
HOUSE BILL 2667

State of Washington

56th Legislature

2000 Regular Session

By Representatives Veloria, Clements, Conway, G. Chandler, Gombosky, Dunn, Cooper, Campbell, Kenney and Buck

Read first time 01/18/2000. Referred to Committee on State Government.

1 AN ACT Relating to prompt payment for goods and services provided
2 to the state of Washington; adding a new chapter to Title 39 RCW; and
3 providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6 (a) Firms and organizations that do business with the state expect
7 and deserve to be paid in a prompt and timely manner; and

8 (b) Unjustified delays in paying vendors, construction contractors,
9 and providers of service may discourage these firms and organizations,
10 in particular small and medium-sized firms and women and minority-owned
11 business enterprises, from doing business with the state, and may
12 ultimately increase the costs to the state government of: (I)
13 Purchasing materials, equipment, and supplies; (ii) undertaking
14 construction and reconstruction projects; and (iii) obtaining a wide
15 variety of professional and other specialized services including those
16 that are provided to persons in need.

17 (2) It is the purpose of this chapter to set standards for the
18 payment of bills incurred by state agencies within specified periods of
19 time and to require interest payments in situations where contract

1 payments do not conform to these standards. It is also the intent of
2 this chapter, consistent with accepted business practices and with
3 sound principles of fiscal management: (a) To encourage state agencies
4 in all branches of state government to make payments at least as
5 expeditiously as they currently do; (b) to reduce existing payment
6 processing times whenever feasible, while at the same time permitting
7 the state agencies to perform proper and reasonable financial oversight
8 activities designed to ensure that the state government receives the
9 quality of goods and services to which it is entitled; and (c) to
10 ensure that public funds are spent in a prudent and responsible manner.

11 NEW SECTION. **Sec. 2.** The definitions in this section apply
12 throughout this chapter unless the context clearly requires otherwise.

13 (1) "Contract" means an enforceable agreement entered into by a
14 contractor and a state agency.

15 (2) "Contractor" means any person, partnership, firm, corporation,
16 or association:

17 (a) Selling materials, equipment, or supplies or leasing property
18 or equipment to a state agency;

19 (b) Constructing, reconstructing, rehabilitating, or repairing
20 buildings or highways for, or on behalf of, a state agency; or

21 (c) Rendering or providing services pursuant to a contract with a
22 state agency.

23 (3) "Designated payment office" means the office designated by the
24 state agency to which a proper invoice is to be submitted by a
25 contractor.

26 (4) "Payment date" means the date on which a check for payment
27 according to a contract is dated.

28 (5) "Proper invoice" means a written request for a contract payment
29 that is submitted by a contractor setting forth the description, price,
30 and quantity of goods, property, or services delivered or rendered, in
31 a form and supported by other substantiating documentation as the
32 individual state agency may reasonably require.

33 (6) "Receipt of an invoice" means the date on which a proper
34 invoice is actually received in the designated payment office; or the
35 date on which the state agency receives the purchased goods, property,
36 or services covered by the proper invoice, whichever is later; or in
37 regard to final payments on highway construction contracts, the date
38 determined in accordance with the provisions of the contract.

1 (7) "Required payment date" means the date a contract payment must
2 be made in order for the state agency not to become liable for interest
3 payments, pursuant to section 3 (2) and (5) of this act.

4 (8) "Set-off" means the reduction by the state treasurer of a
5 payment due to a contractor by an amount equal to the amount of an
6 unpaid legally enforceable debt owed by the contractor to the state.

7 (9) "State agency" means any department, board, commission, office,
8 council, institution, or committee in the executive, legislative, or
9 judicial branches of state government. The term "state agency" also
10 includes that state's institutions of higher education and the
11 vocational and technical colleges.

12 (10) "State funds" means funds held in custody by the state
13 treasurer.

