

H B

210

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 205/210
 Title: Relating to Payment of Interest
 Sponsor: Duncan/Shultz by State
 Requestor: House State Affairs

II. FISCAL DETAIL

Agency Affected: All
 Program Category Affected: All
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC	0	1,125.0	1,125.0	1,125.0	1,125.0	1,125.0
TOTAL OPERATING	0	1,125.0	1,125.0	1,125.0	1,125.0	1,125.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	1,125.0	1,125.0	1,125.0	1,125.0	1,125.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No source identified by the Legislature.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Tom Haas, Acting Director
 Division: Finance

Phone: 465-2240
 Date: 3/17/83

Approved by Commissioner: Lisa Rudd
 Department: Administration

Date: 3/17/83

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

IV. ANALYSIS

The Department of Administration is opposed to this Legislation, not because we disagree with the idea of the State paying its bill in a timely manner, but because we feel there are better ways to address this problem. In determining the fiscal impact on mandatory payment of interest, it is impossible to place a definite dollar amount for the cost. Many items must be taken into consideration.

First, in order to calculate what the interest cost would be, a detailed analysis would be necessary to determine what the dollar amount of bills paid in excess of 30 days might be. Readily available information does not exist. However, to show what the potential impact might be, we offer this example, making a number of assumptions.

On the assumption that the State annual budget is \$3.0 billion and that 50% of that budget represents vendor payments effected by this legislation. Further we assume that 5% of the vendor payments might be subject to penalty as defined in the Legislation. Based on these assumptions, the interest penalty could be as high as \$1,125,000.00.

Calculated as follows:

\$3,000,000,000.00	Annual Budget
X 50%	

\$1,500,000,000.00	Potential Vendor Payments
X 5%	

\$ 75,000,000.00	5% Subject to Penalty
X 0.15%	

\$ 1,125,000.00	Interest Penalty for Bills Paid in Excess of 30 Days.

The preferable way to avoid penalty payments is to pay vendors within the 30 day period. This is and always has been the goal of the Department of Administration. The only effective way of doing this is either to divert current staff of the various State agencies to the effort of paying bills timely or to develop the agencies internal procedures and the Department of Administration's automated systems in order to address the payment problem. The cost to the State in providing additional staff or a bill paying effort that would pay all bills within 30 days using the current system has not be determined. The Department of Administration is currently in the process of

March 17, 1983

redesigning the statewide accounting system which will include features that will improve the bill paying and tracking capabilities of the State.

While we recognize the problem of paying vendors in a timely manner is a serious matter, we should point out that for the most part, vendors are paid timely. For a 12 month period, the State paid on the average of 70,200 invoices a month. During that time, the average payment time was 29 days. The high monthly average was 33 days while the low monthly average was 24 days. During this period, only two months exceeded 30 days payment time.

In addition to the costs of attempting to improve the payment time and the potential interest penalties, we should also consider the cost of increased bureaucracy that would be involved in determining what payments would be subject to penalty, what period of time would be covered, as well as the logistics of making the interest payments, all of these would be costs to the State in time and effort.

Lastly, it should be noted that the funding of the interest payments would need to be 100% State funds. We have been advised by the U.S. Office of Management and Budget that the Prompt Payment Act (P.L. 970177) prohibits the use of Federal grant funds for the agencies that are primarily federally funded. (Copy of OMB letter attached)

Again, we are not opposed to timely payment of vendor bills but are concerned with the method of achieving that goal.

*Al
Fin*

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 210 (finance)
Title Relating to payment for purchases by the state
Requested by House Finance Committee Date 5/26/83

II. FISCAL DETAIL

Agency Affected all
Program Category Affected all
BRU, Program, Or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0				

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER (Specify Source)		0				

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME		0				
PART TIME		0				
TEMPORARY		0				

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Al Adams

IV. DATE 5/18/83 PREPARED BY Al Adams, Chairman

AGENCY House Finance Committee

PHONE 465-3706

Original: Legislative Finance
cc: Budget and Management

Prime Sponsor (First Legislator Named)

PROPOSED TITLE: SCS CSHB 210(RLS)
 AN ACT RELATING TO PAYMENT FOR PURCHASES BY THE STATE;
 AND PROVIDING FOR AN EFFECTIVE DATE

GENERAL DOLLARS: \$0 (F. NOTE)

PRIME SPONSOR: SKULTZ.

