

1 A bill to be entitled
 2 An act relating to public construction; amending s.
 3 218.735, F.S.; revising the amount of retainage that
 4 certain local government entities and contractors may
 5 withhold from progress payments for any construction
 6 services contract; conforming a provision to changes
 7 made by the act; amending s. 255.05, F.S.; revising
 8 requirements for Department of Management Services
 9 rules governing certain contracts; amending s.
 10 255.077, F.S.; conforming a cross-reference; amending
 11 s. 255.078, F.S.; revising the amounts of retainage
 12 that certain public entities and contractors may
 13 withhold from progress payments for any construction
 14 services contract; conforming a provision to changes
 15 made by the act; providing applicability; providing an
 16 effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Paragraph (i) of subsection (7) and subsection
 21 (8) of section 218.735, Florida Statutes, are amended to read:
 22 218.735 Timely payment for purchases of construction
 23 services.—

24 (7) Each contract for construction services between a
 25 local governmental entity and a contractor must provide for the

26 development of a single list of items required to render
27 complete, satisfactory, and acceptable the construction services
28 purchased by the local governmental entity.

29 (i) If a local governmental entity fails to comply with
30 its responsibilities to develop the list required under
31 paragraph (a) or paragraph (b) within the time limitations
32 provided in paragraph (a), the contractor may submit a payment
33 request for all remaining retainage withheld by the local
34 governmental entity pursuant to this section; and payment of any
35 remaining undisputed contract amount, less any amount withheld
36 pursuant to the contract for incomplete or uncorrected work,
37 must be paid within 20 business days after receipt of a proper
38 invoice or payment request. If the local governmental entity has
39 provided written notice to the contractor specifying the failure
40 of the contractor to meet contract requirements in the
41 development of the list of items to be completed, the local
42 governmental entity need not pay or process any payment request
43 for retainage if the contractor has, in whole or in part, failed
44 to cooperate with the local governmental entity in the
45 development of the list or to perform its contractual
46 responsibilities, if any, with regard to the development of the
47 list or if paragraph (8) (c) ~~(8) (f)~~ applies.

48 (8) (a) With regard to any contract for construction
49 services, a local governmental entity may withhold from each
50 progress payment made to the contractor an amount not exceeding

51 5 ~~10~~ percent of the payment as retainage until ~~50~~-percent
52 completion of such services.

53 ~~(b) After 50-percent completion of the construction~~
54 ~~services purchased pursuant to the contract, the local~~
55 ~~governmental entity must reduce to 5 percent the amount of~~
56 ~~retainage withheld from each subsequent progress payment made to~~
57 ~~the contractor. For purposes of this subsection, the term "50-~~
58 ~~percent completion" has the meaning set forth in the contract~~
59 ~~between the local governmental entity and the contractor or, if~~
60 ~~not defined in the contract, the point at which the local~~
61 ~~governmental entity has expended 50 percent of the total cost of~~
62 ~~the construction services purchased as identified in the~~
63 ~~contract together with all costs associated with existing change~~
64 ~~orders and other additions or modifications to the construction~~
65 ~~services provided for in the contract. However, notwithstanding~~
66 ~~this subsection, a municipality having a population of 25,000 or~~
67 ~~fewer, or a county having a population of 100,000 or fewer, may~~
68 ~~withhold retainage in an amount not exceeding 5 ~~10~~ percent of~~
69 ~~each progress payment made to the contractor until final~~
70 ~~completion and acceptance of the project by the local~~
71 ~~governmental entity.~~

72 ~~(c) After 50-percent completion of the construction~~
73 ~~services purchased pursuant to the contract, the contractor may~~
74 ~~elect to withhold retainage from payments to its subcontractors~~
75 ~~at a rate higher than 5 percent. The specific amount to be~~

76 ~~withheld must be determined on a case-by-case basis and must be~~
77 ~~based on the contractor's assessment of the subcontractor's past~~
78 ~~performance, the likelihood that such performance will continue,~~
79 ~~and the contractor's ability to rely on other safeguards. The~~
80 ~~contractor shall notify the subcontractor, in writing, of its~~
81 ~~determination to withhold more than 5 percent of the progress~~
82 ~~payment and the reasons for making that determination, and the~~
83 ~~contractor may not request the release of such retained funds~~
84 ~~from the local governmental entity.~~

