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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2010	.	
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The Committee on Judiciary (Baker) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 262 - 359

and insert:

development of the list, or if paragraph (8)(f) applies.

(8)(a) With regard to any contract for construction services, a local governmental 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.

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



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

29 (c) After 50-percent completion of the construction  
30 services purchased pursuant to the contract, the contractor may  
31 elect to withhold retainage from payments to its subcontractors  
32 at a rate higher than 5 percent. The specific amount to be  
33 withheld must be determined on a case-by-case basis and must be  
34 based on the contractor's assessment of the subcontractor's past  
35 performance, the likelihood that such performance will continue,  
36 and the contractor's ability to rely on other safeguards. The  
37 contractor shall notify the subcontractor, in writing, of its  
38 determination to withhold more than 5 percent of the progress  
39 payment and the reasons for making that determination, and the  
40 contractor may not request the release of such retained funds  
41 from the local governmental entity.

42 (d) After 50-percent completion of the construction



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43 services purchased pursuant to the contract, the contractor may  
44 present to the local governmental entity a payment request for  
45 up to one-half of the retainage held by the local governmental  
46 entity. The local governmental entity shall promptly make  
47 payment to the contractor, unless the local governmental entity  
48 has grounds, pursuant to paragraph (f), for withholding the  
49 payment of retainage. If the local governmental entity makes  
50 payment of retainage to the contractor under this paragraph  
51 which is attributable to the labor, services, or materials  
52 supplied by one or more subcontractors or suppliers, the  
53 contractor shall timely remit payment of such retainage to those  
54 subcontractors and suppliers.

55 (e) This section does not prohibit a local governmental  
56 entity from withholding retainage at a rate less than 10 percent  
57 of each progress payment, from incrementally reducing the rate  
58 of retainage pursuant to a schedule provided for in the  
59 contract, or from releasing at any point all or a portion of any  
60 retainage withheld by the local governmental entity which is  
61 attributable to the labor, services, or materials supplied by  
62 the contractor or by one or more subcontractors or suppliers. If  
63 a local governmental entity makes any payment of retainage to  
64 the contractor which is attributable to the labor, services, or  
65 materials supplied by one or more subcontractors or suppliers,  
66 the contractor shall timely remit payment of such retainage to  
67 those subcontractors and suppliers.

68 (f) This section does not require the local governmental  
69 entity to pay or release any amounts that are the subject of a  
70 good faith dispute, the subject of a claim brought pursuant to  
71 s. 255.05, or otherwise the subject of a claim or demand by the



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72 local governmental entity or contractor.

73 (g) The time limitations set forth in this section for  
74 payment of payment requests apply to any payment request for  
75 retainage made pursuant to this section.

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

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

86 (9) All payments due under this section and not made within  
87 the time periods specified by this section shall bear interest  
88 at the rate of 1 percent per month, or the rate specified by  
89 contract, whichever is greater.

90  
91 ===== T I T L E A M E N D M E N T =====

92 And the title is amended as follows:

93 Delete lines 20 - 25

94 and insert:

95 amending s. 218.76,