

1 A bill to be entitled
2 An act relating to public construction; amending s.
3 166.033, F.S.; providing that a development permit
4 application shall be deemed approved by a municipality
5 after a certain period of review; amending s. 218.735,
6 F.S.; revising provisions relating to payments for
7 purchases of construction services by local
8 governmental entities; amending s. 218.76, F.S.;
9 revising the time periods within which certain
10 proceedings must be commenced and concluded; amending
11 s. 255.073, F.S.; providing dates by which the
12 undisputed portion of certain payment requests must be
13 paid; amending s. 255.074, F.S.; revising the date by
14 which a public entity must submit certain payment
15 requests to the Chief Financial Officer; amending s.
16 255.077, F.S.; revising provisions relating to
17 payments for purchases of construction services by
18 public entities; amending s. 255.078, F.S.; revising
19 applicability; amending s. 255.0992, F.S.; revising
20 the definition of the term "public works project";
21 amending s. 553.792, F.S.; providing that certain
22 building permit applications shall be deemed properly
23 completed and accepted in certain circumstances;
24 providing an effective date.
25

26 | Be It Enacted by the Legislature of the State of Florida:

27 |

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

30 | 166.033 Development permits and orders.—

31 | (2)

32 | (f) Notwithstanding any agreement between a municipality
33 | and an applicant to extend a deadline established in this
34 | section, an application under review for 180 days or more shall
35 | be deemed approved by the municipality.

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

38 | 218.735 Timely payment for purchases of construction
39 | services.—

40 | (7) Each contract for construction services between a
41 | local governmental entity and a contractor must provide for the
42 | development of a single list of items required to render
43 | complete, satisfactory, and acceptable the construction services
44 | purchased by the local governmental entity, which must include a
45 | dollar valuation, determined using reasonable market rates, of
46 | the estimated cost to complete each item.

47 | (a) The contract must specify the process for developing
48 | the list, including the responsibilities of the local
49 | governmental entity and the contractor in developing and
50 | reviewing the list and a reasonable time for developing the

51 list:

52 1. For construction projects having an estimated cost of
 53 Less than \$10 million, within 30 calendar days after reaching
 54 substantial completion of the construction services purchased as
 55 defined in the contract, or, if not defined in the contract,
 56 upon reaching beneficial occupancy or use; or

57 2. For construction projects having an estimated cost of
 58 \$10 million or more, within 30 calendar days, ~~or, if extended by~~
 59 ~~contract, up to 60 calendar days~~ after reaching substantial
 60 completion of the construction services purchased as defined in
 61 the contract, or, if not defined in the contract, upon reaching
 62 beneficial occupancy or use.

63
 64 The contract must also specify a date for the delivery of the
 65 list of items, not to exceed 5 days after the list of items has
 66 been developed and reviewed in accordance with the time periods
 67 set forth in subparagraphs 1. and 2.

68 (b) If the contract between the local governmental entity
 69 and the contractor relates to the purchase of construction
 70 services on more than one building or structure, or involves a
 71 multiphased project, the contract must provide for the
 72 development of a list of items required to render complete,
 73 satisfactory, and acceptable all the construction services
 74 purchased pursuant to the contract for each building, structure,
 75 or phase of the project within the time limitations provided in

76 paragraph (a).

77 (c) The final contract completion date must be at least 30
78 days after the delivery of the list of items. If the list is not
79 provided to the contractor by the agreed upon date for delivery
80 of the list, the contract time for completion must be extended
81 by the number of days the local governmental entity exceeded the
82 delivery date. Damages may not be assessed against a contractor
83 for failing to complete a project within the time required by
84 the contract, unless the contractor failed to complete the
85 project within the contract period as extended under this
86 paragraph.

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

91 (e) Within 20 days after developing the list, the local
92 governmental entity shall pay the contractor the remaining
93 balance of the contract, including any remaining retainage
94 withheld by the local governmental entity, less an amount that
95 equals the estimated cost to complete the items on the list.

96 (f)-(e) Upon completion of all items on the list, the
97 contractor may submit a payment request for the amount ~~all~~
98 ~~remaining retainage~~ withheld by the local governmental entity
99 pursuant to paragraph (e) ~~this section~~. If a good faith dispute
100 exists as to whether one or more items identified on the list

101 have been completed pursuant to the contract, the local
102 governmental entity may continue to withhold up to 150 percent
103 of the total costs to complete such items.