85 ~~(d) After 50 percent completion of the construction~~
86 ~~services purchased pursuant to the contract, the contractor may~~
87 ~~present to the local governmental entity a payment request for~~
88 ~~up to one half of the retainage held by the local governmental~~
89 ~~entity. The local governmental entity shall promptly make~~
90 ~~payment to the contractor, unless the local governmental entity~~
91 ~~has grounds, pursuant to paragraph (f), for withholding the~~
92 ~~payment of retainage. If the local governmental entity makes~~
93 ~~payment of retainage to the contractor under this paragraph~~
94 ~~which is attributable to the labor, services, or materials~~
95 ~~supplied by one or more subcontractors or suppliers, the~~
96 ~~contractor shall timely remit payment of such retainage to those~~
97 ~~subcontractors and suppliers.~~

98 (b)(e) This section does not prohibit a local governmental
99 entity from withholding retainage at a rate less than 5 ~~10~~
100 percent of each progress payment, from incrementally reducing

101 the rate of retainage pursuant to a schedule provided for in the
102 contract, or from releasing at any point all or a portion of any
103 retainage withheld by the local governmental entity which is
104 attributable to the labor, services, or materials supplied by
105 the contractor or by one or more subcontractors or suppliers. If
106 a local governmental entity makes any payment of retainage to
107 the contractor which is attributable to the labor, services, or
108 materials supplied by one or more subcontractors or suppliers,
109 the contractor must ~~shall~~ timely remit payment of such retainage
110 to those subcontractors and suppliers.

111 (c) ~~(f)~~ This section does not require the local
112 governmental entity to pay or release any amounts that are the
113 subject of a good faith dispute, the subject of a claim brought
114 pursuant to s. 255.05, or otherwise the subject of a claim or
115 demand by the local governmental entity or contractor.

116 (d) ~~(g)~~ The time limitations set forth in this section for
117 payment of payment requests apply to any payment request for
118 retainage made pursuant to this section.

119 (e) ~~(h)~~ Paragraph (a) does ~~Paragraphs (a) - (d) do~~ not apply
120 to construction services purchased by a local governmental
121 entity which are paid for, in whole or in part, with federal
122 funds and are subject to federal grantor laws and regulations or
123 requirements that are contrary to any provision of the Local
124 Government Prompt Payment Act.

125 (f) ~~(i)~~ This subsection does not apply to any construction

126 services purchased by a local governmental entity if the total
 127 cost of the construction services purchased as identified in the
 128 contract is \$200,000 or less.

129 Section 2. Paragraph (f) of subsection (1) of section
 130 255.05, Florida Statutes, is amended to read:

131 255.05 Bond of contractor constructing public buildings;
 132 form; action by claimants.—

133 (1) A person entering into a formal contract with the
 134 state or any county, city, or political subdivision thereof, or
 135 other public authority or private entity, for the construction
 136 of a public building, for the prosecution and completion of a
 137 public work, or for repairs upon a public building or public
 138 work shall be required, before commencing the work or before
 139 recommencing the work after a default or abandonment, to execute
 140 and record in the public records of the county where the
 141 improvement is located, a payment and performance bond with a
 142 surety insurer authorized to do business in this state as
 143 surety. A public entity may not require a contractor to secure a
 144 surety bond under this section from a specific agent or bonding
 145 company.

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

149 1. Procedures for retaining up to 5 ~~10~~ percent of each
 150 request for payment submitted by a contractor and procedures for

151 determining disbursements from the amount retained on a pro rata
 152 basis to laborers, materialmen, and subcontractors, as defined
 153 in s. 713.01.

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

160
 161 The state is not liable to any laborer, materialman, or
 162 subcontractor for any amounts greater than the pro rata share as
 163 determined under this section.

164 Section 3. Subsection (8) of section 255.077, Florida
 165 Statutes, is amended to read:

166 255.077 Project closeout and payment of retainage.—

167 (8) If a public entity fails to comply with its
 168 responsibilities to develop the list required under subsection
 169 (1) or subsection (2), as defined in the contract, within the
 170 time limitations provided in subsection (1), the contractor may
 171 submit a payment request for all remaining retainage withheld by
 172 the public entity pursuant to s. 255.078. The public entity need
 173 not pay or process any payment request for retainage if the
 174 contractor has, in whole or in part, failed to cooperate with
 175 the public entity in the development of the list or failed to

176 perform its contractual responsibilities, if any, with regard to
177 the development of the list or if s. 255.078(3) ~~s. 255.078(6)~~
178 applies.

