

By Senator Webster

12-776-01

See HB 113

1 A bill to be entitled
2 An act relating to construction; amending s.
3 218.72, F.S.; redefining the terms "local
4 government entity," "purchase," and
5 "construction services" and defining the terms
6 "payment request" and "agent" for the purpose
7 of the Florida Prompt Payment Act; amending s.
8 218.73, F.S.; providing for timely payment for
9 nonconstruction services; amending s. 218.735,
10 F.S.; revising provisions with respect to
11 timely payment for purchases of construction
12 services; amending s. 218.74, F.S.; revising
13 provisions with respect to procedures for
14 calculation of payment due dates; amending s.
15 218.75, F.S.; revising provisions with respect
16 to mandatory interest; amending s. 218.76,
17 F.S.; revising provisions with respect to
18 improper invoices and resolution of disputes;
19 providing for the recovery of court costs and
20 attorney's fees under certain circumstances;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Subsections (2), (5), and (7) of section
26 218.72, Florida Statutes, are amended, and subsections (8) and
27 (9) are added to that section, to read:

28 218.72 Definitions.--As used in this part:

29 (2) "Local governmental entity" means a county or
30 municipal government, school board, school district,
31 authority, special taxing district, other political

1 subdivision, community college, or any office, board, bureau,
2 commission, department, branch, division, or institution
3 thereof or any project supported by county or municipal funds.

4 (5) "Purchase" means the purchase of goods, ~~or~~
5 services, or construction services; the purchase or lease of
6 personal property; ~~or~~ the lease of real property by a local
7 governmental entity.

8 (7) "Construction services" means all labor, services,
9 and materials provided ~~performed~~ in connection with the
10 construction, alteration, repair, demolition, reconstruction,
11 or any other improvements to real property that require a
12 license under parts I and II of chapter 489.

13 (8) "Payment request" means a request for payment for
14 construction services which conforms with all statutory
15 requirements and with all requirements specified by the local
16 governmental entity to which the payment request is submitted
17 if:

18 (a) Such requirements have been adopted by formal
19 action of the local governmental entity taken prior to the
20 transaction to which the payment request applies.

21 (b) The local governmental entity made such
22 requirements available to vendors.

23 (9) "Agent" means project architect, project engineer,
24 or any other agency or person acting on behalf of the local
25 governmental entity.

26 Section 2. Section 218.73, Florida Statutes, is
27 amended to read:

28 218.73 Timely payment for nonconstruction
29 services.--The time at which payment is due for a purchase
30 other than construction services by a local governmental
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1 ~~entity, except for the purchase of construction services, is~~
2 ~~due~~ must be calculated from:
3 (1) The date on which a proper invoice is received by
4 the chief disbursement officer of the local governmental
5 entity after approval by the governing body, if required; or
6 (2) If a proper invoice is not received by the local
7 governmental entity, the date:
8 (a) On which delivery of personal property is accepted
9 by the local governmental entity;
10 (b) On which services are completed;
11 (c) On which the rental period begins; or
12 (d) On which the local governmental entity and vendor
13 agree in a contract that provides dates relative to payment
14 periods;
15
16 whichever date is latest.
17 Section 3. Section 218.735, Florida Statutes, is
18 amended to read:
19 218.735 Timely payment for purchases of construction
20 services.--
21 (1) The due date for payment for the purchase of
22 construction services by a local governmental entity is
23 determined as follows:
24 (a) If an agent ~~the project architect or project~~
25 ~~engineer~~ must approve the payment request or invoice prior to
26 the payment request or invoice being submitted to the local
27 governmental entity, payment is due 25 ~~20~~ business days after
28 the date on which the payment request or ~~architect or engineer~~
29 ~~approves the invoice and the~~ invoice is stamped as received as
30 provided in s. 218.74(1).
31

1 (b) If an agent ~~the project architect or project~~
2 ~~engineer~~ need not approve the payment request or invoice which
3 is submitted by the contractor, payment is due 20 business
4 days after the date on which the payment request or invoice is
5 stamped as received as provided in s. 218.74(1).

6 (2) The local governmental entity may reject the
7 payment request or invoice within 20 business days after the
8 date on which the payment request or invoice is stamped as
9 received as provided in s. 218.74(1). The rejection must be
10 written and must specify the deficiency in the payment request
11 or invoice and the action necessary to make the payment
12 request or invoice proper.

13 (3) If a payment request or an invoice is rejected
14 under subsection (2) ~~or this subsection~~ and the contractor
15 submits a corrected payment request or invoice which corrects
16 the deficiency specified in writing by the local governmental
17 entity, the corrected payment request or invoice must be paid
18 or rejected on the later of:

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

22 (b) If the governing body is required by ordinance,
23 charter, or other law to approve or reject the corrected
24 payment request or invoice, the first business day after the
25 next regularly scheduled meeting of the governing body held
26 after the corrected payment request or invoice is stamped as
27 received as provided in s. 218.74(1).

28 (4) If a dispute between the local governmental entity
29 and the contractor cannot be resolved by the procedure in
30 subsection (3), the dispute must be resolved in accordance
31 with the dispute resolution procedure prescribed in the

1 construction contract or in any applicable ordinance. In the
2 absence of a prescribed procedure, the dispute must be
3 resolved by the procedure specified in s. 218.76(2).

