

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.

17 (a-5) When a contractor receives any payment, the
18 contractor shall pay each subcontractor and material supplier
19 in proportion to the work completed by each subcontractor and
20 material supplier its ~~their~~ application or pay estimate, plus
21 interest received under this Act, ~~less any retention~~. When a
22 contractor receives any payment, the contractor shall pay each
23 lower-tiered subcontractor and material supplier and each

1 subcontractor and material supplier shall make payment to its
2 own respective subcontractors and material suppliers. If the
3 contractor receives less than the full payment due under the
4 public construction contract, the contractor shall be
5 obligated to disburse on a pro rata basis those funds received,
6 plus interest received under this Act, with the contractor,
7 subcontractors and material suppliers each receiving a
8 prorated portion based on the amount of payment each has
9 earned. When, however, the State official or agency public
10 owner does not release the full payment due under the contract
11 because there are specific areas of work or materials the State
12 agency or official has determined ~~contractor is rejecting or~~
13 ~~because the contractor has otherwise determined such areas~~ are
14 not suitable for payment, then those specific subcontractors or
15 material suppliers involved shall not be paid for that portion
16 of work rejected or deemed not suitable for payment and all
17 other subcontractors and suppliers shall be paid based upon the
18 amount of payment each has earned ~~in full~~, plus interest
19 received under this Act.

20 (a-10) For construction contracts with the Department of
21 Transportation, the contractor, subcontractor, or material
22 supplier, regardless of tier, shall not offset, decrease, or
23 diminish payment or payments that are due to its subcontractors
24 or material suppliers without reasonable cause.

25 A contractor, who refuses to make prompt payment, in whole
26 or in part, shall provide to the subcontractor or material

1 supplier and the public owner or its agent, a written notice of
2 that refusal. The written notice shall be made by a contractor
3 no later than 5 calendar days after payment is received by the
4 contractor. The written notice shall identify the Department of
5 Transportation's contract, any subcontract or material
6 purchase agreement, a detailed reason for refusal, the value of
7 the payment to be withheld, and the specific remedial actions
8 required of the subcontractor or material supplier so that
9 payment may be made. Written notice of refusal may be given in
10 a form and method which is acceptable to the parties and public
11 owner.

12 (b) If the contractor, without reasonable cause, fails to
13 make full payment of amounts due under subsection (a) to its
14 ~~his~~ subcontractors and material suppliers within 15 calendar
15 days after receipt of payment from the State official or agency
16 ~~under the public construction contract~~, the contractor shall
17 pay to its ~~his~~ subcontractors and material suppliers, in
18 addition to the payment due them, interest in the amount of 2%
19 per month, calculated from the expiration of the 15-day period
20 until fully paid. This subsection shall further ~~also~~ apply to
21 any payments made by subcontractors and material suppliers to
22 their subcontractors and material suppliers and to all payments
23 made to lower tier subcontractors and material suppliers
24 throughout the contracting chain.

25 (1) If a contractor, without reasonable cause, fails to
26 make payment in full as provided in subsection (a-5) ~~(a)~~

1 within 15 calendar days after receipt of payment under the
2 public construction contract, any subcontractor or
3 material supplier to whom payments are owed may file a
4 written notice and request for administrative hearing with
5 the State official or agency setting forth the amount owed
6 by the contractor and the contractor's failure to timely
7 pay the amount owed. The written notice and request for
8 administrative hearing shall identify the public
9 construction contract, the contractor, and the amount
10 owed, and shall contain a sworn statement or attestation to
11 verify the accuracy of the notice. The notice and request
12 for administrative hearing shall be filed with the State
13 official for the public construction contract, with a copy
14 of the notice concurrently provided to the contractor.
15 Notice to the State official may be made by certified or
16 registered mail, messenger service, or personal service,
17 and must include proof of delivery to the State official.

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

1 material suppliers, and the reasonable cause or causes
2 asserted by the contractor. The State official or agency
3 shall provide appropriate notice to the parties of the
4 date, time, and location of the hearing. Each contractor,
5 subcontractor, or and material supplier has the right to be
6 represented by counsel at a ~~the~~ hearing and to
7 cross-examine witnesses and challenge documents. Upon the
8 request of the subcontractor or material supplier and a
9 showing of good cause, reasonable continuances may be
10 granted by the administrative law judge.