OTHER DOLLARS: \$0

CO-SPONSORS: DUNCAN, LISKA.

CURRENT STATUS: 4/16/84 EXPIRED 1ST SESSION

DATE	SEC	PAGE	ACTION
02/17/83	01	0286	FIRST READING -- COMMITTEE REPORTS
03/02/83	02	1143	S.A. -- CS05, NR02
05/02/83	03	1143	S.A. F/NOTE USE SUPPL #52
05/17/83	04	1382	FIN -- 0500
			TAKEN UP IMMEDIATELY
05/17/83	05	1382	FIN F/NOTE EQUALS ZERO
05/17/83	06	1372	SECOND READING
05/17/83	07	1372	FIN CS ADOPTED BY UNAN CONSENT
05/17/83	08	1373	AM01 ADOPTED BY UNAN CONSENT
05/17/83	09	1373	ADVANCED TO 3RD READING BY UNAN CONSENT
05/17/83	10	1373	THIRD READING
05/17/83	11	1393	PASSED BY DIV 38-02-04
05/17/83	12	1394	EFFECTIVE DATE VOTE SAME AS PASSAGE
06/22/83	23	1712	CONCURRED IN SENATE AMS BY DIV 38-02-00
06/22/83	24	1712	EFFECTIVE DATE VOTE SAME AS PASSAGE
06/25/83	25	2017	TRANSMITTED TO GOVERNOR
07/19/83	26	2157	REVOKED BY GOVERNOR
04/16/84	27	0000	EXPIRED FIRST SESSION
***	**	**	*** **

DATE	SEC	PAGE	ACTION
05/18/83	12	1014	FIRST READING -- COMMITTEE REPORTS
06/15/83	14	1316	L&C -- CS03
06/17/83	15	1354	FIN -- L&C CS04, NR01
06/21/83	16	1409	RLS -- CS03, OTHER03
			TAKEN UP IMMEDIATELY
06/21/83	17	1419	SECOND READING
06/21/83	18	1419	RLS CS ADOPTED BY UNAN CONSENT
06/21/83	19	1420	ADVANCED TO 3RD READING BY UNAN CONSENT
06/21/83	20	1420	THIRD READING
06/21/83	21	1420	PASSED BY DIV 10-02-00
06/21/83	22	1420	EFFECTIVE DATE VOTE SAME AS PASSAGE
***	**	**	*** **

Offered: 6/15/83
Referred: Finance

Original sponsors: Shultz, Duncan
and Liska

1 IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 210 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to payment for purchases by the
7 state; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 37.05 is amended by adding a new section to read:

10 Sec. 37.05.275. PAYMENT FOR STATE PURCHASES. (a) Payment for
11 purchases of goods or services provided a state agency must be made on
12 a required payment date that is

13 (1) the date on which payment is due under the terms of a
14 contract; or

15 (2) 30 days after receipt of a proper invoice for the
16 amount of the payment due, if a specific date on which payment is due
17 is not established by contract and if the invoice contains or is
18 accompanied by documents required by the contract or purchase order.

19 (b) If a seller offers a discount from the amount otherwise due
20 for property or services in exchange for payment within a specified
21 period of time, the state agency may make payment in an amount equal
22 to the discounted price only if payment is made within the specified
23 period of time.

24 (c) If payment for goods or services purchased by the state is
25 not made within 30 days of a required payment date under (a)(1) of
26 this section or on the required payment date specified in (a)(2) of
27 this section, the state shall pay interest on the unpaid balance from
28 the date of receipt of the invoice for the goods or services at the
29 rate of one and one-half percent a month unless an agreement exists

1 between the seller and the state that precludes the charging of inte:
2 est.

3 (d) This section does not apply

4 (1) if the cost of the goods or services purchased exceeds
5 \$500,000; or

6 (2) to payment for any specific goods or services in dis-
7 pute after a seller of goods or services receives notice from the
8 state official responsible for authorizing payment for goods and
9 services that the amount of the invoice or quality of specific goods
10 or services is in dispute and stating the reasons for the dispute.

11 (e) Interest paid under (c) of this section shall be charged to
12 the budget of the state agency which purchased the goods or services.

13 (f) In this section

14 (1) "dispute" means a determination by the state official
15 responsible for authorizing the payments for the purchase of goods or
16 services that the performance or price charged is not in compliance
17 with the terms of the contract or purchase order;

18 (2) payment is considered made on the date when the payment
19 is personally delivered to the seller or agent of the seller or on the
20 date the payment is mailed;

21 * Sec. 2. This Act does not apply to contracts entered into before the
22 effective date of this Act.

