



Rep. John Connor

Filed: 5/15/2018

10000SB3560ham001

LRB100 17563 RJF 40113 a

1 AMENDMENT TO SENATE BILL 3560

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3560 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The State Prompt Payment Act is amended by  
5 adding Sections 3-3.5, 8, 9, 10, and 11 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)

1       Sec. 8. Vendor Payment Program.

2       (a) As used in this Section:

3               "Applicant" means any entity seeking to be designated  
4               as a qualified purchaser.

5               "Application period" means the time period when the  
6               Program is accepting applications as determined by the  
7               Department of Central Management Services.

8               "Assigned penalties" means penalties payable by the  
9               State in accordance with this Act that are assigned to the  
10              qualified purchaser of an assigned receivable.

11              "Assigned receivable" means the base invoice amount of  
12              a qualified account receivable and any associated assigned  
13              penalties due, currently and in the future, in accordance  
14              with this Act.

15              "Assignment agreement" means an agreement executed and  
16              delivered by a participating vendor and a qualified  
17              purchaser, in which the participating vendor will assign  
18              one or more qualified accounts receivable to the qualified  
19              purchaser and make certain representations and warranties  
20              in respect thereof.

21              "Base invoice amount" means the unpaid principal  
22              amount of the invoice associated with an assigned  
23              receivable.

24              "Department" means the Department of Central  
25              Management Services.

26              "Medical assistance program" means any program which

1 provides medical assistance under Article V of the Illinois  
2 Public Aid Code, including Medicaid.

3 "Participating vendor" means a vendor whose  
4 application for the sale of a qualified account receivable  
5 is accepted for purchase by a qualified purchaser under the  
6 Program terms.

7 "Program" means a Vendor Payment Program.

8 "Prompt payment penalties" means penalties payable by  
9 the State in accordance with this Act.

10 "Purchase price" means 100% of the base invoice amount  
11 associated with an assigned receivable minus: (1) any  
12 deductions against the assigned receivable arising from  
13 State offsets; and (2) if and to the extent exercised by a  
14 qualified purchaser, other deductions for amounts owed by  
15 the participating vendor to the qualified purchaser for  
16 State offsets applied against other accounts receivable  
17 assigned by the participating vendor to the qualified  
18 purchaser under the Program.

19 "Qualified account receivable" means an account  
20 receivable due and payable by the State that is outstanding  
21 for 90 days or more, is eligible to accrue prompt payment  
22 penalties under this Act and is verified by the relevant  
23 State agency. A qualified account receivable shall not  
24 include any account receivable related to medical  
25 assistance program (including Medicaid) payments or any  
26 other accounts receivable, the transfer or assignment of

1 which is prohibited by, or otherwise prevented by,  
2 applicable law.

3 "Qualified purchaser" means any entity that, during  
4 any application period, is approved by the Department of  
5 Central Management Services to participate in the Program  
6 on the basis of certain qualifying criteria as determined  
7 by the Department.

8 "State offsets" means any amount deducted from  
9 payments made by the State in respect of any qualified  
10 account receivable due to the State's exercise of any  
11 offset or other contractual rights against a participating  
12 vendor. For the purpose of this Section, "State offsets"  
13 include statutorily required administrative fees imposed  
14 under the State Comptroller Act.

15 "Sub-participant" means any individual or entity that  
16 intends to purchase assigned receivables, directly or  
17 indirectly, by or through an applicant or qualified  
18 purchaser for the purposes of the Program.

19 "Sub-participant certification" means an instrument  
20 executed and delivered to the Department of Central  
21 Management Services by a sub-participant, in which the  
22 sub-participant certifies its agreement, among others, to  
23 be bound by the terms and conditions of the Program as a  
24 condition to its participation in the Program as a  
25 sub-participant.

26 (b) This Section reflects the provisions of Section 900.125

1 of Title 74 of the Illinois Administrative Code prior to  
2 January 1, 2018. The requirements of this Section establish the  
3 criteria for participation by participating vendors and  
4 qualified purchasers in a Vendor Payment Program. Information  
5 regarding the Vendor Payment Program may be found at the  
6 Internet website for the Department of Central Management  
7 Services.

