

1989 Senate Bill 328

Date of enactment: **April 12, 1990**
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1989 WISCONSIN ACT 233

AN ACT *to renumber and amend* 16.528 (1); *to repeal and recreate* 66.286; and *to create* 16.528 (1) (b), 16.528 (2m), 66.285 and 66.286 of the statutes, **relating to:** interest on late order and contract payments by local governmental units and contractors, and notification of improperly completed invoices to local governmental units.

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

SECTION 1. 16.528 (1) of the statutes is renumbered 16.528 (1) (intro.) and amended to read:

16.528 (1) (title) DEFINITIONS. (intro.) In this section, “agency”:

(a) “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 or 234.

SECTION 2. 16.528 (1) (b) of the statutes is created to read:

16.528 (1) (b) “Subcontractor” has the meaning given in s. 66.29 (1) (d).

SECTION 3. 16.528 (2m) of the statutes is created to read:

16.528 (2m) INTEREST PAYABLE TO SUBCONTRACTORS.

(a) Except as provided in sub. (3) (e) or as otherwise specifically provided, principal contractors that engage subcontractors to perform part of the work on an order or contract from an agency shall pay subcontractors for satisfactory work in a timely fashion. A payment is timely if it is mailed, delivered or transferred to the subcontractor no later than 7 days after the principal contractor’s receipt of any payment from the agency.

(b) If a subcontractor is not paid in a timely fashion, the principal contractor shall pay interest on the balance

due from the 8th day after the principal contractor’s receipt of any payment from the agency, at the rate specified in s. 71.82 (1) (a) compounded monthly.

(c) Subcontractors receiving payment under this subsection shall pay lower-tier subcontractors, and be liable for interest on late payments, in the same manner as principal contractors are required to pay subcontractors in pars. (a) and (b).

SECTION 4. 66.285 of the statutes is created to read:
66.285 Interest on late payments. (1) DEFINITIONS. In this section and 66.286:

(a) “Agency” means any office, department, board, commission or other body under the control of the governing body of a local governmental unit which expends moneys or incurs obligations on behalf of the local governmental unit.

(b) “Good faith dispute” means any of the following:

1. A contention by an agency, principal contractor or subcontractor 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.

2. Any other reason giving cause for the withholding of payment by an agency, principal contractor or subcontractor until the dispute is settled.

(c) “Local governmental unit” means a political subdivision of this state, a special purpose district in this state, an agency or corporation of such a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

(d) “Subcontractor” has the meaning given in s. 66.29 (1) (d).

(2) INTEREST PAYABLE TO PRINCIPAL CONTRACTORS. (a) Except as provided in sub. (4) or as otherwise specifically provided, an agency that 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. 66.286, 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. 71.82 (1) (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. 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. 66.286, 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) INTEREST PAYABLE TO SUBCONTRACTORS. (a) Except as provided in sub. (4) (e) or as otherwise specifically provided, principal contractors that engage subcontractors to perform part of the work on an order or contract from an agency shall pay subcontractors for satisfactory work in a timely fashion. A payment is timely if it is mailed, delivered or transferred to the subcontractor no later than 7 days after the principal contractor's receipt of any payment from the agency.

(b) If a subcontractor is not paid in a timely fashion, the principal contractor shall pay interest on the balance due from the 8th day after the principal contractor's receipt of any payment from the agency, at the rate specified in s. 71.82 (1) (a) compounded monthly.

(c) Subcontractors receiving payment under this subsection shall pay lower-tier subcontractors, and be liable for interest on late payments, in the same manner as principal contractors are required to pay subcontractors in pars. (a) and (b).

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

(a) Any portion of an order or contract for which the payment, from federal moneys, has not been received.

(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 of the same local governmental unit.

(d) An order or contract which provides for the time of payment and the consequences of nontimely payment, if any deviation from the deadlines established in sub. (2) appears in the original bid or proposal.

(e) An order or contract under which the amount due is subject to a good faith dispute if, before the date on which 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.

(5) APPROPRIATION FROM WHICH PAID. An agency that pays interest under this section shall pay the interest only from the appropriation for administration of the program under which the order or contract was made or entered into, unless otherwise directed by the governing body of the local governmental unit.

(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 5. 66.286 of the statutes is created to read:
66.286 Improper invoices. If an agency receives an improperly completed invoice, the agency shall notify the sender of the invoice by 1st class mail, personally delivered or sent in accordance with the procedure specified in the order or contract, within 15 working days after it receives the invoice of the reason that it is improperly completed.

SECTION 5m. 66.286 of the statutes, as created by 1989 Wisconsin Act (this act), is repealed and recreated to read:

66.286 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 that it is improperly completed.

SECTION 6. Initial applicability. This act first applies to orders entered or contracts entered into with principal contractors by state or local governmental units on the first day of the 4th month commencing after publication.

SECTION 7. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The repeal and recreation of section 66.286 of the statutes takes effect on January 1, 1991.