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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; providing for disputed payment

14   requests; providing for payment of undisputed

15   amounts; amending s. 218.74, F.S.; revising

16   provisions with respect to procedures for

17   calculation of payment due dates; amending s.

18   218.75, F.S.; revising provisions with respect

19   to mandatory interest; amending s. 218.76,

20   F.S.; revising provisions with respect to

21   improper invoices and resolution of disputes;

22   providing for the recovery of court costs and

23   attorney's fees under certain circumstances;

24   providing an effective date.

25

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

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28   Section 1. Subsections (1), (2), (5), and (7) of

29 section 218.72, Florida Statutes, are amended, and subsections

30 (8) and (9) are added to that section, to read:

31   218.72 Definitions.--As used in this part:

                              1

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

1   (1) "Proper invoice" means an invoice which conforms

2 with all statutory requirements and with all requirements <u>that</u>

3 <u>have been</u> specified by the local governmental entity to which

4 the invoice is submitted.<s>if:</s>

5   <s>(a) Such requirements have been adopted by formal</s>

6 <s>action of the local governmental entity taken prior to the</s>

7 <s>transaction to which the invoice applies.</s>

8   <s>(b) The local governmental entity made such</s>

9 <s>requirements available to vendors.</s>

10   (2) "Local governmental entity" means a county or

11 municipal government<u>, school board, school district,</u>

12 <u>authority, special taxing district, other political</u>

13 <u>subdivision,</u>or any office, board, bureau, commission,

14 department, branch, division, or institution thereof or any

15 project supported by county or municipal funds.

16   (5) "Purchase" means the purchase of goods<u>,</u><s>or</s>

17 services, <u>or construction services;</u>the purchase or lease of

18 personal property<u>;</u><s>,</s>or the lease of real property by a local

19 governmental entity.

20   (7) "Construction services" means all <u>labor,</u>services<u>,</u>

21 <u>and materials provided</u> <s>performed</s> in connection with the

22 construction, alteration, repair, demolition, reconstruction,

23 or any other improvements to real property that require a

24 license under parts I and II of chapter 489.

25   <u>(8) "Payment request" means a request for payment for</u>

26 <u>construction services which conforms with all statutory</u>

27 <u>requirements and with all requirements specified by the local</u>

28 <u>governmental entity to which the payment request is submitted.</u>

29   <u>(9) "Agent" means project architect, project engineer,</u>

30 <u>or any other agency or person acting on behalf of the local</u>

31 <u>governmental entity.</u>

CODING: Words <s>stricken</s> are deletions; words <u>underlined</u> are additions.

1   Section 2.   Section 218.73, Florida Statutes, is
2 amended to read:
3   218.73   Timely payment <u>for nonconstruction</u>
4 <u>services</u>.--The time at which payment <u>is due</u> for a purchase
5 <u>other than construction services</u> by a local governmental
6 entity<s>, except for the purchase of construction services, is</s>
7 <s>due</s> must be calculated from:
8   (1)   The date on which a proper invoice is received by
9 the chief disbursement officer of the local governmental
10 entity after approval by the governing body, if required; or
11   (2)   If a proper invoice is not received by the local
12 governmental entity, the date:
13   (a)   On which delivery of personal property is accepted
14 by the local governmental entity;
15   (b)   On which services are completed;
16   (c)   On which the rental period begins; or
17   (d)   On which the local governmental entity and vendor
18 agree in a contract that provides dates relative to payment
19 periods;
20
21 whichever date is latest.
22   Section 3.   Section 218.735, Florida Statutes, is
23 amended to read:
24   218.735   Timely payment for purchases of construction
25 services.--
26   (1)   The due date for payment for the purchase of
27 construction services by a local governmental entity is
28 determined as follows:
29   (a)   If <u>an agent</u> <s>the project architect or project</s>
30 <s>engineer</s> must approve the <u>payment request or</u> invoice prior to
31 the <u>payment request or</u> invoice being submitted to the local

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1 governmental entity, payment is due 25 20 business days after
2 the date on which the payment request or architect or engineer
3 approves the invoice and the invoice is stamped as received as
4 provided in s. 218.74(1).
5   (b) If an agent the project architect or project
6 engineer need not approve the payment request or invoice which
7 is submitted by the contractor, payment is due 20 business
8 days after the date on which the payment request or invoice is
9 stamped as received as provided in s. 218.74(1).
10   (2) The local governmental entity may reject the
11 payment request or invoice within 20 business days after the
12 date on which the payment request or invoice is stamped as
13 received as provided in s. 218.74(1). The rejection must be
14 written and must specify the deficiency in the payment request
15 or invoice and the action necessary to make the payment
16 request or invoice proper.
17   (3) If a payment request or an invoice is rejected
18 under subsection (2) or this subsection and the contractor
19 submits a corrected payment request or invoice which corrects
20 the deficiency specified in writing by the local governmental
21 entity, the corrected payment request or invoice must be paid
22 or rejected on the later of:
23   (a) Ten business days after the date the corrected
24 payment request or invoice is stamped as received as provided
25 in s. 218.74(1); or
26   (b) If the governing body is required by ordinance,
27 charter, or other law to approve or reject the corrected
28 payment request or invoice, the first business day after the
29 next regularly scheduled meeting of the governing body held
30 after the corrected payment request or invoice is stamped as
31 received as provided in s. 218.74(1).