11 (3) Upon ~~If there is~~ a finding by the administrative
12 law judge that the contractor failed to make payment in
13 full, without reasonable cause, as provided in subsection
14 (a-10) ~~(a)~~, then the administrative law judge shall, in
15 writing, order ~~direct~~ the contractor to pay the amount owed
16 to the subcontractors or and material suppliers plus
17 interest within 15 calendar days after the order ~~finding~~.

18 (4) If a contractor fails to make full payment as
19 ordered under paragraph (3) of this subsection (b) within
20 15 days after the administrative law judge's order ~~finding~~,
21 then the contractor shall be barred from entering into a
22 State public construction contract for a period of one year
23 beginning on the date of the administrative law judge's
24 order ~~finding~~.

25 (5) If, on 2 or more occasions within a 3-calendar-year
26 period, there is a finding by an administrative law judge

1 that the contractor failed to make payment in full, without
2 reasonable cause, and a written order was issued to a
3 contractor under paragraph (3) of this subsection (b), then
4 the contractor shall be barred from entering into a State
5 public construction contract for a period of 6 months
6 beginning on the date of the administrative law judge's
7 second written order, even if the payments required under
8 the orders were made in full.

9 (6) If a contractor fails to make full payment as
10 ordered under paragraph (4) of this subsection (b), the
11 subcontractor or material supplier may, within 30 days of
12 the date of that order, petition the State agency for an
13 order for reasonable attorney's fees and costs incurred in
14 the prosecution of the action under this subsection (b).
15 Upon that petition and taking of additional evidence, as
16 may be required, the administrative law judge may issue a
17 supplemental order directing the contractor to pay those
18 reasonable attorney's fees and costs.

19 (7) The written order of the administrative law judge
20 shall be final and appealable under the Administrative
21 Review Law.

22 (c) This Section shall not be construed to in any manner
23 diminish, negate, or interfere with the
24 contractor-subcontractor or contractor-material supplier
25 relationship or commercially useful function.

26 (d) This Section shall not preclude, bar, or stay the

1 rights, remedies, and defenses available to the parties by way
2 of the operation of their contract, purchase agreement, the
3 Mechanics Lien Act, or the Public Construction Bond Act.

4 (e) State officials and agencies may adopt rules as may be
5 deemed necessary in order to establish the formal procedures
6 required under this Section.

7 (f) As used in this Section,
8 "Payment" means the discharge of an obligation in money or
9 other valuable consideration or thing delivered in full or
10 partial satisfaction of an obligation to pay. "Payment" shall
11 include interest paid pursuant to this Act.

12 "Reasonable cause" may include, but is not limited to,
13 unsatisfactory workmanship or materials; failure to provide
14 documentation required by the contract, subcontract, or
15 material purchase agreement; claims made against the
16 Department of Transportation or the subcontractor pursuant to
17 subsection (c) of Section 23 of the Mechanics Lien Act or the
18 Public Construction Bond Act; judgments, levies, garnishments,
19 or other court-ordered assessments or offsets in favor of the
20 Department of Transportation or other State agency entered
21 against a subcontractor or material supplier. "Reasonable
22 cause" does not include payments issued to the contractor that
23 create a negative or reduced valuation pay application or pay
24 estimate due to a reduction of contract quantities or work not
25 performed or provided by the subcontractor or material
26 supplier; the interception or withholding of funds for reasons

1 not related to the subcontractor's or material supplier's work
2 on the contract; anticipated claims or assessments of third
3 parties not a party related to the contract or subcontract;
4 asserted claims or assessments of third parties that are not
5 authorized by court order, administrative tribunal, or
6 statute. "Reasonable cause" further does not include the
7 withholding, offset, or reduction of payment, in whole or in
8 part, due to the assessment of liquidated damages or penalties
9 assessed by the Department of Transportation against the
10 contractor, unless the subcontractor's performance or supplied
11 materials were the sole and proximate cause of the liquidated
12 damage or penalty.

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