23 * Sec. 3. This Act takes effect October 1, 1983.

Definition of "state agency"
dropped by mistake at drafting.
Straightened out between Finance
& Rules 6-17-83

Offered: 5/17/83
For Today's Calendar

Original sponsors: Shultz, Duncan
and Liska

IN THE HOUSE

BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 210 (Finance) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

6 For an Act entitled: "An Act relating to payment for purchases by the
7 state; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 37.05 is amended by adding a new section to read:

10 Sec. 37.05.275. PAYMENT FOR STATE PURCHASES. (a) Payment for
11 purchases of goods or services provided a state agency must be made on
12 a required payment date that is

13 (1) the date on which payment is due under the terms of a
14 contract; or

15 (2) 30 days after receipt of a proper invoice for the
16 amount of the payment due, if a specific date on which payment is due
17 is not established by contract and if the invoice contains or is
18 accompanied by documents required by the contract or purchase order.

19 (b) If a seller offers a discount from the amount otherwise due
20 for property or services in exchange for payment within a specified
21 period of time, the state agency may make payment in an amount equal
22 to the discounted price only if payment is made within the specified
23 period of time.

24 (c) If payment for goods or services purchased by the state is
25 not made within 10 days of a required payment date under (a)(1) of
26 this section or on the required payment date specified in (a)(2) of
27 this section, the state shall pay interest on the unpaid balance from
28 the date of receipt of the invoice for the goods or services at the
29 rate of one and one-half percent a month unless an agreement exists

1 between the seller and the state that precludes the charging of in-
2 terest.

3 (d) This section does not apply

4 (1) if the cost of the goods or services purchased exceeds
5 \$500,000; or

6 (2) to payment for any specific goods or services in dis-
7 pute after a seller of goods or services receives notice from the
8 state official responsible for authorizing payment for goods and
9 services that the amount of the invoice or quality of specific goods
10 or services is in dispute and stating the reasons for the dispute.

11 (e) Interest paid under (c) of this section shall be charged to
12 the budget of the state agency which purchased the goods or services.

13 (f) In this section

14 (1) "dispute" means a determination by the state official
15 responsible for authorizing the payments for the purchase of goods or
16 services that the performance or price charged is not in compliance
17 with the terms of the contract or purchase order;

18 (2) payment is considered made on the date when the payment
19 is personally delivered to the seller or agent of the seller or on the
20 date the payment is mailed;

21 (3) "state agency" has the meaning given in AS 37.05.320
22 and also includes the legislative and judicial branches.

23 * Sec. 2. This Act does not apply to contracts entered into before the
24 effective date of this Act.

25 * Sec. 3. This Act takes effect July 1, 1983.

Amended to
Oct 1, 1983

6-14-83 Sam L+C



**National Federation of
Independent Business**

June 14, 1983

Senator Richard Eliason, Chairman
Labor and Commerce Committee
Alaska State Senate
Fouch V
Juneau, Alaska 99811

SUBJECT: Support of HB 210

Dear Senator Eliason:

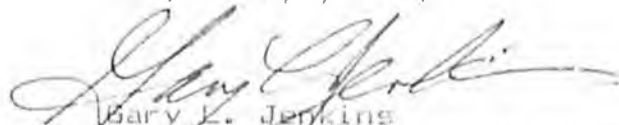
This bill would resolve the most serious problem encountered by the Alaska business community when doing business with the State of Alaska. That problem being the difficulty of obtaining a timely payment of invoices when providing goods or services to the state. The problem has become so severe in recent years that many businesses will not do business with the state because they cannot afford the three to six month wait before being paid. Presently, the state may be charged interest on a late payment only on construction projects, while all other vendors have no recourse but to wait until the state agency gets around to processing their invoice for payment.

The National Federation of Independent Business is a national organization representing small businesses. Of all the states, Alaska has the highest percentage of the business community as members, currently in excess of 3,800. Before we take a position on an issue in the Legislature, it must have been voted on by our membership. When the issue of the state paying interest on overdue accounts was presented, 92% of our Alaska membership voted in support of requiring the state to pay interest. This was the strongest support for any of the issues voted on in recent years.

