

1985 Senate Bill 67

Date of enactment: April 29, 1986
Date of publication: May 6, 1986

1985 Wisconsin Act 300

AN ACT to amend 13.09 (4), 16.53 (11), 16.71 (1), 84.01 (13), 84.06 (2), 84.06 (4) and 85.015; and to create 16.528 and 16.53 (2) of the statutes, relating to interest on late state order and contract payments and notification of improperly completed invoices to state agencies.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 13.09 (4) of the statutes, as affected by 1985 Wisconsin Act 29, is amended to read:

13.09 (4) The joint committee on finance shall receive reports submitted under ss. 13.095, 13.105 (intro.), 13.106 (1) (intro.) and (2), 13.94 (1) (a) and (b), 16.004 (2) and (7) (b), 16.04 (1m), 16.40 (14), 16.50 (3), 16.513 (2) to (4), 16.528 (5), 16.531 (3), 16.54 (5) and (8), 16.544 (1) and (3), 16.545 (8), 16.82 (4) (c), 16.97 (3), 20.002 (10), 20.235 (1) (g), 23.31 (1), 35.03 (6), 36.09 (1) (j), 38.06 (3) (c), 39.16 (2) (im), 39.28 (3) (b), 44.20 (4) (b), 46.03 (18) (a), (24), (26) (intro.) and (31), 49.45 (2) (a) 8 and 16 and (b) 2, 56.018, 115.781, 146.90, 230.08 (4) (c), 234.25 (1), 234.65 (4) and 977.10.

SECTION 2. 16.528 of the statutes is created to read:

16.528 Interest on late payments. (1) DEFINITION. In this section, "agency" means an office, department, independent agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in ch. 231, 233 or 234.

(2) INTEREST PAYABLE. (a) Except as provided in sub. (3) or as otherwise specifically provided, an agency which does not pay timely the amount due on an order or contract shall pay interest on the balance due from the 31st day after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later, or, if the agency does not comply with s. 16.53 (2), from the 31st day after receipt of an improperly completed invoice or receipt and acceptance of the

property or service under the order or contract, whichever is later, at the rate specified in s. 71.09 (5) (a) compounded monthly.

(b) For the purposes of par. (a), a payment is timely if the payment is mailed, delivered or transferred by the later of the following:

1. The date specified on a properly completed invoice for the amount specified in the order or contract.

2. Except as provided in subd. 3, within 45 days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, or, if the agency does not comply with s. 16.53 (2), within 45 days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later.

3. For orders or contracts entered into on and after the first day of the 3rd 12-month period beginning after the first day of the 9th month beginning after the effective date of this subdivision [revisor inserts date], within 30 days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, or, if the agency does not comply with s. 16.53 (2), within 30 days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later.

(3) EXCEPTIONS. Subsection (2) does not apply to the following:

(a) Any portion of an order or contract under which the payment is made from federal moneys.

(b) An order or contract that is subject to late payment interest or another late payment charge required by another law or rule specifically authorized by law.

(c) An order or contract between 2 or more agencies.

(d) An order or contract for services which provides for the time of payment and the consequences of nontimely payment.

(e) An order or contract under which the amount due is subject to a good faith dispute if, before the date payment is not timely, notice of the dispute is sent by 1st class mail, personally delivered or sent in accordance with the procedure specified in the order or contract. In this paragraph, "good faith dispute" means a contention by an agency that goods delivered or services rendered were of a lesser quantity or quality than ordered or specified by contract, were faulty or were installed improperly; or any other reason giving cause for the withholding of payment by the agency until the dispute is settled.

(4) APPROPRIATION FROM WHICH PAID. An agency which pays interest under this section shall pay the interest from the appropriation for administration of the program under which the order or contract was made or entered into unless payment from that appropriation is prohibited. Notwithstanding ss. 20.115 to 20.765, if payment from the appropriation for admin-

istration of the program is prohibited, the interest payment shall be made from a general program operations appropriation of the agency determined by the agency. If the program is administered from more than one appropriation, the interest payment shall be made from the appropriation or appropriations for program administration determined by the agency.

(5) REPORTS OF INTEREST PAID. Annually before October 1, each agency shall report to the department the number of times in the previous fiscal year the agency paid interest under this section, the total amount of interest paid and the reasons why interest payments were not avoided by making timely payment. Annually before January 1, the department shall report that information to the joint committee on finance, together with an analysis of the progress made in reducing from previous years the interest paid under this section by each agency.

(6) ATTORNEY FEES. Notwithstanding s. 814.04 (1), in an action to recover interest due under this section, the court shall award the prevailing party reasonable attorney fees.

