

By the Committee on Community Affairs; and 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 a local governmental
7 entity to identify in a construction contract the
8 agent or employee or facility or office to which a
9 contractor may submit its payment request or invoice;
10 requiring that an ordinance providing dispute
11 resolution procedures applicable to a construction
12 contract be referenced in the contract; requiring
13 construction contracts to specify a date for the
14 delivery of a list of items required to render
15 complete, satisfactory, and acceptable the
16 construction services purchased by a local
17 governmental entity; providing for the extension of
18 the contract if the list of items remaining to
19 complete is not timely provided to the contractor;
20 deleting provisions relating to the amount of
21 retainage that may be withheld by a local governmental
22 entity after 50 percent of construction services are
23 completed; providing a timeframe and procedure for
24 subcontractors to submit an invoice for the remainder
25 of unpaid constructions services; amending s. 218.76,
26 F.S.; revising provisions relating to the resolution
27 of disputes concerning an improper payment request or
28 invoice; providing that a local governmental entity
29 waives its objection in a payment dispute if it fails

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30 to commence the dispute resolution procedure within
31 the time required; providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Section 218.72, Florida Statutes, is reordered
36 and amended to read:

37 218.72 Definitions.—As used in this part, the term:

38 (8)~~(1)~~ "Proper invoice" means an invoice that ~~which~~
39 conforms with all statutory requirements and ~~with~~ all
40 requirements ~~that have been~~ specified by the local governmental
41 entity to which the invoice is submitted.

42 (5)~~(2)~~ "Local governmental entity" means a county or
43 municipal government, school board, school district, authority,
44 special taxing district, other political subdivision, or any
45 office, board, bureau, commission, department, branch, division,
46 or institution thereof.

47 (4)~~(3)~~ "County" means a political subdivision of the state
48 established pursuant to s. 1, Art. VIII of the State
49 Constitution.

50 (6)~~(4)~~ "Municipality" means a municipality created pursuant
51 to general or special law and metropolitan and consolidated
52 governments as provided in s. 6(e) and (f), Art. VIII of the
53 State Constitution.

54 (9)~~(5)~~ "Purchase" means the purchase of goods, services, or
55 construction services; the purchase or lease of personal
56 property; or the lease of real property by a local governmental
57 entity.

58 (10)~~(6)~~ "Vendor" means any person who sells goods or

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59 services, sells or leases personal property, or leases real
60 property directly to a local governmental entity. The term
61 includes any person who provides waste hauling services to
62 residents or businesses located within the boundaries of a local
63 government pursuant to a contract or local ordinance.

64 (2)~~(7)~~ "Construction services" means all labor, services,
65 and materials provided in connection with the construction,
66 alteration, repair, demolition, reconstruction, or ~~any~~ other
67 improvements to real property.

68 (7)~~(8)~~ "Payment request" means a request for payment for
69 construction services which conforms with all statutory
70 requirements and ~~with~~ all requirements specified by the local
71 governmental entity to which the payment request is submitted.
72 Such requirements must be included in the invitation to bid or
73 request for proposal for the project for which payment is
74 requested.

75 (1)~~(9)~~ "Agent" means the project architect, project
76 engineer, or ~~any~~ other agency or person acting on behalf of the
77 local governmental entity. The agent who is required to review
78 invoices or payment requests must be identified in the
79 invitation to bid or request for proposal for the project for
80 which payment requests or invoices are submitted.

81 (3)~~(10)~~ "Contractor" or "provider of construction services"
82 means the ~~any~~ person who contracts directly with a local
83 governmental entity to provide construction services.

84 Section 2. Section 218.735, Florida Statutes, is amended to
85 read:

86 218.735 Timely payment for purchases of construction
87 services.—

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88 (1) The due date for payment for the purchase of
89 construction services by a local governmental entity is
90 determined as follows:

91 (a) If an agent must approve the payment request or invoice
92 before ~~prior to~~ the payment request or invoice is being
93 submitted to the local governmental entity, payment is due 25
94 business days after the date on which the payment request or
95 invoice is stamped as received as provided in s. 218.74(1). If
96 the payment request or invoice is not rejected before the due
97 date, it shall be deemed accepted.

