



705498

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2010	.	
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The Committee on Community Affairs (Bennett) recommended the following:

1 **Senate Substitute for Amendment (377162) (with directory**
2 **and title amendments)**

3
4 Delete line 230
5 and insert:
6 list, or if paragraph (8) (c) ~~(8) (f)~~ applies.

7 ~~(8) (a) With regard to any contract for construction~~
8 ~~services,~~ A local governmental entity may withhold from each
9 progress payment for construction services made to the
10 contractor an amount not exceeding 10 percent of the payment as
11 retainage until 50 percent ~~50 percent~~ completion of such
12 services.



705498

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

31 ~~(c) After 50 percent completion of the construction~~
32 ~~services purchased pursuant to the contract, the contractor may~~
33 ~~elect to withhold retainage from payments to its subcontractors~~
34 ~~at a rate higher than 5 percent. The specific amount to be~~
35 ~~withheld must be determined on a case-by-case basis and must be~~
36 ~~based on the contractor's assessment of the subcontractor's past~~
37 ~~performance, the likelihood that such performance will continue,~~
38 ~~and the contractor's ability to rely on other safeguards. The~~
39 ~~contractor shall notify the subcontractor, in writing, of its~~
40 ~~determination to withhold more than 5 percent of the progress~~
41 ~~payment and the reasons for making that determination, and the~~



705498

42 ~~contractor may not request the release of such retained funds~~
43 ~~from the local governmental entity.~~

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

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

66 ~~(a) If a local governmental entity makes any payment of~~
67 ~~retainage to the contractor which is attributable to the~~
68 ~~construction labor, services, or materials supplied by one or~~
69 ~~more subcontractors or suppliers, the contractor shall timely~~
70 ~~remit payment of such retainage to those subcontractors and~~



705498

71 suppliers.

72 (b) A subcontractor may submit an invoice to the contractor
73 for the remainder of unpaid construction services 45 days after
74 the completion of such services, including an invoice for the
75 full value of the retainage related to the services. The
76 subcontractor shall include a conditional release of lien and
77 all appropriate warranties and closeout documentation with the
78 final payment invoice to the contractor. The contractor must
79 include the payment request in the next payment application
80 cycle to the agent following the receipt of the subcontractor's
81 payment request.

82 (c)-(f) This subsection ~~section~~ does not require the local
83 governmental entity to pay or release any amounts that are the
84 subject of a good faith dispute, the subject of a claim brought
85 pursuant to s. 255.05, or otherwise the subject of a claim or
86 demand by the local governmental entity or contractor.

87 (d)-(g) The time limitations set forth in this subsection
88 ~~section~~ for payment of payment requests apply to any payment
89 request for retainage made pursuant to this section.

90 (e)-(h) This subsection does ~~Paragraphs (a)-(d) do~~ not apply
91 to construction services purchased by a local governmental
92 entity which are paid for, in whole or in part, with federal
93 funds and are subject to federal grantor laws and regulations or
94 requirements that are contrary to any provision of the Local
95 Government Prompt Payment Act.

96 (f)-(i) This subsection does not apply to ~~any~~ construction
97 services purchased by a local governmental entity if the total
98 cost of the construction services purchased as identified in the
99 contract is \$200,000 or less.



705498

100 (9) All payments due under this section and not made within
101 the time periods specified by this section ~~shall~~ bear interest
102 at the rate of 1 percent per month, or the rate specified by
103 contract, whichever is greater.

104

105 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

106 And the directory clause is amended as follows:

107 Delete lines 72 - 73

108 and insert:

109 Section 2. Section 218.735, Florida Statutes, is amended to
110 read.

111

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

113 And the title is amended as follows:

114 Delete line 11

115 and insert:

116 to the contractor; deleting provisions relating to the
117 amount of retainage that may be withheld by a local
118 governmental entity after 50 percent of construction
119 services are completed; providing a timeframe and
120 procedure for subcontractors to submit an invoice for
121 the remainder of unpaid constructions services;
122 amending s. 218.76, F.S.; revising