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

18 (d) Under the Program, qualified purchasers may purchase  
19 from participating vendors certain qualified accounts  
20 receivable owed by the State to the participating vendors. A  
21 participating vendor shall not simultaneously apply to sell the  
22 same qualified account receivable to more than one qualified  
23 purchaser. In consideration of the payment of the purchase  
24 price, a participating vendor shall assign to the qualified  
25 purchaser all of its rights to payment of the qualified account  
26 receivable, including all current and future prompt payment

1 penalties due to that qualified account receivable in  
2 accordance with this Act.

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

4 (1) the vendor is owed an account receivable by the  
5 State for which prompt payment penalties have commenced  
6 accruing;

7 (2) the vendor's account receivable is eligible to  
8 accrue prompt payment penalty interest under this Act;

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

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

14 (f) The Department shall review and approve or disapprove  
15 each applicant seeking a qualified purchaser designation.  
16 Factors to be considered by the Department in determining  
17 whether an applicant shall be designated as a qualified  
18 purchaser include, but are not limited to, the following:

19 (1) the qualified purchaser's agreement to commit a  
20 minimum purchase amount as established from time to time by  
21 the Department based upon the current needs of the Program  
22 and the qualified purchaser's demonstrated ability to fund  
23 its commitment;

24 (2) the demonstrated ability of a qualified  
25 purchaser's sub-participants to fund their portions of a  
26 qualified purchaser's minimum purchase commitment;

1           (3) the ability of a qualified purchaser and its  
2           sub-participants to meet standards of responsibility  
3           substantially in accordance with the requirements of the  
4           Standards of Responsibility found in subsection (b) of  
5           Section 1.2046 of Title 44 of the Illinois Administrative  
6           Code concerning government contracts, procurement, and  
7           property management;

8           (4) the agreement of each qualified purchaser, at its  
9           sole cost and expense, to administer and facilitate the  
10           operation of the Program with respect to that qualified  
11           purchaser, including, without limitation, assisting  
12           potential participating vendors with the application and  
13           assignment process;

14           (5) the agreement of each qualified purchaser, at its  
15           sole cost and expense, to establish a website that is  
16           determined by the Department to be sufficient to administer  
17           the Program in accordance with the terms and conditions of  
18           the Program;

19           (6) the agreement of each qualified purchaser, at its  
20           sole cost and expense, to market the Program to potential  
21           participating vendors;

22           (7) the agreement of each qualified purchaser, at its  
23           sole cost and expense, to educate participating vendors  
24           about the benefits and risks associated with participation  
25           in the Program;

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

1       sole cost and expense, to deposit funds into, release funds  
2       from, and otherwise maintain all required accounts in  
3       accordance with the terms and conditions of the Program.  
4       Subject to the Program terms, all required accounts shall  
5       be maintained and controlled by the qualified purchaser at  
6       the qualified purchaser's sole cost and at no cost, whether  
7       in the form of fees or otherwise, to the participating  
8       vendors;

9       (9) the agreement of each qualified purchaser, at its  
10       sole cost and expense, to submit a monthly written report,  
11       in an acceptable electronic format, to the State  
12       Comptroller or its designee and the Department or its  
13       designee, within 10 days after the end of each month,  
14       which, unless otherwise specified by the Department, at a  
15       minimum, shall contain:

16               (A) a listing of each assigned receivable  
17               purchased by that qualified purchaser during the  
18               month, specifying the base invoice amount and invoice  
19               date of that assigned receivable and the name of the  
20               participating vendor, State contract number, voucher  
21               number, and State agency associated with that assigned  
22               receivable;

23               (B) a listing of each assigned receivable with  
24               respect to which the qualified purchaser has received  
25               payment of the base invoice amount from the State  
26               during that month, including the amount of and date on



1       which that payment was made and the name of the  
2       participating vendor, State contract number, voucher  
3       number, and State agency associated with the assigned  
4       receivable, and identifying the relevant application  
5       period for each assigned receivable;

6           (C) a listing of any payments of assigned penalties  
7       received from the State during the month, including the  
8       amount of and date on which the payment was made, the  
9       name of the participating vendor, the voucher number  
10       for the assigned penalty receivable, and the  
11       associated assigned receivable, including the State  
12       contract number, voucher number, and State agency  
13       associated with the assigned receivable, and  
14       identifying the relevant application period for each  
15       assigned receivable;