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1   (4) If a dispute between the local governmental entity
2 and the contractor cannot be resolved by the procedure in
3 subsection (3), the dispute must be resolved in accordance
4 with the dispute resolution procedure prescribed in the
5 construction contract or in any applicable ordinance. In the
6 absence of a prescribed procedure, the dispute must be
7 resolved by the procedure specified in s. 218.76(2).
8   (5) If a local governmental entity disputes a portion
9 of a payment request or an invoice, the undisputed portion
10 shall be paid timely, in accordance with subsection (1). The
11 payment time periods provided in this section for construction
12 services purchased by a local governmental entity shall not
13 affect contractual provisions or contractual covenants of a
14 local governmental entity in effect on September 30, 1995.
15   (6) When a contractor receives payment from a local
16 governmental entity for labor, services, or materials
17 furnished by subcontractors and suppliers hired by the
18 contractor, the contractor shall remit payment due to those
19 subcontractors and suppliers within 15 days after the
20 contractor's receipt of payment. When a subcontractor receives
21 payment from a contractor for labor, services, or materials
22 furnished by subcontractors and suppliers hired by the
23 subcontractor, the subcontractor shall remit payment due to
24 those subcontractors and suppliers within 15 days after the
25 subcontractor's receipt of payment. Nothing herein shall
26 prohibit a contractor or subcontractor from disputing,
27 pursuant to the terms of the relevant contract, all or any
28 portion of a payment alleged to be due to another party. In
29 the event of such a dispute, the contractor or subcontractor
30 may withhold the disputed portion of any such payment if the
31 contractor or subcontractor notifies the party whose payment

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1 is disputed, in writing, of the amount in dispute and the

2 actions required to cure the dispute. The contractor or

3 subcontractor must pay all undisputed amounts due within the

4 time limits imposed by this section.

5   (7)(6) All payments due under this section from a

6 local governmental entity and not made within the time periods

7 period specified by this section shall bear interest at the

8 rate of 1 percent per month, or the rate specified by

9 contract, whichever is greater as specified in s. 218.74(4).

10   Section 4. Section 218.74, Florida Statutes, is

11 amended to read:

12   218.74 Procedures for calculation of payment due

13 dates.--

14   (1) Each local governmental entity shall establish

15 procedures whereby each payment request or invoice received by

16 the local governmental entity is marked as received on the

17 date on which it is delivered to an agent or employee of the

18 local governmental entity or of a facility or office of the

19 local governmental entity.

20   (2) The payment due date for a local governmental

21 entity for the purchase of goods or services other than

22 construction services is 45 days after the date specified in

23 s. 218.73. The payment due date for the purchase of

24 construction services is specified in s. 218.735.

25   (3) If the terms under which a purchase is made allow

26 for partial deliveries and a payment request or proper invoice

27 is submitted for a partial delivery, the time for payment for

28 the partial delivery must be calculated from the time of the

29 partial delivery and the submission of the payment request or

30 invoice in the same manner as provided in s. 218.73 or s.

31 218.735.

1   (4) All payments, other than payments for construction
2 services,due from a local governmental entity and not made
3 within the time specified by this section bear interest from
4 30 days after the due date at the rate of 1 percent per month
5 on the unpaid balance. The vendor must invoice the local
6 governmental entity for any interest accrued in order to
7 receive the interest payment. Any overdue period of less than
8 1 month is considered as 1 month in computing interest.
9 Unpaid interest is compounded monthly. ~~With respect to each~~
10 ~~past due payment, interest ceases to accrue after interest on~~
11 ~~that payment has accrued for 12 months.~~For the purposes of
12 this section, the term "1 month" means a period beginning on
13 any day of one month and ending on the same day of the
14 following month.
15   Section 5. Section 218.75, Florida Statutes, is
16 amended to read:
17   218.75 Mandatory interest.--No contract between a
18 local governmental entity and a vendor or a provider of
19 construction services shall prohibit the collection of ~~vendor~~
20 ~~from invoicing the local governmental entity for~~ late payment
21 interest charges allowable under this part.
22   Section 6. Section 218.76, Florida Statutes, is
23 amended to read:
24   218.76 Improper payment request or invoice; resolution
25 of disputes.--
26   (1) In any case in which an improper payment request
27 or invoice is submitted by a vendor, the local governmental
28 entity shall, within 10 days after the improper payment
29 request or invoice is received by it, notify the vendor that
30 the payment request or invoice is improper and indicate what
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1 corrective action on the part of the vendor is needed to make

2 the payment request or invoice proper.

3   (2) In the event a dispute occurs between a vendor and

4 a local governmental entity concerning payment of a payment

5 request or an invoice, such disagreement shall be finally

6 determined by the local governmental entity as provided in

7 this section. Each local governmental entity shall establish

8 a dispute resolution procedure to be followed by the local

9 governmental entity in cases of such disputes. Such procedure

10 shall provide that proceedings to resolve the dispute shall be

11 commenced not later than 45 days after the date on which the

12 payment request proper invoice was received by the local

13 governmental entity and shall be concluded by final decision

14 of the local governmental entity not later than 60 days after

15 the date on which the payment request or proper invoice was

16 received by the local governmental entity. Such procedures

17 shall not be subject to chapter 120, and such procedures shall

18 not constitute an administrative proceeding which prohibits a

19 court from deciding de novo any action arising out of the

20 dispute. If the dispute is resolved in favor of the local

21 governmental entity, then interest charges shall begin to

22 accrue 15 days after the local governmental entity's final

23 decision. If the dispute is resolved in favor of the vendor,

24 then interest shall begin to accrue as of the original date

25 the payment became due.

26   (3) In an action to recover amounts due under ss.

27 218.70-218.80 the court shall award court costs and reasonable

28 attorney's fees, including fees incurred through any appeal,

29 to the prevailing party, if the court finds that the

30 nonprevailing party withheld any portion of the payment that

31 is the subject of the action without any reasonable basis in

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1 | law or fact to dispute the prevailing party's claim to those
2 | amounts.
3 | Section 7.   This act shall take effect July 1, 2001.
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