

By Senator DiCeglie

18-00397-23

2023346__

1 A bill to be entitled
2 An act relating to public construction; amending s.
3 166.033, F.S.; providing that applications for
4 approval of a development permit or development order
5 which are under review by a municipality are deemed
6 approved after a specified timeframe; amending s.
7 218.735, F.S.; requiring a certain list to include a
8 dollar valuation using reasonable market rates of the
9 estimated cost to complete items on the list; deleting
10 a provision authorizing an extension by contract for
11 construction projects of less than \$10 million;
12 requiring a local governmental entity to pay a
13 contractor the remaining contract balance within a
14 specified timeframe; revising the conditions that
15 would require a local governmental entity to pay
16 unpaid contract sums to a contractor if a specified
17 list is not developed; requiring a local governmental
18 entity to pay the remaining contract balance if the
19 local governmental entity provided a certain written
20 notice to the contractor; revising the conditions that
21 require a local governmental entity to pay or release
22 amounts subject to certain disputes or claims;
23 amending s. 218.76, F.S.; revising the timeframe
24 within which proceedings must commence to resolve
25 disputes between vendors and local governmental
26 entities; revising the timeframe for such proceedings
27 to conclude; amending s. 255.073, F.S.; requiring
28 undisputed portions of payment requests to be paid
29 within a specified timeframe; amending s. 255.074,

18-00397-23

2023346__

30 F.S.; revising the timeframe for a public entity to
31 submit a payment request to the Chief Financial
32 Officer; amending s. 255.077, F.S.; requiring a
33 certain list to include a dollar valuation using
34 reasonable market rates of the estimated costs to
35 complete the items on the list; requiring the public
36 entity to pay the contractor the remaining contract
37 balance within a specified timeframe; requiring a
38 public entity to pay all remaining retainage if the
39 public entity has not developed a specified list;
40 amending s. 255.078, F.S.; revising the conditions
41 that require a public entity to pay or release amounts
42 subject to certain disputes or claims; amending s.
43 255.0992, F.S.; revising the definition of the term
44 "public works project"; providing an effective date.
45

46 Be It Enacted by the Legislature of the State of Florida:
47

48 Section 1. Paragraph (f) is added to subsection (2) of
49 section 166.033, Florida Statutes, to read:

50 166.033 Development permits and orders.—

51 (2)

52 (f) Notwithstanding any agreement between both parties to
53 extend deadlines established in this section, if an application
54 is under review 180 days after submission, the municipality must
55 deem the application approved.

56 Section 2. Subsection (7) and paragraph (c) of subsection
57 (8) of section 218.735, Florida Statutes, are amended to read:

58 218.735 Timely payment for purchases of construction

18-00397-23

2023346__

59 services.-

60 (7) Each contract for construction services between a local
61 governmental entity and a contractor must provide for the
62 development of a single list of items required to render
63 complete, satisfactory, and acceptable the construction services
64 purchased by the local governmental entity. The list must
65 include a dollar valuation using reasonable market rates of the
66 estimated cost to complete the items on the list.

67 (a) The contract must specify the process for developing
68 the list, including the responsibilities of the local
69 governmental entity and the contractor in developing and
70 reviewing the list and a reasonable time for developing the
71 list:

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

77 2. For construction projects having an estimated cost of
78 \$10 million or more, within 30 calendar days, ~~or, if extended by~~
79 ~~contract, up to 60 calendar days~~ after reaching substantial
80 completion of the construction services purchased as defined in
81 the contract, or, if not defined in the contract, upon reaching
82 beneficial occupancy or use.

83
84 The contract must also specify a date for the delivery of the
85 list of items, not to exceed 5 days after the list of items has
86 been developed and reviewed in accordance with the time periods
87 set forth in subparagraphs 1. and 2.

18-00397-23

2023346__

88 (b) If the contract between the local governmental entity
89 and the contractor relates to the purchase of construction
90 services on more than one building or structure, or involves a
91 multiphased project, the contract must provide for the
92 development of a list of items required to render complete,
93 satisfactory, and acceptable all the construction services
94 purchased pursuant to the contract for each building, structure,
95 or phase of the project within the time limitations provided in
96 paragraph (a).