16           (D) the aggregate number and dollar value of  
17       assigned receivables purchased by the qualified  
18       purchaser from the date on which that qualified  
19       purchaser commenced participating in the Program  
20       through the last day of the month;

21           (E) the aggregate number and dollar value of  
22       assigned receivables purchased by the qualified  
23       purchaser for which no payment by the State of the base  
24       invoice amount has yet been received, from the date on  
25       which the qualified purchaser commenced participating  
26       in the Program through the last day of the month;

1           (F) the aggregate number and dollar value of  
2           invoices purchased by the qualified purchaser for  
3           which no voucher has been submitted; and

4           (G) any other data the State Comptroller and the  
5           Department may reasonably request from time to time;

6           (10) the agreement of each qualified purchaser to use  
7           its reasonable best efforts, and for any sub-participant to  
8           cause a qualified purchaser to use its reasonable best  
9           efforts, to diligently pursue receipt of assigned  
10           penalties associated with the assigned receivables,  
11           including, without limitation, by promptly notifying the  
12           relevant State agency that an assigned penalty is due and,  
13           if necessary, seeking payment of assigned penalties  
14           through the Illinois Court of Claims; and

15           (11) the agreement of each qualified purchaser and any  
16           sub-participant to use their reasonable best efforts to  
17           implement the Program terms and to perform their  
18           obligations under the Program in a timely fashion.

19           (g) Each qualified purchaser's performance and  
20           implementation of its obligations under subsection (f) shall be  
21           subject to review by the Department and the State Comptroller  
22           at any time to confirm that the qualified purchaser is  
23           undertaking those obligations in a manner consistent with the  
24           terms and conditions of the Program. A qualified purchaser's  
25           failure to so perform its obligations including, without  
26           limitation, its obligations to diligently pursue receipt of

1 assigned penalties associated with assigned receivables, shall  
2 be grounds for the Department and the State Comptroller to  
3 terminate the qualified purchaser's participation in the  
4 Program under subsection (i). Any such termination shall be  
5 without prejudice to any rights a participating vendor may have  
6 against that qualified purchaser, in law or in equity,  
7 including, without limitation, the right to enforce the terms  
8 of the assignment agreement and of the Program against the  
9 qualified purchaser.

10 (h) In determining whether any applicant shall be  
11 designated as a qualified purchaser, the Department shall have  
12 the right to review or approve sub-participants that intend to  
13 purchase assigned receivables, directly or indirectly, by or  
14 through the applicant. The Department reserves the right to  
15 reject or terminate the designation of any applicant as a  
16 qualified purchaser or require an applicant to exclude a  
17 proposed sub-participant in order to become or remain a  
18 qualified purchaser on the basis of a review, whether prior to  
19 or after the designation. Each applicant and each qualified  
20 purchaser has an affirmative obligation to promptly notify the  
21 Department of any change or proposed change in the identity of  
22 the sub-participants that it disclosed to the Department no  
23 later than 3 business days after that change. Each  
24 sub-participant shall be required to execute a sub-participant  
25 certification that will be attached to the corresponding  
26 qualified purchaser designation. Sub-participants shall meet,

1 at a minimum, the requirements of paragraphs (2), (3), (10),  
2 and (11) of subsection (f).

3 (i) The Program, as codified under this Section, shall  
4 continue until terminated or suspended as follows:

5 (1) The Program may be terminated or suspended: (A) by  
6 the State Comptroller, after consulting with the  
7 Department, by giving 10 days prior written notice to the  
8 Department and the qualified purchasers in the Program; or  
9 (B) by the Department, after consulting with the State  
10 Comptroller, by giving 10 days prior written notice to the  
11 State Comptroller and the qualified purchasers in the  
12 Program.

13 (2) In the event a qualified purchaser or  
14 sub-participant breaches or fails to meet any of the terms  
15 or conditions of the Program, that qualified purchaser or  
16 sub-participant may be terminated from the Program: (A) by  
17 the State Comptroller, after consulting with the  
18 Department. The termination shall be effective immediately  
19 upon the State Comptroller giving written notice to the  
20 Department and the qualified purchaser or sub-participant;  
21 or (B) by the Department, after consulting with the State  
22 Comptroller. The termination shall be effective  
23 immediately upon the Department giving written notice to  
24 the State Comptroller and the qualified purchaser or  
25 sub-participant.