The Department of Administration has prepared a fiscal note which dramatically overstates the cost to the state agencies if this legislation were adopted. This was noted by the various committees in the House who passed the bill out with a zero fiscal note. It is our strongly held position that when confronted with having to pay interest, the agencies which have historically been late paying their bills will modify their payment procedures to insure timely payment.

The membership of NFIB in Alaska will appreciate your committee taking favorable action on this bill.

Very truly yours,


Gary L. Jenkins
Director, Governmental Relations
Alaska

HB 210

STATE OF ALASKA
FISCAL NOTE

Eliason

Revision Date: May 26, 1983

I. REQUEST

Bill/Resolution No.: CSHB210(FIN)am
Title: Relating to Payment of Interest
Sponsor: Duncan/Shultz by State
Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: All
Program Category Affected: All
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC	0	1,125.0	1,125.0	1,125.0	1,125.0	1,125.0
TOTAL OPERATING	0	1,125.0	1,125.0	1,125.0	1,125.0	1,125.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	1,125.0	1,125.0	1,125.0	1,125.0	1,125.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By : Kenneth E. Bischoff Director
Division: Finance

Phone: 465-2240
Date: 5/26/83

Approved by Commissioner: Lisa Rudd
Department: ADMINISTRATION

Date: 5/26/83

Distribution:

- Original to Legislative Finance
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3/26/83

IV. ANALYSIS:

Differences between CS for HB-210(SA) and CS for HB-210(FIN) am (May 17, 1983)

1. The Finance version section 1(c) changes the date for determining when payment of interest should begin from the required payment date to the date invoice for the goods or services is received.
2. Sections 1(d)(2) of the finance version require notification by the official responsible for authorizing payment rather than the officer responsible for administering the contract when payment for goods and services is in dispute.
3. Section 1(f)(1) was changed to be consistent with the change in 1(d)(2) and made more generally applicable by adding purchase order.
4. Section 1(f)(3) was changed to narrow the scope and specifically include the legislative and judicial branches.

This does not appear to have a significantly different fiscal impact from the analysis done versus the previous bill version CSHB210 (State Affairs). That analysis dated May 15, 1983 is attached. There are some potential administrative impacts as follows:

- a. The change to section 1(c) requiring interest be paid based upon date of invoice receipt may be challengeable by vendors who receive no interest for the same time frame. If a vendor is paid on the 29th day after receipt of invoice, no interest will be paid to that vendor. If a vendor is paid on the 31st day after receipt of invoice that vendor will be entitled to 31 days interest. Twenty-nine days of the two examples overlap. Why should one vendor be paid and the other vendor not paid? The prior version would have given all subject vendors equal treatment.
- b. Is the term Purchase Order singularly applicable to the State purchase order form or should it be defined broadly to all purchase type documents?

IV. ANALYSIS:

Differences between Orig. HB-210 and CS for HB-210 (May 2, 1983)

1. The CS removes the stipulation that a discount must be taken when discount is at least 2% and payment is made within 10 days of receipt of goods, services or invoice, whichever is later, and substitutes, may take discount if made within the specified period of time until payment is due.
2. The CS excludes the legislative agencies and the Court System from subjectivity of this bill.
3. The CS specifies that the interest will be paid out of the paying agencies budget. The original bill specifies that the State will pay interest.
4. The substitute provides for a daily interest calculation after 30 days where the original bill specifies a monthly calculation. For example, if paid in 45 days under original bill the state would owe 2% interest, under CS state would owe approximately 3% interest.
5. The original bill specifies that interest will be paid if payment is not made within 30 days of receipt of goods and invoice, but the substitute requires payment by contract due date or within 30 days of receipt of invoice (excludes receipt of goods which may be after receipt of invoice).

This does not appear to have a significant, different impact from the analysis done versus the previous bill version HB205/210. That analysis dated March 17, 1983 is attached.

Fiscal Note: HB 205/210

March 17, 1983

IV. ANALYSIS

The Department of Administration is opposed to this Legislation, not because we disagree with the idea of the State paying its bills in a timely manner, but because we feel there are better ways to address this problem. In determining the fiscal impact on mandatory payment of interest, it is impossible to place a definite dollar amount for the cost. Many items must be taken into consideration.

First, in order to calculate what the interest cost would be, a detailed analysis would be necessary to determine what the dollar amount of bills paid in excess of 30 days might be. Readily available information does not exist. However, to show what the potential impact might be, we offer this example, making a number of assumptions.

