



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB3560

Introduced 2/16/2018, by Sen. Omar Aquino

#### SYNOPSIS AS INTRODUCED:

30 ILCS 540/3-3.5 new  
30 ILCS 540/8 new  
30 ILCS 540/9 new  
30 ILCS 540/10 new  
30 ILCS 540/11 new  
30 ILCS 540/12 new

Amends the State Prompt Payment Act. Codifies the Vendor Payment Program established under the Illinois Administrative Code. Provides that any contract executed under that Program prior to June 30, 2018 shall remain in effect until those contracts have expired, and that existing contracts shall comply with the additional reporting requirements of this amendatory Act. Provides for the authority, applicability, and requirements for participants and entities involved in the Program established under this amendatory Act. Provides disclosure requirements for vendors under the Program. Requires the Auditor General to perform an annual audit of the Program. Requires the Department of Central Management Services to disclose specified information on its Internet website. Defines terms. Makes other changes. Effective immediately.

LRB100 17563 RJF 32733 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 adding Sections 3-3.5, 8, 9, 10, 11, and 12 as follows:

6 (30 ILCS 540/3-3.5 new)

7 Sec. 3-3.5. Vendor payment contracts. Any contract  
8 executed under the Vendor Payment Program specified in Section  
9 900.125 of Title 74 of the Illinois Administrative Code prior  
10 to June 30, 2018 shall remain in effect until those contracts  
11 have expired. Those parties with existing contracts shall  
12 comply with additional reporting requirements established  
13 under this amendatory Act of the 100th General Assembly or  
14 rules adopted hereunder.

15 (30 ILCS 540/8 new)

16 Sec. 8. Vendor Payment Program.

17 (a) As used in this Section:

18 "Applicant" means any entity seeking to be designated  
19 as a qualified purchaser.

20 "Application period" means the time period when the  
21 Program is accepting applications as determined by the  
22 Department of Central Management Services.

1           "Assigned penalties" means penalties payable by the  
2           State in accordance with this Act that are assigned to the  
3           qualified purchaser of an assigned receivable.

4           "Assigned receivable" means the base invoice amount of  
5           a qualified account receivable and any associated assigned  
6           penalties due, currently and in the future, in accordance  
7           with this Act.

8           "Assignment agreement" means an agreement executed and  
9           delivered by a participating vendor and a qualified  
10           purchaser, in which the participating vendor will assign  
11           one or more qualified accounts receivable to the qualified  
12           purchaser and make certain representations and warranties  
13           in respect thereof.

14           "Base invoice amount" means the unpaid principal  
15           amount of the invoice associated with an assigned  
16           receivable.

17           "Department" means the Department of Central  
18           Management Services.

19           "Medical assistance program" means any program which  
20           provides medical assistance under Article V of the Illinois  
21           Public Aid Code, including Medicaid.

22           "Participating vendor" means a vendor whose  
23           application for the sale of a qualified account receivable  
24           is accepted for purchase by a qualified purchaser under the  
25           Programs terms.

26           "Program" means a Vendor Payment Program.

1           "Prompt payment penalties" means penalties payable by  
2 the State in accordance with this Act.

3           "Purchase Price" means 100% of the base invoice amount  
4 associated with an assigned receivable minus: (1) any  
5 deductions against the assigned receivable arising from  
6 State offsets; and (2) if and to the extent exercised by a  
7 qualified purchaser, other deductions for amounts owed by  
8 the participating vendor to the qualified purchaser for  
9 State offsets applied against other accounts receivable  
10 assigned by the participating vendor to the qualified  
11 purchaser under the Program.

12           "Qualified account receivable" means an account  
13 receivable due and payable by the State that is outstanding  
14 for 90 days or more, is eligible to accrue prompt payment  
15 penalties under this Act and is verified by the relevant  
16 State agency. A qualified account receivable shall not  
17 include any account receivable related to medical  
18 assistance program (including Medicaid) payments or any  
19 other accounts receivable, the transfer or assignment of  
20 which is prohibited by, or otherwise prevented by,  
21 applicable law.