26 (3) A qualified purchaser or sub-participant may

1 terminate its participation in the Program, solely with  
2 respect to its own participation in the Program, in the  
3 event of any change to this Act from the form that existed  
4 on the date that the qualified purchaser or the  
5 sub-participant, as applicable, submitted the necessary  
6 documentation for admission into the Program if the change  
7 materially and adversely affects the qualified purchaser's  
8 or the sub-participant's ability to purchase and receive  
9 payment on receivables on the terms described in this  
10 Section.

11 If the Program, a qualified purchaser, or a sub-participant  
12 is terminated under paragraphs (1) or (2) of this subsection  
13 (i), the Program, qualified purchaser, or sub-participant may  
14 be reinstated only by written agreement of the State  
15 Comptroller and the Department. No termination or suspension  
16 under paragraphs (1), (2), or (3) of this subsection (i) shall  
17 alter or affect the qualified purchaser's or sub-participant's  
18 obligations with respect to assigned receivables purchased by  
19 or through the qualified purchaser prior to the termination.

20 (30 ILCS 540/9 new)

21 Sec. 9. Vendor Payment Program financial backer  
22 disclosure.

23 (a) Within 60 days after the effective date of this  
24 amendatory Act of the 100th General Assembly, at the time of  
25 application, and annually on July 1 of each year, each

1 qualified purchaser shall submit to the Department and the  
2 State Comptroller the following information about each person,  
3 director, owner, officer, association, financial backer,  
4 partnership, other entity, corporation, or trust with an  
5 indirect or direct financial interest in each qualified  
6 purchaser:

7 (1) percent ownership;

8 (2) type of ownership;

9 (3) first name, middle name, last name, maiden name (if  
10 applicable), including aliases or former names;

11 (4) mailing address;

12 (5) type of business entity, if applicable;

13 (6) dates and jurisdiction of business formation or  
14 incorporation, if applicable;

15 (7) names of controlling shareholders, class of stock,  
16 percentage ownership;

17 (8) any indirect earnings resulting from the Program;

18 and

19 (9) any earnings associated with the Program to any  
20 parties not previously disclosed.

21 (b) Within 60 days after the effective date of this  
22 amendatory Act of the 100th General Assembly, at the time of  
23 application, and annually on July 1 of each year, each trust  
24 associated with the qualified purchaser shall submit to the  
25 Department and the State Comptroller the following  
26 information:

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

3           (2) any indirect earnings resulting from the Program;  
4           and

5           (3) any earnings associated with the Program to any  
6           parties not previously disclosed.

7           (c) Each qualified purchaser must submit a statement to the  
8           State Comptroller and the Department of Central Management  
9           Services disclosing whether such qualified purchaser or any  
10           related person, director, owner, officer, or financial backer  
11           has previously or currently retained or contracted with any  
12           registered lobbyist, lawyer, accountant, or other consultant  
13           to prepare the disclosure required under this Section.

14           (30 ILCS 540/10 new)

15           Sec. 10. Vendor Payment Program audit. The Office of the  
16           Auditor General shall perform a performance audit of the  
17           Program established under Section 8. The audit shall include,  
18           but not be limited to, a review of the administration of the  
19           Program and compliance with requirements applicable to  
20           participating vendors, qualified purchasers, qualified  
21           accounts receivable, and financial backer disclosures. The  
22           audit shall cover the Program's operations for fiscal years  
23           2019 and 2020. Upon its completion and release, the Auditor  
24           General's report shall be posted on the Internet website of the  
25           Auditor General.

1 (30 ILCS 540/11 new)

2 Sec. 11. Vendor Payment Program accountability portal. The  
3 Department of Central Management Services and the State  
4 Comptroller shall publish on their respective Internet  
5 websites: (1) the monthly report information submitted under  
6 paragraph 9 of subsection (f) of Section 8; and (2) the  
7 information required to be submitted under Section 9.

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law."