On the assumption that the State annual budget is \$3.0 billion and that 50% of that budget represents vendor payments effected by this legislation. Further we assume that 5% of the vendor payments might be subject to penalty as defined in the Legislation. Based on these assumptions, the interest penalty could be as high as \$1,125,000.00.

Calculated as follows:

\$3,000,000,000.00	Annual Budget
X 50%	
<hr/>	
\$1,500,000,000.00	Potential Vendor Payments
X 5%	
<hr/>	
\$ 75,000,000.00	5% Subject to Penalty
X 0.15%	
<hr/>	
<u>\$ 1,125,000.00</u>	Interest Penalty for Bills Paid in Excess of 30 Days.

The preferable way to avoid penalty payments is to pay vendors within the 30 day period. This is and always has been the goal of the Department of Administration. The only effective way of doing this is either to divert current staff of the various State agencies to the effort of paying bills timely or to develop the agencies internal procedures and the Department of Administration's automated systems in order to address the payment problem. The cost to the State in providing additional staff or a bill paying effort that would pay all bills within 30 days using the current system has not been determined. The Department of Administration is currently in the process of

Fiscal Note: HB 205/210

March 17, 1983

redesigning the statewide accounting system which will include features that will improve the bill paying and tracking capabilities of the State.

While we recognize the problem of paying vendors in a timely manner is a serious matter, we should point out that for the most part, vendors are paid timely. For a 12 month period, the State paid on the average of 70,200 invoices a month. During that time, the average payment time was 29 days. The high monthly average was 33 days while the low monthly average was 24 days. During this period, only two months exceeded 30 days payment time.

In addition to the costs of attempting to improve the payment time and the potential interest penalties, we should also consider the cost of increased bureaucracy that would be involved in determining what payments would be subject to penalty, what period of time would be covered, as well as the logistics of making the interest payments, all of these would be costs to the State in time and effort.

Lastly, it should be noted that the funding of the interest payments would need to be 100% State funds. We have been advised by the U.S. Office of Management and Budget that the Prompt Payment Act (P.L. 970177) prohibits the use of Federal grant funds for the agencies that are primarily federally funded. (Copy of OMB letter attached)

Again, we are not opposed to timely payment of vendor bills but are concerned with the method of achieving that goal.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

December 14, 1982

MEMORANDUM

SUBJECT: Payment Practices

It has come to our attention that several States have laws, or are considering legislation, that requires the payment of interest penalties to contractors when bills are paid late.

This is to alert you to the fact that the Prompt Payment Act (P.L. 97-177) prohibits the use of Federal grant funds for the payment of such interest penalties. The act says

"(A) in no case shall an obligation to pay such interest penalties be construed to be an obligation of the United States, and

"(B) any payment of such interest penalties shall not be made from funds provided to the grant recipient by a Federal agency, nor shall any non-Federal funds expended for such interest penalties be counted toward any matching requirement applicable to that grant."

We would appreciate your alerting your staff to this prohibition to assure that the Federal Government is not charged improperly for interest penalty costs.

John J. Lordan
Deputy Associate Director
for Financial Management

ANALYSIS OF SSHB 210

"An Act relating to payment for purchase by the State; and providing for an effective date."

Section 1 (a) requires the agency to pay on a required payment date as defined under terms of a contract or 30 days after receipt of proper invoice.

Subsection (b) provides for the State to take advantage of any discounts offered by a vendor and if invoice is paid in time, the State agency will deduct the amount of the discount offered from the total amount of the invoice.

Subsection (c) establishes the rate of interest at 1.5% per month that must be paid by the State for a past due balance - also provides for the exclusion of interest in the event that the seller and the State have a mutual agreement.

Subsection (d) 1. exempts purchases of more than \$500,000 from the provisions of the bill.

Subsection (d) 2. provides for an exception in the event the State notifies the vendor or seller of a dispute in the invoice.

Subsection (e) provides that any interest incurred by lack of prompt payment will be charged to the budget of the department involved.

Subsection (f) 1. defines "dispute" as noncompliance, in performance or price, with the terms of the contract, as determined by administering State officer.

Subsection (f) 2. defines when payment is made.

Subsection (f) 3. defines a state agency

Section 2. Exempts any contracts entered into before the effective date from this Act's provisions.

Section 3. Provides an effective date of July 1, 1983.

