



621756

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2010	.	
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The Committee on Judiciary (Baker) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 218.72, Florida Statutes, is reordered  
and amended to read:

218.72 Definitions.—As used in this part, the term:

(8)(1) "Proper invoice" means an invoice that which  
conforms with all statutory requirements and ~~with~~ all  
requirements ~~that have been~~ specified by the local governmental  
entity to which the invoice is submitted. Such requirements must  
be included in the contract for the project for which the  
invoice is submitted.



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14           (5)~~(2)~~ "Local governmental entity" means a county or  
15 municipal government, school board, school district, authority,  
16 special taxing district, other political subdivision, or any  
17 office, board, bureau, commission, department, branch, division,  
18 or institution thereof.

19           (4)~~(3)~~ "County" means a political subdivision of the state  
20 established pursuant to s. 1, Art. VIII of the State  
21 Constitution.

22           (6)~~(4)~~ "Municipality" means a municipality created pursuant  
23 to general or special law and metropolitan and consolidated  
24 governments as provided in s. 6(e) and (f), Art. VIII of the  
25 State Constitution.

26           (9)~~(5)~~ "Purchase" means the purchase of goods, services, or  
27 construction services; the purchase or lease of personal  
28 property; or the lease of real property by a local governmental  
29 entity.

30           (10)~~(6)~~ "Vendor" means any person who sells goods or  
31 services, sells or leases personal property, or leases real  
32 property directly to a local governmental entity. The term  
33 includes any person who provides waste hauling services to  
34 residents or businesses located within the boundaries of a local  
35 government pursuant to a contract or local ordinance.

36           (2)~~(7)~~ "Construction services" means all labor, services,  
37 and materials provided in connection with the construction,  
38 alteration, repair, demolition, reconstruction, or ~~any~~ other  
39 improvements to real property.

40           (7)~~(8)~~ "Payment request" means a request for payment for  
41 construction services which conforms with all statutory  
42 requirements and ~~with~~ all requirements specified by the local



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43 governmental entity to which the payment request is submitted.  
44 Such requirements must be included in the contract for the  
45 project for which payment is requested.

46 (1)(9) "Agent" means the project architect, project  
47 engineer, or any other agency or person acting on behalf of the  
48 local governmental entity. The agent who is required to review  
49 invoices or payment requests must be identified in accordance  
50 with s. 218.735(1).

51 (3)(10) "Contractor" or "provider of construction services"  
52 means the any person who contracts directly with a local  
53 governmental entity to provide construction services.

54 Section 2. Present subsection (8) is redesignated as  
55 subsection (9) and present subsections (1) through (7) of  
56 section 218.735, Florida Statutes, are amended to read:

57 218.735 Timely payment for purchases of construction  
58 services.—

59 (1) The due date for payment for the purchase of  
60 construction services by a local governmental entity is  
61 determined as follows:

62 (a) If an agent must approve the payment request or invoice  
63 before prior to the payment request or invoice is being  
64 submitted to the local governmental entity, payment is due 25  
65 business days after the date on which the payment request or  
66 invoice is stamped as received as provided in s. 218.74(1). The  
67 contractor may send the local government an overdue notice. If  
68 the payment request or invoice is not rejected within 2 business  
69 days after delivery of the overdue notice, the payment request  
70 or invoice is deemed accepted, except for any portion that is  
71 fraudulent or misleading.



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72 (b) If an agent need not approve the payment request or  
73 invoice ~~which is~~ submitted by the contractor, payment is due 20  
74 business days after the date ~~on which~~ the payment request or  
75 invoice is stamped as received as provided in s. 218.74(1).

76 (2) A local governmental entity shall identify the agent or  
77 employee of the local governmental entity, or the facility or  
78 office, to which the contractor may submit its payment request  
79 or invoice.

80 (a) This requirement must be included in the contract  
81 between the local governmental entity and contractor, or, as  
82 required by the contract, must be provided by the local  
83 governmental entity through a separate written notice within 10  
84 days after the contract award.

85 (b) A contractor's submission of a payment request or  
86 invoice to the identified agent, employee, facility, or office  
87 of the local governmental entity must be stamped as received as  
88 provided in s. 218.74(1), and commences the time periods for  
89 payment or rejection of a payment request or invoice as provided  
90 in this subsection and subsection (2).

