

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

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

19  
 20 Section 1. Section 218.72, Florida Statutes, is amended to  
 21 read:

22 218.72 Definitions.—As used in this part, the term:  
 23 (1)(9) "Agent" means the project architect, project  
 24 engineer, or any other agency or person acting on behalf of the  
 25 local governmental entity. The agent who is required to review  
 26 invoices or payment requests must be identified in accordance  
 27 with s. 218.735(1).

28 (2)(7) "Construction services" means all labor, services,

29 | and materials provided in connection with the construction,  
 30 | alteration, repair, demolition, reconstruction, or ~~any~~ other  
 31 | improvements to real property.

32 |       (3)~~(10)~~ "Contractor" or "provider of construction  
 33 | services" means the ~~any~~ person who contracts directly with a  
 34 | local governmental entity to provide construction services.

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

38 |       (5)~~(2)~~ "Local governmental entity" means a county or  
 39 | municipal government, school board, school district, authority,  
 40 | special taxing district, other political subdivision, or any  
 41 | office, board, bureau, commission, department, branch, division,  
 42 | or institution thereof.

43 |       (6)~~(4)~~ "Municipality" means a municipality created  
 44 | pursuant to general or special law and metropolitan and  
 45 | consolidated governments as provided in s. 6(e) and (f), Art.  
 46 | VIII of the State Constitution.

47 |       (7)~~(8)~~ "Payment request" means a request for payment for  
 48 | construction services which conforms with all statutory  
 49 | requirements and ~~with~~ all requirements specified by the local  
 50 | governmental entity to which the payment request is submitted.  
 51 | Such requirements must be included in the contract for the  
 52 | project for which payment is requested.

53 |       (8)~~(1)~~ "Proper invoice" means an invoice that ~~which~~  
 54 | conforms with all statutory requirements and ~~with~~ all  
 55 | requirements ~~that have been~~ specified by the local governmental  
 56 | entity to which the invoice is submitted. Such requirements must

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57 be included in the contract for the project for which the  
 58 invoice is submitted.

59 (9)~~(5)~~ "Purchase" means the purchase of goods, services,  
 60 or construction services; the purchase or lease of personal  
 61 property; or the lease of real property by a local governmental  
 62 entity.

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

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

71 218.735 Timely payment for purchases of construction  
 72 services.—

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

76 (a) If an agent must approve the payment request or  
 77 invoice before ~~prior to~~ the payment request or invoice is being  
 78 submitted to the local governmental entity, payment is due 25  
 79 business days after the date on which the payment request or  
 80 invoice is stamped as received as provided in s. 218.74(1). The  
 81 contractor may send the local government an overdue notice. If  
 82 the payment request or invoice is not rejected within 2 business  
 83 days after delivery of the overdue notice, the payment request  
 84 or invoice shall be deemed accepted, except for any portion of

85 the payment request or invoice that is fraudulent or misleading.

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

90  
 91 A local governmental entity shall identify the agent or employee  
 92 of the local governmental entity, or the facility or office, to  
 93 which the contractor may submit its payment request or invoice.  
 94 This requirement shall be included in the contract between the  
 95 local governmental entity and contractor, or shall be provided  
 96 by the local governmental entity through a separate written  
 97 notice, as required under the contract, no later than 10 days  
 98 after the contract award. A contractor's submission of a payment  
 99 request or invoice to the identified agent, employee, facility,  
 100 or office of the local governmental entity shall be stamped as  
 101 received as provided in s. 218.74(1) and shall commence the time  
 102 periods for payment or rejection of a payment request or invoice  
 103 as provided in this subsection and subsection (2).

104 (2) If a payment request or invoice does not meet the  
 105 contract requirements, the local governmental entity must ~~may~~  
 106 reject the payment request or invoice within 20 business days  
 107 after the date on which the payment request or invoice is  
 108 stamped as received as provided in s. 218.74(1). The rejection  
 109 must be written and must specify the deficiency ~~in the payment~~  
 110 ~~request or invoice~~ and the action necessary to make the payment  
 111 request or invoice proper.

112 (3) If a payment request or an invoice is rejected under

113 subsection (2) and the contractor submits a ~~corrected~~ payment  
 114 request or invoice that ~~which~~ corrects the deficiency ~~specified~~  
 115 ~~in writing by the local governmental entity,~~ the corrected  
 116 payment request or invoice must be paid or rejected on the later  
 117 of:

118 (a) Ten business days after the date the corrected payment  
 119 request or invoice is stamped as received as provided in s.  
 120 218.74(1); or

121 (b) If the local governmental entity ~~governing body~~ is  
 122 required by ordinance, charter, or other law to approve or  
 123 reject the corrected payment request or invoice, the first  
 124 business day after the next regularly scheduled meeting of the  
 125 local governmental entity ~~governing body~~ held after the  
 126 corrected payment request or invoice is stamped as received as  
 127 provided in s. 218.74(1).

