

**By** the Committees on Community Affairs; and Governmental Oversight and Accountability; and Senator Hooper

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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       local governmental 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

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

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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 shall timely remit payment of such retainage to  
83 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

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

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117 under this section from a specific agent or bonding company.

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

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

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

131  
132 The state is not liable to any laborer, materialman, or  
133 subcontractor for any amounts greater than the pro rata share as  
134 determined under this section.

135 Section 3. Subsections (1), (2), (3), and (5) of section  
136 255.078, Florida Statutes, are amended to read:

137 255.078 Public construction retainage.—

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

143 (2) After 50-percent completion of the construction  
144 services purchased pursuant to the contract, the public entity  
145 must reduce to 2.5 ~~5~~ percent the amount of retainage withheld

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146 from each subsequent progress payment made to the contractor.  
147 For purposes of this section, the term "50-percent completion"  
148 means the definition that is provided ~~has the meaning set forth~~  
149 in the contract between the public entity and the contractor or,  
150 if not defined in the contract, the point at which the public  
151 entity has expended 50 percent of the total cost of the  
152 construction services purchased as identified in the contract  
153 together with all costs associated with existing change orders  
154 and other additions or modifications to the construction  
155 services provided for in the contract.

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

169 (5) ~~Neither~~ This section and ~~nor~~ s. 255.077 do not prohibit  
170 ~~prohibits~~ a public entity from withholding retainage at a rate  
171 less than 5 ~~10~~ percent of each progress payment, from  
172 incrementally reducing the rate of retainage pursuant to a  
173 schedule provided for in the contract, or from releasing at any  
174 point all or a portion of any retainage withheld by the public

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175 entity which is attributable to the labor, services, or  
176 materials supplied by the contractor or by one or more  
177 subcontractors or suppliers. If a public entity makes any  
178 payment of retainage to the contractor which is attributable to  
179 the labor, services, or materials supplied by one or more  
180 subcontractors or suppliers, the contractor must ~~shall~~ timely  
181 remit payment of such retainage to those subcontractors and  
182 suppliers.

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

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

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