

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

17  
 18 Be It Enacted by the Legislature of the State of Florida:

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

22           218.72 Definitions.—As used in this part, the term:  
 23           ~~(8)(1)~~ "Proper invoice" means an invoice that ~~which~~  
 24           conforms with all statutory requirements and ~~with~~ all  
 25           requirements ~~that have been~~ specified by the local governmental  
 26           entity to which the invoice is submitted. Such requirements must  
 27           be included in the invitation to bid or request for proposal for  
 28           the project for which the invoice is submitted.

29        (5)~~(2)~~ "Local governmental entity" means a county or  
 30 municipal government, school board, school district, authority,  
 31 special taxing district, other political subdivision, or any  
 32 office, board, bureau, commission, department, branch, division,  
 33 or institution thereof.

34        (4)~~(3)~~ "County" means a political subdivision of the state  
 35 established pursuant to s. 1, Art. VIII of the State  
 36 Constitution.

37        (6)~~(4)~~ "Municipality" means a municipality created  
 38 pursuant to general or special law and metropolitan and  
 39 consolidated governments as provided in s. 6(e) and (f), Art.  
 40 VIII of the State Constitution.

41        (9)~~(5)~~ "Purchase" means the purchase of goods, services,  
 42 or construction services; the purchase or lease of personal  
 43 property; or the lease of real property by a local governmental  
 44 entity.

45        (10)~~(6)~~ "Vendor" means any person who sells goods or  
 46 services, sells or leases personal property, or leases real  
 47 property directly to a local governmental entity. The term  
 48 includes any person who provides waste hauling services to  
 49 residents or businesses located within the boundaries of a local  
 50 government pursuant to a contract or local ordinance.

51        (2)~~(7)~~ "Construction services" means all labor, services,  
 52 and materials provided in connection with the construction,  
 53 alteration, repair, demolition, reconstruction, or ~~any~~ other  
 54 improvements to real property.

55        (7)~~(8)~~ "Payment request" means a request for payment for  
 56 construction services which conforms with all statutory

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57 requirements and ~~with~~ all requirements specified by the local  
58 governmental entity to which the payment request is submitted.  
59 Such requirements must be included in the invitation to bid or  
60 request for proposal for the project for which payment is  
61 requested.

62 ~~(1)(9)~~ "Agent" means the project architect, project  
63 engineer, or ~~any~~ other agency or person acting on behalf of the  
64 local governmental entity. The agent who is required to review  
65 invoices or payment requests must be identified in the  
66 invitation to bid or request for proposal for the project for  
67 which payment requests or invoices are submitted.

68 ~~(3)(10)~~ "Contractor" or "provider of construction  
69 services" means the ~~any~~ person who contracts directly with a  
70 local governmental entity to provide construction services.

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

73 218.735 Timely payment for purchases of construction  
74 services.—

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

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

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

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

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

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

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

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113 (4) If a dispute between the local governmental entity and  
114 the contractor cannot be resolved by the procedure in subsection  
115 (3), the dispute must be resolved in accordance with the dispute  
116 resolution procedure prescribed in the invitation to bid or  
117 request for proposal for the project for which the payment  
118 request or invoice is submitted ~~construction contract or in any~~  
119 ~~applicable ordinance. In the absence of a prescribed procedure,~~  
120 ~~the dispute must be resolved by the procedure specified in s.~~  
121 ~~218.76(2).~~

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

125 (6) If ~~When~~ a contractor receives payment from a local  
126 governmental entity for labor, services, or materials furnished  
127 by subcontractors and suppliers hired by the contractor, the  
128 contractor must ~~shall~~ remit payment due to those subcontractors  
129 and suppliers within 10 days after the contractor's receipt of  
130 payment. If ~~When~~ a subcontractor receives payment from a  
131 contractor for labor, services, or materials furnished by  
132 subcontractors and suppliers hired by the subcontractor, the  
133 subcontractor must ~~shall~~ remit payment due to those  
134 subcontractors and suppliers within 7 days after the  
135 subcontractor's receipt of payment. This subsection does not  
136 ~~Nothing herein shall~~ prohibit a contractor or subcontractor from  
137 disputing, ~~pursuant to the terms of the relevant contract, all~~  
138 ~~or~~ any portion of a payment alleged to be due to another party  
139 if the contractor or subcontractor notifies the party whose  
140 payment is disputed, in writing, of the amount in dispute and

141 the actions required to cure the dispute. The contractor or  
 142 subcontractor must pay all undisputed amounts due within the  
 143 time limits imposed by this section.