This bill has been requested by numerous vendors that do business with the State of Alaska. The State has become notorious for late payment of invoices, forcing many private vendors to borrow money to supplement their cash flow. This reduces their profit, and in some cases even eliminates it as the profit on articles is very marginal.

The bill is patterned after a federal law entitled "The Prompt Payment Act - Public Law 97-177." The Prompt Payment Act became effective October 1, 1982 and when it was introduced in Congress, it carried 133 sponsors.

Mr. Leonard Lemon, Comptroller of the U.S. Army, ^{As Paul Greedy} advised that the Prompt Payment Act has improved their payment scheduling and the payment of their accounts payable has become prompt and very routine. The U.S. Army has incorporated it in their Army Regulations.

The State has put an amount of more than \$1.2 million annual cost on its fiscal note, which should be a good indication of how much money is involved in overdue accounts. The agencies further claim that they will have to reorganize their payment system in order to fulfill the requirements of this bill. If this is so, then it should be done. This should be an indication that their method of paying accounts payable is presently inefficient and needs modifying.

The bill is needed in Alaska and will be a great help to the average small businessman that does business with state government.

Provided by Rep. Shultz

appropriated for fiscal
necessary for carrying

States Commis-

ences of the Com-
shall not, with
States share of
subject to section
as it limits the
to international

appropriated such
ate to provide for
otherwise, facili-
the Commission.
ampus of the Uni-
on and shall be
provisions in the

1937, as amended
of the 90th day

PROMPT PAYMENT ACT

For Legislative History of Act, see p. 111

An Act to require the Federal Government to pay interest on overdue payments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Prompt
Payment Act.

SHORT TITLE

SECTION 1. This Act may be cited as the "Prompt Payment Act".

31 USC 1801
note.

INTEREST PENALTIES ON LATE PAYMENTS

SEC. 2. (a)(1) In accordance with regulations prescribed by the Director of the Office of Management and Budget, each Federal agency which acquires property or services from a business concern but which does not make payment for each such complete delivered item of property or service by the required payment date shall pay an interest penalty to such business concern in accordance with this section on the amount of the payment which is due.

31 USC 1801.

(2) Such regulations—

(A) shall specify that the required payment date shall be—

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

(ii) thirty 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;

(B)(i) in the case of any acquisition of meat or of a meat food product, as defined in section 2(a)(3) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(3)), shall specify a required payment date which is not later than seven days after the date of delivery of such meat or meat food product; and

(ii) in the case of any acquisition of a perishable agricultural commodity, as defined in section 1(4) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(4)), shall specify a required payment date consistent with requirements imposed pursuant to such Act;

(C) 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 for such partial execution or delivery; and

(D) shall require that, within fifteen days after the date on which any invoice is received, Federal agencies notify the business concern of any defect or impropriety in such invoice which would prevent the running of the time period specified in subparagraph (A)(ii).

(b)(1) Interest penalties on amounts due to a business concern under this Act shall be paid to the business concern for the period

and Transportation).

SEC. 4. (a)(1) Claims for interest penalties which a Federal agency has failed to pay in accordance with the requirements of section 2 or 3 of this Act may be filed under section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605).

31 USC 1803

(2) Interest penalties under this Act shall not continue to accrue (A) after the filing of a claim for such penalties under the Contract Disputes Act of 1978, or (B) for more than one year.

41 USC 601 note.

(3) Paragraph (2) shall not be construed to preclude the accrual of interest pursuant to section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) after interest penalties have ceased accruing under this Act, and interest pursuant to such section may accrue on both any unpaid contract payment and on the unpaid interest penalty required by this Act.

(b) Except as provided in section 3 with respect to disputes concerning discounts, this Act 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 Federal agency and a 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, shall be subject to the Contract Disputes Act of 1978.

CONGRESSIONAL OVERSIGHT

SEC. 5. (a) Each Federal agency shall file with the Director of the Office of Management and Budget a detailed report on any interest penalty payments made under this Act during the preceding fiscal year.

Report, filing with OMB. 31 USC 1804

(b) Such report shall include the number, amounts, and frequency of interest penalty payments, and the reasons such payments were not avoided by prompt payment, and shall be delivered to the Director within sixty days after the conclusion of each fiscal year.

Contents.