179 Section 4. Section 255.078, Florida Statutes, is amended,
180 to read:

181 255.078 Public construction retainage.—

182 (1) With regard to any contract for construction services,
183 a public entity may withhold from each progress payment made to
184 the contractor an amount not exceeding 5 ~~10~~ percent of the
185 payment as retainage ~~until 50-percent completion of such~~
186 ~~services.~~

187 ~~(2) After 50-percent completion of the construction~~
188 ~~services purchased pursuant to the contract, the public entity~~
189 ~~must reduce to 5 percent the amount of retainage withheld from~~
190 ~~each subsequent progress payment made to the contractor. For~~
191 ~~purposes of this section, the term "50-percent completion" has~~
192 ~~the meaning set forth in the contract between the public entity~~
193 ~~and the contractor or, if not defined in the contract, the point~~
194 ~~at which the public entity has expended 50 percent of the total~~
195 ~~cost of the construction services purchased as identified in the~~
196 ~~contract together with all costs associated with existing change~~
197 ~~orders and other additions or modifications to the construction~~
198 ~~services provided for in the contract.~~

199 ~~(3) After 50-percent completion of the construction~~
200 ~~services purchased pursuant to the contract, the contractor may~~

201 ~~elect to withhold retainage from payments to its subcontractors~~
202 ~~at a rate higher than 5 percent. The specific amount to be~~
203 ~~withheld must be determined on a case-by-case basis and must be~~
204 ~~based on the contractor's assessment of the subcontractor's past~~
205 ~~performance, the likelihood that such performance will continue,~~
206 ~~and the contractor's ability to rely on other safeguards. The~~
207 ~~contractor shall notify the subcontractor, in writing, of its~~
208 ~~determination to withhold more than 5 percent of the progress~~
209 ~~payment and the reasons for making that determination, and the~~
210 ~~contractor may not request the release of such retained funds~~
211 ~~from the public entity.~~

212 ~~(4) After 50-percent completion of the construction~~
213 ~~services purchased pursuant to the contract, the contractor may~~
214 ~~present to the public entity a payment request for up to one-~~
215 ~~half of the retainage held by the public entity. The public~~
216 ~~entity shall promptly make payment to the contractor, unless the~~
217 ~~public entity has grounds, pursuant to subsection (6), for~~
218 ~~withholding the payment of retainage. If the public entity makes~~
219 ~~payment of retainage to the contractor under this subsection~~
220 ~~which is attributable to the labor, services, or materials~~
221 ~~supplied by one or more subcontractors or suppliers, the~~
222 ~~contractor shall timely remit payment of such retainage to those~~
223 ~~subcontractors and suppliers.~~

224 ~~(2)-(5) Neither This section and~~ neer ~~s. 255.077~~ do not
225 prohibit ~~prohibits~~ a public entity from withholding retainage at

226 a rate less than 5 ~~10~~ percent of each progress payment, from
227 incrementally reducing the rate of retainage pursuant to a
228 schedule provided for in the contract, or from releasing at any
229 point all or a portion of any retainage withheld by the public
230 entity which is attributable to the labor, services, or
231 materials supplied by the contractor or by one or more
232 subcontractors or suppliers. If a public entity makes any
233 payment of retainage to the contractor which is attributable to
234 the labor, services, or materials supplied by one or more
235 subcontractors or suppliers, the contractor must ~~shall~~ timely
236 remit payment of such retainage to those subcontractors and
237 suppliers.

238 (3) ~~(6)~~ ~~Neither~~ This section and ~~nor~~ s. 255.077 do not
239 require ~~requires~~ the public entity to pay or release any amounts
240 that are the subject of a good faith dispute, the subject of a
241 claim brought pursuant to s. 255.05, or otherwise the subject of
242 a claim or demand by the public entity or contractor.

243 (4) ~~(7)~~ The same time limits for payment of a payment
244 request apply regardless of whether the payment request is for,
245 or includes, retainage.

246 (5) ~~(8)~~ Subsection (1) does ~~Subsections (1) - (4) do~~ not
247 apply to construction services purchased by a public entity
248 which are paid for, in whole or in part, with federal funds and
249 are subject to federal grantor laws and regulations or
250 requirements that are contrary to any provision of the Florida

251 Prompt Payment Act.

252 ~~(6)-(9)~~ This section does not apply to any construction
 253 services purchased by a public entity if the total cost of the
 254 construction services purchased as identified in the contract is
 255 \$200,000 or less.

256 Section 5. (1) This act does not apply to any contract
 257 for construction services which is entered into or is pending
 258 approval by a public entity, as defined in s. 255.072, Florida
 259 Statutes, or by a local governmental entity, as defined in s.
 260 218.72, Florida Statutes, or to any construction services
 261 project advertised for bid by the public entity or local
 262 governmental entity, on or before October 1, 2020.

263 (2) The amendments made to ss. 255.05 and 255.078, Florida
 264 Statutes, by this act do not apply to contracts executed under
 265 chapter 337, Florida Statutes.

266 Section 6. This act shall take effect October 1, 2020.