97 (c) The final contract completion date must be at least 30
98 days after the delivery of the list of items. If the list is not
99 provided to the contractor by the agreed upon date for delivery
100 of the list, the contract time for completion must be extended
101 by the number of days the local governmental entity exceeded the
102 delivery date. Damages may not be assessed against a contractor
103 for failing to complete a project within the time required by
104 the contract, unless the contractor failed to complete the
105 project within the contract period as extended under this
106 paragraph.

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

111 (e) Within 20 days after the date the list is created, the
112 local governmental entity must pay the contractor the remaining
113 contract balance that includes all retainage previously withheld
114 by the local governmental entity. The remaining contract balance
115 does not include the estimated costs to complete the items
116 included on the list.

18-00397-23

2023346__

117 (f) Upon completion of all items on the list, the
118 contractor may submit a payment request for all remaining
119 contract sums ~~retainage~~ withheld by the local governmental
120 entity pursuant to this section. If a good faith dispute exists
121 as to whether one or more items identified on the list have been
122 completed pursuant to the contract, the local governmental
123 entity may continue to withhold up to 150 percent of the total
124 costs to complete such items.

125 (g) ~~(f)~~ All items that require correction under the contract
126 which and that are identified after the preparation and delivery
127 of the list remain the obligation of the contractor as defined
128 by the contract.

129 (h) ~~(g)~~ Warranty items or items not included in the list of
130 items required under paragraph (a) may not affect the final
131 payment of retainage as provided in paragraph (e) ~~this section~~
132 or as provided in the contract between the contractor and its
133 subcontractors and suppliers.

134 (i) ~~(h)~~ Retainage may not be held by a local governmental
135 entity or a contractor to secure payment of insurance premiums
136 under a consolidated insurance program or series of insurance
137 policies issued to a local governmental entity or a contractor
138 for a project or group of projects, and the final payment of
139 retainage as provided in paragraph (e) ~~this section~~ may not be
140 delayed pending a final audit by the local governmental entity's
141 or contractor's insurance provider.

142 (j) ~~(i)~~ If a local governmental entity fails to comply with
143 its responsibilities to develop the list required under
144 paragraph (a) or paragraph (b) within the time limitations
145 provided in paragraph (a), the contractor may submit a payment

18-00397-23

2023346__

146 request for all remaining unpaid contract sums including
147 retainage withheld by the local governmental entity, and the
148 local governmental entity must pay the contractor all remaining
149 contract sums pursuant to this section; and payment of any
150 remaining undisputed contract amount, less any amount withheld
151 pursuant to the contract for incomplete or uncorrected work,
152 must be paid within 20 business days after receipt of a proper
153 invoice or payment request. If the local governmental entity has
154 provided written notice to the contractor specifying the failure
155 of the contractor to meet contract requirements in the
156 development of the list of items to be completed, the local
157 governmental entity must pay the contractor the remaining
158 contract balance that includes retainage previously withheld by
159 the local governmental entity. The remaining contract balance
160 does not include 150 percent of the estimated costs to complete
161 the items that the local governmental entity has included on its
162 version of the list need not pay or process any payment request
163 for retainage if the contractor has, in whole or in part, failed
164 to cooperate with the local governmental entity in the
165 development of the list or to perform its contractual
166 responsibilities, if any, with regard to the development of the
167 list or if paragraph (8)(c) applies.

168 (8)

169 (c) This section does not require the local governmental
170 entity to pay or release any amounts that are the subject of a
171 good faith dispute or, the subject of a claim brought pursuant
172 to s. 255.05, or otherwise the subject of a claim or demand by
173 the local governmental entity or contractor.

174 Section 3. Paragraph (a) of subsection (2) of section

18-00397-23

2023346__

175 218.76, Florida Statutes, is amended to read:

176 218.76 Improper payment request or invoice; resolution of
177 disputes.—

178 (2) (a) If a dispute arises between a vendor and a local
179 governmental entity concerning payment of a payment request or
180 an invoice, the dispute must ~~shall~~ be finally determined by the
181 local governmental entity pursuant to a dispute resolution
182 procedure established by the local governmental entity. Such
183 procedure must provide that proceedings to resolve the dispute
184 commence ~~are commenced~~ within 30 ~~45~~ days after the date the
185 payment request or proper invoice was received by the local
186 governmental entity and conclude ~~concluded~~ by final decision of
187 the local governmental entity within 45 ~~60~~ days after the date
188 the payment request or proper invoice was received by the local
189 governmental entity. Such procedures are not subject to chapter
190 120 and do not constitute an administrative proceeding that
191 prohibits a court from deciding de novo any action arising out
192 of the dispute. If the dispute is resolved in favor of the local
193 governmental entity, interest charges begin to accrue 15 days
194 after the local governmental entity's final decision. If the
195 dispute is resolved in favor of the vendor, interest begins to
196 accrue as of the original date the payment became due.

