



Sen. Omar Aquino

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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 Programs 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) Factors to be considered by the Department in  
15 determining whether an applicant shall be designated as a  
16 qualified purchaser include, but are not limited to, the  
17 following:

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

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

26 (3) the ability of a qualified purchaser and its

1       sub-participants to meet standards of responsibility  
2       substantially in accordance with the requirements of the  
3       Standards of Responsibility found in Section 1.2046 of  
4       Title 44 of the Illinois Administrative Code concerning  
5       government contracts, procurement, and property  
6       management;

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

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

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

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

25       (8) the agreement of each qualified purchaser, at its  
26       sole cost and expense, to deposit funds into, release funds

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

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

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

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



1 participating vendor, State contract number, voucher  
2 number, and State agency associated with the assigned  
3 receivable, and identifying the relevant application  
4 period for each assigned receivable;

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

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

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

26 (F) any other data the State Comptroller and the

1 Department may reasonably request from time to time;

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

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

15 (g) Each qualified purchaser's performance and  
16 implementation of its obligations under subsection (f) shall be  
17 subject to review by the Department and the State Comptroller  
18 at any time to confirm that the qualified purchaser is  
19 undertaking those obligations in a manner consistent with the  
20 terms and conditions of the Program. A qualified purchaser's  
21 failure to so perform its obligations including, without  
22 limitation, its obligations to diligently pursue receipt of  
23 assigned penalties associated with assigned receivables, shall  
24 be grounds for the Department and the State Comptroller to  
25 terminate the qualified purchaser's participation in the  
26 Program under subsection (i). Any such termination shall be

1 without prejudice to any rights a participating vendor may have  
2 against that qualified purchaser, in law or in equity,  
3 including, without limitation, the right to enforce the terms  
4 of the assignment agreement and of the Program against the  
5 qualified purchaser.

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

25 (i) The Program, as codified under this Section, shall  
26 commence July 1, 2018, and shall continue until terminated as

1 follows:

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

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

22 (3) A qualified purchaser or sub-participant may  
23 terminate its participation in the Program, solely with  
24 respect to its own participation in the Program, in the  
25 event of any change to this Act from the form that existed  
26 on the date that the qualified purchaser or the

1 sub-participant, as applicable, submitted the necessary  
2 documentation for admission into the Program if the change  
3 materially and adversely affects the qualified purchaser's  
4 or the sub-participant's ability to purchase and receive  
5 payment on receivables on the terms described in this  
6 Section.

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

16 (30 ILCS 540/9 new)

17 Sec. 9. Vendor Payment Program financial backer  
18 disclosure.

19 (a) The Department of Central Management Services shall  
20 collect and certify the following information from each  
21 qualified purchaser about each person, director, owner,  
22 officer, association, financial backer, partnership, other  
23 entity, corporation, or trust with an indirect or direct  
24 financial interest in each qualified purchaser:

25 (1) percent ownership;

1           (2) type of ownership;

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

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

6           (b) If a corporation or other entity associated with the  
7           qualified purchaser, the Department of Central Management  
8           Services shall also collect and certify the following  
9           information from each qualified purchaser:

10           (1) business name, mailing address, telephone number,  
11           and website, if any;

12           (2) type of business entity;

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

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

17           (5) any indirect earnings resulting from the Program;  
18           and

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

21           (c) If a trust associated with the qualified purchaser, the  
22           Department of Central Management Services shall also collect  
23           and certify the following information:

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

26           (2) any indirect earnings resulting from the Program;

1       and

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

4           (d) Each person, director, owner, officer, or financial  
5           backer of a qualified purchaser must submit a statement to the  
6           Department of Central Management Services disclosing whether  
7           he or she has previously or currently retained or contracted  
8           with any registered lobbyist, lawyer, or consultant to prepare  
9           the disclosure required under this Section.

10          (e) The Department of Central Management Services shall  
11          file information collected under subsections (a), (b), (c), and  
12          (d) of this Section with the Office of the Comptroller in a  
13          manner and form prescribed by the Office of the Comptroller.  
14          The Office of the Comptroller shall make information collected  
15          under this Section publicly available. The Office of the  
16          Comptroller shall adopt rules and policies to govern the  
17          reporting requirements of this Section. These rules and  
18          policies may be made effective no earlier than July 1, 2018.

19           (30 ILCS 540/10 new)

20          Sec. 10. Vendor Payment Program audit. The Office of the  
21          Auditor General shall perform a performance audit of the  
22          Program established under Section 8. The audit shall include,  
23          but not be limited to, a review of the administration of the  
24          Program and compliance with requirements applicable to  
25          participating vendors, qualified purchasers, qualified

1 accounts receivable, and financial backer disclosures. The  
2 audit shall cover the Program's operations for fiscal years  
3 2019 and 2020. Upon its completion and release, the Auditor  
4 General's report shall be posted on the Internet website of the  
5 Auditor General.

6 (30 ILCS 540/11 new)

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

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

19 (2) a listing of any payments of assigned penalties  
20 received from the State during the month, including the  
21 amount of and date on which the payment was made, the name  
22 of the participating vendor, the voucher number for the  
23 assigned penalty receivable, and the associated assigned  
24 receivable, including the State contract number, voucher  
25 number, and State agency associated with the assigned



1       receivable, and identifying the relevant application  
2       period for each assigned receivable;

3       (3) the aggregate number and dollar value of assigned  
4       receivables purchased by the qualified purchaser from the  
5       date on which that qualified purchaser commenced  
6       participating in the Program through the last day of the  
7       month;

8       (4) the aggregate number and dollar value of assigned  
9       receivables purchased by the qualified purchaser for which  
10       no payment by the State of the base invoice amount has yet  
11       been received, from the date on which the qualified  
12       purchaser commenced participating in the Program through  
13       the last day of the month;

14       (5) the aggregate number and dollar value of invoices  
15       purchased by the qualified purchaser for which no  
16       appropriation has been authorized; and

17       (6) any other data the State Comptroller and the  
18       Department of Central Management Services may reasonably  
19       request from time to time.

20       Section 99. Effective date. This Act takes effect upon  
21       becoming law."