22           "Qualified purchaser" means any entity that, during  
23 any application period, is approved by the Department of  
24 Central Management Services to participate in the Program  
25 on the basis of certain qualifying criteria as determined  
26 by the Department.

1           "State offsets" means any amount deducted from  
2           payments made by the State in respect of any qualified  
3           account receivable due to the State's exercise of any  
4           offset or other contractual rights against a participating  
5           vendor. For the purpose of this Section, "State offsets"  
6           include statutorily required administrative fees imposed  
7           under the State Comptroller Act.

8           "Sub-participant" means any individual or entity that  
9           intends to purchase assigned receivables, directly or  
10           indirectly, by or through an applicant or qualified  
11           purchaser for the purposes of the Program.

12           "Sub-participant certification" means an instrument  
13           executed and delivered to the Department of Central  
14           Management Services by a sub-participant, in which the  
15           sub-participant certifies its agreement, among others, to  
16           be bound by the terms and conditions of the Program as a  
17           condition to its participation in the Program as a  
18           sub-participant.

19           (b) This Section reflects the provisions of Section 900.125  
20           of Title 74 of the Illinois Administrative Code prior to  
21           January 1, 2018. The requirements of this Section establish the  
22           criteria for participation by participating vendors and  
23           qualified purchasers in a Vendor Payment Program. Information  
24           regarding the Vendor Payment Program may be found at the  
25           Internet website for the Department of Central Management  
26           Services.

1       (c) The State Comptroller and the Department of Central  
2 Management Services are authorized to establish and implement  
3 the Program under Section 3-3. This Section applies to all  
4 qualified accounts receivable not otherwise excluded from  
5 receiving prompt payment interest under Section 900.120 of  
6 Title 74 of the Illinois Administrative Code. This Section  
7 shall not apply to the purchase of any accounts receivable  
8 related to payments made under a medical assistance program,  
9 including Medicaid payments, or any other purchase of accounts  
10 receivable that is otherwise prohibited by law.

11       (d) Under the Program, qualified purchasers may purchase  
12 from participating vendors certain qualified accounts  
13 receivable owed by the State to the participating vendors. A  
14 participating vendor shall not simultaneously apply to sell the  
15 same qualified account receivable to more than one qualified  
16 purchaser. In consideration of the payment of the purchase  
17 price, a participating vendor shall assign to the qualified  
18 purchaser all of its rights to payment of the qualified account  
19 receivable, including all current and future prompt payment  
20 penalties due to that qualified account receivable in  
21 accordance with this Act.

22       (e) A vendor may apply to participate in the Program if:

23           (1) the vendor is owed an account receivable by the  
24 State for which prompt payment penalties have commenced  
25 accruing;

26           (2) the vendor's account receivable is eligible to

1 accrue prompt payment penalty interest under this Act;

2 (3) the vendor's account receivable is not for payments  
3 under a medical assistance program; and

4 (4) the vendor's account receivable is not prohibited  
5 by, or otherwise prevented by, applicable law from being  
6 transferred or assigned under this Section.

7 (f) Factors to be considered by the Department in  
8 determining whether an applicant shall be designated as a  
9 qualified purchaser include, but are not limited to, the  
10 following:

11 (1) the qualified purchaser's agreement to commit a  
12 minimum purchase amount as established from time to time by  
13 the Department based upon the current needs of the Program  
14 and the qualified purchaser's demonstrated ability to fund  
15 its commitment;

16 (2) the demonstrated ability of a qualified  
17 purchaser's sub-participants to fund their portions of a  
18 qualified purchaser's minimum purchase commitment;

19 (3) the ability of a qualified purchaser and its  
20 sub-participants to meet standards of responsibility  
21 substantially in accordance with the requirements of the  
22 Standards of Responsibility found in Section 1.2046 of  
23 Title 44 of the Illinois Administrative Code concerning  
24 government contracts, procurement, and property  
25 management;

