

By Representative J. Miller

1 A bill to be entitled
2 An act relating to prompt payment and retainage
3 reform; amending s. 218.72, F.S.; redefining
4 the terms "purchase" and "construction
5 services" and defining the terms "payment
6 request" and "agent" for the purpose of the
7 Florida Prompt Payment Act; amending s. 218.73,
8 F.S.; providing for timely payment for
9 nonconstruction services; amending s. 218.735,
10 F.S.; revising language with respect to timely
11 payment for purchases of construction services;
12 providing for timely payment of undisputed
13 portions of a payment request or invoice;
14 providing for an interest rate on payments due
15 from a local government not made within a
16 certain time period; amending s. 218.74, F.S.;
17 revising language with respect to procedures
18 for calculation of payment due dates; amending
19 s. 218.75, F.S.; revising language with respect
20 to mandatory interest; amending s. 218.76,
21 F.S.; revising language with respect to
22 improper invoices and resolution of disputes;
23 providing for the recovery of court costs and
24 attorney's fees under certain circumstances;
25 creating s. 255.049, F.S.; providing for the
26 retention of funds on public construction
27 contracts under certain circumstances; amending
28 s. 715.12, F.S.; revising language with respect
29 to the Construction Contract Prompt Payment
30 Law; providing an effective date.
31

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

2

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

6 218.72 Definitions.--As used in this part:

7 (5) "Purchase" means the purchase of goods,or
8 services, or construction services,the purchase or lease of
9 personal property, or the lease of real property by a local
10 governmental entity.

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

16 (8) "Payment request" means a contractor's written
17 request for payment for labor, services, and materials
18 provided through a date certain.

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

22 Section 2. Section 218.73, Florida Statutes, is
23 amended to read:

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

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

1 (2) If a proper invoice is not received by the local
2 governmental entity, the date:
3 (a) On which delivery of personal property is accepted
4 by the local governmental entity;
5 (b) On which services are completed;
6 (c) On which the rental period begins; or
7 (d) On which the local governmental entity and vendor
8 agree in a contract that provides dates relative to payment
9 periods;

10
11 whichever date is latest.

12 Section 3. Section 218.735, Florida Statutes, is
13 amended to read:

14 218.735 Timely payment for purchases of construction
15 services.--

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

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

25 ~~(b) If the project architect or project engineer need~~
26 ~~not approve the invoice which is submitted by the contractor,~~
27 ~~payment is due 20 business days after the date on which the~~
28 ~~invoice is 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 10 ~~20 business~~ days after
31 the date on which the payment request or invoice is stamped as

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 within 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 ~~invoice, the first business day after the next regularly~~
17 ~~scheduled meeting of the governing body held after the~~
18 ~~corrected invoice is stamped as received as provided in s.~~
19 ~~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~~

1 ~~affect contractual provisions or contractual covenants of a~~
2 ~~local governmental entity in effect on September 30, 1995.~~
3 (6) All payments due from a local governmental entity
4 and not made within the time periods ~~period~~ specified by this
5 section shall bear interest at the rate of 1 percent per
6 month, or the rate specified by contract, whichever is greater
7 ~~as specified in s. 218.74(4).~~

8 Section 4. Section 218.74, Florida Statutes, is
9 amended to read:

10 218.74 Procedures for calculation of payment due
11 dates.--

12 (1) Each local governmental entity shall establish
13 procedures whereby each payment request or invoice received by
14 the local governmental entity is marked as received on the
15 date on which it is delivered to an agent or employee of the
16 local governmental entity or of a facility or office of the
17 local governmental entity.

18 (2) The payment due date for a local governmental
19 entity for the purchase of goods or services other than
20 construction services is 45 days after the date specified in
21 s. 218.73. The payment due date for the purchase of
22 construction services is specified in s. 218.735.

23 (3) If the terms under which a purchase is made allow
24 for partial deliveries and a payment request or proper invoice
25 is submitted for a partial delivery, the time for payment for
26 the partial delivery must be calculated from the time of the
27 partial delivery and the submission of the payment request or
28 invoice in the same manner as provided in s. 218.73 or s.
29 218.735.