14 NEW SECTION. **Sec. 3.** (1) Each state agency which is required to
15 make a payment from state funds according to a contract and which does
16 not make the contract payment by the required payment date shall make
17 an interest payment to the contractor in accordance with this chapter
18 on the amount of the contract payment which is due, unless failure to
19 make the contract payment is the result of a lien, attachment, or other
20 legal process against the money due to the contractor, or unless the
21 amount of the interest payment, as computed in accordance with the
22 provisions of section 4 of this act, is less than one hundred dollars.

23 (2) The required payment date is thirty calendar days, excluding
24 legal holidays, or ninety calendar days in the case of final payments
25 on highway construction contracts, excluding legal holidays, after
26 receipt of an invoice for the amount of the contract payment due,
27 except when:

28 (a) The designated payment office in the course of its audit
29 determines that there is reasonable cause to believe that payment may
30 not be properly due, in whole or in part;

31 (b) In accordance with specific statutory or contractual
32 provisions, payment must be preceded by an inspection period or by an
33 audit to determine the resources applied or used by a contractor in
34 fulfilling the terms of the contract;

35 (c) The necessary state government appropriation required to
36 authorize payment has not been enacted;

37 (d) The cash balance of the fund or subfund from which the payment
38 is to be made is insufficient to finance the payment;

1 (e) A proper invoice must be examined by the federal government
2 prior to payment;

3 (f) The goods or property have not been delivered or the services
4 have not been rendered by the contractor in compliance with the terms
5 or conditions of the contract;

6 (g) The required payment date is modified in accordance with (c) of
7 this subsection; or

8 (h) In the case of final payments on highway construction
9 contracts, the secretary of transportation determines that the
10 contractor has failed to properly submit the necessary documents and
11 other submissions required by the contract and other applicable state
12 and federal laws which enable the department of transportation to
13 process the final payment properly and expeditiously.

14 Any time taken to satisfy or rectify any of the types of conditions
15 described in this subsection shall extend the required payment date by
16 an equal period of time.

17 (3) Each state agency has fifteen calendar days after receipt of an
18 invoice by the state agency at its designated payment office to notify
19 the contractor of defects in the delivered goods, property, or
20 services; defects in the invoice; or suspected improprieties of any
21 kind. The existence of any defects or improprieties shall prevent the
22 commencement of the time period specified in subsection (2) of this
23 section. When a state agency fails to notify a contractor of defects
24 or suspected improprieties within fifteen calendar days of receiving
25 the invoice, the number of days allowed for payment of the corrected
26 proper invoice will be reduced by the number of days between the
27 fifteenth day and the day that notification was transmitted to the
28 contractor. If the state agency, in these situations, fails to provide
29 reasonable grounds for its contention that a defect or impropriety
30 exists, the required payment date shall be calculated from the date of
31 receipt of an invoice.

32 (4) Notwithstanding any provision of the public service law or any
33 tariffs promulgated in accordance with the law to the contrary, the
34 provisions of this chapter provide the sole basis for determining and
35 making interest payments on invoices submitted by public utilities to
36 state agencies.

37 (5) A proper invoice submitted by the contractor is required to
38 initiate any payment, except where the contract provides that the
39 contractor will be paid at predetermined intervals without having to

1 submit an invoice for each scheduled payment, in which case the state
2 agency responsible for making the purchase shall submit an approvable
3 voucher to the state treasurer for the payment that is due and, for the
4 purposes of determining eligibility for payment of interest and subject
5 to the exception of time-to-rectify provisions of subsection (2) of
6 this section, the required payment date is the payment due date
7 specified in accordance with the contract.

8 NEW SECTION. **Sec. 4.** Interest payments on amounts due to a
9 contractor according to this chapter shall be paid to the contractor
10 for the period beginning on the day after the required payment date,
11 and ending on the payment date, for those payments required according
12 to this chapter and shall be paid at the rate of interest in effect on
13 the date when the interest payment is made. Notwithstanding any other
14 provision of law to the contrary, the interest rate equals one percent
15 per month.

16 NEW SECTION. **Sec. 5.** (1) Except where federal law or the
17 provisions of section 12 of this act require otherwise, an interest
18 payment required by this chapter shall be paid from the same
19 appropriation from which the related proper invoice is paid.