26 (4) the agreement of each qualified purchaser, at its

1 sole cost and expense, to administer and facilitate the  
2 operation of the Program with respect to that qualified  
3 purchaser, including, without limitation, assisting  
4 potential participating vendors with the application and  
5 assignment process;

6 (5) the agreement of each qualified purchaser, at its  
7 sole cost and expense, to establish a website that is  
8 determined by the Department to be sufficient to administer  
9 the Program in accordance with the terms and conditions of  
10 the Program;

11 (6) the agreement of each qualified purchaser, at its  
12 sole cost and expense, to market the Program to potential  
13 participating vendors;

14 (7) the agreement of each qualified purchaser, at its  
15 sole cost and expense, to educate participating vendors  
16 about the benefits and risks associated with participation  
17 in the Program;

18 (8) the agreement of each qualified purchaser, at its  
19 sole cost and expense, to deposit funds into, release funds  
20 from, and otherwise maintain all required accounts in  
21 accordance with the terms and conditions of the Program.  
22 Subject to the Program terms, all required accounts shall  
23 be maintained and controlled by the qualified purchaser at  
24 the qualified purchaser's sole cost and at no cost, whether  
25 in the form of fees or otherwise, to the participating  
26 vendors;



1           (9) the agreement of each qualified purchaser, at its  
2           sole cost and expense, to submit a monthly written report,  
3           in both hard copy and Excel format, to the State  
4           Comptroller or its designee and the Department or its  
5           designee, within 10 days after the end of each month,  
6           which, unless otherwise specified by the Department, at a  
7           minimum, shall contain:

8                   (A) a listing of each assigned receivable  
9                   purchased by that qualified purchaser during the  
10                   month, specifying the base invoice amount and invoice  
11                   date of that assigned receivable and the name of the  
12                   participating vendor, State contract number, voucher  
13                   number, and State agency associated with that assigned  
14                   receivable;

15                   (B) a listing of each assigned receivable with  
16                   respect to which the qualified purchaser has received  
17                   payment of the base invoice amount from the State  
18                   during that month, including the amount of and date on  
19                   which that payment was made and the name of the  
20                   participating vendor, State contract number, voucher  
21                   number, and State agency associated with the assigned  
22                   receivable, and identifying the relevant application  
23                   period for each assigned receivable;

24                   (C) a listing of any payments of assigned penalties  
25                   received from the State during the month, including the  
26                   amount of and date on which the payment was made, the

1 name of the participating vendor, the voucher number  
2 for the assigned penalty receivable, and the  
3 associated assigned receivable, including the State  
4 contract number, voucher number, and State agency  
5 associated with the assigned receivable, and  
6 identifying the relevant application period for each  
7 assigned receivable;

8 (D) the aggregate number and dollar value of  
9 assigned receivables purchased by the qualified  
10 purchaser from the date on which that qualified  
11 purchaser commenced participating in the Program  
12 through the last day of the month;

13 (E) the aggregate number and dollar value of  
14 assigned receivables purchased by the qualified  
15 purchaser for which no payment by the State of the base  
16 invoice amount has yet been received, from the date on  
17 which the qualified purchaser commenced participating  
18 in the Program through the last day of the month; and

19 (F) any other data the State Comptroller and the  
20 Department may reasonably request from time to time;

21 (10) the agreement of each qualified purchaser to use  
22 its reasonable best efforts, and for any sub-participant to  
23 cause a qualified purchaser to use its reasonable best  
24 efforts, to diligently pursue receipt of assigned  
25 penalties associated with the assigned receivables,  
26 including, without limitation, by promptly notifying the

1 relevant State agency that an assigned penalty is due and,  
2 if necessary, seeking payment of assigned penalties  
3 through the Illinois Court of Claims; and

4 (11) the agreement of each qualified purchaser and any  
5 sub-participant to use their reasonable best efforts to  
6 implement the Program terms and to perform their  
7 obligations under the Program in a timely fashion.

