

1                   A bill to be entitled  
2           An act relating to public construction; amending s.  
3           218.735, F.S.; revising provisions relating to  
4           payments for purchases of construction services by  
5           local governmental entities; amending s. 218.76, F.S.;  
6           revising the time periods within which certain  
7           proceedings must be commenced and concluded; amending  
8           s. 255.073, F.S.; providing dates by which the  
9           undisputed portion of certain payment requests must be  
10          paid; amending s. 255.074, F.S.; revising the date by  
11          which a public entity must submit certain payment  
12          requests to the Chief Financial Officer; amending s.  
13          255.077, F.S.; revising provisions relating to  
14          payments for purchases of construction services by  
15          public entities; amending s. 255.078, F.S.; revising  
16          applicability; amending s. 255.0992, F.S.; revising  
17          the definition of the term "public works project";  
18          prohibiting a political subdivision from requiring an  
19          entity to dedicate funds to or make expenditures for  
20          art in public places in excess of a certain amount  
21          except in certain circumstances; providing  
22          applicability; providing an effective date.

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

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

28 218.735 Timely payment for purchases of construction  
29 services.—

30 (7) Each contract for construction services between a  
31 local governmental entity and a contractor must provide for the  
32 development of a single list of items that contains the  
33 estimated cost to complete each item required to render  
34 complete, satisfactory, and acceptable the construction services  
35 purchased by the local governmental entity.

36 (a) The contract must specify the process for developing  
37 the list and determining the estimated cost to complete each  
38 item, including the responsibilities of the local governmental  
39 entity and the contractor in developing and reviewing the list  
40 and a reasonable time for developing the list:

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

46 2. For construction projects having an estimated cost of  
47 \$10 million or more, within 30 calendar days, or, if extended by  
48 contract, up to 60 calendar days after reaching substantial  
49 completion of the construction services purchased as defined in  
50 the contract, or, if not defined in the contract, upon reaching

51 beneficial occupancy or use.

52

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

57 (b) If the contract between the local governmental entity  
58 and the contractor relates to the purchase of construction  
59 services on more than one building or structure, or involves a  
60 multiphased project, the contract must provide for the  
61 development of a list of items required to render complete,  
62 satisfactory, and acceptable all the construction services  
63 purchased pursuant to the contract for each building, structure,  
64 or phase of the project within the time limitations provided in  
65 paragraph (a).

66 (c) The final contract completion date must be at least 30  
67 days after the delivery of the list of items. If the list is not  
68 provided to the contractor by the agreed upon date for delivery  
69 of the list, the contract time for completion must be extended  
70 by the number of days the local governmental entity exceeded the  
71 delivery date. Damages may not be assessed against a contractor  
72 for failing to complete a project within the time required by  
73 the contract, unless the contractor failed to complete the  
74 project within the contract period as extended under this  
75 paragraph.

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

80 (e) Within 20 business days after the list is developed,  
 81 the local governmental entity shall pay the contractor the  
 82 remaining balance of the contract, including any remaining  
 83 retainage withheld by the local governmental entity, less an  
 84 amount equal to 150 percent of the estimated cost to complete  
 85 the items on the list.

86 (f)~~(e)~~ Upon completion of all items on the list, the  
 87 contractor may submit a payment request for the amount ~~all~~  
 88 ~~remaining retainage~~ withheld by the local governmental entity  
 89 pursuant to paragraph (e) ~~this section~~. If a good faith dispute  
 90 exists as to whether one or more items identified on the list  
 91 have been completed pursuant to the contract, the local  
 92 governmental entity may continue to withhold up to 150 percent  
 93 of the total costs to complete such items.

94 (g)~~(f)~~ All items that require correction under the  
 95 contract and that are identified after the preparation and  
 96 delivery of the list remain the obligation of the contractor as  
 97 defined by the contract.

98 (h)~~(g)~~ Warranty items or items not included in the list of  
 99 items required under paragraph (a) may not affect the final  
 100 payment of retainage as provided in this section or as provided

101 in the contract between the contractor and its subcontractors  
 102 and suppliers.

