claimant)...

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

28
 29 DATED on,

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1 Signed:...(Contractor or Attorney)...

2
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4 The claim of any claimant upon whom such notice is served and
5 who fails to institute a suit to enforce his or her claim
6 against the payment bond within 60 days after service of such
7 notice shall be extinguished automatically. The clerk shall
8 mail a copy of the notice of contest to the claimant at the
9 address shown in the notice of nonpayment or most recent
10 amendment thereto and shall certify to such service on the
11 face of such notice and record the notice. Service is complete
12 upon mailing.

13 2. A claimant, except a laborer, who is not in privity
14 with the contractor shall, before commencing or not later than
15 45 days after commencing to furnish labor, materials, or
16 supplies for the prosecution of the work, furnish the
17 contractor with a notice that he or she intends to look to the
18 bond for protection. A claimant who is not in privity with the
19 contractor and who has not received payment for his or her
20 labor, materials, or supplies shall deliver to the contractor
21 and to the surety written notice of the performance of the
22 labor or delivery of the materials or supplies and of the
23 nonpayment. The notice of nonpayment may be served at any time
24 during the progress of the work or thereafter but ~~not before~~
25 ~~45 days after the first furnishing of labor, services, or~~
26 ~~materials, and~~ not later than 90 days after the final
27 furnishing of the labor, services, or materials by the
28 claimant or, with respect to rental equipment, not later than
29 90 days after the date that the rental equipment was last on
30 the job site available for use. No action for the labor,
31 materials, or supplies may be instituted against the

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1 contractor or the surety unless both notices have been given.
2 Notices required or permitted under this section may be served
3 in accordance with s. 713.18. An action, except for an action
4 exclusively for recovery of retainage, must be instituted
5 against the contractor or the surety on the payment bond or
6 the payment provisions of a combined payment and performance
7 bond within 1 year after the performance of the labor or
8 completion of delivery of the materials or supplies. An action
9 exclusively for recovery of retainage must be instituted
10 against the contractor or the surety within 1 year after the
11 performance of the labor or completion of delivery of the
12 materials or supplies, or within 90 days after ~~the~~
13 ~~contractor's~~ receipt of final payment (or the payment estimate
14 containing the owner's final reconciliation of quantities if
15 no further payment is earned and due as a result of deductive
16 adjustments) by the contractor or surety, whichever comes
17 last. A claimant may not waive in advance his or her right to
18 bring an action under the bond against the surety. In any
19 action brought to enforce a claim against a payment bond under
20 this section, the prevailing party is entitled to recover a
21 reasonable fee for the services of his or her attorney for
22 trial and appeal or for arbitration, in an amount to be
23 determined by the court, which fee must be taxed as part of
24 the prevailing party's costs, as allowed in equitable actions.
25 The time periods for service of a notice of nonpayment or for
26 bringing an action against a contractor or a surety shall be
27 measured from the last day of furnishing labor, services, or
28 materials by the claimant and shall not be measured by other
29 standards, such as the issuance of a certificate of occupancy
30 or the issuance of a certificate of substantial completion.

31 Section 8. Subsections (14) through (26) of section

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1 633.021, Florida Statutes, are renumbered as subsections (15)
2 through (27), and a new subsection (14) is added to said
3 section, to read:

4 633.021 Definitions.--As used in this chapter:
5 (14) "Layout" as used in this chapter means the layout
6 of risers, cross mains, branch lines, sprinkler heads, sizing
7 of pipe, hanger locations, and hydraulic calculations in
8 accordance with the design concepts established through the
9 provisions of s. 553.79(6)(c).

