

CHAPTER 82

H.B. No. 275

An Act relating to payments for goods and services contracted for by the state or by a political subdivision of the state.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act:

- (1) "State agency" means:
 - (A) a board, commission, department, office, or other agency in the executive branch of state government that was created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code, and a river authority;
 - (B) the legislature or a legislative agency; or
 - (C) the supreme court, the court of criminal appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.
- (2) "Political subdivision" means:
 - (A) a county;
 - (B) an incorporated city or town;
 - (C) a public school district; or
 - (D) a special purpose district or authority.
- (3) "Governmental entity" means a state agency or a political subdivision of this state.
- (4) "Payment" means money owed to a vendor from whom a governmental entity acquires property or services.
- (5) "Commission" means the State Purchasing and General Services Commission.
- (6) "Vendor" means a person, corporation, association, partnership, or other legal entity that supplies goods and/or services to a governmental entity.
- (7) "Subcontractor" means a person who contracts with a vendor to work, or has contracted with a vendor to contribute toward the completion of work done, for a governmental entity.

SECTION 2. POLITICAL SUBDIVISIONS; TIME FOR PAYMENTS. (a) Except as provided by Subsection (b) of this section, a payment owed by a political subdivision based on a contract executed on or after the effective date of this Act is due not later than the 45th calendar day after the day on which the political subdivision received supplies, materials, or equipment, or the day on which the performance of services was completed or the day on which the political subdivision received the invoice for the supplies, materials, equipment, or services, whichever is later.

(b) After September 1, 1987, a payment owed by a political subdivision based on a contract executed on or after September 1, 1987, is due not later than the 30th calendar day after the day on which the political subdivision received supplies, materials, or equipment, or the day on which the performance of services was completed or the day on which the political subdivision received the invoice for the supplies, materials, equipment, or services, whichever is later.

(c) Interest imposed under this Act on a political subdivision shall be paid automatically as payments become overdue. It shall be the responsibility of each political subdivision to calculate and pay interest automatically at the time that payment is made on the principal. Interest payments shall accompany payment of the net amount due for goods and services. Political subdivisions may not require a vendor to petition, invoice, bill, or wait any additional days to receive the interest due.

SECTION 3. STATE AGENCIES; TIME FOR PAYMENTS. (a) Except as provided by Subsection (b) of this section, a payment owed by a state agency based on a contract executed on or after the effective date of this Act is due not later than the 45th calendar day after the day on which the state agency received supplies, materials, or equipment, or the day on which the performance of services was completed or the day on which the state agency received the invoice for the supplies, materials, equipment, or services, whichever is later.

(b) After September 1, 1987, a payment owed by a state agency based on a contract executed on or after September 1, 1987, is due not later than the 30th calendar day after the day on which the state agency received supplies, materials, or equipment, or the day on which the performance of services was completed or the day on which the state agency received the invoice for the supplies, materials, equipment, or services, whichever is later.

(c) If the warrant is not mailed within the applicable time period, the originating state agency is liable for any interest payment accruing under this Act.

(d) A claim for interest imposed under this Act on a state agency must be presented to the originating state agency, along with the envelope in which the warrant was received or other proof showing the date the payment was mailed or transmitted by the state agency, no later than six months after the payment was received by the vendor.

SECTION 4. VENDORS; TIME FOR PAYMENTS. (a) A vendor who has received payment from a governmental entity shall pay each subcontractor the appropriate share of the payment not later than the 10th calendar day after the day on which the vendor receives payment from the governmental entity. If the vendor does not make the payment within that time period, the vendor shall pay interest to the subcontractor as provided by Section 5 of this Act.

(b) A subcontractor who has received payment from a vendor shall pay each person who supplied material, machinery, supplies, goods, and/or services for which payment is being made the appropriate share of the payment made to it not later than the 10th calendar day after the day on which the subcontractor receives payment. If the subcontractor does not make the payment within that time period, the subcontractor shall pay interest to such persons as provided in Section 5 of this Act.

(c) Interest imposed under this Act on a vendor or a subcontractor shall be paid automatically as payments become overdue.

SECTION 5. OVERDUE PAYMENTS; INTEREST. (a) If a payment is not made within the period specified in this Act, the payment is overdue and subject to interest.

(b) The interest imposed by this section accrues and is charged beginning on the day after the payment is due under this Act. The interest accrues at the rate of one percent per month. The interest ceases to accrue on the date that the payment is mailed by the vendor or the governmental entity. For purposes of this Act, a payment is considered mailed on the date the payment is postmarked or electronically transmitted to the vendor's financial institution.

(c) If partial payment is made within the period specified in this Act, the unpaid balance accrues interest as provided by this section unless the balance is in dispute in which case the provisions of Section 6 would prevail.

SECTION 6. DISPUTED PAYMENTS. (a) If a governmental entity believes that there is an error in an invoice submitted for payment, the governmental entity shall notify the vendor who submitted the invoice of the alleged error not later than the 21st day after the date on which the invoice is received.

(b) If the dispute is resolved in favor of the vendor who submitted the invoice, that vendor shall receive interest on all invoices for which payment has not been received within the applicable time period specified in Section 2 or Section 3, as applicable, of this Act from the date on which the payment first becomes overdue.

(c) If the dispute is resolved in favor of the governmental entity, the vendor who submitted the original invoice shall submit a corrected invoice and the corrected invoice shall be paid in accordance with Section 2 or Section 3 of this Act, as appropriate. If the corrected invoice is not paid by the appropriate date, interest accrues as provided by this Act.

SECTION 7. EXCEPTIONS; LEGISLATIVE INTENT. (a) This Act does not apply to payments made by a governmental entity or a vendor in the event:

- (1) the terms of a contract specify other times and methods of payment; or
- (2) there is a bona fide dispute between a vendor and a subcontractor or between a subcontractor and its supplier concerning the supplies, materials, or equipment delivered or the services performed which causes the payment to be late; or
- (3) the terms of a federal contract, grant, regulation, or statute prevent the governmental entity from making a timely payment with federal funds; or
- (4) the invoice is not mailed to the addressee in strict accordance with instructions, if any, on the purchase order covering said payment.

(b) Nothing in this Act shall be construed to amend the provisions of Article 5160, Revised Statutes.

SECTION 8. EARLY PAYMENT DISCOUNTS. It is the intent of the legislature that a governmental entity take advantage of early payment discounts when offered. However, no discount offered by a vendor shall be taken by a governmental entity unless full payment is made within the discount period. In the event a discount is taken later, interest shall accrue on the unpaid balance from the day the discount offer expired.

SECTION 9. ROLE OF COMMISSION. The State Purchasing and General Services Commission shall adopt rules to implement this Act within 60 days of the effective date of this Act.

SECTION 10. ATTORNEY'S FEES. In a formal administrative or judicial action to collect an invoice payment or interest due under this Act, the opposing party, which may be the governmental entity or vendor, shall pay the reasonable attorney's fees of the prevailing party.

SECTION 11. TRANSITION. (a) This Act applies to payments made under contracts executed on or after the effective date of this Act. Payments made under contracts executed before the effective date are governed by the law in effect at the time the contracts were executed, and the former law is continued in effect for this purpose.

(b) The interest established by this Act applies only to the outstanding balance due under an invoice issued on a contract executed on or after July 1, 1986.

SECTION 12. EFFECTIVE DATE. This Act takes effect July 1, 1986.

SECTION 13. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on March 13, 1985, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 275 on April 22, 1985, by a non-record vote; passed by the Senate, with amendments, on April 18, 1985, by the following vote: Yeas 31, Nays 0.

Approved: May 8, 1985

Effective: July 1, 1986