



**House
Legislative
Analysis
Section**

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PROMPT PAYMENT BY MDOT

**House Bill 4713 as passed by the House
Second Analysis (1-10-96)**

**Sponsor: Rep. Harold S. Voorhees
House Committee: Commerce
Senate Committee: Local, Urban, and State
Affairs**

THE APPARENT PROBLEM:

Public Act 279 of 1984 requires state departments to pay for goods and services from private enterprises within 45 days after they receive 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 per month of the payment to the private enterprise. According to some road building contractors, the Michigan Department of Transportation (MDOT) has a history of slow final payment on many road projects. They cite as an example a road project completed in July of 1989 in which final payment was not received until January, 1994. Road construction contractors have requested legislation granting their industry similar guarantees they will be paid on time accorded businesses that provide goods or services.

THE CONTENT OF THE BILL:

Public Act 279 of 1984 currently imposes a late payment charge on departments that fail to pay on time of 0.75 percent per month of amounts paid late. The bill would amend the act to require the Department of Transportation, unless otherwise agreed in writing, to ensure that payment for a construction project was mailed to the contractor within 45 days after either 1) the date the department determined the project had been completed or 2) the scheduled completion date of the project, adjusted for any approved extensions of time--whichever was earlier. The department would be subject to the bill's late payment penalty provisions for amounts that were paid late. The bill would apply to construction contracts awarded by the department after June 30, 1996. Also, the bill clarifies that the late-payment penalty would apply only to the principal amount of the payment due for the first month and each succeeding month or portion of a month that a payment was overdue.

In addition, the bill would prohibit the state from contracting for, or allowing a subcontract with, services provided by a convicted felon.

MCL 17.51 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill would have fiscal implications for the Department of Transportation. MDOT's costs under the bill would depend on the amount of money retained by the department as a road project neared completion, which can vary from project to project, and the length of time before final payment is made. Based on a review of MDOT records, the agency estimates the average retainage amount on 360 current projects to be 1.04 percent of the contracted amounts, with about \$525 million in construction contracts finalized each year. Assuming final payment on a project occurred four months after its completion, the bill would result in penalty costs for the two and one-half month period following the 45-day prompt payment period. Based on these figures, the agency says MDOT could incur penalty costs under the bill of about \$125,000 annually, although actual penalties could vary depending on actual retainage rates and "finaling" periods. The HFA also says the bill would have no fiscal implications for local governments. (1-9-96)

ARGUMENTS:

For:

Construction contractors and subcontractors have suffered due to slow payment or no payment by the state on road projects for which they provided services. 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

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as smaller construction companies who often don't have the financial wherewithal or cash flow to wait for the final payment. Often, these companies forego even bidding on road projects out of fear they will not be paid promptly and in full. The bill would provide the same fair treatment for construction contractors as is provided state vendors who provide goods and services, by holding the bureaucracy accountable to businesses with whom they do business.

For:

The bill includes a provision that specifically would prohibit state agencies from contracting for, or allowing a subcontract for, services provided by someone who was a convicted felon. This provision was added to prevent an occurrence similar to one which occurred last year when the state contracted with a conservation group to dispense with fish eggs collected by the Department of Natural Resources. The primary contractor then subcontracted with another firm to perform the task, even though the owner of that firm had previously been convicted in another state of illegally selling fish eggs containing high levels of mercury along with untainted eggs.

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 contractors to return documents to the state in order to finalize a project or their 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, completing a road project often entails more than simply having the road open to traffic. Other requirements may need to be met, such as balancing of quantities, local or federal participation, waivers of lien statements, and other contract requirements. Balancing of quantities is a process in which projected quantities of materials (usually dirt) expressed in the contract must be verified as 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, while other projects involve the federal government. Often the final payment to the contractor on a project is held up until the state receives from another governmental entity outstanding paperwork or the local or federal portion of the funding for the project. Also, contractors' provision of waiver of lien statements and other contract requirements, such as ensuring proper signage or guard rails are in place, are necessary before

the department may process a final payment. Enacting the bill would only force the department to make payments to contractors on time while it was waiting for other parties to a contract to meet their contractual obligations, and would punish the department when contractors were paid late even though it was for reasons beyond its control.

Against:

If the transportation department is going to be held to prompt payment and subject to late fees on road construction projects, it seems reasonable to also require contractors on those projects to warranty their work.

POSITIONS:

The Michigan Road Builders Association supports the bill. (1-9-96)

The Michigan State Building Trades Council supports the bill. (1-9-96)

The Department of Transportation opposes the bill. (1-9-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.