(c) The Director shall submit to the Committee on Governmental Affairs, the Committee on Appropriations, and the Committee on Small Business of the Senate and to the Committee on Government Operations, the Committee on Appropriations, and the Committee on Small Business of the House of Representatives within one hundred and twenty days after the conclusion of each fiscal year a report on Federal agency compliance with the requirements of this Act. Such report shall include a summary of the report submitted by each Federal agency under subsection (b) and an analysis of the progress made in reducing interest penalty payments by that agency from previous years.

Federal agency compliance; submittal to congressional committees.

DEFINITIONS

SEC. 6. For the purposes of this Act—

31 USC 1805.

(1) the term "Federal agency" has the same meaning as the term "agency" in section 551(1) of title 5, United States Code, but also includes any entity (A) which is operated exclusively as an instrumentality of such an agency for the purpose of administering one or more programs of that agency, and (B)

which is so identified for this purpose by the head of such agency;

(2) the term "business concern" means any person engaged in a trade or business and nonprofit entities operating as contractors;

(3) an invoice shall be considered a "proper invoice" when it contains or is accompanied by such substantiating documentation (A) as the Director of the Office of Management and Budget may require by regulation; and (B) as the Federal agency involved may require by regulation or contract;

(4) an invoice shall be deemed to have been received by an agency on the later of—

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

(B) the date on which such agency accepts the property or service concerned;

(5) a payment shall be considered made on the date on which a check for such payment is dated; and

(6) a contract for the rental of real or personal property is a contract for the acquisition of that property.

EFFECTIVE DATE

31 USC 1801
note.

SEC. 7. (a) This Act applies to the acquisition of property or services on or after the beginning of the first calendar quarter which begins more than ninety days after the date of enactment of this Act.

31 USC 1801
note.

(b) The provisions of this Act requiring the promulgation of regulations shall be effective upon enactment, and such regulations shall be promulgated not later than ninety days after the date of enactment of this Act.

31 USC 1806.

(c) The provisions of this Act shall apply to the Tennessee Valley Authority, but any regulations promulgated under the authority of this Act shall not be applicable to the Tennessee Valley Authority, which shall be solely responsible for implementing the provisions of this Act with respect to its contracts.

Approved May 21, 1982.

LEGISLATIVE HISTORY—S. 1131 (H.R. 4709):

HOUSE REPORT No. 97-461 accompanying H.R. 4709 (Comm. on Government Operations).

SENATE REPORT No. 97-302 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 127 (1981): Dec. 15, considered and passed Senate.

Vol. 128 (1982): Mar. 23, H.R. 4709 considered and passed House; proceedings vacated and S. 1131, amended, passed in lieu.

May 11, Senate concurred in House amendments.

PUBLIC LAW 97

AMELIA EARHART DAY

Joint Resolution to authorize and request the President to proclaim Earhart Day.

Whereas Amelia Earhart was the first woman to fly across the Atlantic Ocean as a pilot;

Whereas Amelia Earhart was the first woman to fly solo across the Atlantic Ocean;

Whereas Amelia Earhart was the first woman to fly solo around the world;

Whereas Amelia Earhart was an inspiring example to all women in aviation;

Whereas Amelia Earhart was a pioneer in aviation and was a strong advocate of women's rights;

Whereas Amelia Earhart was the first woman to fly solo across the Atlantic Ocean;

Whereas Amelia Earhart was the first woman to fly solo around the world;

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the President be and he is authorized and requested to proclaim Earhart Day, as a tribute to the achievements of Amelia Earhart, and to call upon all Federal agencies and the people of the United States to observe Earhart Day with appropriate ceremonies.

Approved May 21, 1982.

Approved May 21, 1982.

Approved May 21, 1982.

LEGISLATIVE HISTORY—H.R. 4709:

CONGRESSIONAL RECORD, Vol. 128, considered and passed House.

May 18, considered and passed Senate.

May 19, considered and passed House.

Bill Fact Sheet

Date Received _____

Bill Number HB 240 Title Relating to payment of interest by state

Fiscal Note - Date Requested revised 6-1 Date Received _____

- Of Whom _____

Dept. Position Paper - Date Requested _____ Date Received _____

- Of Whom _____

Resource People

Initial Hearing - Date fell through 5-26, 6-7
People Contacted

Shultz - 4940 - requested info 5/18
Dept of Admin/

- 6-1 ✓ Net. T. Gary Jenkins 6-4100 ✓ answering service
- ✓ Cynthia Halterman 2200
- Kenneth Bischoff, Director

Fol

Hear only
C

Final Action _____ Date _____