



570730

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2023	.	
	.	
	.	
	.	

---

The Committee on Governmental Oversight and Accountability  
(DiCeglie) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (7) and paragraph (c) of subsection  
(8) of section 218.735, Florida Statutes, are amended to read:

218.735 Timely payment for purchases of construction  
services.—

(7) Each contract for construction services between a local  
governmental entity and a contractor must provide for the



11 development of a single list of items and the estimated cost to  
12 complete each item on the list required to render complete,  
13 satisfactory, and acceptable the construction services purchased  
14 by the local governmental entity.

15 (a) The contract must specify the process for developing  
16 the list and for determining the cost to complete each item on  
17 the list, and should include, ~~including~~ the responsibilities of  
18 the local governmental entity and the contractor in developing  
19 and reviewing the list and a reasonable time for developing the  
20 list:

21 1. For construction projects having an estimated cost of  
22 less than \$10 million, within 30 calendar days after reaching  
23 substantial completion of the construction services purchased as  
24 defined in the contract, or, if not defined in the contract,  
25 upon reaching beneficial occupancy or use; or

26 2. For construction projects having an estimated cost of  
27 \$10 million or more, within 30 calendar days, or, if extended by  
28 contract, up to 45 ~~60~~ calendar days after reaching substantial  
29 completion of the construction services purchased as defined in  
30 the contract, or, if not defined in the contract, upon reaching  
31 beneficial occupancy or use.

32  
33 The contract must also specify a date for the delivery of the  
34 list of items, not to exceed 5 days after the list of items has  
35 been developed and reviewed in accordance with the time periods  
36 set forth in subparagraphs 1. and 2.

37 (b) If the contract between the local governmental entity  
38 and the contractor relates to the purchase of construction  
39 services on more than one building or structure, or involves a



570730

40 multiphased project, the contract must provide for the  
41 development of a list of items required to render complete,  
42 satisfactory, and acceptable all the construction services  
43 purchased pursuant to the contract for each building, structure,  
44 or phase of the project within the time limitations provided in  
45 paragraph (a).

46 (c) The final contract completion date must be at least 30  
47 days after the delivery of the list of items. If the list is not  
48 provided to the contractor by the agreed upon date for delivery  
49 of the list, the contract time for completion must be extended  
50 by the number of days the local governmental entity exceeded the  
51 delivery date. Damages may not be assessed against a contractor  
52 for failing to complete a project within the time required by  
53 the contract, unless the contractor failed to complete the  
54 project within the contract period as extended under this  
55 paragraph.

56 (d) The failure to include any corrective work or pending  
57 items not yet completed on the list does not alter the  
58 responsibility of the contractor to complete all the  
59 construction services purchased pursuant to the contract.

60 (e) Within 20 business days after the list is created, the  
61 local governmental entity must pay the contractor the remaining  
62 contract balance that includes all retainage previously withheld  
63 by the local governmental entity less an amount equal to 150  
64 percent of the estimated cost to complete the items on the list.

65 (f) Upon completion of all items on the list, the  
66 contractor may submit a payment request for the amount ~~all~~  
67 ~~remaining retainage~~ withheld by the local governmental entity  
68 pursuant to paragraph (e) ~~this section~~. If a good faith dispute



570730

69 exists as to whether one or more items identified on the list  
70 have been completed pursuant to the contract, the local  
71 governmental entity may continue to withhold up to 150 percent  
72 of the total costs to complete such items.

73 (g)~~(f)~~ All items that require correction under the contract  
74 which and that are identified after the preparation and delivery  
75 of the list remain the obligation of the contractor as defined  
76 by the contract.

77 (h)~~(g)~~ Warranty items or items not included in the list of  
78 items required under paragraph (a) may not affect the final  
79 payment of retainage as provided in paragraph (a) ~~this section~~  
80 or as provided in the contract between the contractor and its  
81 subcontractors and suppliers.

82 (i)~~(h)~~ Retainage may not be held by a local governmental  
83 entity or a contractor to secure payment of insurance premiums  
84 under a consolidated insurance program or series of insurance  
85 policies issued to a local governmental entity or a contractor  
86 for a project or group of projects, and the final payment of  
87 retainage as provided in this section may not be delayed pending  
88 a final audit by the local governmental entity's or contractor's  
89 insurance provider.