SECTION 3. 16.53 (2) of the statutes is created to read:

16.53 (2) IMPROPER INVOICES. If an agency receives an improperly completed invoice, the agency shall notify the sender of the invoice within 10 working days after it receives the invoice of the reason it is improperly completed. In this subsection, "agency" means an office, department, independent agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in ch. 231, 233 or 234.

SECTION 4. 16.53 (11) of the statutes is amended to read:

16.53 (11) INTEREST ON DELAYED PAYMENTS. Payments, other than payments subject to s. 16.528, prorated or delayed under sub. (10) which are payable to local units of government shall accrue interest on the payment delay at a rate equal to the state investment fund earnings rate during the period of the payment delay. Payments subject to s. 16.528 prorated or delayed under sub. (10) past the due date shall not accrue interest. In this subsection, "local unit of government" means a county, city, village, town, school district, vocational, technical and adult education district or any other governmental entity which is entitled to receive aid payments from this state.

SECTION 5. 16.71 (1) of the statutes, as affected by 1985 Wisconsin Act 29, is amended to read:

16.71 (1) Except as authorized in s. 16.74, the department shall purchase and may delegate to special designated agents the authority to purchase all necessary materials, supplies, equipment, all other permanent personal property and miscellaneous capital, and contractual services and all other expense of a con-

sumable nature for all agencies. In making any delegation, the department shall require the agent to adhere to all requirements imposed upon the department in making purchases under this subchapter. All materials, services and other things and expense furnished to any agency and interest paid under s. 16.528 shall be charged to the proper appropriation of the agency to which furnished.

SECTION 6. 84.01 (13) of the statutes is amended to read:

84.01 (13) ENGINEERING SERVICES. The department may engage such engineering, consulting, surveying or other specialized services as it deems advisable. Any engagement of services under this subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.82 and 16.85 to 16.89, but ~~s. 16.528 and 16.754~~ applies apply to such engagement. Any engagement involving an expenditure of \$3,000 or more shall be by formal contract approved by the governor.

SECTION 7. 84.06 (2) of the statutes is amended to read:

84.06 (2) BIDS, CONTRACTS. All such highway improvements shall be executed by contract based on bids unless the department finds that another method as provided in sub. (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in the manner determined by the department. Except as provided in s. 84.075, the contract shall be awarded to the lowest competent and responsible bidder as determined by the department. If the bid of the lowest competent bidder is determined by the department to be in excess of the estimated reasonable value of the work or not in the public interest, all bids may be rejected. The department shall, so far as reasonable, follow uniform methods of advertising for bids and may prescribe and require uniform forms of bids and contracts. The secretary shall enter into the contract on behalf of the state. Every such contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but ~~s. 16.528 and 16.754~~ applies apply to the contract. Any such contract involving an expenditure of \$1,000 or more shall not be valid until approved by the governor. The secretary may require the attorney general to examine any contract and any bond submitted in connection with the contract and report on its sufficiency of form and execution. The bond required by s. 779.14 for any such contract involving an expenditure of less than \$1,000 is exempt

from approval by the governor and shall be subject to approval by the secretary. This subsection also applies to contracts with private contractors based on bids for maintenance under s. 84.07.

SECTION 8. 84.06 (4) of the statutes is amended to read:

84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement undertaken by the department will cross or affect the property or facilities of a railroad or public utility company, the department may, upon finding that it is feasible and advantageous to the state, arrange to perform portions of the improvement work affecting such facilities or property or perform work of altering, rearranging or relocating such facilities by contract with the railroad or public utility. Such contract shall be between the railroad company or public utility and the state and need not be based on bids. The contract may be entered into on behalf of the state by the secretary. Every such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230, except ~~s. ss. 16.528 and 16.754~~. No such contract in which the total estimated debt to be incurred exceeds \$5,000 shall be valid until approved by the governor. As used in this subsection, "public utility" means the same as in s. 196.01 and "railroad" means the same as in s. 195.02. "Property" as used in this subsection includes but is not limited to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines, plants, substations and other facilities. Nothing in this subsection shall be construed to relieve any railroad or public utility from any financial obligation, expense, duty or responsibility otherwise provided by law relative to such property.

SECTION 9. 85.015 of the statutes is amended to read:

85.015 Transportation assistance contracts. All contracts entered into under this chapter to provide financial assistance in the areas of railroads, urban mass transit, specialized transportation, and harbors are subject to s. 16.528 but are exempt from ss. 16.70 to 16.75, 16.755 to 16.82 and 16.85 to 16.89.

SECTION 10. **Initial applicability.** This act applies to orders entered or contracts entered into by the state on and after the first day of the 9th month commencing after publication.