104 (g)~~(f)~~ All items that require correction under the
105 contract and that are identified after the preparation and
106 delivery of the list remain the obligation of the contractor as
107 defined by the contract.

108 (h)~~(g)~~ Warranty items or items not included in the list of
109 items required under paragraph (a) may not affect the final
110 payment of retainage as provided in this section or as provided
111 in the contract between the contractor and its subcontractors
112 and suppliers.

113 (i)~~(h)~~ Retainage may not be held by a local governmental
114 entity or a contractor to secure payment of insurance premiums
115 under a consolidated insurance program or series of insurance
116 policies issued to a local governmental entity or a contractor
117 for a project or group of projects, and the final payment of
118 retainage as provided in this section may not be delayed pending
119 a final audit by the local governmental entity's or contractor's
120 insurance provider.

121 (j)~~(i)~~ If a local governmental entity fails to comply with
122 its responsibilities to develop the list required under
123 paragraph (a) or paragraph (b) within the time limitations
124 provided in paragraph (a), the contractor may submit a payment
125 request to the local governmental entity for the remaining

126 balance of the contract, including all remaining retainage
127 withheld by the local governmental entity. The local
128 governmental entity must pay the contractor pursuant to this
129 section; and payment of any remaining undisputed contract
130 amount, less any amount withheld pursuant to the contract for
131 incomplete or uncorrected work, must be paid within 20 business
132 days after receipt of a proper invoice or payment request. If
133 the local governmental entity has provided written notice to the
134 contractor specifying the failure of the contractor to meet
135 contract requirements in the development of the list of items to
136 be completed, the local governmental entity shall pay the
137 contractor the remaining balance of the contract, less an amount
138 equal to 150 percent of the estimated cost to complete the items
139 that the local governmental entity intended to include on the
140 list need not pay or process any payment request for retainage
141 if the contractor has, in whole or in part, failed to cooperate
142 with the local governmental entity in the development of the
143 list or to perform its contractual responsibilities, if any,
144 with regard to the development of the list or if paragraph
145 (8)(c) applies.

146 (8)

147 (c) This section does not require the local governmental
148 entity to pay or release any amounts that are the subject of a
149 good faith dispute or, the subject of a claim brought pursuant
150 to s. 255.05, ~~or otherwise the subject of a claim or demand by~~

151 ~~the local governmental entity or contractor.~~

152 Section 3. Paragraph (a) of subsection (2) of section
 153 218.76, Florida Statutes, is amended to read:

154 218.76 Improper payment request or invoice; resolution of
 155 disputes.—

156 (2)(a) If a dispute arises between a vendor and a local
 157 governmental entity concerning payment of a payment request or
 158 invoice, the dispute shall be finally determined by the local
 159 governmental entity pursuant to a dispute resolution procedure
 160 established by the local governmental entity. Such procedure
 161 must provide that proceedings to resolve the dispute are
 162 commenced within 30 ~~45~~ days after the date the payment request
 163 or proper invoice was received by the local governmental entity
 164 and concluded by final decision of the local governmental entity
 165 within 45 ~~60~~ days after the date the payment request or proper
 166 invoice was received by the local governmental entity. Such
 167 procedures are not subject to chapter 120 and do not constitute
 168 an administrative proceeding that prohibits a court from
 169 deciding de novo any action arising out of the dispute. If the
 170 dispute is resolved in favor of the local governmental entity,
 171 interest charges begin to accrue 15 days after the local
 172 governmental entity's final decision. If the dispute is resolved
 173 in favor of the vendor, interest begins to accrue as of the
 174 original date the payment became due.

175 Section 4. Subsection (2) of section 255.073, Florida

176 Statutes, is amended to read:

177 255.073 Timely payment for purchases of construction
178 services.—

179 (2) If a public entity disputes a portion of a payment
180 request, the undisputed portion must be ~~timely paid~~ by the date
181 required under the contract or by 20 days after receipt of the
182 request, whichever is earlier.