8 (g) Each qualified purchaser's performance and  
9 implementation of its obligations under subsection (f) shall be  
10 subject to review by the Department and the State Comptroller  
11 at any time to confirm that the qualified purchaser is  
12 undertaking those obligations in a manner consistent with the  
13 terms and conditions of the Program. A qualified purchaser's  
14 failure to so perform its obligations including, without  
15 limitation, its obligations to diligently pursue receipt of  
16 assigned penalties associated with assigned receivables, shall  
17 be grounds for the Department and the State Comptroller to  
18 terminate the qualified purchaser's participation in the  
19 Program under subsection (i). Any such termination shall be  
20 without prejudice to any rights a participating vendor may have  
21 against that qualified purchaser, in law or in equity,  
22 including, without limitation, the right to enforce the terms  
23 of the assignment agreement and of the Program against the  
24 qualified purchaser.

25 (h) In determining whether any applicant shall be  
26 designated as a qualified purchaser, the Department shall have

1 the right to review or approve sub-participants that intend to  
2 purchase assigned receivables, directly or indirectly, by or  
3 through the applicant. The Department reserves the right to  
4 reject or terminate the designation of any applicant as a  
5 qualified purchaser or require an applicant to exclude a  
6 proposed sub-participant in order to become or remain a  
7 qualified purchaser on the basis of a review, whether prior to  
8 or after the designation. Each applicant and each qualified  
9 purchaser has an affirmative obligation to promptly notify the  
10 Department of any change or proposed change in the identity of  
11 the sub-participants that it disclosed to the Department no  
12 later than 3 business days after that change. Each  
13 sub-participant shall be required to execute a sub-participant  
14 certification that will be attached to the corresponding  
15 qualified purchaser designation. Sub-participants shall meet,  
16 at a minimum, the requirements of paragraphs (2), (3), (10),  
17 and (11) of subsection (f).

18 (i) The Program, as codified under this Section, shall  
19 commence July 1, 2018, and shall continue until terminated as  
20 follows:

21 (1) The Program may be terminated: (A) by the State  
22 Comptroller, after consulting with the Department, by  
23 giving 10 days prior written notice to the Department and  
24 the qualified purchasers in the Program; or (B) by the  
25 Department, after consulting with the State Comptroller,  
26 by giving 10 days prior written notice to the State

1 Comptroller and the qualified purchasers in the Program.

2 (2) In the event a qualified purchaser or  
3 sub-participant breaches or fails to meet any of the terms  
4 or conditions of the Program, that qualified purchaser or  
5 sub-participant may be terminated from the Program: (A) by  
6 the State Comptroller, after consulting with the  
7 Department. The termination shall be effective immediately  
8 upon the State Comptroller giving written notice to the  
9 Department and the qualified purchaser or sub-participant;  
10 or (B) by the Department, after consulting with the State  
11 Comptroller. The termination shall be effective  
12 immediately upon the Department giving written notice to  
13 the State Comptroller and the qualified purchaser or  
14 sub-participant.

15 (3) A qualified purchaser or sub-participant may  
16 terminate its participation in the Program, solely with  
17 respect to its own participation in the Program, in the  
18 event of any change to this Act from the form that existed  
19 on the date that the qualified purchaser or the  
20 sub-participant, as applicable, submitted the necessary  
21 documentation for admission into the Program if the change  
22 materially and adversely affects the qualified purchaser's  
23 or the sub-participant's ability to purchase and receive  
24 payment on receivables on the terms described in this  
25 Section.

26 If the Program, a qualified purchaser, or a sub-participant

1 is terminated under paragraphs (1) or (2) of this subsection  
2 (i), the Program, qualified purchaser, or sub-participant may  
3 be reinstated only by written agreement of the State  
4 Comptroller and the Department. No termination under  
5 paragraphs (1), (2), or (3) of this subsection (i) shall alter  
6 or affect the qualified purchaser's or sub-participant's  
7 obligations with respect to assigned receivables purchased by  
8 or through the qualified purchaser prior to the termination.