91 (3)~~(2)~~ If a payment request or invoice does not meet the  
92 contract requirements, the local governmental entity ~~must~~ ~~may~~  
93 reject the payment request or invoice within 20 business days  
94 after the date on which the payment request or invoice is  
95 stamped as received as provided in s. 218.74(1). The rejection  
96 must be written and must specify the deficiency ~~in the payment~~  
97 ~~request or invoice~~ and the action necessary to make the payment  
98 request or invoice proper.

99 (4)~~(3)~~ If a payment request or an invoice is rejected under  
100 subsection (2) and the contractor submits a ~~corrected~~ payment



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101 request or invoice that ~~which~~ corrects the deficiency ~~specified~~  
102 ~~in writing by the local governmental entity~~, the corrected  
103 payment request or invoice must be paid or rejected on the later  
104 of:

105 (a) Ten business days after the date the corrected payment  
106 request or invoice is stamped as received as provided in s.  
107 218.74(1); or

108 (b) If the local governmental entity ~~governing body~~ is  
109 required by ordinance, charter, or other law to approve or  
110 reject the corrected payment request or invoice, the first  
111 business day after the next regularly scheduled meeting of the  
112 local governmental entity ~~governing body~~ held after the  
113 corrected payment request or invoice is stamped as received as  
114 provided in s. 218.74(1).

115 ~~(5)~~(4) If a dispute between the local governmental entity  
116 and the contractor cannot be resolved by the procedure in  
117 subsection (4) ~~(3)~~, the dispute must be resolved in accordance  
118 with the dispute resolution procedure prescribed in the  
119 construction contract or in any applicable ordinance, which must  
120 be referenced in the contract. In the absence of a prescribed  
121 procedure, the dispute must be resolved by the procedure  
122 specified in s. 218.76(2).

123 ~~(6)~~(5) If a local governmental entity disputes a portion of  
124 a payment request or an invoice, the undisputed portion shall be  
125 paid timely, in accordance with subsection (1).

126 ~~(7)~~(6) ~~If when~~ a contractor receives payment from a local  
127 governmental entity for labor, services, or materials furnished  
128 by subcontractors and suppliers hired by the contractor, the  
129 contractor must ~~shall~~ remit payment due to those subcontractors



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130 and suppliers within 10 days after the contractor's receipt of  
131 payment. ~~If~~ When a subcontractor receives payment from a  
132 contractor for labor, services, or materials furnished by  
133 subcontractors and suppliers hired by the subcontractor, the  
134 subcontractor must ~~shall~~ remit payment due to those  
135 subcontractors and suppliers within 7 days after the  
136 subcontractor's receipt of payment. This subsection does not  
137 ~~Nothing herein shall~~ prohibit a contractor or subcontractor from  
138 disputing, pursuant to the terms of the relevant contract, all  
139 or any portion of a payment alleged to be due to another party  
140 if the contractor or subcontractor notifies the party whose  
141 payment is disputed, in writing, of the amount in dispute and  
142 the actions required to cure the dispute. The contractor or  
143 subcontractor must pay all undisputed amounts due within the  
144 time limits imposed by this section.

145 (8) (7) (a) Each contract for construction services between a  
146 local governmental entity and a contractor must provide for the  
147 development of a single list of items required to render  
148 complete, satisfactory, and acceptable the construction services  
149 purchased by the local governmental entity.

150 (a) The contract must specify the process for developing  
151 ~~the development of~~ the list, including the responsibilities of  
152 the local governmental entity and the contractor in developing  
153 and reviewing the list and a reasonable time for developing the  
154 list, ~~as follows:~~

155 1. For construction projects having an estimated cost of  
156 Less than \$10 million, within 30 calendar days after reaching  
157 substantial completion of the construction services purchased as  
158 defined in the contract, or, if not defined in the contract,



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159 upon reaching beneficial occupancy or use; or

160 2. For construction projects having an estimated cost of  
161 \$10 million or more, within 30 calendar days, or, if unless  
162 ~~otherwise~~ extended by contract, up to not to exceed 60 calendar  
163 days, after reaching substantial completion of the construction  
164 services purchased as defined in the contract, or, if not  
165 defined in the contract, upon reaching beneficial occupancy or  
166 use.

167 (b) The contract must also specify a date for the delivery  
168 of the list of items, not to exceed 5 days after the list of  
169 items has been developed and reviewed in accordance with the  
170 time periods set forth in paragraph (a).