10 Section 9. Subsections (1) and (3) of section 471.025,
11 Florida Statutes, are amended to read:

12 471.025 Seals.--

13 (1) The board shall prescribe, by rule, a form of seal
14 to be used by registrants holding valid certificates of
15 registration. Each registrant shall obtain an impression-type
16 metal seal in the form aforesaid and may, in addition,
17 register his or her seal electronically in accordance with ss.
18 282.70-282.75. All final drawings, specifications, plans,
19 reports, or documents prepared or issued by the registrant and
20 being filed for public record and all final bid documents
21 provided to the owner or the owner's representative shall be
22 signed by the registrant, dated, and stamped with said seal.
23 Such signature, date, and seal shall be evidence of the
24 authenticity of that to which they are affixed. Drawings,
25 specifications, plans, reports, final bid documents, or
26 documents prepared or issued by a registrant may be
27 transmitted electronically and may be signed by the
28 registrant, dated, and stamped electronically with said seal
29 in accordance with ss. 282.70-282.75.

30 (3) No registrant shall affix or permit to be affixed
31 his or her seal, name, or digital signature to any plan,

1 specification, drawing, final bid document, or other document
2 that ~~which~~ depicts work which he or she is not licensed to
3 perform or which is beyond his or her profession or specialty
4 therein.

5 Section 10. Section 468.619, Florida Statutes, is
6 created to read:

7 468.619 Building code enforcement officials' bill of
8 rights.--

9 (1) It is the finding of the Legislature that building
10 code enforcement officials are employed by local jurisdictions
11 to exercise police powers of the state in the course of their
12 duties and are in that way similar to law enforcement
13 personnel, correctional officers, and firefighters. It is the
14 further finding of the Legislature that building code
15 enforcement officials are thereby sufficiently distinguishable
16 from other professionals regulated by the department so that
17 their circumstances merit additional specific protections in
18 the course of disciplinary investigations and proceedings
19 against their licenses.

20 (2) All enforcement officials licensed under this part
21 shall have the rights and privileges specified in this
22 section. Such rights are not exclusive to other rights, and an
23 enforcement official does not forfeit any rights otherwise
24 held under federal, state, or local law. In any instance of a
25 conflict between a provision of this section and a provision
26 of chapter 455, the provision of this section shall supersede
27 the provision of chapter 455.

28 (3) Whenever an enforcement official is subjected to
29 an investigative interview for possible disciplinary action by
30 the department, such interview shall be conducted pursuant to
31 the requirements of this subsection.

1 (a) The interview shall take place at a reasonable
2 hour. If the interview is taken in person, it shall take place
3 not more than 30 miles from where the licensee works, or at
4 any other mutually agreeable location or time.

5 (b) An enforcement official may not be subjected to an
6 interview without first receiving written notice of sufficient
7 details of the complaint in order to be reasonably apprised of
8 the nature of the investigation and of the substance of the
9 allegations made. The enforcement official shall be informed
10 prior to the interview whether the complaint originated from
11 the department or from a consumer.

12 (c) At his or her request, an enforcement official
13 under investigation shall have the right to be represented by
14 counsel or by any other representative of his or her choice,
15 who shall be present at such time as the enforcement official
16 wishes during the interview.

17 (d) During the interview, the enforcement official may
18 not be subjected to offensive language. No promise may be made
19 or reward offered to the enforcement official as an inducement
20 to answer any question.

21 (e) If requested by the enforcement official, the
22 interview of an enforcement official, including notation of
23 all recess periods, must be recorded on audio tape, or
24 otherwise preserved in such a manner as to allow a transcript
25 to be prepared, and there shall be no unrecorded questions or
26 statements. Upon the request of the enforcement official, a
27 copy of any such recording of the interview must be made
28 available to the enforcement official no later than 72 hours
29 following the interview, excluding holidays and weekends. The
30 expense of the recording and transcript shall be borne by the
31 enforcement official.

