

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Andrade offered the following:

2  
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Paragraph (i) of subsection (7) and subsection  
6 (8) of section 218.735, Florida Statutes, are amended to read:

7 218.735 Timely payment for purchases of construction  
8 services.—

9 (i) If a local governmental entity fails to comply with  
10 its responsibilities to develop the list required under  
11 paragraph (a) or paragraph (b) within the time limitations  
12 provided in paragraph (a), the contractor may submit a payment  
13 request for all remaining retainage withheld by the local

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14 governmental entity pursuant to this section; and payment of any  
15 remaining undisputed contract amount, less any amount withheld  
16 pursuant to the contract for incomplete or uncorrected work,  
17 must be paid within 20 business days after receipt of a proper  
18 invoice or payment request. If the local governmental entity has  
19 provided written notice to the contractor specifying the failure  
20 of the contractor to meet contract requirements in the  
21 development of the list of items to be completed, the local  
22 governmental entity need not pay or process any payment request  
23 for retainage if the contractor has, in whole or in part, failed  
24 to cooperate with the local governmental entity in the  
25 development of the list or to perform its contractual  
26 responsibilities, if any, with regard to the development of the  
27 list or if paragraph (8)(c) ~~(8)(f)~~ applies.

28 (8)(a) With regard to any contract for construction  
29 services, a local governmental entity may withhold from each  
30 progress payment made to the contractor an amount not exceeding  
31 5 ~~10~~ percent of the payment as retainage ~~until 50 percent~~  
32 ~~completion of such services.~~

33 ~~(b) After 50 percent completion of the construction~~  
34 ~~services purchased pursuant to the contract, the local~~  
35 ~~governmental entity must reduce to 5 percent the amount of~~  
36 ~~retainage withheld from each subsequent progress payment made to~~  
37 ~~the contractor. For purposes of this subsection, the term "50-~~  
38 ~~percent completion" has the meaning set forth in the contract~~

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39 ~~between the local governmental entity and the contractor or, if~~  
40 ~~not defined in the contract, the point at which the local~~  
41 ~~governmental entity has expended 50 percent of the total cost of~~  
42 ~~the construction services purchased as identified in the~~  
43 ~~contract together with all costs associated with existing change~~  
44 ~~orders and other additions or modifications to the construction~~  
45 ~~services provided for in the contract. However, notwithstanding~~  
46 ~~this subsection, a municipality having a population of 25,000 or~~  
47 ~~fewer, or a county having a population of 100,000 or fewer, may~~  
48 ~~withhold retainage in an amount not exceeding 5 10 percent of~~  
49 ~~each progress payment made to the contractor until final~~  
50 ~~completion and acceptance of the project by the local~~  
51 ~~governmental entity.~~

52 ~~(c) After 50-percent completion of the construction~~  
53 ~~services purchased pursuant to the contract, the contractor may~~  
54 ~~elect to withhold retainage from payments to its subcontractors~~  
55 ~~at a rate higher than 5 percent. The specific amount to be~~  
56 ~~withheld must be determined on a case-by-case basis and must be~~  
57 ~~based on the contractor's assessment of the subcontractor's past~~  
58 ~~performance, the likelihood that such performance will continue,~~  
59 ~~and the contractor's ability to rely on other safeguards. The~~  
60 ~~contractor shall notify the subcontractor, in writing, of its~~  
61 ~~determination to withhold more than 5 percent of the progress~~  
62 ~~payment and the reasons for making that determination, and the~~

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

65 ~~(d) After 50-percent completion of the construction~~  
66 ~~services purchased pursuant to the contract, the contractor may~~  
67 ~~present to the local governmental entity a payment request for~~  
68 ~~up to one-half of the retainage held by the local governmental~~  
69 ~~entity. The local governmental entity shall promptly make~~  
70 ~~payment to the contractor, unless the local governmental entity~~  
71 ~~has grounds, pursuant to paragraph (f), for withholding the~~  
72 ~~payment of retainage. If the local governmental entity makes~~  
73 ~~payment of retainage to the contractor under this paragraph~~  
74 ~~which is attributable to the labor, services, or materials~~  
75 ~~supplied by one or more subcontractors or suppliers, the~~  
76 ~~contractor shall timely remit payment of such retainage to those~~  
77 ~~subcontractors and suppliers.~~