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

102

103 A local governmental entity shall identify the agent or employee
104 of the local governmental entity, or the facility or office, to
105 which the contractor may submit its payment request or invoice.
106 This information shall be included in the contract between the
107 local governmental entity and contractor, or shall be provided
108 by the local governmental entity through a separate written
109 notice, as required under the contract, within 10 days after the
110 contract award. A contractor's submission of a payment request
111 or invoice to the identified agent, employee, facility, or
112 office of the local governmental entity shall be stamped as
113 received as provided in s. 218.74(1). Upon the submission of the
114 payment request or invoice, the time periods commence for
115 payment or rejection of a payment request or invoice as provided
116 in subsection (1) or subsection (2).

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117 (2) If a payment request or invoice does not meet the
118 contract requirements, the local governmental entity must ~~may~~
119 reject the payment request or invoice within 20 business days
120 after the date on which the payment request or invoice is
121 stamped as received as provided in s. 218.74(1). The rejection
122 must be written and must specify the deficiency ~~in the payment~~
123 ~~request or invoice~~ and the action necessary to make the payment
124 request or invoice proper.

125 (3) If a payment request or an invoice is rejected under
126 subsection (2) and the contractor submits a ~~corrected~~ payment
127 request or invoice that ~~which~~ corrects the deficiency ~~specified~~
128 ~~in writing by the local governmental entity,~~ the corrected
129 payment request or invoice must be paid or rejected on the later
130 of:

131 (a) Ten business days after the date the corrected payment
132 request or invoice is stamped as received as provided in s.
133 218.74(1); or

134 (b) If the local governmental entity ~~governing body~~ is
135 required by ordinance, charter, or other law to approve or
136 reject the corrected payment request or invoice, the first
137 business day after the next regularly scheduled meeting of the
138 local governmental entity ~~governing body~~ held after the
139 corrected payment request or invoice is stamped as received as
140 provided in s. 218.74(1).

141 (4) If a dispute between the local governmental entity and
142 the contractor cannot be resolved by the procedure in subsection
143 (3), the dispute must be resolved in accordance with the dispute
144 resolution procedure prescribed in the construction contract or
145 in any applicable ordinance. Such ordinance shall be referenced

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146 in the contract. In the absence of a prescribed procedure, the
147 dispute must be resolved by the procedure specified in s.
148 218.76(2).

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

152 (6) If ~~When~~ a contractor receives payment from a local
153 governmental entity for labor, services, or materials furnished
154 by subcontractors and suppliers hired by the contractor, the
155 contractor must ~~shall~~ remit payment due to those subcontractors
156 and suppliers within 10 days after the contractor's receipt of
157 payment. If ~~When~~ a subcontractor receives payment from a
158 contractor for labor, services, or materials furnished by
159 subcontractors and suppliers hired by the subcontractor, the
160 subcontractor must ~~shall~~ remit payment due to those
161 subcontractors and suppliers within 7 days after the
162 subcontractor's receipt of payment. This subsection does not
163 ~~Nothing herein shall~~ prohibit a contractor or subcontractor from
164 disputing, pursuant to the terms of the relevant contract, all
165 or any portion of a payment alleged to be due to another party
166 if the contractor or subcontractor notifies the party whose
167 payment is disputed, in writing, of the amount in dispute and
168 the actions required to cure the dispute. The contractor or
169 subcontractor must pay all undisputed amounts due within the
170 time limits imposed by this section.

171 (7) ~~(a)~~ Each contract for construction services between a
172 local governmental entity and a contractor must provide for the
173 development of a single list of items required to render
174 complete, satisfactory, and acceptable the construction services

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175 purchased by the local governmental entity.