30 (4) All payments, other than payments for construction
31 services, due from a local governmental entity and not made

1 within the time specified by this section bear interest from
2 30 days after the due date at the rate of 1 percent per month
3 on the unpaid balance. The vendor must invoice the local
4 governmental entity for any interest accrued in order to
5 receive the interest payment. Any overdue period of less than
6 1 month is considered as 1 month in computing interest.
7 Unpaid interest is compounded monthly. ~~With respect to each~~
8 ~~past due payment, interest ceases to accrue after interest on~~
9 ~~that payment has accrued for 12 months.~~For the purposes of
10 this section, the term "1 month" means a period beginning on
11 any day of one month and ending on the same day of the
12 following month.

13 Section 5. Section 218.75, Florida Statutes, is
14 amended to read:

15 218.75 Mandatory interest.--No contract between a
16 local governmental entity and a vendor or a provider of
17 construction services shall prohibit the collection of ~~vendor~~
18 ~~from invoicing the local governmental entity for late payment~~
19 interest charges allowable under this part.

20 Section 6. Section 218.76, Florida Statutes, is
21 amended to read:

22 218.76 Improper invoice; resolution of disputes.--

23 (1) In any case in which an improper invoice is
24 submitted by a vendor, the local governmental entity shall,
25 within 10 days after the improper invoice is received by it,
26 notify the vendor that the invoice is improper and indicate
27 what corrective action on the part of the vendor is needed to
28 make the invoice proper.

29 (2) In the event a dispute occurs between a vendor and
30 a local governmental entity concerning payment of a payment
31 request or an invoice, such disagreement shall be finally

1 determined by the local governmental entity as provided in
2 this section. Each local governmental entity shall establish
3 a dispute resolution procedure to be followed by the local
4 governmental entity in cases of such disputes. Such procedure
5 shall provide that proceedings to resolve the dispute shall be
6 commenced not later than 45 days after the date on which the
7 payment request or proper invoice was received by the local
8 governmental entity and shall be concluded by final decision
9 of the local governmental entity not later than 60 days after
10 the date on which the payment request or proper invoice was
11 received by the local governmental entity. Such procedures
12 shall not be subject to chapter 120, and such procedures shall
13 not constitute an administrative proceeding which prohibits a
14 court from deciding de novo any action arising out of the
15 dispute. If the dispute is resolved in favor of the local
16 governmental entity, then interest charges shall begin to
17 accrue 10 ~~15~~ days after the local governmental entity's final
18 decision. If the dispute is resolved in favor of the vendor,
19 then interest shall begin to accrue as of the original date
20 the payment became due.

21 (3) In an action to recover amounts due under this
22 section and ss. 218.70-218.75, the prevailing party shall be
23 entitled to recover court costs and attorney's fees at trial
24 and on appeal.

25 Section 7. Section 255.049, Florida Statutes, is
26 created to read:

27 255.049 Retention of funds on public construction
28 projects.--

29 (1) This section shall apply to all public
30 construction projects for which a payment and performance bond
31 is provided pursuant to s. 255.05. This section shall not

1 apply to contracts with the Department of Transportation for
2 road and bridge construction and maintenance, which are
3 governed by chapter 337.

4 (2) If a project is exempt from the bond requirements
5 of s. 255.05, the contractor may elect to provide a payment
6 and performance bond, in which event the provisions of this
7 section shall apply.

8 (3) For purposes of this section, "payment request"
9 means a contractor's written request for payment for labor,
10 services, and materials provided through a date certain.

11 (4) When a governmental entity makes progress payments
12 under a construction contract, such progress payments shall be
13 made monthly, or at such more frequent intervals as stipulated
14 in the contract, and shall be based on the total value of the
15 work that the contractor has performed to the date of the
16 payment request, less any amounts previously paid, and less
17 any amount to be retained, which shall not exceed 5 percent of
18 the amount to be paid pursuant to the payment request.