144 (7)~~(a)~~ Each contract for construction services between a  
 145 local governmental entity and a contractor must provide for the  
 146 development of a single list of items required to render  
 147 complete, satisfactory, and acceptable the construction services  
 148 purchased by the local governmental entity.

149 (a) The contract must specify the process for developing  
 150 ~~the development of~~ the list, including the responsibilities of  
 151 the local governmental entity and the contractor in developing  
 152 and reviewing the list and a reasonable time for developing the  
 153 list,~~as follows:~~

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

159 2. For construction projects having an estimated cost of  
 160 \$10 million or more, within 30 calendar days, or, if ~~unless~~  
 161 ~~otherwise~~ extended by contract, up to ~~not to exceed~~ 60 calendar  
 162 days, after reaching substantial completion of the construction  
 163 services purchased as defined in the contract, or, if not  
 164 defined in the contract, upon reaching beneficial occupancy or  
 165 use.

166 (b) If the contract between the local governmental entity  
 167 and the contractor relates to the purchase of construction  
 168 services on more than one building or structure, or involves a

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169 multiphased project, the contract must provide for the  
170 development of a list of items required to render complete,  
171 satisfactory, and acceptable all the construction services  
172 purchased pursuant to the contract for each building, structure,  
173 or phase of the project within the time limitations provided in  
174 paragraph (a).

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

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

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

196 (f)~~(e)~~ All items that require correction under the

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197 contract and that are identified after the preparation and  
198 delivery of the list remain the obligation of the contractor as  
199 defined by the contract.

200 (g)~~(f)~~ Warranty items or items not included in the list of  
201 items required under paragraph (a) may not affect the final  
202 payment of retainage as provided in this section or as provided  
203 in the contract between the contractor and its subcontractors  
204 and suppliers.

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

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



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225 for retainage if the contractor has, in whole or in part, failed  
 226 to cooperate with the local governmental entity in the  
 227 development of the list, ~~or~~ failed to perform its contractual  
 228 responsibilities, if any, with regard to the development of the  
 229 list, or if paragraph (8)(f) applies.

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

232 218.76 Improper payment request or invoice; resolution of  
 233 disputes.—

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

241 (2) ~~If In the event~~ a dispute arises ~~occurs~~ between a  
 242 vendor and a local governmental entity concerning payment of a  
 243 payment request or ~~an~~ invoice, the dispute ~~such disagreement~~  
 244 shall be finally determined by the local governmental entity  
 245 pursuant to ~~as provided in this section.~~ ~~Each local governmental~~  
 246 ~~entity shall establish~~ a dispute resolution procedure  
 247 established to be followed by the local governmental entity ~~in~~  
 248 ~~eases of such disputes.~~ Such procedure must ~~shall~~ provide that  
 249 proceedings to resolve the dispute are ~~shall be~~ commenced within  
 250 ~~not later than~~ 45 days after the date ~~on which~~ the payment  
 251 request or proper invoice was received by the local governmental  
 252 entity and ~~shall be~~ concluded by final decision of the local

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253 governmental entity within ~~not later than~~ 60 days after the date  
 254 ~~on which~~ the payment request or proper invoice was received by  
 255 the local governmental entity. Such procedures are ~~shall~~ not be  
 256 subject to chapter 120, and do ~~such procedures shall~~ not  
 257 constitute an administrative proceeding that ~~which~~ prohibits a  
 258 court from deciding de novo any action arising out of the  
 259 dispute. If the dispute is resolved in favor of the local  
 260 governmental entity, ~~then~~ interest charges ~~shall~~ begin to accrue  
 261 15 days after the local governmental entity's final decision. If  
 262 the dispute is resolved in favor of the vendor, ~~then~~ interest  
 263 begins ~~shall begin~~ to accrue as of the original date the payment  
 264 became due. If the local governmental entity does not commence  
 265 the dispute resolution procedure within the time required, the  
 266 objection to payment shall be deemed to have been waived. The  
 267 time for dispute resolution may be extended upon the written  
 268 agreement of the affected parties.

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

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