

No. 1982-266

AN ACT

HB 2333

Amending the act of April 9, 1929 (P.L.343, No.176), entitled "An act relating to the finances of the State government; providing for the settlement, assessment, collection, and lien of taxes, bonus, and all other accounts due the Commonwealth, the collection and recovery of fees and other money or property due or belonging to the Commonwealth, or any agency thereof, including escheated property and the proceeds of its sale, the custody and disbursement or other disposition of funds and securities belonging to or in the possession of the Commonwealth, and the settlement of claims against the Commonwealth, the resettlement of accounts and appeals to the courts, refunds of moneys erroneously paid to the Commonwealth, auditing the accounts of the Commonwealth and all agencies thereof, of all public officers collecting moneys payable to the Commonwealth, or any agency thereof, and all receipts of appropriations from the Commonwealth and imposing penalties; affecting every department, board, commission, and officer of the State government, every political subdivision of the State, and certain officers of such subdivisions, every person, association, and corporation required to pay, assess, or collect taxes, or to make returns or reports under the laws imposing taxes for State purposes, or to pay license fees or other moneys to the Commonwealth, or any agency thereof, every State depository and every debtor or creditor of the Commonwealth," providing for interest on certain Commonwealth purchases.

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

Section 1. The act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," is amended by adding a section to read:

Section 1507. Interest Penalties on Commonwealth Accounts.—

(a) (1) In accordance with regulations prescribed by the Secretary of the Budget, each Commonwealth agency which acquires property or services from a business concern or a qualified small business concern but which does not make payment for each such complete delivered item of property or service by the required payment date may pay an interest penalty to such business concern, and shall pay an interest penalty to any qualified small business concern, in accordance with this section on the amount of the payment which is due.

(2) Such regulations:

(i) shall specify that the required payment date shall be:

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

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

(ii) shall specify separate required payment dates for contracts under which property or services are provided in a series of partial executions or deliveries, to the extent that such contract provides for separate payment of such partial execution or delivery;

(iii) shall require that prior to the date upon which payment without an interest penalty is due, Commonwealth agencies notify the business concern or qualified small business concern of any defect in goods and services or impropriety in such invoice which would prevent the running of the time periods specified in this paragraph¹; and

(iv) may require any qualified small business concern to present on or with the invoice a statement that it meets the definition of a qualified small business concern contained in this section.

(b) (1) Interest penalties payable on amounts due to a business concern or qualified small business concern under this section shall be paid to the business concern for the period beginning on the day after the required payment date and ending on the date on which payment on the amount due is made, except no interest penalty shall be paid if payment for the complete delivered item of property or service concerned is made on or before the fifteenth calendar day after the required payment date.

(2) Interest shall be computed at the rate determined by the Secretary of Revenue for interest payments on overdue taxes or the refund of taxes as provided in sections 806 and 806.1 and any subsequent amendments to those sections.

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

(4) Any amount of an interest penalty imposed because of a debt which remains unpaid at the end of any thirty day period shall be added to the principle amount of the debt and thereafter interest penalties shall accrue on such added amount.

(c) A Commonwealth agency shall pay any interest penalties required by this section out of funds made available for the administration or operation of the program for which the penalty was incurred, or from general administrative funds of the agency. Nothing in this section shall be construed to require payment of interest penalties from Federal funds if such payment is prohibited by Federal law or regulation.

(d) Claims for interest penalties which a Commonwealth agency has failed to pay in accordance with the requirements of this section may be filed with the Board of Arbitration of Claims following the exhaustion of other appropriate administrative or contractual remedies. If a claim for interest penalties is² filed under this subsection, the jurisdictional amount in controversy requirement established by section 4 of the act of May 20, 1937 (P.L. 728, No. 193), referred to as the Board of Claims Act, shall not be applicable to such proceedings.

(e) This section shall not be construed to require interest penalties on payments which are not made by the required payment date by reason of a dispute between a Commonwealth agency and a business concern or qualified small business concern over the amount of that payment or other allegations concerning compliance with a contract. Claims concerning any such dispute, and any interest which may be payable with respect to the period while the dispute is being resolved, may be filed with

¹"paragraph(a)(2)" in original.

²"if" in original.

the Board of Arbitration of Claims, following the exhaustion of other appropriate administrative or contractual remedies, if the claim meets the other jurisdictional requirements of the board. Interest penalties awarded by the board, if any, shall be computed at the rate established by subsection (b)(2).

(f) For the purposes of this section:

(1) The term "Commonwealth agency" shall include, the Executive and all departments, boards, bureaus and agencies hereunder, all independent agencies as defined by section 102 of the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," and the Auditor General, the Board of Arbitration of Claims, the State Treasurer and the Public Utility¹ Commission.

(2) The term "qualified small business concern" means any independently owned and operated for-profit business concern employing fifty or fewer employees.

(3) The term "business concern" means any person engaged in a trade or business and operating as contractors with Commonwealth agencies, and nonprofit entities operating as contractors with Commonwealth agencies.

(4) An invoice shall be considered a "proper invoice" when it contains or is accompanied by such substantiating documentation as the Secretary of Budget may require by regulation, and as the Commonwealth agency involved may require by regulation or contract.

(5) An invoice shall be deemed to have been received by an agency on the later of:

(i) the date on which the agency's designated payment office or finance center actually receives a proper invoice; or

(ii) the date on which such agency accepts the property or service concerned.

(6) A payment shall be considered made on the date on which a check for such payment is dated.

(7) This section shall not apply to any "public contracts" subject to the act of November 26, 1978 (P.L.1309, No.317), referred to as the Public Works Contract Regulation Law.

Section 2. (a) This amendatory act applies to contracts entered into for the acquisition of property or services on or after 180 days from the date of enactment of this act.

(b) The provisions of this amendatory act providing for the promulgation of regulations shall be effective upon enactment, but these regulations shall not be effective until at least 180 days from enactment of this act.

Section 3. This act shall take effect in 60 days.

APPROVED—The 13th day of December, A. D. 1982.

DICK THORNBURGH

¹"Utilities" in original.