



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2664

by Rep. William Davis

SYNOPSIS AS INTRODUCED:

30 ILCS 540/7

from Ch. 127, par. 132.407

Amends the State Prompt Payment Act. Provides that if a contractor is assessed liquidated damages by the State, the contractor is still responsible to each subcontractor under the subcontracts. For contracts with the Department of Transportation, provides that if a contractor is assessed a liquidated damages penalty equal to or exceeding the total amount of the contract and the contractor is unable to pay its subcontractors, the Department of Transportation shall verify completion of the work performed by the subcontractor and, upon successful verification, pay the subcontractor the amount owed on the subcontract with the contractor.

LRB100 08773 MLM 18912 b

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The State Prompt Payment Act is amended by
5 changing Section 7 as follows:

6 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

7 Sec. 7. Payments to subcontractors and material suppliers.

8 (a) When a State official or agency responsible for
9 administering a contract submits a voucher to the Comptroller
10 for payment to a contractor, that State official or agency
11 shall promptly make available electronically the voucher
12 number, the date of the voucher, and the amount of the voucher.
13 The State official or agency responsible for administering the
14 contract shall provide subcontractors and material suppliers,
15 known to the State official or agency, with instructions on how
16 to access the electronic information. When a contractor
17 receives any payment, the contractor shall pay each
18 subcontractor and material supplier in proportion to the work
19 completed by each subcontractor and material supplier their
20 application, plus interest received under this Act, less any
21 retention. If the contractor receives less than the full
22 payment due under the public construction contract, the
23 contractor shall be obligated to disburse on a pro rata basis

1 those funds received, plus interest received under this Act,
2 with the contractor, subcontractors and material suppliers
3 each receiving a prorated portion based on the amount of
4 payment. If the contractor is assessed liquidated damages by
5 the State, the contractor is still responsible to each
6 subcontractor under the subcontracts. When, however, the
7 public owner does not release the full payment due under the
8 contract because there are specific areas of work or materials
9 the contractor is rejecting or because the contractor has
10 otherwise determined such areas are not suitable for payment,
11 then those specific subcontractors or suppliers involved shall
12 not be paid for that portion of work rejected or deemed not
13 suitable for payment and all other subcontractors and suppliers
14 shall be paid in full, plus interest received under this Act.

15 For a contract with the Department of Transportation, if a
16 contractor is assessed a liquidated damages penalty equal to or
17 exceeding the total amount of the contract and the contractor
18 is unable to pay its subcontractors, the Department of
19 Transportation shall verify completion of the work performed by
20 the subcontractor and, upon successful verification, pay the
21 subcontractor the amount owed on the subcontract with the
22 contractor.

23 (b) If the contractor, without reasonable cause, fails to
24 make full payment of amounts due under subsection (a) to his
25 subcontractors and material suppliers within 15 days after
26 receipt of payment under the public construction contract, the

1 contractor shall pay to his subcontractors and material
2 suppliers, in addition to the payment due them, interest in the
3 amount of 2% per month, calculated from the expiration of the
4 15-day period until fully paid. This subsection shall also
5 apply to any payments made by subcontractors and material
6 suppliers to their subcontractors and material suppliers and to
7 all payments made to lower tier subcontractors and material
8 suppliers throughout the contracting chain.

9 (1) If a contractor, without reasonable cause, fails to
10 make payment in full as provided in subsection (a) within
11 15 days after receipt of payment under the public
12 construction contract, any subcontractor or material
13 supplier to whom payments are owed may file a written
14 notice with the State official or agency setting forth the
15 amount owed by the contractor and the contractor's failure
16 to timely pay the amount owed.

17 (2) The State official or agency, within 15 days after
18 receipt of a subcontractor's or material supplier's
19 written notice of the failure to receive payment from the
20 contractor, shall hold a hearing convened by an
21 administrative law judge to determine whether the
22 contractor withheld payment, without reasonable cause,
23 from the subcontractors and material suppliers and what
24 amount, if any, is due to the subcontractors and material
25 suppliers. The State official or agency shall provide
26 appropriate notice to the parties of the date, time, and

1 location of the hearing. Each contractor, subcontractor,
2 and material supplier has the right to be represented by
3 counsel at the hearing and to cross-examine witnesses and
4 challenge documents.

5 (3) If there is a finding by the administrative law
6 judge that the contractor failed to make payment in full,
7 without reasonable cause, as provided in subsection (a),
8 then the administrative law judge shall, in writing, direct
9 the contractor to pay the amount owed to the subcontractors
10 and material suppliers plus interest within 15 days after
11 the finding.

12 (4) If a contractor fails to make full payment within
13 15 days after the administrative law judge's finding, then
14 the contractor shall be barred from entering into a State
15 public construction contract for a period of one year
16 beginning on the date of the administrative law judge's
17 finding.

18 (Source: P.A. 94-672, eff. 1-1-06; 94-972, eff. 7-1-07.)