

1 A bill to be entitled
2 An act relating to retainage; amending s. 255.078,
3 F.S.; revising the amounts that a public entity may
4 withhold from a progress payment to a contractor as
5 retainage until and after 50-percent completion of
6 construction services; providing that a contractor may
7 elect to withhold retainage from payments to its
8 subcontractors at a higher rate after 50-percent
9 completion of construction services; conforming
10 provisions to changes made by the act; amending s.
11 255.05, F.S.; conforming a provision to changes made
12 by the act; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Subsections (1), (2), (3), and (5) of section
17 255.078, Florida Statutes, are amended to read:

18 255.078 Public construction retainage.—

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

24 (2) After 50-percent completion of the construction
25 services purchased pursuant to the contract, the public entity

26 | must reduce to 2.5 ~~5~~ percent the amount of retainage withheld
27 | from each subsequent progress payment made to the contractor.
28 | For purposes of this section, the term "50-percent completion"
29 | has the meaning set forth in the contract between the public
30 | entity and the contractor or, if not defined in the contract,
31 | the point at which the public entity has expended 50 percent of
32 | the total cost of the construction services purchased as
33 | identified in the contract together with all costs associated
34 | with existing change orders and other additions or modifications
35 | to the construction services provided for in the contract.

36 | (3) After 50-percent completion of the construction
37 | services purchased pursuant to the contract, the contractor may
38 | elect to withhold retainage from payments to its subcontractors
39 | at a rate higher than 2.5 ~~5~~ percent. The specific amount to be
40 | withheld must be determined on a case-by-case basis and must be
41 | based on the contractor's assessment of the subcontractor's past
42 | performance, the likelihood that such performance will continue,
43 | and the contractor's ability to rely on other safeguards. The
44 | contractor shall notify the subcontractor, in writing, of its
45 | determination to withhold more than 2.5 ~~5~~ percent of the
46 | progress payment and the reasons for making that determination,
47 | and the contractor may not request the release of such retained
48 | funds from the public entity.

49 | (5) Neither this section nor s. 255.077 prohibits a public
50 | entity from withholding retainage at a rate less than 5 ~~10~~

51 percent of each progress payment, from incrementally reducing
52 the rate of retainage pursuant to a schedule provided for in the
53 contract, or from releasing at any point all or a portion of any
54 retainage withheld by the public entity which is attributable to
55 the labor, services, or materials supplied by the contractor or
56 by one or more subcontractors or suppliers. If a public entity
57 makes any payment of retainage to the contractor which is
58 attributable to the labor, services, or materials supplied by
59 one or more subcontractors or suppliers, the contractor shall
60 timely remit payment of such retainage to those subcontractors
61 and suppliers.

62 Section 2. Paragraph (f) of subsection (1) of section
63 255.05, Florida Statutes, is amended to read:

64 255.05 Bond of contractor constructing public buildings;
65 form; action by claimants.—

66 (1) A person entering into a formal contract with the
67 state or any county, city, or political subdivision thereof, or
68 other public authority or private entity, for the construction
69 of a public building, for the prosecution and completion of a
70 public work, or for repairs upon a public building or public
71 work shall be required, before commencing the work or before
72 recommencing the work after a default or abandonment, to execute
73 and record in the public records of the county where the
74 improvement is located, a payment and performance bond with a
75 surety insurer authorized to do business in this state as

76 | surety. A public entity may not require a contractor to secure a
77 | surety bond under this section from a specific agent or bonding
78 | company.

79 | (f) The Department of Management Services shall adopt
80 | rules with respect to all contracts for \$200,000 or less, to
81 | provide:

82 | 1. Procedures for retaining up to 5 ~~10~~ percent of each
83 | request for payment submitted by a contractor and procedures for
84 | determining disbursements from the amount retained on a pro rata
85 | basis to laborers, materialmen, and subcontractors, as defined
86 | in s. 713.01.

87 | 2. Procedures for requiring certification from laborers,
88 | materialmen, and subcontractors, as defined in s. 713.01, before
89 | final payment to the contractor that such laborers, materialmen,
90 | and subcontractors have no claims against the contractor
91 | resulting from the completion of the work provided for in the
92 | contract.

93 |
94 | The state is not liable to any laborer, materialman, or
95 | subcontractor for any amounts greater than the pro rata share as
96 | determined under this section.

97 | Section 3. This act shall take effect July 1, 2019.