20 (2) The interest payment shall not reduce the amount of money that
21 otherwise will be payable to the contractor under the terms of the
22 contract, and if the obligation to make an interest payment is incurred
23 in whole or in part because it takes the state treasurer more than
24 twelve calendar days from the date it receives an approvable voucher
25 from another state agency, excluding legal holidays, to process a
26 contract payment, then the portion of the total interest payment that
27 is attributable to delays by the state treasurer shall be paid from
28 funds made available to the state treasurer.

29 (3) Notwithstanding any other provision of law to the contrary, if
30 the amount of money available from any appropriation to the state
31 agency which received the proper invoice is insufficient to pay the
32 interest, and if for any reason it is not feasible for the director of
33 financial management to exercise the transfer or interchange authority,
34 the director of financial management may issue a certificate or
35 certificates transferring or interchanging within a fund the amount
36 needed to pay the interest on the appropriation within the fund from

1 the unspent balance of any appropriation that is available to the same
2 state agency.

3 (4) In exercising the latter transfer or interchange authority, the
4 director of financial management shall transfer or interchange amounts
5 that are not needed to accomplish the purposes for which the
6 appropriation was made, however, the director of financial management
7 may, to the extent deemed practicable, transfer or interchange amounts
8 from appropriations that otherwise would be available for the
9 administration and operations of the state agency which incurred the
10 interest payment.

11 (5) Any certificate or certificates issued by the director of
12 financial management shall be sent to the state treasurer.

13 NEW SECTION. **Sec. 6.** Any interest paid to a contractor under the
14 provisions of this chapter shall not be included as revenue for the
15 purposes of determining any reimbursement rates applicable to a
16 contractor.

17 NEW SECTION. **Sec. 7.** (1) Except as provided in subsection (2) of
18 this section, in the event that an interest payment is made by a
19 contractor in the course of transacting business with any entity other
20 than a state agency, the interest shall not be an obligation of the
21 state, and the state shall not reimburse the contractor for the
22 interest, nor shall any moneys expended for interest payments be
23 counted toward any matching requirement applicable to grants or
24 payments of state funds unless expressly permitted by state law.

25 (2) If a contractor incurs an interest obligation or charge as a
26 direct result of the state agency's failure to make a payment in
27 accordance with the provisions of this chapter, then the state agency
28 must reimburse the contractor for the amount of the interest obligation
29 or charge.

30 NEW SECTION. **Sec. 8.** The acceptance of payment, in whole or in
31 part, by a contractor does not constitute a waiver of interest
32 otherwise due under the provisions of this chapter.

33 NEW SECTION. **Sec. 9.** No contract entered into between a state
34 agency and a contractor after July 1, 2000, shall contain any provision
35 requiring the payment of interest in a manner inconsistent with this

1 chapter, and any provision contained in a contract which waives the
2 right to the payment of interest is hereby declared to be contrary to
3 public policy and wholly void.

4 NEW SECTION. **Sec. 10.** (1) The state treasurer shall:

5 (a) Promulgate rules and regulations necessary to carry out the
6 state treasurer's responsibilities under this chapter;

7 (b) Develop and implement a procedure for calculating the amount of
8 interest, if any, due to any contractor under the provisions of this
9 chapter. This procedure shall include provisions for calculating:

10 (i) The amount of time, in calendar days, between the date of
11 receipt of a proper invoice by the state agency and the date on which
12 an approvable voucher was delivered to the state treasurer;

13 (ii) The amount of time between the date on which an approvable
14 voucher was delivered to the state treasurer and the payment date;

15 (iii) The amount of interest, if any, chargeable to the state
16 agency involved according to this chapter; and

17 (iv) The amount of interest, if any, chargeable to the state
18 treasurer according to this chapter;

19 (c) Develop and implement a procedure for paying interest in not
20 more than seven days from the payment date on those proper invoices for
21 which interest is due and for which the director of financial
22 management does not issue a certificate or certificates increasing,
23 transferring, or interchanging funds so that an interest payment can be
24 made according to this chapter. The state treasurer shall also develop
25 and implement a procedure for paying interest in not more than fourteen
26 days from the payment date on those proper invoices for which interest
27 is due and for which the director of financial management does issue a
28 certificate or certificates increasing, transferring, or interchanging
29 funds so that an interest payment can be made according to this
30 chapter;

31 (d) Develop and implement a procedure by which the state treasurer
32 notifies contractors promptly and directly whenever the state treasurer
33 rejects a voucher and returns it to a state agency.

