

By the Committee on Community Affairs; and Senator DiCeglie

578-02612-23

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1                                   A bill to be entitled  
2           An act relating to public construction; amending s.  
3           218.735, F.S.; requiring that a certain list include a  
4           dollar valuation, as reasonably determined by the  
5           contractor as a portion of the contract value, of the  
6           estimated cost to complete each item on the list;  
7           deleting a provision authorizing an extension by  
8           contract for construction projects of less than \$10  
9           million; requiring a local governmental entity to pay  
10          a contractor the remaining contract balance within a  
11          specified timeframe; revising the conditions that  
12          would require a local governmental entity to pay  
13          unpaid contract sums to a contractor if a specified  
14          list is not developed; requiring a local governmental  
15          entity to pay the remaining contract balance if the  
16          local governmental entity provided a certain written  
17          notice to the contractor; revising the conditions that  
18          require a local governmental entity to pay or release  
19          amounts subject to certain disputes or claims;  
20          amending s. 218.76, F.S.; revising the timeframe  
21          within which proceedings must commence to resolve  
22          disputes between vendors and local governmental  
23          entities; revising the timeframe for such proceedings  
24          to conclude; amending s. 255.073, F.S.; requiring that  
25          undisputed portions of payment requests be paid within  
26          a specified timeframe; amending s. 255.074, F.S.;  
27          revising the timeframe for a public entity to submit a  
28          payment request to the Chief Financial Officer;  
29          amending s. 255.077, F.S.; requiring that a certain

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30 list include a dollar valuation, as determined by the  
31 contractor as a portion of the contract value, to  
32 complete each item on the list; requiring the public  
33 entity to pay the contractor the remaining contract  
34 balance within a specified timeframe; requiring a  
35 public entity to pay all remaining retainage if the  
36 public entity has not developed a specified list;  
37 amending s. 255.078, F.S.; revising the conditions  
38 that require a public entity to pay or release amounts  
39 subject to certain disputes or claims; amending s.  
40 255.0992, F.S.; revising the definition of the term  
41 "public works project"; providing an effective date.  
42

43 Be It Enacted by the Legislature of the State of Florida:  
44

45 Section 1. Subsection (7) and paragraph (c) of subsection  
46 (8) of section 218.735, Florida Statutes, are amended to read:  
47 218.735 Timely payment for purchases of construction  
48 services.—

49 (7) Each contract for construction services between a local  
50 governmental entity and a contractor must provide for the  
51 development of a single list of items required to render  
52 complete, satisfactory, and acceptable the construction services  
53 purchased by the local governmental entity, which must include a  
54 dollar valuation, as reasonably determined by the contractor as  
55 a portion of the contract value, of the estimated cost to  
56 complete each item on the list.

57 (a) The contract must specify the process for developing  
58 the list, including the responsibilities of the local

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59 governmental entity and the contractor in developing and  
60 reviewing the list and a reasonable time for developing the  
61 list:

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

67 2. For construction projects having an estimated cost of  
68 \$10 million or more, within 30 calendar days, ~~or, if extended by~~  
69 ~~contract, up to 60 calendar days~~ after reaching substantial  
70 completion of the construction services purchased as defined in  
71 the contract, or, if not defined in the contract, upon reaching  
72 beneficial occupancy or use.

73

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

78 (b) If the contract between the local governmental entity  
79 and the contractor relates to the purchase of construction  
80 services on more than one building or structure, or involves a  
81 multiphased project, the contract must provide for the  
82 development of a list of items required to render complete,  
83 satisfactory, and acceptable all the construction services  
84 purchased pursuant to the contract for each building, structure,  
85 or phase of the project within the time limitations provided in  
86 paragraph (a).

87 (c) The final contract completion date must be at least 30

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88 days after the delivery of the list of items. If the list is not  
89 provided to the contractor by the agreed upon date for delivery  
90 of the list, the contract time for completion must be extended  
91 by the number of days the local governmental entity exceeded the  
92 delivery date. Damages may not be assessed against a contractor  
93 for failing to complete a project within the time required by  
94 the contract, unless the contractor failed to complete the  
95 project within the contract period as extended under this  
96 paragraph.

