

By the Committee on Governmental Oversight and Productivity;
and Senators Webster, Peadar, Posey, Lee and Sanderson

302-1531-01

1 A bill to be entitled
2 An act relating to construction; amending s.
3 218.72, F.S.; redefining the terms "proper
4 invoice," "local government entity,"
5 "purchase," and "construction services" and
6 defining the terms "payment request" and
7 "agent" for the purpose of the Florida Prompt
8 Payment Act; amending s. 218.73, F.S.;
9 providing for timely payment for
10 nonconstruction services; amending s. 218.735,
11 F.S.; revising provisions with respect to
12 timely payment for purchases of construction
13 services; amending s. 218.74, F.S.; revising
14 provisions with respect to procedures for
15 calculation of payment due dates; amending s.
16 218.75, F.S.; revising provisions with respect
17 to mandatory interest; amending s. 218.76,
18 F.S.; revising provisions with respect to
19 improper invoices and resolution of disputes;
20 providing for the recovery of court costs and
21 attorney's fees under certain circumstances;
22 providing an effective date.

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

26 Section 1. Subsections (1), (2), (5), and (7) of
27 section 218.72, Florida Statutes, are amended, and subsections
28 (8) and (9) are added to that section, to read:

29 218.72 Definitions.--As used in this part:

30 (1) "Proper invoice" means an invoice which conforms
31 with all statutory requirements and with all requirements that

1 have been specified by the local governmental entity to which
2 the invoice is submitted.~~if+~~

3 ~~(a) Such requirements have been adopted by formal~~
4 ~~action of the local governmental entity taken prior to the~~
5 ~~transaction to which the invoice applies.~~

6 ~~(b) The local governmental entity made such~~
7 ~~requirements available to vendors.~~

8 (2) "Local governmental entity" means a county or
9 municipal government, school board, school district,
10 authority, special taxing district, other political
11 subdivision, community college, or any office, board, bureau,
12 commission, department, branch, division, or institution
13 thereof or any project supported by county or municipal funds.

14 (5) "Purchase" means the purchase of goods, or
15 services, or construction services; the purchase or lease of
16 personal property; or the lease of real property by a local
17 governmental entity.

18 (7) "Construction services" means all labor, services,
19 and materials provided ~~performed~~ in connection with the
20 construction, alteration, repair, demolition, reconstruction,
21 or any other improvements to real property that require a
22 license under parts I and II of chapter 489.

23 (8) "Payment request" means a request for payment for
24 construction services which conforms with all statutory
25 requirements and with all requirements specified by the local
26 governmental entity to which the payment request is submitted.

27 (9) "Agent" means project architect, project engineer,
28 or any other agency or person acting on behalf of the local
29 governmental entity.

30 Section 2. Section 218.73, Florida Statutes, is
31 amended to read:

1 218.73 Timely payment for nonconstruction
2 services.--The time at which payment is due for a purchase
3 other than construction services by a local governmental
4 entity, ~~except for the purchase of construction services, is~~
5 ~~due~~ must be calculated from:

6 (1) The date on which a proper invoice is received by
7 the chief disbursement officer of the local governmental
8 entity after approval by the governing body, if required; or

9 (2) If a proper invoice is not received by the local
10 governmental entity, the date:

11 (a) On which delivery of personal property is accepted
12 by the local governmental entity;

13 (b) On which services are completed;

14 (c) On which the rental period begins; or

15 (d) On which the local governmental entity and vendor
16 agree in a contract that provides dates relative to payment
17 periods;

18
19 whichever date is latest.

20 Section 3. Section 218.735, Florida Statutes, is
21 amended to read:

22 218.735 Timely payment for purchases of construction
23 services.--

24 (1) The due date for payment for the purchase of
25 construction services by a local governmental entity is
26 determined as follows:

27 (a) If an agent ~~the project architect or project~~
28 ~~engineer~~ must approve the payment request or invoice prior to
29 the payment request or invoice being submitted to the local
30 governmental entity, payment is due 25 ~~20~~ business days after
31 the date on which the payment request or ~~architect or engineer~~

1 ~~approves the invoice and the~~ invoice is stamped as received as
2 provided in s. 218.74(1).

3 (b) If an agent ~~the project architect or project~~
4 ~~engineer~~ need not approve the payment request or invoice which
5 is submitted by the contractor, payment is due 20 business
6 days after the date on which the payment request or invoice is
7 stamped as received as provided in s. 218.74(1).

8 (2) The local governmental entity may reject the
9 payment request or invoice within 20 business days after the
10 date on which the payment request or invoice is stamped as
11 received as provided in s. 218.74(1). The rejection must be
12 written and must specify the deficiency in the payment request
13 or invoice and the action necessary to make the payment
14 request or invoice proper.

15 (3) If a payment request or an invoice is rejected
16 under subsection (2) ~~or this subsection~~ and the contractor
17 submits a corrected payment request or invoice which corrects
18 the deficiency specified in writing by the local governmental
19 entity, the corrected payment request or invoice must be paid
20 or rejected on the later of:

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

24 (b) If the governing body is required by ordinance,
25 charter, or other law to approve or reject the corrected
26 payment request or invoice, the first business day after the
27 next regularly scheduled meeting of the governing body held
28 after the corrected payment request or invoice is stamped as
29 received as provided in s. 218.74(1).

30 (4) If a dispute between the local governmental entity
31 and the contractor cannot be resolved by the procedure in

1 subsection (3), the dispute must be resolved in accordance
2 with the dispute resolution procedure prescribed in the
3 construction contract or in any applicable ordinance. In the
4 absence of a prescribed procedure, the dispute must be
5 resolved by the procedure specified in s. 218.76(2).

