



214284

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete lines 95 - 100

and insert:

Section 3. Subsection (8) of section 218.735, Florida
Statutes, is amended to read:

218.735 Timely payment for purchases of construction
services.—

(8) (a) With regard to any contract for construction
services, a local governmental entity may withhold from each



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11 progress payment made to the contractor an amount not exceeding
12 5 ~~10~~ percent of the payment as retainage until 50-percent
13 completion of such services.

14 (b) After 50-percent completion of the construction
15 services purchased pursuant to the contract, the local
16 governmental entity must reduce to 2.5 ~~5~~ percent the amount of
17 retainage withheld from each subsequent progress payment made to
18 the contractor. For purposes of this subsection, the term "50-
19 percent completion" has the meaning set forth in the contract
20 between the local governmental entity and the contractor or, if
21 not defined in the contract, the point at which the local
22 governmental entity has expended 50 percent of the total cost of
23 the construction services purchased as identified in the
24 contract together with all costs associated with existing change
25 orders and other additions or modifications to the construction
26 services provided for in the contract. However, notwithstanding
27 this subsection, a municipality having a population of 25,000 or
28 fewer, or a county having a population of 100,000 or fewer, may
29 withhold retainage in an amount not exceeding 5 ~~10~~ percent of
30 each progress payment made to the contractor until final
31 completion and acceptance of the project by the local
32 governmental entity.

33 (c) After 50-percent completion of the construction
34 services purchased pursuant to the contract, the contractor may
35 elect to withhold retainage from payments to its subcontractors
36 at a rate higher than 2.5 ~~5~~ percent. The specific amount to be
37 withheld must be determined on a case-by-case basis and must be
38 based on the contractor's assessment of the subcontractor's past
39 performance, the likelihood that such performance will continue,



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40 and the contractor's ability to rely on other safeguards. The
41 contractor shall notify the subcontractor, in writing, of its
42 determination to withhold more than 2.5 ~~5~~ percent of the
43 progress payment and the reasons for making that determination,
44 and the contractor may not request the release of such retained
45 funds from the local governmental entity.

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

59 (e) This section does not prohibit a local governmental
60 entity from withholding retainage at a rate less than 5 ~~10~~
61 percent of each progress payment, from incrementally reducing
62 the rate of retainage pursuant to a schedule provided for in the
63 contract, or from releasing at any point all or a portion of any
64 retainage withheld by the local governmental entity which is
65 attributable to the labor, services, or materials supplied by
66 the contractor or by one or more subcontractors or suppliers. If
67 a local governmental entity makes any payment of retainage to
68 the contractor which is attributable to the labor, services, or



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69 materials supplied by one or more subcontractors or suppliers,
70 the contractor shall timely remit payment of such retainage to
71 those subcontractors and suppliers.

72 (f) This section does not require the local governmental
73 entity to pay or release any amounts that are the subject of a
74 good faith dispute, the subject of a claim brought pursuant to
75 s. 255.05, or otherwise the subject of a claim or demand by the
76 local governmental entity or contractor.

77 (g) The time limitations set forth in this section for
78 payment of payment requests apply to any payment request for
79 retainage made pursuant to this section.

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

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

90 Section 4. (1) This act does not apply to any contract for
91 construction services which is entered into or is pending
92 approval by a public entity, as defined in s. 255.072, Florida
93 Statutes, or to any construction services project advertised for
94 bid by the public entity, on or before July 1, 2019.

95 (2) The amendments made to ss. 255.05 and 255.078, Florida
96 Statutes, by this act do not apply to contracts executed under
97 Chapter 337, Florida Statutes.



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98 Section 5. This act shall take effect July 1, 2019.

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

102 And the title is amended as follows:

103 Delete lines 2 - 10

104 and insert:

105 An act relating to public construction; amending
106 255.05, F.S.; revising requirements for Department of
107 Management Services rules governing certain contracts;
108 amending s. 255.078, F.S.; revising the amounts of
109 retainage that certain public entities and contractors
110 may withhold from progress payments for any
111 construction services contract; amending s. 218.735;
112 revising the amounts of retainage that certain public
113 entities and contractors may withhold from progress
114 payments for any construction services contract;
115 specifying nonapplicability of the act; providing an
116 effective date.