

Committee Substitute for
Committee Substitute for Senate Bill No. 870

An act relating to construction; amending s. 218.72, F.S.; redefining the terms “proper invoice,” “local government entity,” “purchase,” and “construction services” and defining the terms “payment request” and “agent” for the purpose of the Florida Prompt Payment Act; amending s. 218.73, F.S.; providing for timely payment for non-construction services; amending s. 218.735, F.S.; revising provisions with respect to timely payment for purchases of construction services; providing for disputed payment requests; providing for payment of undisputed amounts; amending s. 218.74, F.S.; revising provisions with respect to procedures for calculation of payment due dates; amending s. 218.75, F.S.; revising provisions with respect to mandatory interest; amending s. 218.76, F.S.; revising provisions with respect to improper invoices and resolution of disputes; providing for the recovery of court costs and attorney’s fees under certain circumstances; providing an effective date.

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

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

218.72 Definitions.—As used in this part:

(1) “Proper invoice” means an invoice which conforms with all statutory requirements and with all requirements that have been specified by the local governmental entity to which the invoice is submitted, if:

~~(a) Such requirements have been adopted by formal action of the local governmental entity taken prior to the transaction to which the invoice applies.~~

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

(2) “Local governmental entity” means a county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof or any project supported by county or municipal funds.

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

(7) “Construction services” means all labor, services, and materials provided ~~performed~~ in connection with the construction, alteration, repair, de-

molition, reconstruction, or any other improvements to real property that require a license under parts I and II of chapter 489.

(8) “Payment request” means a request for payment for construction services which conforms with all statutory requirements and with all requirements specified by the local governmental entity to which the payment request is submitted.

(9) “Agent” means project architect, project engineer, or any other agency or person acting on behalf of the local governmental entity.

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

218.73 Timely payment for nonconstruction services.—The time at which payment is due for a purchase other than construction services by a local governmental entity, ~~except for the purchase of construction services, is due~~ must be calculated from:

(1) The date on which a proper invoice is received by the chief disbursement officer of the local governmental entity after approval by the governing body, if required; or

(2) If a proper invoice is not received by the local governmental entity, the date:

(a) On which delivery of personal property is accepted by the local governmental entity;

(b) On which services are completed;

(c) On which the rental period begins; or

(d) On which the local governmental entity and vendor agree in a contract that provides dates relative to payment periods;

whichever date is latest.

Section 3. Section 218.735, Florida Statutes, is amended to read:

218.735 Timely payment for purchases of construction services.—

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

(a) ~~If an agent the project architect or project engineer must approve the payment request or invoice prior to the payment request or invoice being submitted to the local governmental entity, payment is due 25 20 business days after the date on which the payment request or architect or engineer approves the invoice and the invoice is stamped as received as provided in s. 218.74(1).~~

(b) ~~If an agent the project architect or project engineer need not approve the payment request or invoice which is submitted by the contractor, pay-~~

ment is due 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1).

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

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

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

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

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

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

(6) When a contractor receives payment from a local governmental entity for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor shall remit payment due to those subcontractors and suppliers within 15 days after the contractor's receipt of payment. When a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within 15 days after the subcontractor's receipt of payment. Nothing herein shall prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party. In the event of such a dispute, the contractor or subcontractor may withhold the disputed portion of any such payment if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the

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

~~(7)(6)~~ All payments due under this section ~~from a local governmental entity~~ and not made within the time ~~periods~~ period specified by this section shall bear interest at the rate of 1 percent per month, or the rate specified by contract, whichever is greater ~~as specified in s. 218.74(4).~~

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

218.74 Procedures for calculation of payment due dates.—

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

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

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

(4) All payments, other than payments for construction services, due from a local governmental entity and not made within the time specified by this section bear interest from 30 days after the due date at the rate of 1 percent per month on the unpaid balance. The vendor must invoice the local governmental entity for any interest accrued in order to receive the interest payment. Any overdue period of less than 1 month is considered as 1 month in computing interest. Unpaid interest is compounded monthly. ~~With respect to each past due payment, interest ceases to accrue after interest on that payment has accrued for 12 months.~~ For the purposes of this section, the term “1 month” means a period beginning on any day of one month and ending on the same day of the following month.

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

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

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

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

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

(2) In the event a dispute occurs between a vendor and a local governmental entity concerning payment of a payment request or an invoice, such disagreement shall be finally determined by the local governmental entity as provided in this section. Each local governmental entity shall establish a dispute resolution procedure to be followed by the local governmental entity in cases of such disputes. Such procedure shall provide that proceedings to resolve the dispute shall be commenced not later than 45 days after the date on which the payment request proper invoice was received by the local governmental entity and shall be concluded by final decision of the local governmental entity not later than 60 days after the date on which the payment request or proper invoice was received by the local governmental entity. Such procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding which prohibits a court from deciding de novo any action arising out of the dispute. If the dispute is resolved in favor of the local governmental entity, then interest charges shall begin to accrue 15 days after the local governmental entity's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.

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

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

Approved by the Governor June 6, 2001.

Filed in Office Secretary of State June 6, 2001.