4 (5) If a local governmental entity disputes a portion
5 of a payment request or an invoice, the undisputed portion
6 shall be paid timely, in accordance with subsection (1).~~The~~
7 ~~payment time periods provided in this section for construction~~
8 ~~services purchased by a local governmental entity shall not~~
9 ~~affect contractual provisions or contractual covenants of a~~
10 ~~local governmental entity in effect on September 30, 1995.~~

11 (6) When a contractor receives payment from a local
12 governmental entity for labor, services, or materials
13 furnished by subcontractors and suppliers hired by the
14 contractor, the contractor shall remit payment due to those
15 subcontractors and suppliers within 15 days after the
16 contractor's receipt of payment. When a subcontractor
17 receives payment from a contractor for labor, services, or
18 materials furnished by subcontractors and suppliers hired by
19 the subcontractor, the subcontractor shall remit payment due
20 to those subcontractors and suppliers within 15 days after the
21 subcontractor's receipt of payment. Nothing herein shall
22 prohibit a contractor or subcontractor from disputing,
23 pursuant to the terms of the relevant contract, all or any
24 portion of a payment alleged to be due to another party. In
25 the event of such a dispute, the contractor or subcontractor
26 may withhold the disputed portion of any such payment but the
27 undisputed portion must be remitted within the time limits
28 imposed by this subsection.

29 ~~(7)(6)~~ All payments due under this section from a
30 ~~local governmental entity~~ and not made within the time periods
31 period specified by this section shall bear interest at the

1 rate of 1 percent per month, or the rate specified by
2 contract, whichever is greater ~~as specified in s. 218.74(4).~~

3 Section 4. Section 218.74, Florida Statutes, is
4 amended to read:

5 218.74 Procedures for calculation of payment due
6 dates.--

7 (1) Each local governmental entity shall establish
8 procedures whereby each payment request or invoice received by
9 the local governmental entity is marked as received on the
10 date on which it is delivered to an agent or employee of the
11 local governmental entity or of a facility or office of the
12 local governmental entity.

13 (2) The payment due date for a local governmental
14 entity for the purchase of goods or services other than
15 construction services is 45 days after the date specified in
16 s. 218.73. The payment due date for the purchase of
17 construction services is specified in s. 218.735.

18 (3) If the terms under which a purchase is made allow
19 for partial deliveries and a payment request or proper invoice
20 is submitted for a partial delivery, the time for payment for
21 the partial delivery must be calculated from the time of the
22 partial delivery and the submission of the payment request or
23 invoice in the same manner as provided in s. 218.73 or s.
24 218.735.

25 (4) All payments, other than payments for construction
26 services, due from a local governmental entity and not made
27 within the time specified by this section bear interest from
28 30 days after the due date at the rate of 1 percent per month
29 on the unpaid balance. The vendor must invoice the local
30 governmental entity for any interest accrued in order to
31 receive the interest payment. Any overdue period of less than

1 1 month is considered as 1 month in computing interest.
2 Unpaid interest is compounded monthly. ~~With respect to each~~
3 ~~past due payment, interest ceases to accrue after interest on~~
4 ~~that payment has accrued for 12 months.~~For the purposes of
5 this section, the term "1 month" means a period beginning on
6 any day of one month and ending on the same day of the
7 following month.

8 Section 5. Section 218.75, Florida Statutes, is
9 amended to read:

10 218.75 Mandatory interest.--No contract between a
11 local governmental entity and a vendor or a provider of
12 construction services shall prohibit the collection of ~~vendor~~
13 ~~from invoicing the local governmental entity for~~ late payment
14 interest charges allowable under this part.

15 Section 6. Section 218.76, Florida Statutes, is
16 amended to read:

17 218.76 Improper payment request or invoice; resolution
18 of disputes.--

19 (1) In any case in which an improper payment request
20 or invoice is submitted by a vendor, the local governmental
21 entity shall, within 10 days after the improper payment
22 request or invoice is received by it, notify the vendor that
23 the payment request or invoice is improper and indicate what
24 corrective action on the part of the vendor is needed to make
25 the payment request or invoice proper.

26 (2) In the event a dispute occurs between a vendor and
27 a local governmental entity concerning payment of a payment
28 request or an invoice, such disagreement shall be finally
29 determined by the local governmental entity as provided in
30 this section. Each local governmental entity shall establish
31 a dispute resolution procedure to be followed by the local

1 governmental entity in cases of such disputes. Such procedure
2 shall provide that proceedings to resolve the dispute shall be
3 commenced not later than 45 days after the date on which the
4 payment request or proper invoice was received by the local
5 governmental entity and shall be concluded by final decision
6 of the local governmental entity not later than 60 days after
7 the date on which the payment request or proper invoice was
8 received by the local governmental entity. Such procedures
9 shall not be subject to chapter 120, and such procedures shall
10 not constitute an administrative proceeding which prohibits a
11 court from deciding de novo any action arising out of the
12 dispute. If the dispute is resolved in favor of the local
13 governmental entity, then interest charges shall begin to
14 accrue 10 ~~15~~ days after the local governmental entity's final
15 decision. If the dispute is resolved in favor of the vendor,
16 then interest shall begin to accrue as of the original date
17 the payment became due.

18 (3) In an action to recover amounts due under s.
19 218.70-218.80, the prevailing party shall be entitled to
20 recover court costs and attorney's fees at trial and on
21 appeal.

22 Section 7. This act shall take effect July 1, 2001.
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LEGISLATIVE SUMMARY

Revises the Florida Prompt Payment Act to:
1. Redefine the terms "local government entity,"
"purchase," and "construction services" and defines the
terms "payment request" and "agent."
2. Provide for the timely payment for
nonconstruction services.
3. Revise provisions with respect to timely payment
for purchases of construction services.
4. Revise provisions with respect to calculations
of payment due dates, mandatory interest, improper
invoices, and resolution of disputes.

(See bill for details.)