

By Senator Baker

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1 A bill to be entitled
 2 An act relating to the Local Government Prompt Payment
 3 Act; amending s. 218.72, F.S.; revising definitions;
 4 amending s. 218.735, F.S.; revising provisions
 5 relating to the timely payment for purchases of
 6 construction services; requiring that a dispute be
 7 resolved according to procedures in the invitation to
 8 bid or request for proposal; prohibiting the
 9 assessment of damages against a contractor if the list
 10 of items remaining to complete is not timely provided
 11 to the contractor; amending s. 218.76, F.S.; revising
 12 provisions relating to the resolution of disputes
 13 concerning an improper payment request or invoice;
 14 providing that a local governmental entity waives its
 15 objection in a payment dispute if it fails to commence
 16 the dispute resolution procedure within the time
 17 required; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Section 218.72, Florida Statutes, is reordered
 22 and amended to read:

23 218.72 Definitions.—As used in this part, the term:
 24 (8)(1) "Proper invoice" means an invoice that which
 25 conforms with all statutory requirements and ~~with~~ all
 26 requirements ~~that have been~~ specified by the local governmental
 27 entity to which the invoice is submitted. Such requirements must
 28 be included in the invitation to bid or request for proposal for
 29 the project for which the invoice is submitted.

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30 (5)~~(2)~~ "Local governmental entity" means a county or
31 municipal government, school board, school district, authority,
32 special taxing district, other political subdivision, or any
33 office, board, bureau, commission, department, branch, division,
34 or institution thereof.

35 (4)~~(3)~~ "County" means a political subdivision of the state
36 established pursuant to s. 1, Art. VIII of the State
37 Constitution.

38 (6)~~(4)~~ "Municipality" means a municipality created pursuant
39 to general or special law and metropolitan and consolidated
40 governments as provided in s. 6(e) and (f), Art. VIII of the
41 State Constitution.

42 (9)~~(5)~~ "Purchase" means the purchase of goods, services, or
43 construction services; the purchase or lease of personal
44 property; or the lease of real property by a local governmental
45 entity.

46 (10)~~(6)~~ "Vendor" means any person who sells goods or
47 services, sells or leases personal property, or leases real
48 property directly to a local governmental entity. The term
49 includes any person who provides waste hauling services to
50 residents or businesses located within the boundaries of a local
51 government pursuant to a contract or local ordinance.

52 (2)~~(7)~~ "Construction services" means all labor, services,
53 and materials provided in connection with the construction,
54 alteration, repair, demolition, reconstruction, or ~~any~~ other
55 improvements to real property.

56 (7)~~(8)~~ "Payment request" means a request for payment for
57 construction services which conforms with all statutory
58 requirements and ~~with~~ all requirements specified by the local

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59 governmental entity to which the payment request is submitted.
60 Such requirements must be included in the invitation to bid or
61 request for proposal for the project for which payment is
62 requested.

63 (1)(9) "Agent" means the project architect, project
64 engineer, or ~~any~~ other agency or person acting on behalf of the
65 local governmental entity. The agent who is required to review
66 invoices or payment requests must be identified in the
67 invitation to bid or request for proposal for the project for
68 which payment requests or invoices are submitted.

69 (3)(10) "Contractor" or "provider of construction services"
70 means the ~~any~~ person who contracts directly with a local
71 governmental entity to provide construction services.

72 Section 2. Subsections (1) through (7) of section 218.735,
73 Florida Statutes, are amended to read:

74 218.735 Timely payment for purchases of construction
75 services.—

76 (1) The due date for payment for the purchase of
77 construction services by a local governmental entity is
78 determined as follows:

79 (a) If an agent must approve the payment request or invoice
80 before ~~prior to~~ the payment request or invoice is being
81 submitted to the local governmental entity, payment is due 25
82 business days after the date on which the payment request or
83 invoice is stamped as received as provided in s. 218.74(1). If
84 the payment request or invoice is not rejected before the due
85 date, it shall be deemed accepted.

86 (b) If an agent need not approve the payment request or
87 invoice ~~which is~~ submitted by the contractor, payment is due 20

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88 business days after the date on which the payment request or
89 invoice is stamped as received as provided in s. 218.74(1).

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

98 (3) If a payment request or an invoice is rejected under
99 subsection (2) and the contractor submits a ~~corrected~~ payment
100 request or invoice that ~~which~~ corrects the deficiency ~~specified~~
101 ~~in writing by the local governmental entity,~~ the corrected
102 payment request or invoice must be paid or rejected on the later
103 of:

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

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

114 (4) If a dispute between the local governmental entity and
115 the contractor cannot be resolved by the procedure in subsection
116 (3), the dispute must be resolved in accordance with the dispute

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117 resolution procedure prescribed in the invitation to bid or
118 request for proposal for the project for which the payment
119 request or invoice is submitted ~~construction contract or in any~~
120 ~~applicable ordinance. In the absence of a prescribed procedure,~~
121 ~~the dispute must be resolved by the procedure specified in s.~~
122 ~~218.76(2).~~

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

126 (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
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 (7) ~~(a)~~ Each contract for construction services between a

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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,
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) If the contract between the local governmental entity
168 and the contractor relates to the purchase of construction
169 services on more than one building or structure, or involves a
170 multiphased project, the contract must provide for the
171 development of a list of items required to render complete,
172 satisfactory, and acceptable all the construction services
173 purchased pursuant to the contract for each building, structure,
174 or phase of the project within the time limitations provided in

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175 paragraph (a).