197 Section 4. Subsection (2) of section 255.073, Florida
198 Statutes, is amended to read:

199 255.073 Timely payment for purchases of construction
200 services.—

201 (2) If a public entity disputes a portion of a payment
202 request, the undisputed portion must be ~~timely~~ paid within the
203 time required under the contract or within 20 days, whichever is

18-00397-23

2023346__

204 earlier.

205 Section 5. Subsection (3) of section 255.074, Florida
206 Statutes, is amended to read:

207 255.074 Procedures for calculation of payment due dates.—

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

211 Section 6. Present subsections (4) through (8) of section
212 255.077, Florida Statutes, are redesignated as subsections (5)
213 through (9), respectively, a new subsection (4) is added to that
214 section, and subsection (1) and present subsection (8) of that
215 section are amended, to read:

216 255.077 Project closeout and payment of retainage.—

217 (1) Each contract for construction services between a
218 public entity and a contractor must provide for the development
219 of a list of items required to render complete, satisfactory,
220 and acceptable the construction services purchased by the public
221 entity. The list must include a dollar valuation using
222 reasonable market rates of the estimated cost to complete the
223 items included on the list. The contract must specify the
224 process for the development of the list, including
225 responsibilities of the public entity and the contractor in
226 developing and reviewing the list and a reasonable time for
227 developing the list, as follows:

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

18-00397-23

2023346__

233 (b) For construction projects having an estimated cost of
234 \$10 million or more, within 30 calendar days, unless otherwise
235 extended by contract not to exceed 60 calendar days, after
236 reaching substantial completion of the construction services
237 purchased as defined in the contract, or, if not defined in the
238 contract, upon reaching beneficial occupancy or use.

239 (4) Within 20 days after the date the list is created, the
240 public entity must pay the contractor the remaining contract
241 balance that includes all retainage previously withheld by the
242 public entity. The remaining contract balance does not include
243 the costs to complete the items included on the list.

244 (9)-(8) If a public entity fails to comply with its
245 responsibilities to develop the list required under subsection
246 (1) or subsection (2), as defined in the contract, within the
247 time limitations provided in subsection (1), the contractor may
248 submit a payment request for all remaining retainage withheld by
249 the public entity pursuant to s. 255.078 and the public entity
250 must pay the contractor all remaining retainage previously
251 withheld within 20 days after receipt of the payment request.
252 The public entity is not required to ~~need not~~ pay or process any
253 payment request for retainage if the contractor has, ~~in whole or~~
254 ~~in part,~~ failed to cooperate with the public entity in the
255 development of the list or failed to perform its contractual
256 responsibilities, if any, with regard to the development of the
257 list or if s. 255.078(3) applies.

258 Section 7. Subsection (3) of section 255.078, Florida
259 Statutes, is amended to read:

260 255.078 Public construction retainage.—

261 (3) This section and s. 255.077 do not require the public

18-00397-23

2023346__

262 entity to pay or release any amounts that are the subject of a
263 good faith dispute or, the subject of a claim brought pursuant
264 to s. 255.05, ~~or otherwise the subject of a claim or demand by~~
265 ~~the public entity or contractor.~~

266 Section 8. Paragraph (b) of subsection (1) of section
267 255.0992, Florida Statutes, is amended to read:

268 255.0992 Public works projects; prohibited governmental
269 actions.-

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

271 (b) "Public works project" means an activity ~~exceeding \$1~~
272 ~~million in value~~ that is paid for with any local or state-
273 appropriated funds and ~~that~~ ~~which~~ consists of the construction,
274 maintenance, repair, renovation, remodeling, or improvement of a
275 building, road, street, sewer, storm drain, water system, site
276 development, irrigation system, reclamation project, gas or
277 electrical distribution system, gas or electrical substation, or
278 other facility, project, or portion thereof ~~that is~~ owned in
279 whole or in part by any political subdivision.

280 Section 9. This act shall take effect July 1, 2023.