

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 353

Session of
1993

INTRODUCED BY LESCOVITZ, COLAIZZO, MARKOSEK, FAIRCHILD, MELIO,
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GORDNER AND GEIST, FEBRUARY 10, 1993

AS REPORTED FROM COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,
HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 28, 1993

AN ACT

1 Providing for the payment of interest on purchases by political
2 subdivisions.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Political
7 Subdivision Procurement Interest Payment Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Local authority." A municipal authority or any other body
13 corporate and politically created by one or more political
14 subdivisions pursuant to statute.

15 "Payment made." A payment shall be considered made on the
16 date on which a check for the payment is dated.

1 "Political subdivision." Any county, city, borough,
2 incorporated town, township, school district, vocational school
3 district, county institution district, local authority or any
4 joint or cooperative body of political subdivisions having the
5 power to enter into contracts.

6 "Proper invoice." An invoice which contains or is
7 accompanied by substantiating documentation as the political
8 subdivision involved may require by regulation or contract.

9 "Qualified small business concern." Any independently owned
10 and operated for-profit business concern, including any person
11 engaged in a trade, employing 100 or fewer employees operating
12 as a contractor with a political subdivision.

13 "Received invoice." Any invoice received by a political
14 subdivision on the later of:

15 (1) the date on which the political subdivision's
16 designated payment office or finance center actually receives
17 a proper invoice; or

18 (2) the date on which the political subdivision accepts
19 the property or service concerned.

20 Section 3. Political subdivision interest payments.

21 (a) General rule.--

22 (1) In accordance with the provisions of paragraph (2),
23 each political subdivision which acquires property or
24 services from a qualified small business concern but which
25 does not make payment for each complete delivered item of
26 property or service by the required payment date shall pay an
27 interest penalty to the business concern in accordance with
28 this section on the amount of the payment which is due. <—

29 ~~provided that the interest rate to be assessed against any~~ <—
30 ~~late payments, as determined by the Secretary of Revenue~~

1 ~~under subsection (b)(2), shall be included in either the~~
2 ~~contract or the invoice accompanying the item of property or~~
3 ~~service and provided further that any qualified small~~ UNLESS <—
4 A LOWER RATE HAS BEEN AGREED TO, THE INTEREST RATE TO BE
5 ASSESSED AGAINST ANY LATE PAYMENTS SHALL BE DETERMINED BY THE
6 SECRETARY OF REVENUE UNDER SUBSECTION (B)(2), PROVIDED THAT
7 ANY QUALIFIED SMALL business concern shall conspicuously
8 present a statement, on or with the invoice statement, that
9 it meets the definition of a qualified small business concern
10 contained in this act.

11 (2) All of the following conditions shall apply for the
12 payment of interest by a political subdivision:

13 (i) The required payment date shall be:

14 (A) the date on which payment is due under the
15 terms of the contract for the provision of the
16 property or service; or

17 (B) thirty calendar days after receipt of a
18 proper invoice for the amount of the payment due, if
19 a specific date on which payment is due is not
20 established by contract.

21 (ii) Separate required payment dates for contracts
22 under which property or services are provided in a series
23 of partial executions or deliveries shall be established,
24 to the extent that the contract provides for separate
25 payment of the partial execution or delivery.

26 (iii) Prior to the date upon which payment without
27 an interest penalty is due, a political subdivision shall
28 notify the qualified small business concern of any defect
29 in goods and services or impropriety in the invoice which
30 would prevent the running of the time periods specified

1 in this paragraph.

2 (b) Due date of payment.--

3 (1) Interest penalties payable on amounts due to a
4 qualified small business concern under this act shall be paid
5 to the business concern for the period beginning on the day
6 after the required payment date and ending on the date on
7 which payment on the amount due is made except no interest
8 penalty shall be paid if payment for the complete delivered
9 item of property or service concerned is made on or before
10 the 15th calendar day after the required payment date.

11 (2) Interest shall be computed at the rate determined by
12 the Secretary of Revenue for interest payments on overdue
13 taxes or the refund of taxes as provided in sections 806 and
14 806.1 of the act of April 9, 1929 (P.L.343, No.176), known as
15 The Fiscal Code, and any subsequent amendments to those
16 sections.

17 (3) Interest may be paid by separate payment made to a
18 qualified small business concern within 30 days of payment of
19 the original invoice.

20 (4) Any amount of an interest penalty imposed because of
21 a debt which remains unpaid at the end of any 30-day period
22 shall be added to the principle amount of the debt and
23 thereafter interest penalties shall accrue on the added
24 amount.

25 (c) Funds for interest payment.--A political subdivision
26 shall pay any interest penalties required by this act out of
27 funds made available for the administration or operation of the
28 program for which the penalty was incurred, or from general
29 administrative funds of the political subdivision. Nothing in
30 this act shall be construed to require payment of interest

1 penalties from Federal or State funds if the payment is
2 prohibited by Federal or State law or regulation.

3 (d) Claims.--Claims for interest penalties which a political
4 subdivision has failed to pay in accordance with the
5 requirements of this act shall be made in a formal civil action
6 against the offending political subdivision following the
7 exhaustion of all contractual remedies.

8 (e) Disputes.--This act shall not be construed to require
9 interest penalties on payments which are not made by the
10 required payment date by reason of a dispute between a political
11 subdivision and a qualified small business concern over the
12 amount of that payment or other allegations concerning
13 compliance with a contract.

14 Section 4. Exception.

15 Section 3 shall not apply when the political subdivision's
16 nonpayment on a particular project is caused by failure of the
17 Federal or State government to pay funds designated for the
18 specific project. Nothing in this act shall be construed to
19 require payment of interest penalties by the Federal or State
20 government.

21 Section 5. Nonapplication of act.

22 ~~This act shall not apply to any "public contracts" subject to~~ <—
23 ~~the act of November 26, 1978 (P.L.1309, No.317), referred to as~~
24 ~~the Public Works Contract Regulation Law. This act shall not~~
25 ~~apply to those invoices which are part of, or subject to,~~
26 ~~negotiation sessions conducted by the coordinator of a~~
27 ~~municipality determined to be distressed under the act of July~~
28 ~~10, 1987 (P.L.246, No.47), known as the Municipalities Financial~~
29 ~~Recovery Act.~~

30 THIS ACT SHALL NOT APPLY TO ANY OF THE FOLLOWING: <—

1 (1) "PUBLIC CONTRACTS" SUBJECT TO THE ACT OF NOVEMBER
2 26, 1978 (P.L.1309, NO.317), REFERRED TO AS THE PUBLIC WORKS
3 CONTRACT REGULATION LAW.

4 (2) A MUNICIPALITY DETERMINED TO BE DISTRESSED UNDER THE
5 ACT OF JULY 10, 1987 (P.L.246, NO.47), KNOWN AS THE
6 MUNICIPALITIES FINANCIAL RECOVERY ACT.

7 (3) A SCHOOL DISTRICT WHICH HAS BEEN DETERMINED TO BE A
8 DISTRESSED SCHOOL DISTRICT UNDER SECTION 691 OF THE ACT OF
9 MARCH 10, 1949 (P.L.30, NO.14), KNOWN AS THE PUBLIC SCHOOL
10 CODE OF 1949.

11 Section 6. Applicability.

12 This act shall apply to all contracts entered into on or
13 after July 1, 1993.

14 Section 7. Effective date.

15 This act shall take effect in 180 days.