171 (c) ~~(b)~~ If the contract between the local governmental  
172 entity and the contractor relates to the purchase of  
173 construction services on more than one building or structure, or  
174 involves a multiphased project, the contract must provide for  
175 the development of a list of items required to render complete,  
176 satisfactory, and acceptable all the construction services  
177 purchased pursuant to the contract for each building, structure,  
178 or phase of the project within the time limitations provided in  
179 paragraph (a).

180 (d) The final contract completion date must be at least 30  
181 days after the delivery of the list of items. If the list is not  
182 provided to the contractor by the agreed date, the contract time  
183 for completion must be extended by the number of days the local  
184 governmental entity exceeded the delivery date. Damages may not  
185 be assessed against a contractor for failing to complete a  
186 project within the time required by the contract, unless the  
187 contractor failed to complete the project within the contract



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188 period as extended pursuant to this paragraph.

189 (e)~~(e)~~ The failure to include any corrective work or  
190 pending items not yet completed on the list ~~developed pursuant~~  
191 ~~to this subsection~~ does not alter the responsibility of the  
192 contractor to complete all the construction services purchased  
193 pursuant to the contract.

194 (f)~~(d)~~ Upon completion of all items on the list, the  
195 contractor may submit a payment request for all remaining  
196 retainage withheld by the local governmental entity pursuant to  
197 this section. If a good faith dispute exists as to whether one  
198 or more items identified on the list have been completed  
199 pursuant to the contract, the local governmental entity may  
200 continue to withhold up to ~~an amount not to exceed~~ 150 percent  
201 of the total costs to complete such items.

202 (g)~~(e)~~ All items that require correction under the contract  
203 and that are identified after the preparation and delivery of  
204 the list remain the obligation of the contractor as defined by  
205 the contract.

206 (h)~~(f)~~ Warranty items or items not included in the list of  
207 items may not affect the final payment of retainage as provided  
208 in this section or as provided in the contract between the  
209 contractor and its subcontractors and suppliers.

210 (i)~~(g)~~ Retainage may not be held by a local governmental  
211 entity or a contractor to secure payment of insurance premiums  
212 under a consolidated insurance program or series of insurance  
213 policies issued to a local governmental entity or a contractor  
214 for a project or group of projects, and the final payment of  
215 retainage as provided in this section may not be delayed pending  
216 a final audit by the local governmental entity's or contractor's





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217 insurance provider.

218 (j)~~(h)~~ If a local governmental entity fails to comply with  
219 its responsibilities to develop the list of items including the  
220 list required under paragraph (c), if applicable, ~~(a) or~~  
221 ~~paragraph (b), as defined in the contract,~~ within the time  
222 limitations provided in paragraph (a), the contractor may submit  
223 a payment request for all remaining retainage withheld by the  
224 local governmental entity pursuant to this section. The payment  
225 of any remaining undisputed contract amount, less any amount  
226 withheld pursuant to the contract for incomplete or uncorrected  
227 work, must be paid within 20 business days after receipt of a  
228 proper invoice or payment request. If the local governmental  
229 entity has provided written notice to the contractor specifying  
230 the failure of the contractor to meet contract requirements in  
231 developing the list of items to be completed, the local  
232 governmental entity need not pay or process any payment request  
233 for retainage if the contractor has, in whole or in part, failed  
234 to cooperate with the local governmental entity in the  
235 development of the list, ~~or~~ failed to perform its contractual  
236 responsibilities, if any, with regard to the development of the  
237 list, or if paragraph (9) (f) ~~(8) (f)~~ applies.

238 Section 3. Section 218.76, Florida Statutes, is amended to  
239 read:

240 218.76 Improper payment request or invoice; resolution of  
241 disputes.—

242 (1) ~~If In any case in which~~ an improper payment request or  
243 invoice is submitted by a vendor, the local governmental entity  
244 shall, within 10 days after the improper payment request or  
245 invoice is received ~~by it,~~ notify the vendor, in writing, that



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246 the payment request or invoice is improper and indicate what  
247 corrective action on the part of the vendor is needed to make  
248 the payment request or invoice proper.