34 (2) The state treasurer shall submit a report to the governor and
35 the legislature which includes the number and amounts of interest
36 payments made for each state agency, the number of interest chargeable
37 days, the number of days taken to process contract payments, the extent
38 to which delays occurred because a state agency took longer than

1 allotted under the provisions of this chapter to process the affected
2 invoices and the extent to which delays occurred because the state
3 treasurer took longer than allotted by the provisions of this chapter
4 to process the related vouchers, and a summary of the principal reasons
5 causing late payments. The report shall be delivered to the governor
6 and legislature within sixty calendar days after the conclusion of each
7 fiscal year.

8 NEW SECTION. **Sec. 11.** Any determination made by a state agency
9 according to section 3(3) of this act is subject to judicial review.
10 The proceedings shall only be commenced in the absence, or upon
11 completion, of other review procedures specified in the applicable
12 contract or by applicable regulations.

13 NEW SECTION. **Sec. 12.** (1) Notwithstanding any other provision of
14 law to the contrary, the liability of the state treasurer, insofar as
15 incurring an obligation to make an interest payment to a contractor
16 under the terms of this chapter is concerned, shall not extend beyond
17 the date of a notice of intention to file a claim, the date of a notice
18 of a claim, or the date commencing a legal action for the payment of
19 interest, whichever occurs first. Any interest payment owed by the
20 state agency in accordance with the provisions of this chapter as of
21 this date shall be paid as directed by the court, and to the extent
22 that the interest payment is attributable to processing delays caused
23 by the state agency which received the proper invoice or by processing
24 delays caused by the state treasurer, the interest payment shall be
25 made from funds available to the state agency or to the state treasurer
26 at the time of final judgment.

27 (2) With respect to the court actions or other legal processes
28 referred to in this section, any interest obligation incurred by the
29 state agency after the date specified in this chapter, or in accordance
30 with any other provision of law, shall be determined as prescribed by
31 any separate provision of law, shall be paid as directed by the court,
32 and shall be paid from any appropriation available for that purpose.

33 NEW SECTION. **Sec. 13.** The provisions of this chapter shall not
34 apply to payments due and owing by the state:

35 (1) Under the eminent domain procedure law, chapter 8.04 RCW;

1 (2) As interest allowed on judgments rendered by a court according
2 to any provision of law other than those provisions contained in this
3 chapter;

4 (3) To the federal government, to any state agency or its related
5 instrumentalities, to any duly constituted unit of local government
6 including, but not limited to, counties, cities, towns, school
7 districts, special districts, or any of their related
8 instrumentalities, to any public authority or public benefit
9 corporation, or to employees of state agencies when acting in, or
10 incidental to, their public employment capacity;

11 (4) To entities which receive state funds through any intermediary
12 organization other than a state agency; or

13 (5) In situations where the state agency exercises a legally
14 authorized setoff against all or part of the payment due the
15 contractor.

16 NEW SECTION. **Sec. 14.** For the purpose of making a final payment
17 on a highway construction contract, the date to be used for determining
18 the receipt of an invoice in section 3(2) of this act is the date the
19 contract work has been accepted as completed by the secretary of
20 transportation.

21 NEW SECTION. **Sec. 15.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 16.** This act takes effect July 1, 2000.

26 NEW SECTION. **Sec. 17.** This act may be known and cited as the
27 prompt payment act.

28 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act
29 constitute a new chapter in Title 39 RCW.

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