A bill to be entitled
An act relating to retainage; amending s. 255.078, F.S.; revising the amounts that a public entity may withhold from a progress payment to a contractor as retainage until and after 50-percent completion of construction services; providing that a contractor may elect to withhold retainage from payments to its subcontractors at a higher rate after 50-percent completion of construction services; conforming provisions to changes made by the act; amending s. 255.05, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsections (1), (2), (3), and (5) of section 255.078, Florida Statutes, are amended to read:

255.078 Public construction retainage.—

(1) With regard to any contract for construction services, a public entity may withhold from each progress payment made to the contractor an amount not exceeding 10 percent of the payment as retainage until 50-percent completion of such services.

(2) After 50-percent completion of the construction services purchased pursuant to the contract, the public entity...
must reduce to 2.5 ½ percent the amount of retainage withheld
from each subsequent progress payment made to the contractor.
For purposes of this section, the term "50-percent completion"
has the meaning set forth in the contract between the public
entity and the contractor or, if not defined in the contract,
the point at which the public entity has expended 50 percent of
the total cost of the construction services purchased as
identified in the contract together with all costs associated
with existing change orders and other additions or modifications
to the construction services provided for in the contract.

(3) After 50-percent completion of the construction
services purchased pursuant to the contract, the contractor may
elect to withhold retainage from payments to its subcontractors
at a rate higher than 2.5 ½ percent. The specific amount to be
withheld must be determined on a case-by-case basis and must be
based on the contractor's assessment of the subcontractor's past
performance, the likelihood that such performance will continue,
and the contractor's ability to rely on other safeguards. The
contractor shall notify the subcontractor, in writing, of its
determination to withhold more than 2.5 ½ percent of the
progress payment and the reasons for making that determination,
and the contractor may not request the release of such retained
funds from the public entity.

(5) Neither this section nor s. 255.077 prohibits a public
entity from withholding retainage at a rate less than 5 ½.
percent of each progress payment, from incrementally reducing
the rate of retainage pursuant to a schedule provided for in the
contract, or from releasing at any point all or a portion of any
retainage withheld by the public entity which is attributable to
the labor, services, or materials supplied by the contractor or
by one or more subcontractors or suppliers. If a public entity
makes any payment of retainage to the contractor which is
attributable to the labor, services, or materials supplied by
one or more subcontractors or suppliers, the contractor shall
timely remit payment of such retainage to those subcontractors
and suppliers.

Section 2. Paragraph (f) of subsection (1) of section
255.05, Florida Statutes, is amended to read:
255.05 Bond of contractor constructing public buildings;
form; action by claimants.—
(1) A person entering into a formal contract with the
state or any county, city, or political subdivision thereof, or
other public authority or private entity, for the construction
of a public building, for the prosecution and completion of a
public work, or for repairs upon a public building or public
work shall be required, before commencing the work or before
recommencing the work after a default or abandonment, to execute
and record in the public records of the county where the
improvement is located, a payment and performance bond with a
surety insurer authorized to do business in this state as
surety. A public entity may not require a contractor to secure a
surety bond under this section from a specific agent or bonding
company.

(f) The Department of Management Services shall adopt
rules with respect to all contracts for $200,000 or less, to
provide:

1. Procedures for retaining up to 5 percent of each
request for payment submitted by a contractor and procedures for
determining disbursements from the amount retained on a pro rata
basis to laborers, materialmen, and subcontractors, as defined
in s. 713.01.

2. Procedures for requiring certification from laborers,
materialmen, and subcontractors, as defined in s. 713.01, before
final payment to the contractor that such laborers, materialmen,
and subcontractors have no claims against the contractor
resulting from the completion of the work provided for in the
contract.

The state is not liable to any laborer, materialman, or
subcontractor for any amounts greater than the pro rata share as
determined under this section.

Section 3. This act shall take effect July 1, 2019.