



Sen. Laura Fine

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10100HB2838sam001

LRB101 07526 TAE 61437 a

1 AMENDMENT TO HOUSE BILL 2838

2 AMENDMENT NO. _____. Amend House Bill 2838 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Wage Payment and Collection Act is
5 amended by adding Section 13.5 as follows:

6 (820 ILCS 115/13.5 new)

7 Sec. 13.5. Primary contractor responsibility for wage
8 claims in construction industry.

9 (a) For all contracts entered into on or after July 1,
10 2019, a primary contractor making or taking a contract in the
11 State for the erection, construction, alteration, or repair of
12 a building, structure, or other private work in the State,
13 shall assume, and is liable for, any debt owed to a wage
14 claimant incurred pursuant to this Act by a subcontractor at
15 any tier acting under, by, or for the primary contractor for
16 the wage claimant's performance of labor included in the

1 subject of the contract between the primary contractor and the
2 owner. This Section does not apply to work performed by a
3 contractor of the State, a special district, a city, a county,
4 or any political subdivision of the State.

5 (b) For the purposes of this Section:

6 "Primary contractor" means a contractor that has a direct
7 contractual relationship with a property owner. "Primary
8 contractor" may have the same meaning as a "general contractor"
9 or "prime contractor". However, a property owner who acts as a
10 primary contractor related to the erection, construction,
11 alteration, or repair of his or her primary residence where the
12 aggregate costs of the project amounts to less than \$100,000
13 shall be exempt from liability under this Section.

14 "Private work" means any erection, construction,
15 alteration, or repair of a building, structure, or other work
16 that is funded or financed wholly without public funds.

17 "Subcontractor" means a contractor that has a contractual
18 relationship with the primary contractor or with another
19 subcontractor at any tier, who furnishes any goods or services
20 in connection with the contract between the primary contractor
21 and the property owner, but does not include contractors who
22 solely provide goods and transport of such goods related to the
23 contract.

24 (c) The primary contractor's liability under this Section
25 shall extend only to any unpaid wages, including interest owed
26 and reasonable attorney's fees, but shall not extend to wage

1 supplements, penalties, or liquidated damages.

2 (d) A primary contractor or any other person shall not
3 evade or commit any act that negates the requirements of this
4 Section. This Section does not prohibit a primary contractor or
5 subcontractor at any tier from establishing by contract or
6 enforcing any otherwise lawful remedies against a
7 subcontractor it hires for liability created by the nonpayment
8 of wages by the subcontractor or by a subcontractor at any tier
9 working under that subcontractor.

10 (e) If the primary contractor complies with the following
11 requirements, the primary contractor shall not be liable for
12 payments to a subcontractors' employees of any tier for unpaid
13 wages for the project identified and for the specific time
14 period. The primary contractor must obtain from the
15 subcontractor, for each project and for each specific time
16 period the applicable payment is being made, the following
17 prior to making any payment to the subcontractor:

18 (1) An affidavit from the subcontractor that all wages
19 have been paid for each of the employees for the specific
20 period of time of the applicable payment on the specific
21 project. The affidavit shall identify the project's
22 address, and list all of the subcontractor's employees by
23 name, address, and the last four digits of the employee's
24 social security number.

25 (2) A copy of the subcontractor's payroll records
26 identifying each employee and redacting the employee's

1 social security number, except for the last four digits,
2 the payroll period, the amount of wages paid, hours worked,
3 withholdings, and other deductions made.

4 (3) If the subcontractor has any lower tiered
5 subcontractors on the project, the subcontractor shall
6 supply similar affidavits, statements, and notices as
7 required in this Section. If the subcontractor does not
8 have any lower tiered subcontractors, the subcontractor
9 shall state that it did not utilize any.

10 Any primary contractor that receives the statements
11 and affidavits required under this subsection is not required
12 to conduct any additional verification as to the truthfulness
13 of the statements set forth therein, but is entitled to rely on
14 good faith on the statements and authorize payment to the
15 subcontractor for the specified project and time period. Any
16 primary contractor that complies with the requirements set
17 forth in this Section, has a defense to any action brought by a
18 subcontractor's employee or third party entitled to receive any
19 unpaid wages under this Section on said employee's behalf,
20 provided that the primary contractor did not know or should not
21 have known that the statements and affidavits contained false
22 or misleading information or material omissions.

23 (f) Any primary contractor receiving the statements and
24 affidavits required under subsection (e) is required to
25 maintain all statements and affidavits for a period of one year
26 from the date of making the payment to the subcontractor for

1 the specific period.

2 (g) The obligations and remedies provided in this Section
3 shall be in addition to any obligations and remedies otherwise
4 provided by law, except that nothing in this Section shall be
5 construed to impose liability on a primary contractor for
6 anything other than unpaid wages, interest owed, and reasonable
7 attorney's fees.

8 (h) Claims brought pursuant to this Section shall be done
9 so in accordance with Section 11 of this Act.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.".