19 (5) Any amounts retained by the governmental entity
20 pursuant to subsection (4) shall be released as follows:

21 (a) Each individual subcontract shall be considered a
22 separate division of the contract for purposes of release of
23 retention, and the governmental entity shall release all
24 retained amounts for that subcontract within 90 days after the
25 date a notice of completion has been received and accepted. A
26 notice of completion shall be deemed to have been accepted if
27 that phase of the project must be complete in order to
28 commence a subsequent phase of the project and the subsequent
29 phase of the project has been commenced.

30 (b) Final payment of all amounts retained under the
31 contract shall be due from the governmental entity to the

1 contractor within 30 days after final acceptance of the
2 project by the governmental entity. The issuance of an
3 architect's or engineer's certificate of substantial
4 completion, the issuance of a certificate of occupancy, or the
5 actual use of the property by the governmental entity or its
6 lessee shall be deemed final acceptance of the project.

7 (c) For construction projects that are to be built in
8 phases, this subsection applies to each phase of the total
9 project. The contract between the governmental entity and the
10 contractor may specify a shorter time period for disbursing
11 all or any portion of the final payment and the retainage.

12 (6) A prime contractor shall retain no greater
13 percentage from a subcontractor than the governmental entity
14 retains from the prime contractor, and shall release all
15 retained amounts to the subcontractor within 10 days after
16 receiving the retained amounts from the governmental entity. A
17 subcontractor shall retain no greater percentage from a
18 sub-subcontractor than the contractor retains from the
19 subcontractor, and shall release all retained amounts to the
20 sub-subcontractor within 10 days after receiving the retained
21 amounts from the contractor.

22 (7) Any payment of retainage provided for in this
23 section which has not been made within 10 days after the due
24 date specified in this section shall bear interest at the
25 highest rate allowed by law, calculated from the date the
26 payment was due until the date the payment is made. This late
27 payment interest penalty cannot be waived, by contract or
28 otherwise, prior to the date of payment.

29 (8) The provisions of this section are not intended to
30 impair the rights of any governmental entity, contractor, or
31 subcontractor, in the event of a good faith dispute, to

1 withhold payment without incurring any obligation to pay a
2 late payment interest penalty. The retaining party shall
3 notify the party whose retainage is being withheld, in
4 writing, of the amount of payment withheld and the reason for
5 nonpayment. For purposes of this section, a "good faith
6 dispute" means a documented dispute concerning:
7 (a) Unsatisfactory job progress;
8 (b) Defective work not remedied;
9 (c) Third party claims filed or reasonable evidence
10 that claims will be filed;
11 (d) Failure to make timely payments for labor,
12 equipment, or materials;
13 (e) Damage to the governmental entity, the prime
14 contractor, or a subcontractor; or
15 (f) Reasonable evidence that the contract or
16 subcontract cannot be completed for the unpaid balance of the
17 contract or subcontract.
18 (9) Retainage shall not be held to secure the
19 performance of work which is covered under a warranty provided
20 by a contractor, a subcontractor, a sub-subcontractor, or a
21 manufacturer.
22 (10) In any action for payment of retained amounts due
23 under this section, the prevailing party shall be entitled to
24 recover court costs and attorney's fees at trial and on
25 appeal.
26 Section 8. Section 715.12, Florida Statutes, is
27 amended to read:
28 715.12 Construction Contract Prompt Payment Law.--
29 (1) This section may be cited as the "Construction
30 Contract Prompt Payment Law."
31

1 (2) This section applies only to written contracts to
2 improve real property entered into after December 31, 1992,
3 and for which a construction lien is authorized under part I
4 of chapter 713.

5 (3) The terms used in this section have the same
6 definitions as the terms defined in s. 713.01. As used in
7 this section, the term:

8 (a) "Obligor" means an owner, contractor,
9 subcontractor, or sub-subcontractor who has an obligation to
10 make payments under a contract that is subject to this
11 section.

12 (b) "Obligee" means a contractor, subcontractor,
13 sub-subcontractor, or materialman who is entitled to receive
14 payments under a contract that is subject to this section.