176 (a) The contract must specify the process for developing
177 ~~the development of~~ the list, including the responsibilities of
178 the local governmental entity and the contractor in developing
179 and reviewing the list and a reasonable time for developing the
180 list, ~~as follows:~~

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

186 2. For construction projects having an estimated cost of
187 \$10 million or more, within 30 calendar days, or, if unless
188 ~~otherwise~~ extended by contract, up to not to exceed 60 calendar
189 days, ~~after~~ reaching substantial completion of the construction
190 services purchased as defined in the contract, or, if not
191 defined in the contract, upon reaching beneficial occupancy or
192 use.

193
194 The contract must also specify a date for the delivery of the
195 list of items, not to exceed 10 days after the list of items has
196 been developed and reviewed within the time periods set forth in
197 subparagraph 1. or subparagraph 2.

198 (b) If the contract between the local governmental entity
199 and the contractor relates to the purchase of construction
200 services on more than one building or structure, or involves a
201 multiphased project, the contract must provide for the
202 development of a list of items required to render complete,
203 satisfactory, and acceptable all the construction services

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204 purchased pursuant to the contract for each building, structure,
205 or phase of the project within the time limitations provided in
206 paragraph (a).

207 (c) The final contract completion date must be at least 30
208 days after the delivery of the list of items. If the list is not
209 provided to the contractor by the agreed to date for the
210 delivery of the list, the contract time for completion shall be
211 extended by the number of days the local governmental entity
212 exceeded the delivery date. Damages may not be assessed against
213 a contractor for failing to complete a project within the time
214 required by the contract, unless the contractor failed to
215 complete the project within the contract period as extended
216 pursuant to this paragraph.

217 (d)~~(e)~~ The failure to include any corrective work or
218 pending items not yet completed on the list developed pursuant
219 ~~to this subsection~~ does not alter the responsibility of the
220 contractor to complete all the construction services purchased
221 pursuant to the contract.

222 (e)~~(d)~~ Upon completion of all items on the list, the
223 contractor may submit a payment request for all remaining
224 retainage withheld by the local governmental entity pursuant to
225 this section. If a good faith dispute exists as to whether one
226 or more items identified on the list have been completed
227 pursuant to the contract, the local governmental entity may
228 continue to withhold up to ~~an amount not to exceed~~ 150 percent
229 of the total costs to complete such items.

230 (f)~~(e)~~ All items that require correction under the contract
231 and that are identified after the preparation and delivery of
232 the list remain the obligation of the contractor as defined by

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233 the contract.

234 (g)~~(f)~~ Warranty items or items not included in the list of
235 items required under paragraph (a) may not affect the final
236 payment of retainage as provided in this section or as provided
237 in the contract between the contractor and its subcontractors
238 and suppliers.

239 (h)~~(g)~~ Retainage may not be held by a local governmental
240 entity or a contractor to secure payment of insurance premiums
241 under a consolidated insurance program or series of insurance
242 policies issued to a local governmental entity or a contractor
243 for a project or group of projects, and the final payment of
244 retainage as provided in this section may not be delayed pending
245 a final audit by the local governmental entity's or contractor's
246 insurance provider.

247 (i)~~(h)~~ If a local governmental entity fails to comply with
248 its responsibilities to develop the list required under
249 paragraph (a) or paragraph (b), ~~as defined in the contract,~~
250 within the time limitations provided in paragraph (a), the
251 contractor may submit a payment request for all remaining
252 retainage withheld by the local governmental entity pursuant to
253 this section. The payment of any remaining undisputed contract
254 amount, less any amount withheld pursuant to the contract for
255 incomplete or uncorrected work, must be paid within 20 business
256 days after receipt of a proper invoice or payment request. If
257 the local governmental entity need not pay or process any
258 payment request for retainage if the contractor has, in whole or
259 in part, failed to cooperate with the local governmental entity
260 in the development of the list or failed to perform its
261 contractual responsibilities, if any, with regard to the

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262 development of the list, or if paragraph (8)(c) ~~(8)(f)~~ applies.

263 ~~(8)(a) With regard to any contract for construction~~
264 ~~services,~~ A local governmental entity may withhold from each
265 progress payment for construction services made to the
266 contractor an amount not exceeding 10 percent of the payment as
267 retainage until 50 percent ~~50-percent~~ completion of such
268 services.