90 (j)~~(i)~~ If a local governmental entity fails to comply with  
91 its responsibilities to develop the list required under  
92 paragraph (a) or paragraph (b) within the time limitations  
93 provided in paragraph (a), the contractor may submit a payment  
94 request to the local governmental entity for the all remaining  
95 balance of the contract, including all remaining retainage  
96 withheld by the local governmental entity. The local  
97 governmental entity must pay the contractor pursuant to this



98 ~~section; and payment of any remaining undisputed contract~~  
99 ~~amount, less any amount withheld pursuant to the contract for~~  
100 ~~incomplete or uncorrected work, must be paid within 20 business~~  
101 ~~days after receipt of a proper invoice or payment request. If~~  
102 ~~the local governmental entity has provided written notice to the~~  
103 ~~contractor specifying the failure of the contractor to meet~~  
104 ~~contract requirements in the development of the list of items to~~  
105 ~~be completed, the local governmental entity must pay the~~  
106 ~~contractor the remaining balance of the contract, less an amount~~  
107 ~~equal to 150 percent of the estimated cost to complete the items~~  
108 ~~that the local governmental entity intended to include on the~~  
109 ~~list need not pay or process any payment request for retainage~~  
110 ~~if the contractor has, in whole or in part, failed to cooperate~~  
111 ~~with the local governmental entity in the development of the~~  
112 ~~list or to perform its contractual responsibilities, if any,~~  
113 ~~with regard to the development of the list or if paragraph~~  
114 ~~(8) (c) applies.~~

115 (8)

116 (c) This section does not require the local governmental  
117 entity to pay or release any amounts that are the subject of a  
118 good faith dispute made in writing pursuant to the contract or,  
119 the subject of a claim brought pursuant to s. 255.05, ~~or~~  
120 ~~otherwise the subject of a claim or demand by the local~~  
121 ~~governmental entity or contractor.~~

122 Section 2. Paragraph (a) of subsection (2) of section  
123 218.76, Florida Statutes, is amended to read:

124 218.76 Improper payment request or invoice; resolution of  
125 disputes.—

126 (2) (a) If a dispute arises between a vendor and a local



570730

127 governmental entity concerning payment of a payment request or  
128 an invoice, the dispute must ~~shall~~ be finally determined by the  
129 local governmental entity pursuant to a dispute resolution  
130 procedure established by the local governmental entity. Such  
131 procedure must provide that proceedings to resolve the dispute  
132 commence ~~are commenced~~ within 30 ~~45~~ days after the date the  
133 payment request or proper invoice was received by the local  
134 governmental entity and conclude ~~concluded~~ by final decision of  
135 the local governmental entity within 45 ~~60~~ days after the date  
136 the payment request or proper invoice was received by the local  
137 governmental entity. Such procedures are not subject to chapter  
138 120 and do not constitute an administrative proceeding that  
139 prohibits a court from deciding de novo any action arising out  
140 of the dispute. If the dispute is resolved in favor of the local  
141 governmental entity, interest charges begin to accrue 15 days  
142 after the local governmental entity's final decision. If the  
143 dispute is resolved in favor of the vendor, interest begins to  
144 accrue as of the original date the payment became due.

145 Section 3. Subsection (2) of section 255.073, Florida  
146 Statutes, is amended to read:

147 255.073 Timely payment for purchases of construction  
148 services.—

149 (2) If a public entity disputes a portion of a payment  
150 request, the undisputed portion must be ~~timely~~ paid by the date  
151 required under the contract or by 20 business days after receipt  
152 of the request, whichever is earlier.

153 Section 4. Subsection (3) of section 255.074, Florida  
154 Statutes, is amended to read:

155 255.074 Procedures for calculation of payment due dates.—



570730

156 (3) A public entity must submit a payment request to the  
157 Chief Financial Officer for payment no later ~~more~~ than 14 ~~20~~  
158 days after receipt of the payment request.

159 Section 5. Present subsections (4) through (8) of section  
160 255.077, Florida Statutes, are redesignated as subsections (5)  
161 through (9), respectively, a new subsection (4) is added to that  
162 section, and subsection (1) and present subsection (8) of that  
163 section are amended, to read:

164 255.077 Project closeout and payment of retainage.—

165 (1) Each contract for construction services between a  
166 public entity and a contractor must provide for the development  
167 of a list of items and the estimated cost to complete each item  
168 on the list required to render complete, satisfactory, and  
169 acceptable the construction services purchased by the public  
170 entity. The contract must specify the process for the  
171 development of the list and for determining the cost to complete  
172 each item on the list, and should include the, including  
173 responsibilities of the public entity and the contractor in  
174 developing and reviewing the list and a reasonable time for  
175 developing the list, as follows:

176 (a) For construction projects having an estimated cost of  
177 less than \$10 million, within 30 calendar days after reaching  
178 substantial completion of the construction services purchased as  
179 defined in the contract, or, if not defined in the contract,  
180 upon reaching beneficial occupancy or use; or

181 (b) For construction projects having an estimated cost of  
182 \$10 million or more, within 30 calendar days, unless otherwise  
183 extended by contract not to exceed 45 ~~60~~ calendar days, after  
184 reaching substantial completion of the construction services



570730

185 purchased as defined in the contract, or, if not defined in the  
186 contract, upon reaching beneficial occupancy or use.

