

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee

3 Representative Andrade offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
 7 Section 1. Subsection (8) of section 218.735, Florida
 8 Statutes, is amended to read:

9 218.735 Timely payment for purchases of construction
 10 services.—

11 (8) (a) With regard to any contract for construction
 12 services, a local governmental entity may withhold from each
 13 progress payment made to the contractor an amount not exceeding
 14 5 ~~10~~ percent of the payment as retainage until 50-percent
 15 completion of such services.

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

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

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

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

61 (e) This section does not prohibit a local governmental
62 entity from withholding retainage at a rate less than 5 ~~10~~
63 percent of each progress payment, from incrementally reducing
64 the rate of retainage pursuant to a schedule provided for in the
65 contract, or from releasing at any point all or a portion of any

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

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

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

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

88 (i) This subsection does not apply to any construction
89 services purchased by a local governmental entity if the total

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90 cost of the construction services purchased as identified in the
91 contract is \$200,000 or less.

92 Section 2. Paragraph (f) of subsection (1) of section
93 255.05, Florida Statutes, is amended to read:

94 255.05 Bond of contractor constructing public buildings;
95 form; action by claimants.—

96 (1) A person entering into a formal contract with the
97 state or any county, city, or political subdivision thereof, or
98 other public authority or private entity, for the construction
99 of a public building, for the prosecution and completion of a
100 public work, or for repairs upon a public building or public
101 work shall be required, before commencing the work or before
102 recommencing the work after a default or abandonment, to execute
103 and record in the public records of the county where the
104 improvement is located, a payment and performance bond with a
105 surety insurer authorized to do business in this state as
106 surety. A public entity may not require a contractor to secure a
107 surety bond under this section from a specific agent or bonding
108 company.

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

112 1. Procedures for retaining up to 5 ~~10~~ percent of each
113 request for payment submitted by a contractor and procedures for
114 determining disbursements from the amount retained on a pro rata

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115 basis to laborers, materialmen, and subcontractors, as defined
116 in s. 713.01.

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

123

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

127 Section 3. Subsections (1), (2), (3), and (5), of section
128 255.078, Florida Statutes, are amended to read:

129 255.078 Public construction retainage.—

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

135 (2) After 50-percent completion of the construction
136 services purchased pursuant to the contract, the public entity
137 must reduce to 2.5 ~~5~~ percent the amount of retainage withheld
138 from each subsequent progress payment made to the contractor.
139 For purposes of this section, the term "50-percent completion"

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140 means the definition that is provided ~~has the meaning set forth~~
141 in the contract between the public entity and the contractor or,
142 if not defined in the contract, the point at which the public
143 entity has expended 50 percent of the total cost of the
144 construction services purchased as identified in the contract
145 together with all costs associated with existing change orders
146 and other additions or modifications to the construction
147 services provided for in the contract.

148 (3) After 50-percent completion of the construction
149 services purchased pursuant to the contract, the contractor may
150 elect to withhold retainage from payments to its subcontractors
151 at a rate higher than 2.5 ~~5~~ percent. The specific amount to be
152 withheld must be determined on a case-by-case basis and must be
153 based on the contractor's assessment of the subcontractor's past
154 performance, the likelihood that such performance will continue,
155 and the contractor's ability to rely on other safeguards. The
156 contractor shall notify the subcontractor, in writing, of its
157 determination to withhold more than 5 percent of the progress
158 payment and the reasons for making that determination, and the
159 contractor may not request the release of such retained funds
160 from the public entity.

161 (5) ~~Neither~~ This section and ~~nor~~ s. 255.077 do not
162 prohibit ~~prohibits~~ a public entity from withholding retainage at
163 a rate less than 5 ~~10~~ percent of each progress payment, from
164 incrementally reducing the rate of retainage pursuant to a

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165 | schedule provided for in the contract, or from releasing at any
166 | point all or a portion of any retainage withheld by the public
167 | entity which is attributable to the labor, services, or
168 | materials supplied by the contractor or by one or more
169 | subcontractors or suppliers. If a public entity makes any
170 | payment of retainage to the contractor which is attributable to
171 | the labor, services, or materials supplied by one or more
172 | subcontractors or suppliers, the contractor must ~~shall~~ timely
173 | remit payment of such retainage to those subcontractors and
174 | suppliers.

175 | Section 4. This act does not apply to any contract for
176 | construction services which is entered into or is pending
177 | approval by a local government entity, as defined in s. 218.72,
178 | Florida Statutes, or a public entity, as defined in s. 255.072,
179 | Florida Statutes, or to any construction services project
180 | advertised for bid by a local government entity or a public
181 | entity, on or before July 1, 2019.

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

183 |
184 | -----

185 | **T I T L E A M E N D M E N T**

186 | Remove everything before the enacting clause and insert:

187 | A bill to be entitled

188 | An act relating to public construction; amending s.

189 | 218.735, F.S.; revising the amounts of retainage that

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190 certain local government entities and contractors may
191 withhold from progress payments for any construction
192 services contract; amending s. 255.05, F.S.; revising
193 requirements for Department of Management Services rules
194 governing certain contracts; amending s. 255.078, F.S.;
195 revising the amounts of retainage that certain public
196 entities and contractors may withhold from progress
197 payments for any construction services contract; specifying
198 nonapplicability of the act; providing an effective date.