9 (30 ILCS 540/9 new)

10 Sec. 9. Vendor Payment Program financial backer  
11 disclosure.

12 (a) The Secretary of State shall create an online database  
13 listing the following information about each person, director,  
14 owner, officer, association, financial backer, partnership,  
15 other entity, corporation, or trust with an indirect or direct  
16 financial interest in each qualified purchaser:

17 (1) percent ownership;

18 (2) type of ownership;

19 (3) first name, middle name, last name, maiden name (if  
20 applicable), including aliases or former names; and

21 (4) resident mailing address, work mailing address,  
22 work telephone, and work email address.

23 (b) If a corporation or other entity, the following  
24 information shall be disclosed:

25 (1) business name, mailing address, telephone number,

1 and website, if any;

2 (2) type of business entity;

3 (3) dates and jurisdiction of business formation or  
4 incorporation;

5 (4) names of controlling shareholders, class of stock,  
6 percentage ownership;

7 (5) any indirect earnings resulting from the Program;  
8 and

9 (6) any earnings associated with the Program to any  
10 parties not previously disclosed.

11 (c) If a trust, the following information shall be  
12 disclosed:

13 (1) names, addresses, dates of birth, and percentages  
14 of interest of all beneficiaries;

15 (2) any indirect earnings resulting from the Program;  
16 and

17 (3) any earnings associated with the Program to any  
18 parties not previously disclosed.

19 (d) Each person, director, owner, officer, or financial  
20 backer must submit a statement disclosing whether they have  
21 previously or currently retained or contracted with any  
22 registered lobbyist, lawyer, or consultant to prepare the  
23 disclosure required under this Section.

24 (e) The Secretary of State shall adopt rules and policies  
25 to govern the application of this Section that shall be binding  
26 on all officials and agencies under this Act's jurisdiction.

1 These rules and policies may be made effective no earlier than  
2 July 1, 2018.

3 (30 ILCS 540/10 new)

4 Sec. 10. Vendor Payment Program audit. The Office of the  
5 Auditor General shall perform a compliance and performance  
6 audit of the Program established under Section 8 annually for  
7 the previous fiscal year beginning on January 1, 2019. The  
8 Auditor General shall deliver a report of his or her findings  
9 as provided under Section 3-14 of the State Auditing Act by  
10 January 1 of each year.

11 (30 ILCS 540/11 new)

12 Sec. 11. Vendor Payment Program accountability portal. The  
13 Department of Central Management Services shall publish on its  
14 Internet website a monthly report disclosing the following:

15 (1) a listing of each assigned receivable with respect  
16 to which the qualified purchaser has received payment of  
17 the base invoice amount from the State during that month,  
18 including the amount of and date on which that payment was  
19 made and the name of the participating vendor, State  
20 contract number, voucher number, and State agency  
21 associated with the assigned receivable, and identifying  
22 the relevant application period for each assigned  
23 receivable;

24 (2) a listing of any payments of assigned penalties



1 received from the State during the month, including the  
2 amount of and date on which the payment was made, the name  
3 of the participating vendor, the voucher number for the  
4 assigned penalty receivable, and the associated assigned  
5 receivable, including the State contract number, voucher  
6 number, and State agency associated with the assigned  
7 receivable, and identifying the relevant application  
8 period for each assigned receivable;

9 (3) the aggregate number and dollar value of assigned  
10 receivables purchased by the qualified purchaser from the  
11 date on which that qualified purchaser commenced  
12 participating in the Program through the last day of the  
13 month;

14 (4) the aggregate number and dollar value of assigned  
15 receivables purchased by the qualified purchaser for which  
16 no payment by the State of the base invoice amount has yet  
17 been received, from the date on which the qualified  
18 purchaser commenced participating in the Program through  
19 the last day of the month;

20 (5) the aggregate number and dollar value of invoices  
21 purchased by the qualified purchaser for which no  
22 appropriation has been authorized; and

23 (6) any other data the State Comptroller and the  
24 Department of Central Management Services may reasonably  
25 request from time to time.

1 (30 ILCS 540/12 new)

2 Sec. 12. Vendor Payment Program promotion. In the absence  
3 of a State appropriation, the State of Illinois and its  
4 agencies shall not promote any Program established to  
5 facilitate the assignment of any accounts receivable.

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law.