15 (c) "Chain of contracts" means the contracts between
16 the owner and the contractor, the contractor and any
17 subcontractor or materialman, the subcontractor and any
18 sub-subcontractor or materialman, and the sub-subcontractor
19 and any materialman.

20 (d) "Payment request" means an obligee's written
21 request for payment for labor, services, and materials
22 provided through a date certain.

23 (4) Payment is due from an obligor to ~~must pay~~ an
24 obligee with whom the obligor has a contract within 10 days
25 after the date ~~when~~ all of the following events have occurred:

26 (a) The obligee is entitled to a payment at the time
27 and under the terms specified in the contract between the
28 obligor and the obligee, and the obligee has furnished the
29 obligor with a written payment request ~~for payment~~; and

30 (b) The obligor, except an owner, has been paid for
31 the obligee's labor, services, or materials described in the

1 obligee's request for payment by the person immediately above
2 the obligor in the chain of contracts; and

3 (c) The obligee has furnished the obligor with all
4 affidavits or waivers required for the owner to make proper
5 payments under s. 713.06. This provision shall not be
6 interpreted to require an obligee to waive lien rights or bond
7 rights in advance of receiving payment.

8 (5)(a) Any payment due under the provisions of
9 subsection (4), excluding any amounts withheld pursuant to
10 subsection (7), shall bear interest at the rate of 1 percent
11 per month or the rate specified in the contract, whichever is
12 greater ~~specified in s. 55.03~~, computed beginning on the 10th
13 ~~14th~~ day after payment is due pursuant to subsection (4).

14 (b) If the payment request ~~for payment~~ is incomplete
15 or contains an error, the obligor has 10 ~~14~~ days within which
16 to return the payment request ~~for payment~~ to the obligee for
17 completion or correction. The obligor must specify in writing
18 the reasons for the return of the payment request and the
19 action necessary to correct the payment request ~~for payment~~.
20 If the obligor does not return the payment request ~~for~~
21 ~~payment~~, together with the specified reasons within 10 days
22 after the obligor's receipt of the payment refusal ~~the time~~
23 ~~provided in paragraph (a)~~, the obligor must pay interest as
24 provided in paragraph (a). If the obligor does return the
25 request for payment within the time provided in this paragraph
26 ~~(a)~~, the time period for computing interest begins to run on
27 the 10th ~~14th~~ day after the obligor receives a corrected
28 payment request which corrects the deficiency specified in
29 writing by the obligor, ~~request for payment is completed or~~
30 ~~corrected~~ and payment is otherwise due pursuant to subsection
31 (4).

1 (6)(a) The right to receive interest on a payment
2 under this section is not an exclusive remedy. This section
3 does not modify the remedies available to any person under the
4 terms of a contract or under any other statute. This section
5 does not modify the rights of any person to recover
6 prejudgment interest awarded to the prevailing party in any
7 civil action or arbitration case. ~~During the period that~~
8 ~~interest accrues under this section, the interest rate shall~~
9 ~~be the rate specified in s. 55.03 or the rate specified in the~~
10 ~~contract, whichever is greater. A person shall not be entitled~~
11 ~~to receive both the contract interest and the statutory~~
12 ~~interest specified in this section.~~

13 ~~(b) This section does not create a separate cause of~~
14 ~~action other than for the collection of interest due pursuant~~
15 ~~to subsection (5).~~

16 (b)(c) If an obligor pays an amount less than the full
17 amount due under the contract between the obligor and the
18 obligee, the obligor may designate the portion of the labor,
19 services, or materials to which the payment applies. In the
20 absence of such a designation by the obligor, the obligee may
21 apply the payment in any manner the obligee deems appropriate.
22 This paragraph does not modify the obligation to make or
23 demand a designation under the provisions of s. 713.14.

24 (c)(d) An obligee may not waive the right to receive
25 interest before a payment is due under a contract subject to
26 this section. An obligee may waive the interest due on any
27 late payment on or after the date the payment is due under
28 subsection (4).