103 ~~(i)-(h)~~ Retainage may not be held by a local governmental  
 104 entity or a contractor to secure payment of insurance premiums  
 105 under a consolidated insurance program or series of insurance  
 106 policies issued to a local governmental entity or a contractor  
 107 for a project or group of projects, and the final payment of  
 108 retainage as provided in this section may not be delayed pending  
 109 a final audit by the local governmental entity's or contractor's  
 110 insurance provider.

111 ~~(j)-(i)~~ If a local governmental entity fails to comply with  
 112 its responsibilities to develop the list required under  
 113 paragraph (a) or paragraph (b) within the time limitations  
 114 provided in paragraph (a), the contractor may submit a payment  
 115 request to the local governmental entity for the remaining  
 116 balance of the contract, including all remaining retainage  
 117 withheld by the local governmental entity. The local  
 118 governmental entity shall pay the contractor pursuant to this  
 119 ~~section; and payment of any remaining undisputed contract~~  
 120 ~~amount, less any amount withheld pursuant to the contract for~~  
 121 ~~incomplete or uncorrected work, must be paid~~ within 20 business  
 122 days after receipt of a proper invoice or payment request. If  
 123 the local governmental entity has provided written notice to the  
 124 contractor specifying the failure of the contractor to meet  
 125 contract requirements in the development of the list of items to

126 | be completed, the local governmental entity shall pay the  
 127 | contractor the remaining balance of the contract, less an amount  
 128 | equal to 150 percent of the estimated cost to complete the items  
 129 | that the local governmental entity intended to include on the  
 130 | list ~~need not pay or process any payment request for retainage~~  
 131 | ~~if the contractor has, in whole or in part, failed to cooperate~~  
 132 | ~~with the local governmental entity in the development of the~~  
 133 | ~~list or to perform its contractual responsibilities, if any,~~  
 134 | ~~with regard to the development of the list or if paragraph~~  
 135 | ~~(8)(c) applies.~~

136 | (8)

137 | (c) This section does not require the local governmental  
 138 | entity to pay or release any amounts that are the subject of a  
 139 | good faith dispute made in writing pursuant to the contract or  
 140 | the subject of a claim brought pursuant to s. 255.05, ~~or~~  
 141 | ~~otherwise the subject of a claim or demand by the local~~  
 142 | ~~governmental entity or contractor.~~

143 | Section 2. Paragraph (a) of subsection (2) of section  
 144 | 218.76, Florida Statutes, is amended to read:

145 | 218.76 Improper payment request or invoice; resolution of  
 146 | disputes.—

147 | (2)(a) If a dispute arises between a vendor and a local  
 148 | governmental entity concerning payment of a payment request or  
 149 | invoice, the dispute shall be finally determined by the local  
 150 | governmental entity pursuant to a dispute resolution procedure

151 established by the local governmental entity. Such procedure  
152 must provide that proceedings to resolve the dispute are  
153 commenced within 30 ~~45~~ days after the date the payment request  
154 or proper invoice was received by the local governmental entity  
155 and concluded by final decision of the local governmental entity  
156 within 45 ~~60~~ days after the date the payment request or proper  
157 invoice was received by the local governmental entity. Such  
158 procedures are not subject to chapter 120 and do not constitute  
159 an administrative proceeding that prohibits a court from  
160 deciding de novo any action arising out of the dispute. If the  
161 dispute is resolved in favor of the local governmental entity,  
162 interest charges begin to accrue 15 days after the local  
163 governmental entity's final decision. If the dispute is resolved  
164 in favor of the vendor, interest begins to accrue as of the  
165 original date the payment became due.

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

168 255.073 Timely payment for purchases of construction  
169 services.—

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

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

176           255.074 Procedures for calculation of payment due dates.-  
 177           (3) A public entity must submit a payment request to the  
 178 Chief Financial Officer for payment no more than 14 ~~20~~ days  
 179 after receipt of the payment request.