269 ~~(b) After 50-percent completion of the construction~~
270 ~~services purchased pursuant to the contract, the local~~
271 ~~governmental entity must reduce to 5 percent the amount of~~
272 ~~retainage withheld from each subsequent progress payment made to~~
273 ~~the contractor. For purposes of this subsection, the term "50-~~
274 ~~percent completion" has the meaning set forth in the contract~~
275 ~~between the local governmental entity and the contractor or, if~~
276 ~~not defined in the contract, the point at which the local~~
277 ~~governmental entity has expended 50 percent of the total cost of~~
278 ~~the construction services purchased as identified in the~~
279 ~~contract together with all costs associated with existing change~~
280 ~~orders and other additions or modifications to the construction~~
281 ~~services provided for in the contract. However, notwithstanding~~
282 ~~this subsection, a municipality having a population of 25,000 or~~
283 ~~fewer, or a county having a population of 100,000 or fewer, may~~
284 ~~withhold retainage in an amount not exceeding 10 percent of each~~
285 ~~progress payment made to the contractor until final completion~~
286 ~~and acceptance of the project by the local governmental entity.~~

287 ~~(c) After 50-percent completion of the construction~~
288 ~~services purchased pursuant to the contract, the contractor may~~
289 ~~elect to withhold retainage from payments to its subcontractors~~
290 ~~at a rate higher than 5 percent. The specific amount to be~~

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291 ~~withheld must be determined on a case-by-case basis and must be~~
292 ~~based on the contractor's assessment of the subcontractor's past~~
293 ~~performance, the likelihood that such performance will continue,~~
294 ~~and the contractor's ability to rely on other safeguards. The~~
295 ~~contractor shall notify the subcontractor, in writing, of its~~
296 ~~determination to withhold more than 5 percent of the progress~~
297 ~~payment and the reasons for making that determination, and the~~
298 ~~contractor may not request the release of such retained funds~~
299 ~~from the local governmental entity.~~

300 ~~(d) After 50-percent completion of the construction~~
301 ~~services purchased pursuant to the contract, the contractor may~~
302 ~~present to the local governmental entity a payment request for~~
303 ~~up to one-half of the retainage held by the local governmental~~
304 ~~entity. The local governmental entity shall promptly make~~
305 ~~payment to the contractor, unless the local governmental entity~~
306 ~~has grounds, pursuant to paragraph (f), for withholding the~~
307 ~~payment of retainage. If the local governmental entity makes~~
308 ~~payment of retainage to the contractor under this paragraph~~
309 ~~which is attributable to the labor, services, or materials~~
310 ~~supplied by one or more subcontractors or suppliers, the~~
311 ~~contractor shall timely remit payment of such retainage to those~~
312 ~~subcontractors and suppliers.~~

313 ~~(e) This limitation section does not prohibit a local~~
314 ~~governmental entity from withholding retainage at a rate less~~
315 ~~than 10 percent of each progress payment or, from incrementally~~
316 ~~reducing the rate of retainage pursuant to a schedule provided~~
317 ~~for in the contract, or from releasing at any point all or a~~
318 ~~portion of any retainage withheld by the local governmental~~
319 ~~entity which is attributable to the labor, services, or~~

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320 ~~materials supplied by the contractor or by one or more~~
321 ~~subcontractors or suppliers.~~

322 (a) If a local governmental entity makes any payment of
323 retainage to the contractor which is attributable to the
324 construction labor, services, or materials supplied by one or
325 more subcontractors or suppliers, the contractor shall timely
326 remit payment of such retainage to those subcontractors and
327 suppliers.

328 (b) A subcontractor may submit an invoice to the contractor
329 for the remainder of unpaid construction services 45 days after
330 the completion of such services, including an invoice for the
331 full value of the retainage related to the services. The
332 subcontractor shall include a conditional release of lien and
333 all appropriate warranties and closeout documentation with the
334 final payment invoice to the contractor. The contractor must
335 include the payment request in the next payment application
336 cycle to the agent following the receipt of the subcontractor's
337 payment request.

