



**House
Legislative
Analysis
Section**

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STATE CONTRACTS

**House Bill 4582 with committee
amendment
Revised first Analysis (2-8-94)**

**Sponsor: Rep. Harold Voorhees
Committee: Consumers**

THE APPARENT PROBLEM:

Public Act 279 of 1984 requires a state agency ("a principal executive department") to pay for goods and services from private enterprises within 45 days after the agency receives either the goods or services, a complete invoice for the goods and services, or a complete contract for goods and services, whichever is later. If a payment to a private enterprise for goods and services is past due, the state agency is required to pay an additional amount equal to 0.75 percent of the payment to the private enterprise. The act applies only to goods and services received -- and for which a complete invoice was received -- by a state agency after September 30, 1984.

According to some road building contractors, the Michigan Department of Transportation has a history of slow final payment on many road projects. One example given is the final payment for a road project completed in July, 1989 was not received until January, 1994. Construction contractors have requested legislation granting their industry the same benefits accorded businesses that provide goods or services.

THE CONTENT OF THE BILL:

The bill would amend Public Act 279 of 1984 to provide for payment schedule requirements and late payment fees for construction projects done by private enterprises for state agencies, similar to the requirements for contracts with businesses that provide goods and services. State agencies would be required to mail payment to a private enterprise within 45 days after the date the state agency determined that a construction project had been completed or within 45 days after the scheduled completion date of the project, adjusted for any approved extensions, whichever was earlier. The penalty would be an additional amount equal to 0.75 percent of a late payment to a private enterprise,

and would apply to construction contracts entered into after June 30, 1994.

MCL 17.51 et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Construction contractors and subcontractors have suffered due to slow payment or no payment on many road projects. This situation has been caused in part by uncompleted paperwork, disputes, and so forth. Some of these cases are several years old. The present system causes severe hardship for women and minority contractors, as well as smaller construction companies who often don't have the financial wherewithal or cash flow to wait for the final payment. Often these companies don't bid on road projects because of these financial considerations. The bill would provide the same fair treatment for construction contractors as provided to state vendors that provide goods and services by holding the bureaucracy accountable to businesses with whom they do business.

Against:

According to the Department of Transportation, contractors are audited and paid every two weeks during a project. The problem is the time it takes for contractors to return documents to the state in order to finalize a project or failure to respond to a state request for information needed to process the final payment. Completion of a project is often construed as the point the contractor physically completes work on the project. However, on road projects, there's more to the completion of a project than simply having the road open to traffic. Other

requirements may need to be met, such as balancing of quantities, local participation, waivers of lien statement, and other contract requirements. Balancing of quantities refers to the process of verifying that projected quantities of materials (usually dirt) expressed in the contract are accurate. For example, if a contract called for a certain amount of dirt to be removed from a project, a survey crew would have to go to the job site and verify that the specified amount of dirt had been removed. Furthermore, many construction projects are shared between the state and a local governmental agency. Often the final payment to the contractor of a project is held up until the state receives from the local governmental entity outstanding paperwork or the local portion of the funding for the project. The Department of Transportation says that half of current unfinished projects involve local units. Contractors' provision of waiver of lien statements and other contract requirements, such as making sure proper signage or guard rails are in place, are also necessary before the department may process a final payment.

Against:

If the state is going to be held to prompt payment and subject to late fees, it seems reasonable to require contractors to warranty their work.

Against:

Public Act 524 of 1980 requires all state departments, with the exception of the Department of Transportation, to make payments to construction contractors within 30 days following receipt of the certified payment request. House Bill 4582, with its more lenient requirements, may create confusion for state agencies other than the Department of Transportation, which must follow the 1980 law.

POSITIONS:

The Michigan Roadbuilders Association supports the bill. (1-25-94)

The Michigan Highway Contractors Assistance Project supports the bill. (1-26-94)

The Michigan Women Contractors Association supports the bill. (1-26-94)

The Contractors Association of Michigan supports the bill. (1-26-94)

The Metropolitan Detroit Chapter of the Sheet Metal and Air Conditioning Contractors Association supports the bill. (1-26-94)

The Michigan Chapter of the Air Conditioning Contractors of America supports the bill. (1-26-94)

The Department of Management and Budget does not support the bill. (1-26-94)

The Department of Transportation opposes the bill. (1-25-94)