

1 A bill to be entitled
2 An act relating to public construction; amending s.
3 218.735, F.S.; revising the amounts of retainage that
4 certain local government entities and contractors may
5 withhold from progress payments for any construction
6 services contract; amending s. 255.05, F.S.; revising
7 requirements for Department of Management Services
8 rules governing certain contracts; amending s.
9 255.078, F.S.; revising the amounts of retainage that
10 certain public entities and contractors may withhold
11 from progress payments for any construction services
12 contract; specifying nonapplicability of the act;
13 providing an effective date.

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

16
17 Section 1. Subsection (8) of section 218.735, Florida
18 Statutes, is amended to read:

19 218.735 Timely payment for purchases of construction
20 services.—

21 (8) (a) With regard to any contract for construction
22 services, a local governmental entity may withhold from each
23 progress payment made to the contractor an amount not exceeding
24 5 ~~10~~ percent of the payment as retainage until 50-percent
25 completion of such services.

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

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

51 performance, the likelihood that such performance will continue,
52 and the contractor's ability to rely on other safeguards. The
53 contractor shall notify the subcontractor, in writing, of its
54 determination to withhold more than 2.5 ~~5~~ percent of the
55 progress payment and the reasons for making that determination,
56 and the contractor may not request the release of such retained
57 funds from the local governmental entity.

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

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

76 retainage withheld by the local governmental entity which is
77 attributable to the labor, services, or materials supplied by
78 the contractor or by one or more subcontractors or suppliers. If
79 a local governmental entity makes any payment of retainage to
80 the contractor which is attributable to the labor, services, or
81 materials supplied by one or more subcontractors or suppliers,
82 the contractor must ~~shall~~ timely remit payment of such retainage
83 to those subcontractors and suppliers.

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

89 (g) The time limitations set forth in this section for
90 payment of payment requests apply to any payment request for
91 retainage made pursuant to this section.

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

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

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

102 Section 2. Paragraph (f) of subsection (1) of section
 103 255.05, Florida Statutes, is amended to read:

104 255.05 Bond of contractor constructing public buildings;
 105 form; action by claimants.—

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

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

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

125 basis to laborers, materialmen, and subcontractors, as defined
126 in s. 713.01.

127 2. Procedures for requiring certification from laborers,
128 materialmen, and subcontractors, as defined in s. 713.01, before
129 final payment to the contractor that such laborers, materialmen,
130 and subcontractors have no claims against the contractor
131 resulting from the completion of the work provided for in the
132 contract.

133

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

137 Section 3. Subsections (1), (2), (3), and (5), of section
138 255.078, Florida Statutes, are amended to read:

139 255.078 Public construction retainage.—

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

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

150 means the definition that is provided ~~has the meaning set forth~~
151 in the contract between the public entity and the contractor or,
152 if not defined in the contract, the point at which the public
153 entity has expended 50 percent of the total cost of the
154 construction services purchased as identified in the contract
155 together with all costs associated with existing change orders
156 and other additions or modifications to the construction
157 services provided for in the contract.

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

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

175 | schedule provided for in the contract, or from releasing at any
176 | point all or a portion of any retainage withheld by the public
177 | entity which is attributable to the labor, services, or
178 | materials supplied by the contractor or by one or more
179 | subcontractors or suppliers. If a public entity makes any
180 | payment of retainage to the contractor which is attributable to
181 | the labor, services, or materials supplied by one or more
182 | subcontractors or suppliers, the contractor must ~~shall~~ timely
183 | remit payment of such retainage to those subcontractors and
184 | suppliers.

185 | Section 4. This act does not apply to any contract for
186 | construction services which is entered into or is pending
187 | approval by a local government entity, as defined in s. 218.72,
188 | Florida Statutes, or a public entity, as defined in s. 255.072,
189 | Florida Statutes, or to any construction services project
190 | advertised for bid by a local government entity or a public
191 | entity, on or before July 1, 2019.

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