29 ~~(d)(e) Unless the contract specifically provides to~~
30 ~~the contrary,~~A dispute between an obligor and obligee does
31 not permit the obligor to withhold any payment due under this

1 section, including payment of retainage,~~payment~~ from the
2 obligee or from any other obligee for labor, services, or
3 materials provided to the obligor and which are not subject to
4 or affected by the dispute.

5 (e) An obligor shall not withhold any payment due
6 under this section, including payment of retainage, for work
7 which is covered under a warranty of the obligee, any other
8 obligee, or a manufacturer.

9 (7)(a) An owner and a contractor may agree to a
10 provision that allows the owner to withhold a portion of each
11 progress payment, which shall not exceed 5 percent of the
12 amount to be paid pursuant to the payment request ~~until~~
13 ~~substantial completion of the entire project.~~

14 (b) Any amounts retained by the owner pursuant to
15 subsection (a) shall be released as follows:

16 1. Each individual subcontract shall be considered a
17 separate division of the contract for purposes of release of
18 retention, and the owner shall release all retained amounts
19 for that subcontract within 20 days after the date a notice of
20 completion has been received and accepted. A notice of
21 completion shall be deemed to have been accepted if that phase
22 of the project must be complete in order to commence a
23 subsequent phase of the project and the subsequent phase of
24 the project has been commenced.

25 2. The owner shall pay the contractor the balance of
26 the contract price, including the amounts withheld from the
27 progress payments, within 20 ~~14~~ days after final acceptance of
28 the project by the owner. The issuance of an architect's or
29 engineer's certificate of substantial completion, the issuance
30 of a certificate of occupancy, or the actual use of the
31

1 property by the owner or its lessee shall be deemed final
2 acceptance of the project.

3 (c) A prime contractor shall retain no greater
4 percentage from a subcontractor than the owner retains from
5 the prime contractor and shall release all retained amounts to
6 the subcontractor within 10 days after receiving the retained
7 amounts from the owner. A subcontractor shall retain no
8 greater percentage from a sub-subcontractor than the
9 contractor retains from the subcontractor and shall release
10 all retained amounts to the sub-subcontractor within 10 days
11 after receiving the retained amounts from the contractor.

12 (d) Any payment of retainage provided for in this
13 section which has not been made within 10 days after the due
14 date specified in this subsection shall bear interest at the
15 highest rate allowed by law, calculated from the date the
16 payment was due until the date the payment is made. This late
17 payment interest penalty cannot be waived, by contract or
18 otherwise, prior to the date of payment.~~any of the following~~
19 ~~events occur.~~

20 ~~1. Pursuant to the terms of the contract, an architect~~
21 ~~or engineer certifies that the project is substantially~~
22 ~~complete and, within the time provided in the contract between~~
23 ~~the owner and the contractor, the owner submits a written~~
24 ~~punchlist to the contractor and the contractor substantially~~
25 ~~completes all of the items on the punchlist.~~

26 ~~2. The issuance of a certificate of occupancy for the~~
27 ~~project, and within the time provided in the contract between~~
28 ~~the owner and the contractor, the owner submits a written~~
29 ~~punchlist to the contractor and the contractor substantially~~
30 ~~completes all of the items on the punchlist.~~

31

1 ~~3. The owner or a tenant of the owner takes possession~~
2 ~~of the construction project and, within the time provided in~~
3 ~~the contract between the owner and the contractor, the owner~~
4 ~~submits a written punchlist to the contractor and the~~
5 ~~contractor substantially completes all of the items on the~~
6 ~~punchlist.~~