180           Section 5. Subsections (4) through (8) of section 255.077,  
 181 Florida Statutes, are renumbered as subsections (5) through (9),  
 182 respectively, subsection (1) and present subsections (4) and (8)  
 183 are amended, and a new subsection (4) is added to that section,  
 184 to read:

185           255.077 Project closeout and payment of retainage.-

186           (1) Each contract for construction services between a  
 187 public entity and a contractor must provide for the development  
 188 of a single list of items that contains the estimated cost to  
 189 complete each item required to render complete, satisfactory,  
 190 and acceptable the construction services purchased by the public  
 191 entity. The contract must specify the process for developing the  
 192 development of the list and determining the estimated cost to  
 193 complete each item, including responsibilities of the public  
 194 entity and the contractor in developing and reviewing the list  
 195 and a reasonable time for developing the list, as follows:

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



201 (b) For construction projects having an estimated cost of  
202 \$10 million or more, within 30 calendar days, unless otherwise  
203 extended by contract not to exceed 60 calendar days, after  
204 reaching substantial completion of the construction services  
205 purchased as defined in the contract, or, if not defined in the  
206 contract, upon reaching beneficial occupancy or use.

207 (4) Within 20 business days after the list is developed,  
208 and after receipt of a proper invoice or payment request, the  
209 public entity shall pay the contractor the remaining balance of  
210 the contract, including any remaining retainage withheld by the  
211 public entity pursuant to s. 255.078, less an amount equal to  
212 150 percent of the estimated cost to complete the items on the  
213 list.

214 ~~(5)-(4)~~ Upon completion of all items on the list, the  
215 contractor may submit a payment request for the amount all  
216 ~~remaining retainage~~ withheld by the public entity pursuant to  
217 subsection (4) s. 255.078. If a good faith dispute exists as to  
218 whether one or more items identified on the list have been  
219 completed pursuant to the contract, the public entity may  
220 continue to withhold an amount not to exceed 150 percent of the  
221 total costs to complete such items.

222 ~~(9)-(8)~~ If a public entity fails to comply with its  
223 responsibilities to develop the list required under subsection  
224 (1) or subsection (2), as defined in the contract, within the  
225 time limitations provided in subsection (1), the contractor may

226 | submit to the public entity a payment request for all remaining  
 227 | retainage withheld by the public entity pursuant to s. 255.078.  
 228 | The public entity shall pay the contractor within 20 business  
 229 | days after receiving the payment request. However, the public  
 230 | entity need not pay or process any payment request for retainage  
 231 | if the contractor has, ~~in whole or in part,~~ failed to cooperate  
 232 | with the public entity in the development of the list or failed  
 233 | to perform its contractual responsibilities, if any, with regard  
 234 | to the development of the list or if s. 255.078(3) applies.

235 | Section 6. Subsection (3) of section 255.078, Florida  
 236 | Statutes, is amended to read:

237 | 255.078 Public construction retainage.—

238 | (3) This section and s. 255.077 do not require the public  
 239 | entity to pay or release any amounts that are the subject of a  
 240 | good faith dispute made in writing pursuant to the contract or~~7~~  
 241 | the subject of a claim brought pursuant to s. 255.05~~7~~ ~~or~~  
 242 | ~~otherwise the subject of a claim or demand by the public entity~~  
 243 | ~~or contractor.~~

244 | Section 7. Subsection (3) of section 255.0992, Florida  
 245 | Statutes, is renumbered as subsection (4), paragraph (b) of  
 246 | subsection (1) and present subsection (3) are amended, and a new  
 247 | subsection (3) is added to that section, to read:

248 | 255.0992 Public works projects; prohibited governmental  
 249 | actions.—

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

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

260 (3) A political subdivision may not require any entity to  
 261 dedicate funds to or make expenditures for art in public places  
 262 in an amount that exceeds the amount required for the  
 263 acquisition of works of art under s. 255.043 except for the  
 264 original construction of a government building that provides  
 265 public access.

266 (4)~~(3)~~ This section does not apply to the following:

267 (a) Contracts executed under chapter 337.

268 (b) A use authorized by s. 212.055(1) which is approved by  
 269 a majority vote of the electorate of the county or by a charter  
 270 amendment approved by a majority vote of the electorate of the  
 271 county.

272 (c) An independent special district as defined in s.  
 273 189.012.

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