338 (c)~~(f)~~ This subsection ~~section~~ does not require the local
339 governmental entity to pay or release any amounts that are the
340 subject of a good faith dispute, the subject of a claim brought
341 pursuant to s. 255.05, or otherwise the subject of a claim or
342 demand by the local governmental entity or contractor.

343 (d)~~(g)~~ The time limitations set forth in this subsection
344 ~~section~~ for payment of payment requests apply to any payment
345 request for retainage made pursuant to this section.

346 (e)~~(h)~~ This subsection does ~~Paragraphs (a) - (d) do~~ not apply
347 to construction services purchased by a local governmental
348 entity which are paid for, in whole or in part, with federal

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349 funds and are subject to federal grantor laws and regulations or
350 requirements that are contrary to any provision of the Local
351 Government Prompt Payment Act.

352 (f)~~(i)~~ This subsection does not apply to ~~any~~ construction
353 services purchased by a local governmental entity if the total
354 cost of the construction services purchased as identified in the
355 contract is \$200,000 or less.

356 (9) All payments due under this section and not made within
357 the time periods specified by this section ~~shall~~ bear interest
358 at the rate of 1 percent per month, or the rate specified by
359 contract, whichever is greater.

360 Section 3. Section 218.76, Florida Statutes, is amended to
361 read:

362 218.76 Improper payment request or invoice; resolution of
363 disputes.-

364 (1) If ~~In any case in which~~ an improper payment request or
365 invoice is submitted by a vendor, the local governmental entity
366 shall, within 10 days after the improper payment request or
367 invoice is received ~~by it~~, notify the vendor, in writing, that
368 the payment request or invoice is improper and indicate what
369 corrective action on the part of the vendor is needed to make
370 the payment request or invoice proper.

371 (2) If ~~In the event~~ a dispute arises ~~occurs~~ between a
372 vendor and a local governmental entity concerning payment of a
373 payment request or ~~an~~ invoice, the dispute ~~such disagreement~~
374 shall be finally determined by the local governmental entity
375 pursuant to ~~as provided in this section. Each local governmental~~
376 ~~entity shall establish~~ a dispute resolution procedure
377 established ~~to be followed~~ by the local governmental entity ~~in~~

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378 ~~eases of such disputes.~~ Such procedure must ~~shall~~ provide that
379 proceedings to resolve the dispute are ~~shall be~~ commenced within
380 ~~not later than~~ 45 days after the date ~~on which~~ the payment
381 request or proper invoice was received by the local governmental
382 entity and ~~shall be~~ concluded by final decision of the local
383 governmental entity within ~~not later than~~ 60 days after the date
384 ~~on which~~ the payment request or proper invoice was received by
385 the local governmental entity. Such procedures are ~~shall~~ not be
386 subject to chapter 120~~7~~, and do ~~such procedures shall~~ not
387 constitute an administrative proceeding that ~~which~~ prohibits a
388 court from deciding de novo any action arising out of the
389 dispute. If the dispute is resolved in favor of the local
390 governmental entity, ~~then~~ interest charges ~~shall~~ begin to accrue
391 15 days after the local governmental entity's final decision. If
392 the dispute is resolved in favor of the vendor, ~~then~~ interest
393 begins ~~shall begin~~ to accrue as of the original date the payment
394 became due. If the local governmental entity does not commence
395 the dispute resolution procedure within the time required, the
396 objection to payment shall be deemed to have been waived. The
397 time for dispute resolution may be extended upon the written
398 agreement of the affected parties.

399 (3) In an action to recover amounts due under this part ss.
400 ~~218.70-218.80~~, the court shall award court costs and reasonable
401 attorney's fees, including fees incurred through ~~any~~ appeal, to
402 the prevailing party, ~~if the court finds that the nonprevailing~~
403 ~~party withheld any portion of the payment that is the subject of~~
404 ~~the action without any reasonable basis in law or fact to~~
405 ~~dispute the prevailing party's claim to those amounts.~~

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