

## LEGISLATIVE BILL 1079

Approved by the Governor April 7, 1988

Introduced by Hefner, 19; Abboud, 12

AN ACT relating to state agencies; to adopt the Prompt Payment Act; to eliminate provisions relating to payment of accounts; and to repeal sections 81-1111.01 to 81-1111.03, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Prompt Payment Act.

Sec. 2. As used in the Prompt Payment Act, unless the context otherwise requires:

(1) Agency shall mean the state and any agency, department, office, commission, board, panel, or division of the state;

(2) Bill shall mean a proper billing or invoice which requests a payment and which is supplemented by all necessary verification and forms required by agency rules and regulations to process payments;

(3) Creditor shall mean any person, corporation, association, or other business concern engaged in a trade or business, either on a for-profit or not-for-profit basis, and providing any goods or services to an agency;

(4) Good faith dispute shall mean:

(a) A contention by the agency that goods delivered or services rendered were of less quantity or quality than ordered or specified by contract, faulty, or installed improperly; or

(b) Any other reason giving cause for the withholding of payment by the agency until the dispute is settled, except that failure to give notice as prescribed in section 5 of this act shall preclude an agency from claiming a good faith dispute in the case of a defective or improper billing;

(5) Goods shall mean any goods, supplies, materials, equipment, or other personal property but shall not mean any real property; and

(6) Services shall mean any contractual services, including, but not limited to, architectural, engineering, medical, financial consulting, or other professional services, any construction services, and

any other personal services but shall not mean any services performed as an officer or employee of any agency.

Sec. 3. (1) Except as provided in subsection (2) of this section, each agency shall make payment in full for all goods delivered or services rendered on or before the forty-fifth calendar day after (a) the date of receipt by the agency of the goods or services or (b) the date of receipt by the agency of the bill for the goods or services, whichever is later, unless other provisions for payment are agreed to in writing by the creditor and the agency.

(2) Any agency making payment for goods or services provided for third parties shall make payment in full for such goods or services on or before the sixtieth calendar day after the date of receipt by the agency of the bill.

(3) No goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency. For purposes of determining whether payment was made in accordance with this section, payment in full by an agency shall be considered to be made on the date the warrant or check for such payment was mailed or otherwise transmitted.

Sec. 4. Any creditor of an agency not receiving payment in full for goods delivered or services rendered within the forty-five-day or sixty-day time period, whichever is applicable, may charge the agency interest on the unpaid principal balance at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature. Interest charges shall begin to accrue on the thirty-first calendar day after (1) the date of receipt by the agency of the goods or services or (2) the date of receipt by the agency of the bill for the goods or services, whichever is later, and shall terminate on the date on which payment in full of the amount due is made. Each agency shall pay the interest charge upon request unless the bill is the subject of a good faith dispute between the agency and the creditor. No claim by a creditor for interest charges shall be allowed unless the agency is requested to pay the interest charges within ninety calendar days from the date on which payment in full is due.

Sec. 5. When a bill submitted to an agency is filled out incorrectly or when there is any defect or impropriety in a bill submitted, the agency shall notify the creditor in writing prior to the date on which

payment in full is due. The notice shall contain a description of the defect or impropriety and any additional information necessary to enable the creditor to correct the bill. Upon receiving a properly corrected bill, the agency shall make payment in full of the bill on or before the forty-fifth calendar day after the receipt of the corrected bill or, when the agency is making payment for goods or services provided by a third party, on or before the sixtieth calendar day after the receipt of the corrected bill.

Sec. 6. Nothing in the Prompt Payment Act shall be construed to prohibit full or partial payments by agencies for goods or services whether or not such goods or services have been completely received or finally accepted by the agencies.

Sec. 7. The Prompt Payment Act shall not apply to the following:

(1) Claims subject to a good faith dispute if notice of the dispute is conveyed to the creditor in writing before the time required for payment, except that the Prompt Payment Act shall take effect on the date that the dispute is resolved;

(2) Contracts related to highway or road construction, reconstruction, or maintenance; and

(3) Claims, contracts, or projects which are to be paid for exclusively with federal funds.

Sec. 8. Each agency shall report monthly to the Director of Administrative Services and the Legislative Fiscal Analyst any account that has not been paid within the applicable time period prescribed by section 3 of this act. Each agency shall report annually any interest charge on a past-due account, whether paid or unpaid, to the Governor and to the Appropriations Committee of the Legislature.

Sec. 9. That sections 81-1111.01 to 81-1111.03, Reissue Revised Statutes of Nebraska, 1943, are repealed.