

By the Committees on Judiciary; and 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; providing that a payment  
7           request or invoice that is not rejected within a  
8           certain time after an overdue notice is sent is deemed  
9           accepted; requiring a local governmental entity to  
10          identify in a construction contract the agent or  
11          employee or facility or office to which a contractor  
12          may submit its payment request or invoice; requiring  
13          that an ordinance providing dispute resolution  
14          procedures applicable to a construction contract be  
15          referenced in the contract; requiring construction  
16          contracts to specify a date for the delivery of a list  
17          of items required to render complete, satisfactory,  
18          and acceptable the construction services purchased by  
19          a local governmental entity; providing for the  
20          extension of the contract if the list of items  
21          remaining to complete is not timely provided to the  
22          contractor; specifying the time for paying any  
23          remaining undisputed contract amount; amending s.  
24          218.76, F.S.; revising provisions relating to the  
25          resolution of disputes concerning an improper payment  
26          request or invoice; providing that a local  
27          governmental entity waives its objection in a payment  
28          dispute if it fails to commence the dispute resolution  
29          procedure within a certain time and after receiving

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30 notice from the contractor; providing an effective  
31 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. Such requirements must  
42 be included in the contract for the project for which the  
43 invoice is submitted.

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

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

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

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

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59 entity.

60 (10)~~(6)~~ "Vendor" means any person who sells goods or  
61 services, sells or leases personal property, or leases real  
62 property directly to a local governmental entity. The term  
63 includes any person who provides waste hauling services to  
64 residents or businesses located within the boundaries of a local  
65 government pursuant to a contract or local ordinance.

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

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

76 (1)~~(9)~~ "Agent" means the project architect, project  
77 engineer, or ~~any~~ other agency or person acting on behalf of the  
78 local governmental entity. The agent who is required to review  
79 invoices or payment requests must be identified in accordance  
80 with s. 218.735(2).

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. Present subsections (8) and (9) of section  
85 218.735, Florida Statutes, are redesignated as subsections (9)  
86 and (10), respectively, and present subsections (1) through (7)  
87 of that section are amended, to read:

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88 218.735 Timely payment for purchases of construction  
89 services.-

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

93 (a) If an agent must approve the payment request or invoice  
94 before ~~prior to~~ the payment request or invoice is being  
95 submitted to the local governmental entity, payment is due 25  
96 business days after the date on which the payment request or  
97 invoice is stamped as received as provided in s. 218.74(1). The  
98 contractor may send the local government an overdue notice. If  
99 the payment request or invoice is not rejected within 2 business  
100 days after delivery of the overdue notice, the payment request  
101 or invoice is deemed accepted, except for any portion that is  
102 fraudulent or misleading.

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

107 (2) A local governmental entity shall identify the agent or  
108 employee of the local governmental entity, or the facility or  
109 office, to which the contractor may submit its payment request  
110 or invoice.

111 (a) This requirement must be included in the contract  
112 between the local governmental entity and contractor, or, as  
113 required by the contract, must be provided by the local  
114 governmental entity through a separate written notice within 10  
115 days after the contract award.

116 (b) A contractor's submission of a payment request or

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117 invoice to the identified agent, employee, facility, or office  
118 of the local governmental entity must be stamped as received as  
119 provided in s. 218.74(1), and commences the time periods for  
120 payment or rejection of a payment request or invoice as provided  
121 in this subsection and subsection (3).

122 (3)~~(2)~~ If a payment request or invoice does not meet the  
123 contract requirements, the local governmental entity must ~~may~~  
124 reject the payment request or invoice within 20 business days  
125 after the date on which the payment request or invoice is  
126 stamped as received as provided in s. 218.74(1). The rejection  
127 must be written and must specify the deficiency ~~in the payment~~  
128 ~~request or invoice~~ and the action necessary to make the payment  
129 request or invoice proper.

130 (4)~~(3)~~ If a payment request or an invoice is rejected under  
131 subsection (3) ~~(2)~~ and the contractor submits a ~~corrected~~  
132 payment request or invoice that ~~which~~ corrects the deficiency  
133 ~~specified in writing by the local governmental entity,~~ the  
134 corrected payment request or invoice must be paid or rejected on  
135 the later of:

136 (a) Ten business days after the date the corrected payment  
137 request or invoice is stamped as received as provided in s.  
138 218.74(1); or

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

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146        (5)~~(4)~~ If a dispute between the local governmental entity  
147 and the contractor cannot be resolved by the procedure in  
148 subsection (4) ~~(3)~~, the dispute must be resolved in accordance  
149 with the dispute resolution procedure prescribed in the  
150 construction contract or in any applicable ordinance, which must  
151 be referenced in the contract. In the absence of a prescribed  
152 procedure, the dispute must be resolved by the procedure  
153 specified in s. 218.76(2).

154        (6)~~(5)~~ If a local governmental entity disputes a portion of  
155 a payment request or an invoice, the undisputed portion shall be  
156 paid timely, in accordance with subsection (1).

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

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175 time limits imposed by this section.

176 ~~(8)(7)(a)~~ Each contract for construction services between a  
177 local governmental entity and a contractor must provide for the  
178 development of a single list of items required to render  
179 complete, satisfactory, and acceptable the construction services  
180 purchased by the local governmental entity.