128 (4) If a dispute between the local governmental entity and  
 129 the contractor cannot be resolved by the procedure in subsection  
 130 (3), the dispute must be resolved in accordance with the dispute  
 131 resolution procedure prescribed in the construction contract or  
 132 in any applicable ordinance, which shall be referenced in the  
 133 contract. In the absence of a prescribed procedure, the dispute  
 134 must be resolved by the procedure specified in s. 218.76(2).

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

138 (6) If ~~When~~ a contractor receives payment from a local  
 139 governmental entity for labor, services, or materials furnished  
 140 by subcontractors and suppliers hired by the contractor, the

141 contractor must ~~shall~~ remit payment due to those subcontractors  
 142 and suppliers within 10 days after the contractor's receipt of  
 143 payment. If ~~When~~ a subcontractor receives payment from a  
 144 contractor for labor, services, or materials furnished by  
 145 subcontractors and suppliers hired by the subcontractor, the  
 146 subcontractor must ~~shall~~ remit payment due to those  
 147 subcontractors and suppliers within 7 days after the  
 148 subcontractor's receipt of payment. This subsection does not  
 149 ~~Nothing herein shall~~ prohibit a contractor or subcontractor from  
 150 disputing, pursuant to the terms of the relevant contract, all  
 151 or any portion of a payment alleged to be due to another party  
 152 if the contractor or subcontractor notifies the party whose  
 153 payment is disputed, in writing, of the amount in dispute and  
 154 the actions required to cure the dispute. The contractor or  
 155 subcontractor must pay all undisputed amounts due within the  
 156 time limits imposed by this section.

157 (7) ~~(a)~~ Each contract for construction services between a  
 158 local governmental entity and a contractor must provide for the  
 159 development of a single list of items required to render  
 160 complete, satisfactory, and acceptable the construction services  
 161 purchased by the local governmental entity.

162 (a) The contract must specify the process for developing  
 163 ~~the development of~~ the list, including the responsibilities of  
 164 the local governmental entity and the contractor in developing  
 165 and reviewing the list and a reasonable time for developing the  
 166 list, ~~as follows:~~

167 1. For construction projects having an estimated cost of  
 168 Less than \$10 million, within 30 calendar days after reaching

169 substantial completion of the construction services purchased as  
 170 defined in the contract, or, if not defined in the contract,  
 171 upon reaching beneficial occupancy or use; or

172 2. For construction projects having an estimated cost of  
 173 \$10 million or more, within 30 calendar days, or, if unless  
 174 ~~otherwise~~ extended by contract, up to not to exceed 60 calendar  
 175 days, after reaching substantial completion of the construction  
 176 services purchased as defined in the contract, or, if not  
 177 defined in the contract, upon reaching beneficial occupancy or  
 178 use.

179  
 180 The contract must also specify a date for the delivery of the  
 181 list of items, not to exceed 5 days after the list of items has  
 182 been developed and reviewed in accordance with the time periods  
 183 set forth in subparagraphs 1. and 2.

184 (b) If the contract between the local governmental entity  
 185 and the contractor relates to the purchase of construction  
 186 services on more than one building or structure, or involves a  
 187 multiphased project, the contract must provide for the  
 188 development of a list of items required to render complete,  
 189 satisfactory, and acceptable all the construction services  
 190 purchased pursuant to the contract for each building, structure,  
 191 or phase of the project within the time limitations provided in  
 192 paragraph (a).

193 (c) The final contract completion date must be at least 30  
 194 days after the delivery of the list of items. If the list is not  
 195 provided to the contractor by the agreed upon date for delivery  
 196 of the list, the contract time for completion must be extended

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197 by the number of days the local governmental entity exceeded the  
198 delivery date. Damages may not be assessed against a contractor  
199 for failing to complete a project within the time required by  
200 the contract, unless the contractor failed to complete the  
201 project within the contract period as extended under this  
202 paragraph.

203 (d)~~(e)~~ The failure to include any corrective work or  
204 pending items not yet completed on the list ~~developed pursuant~~  
205 ~~to this subsection~~ does not alter the responsibility of the  
206 contractor to complete all the construction services purchased  
207 pursuant to the contract.

208 (e)~~(d)~~ Upon completion of all items on the list, the  
209 contractor may submit a payment request for all remaining  
210 retainage withheld by the local governmental entity pursuant to  
211 this section. If a good faith dispute exists as to whether one  
212 or more items identified on the list have been completed  
213 pursuant to the contract, the local governmental entity may  
214 continue to withhold up to an amount not to exceed 150 percent  
215 of the total costs to complete such items.

216 (f)~~(e)~~ All items that require correction under the  
217 contract and that are identified after the preparation and  
218 delivery of the list remain the obligation of the contractor as  
219 defined by the contract.

