

By Senator Hooper

16-00384-19

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

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Paragraph (f) of subsection (1) of section
15 255.05, Florida Statutes, is amended to read:

16 255.05 Bond of contractor constructing public buildings;
17 form; action by claimants.-

18 (1) A person entering into a formal contract with the state
19 or any county, city, or political subdivision thereof, or other
20 public authority or private entity, for the construction of a
21 public building, for the prosecution and completion of a public
22 work, or for repairs upon a public building or public work shall
23 be required, before commencing the work or before recommencing
24 the work after a default or abandonment, to execute and record
25 in the public records of the county where the improvement is
26 located, a payment and performance bond with a surety insurer
27 authorized to do business in this state as surety. A public
28 entity may not require a contractor to secure a surety bond
29 under this section from a specific agent or bonding company.

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

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

37 2. Procedures for requiring certification from laborers,
38 materialmen, and subcontractors, as defined in s. 713.01, before
39 final payment to the contractor that such laborers, materialmen,
40 and subcontractors have no claims against the contractor
41 resulting from the completion of the work provided for in the
42 contract.

43
44 The state is not liable to any laborer, materialman, or
45 subcontractor for any amounts greater than the pro rata share as
46 determined under this section.

47 Section 2. Subsections (1), (2), (3), and (5) of section
48 255.078, Florida Statutes, are amended to read:

49 255.078 Public construction retainage.—

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

55 (2) After 50-percent completion of the construction
56 services purchased pursuant to the contract, the public entity
57 must reduce to 2.5 ~~5~~ percent the amount of retainage withheld
58 from each subsequent progress payment made to the contractor.

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59 For purposes of this section, the term "50-percent completion"
60 means the definition that is provided ~~has the meaning set forth~~
61 in the contract between the public entity and the contractor or,
62 if not defined in the contract, the point at which the public
63 entity has expended 50 percent of the total cost of the
64 construction services purchased as identified in the contract
65 together with all costs associated with existing change orders
66 and other additions or modifications to the construction
67 services provided for in the contract.

68 (3) After 50-percent completion of the construction
69 services purchased pursuant to the contract, the contractor may
70 elect to withhold retainage from payments to its subcontractors
71 at a rate higher than 2.5 ~~5~~ percent. The specific amount to be
72 withheld must be determined on a case-by-case basis and must be
73 based on the contractor's assessment of the subcontractor's past
74 performance, the likelihood that such performance will continue,
75 and the contractor's ability to rely on other safeguards. The
76 contractor shall notify the subcontractor, in writing, of its
77 determination to withhold more than 2.5 ~~5~~ percent of the
78 progress payment and the reasons for making that determination,
79 and the contractor may not request the release of such retained
80 funds from the public entity.

81 (5) ~~Neither~~ This section and ~~nor~~ s. 255.077 do not prohibit
82 ~~prohibits~~ a public entity from withholding retainage at a rate
83 less than 5 ~~10~~ percent of each progress payment, from
84 incrementally reducing the rate of retainage pursuant to a
85 schedule provided for in the contract, or from releasing at any
86 point all or a portion of any retainage withheld by the public
87 entity which is attributable to the labor, services, or

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88 materials supplied by the contractor or by one or more
89 subcontractors or suppliers. If a public entity makes any
90 payment of retainage to the contractor which is attributable to
91 the labor, services, or materials supplied by one or more
92 subcontractors or suppliers, the contractor must ~~shall~~ timely
93 remit payment of such retainage to those subcontractors and
94 suppliers.

95 Section 3. This act does not apply to any contract for
96 construction services which is entered into or is pending
97 approval by a public entity, as defined in s. 255.072, Florida
98 Statutes, or to any construction services project advertised for
99 bid by the public entity, on or before July 1, 2019.

100 Section 4. This act shall take effect July 1, 2019.