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

101 (e) Within 20 days after the date the list is created, the  
102 local governmental entity must pay the contractor the remaining  
103 contract balance that includes all retainage previously withheld  
104 by the local governmental entity. The remaining contract balance  
105 does not include the estimated costs to complete the items  
106 included on the list.

107 (f) Upon completion of all items on the list, the  
108 contractor may submit a payment request for all remaining  
109 contract sums ~~retainage~~ withheld by the local governmental  
110 entity pursuant to this section. If a good faith dispute exists  
111 as to whether one or more items identified on the list have been  
112 completed pursuant to the contract, the local governmental  
113 entity may continue to withhold up to 150 percent of the total  
114 costs to complete such items.

115 (g) ~~(f)~~ All items that require correction under the contract  
116 which ~~and that~~ are identified after the preparation and delivery

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117 of the list remain the obligation of the contractor as defined  
118 by the contract.

119 (h)~~(g)~~ Warranty items or items not included in the list of  
120 items required under paragraph (a) may not affect the final  
121 payment of retainage as provided in paragraph (e) ~~this section~~  
122 or as provided in the contract between the contractor and its  
123 subcontractors and suppliers.

124 (i)~~(h)~~ Retainage may not be held by a local governmental  
125 entity or a contractor to secure payment of insurance premiums  
126 under a consolidated insurance program or series of insurance  
127 policies issued to a local governmental entity or a contractor  
128 for a project or group of projects, and the final payment of  
129 retainage as provided in paragraph (e) ~~this section~~ may not be  
130 delayed pending a final audit by the local governmental entity's  
131 or contractor's insurance provider.

132 (j)~~(i)~~ If a local governmental entity fails to comply with  
133 its responsibilities to develop the list required under  
134 paragraph (a) or paragraph (b) within the time limitations  
135 provided in paragraph (a), the contractor may submit a payment  
136 request for all remaining unpaid contract sums, including  
137 retainage withheld by the local governmental entity, and the  
138 local governmental entity must pay the contractor all remaining  
139 contract sums pursuant to this section; and payment of any  
140 remaining undisputed contract amount, less any amount withheld  
141 pursuant to the contract for incomplete or uncorrected work,  
142 ~~must be paid~~ within 20 business days after receipt of a proper  
143 invoice or payment request. If the local governmental entity has  
144 provided written notice to the contractor specifying the failure  
145 of the contractor to meet contract requirements in the

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146 development of the list of items to be completed, the local  
147 governmental entity must pay the contractor the remaining  
148 contract balance that includes retainage previously withheld by  
149 the local governmental entity. The remaining contract balance  
150 does not include 150 percent of the estimated costs to complete  
151 the items that the local governmental entity has included on its  
152 version of the list ~~need not pay or process any payment request~~  
153 ~~for retainage if the contractor has, in whole or in part, failed~~  
154 ~~to cooperate with the local governmental entity in the~~  
155 ~~development of the list or to perform its contractual~~  
156 ~~responsibilities, if any, with regard to the development of the~~  
157 ~~list or if paragraph (8)(c) applies.~~

158 (8)

159 (c) This section does not require the local governmental  
160 entity to pay or release any amounts that are the subject of a  
161 good faith dispute or the subject of a claim brought pursuant  
162 to s. 255.05, ~~or otherwise the subject of a claim or demand by~~  
163 ~~the local governmental entity or contractor.~~

164 Section 2. Paragraph (a) of subsection (2) of section  
165 218.76, Florida Statutes, is amended to read:

166 218.76 Improper payment request or invoice; resolution of  
167 disputes.—

168 (2) (a) If a dispute arises between a vendor and a local  
169 governmental entity concerning payment of a payment request or  
170 an invoice, the dispute must ~~shall~~ be finally determined by the  
171 local governmental entity pursuant to a dispute resolution  
172 procedure established by the local governmental entity. Such  
173 procedure must provide that proceedings to resolve the dispute  
174 commence ~~are commenced~~ within 30 ~~45~~ days after the date the

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175 payment request or proper invoice was received by the local  
176 governmental entity and conclude ~~concluded~~ by final decision of  
177 the local governmental entity within 45 ~~60~~ days after the date  
178 the payment request or proper invoice was received by the local  
179 governmental entity. Such procedures are not subject to chapter  
180 120 and do not constitute an administrative proceeding that  
181 prohibits a court from deciding de novo any action arising out  
182 of the dispute. If the dispute is resolved in favor of the local  
183 governmental entity, interest charges begin to accrue 15 days  
184 after the local governmental entity's final decision. If the  
185 dispute is resolved in favor of the vendor, interest begins to  
186 accrue as of the original date the payment became due.