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

185 255.074 Procedures for calculation of payment due dates.—

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

189 Section 6. Subsections (4) and (8) of section 255.077,
190 Florida Statutes, are renumbered as subsections (5) and (9),
191 respectively, subsection (1) and present subsections (4) and (8)
192 are amended, and a new subsection (4) is added to that section,
193 to read:

194 255.077 Project closeout and payment of retainage.—

195 (1) Each contract for construction services between a
196 public entity and a contractor must provide for the development
197 of a list of items required to render complete, satisfactory,
198 and acceptable the construction services purchased by the public
199 entity, which must include a dollar valuation, determined using
200 reasonable market rates, of the estimated cost to complete each

201 item. The contract must specify the process for the development
202 of the list, including responsibilities of the public entity and
203 the contractor in developing and reviewing the list and a
204 reasonable time for developing the list, as follows:

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

210 (b) For construction projects having an estimated cost of
211 \$10 million or more, within 30 calendar days, unless otherwise
212 extended by contract not to exceed 60 calendar days, after
213 reaching substantial completion of the construction services
214 purchased as defined in the contract, or, if not defined in the
215 contract, upon reaching beneficial occupancy or use.

216 (4) Within 20 days after developing the list, the public
217 entity shall pay the contractor the remaining balance of the
218 contract, including any remaining retainage withheld by the
219 public entity pursuant to s. 255.078, less an amount that equals
220 the estimated costs to complete the items on the list.

221 (5)-(4) Upon completion of all items on the list, the
222 contractor may submit a payment request for the amount ~~all~~
223 ~~remaining retainage~~ withheld by the public entity pursuant to
224 subsection (4) s. 255.078. If a good faith dispute exists as to
225 whether one or more items identified on the list have been

226 completed pursuant to the contract, the public entity may
227 continue to withhold an amount not to exceed 100 ~~150~~ percent of
228 the total costs to complete such items.

229 ~~(9)(8)~~ If a public entity fails to comply with its
230 responsibilities to develop the list required under subsection
231 (1) or subsection (2), as defined in the contract, within the
232 time limitations provided in subsection (1), the contractor may
233 submit to the public entity a payment request for all remaining
234 retainage withheld by the public entity pursuant to s. 255.078.
235 The public entity shall pay the contractor within 20 days after
236 receiving the payment request. However, the public entity need
237 not pay or process any payment request for retainage if the
238 contractor has, ~~in whole or in part,~~ failed to cooperate with
239 the public entity in the development of the list or failed to
240 perform its contractual responsibilities, if any, with regard to
241 the development of the list or if s. 255.078(3) applies.

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

244 255.078 Public construction retainage.—

245 (3) This section and s. 255.077 do not require the public
246 entity to pay or release any amounts that are the subject of a
247 good faith dispute or, the subject of a claim brought pursuant
248 to s. 255.05, ~~or otherwise the subject of a claim or demand by~~
249 ~~the public entity or contractor.~~

250 Section 8. Paragraph (b) of subsection (1) of section

251 255.0992, Florida Statutes, is amended to read:

252 255.0992 Public works projects; prohibited governmental
253 actions.—

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

255 (b) "Public works project" means an activity ~~exceeding \$1~~
256 ~~million in value~~ that is paid for with any local or state-
257 appropriated funds and which consists of the construction,
258 maintenance, repair, renovation, remodeling, or improvement of a
259 building, road, street, sewer, storm drain, water system, site
260 development, irrigation system, reclamation project, gas or
261 electrical distribution system, gas or electrical substation, or
262 other facility, project, or portion thereof that is owned in
263 whole or in part by any political subdivision.

264 Section 9. Paragraph (a) of subsection (1) of section
265 553.792, Florida Statutes, is amended to read:

266 553.792 Building permit application to local government.—

267 (1)(a) Within 10 days of an applicant submitting an
268 application to the local government, the local government shall
269 advise the applicant what information, if any, is needed to deem
270 the application properly completed in compliance with the filing
271 requirements published by the local government. If the local
272 government does not provide written notice that the applicant
273 has not submitted the properly completed application, the
274 application shall be automatically deemed properly completed and
275 accepted. Within 45 days after receiving a completed

276 application, a local government must notify an applicant if
277 additional information is required for the local government to
278 determine the sufficiency of the application, and shall specify
279 the additional information that is required. If the local
280 government requests additional information that already appears
281 in the application or that is not critical to the review of the
282 application, the application shall be automatically deemed
283 properly completed and accepted. The applicant must submit the
284 additional information to the local government or request that
285 the local government act without the additional information.
286 While the applicant responds to the request for additional
287 information, the 120-day period described in this subsection is
288 tolled. Both parties may agree to a reasonable request for an
289 extension of time, particularly in the event of a force majeure
290 or other extraordinary circumstance. The local government must
291 approve, approve with conditions, or deny the application within
292 120 days following receipt of a completed application.
293 Section 10. This act shall take effect July 1, 2023.