6 (5) If a local governmental entity disputes a portion
7 of a payment request or an invoice, the undisputed portion
8 shall be paid timely, in accordance with subsection (1).~~The~~
9 ~~payment time periods provided in this section for construction~~
10 ~~services purchased by a local governmental entity shall not~~
11 ~~affect contractual provisions or contractual covenants of a~~
12 ~~local governmental entity in effect on September 30, 1995.~~

13 (6) When a contractor receives payment from a local
14 governmental entity for labor, services, or materials
15 furnished by subcontractors and suppliers hired by the
16 contractor, the contractor shall remit payment due to those
17 subcontractors and suppliers within 15 days after the
18 contractor's receipt of payment. When a subcontractor
19 receives payment from a contractor for labor, services, or
20 materials furnished by subcontractors and suppliers hired by
21 the subcontractor, the subcontractor shall remit payment due
22 to those subcontractors and suppliers within 15 days after the
23 subcontractor's receipt of payment. Nothing herein shall
24 prohibit a contractor or subcontractor from disputing,
25 pursuant to the terms of the relevant contract, all or any
26 portion of a payment alleged to be due to another party. In
27 the event of such a dispute, the contractor or subcontractor
28 may withhold the disputed portion of any such payment but the
29 undisputed portion must be remitted within the time limits
30 imposed by this subsection.

31

1 ~~(7)(6)~~ All payments due under this section ~~from a~~
2 ~~local governmental entity~~ and not made within the time periods
3 ~~period~~ specified by this section shall bear interest at the
4 rate of 1 percent per month, or the rate specified by
5 contract, whichever is greater ~~as specified in s. 218.74(4).~~

6 Section 4. Section 218.74, Florida Statutes, is
7 amended to read:

8 218.74 Procedures for calculation of payment due
9 dates.--

10 (1) Each local governmental entity shall establish
11 procedures whereby each payment request or invoice received by
12 the local governmental entity is marked as received on the
13 date on which it is delivered to an agent or employee of the
14 local governmental entity or of a facility or office of the
15 local governmental entity.

16 (2) The payment due date for a local governmental
17 entity for the purchase of goods or services other than
18 construction services is 45 days after the date specified in
19 s. 218.73. The payment due date for the purchase of
20 construction services is specified in s. 218.735.

21 (3) If the terms under which a purchase is made allow
22 for partial deliveries and a payment request or proper invoice
23 is submitted for a partial delivery, the time for payment for
24 the partial delivery must be calculated from the time of the
25 partial delivery and the submission of the payment request or
26 invoice in the same manner as provided in s. 218.73 or s.
27 218.735.

28 (4) All payments, other than payments for construction
29 services, due from a local governmental entity and not made
30 within the time specified by this section bear interest from
31 30 days after the due date at the rate of 1 percent per month

1 on the unpaid balance. The vendor must invoice the local
2 governmental entity for any interest accrued in order to
3 receive the interest payment. Any overdue period of less than
4 1 month is considered as 1 month in computing interest.
5 Unpaid interest is compounded monthly. ~~With respect to each~~
6 ~~past due payment, interest ceases to accrue after interest on~~
7 ~~that payment has accrued for 12 months.~~For the purposes of
8 this section, the term "1 month" means a period beginning on
9 any day of one month and ending on the same day of the
10 following month.

11 Section 5. Section 218.75, Florida Statutes, is
12 amended to read:

13 218.75 Mandatory interest.--No contract between a
14 local governmental entity and a vendor or a provider of
15 construction services shall prohibit the collection of ~~vendor~~
16 ~~from invoicing the local governmental entity for~~ late payment
17 interest charges allowable under this part.

18 Section 6. Section 218.76, Florida Statutes, is
19 amended to read:

20 218.76 Improper payment request or invoice; resolution
21 of disputes.--

22 (1) In any case in which an improper payment request
23 or invoice is submitted by a vendor, the local governmental
24 entity shall, within 10 days after the improper payment
25 request or invoice is received by it, notify the vendor that
26 the payment request or invoice is improper and indicate what
27 corrective action on the part of the vendor is needed to make
28 the payment request or invoice proper.

29 (2) In the event a dispute occurs between a vendor and
30 a local governmental entity concerning payment of a payment
31 request or an invoice, such disagreement shall be finally

1 determined by the local governmental entity as provided in
2 this section. Each local governmental entity shall establish
3 a dispute resolution procedure to be followed by the local
4 governmental entity in cases of such disputes. Such procedure
5 shall provide that proceedings to resolve the dispute shall be
6 commenced not later than 45 days after the date on which the
7 payment request proper invoice was received by the local
8 governmental entity and shall be concluded by final decision
9 of the local governmental entity not later than 60 days after
10 the date on which the payment request or proper invoice was
11 received by the local governmental entity. Such procedures
12 shall not be subject to chapter 120, and such procedures shall
13 not constitute an administrative proceeding which prohibits a
14 court from deciding de novo any action arising out of the
15 dispute. If the dispute is resolved in favor of the local
16 governmental entity, then interest charges shall begin to
17 accrue 15 days after the local governmental entity's final
18 decision. If the dispute is resolved in favor of the vendor,
19 then interest shall begin to accrue as of the original date
20 the payment became due.

21 (3) In an action to recover amounts due under ss.
22 218.70-218.80, the prevailing party is entitled to recover
23 court costs and reasonable attorney's fees at trial and on
24 appeal.

25 Section 7. This act shall take effect July 1, 2001.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 870

Amends the definitions of "proper invoice" and "payment request" to provide that the local governmental entity need not take formal action to approve requirements for invoices or payment requests.

Adds that attorney's fees awarded to prevailing plaintiff's must be reasonable.