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

189 255.073 Timely payment for purchases of construction  
190 services.—

191 (2) If a public entity disputes a portion of a payment  
192 request, the undisputed portion must be ~~timely~~ paid within the  
193 time required under the contract or within 20 days, whichever is  
194 earlier.

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

197 255.074 Procedures for calculation of payment due dates.—

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

201 Section 5. Present subsections (4) through (8) of section  
202 255.077, Florida Statutes, are redesignated as subsections (5)  
203 through (9), respectively, a new subsection (4) is added to that

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204 section, and subsection (1) and present subsection (8) of that  
205 section are amended, to read:

206 255.077 Project closeout and payment of retainage.—

207 (1) Each contract for construction services between a  
208 public entity and a contractor must provide for the development  
209 of a list of items required to render complete, satisfactory,  
210 and acceptable the construction services purchased by the public  
211 entity. The list must include a dollar valuation, as reasonably  
212 determined by the contractor as a portion of the contract value,  
213 of the estimated cost to complete the items included on the  
214 list. The contract must specify the process for the development  
215 of the list, including responsibilities of the public entity and  
216 the contractor in developing and reviewing the list and a  
217 reasonable time for developing the list, as follows:

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

223 (b) For construction projects having an estimated cost of  
224 \$10 million or more, within 30 calendar days, unless otherwise  
225 extended by contract not to exceed 60 calendar days, after  
226 reaching substantial completion of the construction services  
227 purchased as defined in the contract, or, if not defined in the  
228 contract, upon reaching beneficial occupancy or use.

229 (4) Within 20 days after the date the list is created, the  
230 public entity must pay the contractor the remaining contract  
231 balance that includes all retainage previously withheld by the  
232 public entity. The remaining contract balance does not include



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233 the costs to complete the items included on the list.

234 (9)~~(8)~~ If a public entity fails to comply with its  
235 responsibilities to develop the list required under subsection  
236 (1) or subsection (2), as defined in the contract, within the  
237 time limitations provided in subsection (1), the contractor may  
238 submit a payment request for all remaining retainage withheld by  
239 the public entity pursuant to s. 255.078 and the public entity  
240 must pay the contractor all remaining retainage previously  
241 withheld within 20 days after receipt of the payment request.

242 The public entity is not required to ~~need not~~ pay or process any  
243 payment request for retainage if the contractor has, ~~in whole or~~  
244 ~~in part,~~ failed to cooperate with the public entity in the  
245 development of the list or failed to perform its contractual  
246 responsibilities, if any, with regard to the development of the  
247 list or if s. 255.078(3) applies.

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

250 255.078 Public construction retainage.—

251 (3) This section and s. 255.077 do not require the public  
252 entity to pay or release any amounts that are the subject of a  
253 good faith dispute or, the subject of a claim brought pursuant  
254 to s. 255.05, ~~or otherwise the subject of a claim or demand by~~  
255 ~~the public entity or contractor.~~

256 Section 7. Paragraph (b) of subsection (1) of section  
257 255.0992, Florida Statutes, is amended to read:

258 255.0992 Public works projects; prohibited governmental  
259 actions.—

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

261 (b) "Public works project" means an activity exceeding

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262 \$350,000 ~~\$1 million~~ in value that is paid for with any local or  
263 state-appropriated funds and that ~~which~~ consists of the  
264 construction, maintenance, repair, renovation, remodeling, or  
265 improvement of a building, road, street, sewer, storm drain,  
266 water system, site development, irrigation system, reclamation  
267 project, gas or electrical distribution system, gas or  
268 electrical substation, or other facility, project, or portion  
269 thereof ~~that is~~ owned in whole or in part by any political  
270 subdivision.

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