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1 (f) If the testimony is transcribed, the transcript
2 must be furnished to the enforcement official for examination,
3 and shall be read to or by the enforcement official, unless
4 waived by all parties involved. Any changes in form or
5 substance that the enforcement official wants to make shall be
6 listed in writing, with a statement of the reasons for making
7 the changes. The changes shall be attached to the transcript.
8 Any transcript of an interview with an enforcement official
9 which is to be used in any proceeding against the enforcement
10 official shall be sworn or affirmed to and acknowledged by the
11 enforcement official.

12 (4) The investigation of a complaint against an
13 enforcement official is subject to the time restrictions set
14 forth in this subsection, and failure to comply with any time
15 restriction set forth in this subsection shall result in
16 dismissal of the complaint against the enforcement official.
17 An investigation of a complaint against an enforcement
18 official that was dismissed for failure to comply with a time
19 restriction set forth in this subsection may not be reopened.
20 However, in any instance of an additional complaint being
21 initiated, information or investigation related to the
22 dismissed complaint may be used.

23 (a) The department must inform the enforcement
24 official of any legally sufficient complaint received,
25 including the substance of the allegation, within 10 days
26 after receipt of the complaint by the department.

27 (b) The enforcement official shall be given thirty
28 (30) days to respond to any legally sufficient complaint.

29 (c) No longer than 180 days from the date of the
30 receipt of the complaint, the department shall submit the
31 investigation, whether complete or not, to the probable cause

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1 panel for review. In the event the investigation is not
2 complete, the probable cause panel shall review and instruct
3 the department to complete the investigation within a time
4 certain and, in no event, greater than ninety (90) days or
5 dismiss the complaint with prejudice.

6 (5) The enforcement official shall be considered an
7 agent of the governmental entity employing him or her and as
8 such shall be defended by that entity in any action brought by
9 the department or the board, provided the enforcement official
10 is working within the scope of his or her employment.

11 (6) An enforcement official shall not be subject to
12 disciplinary action in regard to his or her certification for
13 exercising his or her rights under this section.

14 (7) If any action taken against the enforcement
15 official by the department or the board is found to be without
16 merit by a court of competent jurisdiction, or if judgment in
17 such an action is awarded to the enforcement official, the
18 department or the board, or the assignee of the department or
19 board, shall reimburse the enforcement official or his or her
20 employer, as appropriate, for reasonable legal costs and
21 reasonable attorney's fees incurred. The amount awarded shall
22 not exceed the limit provided in s. 120.595.

23 (8) An enforcement official may bring civil suit
24 against any person, group of persons, or organization or
25 corporation, or the head of such organization or corporation,
26 for damages, either pecuniary or otherwise, suffered pursuant
27 to the performance of the enforcement official's duties or for
28 abridgement of the enforcement official's civil rights arising
29 out of the enforcement official's performance of official
30 duties.

31 (9) Notwithstanding any other provision in law, while

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1 under investigation the enforcement official shall not be
2 denied any and all the rights and privileges of a licensee in
3 good standing.

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 On page 1, line 2, after the semicolon

9

10 insert:

11 amending s. 218.72, F.S.; redefining the terms
12 "local government entity," "purchase," and
13 "construction services" and defining the terms
14 "payment request" and "agent" for the purpose
15 of the Florida Prompt Payment Act; amending s.
16 218.73, F.S.; providing for timely payment for
17 nonconstruction services; amending s. 218.735,
18 F.S.; revising language with respect to timely
19 payment for purchases of construction services;
20 amending s. 218.74, F.S.; revising language
21 with respect to procedures for calculation of
22 payment due dates; amending s. 218.75, F.S.;
23 revising language with respect to mandatory
24 interest; amending s. 218.76, F.S.; revising
25 language with respect to improper invoices and
26 resolution of disputes; providing for the
27 recovery of court costs and attorney's fees
28 under certain circumstances; amending s.
29 255.05, F.S.; revising language with respect to
30 the bond of a contractor constructing public
31 buildings; amending s. 471.025, F.S.; adding a

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circumstance under which engineering documents
must be sealed; amending s. 633.021, F.S.;
adding a definition of "layout";