78 ~~(b) (e)~~ This section does not prohibit a local governmental  
79 entity from withholding retainage at a rate less than 5 ~~10~~  
80 percent of each progress payment, from incrementally reducing  
81 the rate of retainage pursuant to a schedule provided for in the  
82 contract, or from releasing at any point all or a portion of any  
83 retainage withheld by the local governmental entity which is  
84 attributable to the labor, services, or materials supplied by  
85 the contractor or by one or more subcontractors or suppliers. If  
86 a local governmental entity makes any payment of retainage to  
87 the contractor which is attributable to the labor, services, or

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88 materials supplied by one or more subcontractors or suppliers,  
89 the contractor must ~~shall~~ timely remit payment of such retainage  
90 to those subcontractors and suppliers.

91 ~~(c)-(f)~~ This section does not require the local  
92 governmental entity to pay or release any amounts that are the  
93 subject of a good faith dispute, the subject of a claim brought  
94 pursuant to s. 255.05, or otherwise the subject of a claim or  
95 demand by the local governmental entity or contractor.

96 ~~(d)-(g)~~ The time limitations set forth in this section for  
97 payment of payment requests apply to any payment request for  
98 retainage made pursuant to this section.

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

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

109 Section 2. Paragraph (f) of subsection (1) of section  
110 255.05, Florida Statutes, is amended to read:

111 255.05 Bond of contractor constructing public buildings;  
112 form; action by claimants.-

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113 (1) A person entering into a formal contract with the  
114 state or any county, city, or political subdivision thereof, or  
115 other public authority or private entity, for the construction  
116 of a public building, for the prosecution and completion of a  
117 public work, or for repairs upon a public building or public  
118 work shall be required, before commencing the work or before  
119 recommencing the work after a default or abandonment, to execute  
120 and record in the public records of the county where the  
121 improvement is located, a payment and performance bond with a  
122 surety insurer authorized to do business in this state as  
123 surety. A public entity may not require a contractor to secure a  
124 surety bond under this section from a specific agent or bonding  
125 company.

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

129 1. Procedures for retaining up to 5 ~~10~~ percent of each  
130 request for payment submitted by a contractor and procedures for  
131 determining disbursements from the amount retained on a pro rata  
132 basis to laborers, materialmen, and subcontractors, as defined  
133 in s. 713.01.

134 2. Procedures for requiring certification from laborers,  
135 materialmen, and subcontractors, as defined in s. 713.01, before  
136 final payment to the contractor that such laborers, materialmen,  
137 and subcontractors have no claims against the contractor

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138 resulting from the completion of the work provided for in the  
139 contract.

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

144 Section 3. Subsections (5) through (9) of section 255.078,  
145 Florida Statutes, are renumbered as subsections (2) through (6),  
146 respectively, and subsections (1), (2), (3), and (4) and present  
147 subsections (5) and (8) of that section are amended, to read:

148 255.078 Public construction retainage.—

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

154 ~~(2) After 50-percent completion of the construction~~  
155 ~~services purchased pursuant to the contract, the public entity~~  
156 ~~must reduce to 5 percent the amount of retainage withheld from~~  
157 ~~each subsequent progress payment made to the contractor. For~~  
158 ~~purposes of this section, the term "50-percent completion" has~~  
159 ~~the meaning set forth in the contract between the public entity~~  
160 ~~and the contractor or, if not defined in the contract, the point~~  
161 ~~at which the public entity has expended 50 percent of the total~~  
162 ~~cost of the construction services purchased as identified in the~~

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163 ~~contract together with all costs associated with existing change~~  
164 ~~orders and other additions or modifications to the construction~~  
165 ~~services provided for in the contract.~~

166 ~~(3) After 50-percent completion of the construction~~  
167 ~~services purchased pursuant to the contract, the contractor may~~  
168 ~~elect to withhold retainage from payments to its subcontractors~~  
169 ~~at a rate higher than 5 percent. The specific amount to be~~  
170 ~~withheld must be determined on a case-by-case basis and must be~~  
171 ~~based on the contractor's assessment of the subcontractor's past~~  
172 ~~performance, the likelihood that such performance will continue,~~  
173 ~~and the contractor's ability to rely on other safeguards. The~~  
174 ~~contractor shall notify the subcontractor, in writing, of its~~  
175 ~~determination to withhold more than 5 percent of the progress~~  
176 ~~payment and the reasons for making that determination, and the~~  
177 ~~contractor may not request the release of such retained funds~~  
178 ~~from the public entity.~~