181 (a) The contract must specify the process for developing  
182 ~~the development of~~ the list, including the responsibilities of  
183 the local governmental entity and the contractor in developing  
184 and reviewing the list and a reasonable time for developing the  
185 list, ~~as follows:~~

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

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

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

202 (c) ~~(b)~~ If the contract between the local governmental  
203 entity and the contractor relates to the purchase of

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204 construction services on more than one building or structure, or  
205 involves a multiphased project, the contract must provide for  
206 the development of a list of items required to render complete,  
207 satisfactory, and acceptable all the construction services  
208 purchased pursuant to the contract for each building, structure,  
209 or phase of the project within the time limitations provided in  
210 paragraph (a).

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

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

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



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233        (g)~~(e)~~ All items that require correction under the contract  
234 and that are identified after the preparation and delivery of  
235 the list remain the obligation of the contractor as defined by  
236 the contract.

237        (h)~~(f)~~ Warranty items or items not included in the list of  
238 items may not affect the final payment of retainage as provided  
239 in this section or as provided in the contract between the  
240 contractor and its subcontractors and suppliers.

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

249        (j)~~(h)~~ If a local governmental entity fails to comply with  
250 its responsibilities to develop the list of items, including the  
251 list required under paragraph (c), if applicable, ~~(a) or~~  
252 ~~paragraph (b), as defined in the contract,~~ within the time  
253 limitations provided in paragraph (a), the contractor may submit  
254 a payment request for all remaining retainage withheld by the  
255 local governmental entity pursuant to this section. The payment  
256 of any remaining undisputed contract amount, less any amount  
257 withheld pursuant to the contract for incomplete or uncorrected  
258 work, must be paid within 20 business days after receipt of a  
259 proper invoice or payment request. If the local governmental  
260 entity has provided written notice to the contractor specifying  
261 the failure of the contractor to meet contract requirements in

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262 developing the list of items to be completed, the local  
 263 governmental entity need not pay or process any payment request  
 264 for retainage if the contractor has, in whole or in part, failed  
 265 to cooperate with the local governmental entity in the  
 266 development of the list, ~~or~~ failed to perform its contractual  
 267 responsibilities, if any, with regard to the development of the  
 268 list, or if paragraph (9) (f) ~~(8) (f)~~ applies.

269 Section 3. Section 218.76, Florida Statutes, is amended to  
 270 read:

271 218.76 Improper payment request or invoice; resolution of  
 272 disputes.-

273 (1) If ~~In any case in which~~ an improper payment request or  
 274 invoice is submitted by a vendor, the local governmental entity  
 275 shall, within 10 days after the improper payment request or  
 276 invoice is received ~~by it,~~ notify the vendor, in writing, that  
 277 the payment request or invoice is improper and indicate what  
 278 corrective action on the part of the vendor is needed to make  
 279 the payment request or invoice proper.

280 (2) If ~~In the event~~ a dispute arises ~~occurs~~ between a  
 281 vendor and a local governmental entity concerning payment of a  
 282 payment request or ~~an~~ invoice, the dispute ~~such disagreement~~  
 283 shall be finally determined by the local governmental entity  
 284 pursuant to ~~as provided in this section.~~ Each local governmental  
 285 entity ~~shall establish~~ a dispute resolution procedure  
 286 established to be followed by the local governmental entity ~~in~~  
 287 ~~cases of such disputes.~~

288 (a) The ~~Such~~ procedure must ~~shall~~ provide that proceedings  
 289 to resolve the dispute are ~~shall be~~ commenced within ~~not later~~  
 290 ~~than~~ 45 days after the date ~~on which~~ the payment request or

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291 proper invoice was received by the local governmental entity and  
292 ~~shall be~~ concluded by final decision of the local governmental  
293 entity within not later than 60 days after the date ~~on which~~ the  
294 payment request or proper invoice was received by the local  
295 governmental entity. Such procedures are ~~shall~~ not be subject to  
296 chapter 120, and do such procedures ~~shall~~ not constitute an  
297 administrative proceeding that ~~which~~ prohibits a court from  
298 deciding de novo any action arising out of the dispute. If the  
299 dispute is resolved in favor of the local governmental entity,  
300 ~~then~~ interest charges ~~shall~~ begin to accrue 15 days after the  
301 local governmental entity's final decision. If the dispute is  
302 resolved in favor of the vendor, ~~then~~ interest begins ~~shall~~  
303 begin to accrue as of the original date the payment became due.

304 (b) If the local governmental entity does not commence the  
305 dispute resolution procedure within the time required, the  
306 contractor may give written notice to the local governmental  
307 entity of the failure to timely commence the dispute resolution  
308 procedure. If the local governmental entity fails to commence  
309 the dispute resolution procedure within 2 business days after  
310 such notice:

311 1. Any amounts resolved in the contractor's favor bear  
312 mandatory interest, as set forth in s. 218.735(10), from the  
313 date the payment request or invoice containing the disputed  
314 amounts was submitted to the local governmental entity.

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

318 (3) In an action to recover amounts due under this part ~~ss.~~  
319 ~~218.70-218.80~~, the court shall award court costs and reasonable

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320 attorney's fees, including fees incurred through any appeal, to  
321 the prevailing party, ~~if the court finds that the nonprevailing~~  
322 ~~party withheld any portion of the payment that is the subject of~~  
323 ~~the action without any reasonable basis in law or fact to~~  
324 ~~dispute the prevailing party's claim to those amounts. This~~  
325 ~~subsection does not apply to any litigation commenced before~~  
326 ~~October 1, 2010.~~

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