

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

Committee Substitute

for

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for

Senate Bill 436

BY SENATORS TARR, SWOPE, JEFFRIES, AND BARRETT

[Originating in the Committee on Finance; reported on

February 17, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §12-10-1 and §12-10-2, all relating to prompt payment of legitimate
3 uncontested invoices by state agencies; providing that registered and qualified vendors
4 shall be entitled to prompt payment upon presentation to a state agency of a legitimate
5 uncontested invoice; providing the rate of interest and manner of calculation; determining
6 the date an invoice is considered received by a state agency; outlining rights of state
7 agencies to receive updated invoices with interest prior to payment; requiring state
8 agencies to explain and calculate interest on the payment claim at the time it is submitted
9 to the State Auditor; providing the timeline in which state agencies shall process
10 payments; providing the timeline in which state agencies shall process payments for other
11 agencies; providing for the definition of "state agency"; and providing for exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. PROMPT PAYMENT ACT OF 2023.

§12-10-1. Short title.

1 This article shall be known and may be cited as the Prompt Payment Act of 2023.

§12-10-2. Payment of legitimate uncontested invoices; interest on late payments.

1 (a) Any properly registered and qualified vendor who supplies services or commodities to
2 any state agency shall be entitled to prompt payment upon presentation to that state agency of a
3 legitimate uncontested invoice: *Provided*, That employees of the state shall not be considered
4 vendors under this article.

5 (b)(1) For purchases of services or commodities made on or after July 1, 2023, a check,
6 state warrant, purchasing card transaction, or electronic payment shall be issued in payment
7 thereof within 45 business days after a legitimate uncontested invoice is received by the state
8 agency receiving the services or commodities. Any check, state warrant, purchasing card
9 transaction, or electronic payment issued after 45 business days shall include interest calculated
10 as the Wall Street Journal Prime Rate plus three percent determined on the date on which the

check or warrant is mailed to the vendor, the electronic payment is issued and cleared through the bank, or the purchasing card transaction is initiated and cleared by the bank.

(2) For purposes of this subsection, an invoice shall be deemed to be received by a state agency on the date on which the invoice is marked as received by the state agency, the date of the postmark made by the United States Postal Service as evidenced on the envelope in which the invoice is mailed, or the date the invoice is logged received or confirmed on an electronic mailbox or messaging system, whichever is earlier, unless the vendor can provide sufficient evidence that the invoice was received by the state agency on an earlier date: *Provided, That in the event an invoice is received by a state agency prior to the date on which the commodities covered by the invoice are delivered in full and accepted or the services covered by the invoice are fully performed and accepted, the invoice shall be deemed to be received on the date on which the commodities covered by the invoice were actually delivered in full and accepted or the services covered by the invoice were fully performed and accepted.*

(c) Prior to initiating payment that includes interest as provided in §12-10-2(b)(1) of this code, a state agency may request a vendor present a revised invoice for payment including itemized interest and all other charges authorized under this article. The state agency reserves the right to recalculate and ensure the itemized interest amounts are correct prior to payment of a late invoice and shall ensure interest is appropriate and due before payment of an invoice with interest added for late payment. The state agency shall add explanatory documentation to the claim for payment prior to submitting it to the State Auditor's office to explain the difference between the amount of the invoice and the amount requested to pay the vendor in the statewide accounting system. For reporting purposes, the State Auditor may require agencies to properly separate reporting of the payment for commodities and services and the payment of interest in the statewide accounting system using budgetary object codes or tracking codes.

(d) The state agency initially receiving a legitimate uncontested invoice shall process the invoice within 10 business days from the day of its receipt. Failure to comply with the requirements

of this subsection shall render the state agency liable for payment of the interest mandated by §12-10-2(b)(1) of this code when there is a failure to promptly pay a legitimate uncontested invoice: *Provided*, That a state agency shall not be liable for payment of interest owed by another state agency under this section: *Provided, however*, That the State Auditor's office shall not be liable for payment of interest when an invoice is delayed due to the State Auditor's office's refusal of the payment request due to the state agency's noncompliance with the payment standards promulgated by the State Auditor when submitting payment.

(e) Any state agency charged by law with processing another state agency's requisition for payment of a legitimate uncontested invoice shall either process the claim or reject it for good cause within 10 business days after such processing state agency receives it. Failure to comply with the requirements of this subsection shall render the processing state agency liable for payment of the interest mandated by §12-10-2(b)(1) of this code when there is a failure to promptly pay a legitimate uncontested invoice unless the processing state agency did not receive the invoice from the paying agency in a timely manner.

(f) For purposes of this section, "state agency" is defined as any agency, department, board, office, bureau, commission, authority, or any other entity of the executive, judicial, elected, or legislative branch of state government.

(g) The provisions of this article do not apply to any vendor, grantee, or subgrantee who is debarred, whose payments are required to be offset and intercepted to a state or federal agency, or who is otherwise ineligible to receive payment from the state by any act provided for in this code.

(h) Nothing in this article should be construed to limit the right of a state agency or the State Auditor to refuse illegitimate, erroneous, fraudulent, or disputed claims for payment. Examples of these types of payments include, but are not limited to:

(1) Payment claims that do not conform to a state agency's standards for payment or internal controls;

63 (2) Payment claims of a fraudulent or a personal nature;

64 (3) Payment claims for services not ordered, rendered, or received;

65 (4) Payment claims that appear to be in violation of any state, local, or Federal law;

66 (5) Claims for payment that do not conform to the payment standards administered by the
67 State Auditor in authorized promulgated administrative law, rule, or policy, or;

68 (6) Any other situation where paying a claim for payment would be unlawful, inappropriate,
69 or not in the best interests of the State of West Virginia: *Provided*, That no state agency shall
70 arbitrarily deem an invoice illegitimate, erroneous, fraudulent, or disputed solely in order to
71 circumvent the requirements of this article.

72 (i) No state agency shall be liable for the interest provided for in this article if the Legislature
73 declines to fund the payment claim's program or appropriation for a given state agency in a
74 subsequent fiscal year or if the State Budget Office determines that the payment of interest
75 provided for in this article provides a financial hardship or burden on the state in any given fiscal
76 year.