220 (g)~~(f)~~ Warranty items or items not included in the list of  
221 items required under paragraph (a) may not affect the final  
222 payment of retainage as provided in this section or as provided  
223 in the contract between the contractor and its subcontractors  
224 and suppliers.



225        (h) ~~(g)~~ Retainage may not be held by a local governmental  
 226        entity or a contractor to secure payment of insurance premiums  
 227        under a consolidated insurance program or series of insurance  
 228        policies issued to a local governmental entity or a contractor  
 229        for a project or group of projects, and the final payment of  
 230        retainage as provided in this section may not be delayed pending  
 231        a final audit by the local governmental entity's or contractor's  
 232        insurance provider.

233        (i) ~~(h)~~ If a local governmental entity fails to comply with  
 234        its responsibilities to develop the list required under  
 235        paragraph (a) or paragraph (b), ~~as defined in the contract,~~  
 236        within the time limitations provided in paragraph (a), the  
 237        contractor may submit a payment request for all remaining  
 238        retainage withheld by the local governmental entity pursuant to  
 239        this section and payment of any remaining undisputed contract  
 240        amount, less any amount withheld pursuant to the contract for  
 241        incomplete or uncorrected work, must be paid within 20 business  
 242        days after receipt of a proper invoice or payment request. If  
 243        the local governmental entity has provided written notice to the  
 244        contractor specifying the failure of the contractor to meet  
 245        contract requirements in the development of the list of items to  
 246        be completed, the local governmental entity need not pay or  
 247        process any payment request for retainage if the contractor has,  
 248        in whole or in part, failed to cooperate with the local  
 249        governmental entity in the development of the list or ~~failed~~ to  
 250        perform its contractual responsibilities, if any, with regard to  
 251        the development of the list or if paragraph (8)(f) applies.

252        Section 3. Section 218.76, Florida Statutes, is amended to

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253 read:

254 218.76 Improper payment request or invoice; resolution of  
255 disputes.—

256 (1) ~~If In any case in which~~ an improper payment request or  
257 invoice is submitted by a vendor, the local governmental entity  
258 shall, within 10 days after the improper payment request or  
259 invoice is received ~~by it~~, notify the vendor, in writing, that  
260 the payment request or invoice is improper and indicate what  
261 corrective action on the part of the vendor is needed to make  
262 the payment request or invoice proper.

263 (2) (a) ~~If In the event~~ a dispute arises ~~occurs~~ between a  
264 vendor and a local governmental entity concerning payment of a  
265 payment request or ~~an~~ invoice, the dispute ~~such disagreement~~  
266 shall be finally determined by the local governmental entity  
267 pursuant to ~~as provided in this section.~~ Each local governmental  
268 ~~entity shall establish~~ a dispute resolution procedure  
269 established ~~to be followed~~ by the local governmental entity ~~in~~  
270 ~~eases of such disputes.~~ Such procedure must ~~shall~~ provide that  
271 proceedings to resolve the dispute are ~~shall be~~ commenced within  
272 ~~not later than~~ 45 days after the date ~~on which~~ the payment  
273 request or proper invoice was received by the local governmental  
274 entity and ~~shall be~~ concluded by final decision of the local  
275 governmental entity within ~~not later than~~ 60 days after the date  
276 ~~on which~~ the payment request or proper invoice was received by  
277 the local governmental entity. Such procedures are ~~shall not be~~  
278 subject to chapter 120, and do ~~such procedures shall~~ not  
279 constitute an administrative proceeding that ~~which~~ prohibits a  
280 court from deciding de novo any action arising out of the

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281 dispute. If the dispute is resolved in favor of the local  
 282 governmental entity, ~~then~~ interest charges ~~shall~~ begin to accrue  
 283 15 days after the local governmental entity's final decision. If  
 284 the dispute is resolved in favor of the vendor, ~~then~~ interest  
 285 begins ~~shall begin~~ to accrue as of the original date the payment  
 286 became due.

287 (b) If the local governmental entity does not commence the  
 288 dispute resolution procedure within the time required, a  
 289 contractor may give written notice to the local governmental  
 290 entity of the failure to timely commence its dispute resolution  
 291 procedure. If the local governmental entity fails to commence  
 292 the dispute resolution procedure within 2 business days after  
 293 such notice, any amounts resolved in the contractor's favor  
 294 shall bear mandatory interest, as set forth in s. 218.735(9),  
 295 from the date the payment request or invoice containing the  
 296 disputed amounts was submitted to the local governmental entity.  
 297 If the dispute resolution procedure is not commenced within 2  
 298 business days after the notice, the objection to the payment  
 299 request or invoice shall be deemed waived. The waiver of an  
 300 objection pursuant to this paragraph does not relieve a  
 301 contractor of its contractual obligations.

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

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309 | This paragraph shall not apply to any litigation commenced  
310 | before October 1, 2010.

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