7
8 ~~Any funds retained by the owner beyond the time period~~
9 ~~specified in this subsection shall accrue interest at the rate~~
10 ~~specified in subsection (5), computed from the date the~~
11 ~~payment is due to the date the payment is received by the~~
12 ~~contractor. If the contract between the owner and the~~
13 ~~contractor does not provide a time period for the owner to~~
14 ~~submit a written punchlist to the contractor, the time period~~
15 ~~shall be 15 days from the issuance of the certificate of~~
16 ~~substantial completion, the issuance of the certificate of~~
17 ~~occupancy, or the date the owner or the owner's tenant takes~~
18 ~~possession of the project, whichever first occurs. If no~~
19 ~~written punchlist is given to the contractor within the time~~
20 ~~provided in this subsection, interest begins to accrue 14 days~~
21 ~~after the issuance of the certificate of substantial~~
22 ~~completion, the issuance of the certificate of occupancy, or~~
23 ~~the date the owner or the owner's tenant takes possession of~~
24 ~~the project, whichever first occurs.~~

25 (e) For construction projects that are to be built in
26 phases, this subsection applies to each phase of the total
27 project. The contract between the owner and the contractor may
28 specify a shorter time period for disbursing all or any
29 portion of the final payment and the retainage.

30 ~~(b) Except as provided in paragraph (a), an obligor~~
31 ~~and obligee may agree to a provision that allows the obligor~~

1 ~~to withhold a portion of each progress payment until~~
2 ~~completion of the entire project. The amounts withheld shall~~
3 ~~bear interest 14 days after payment of such amounts are due~~
4 ~~under the terms of the contract between the obligor and~~
5 ~~obligee and the other requirements of subsection (4) have been~~
6 ~~satisfied.~~

7 (f)~~(c)~~ An obligee may, from time to time, withdraw all
8 or any portion of the amount retained from progress payments
9 upon depositing with the obligor:

- 10 1. United States Treasury bonds, United States
- 11 Treasury notes, United States Treasury certificates of
- 12 indebtedness, or United States Treasury bills;
- 13 2. Bonds or notes of the State of Florida; or
- 14 3. Certificates of deposit, within the insured limits,
- 15 from a state or national bank or state or federal savings and
- 16 loan association authorized to do business in this state.

17
18 Amounts may not be withdrawn in excess of the market value of
19 the securities listed in subparagraphs 1., 2., and 3. at the
20 time of such withdrawal or in excess of the par value of such
21 securities, whichever is less. The obligee shall execute and
22 deliver all documents reasonably required to allow the obligor
23 to document the transfer and the obligee shall pay any
24 recording or registration costs incurred by the obligor in
25 connection with the transfer. The obligor shall pay the
26 obligee any interest or income earned on the securities so
27 deposited within 30 days after the date such interest or
28 income is received by the obligor. If the deposit is in the
29 form of coupon bonds, the obligor shall deliver each coupon to
30 the obligee within 30 days after the date the coupon matures.
31 An obligee may withdraw funds retained from progress payments

1 only to the extent the obligor has withdrawn such funds for
2 the obligee's labor, services, or materials from the person
3 immediately above the obligor in the chain of contracts.
4 (8) The provisions of this section are not intended to
5 impair the rights of any obligor, in the event of a good faith
6 dispute, to withhold payment from an obligee without incurring
7 any obligation to pay a late payment interest penalty. The
8 obligor shall notify the obligee in writing of the amount of
9 payment withheld and the reason for nonpayment. The time for
10 payment of the amounts withheld, and the subsequent
11 calculation of time periods for accrual of late payment
12 interest penalties on the amounts, shall be calculated from
13 the date the obligee notifies the obligor in writing that the
14 reason for the good faith dispute has been cured and payment
15 is due. For purposes of this section, a "good faith dispute"
16 means a documented dispute concerning:
17 (a) Unsatisfactory job progress;
18 (b) Defective work not remedied;
19 (c) Third party claims filed or reasonable evidence
20 that claims will be filed;
21 (d) Failure to make timely payments for labor,
22 equipment, or materials;
23 (e) Damage to the owner, the prime contractor, or a
24 subcontractor; or
25 (f) Reasonable evidence that the contract or
26 subcontract cannot be completed for the unpaid balance of the
27 contract or subcontract.
28 (9) In an action for payment of amounts due under this
29 section, the prevailing party shall be entitled to recover
30 court costs and attorney's fees at trial and on appeal.
31