187 (4) Within 20 business days after developing the list, and  
188 after receipt of a proper invoice or payment request, the public  
189 entity must pay the contractor the remaining balance of the  
190 contract, including any remaining retainage withheld by the  
191 public entity pursuant to s. 255.078, less an amount equal to  
192 150 percent of the estimated cost to complete the items on the  
193 list.

194 (9)(8) If a public entity fails to comply with its  
195 responsibilities to develop the list required under subsection  
196 (1) or subsection (2), as defined in the contract, within the  
197 time limitations provided in subsection (1), the contractor may  
198 submit a payment request for all remaining retainage withheld by  
199 the public entity pursuant to s. 255.078 and the public entity  
200 must pay the contractor all remaining retainage previously  
201 withheld within 20 days after receipt of the payment request.

202 The public entity is not required to need not pay or process any  
203 payment request for retainage if the contractor has, in whole or  
204 in part, failed to cooperate with the public entity in the  
205 development of the list or failed to perform its contractual  
206 responsibilities, if any, with regard to the development of the  
207 list or if s. 255.078(3) applies.

208 Section 6. Subsection (3) of section 255.078, Florida  
209 Statutes, is amended to read:

210 255.078 Public construction retainage.—

211 (3) This section and s. 255.077 do not require the public  
212 entity to pay or release any amounts that are the subject of a  
213 good faith dispute made in writing pursuant to the contract or





570730

214 the subject of a claim brought pursuant to s. 255.05, ~~or~~  
215 ~~otherwise the subject of a claim or demand by the public entity~~  
216 ~~or contractor.~~

217 Section 7. Paragraph (b) of subsection (1) of section  
218 255.0992, Florida Statutes, is amended to read:

219 255.0992 Public works projects; prohibited governmental  
220 actions.-

221 (1) As used in this section, the term:

222 (b) "Public works project" means an activity ~~exceeding \$1~~  
223 ~~million in value~~ that is paid for with any state-appropriated  
224 funds and that ~~which~~ consists of the construction, maintenance,  
225 repair, renovation, remodeling, or improvement of a building,  
226 road, street, sewer, storm drain, water system, site  
227 development, irrigation system, reclamation project, gas or  
228 electrical distribution system, gas or electrical substation, or  
229 other facility, project, or portion thereof ~~that is~~ owned in  
230 whole or in part by any political subdivision.

231 Section 8. This act shall take effect July 1, 2023.

232  
233 ===== T I T L E A M E N D M E N T =====

234 And the title is amended as follows:

235 Delete everything before the enacting clause  
236 and insert:

237 A bill to be entitled  
238 An act relating to public construction; amending s.  
239 218.735, F.S.; requiring that certain contracts  
240 provide the estimated cost to complete each item on a  
241 specified list; requiring that such contracts specify  
242 the process for determining the cost to complete each



243 item on the list; revising the extension by contract  
244 of a specified timeframe to develop and review a  
245 specified list; requiring a local governmental entity  
246 to pay a contractor the remaining contract balance  
247 within a specified timeframe; authorizing the  
248 contractor to submit a payment request for the amount  
249 withheld by the local governmental entity under  
250 specified conditions; authorizing a contractor to  
251 submit a payment request to the local governmental  
252 entity for the remaining balance of the contract,  
253 under specified conditions; requiring a local  
254 governmental entity to pay the contractor within a  
255 specified timeframe; requiring the local governmental  
256 entity to pay the remaining balance of the contract  
257 under specified conditions; revising the conditions  
258 that require a local governmental entity to pay or  
259 release amounts subject to certain disputes or claims;  
260 amending s. 218.76, F.S.; revising the timeframe  
261 within which proceedings must commence to resolve  
262 disputes between vendors and local governmental  
263 entities; revising the timeframe for such proceedings  
264 to conclude; amending s. 255.073, F.S.; requiring that  
265 undisputed portions of payment requests be paid within  
266 a specified timeframe; amending s. 255.074, F.S.;  
267 revising the timeframe for a public entity to submit a  
268 payment request to the Chief Financial Officer;  
269 amending s. 255.077, F.S.; requiring that certain  
270 contracts provide the estimated cost to complete each  
271 item on a specified list; requiring that such



570730

272 contracts specify the process for determining the cost  
273 to complete the items on the list; revising the  
274 extension authorized by contract to develop the  
275 specified list; requiring the public entity to pay the  
276 contractor the remaining balance of the contract  
277 within a specified timeframe; requiring a public  
278 entity to pay all remaining retainage if the public  
279 entity has not developed a specified list; amending s.  
280 255.078, F.S.; revising the conditions that require a  
281 public entity to pay or release amounts subject to  
282 certain disputes or claims; amending s. 255.0992,  
283 F.S.; revising the definition of the term "public  
284 works project"; providing an effective date.