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 CS/HB 1157, Engrossed 1

2010 Legislature

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,

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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 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

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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.

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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

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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

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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



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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.

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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

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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~~

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

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