179 ~~(4) After 50-percent completion of the construction~~  
180 ~~services purchased pursuant to the contract, the contractor may~~  
181 ~~present to the public entity a payment request for up to one-~~  
182 ~~half of the retainage held by the public entity. The public~~  
183 ~~entity shall promptly make payment to the contractor, unless the~~  
184 ~~public entity has grounds, pursuant to subsection (6), for~~  
185 ~~withholding the payment of retainage. If the public entity makes~~  
186 ~~payment of retainage to the contractor under this subsection~~  
187 ~~which is attributable to the labor, services, or materials~~

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188 ~~supplied by one or more subcontractors or suppliers, the~~  
189 ~~contractor shall timely remit payment of such retainage to those~~  
190 ~~subcontractors and suppliers.~~

191 ~~(2)(5) Neither~~ This section ~~and~~ ~~per~~ s. 255.077 do not  
192 prohibit ~~prohibits~~ a public entity from withholding retainage at  
193 a rate less than 5 ~~10~~ percent of each progress payment, from  
194 incrementally reducing the rate of retainage pursuant to a  
195 schedule provided for in the contract, or from releasing at any  
196 point all or a portion of any retainage withheld by the public  
197 entity which is attributable to the labor, services, or  
198 materials supplied by the contractor or by one or more  
199 subcontractors or suppliers. If a public entity makes any  
200 payment of retainage to the contractor which is attributable to  
201 the labor, services, or materials supplied by one or more  
202 subcontractors or suppliers, the contractor must ~~shall~~ timely  
203 remit payment of such retainage to those subcontractors and  
204 suppliers.

205 ~~(5)(8) Subsection (1) does~~ ~~Subsections (1)-(4) do not~~  
206 apply to construction services purchased by a public entity  
207 which are paid for, in whole or in part, with federal funds and  
208 are subject to federal grantor laws and regulations or  
209 requirements that are contrary to any provision of the Florida  
210 Prompt Payment Act.

211 Section 4. Subsection (8) of section 255.077, Florida  
212 Statutes, is amended to read:

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213 255.077 Project closeout and payment of retainage.-

214 (8) If a public entity fails to comply with its  
215 responsibilities to develop the list required under subsection  
216 (1) or subsection (2), as defined in the contract, within the  
217 time limitations provided in subsection (1), the contractor may  
218 submit a payment request for all remaining retainage withheld by  
219 the public entity pursuant to s. 255.078. The public entity need  
220 not pay or process any payment request for retainage if the  
221 contractor has, in whole or in part, failed to cooperate with  
222 the public entity in the development of the list or failed to  
223 perform its contractual responsibilities, if any, with regard to  
224 the development of the list or if s. 255.078(3) ~~s. 255.078(6)~~  
225 applies.

226 Section 5. (1) This act does not apply to any contract  
227 for construction services which is entered into or is pending  
228 approval by a public entity, as defined in s. 255.072, Florida  
229 Statutes, or by a local governmental entity, as defined in s.  
230 218.72, Florida Statutes, or to any construction services  
231 project advertised for bid by the public entity or local  
232 governmental entity, on or before October 1, 2019.

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

236 Section 6. This act shall take effect October 1, 2019.  
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**T I T L E   A M E N D M E N T**

Remove everything before the enacting clause and insert:  
An act relating to public construction; amending s. 218.735,  
F.S.; conforming a cross-reference; revising the amounts of  
retainage that certain local government entities and contractors  
may withhold from progress payments for any construction  
services contract; removing provisions relating to retainage  
requirements after 50 percent completion of construction  
services; conforming a provision to changes made by the act;  
amending s. 255.05, F.S.; revising requirements for Department  
of Management Services rules governing certain contracts;  
amending s. 255.078, F.S.; revising the amounts of retainage  
that certain public entities and contractors may withhold from  
progress payments for any construction services contract;  
removing provisions relating to retainage requirements after 50  
percent completion of construction services; conforming a  
provision to changes made by the act; amending s. 255.077, F.S.;  
conforming a cross-reference; specifying nonapplicability of the  
act; providing an effective date.

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