176 (c) The final contract completion date must be at least 30
177 days after the delivery of the list of items. If the list is not
178 timely provided to the contractor, the contract time for
179 completion must be extended by at least 30 days after the
180 contractor receives the list. Damages may not be assessed
181 against a contractor for failing to complete a project within
182 the time required by the contract if the list of items has not
183 been timely provided to the contractor.

184 (d)~~(e)~~ The failure to include any corrective work or
185 pending items not yet completed on the list developed pursuant
186 ~~to this subsection~~ does not alter the responsibility of the
187 contractor to complete all the construction services purchased
188 pursuant to the contract.

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

197 (f)~~(e)~~ All items that require correction under the contract
198 and that are identified after the preparation and delivery of
199 the list remain the obligation of the contractor as defined by
200 the contract.

201 (g)~~(f)~~ Warranty items or items not included in the list of
202 items required under paragraph (a) may not affect the final
203 payment of retainage as provided in this section or as provided

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204 in the contract between the contractor and its subcontractors
205 and suppliers.

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

214 (i)~~(h)~~ If a local governmental entity fails to comply with
215 its responsibilities to develop the list required under
216 paragraph (a) or paragraph (b), ~~as defined in the contract,~~
217 within the time limitations provided in paragraph (a), the
218 contractor may submit a payment request for all remaining
219 retainage withheld by the local governmental entity pursuant to
220 this section and payment of any remaining contract amount must
221 be paid within 20 business days. If the local governmental
222 entity has provided written notice to the contractor specifying
223 the failure of the contractor to meet contract requirements in
224 the development of the list of items to be completed, the local
225 governmental entity need not pay or process any payment request
226 for retainage if the contractor has, in whole or in part, failed
227 to cooperate with the local governmental entity in the
228 development of the list, ~~or~~ failed to perform its contractual
229 responsibilities, if any, with regard to the development of the
230 list, or if paragraph (8)(f) applies.

231 Section 3. Section 218.76, Florida Statutes, is amended to
232 read:

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233 218.76 Improper payment request or invoice; resolution of
234 disputes.-

235 (1) ~~If In any case in which~~ an improper payment request or
236 invoice is submitted by a vendor, the local governmental entity
237 shall, within 10 days after the improper payment request or
238 invoice is received ~~by it~~, notify the vendor, in writing, that
239 the payment request or invoice is improper and indicate what
240 corrective action on the part of the vendor is needed to make
241 the payment request or invoice proper.

242 (2) ~~If In the event~~ a dispute arises ~~occurs~~ between a
243 vendor and a local governmental entity concerning payment of a
244 payment request or ~~an~~ invoice, the dispute ~~such disagreement~~
245 shall be finally determined by the local governmental entity
246 pursuant to ~~as provided in this section~~. ~~Each local governmental~~
247 ~~entity shall establish~~ a dispute resolution procedure
248 established ~~to be followed~~ by the local governmental entity ~~in~~
249 ~~eases of such disputes~~. Such procedure must ~~shall~~ provide that
250 proceedings to resolve the dispute are ~~shall be~~ commenced within
251 ~~not later than~~ 45 days after the date ~~on which~~ the payment
252 request or proper invoice was received by the local governmental
253 entity and ~~shall be~~ concluded by final decision of the local
254 governmental entity within ~~not later than~~ 60 days after the date
255 ~~on which~~ the payment request or proper invoice was received by
256 the local governmental entity. Such procedures are ~~shall~~ not be
257 subject to chapter 120, and do ~~such procedures shall~~ not
258 constitute an administrative proceeding that ~~which~~ prohibits a
259 court from deciding de novo any action arising out of the
260 dispute. If the dispute is resolved in favor of the local
261 governmental entity, ~~then~~ interest charges ~~shall~~ begin to accrue

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262 15 days after the local governmental entity's final decision. If
263 the dispute is resolved in favor of the vendor, ~~then~~ interest
264 begins shall begin to accrue as of the original date the payment
265 became due. If the local governmental entity does not commence
266 the dispute resolution procedure within the time required, the
267 objection to payment shall be deemed to have been waived. The
268 time for dispute resolution may be extended upon the written
269 agreement of the affected parties.

270 (3) In an action to recover amounts due under this part ss.
271 ~~218.70-218.80~~, the court shall award court costs and reasonable
272 attorney's fees, including fees incurred through any appeal, to
273 the prevailing party, ~~if the court finds that the nonprevailing~~
274 ~~party withheld any portion of the payment that is the subject of~~
275 ~~the action without any reasonable basis in law or fact to~~
276 ~~dispute the prevailing party's claim to those amounts.~~

277 Section 4. This act shall take effect July 1, 2010.