

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

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 4 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 or notice to proceed. A contractor's
 99 submission of a payment request or invoice to the identified
 100 agent, employee, facility, or office of the local governmental
 101 entity shall be stamped as received as provided in s. 218.74(1)
 102 and shall commence the time periods for payment or rejection of
 103 a payment request or invoice as provided in this subsection and
 104 subsection (2).

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

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

119 (a) Ten business days after the date the corrected payment
120 request or invoice is stamped as received as provided in s.
121 218.74(1); or

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

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

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

139 (6) If ~~When~~ a contractor receives payment from a local
140 governmental entity for labor, services, or materials furnished

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

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

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

168 1. For construction projects having an estimated cost of

169 Less than \$10 million, within 30 calendar days after reaching
170 substantial completion of the construction services purchased as
171 defined in the contract, or, if not defined in the contract,
172 upon reaching beneficial occupancy or use; or

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

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

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

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

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

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

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

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

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

225 and suppliers.

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

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

253 Section 3. Section 218.76, Florida Statutes, is amended to
 254 read:

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

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

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

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

288 (b) If the local governmental entity does not commence the
 289 dispute resolution procedure within the time required, a
 290 contractor may give written notice to the local governmental
 291 entity of the failure to timely commence its dispute resolution
 292 procedure. If the local governmental entity fails to commence
 293 the dispute resolution procedure within 4 business days after
 294 such notice, any amounts resolved in the contractor's favor
 295 shall bear mandatory interest, as set forth in s. 218.735(9),
 296 from the date the payment request or invoice containing the
 297 disputed amounts was submitted to the local governmental entity.
 298 If the dispute resolution procedure is not commenced within 4
 299 business days after the notice, the objection to the payment
 300 request or invoice shall be deemed waived. The waiver of an
 301 objection pursuant to this paragraph does not relieve a
 302 contractor of its contractual obligations.

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

CS/HB 1157, Engrossed 1

2010

309 | ~~fact to dispute the prevailing party's claim to those amounts.~~

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