249 (2) If ~~In the event~~ a dispute arises ~~occurs~~ between a  
250 vendor and a local governmental entity concerning payment of a  
251 payment request or ~~an~~ invoice, the dispute ~~such disagreement~~  
252 shall be finally determined by the local governmental entity  
253 pursuant to ~~as provided in this section~~. ~~Each local governmental~~  
254 ~~entity shall establish~~ a dispute resolution procedure  
255 established ~~to be followed~~ by the local governmental entity ~~in~~  
256 ~~eases of such disputes~~.

257 (a) The ~~Such~~ procedure must ~~shall~~ provide that proceedings  
258 to resolve the dispute are ~~shall be~~ commenced within ~~not later~~  
259 ~~than~~ 45 days after the date ~~on which~~ the payment request or  
260 proper invoice was received by the local governmental entity and  
261 ~~shall be~~ concluded by final decision of the local governmental  
262 entity within ~~not later than~~ 60 days after the date ~~on which~~ the  
263 payment request or proper invoice was received by the local  
264 governmental entity. Such procedures are ~~shall~~ not be subject to  
265 chapter 120<sup>7</sup>, and do ~~such procedures shall~~ not constitute an  
266 administrative proceeding that ~~which~~ prohibits a court from  
267 deciding de novo any action arising out of the dispute. If the  
268 dispute is resolved in favor of the local governmental entity,  
269 ~~then~~ interest charges ~~shall~~ begin to accrue 15 days after the  
270 local governmental entity's final decision. If the dispute is  
271 resolved in favor of the vendor, ~~then~~ interest begins ~~shall~~  
272 ~~begin~~ to accrue as of the original date the payment became due.

273 (b) If the local governmental entity does not commence the  
274 dispute resolution procedure within the time required, the



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275 contractor may give written notice to the local governmental  
276 entity of the failure to timely commence the dispute resolution  
277 procedure. If the local governmental entity fails to commence  
278 the dispute resolution procedure within 2 business days after  
279 such notice:

280 1. Any amounts resolved in the contractor's favor bear  
281 mandatory interest, as set forth in s. 218.735(9), from the date  
282 the payment request or invoice containing the disputed amounts  
283 was submitted to the local governmental entity.

284 2. The objection to the payment request or invoice is  
285 deemed waived. The waiver of such objection does not relieve a  
286 contractor of its contractual obligations.

287 (3) In an action to recover amounts due under this part ~~ss.~~  
288 ~~218.70-218.80~~, the court shall award court costs and reasonable  
289 attorney's fees, including fees incurred through any appeal, to  
290 the prevailing party, ~~if the court finds that the nonprevailing~~  
291 ~~party withheld any portion of the payment that is the subject of~~  
292 ~~the action without any reasonable basis in law or fact to~~  
293 ~~dispute the prevailing party's claim to those amounts. This~~  
294 paragraph does not apply to any litigation commenced before  
295 October 1, 2010.

296 Section 4. This act shall take effect October 1, 2010.

297  
298 ===== T I T L E A M E N D M E N T =====

299 And the title is amended as follows:

300 Delete everything before the enacting clause  
301 and insert:

302 A bill to be entitled

303 An act relating to the Local Government Prompt Payment



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304 Act; amending s. 218.72, F.S.; revising definitions;  
305 amending s. 218.735, F.S.; revising provisions  
306 relating to the timely payment for purchases of  
307 construction services; providing that a payment  
308 request or invoice which is not rejected within a  
309 certain time after an overdue notice is sent is deemed  
310 accepted; requiring a local governmental entity to  
311 identify in a construction contract the agent or  
312 employee or facility or office to which a contractor  
313 may submit its payment request or invoice; requiring  
314 that an ordinance providing dispute resolution  
315 procedures applicable to a construction contract be  
316 referenced in the contract; requiring construction  
317 contracts to specify a date for the delivery of a list  
318 of items required to render complete, satisfactory,  
319 and acceptable the construction services purchased by  
320 a local governmental entity; providing for the  
321 extension of the contract if the list of items  
322 remaining to complete is not timely provided to the  
323 contractor; specifying the time for paying any  
324 remaining undisputed contract amount; amending s.  
325 218.76, F.S.; revising provisions relating to the  
326 resolution of disputes concerning an improper payment  
327 request or invoice; providing that a local  
328 governmental entity waives its objection in a payment  
329 dispute if it fails to commence the dispute resolution  
330 procedure within a certain time and after receiving  
331 notice from the contractor; providing an effective  
332 date.