



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB0104

Introduced 1/23/2019, by Sen. Martin A. Sandoval

#### SYNOPSIS AS INTRODUCED:

30 ILCS 500/20-120

30 ILCS 540/7

from Ch. 127, par. 132.407

Amends the Illinois Procurement Code. Provides that the Capital Development Board and the Department of Transportation shall each, by rule, implement a pilot program under which select construction contracts shall contain provisions that if a subcontractor has performed in accordance with the provisions of the subcontract and the work has been accepted by the State agency, the State agency shall pay the subcontractor directly. Provides that the program shall be implemented by January 1, 2021. Amends the State Prompt Payment Act. Provides that certain provisions concerning payments to subcontractors do not apply to payments to a subcontractor for work performed under a subcontract entered into with a construction contractor if the contract contains a provision that the State agency shall pay the subcontractor directly.

LRB101 04773 RJF 49782 b

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 Illinois Procurement Code is amended by  
5 changing Section 20-120 as follows:

6 (30 ILCS 500/20-120)

7 Sec. 20-120. Subcontractors.

8 (a) Any contract granted under this Code shall state  
9 whether the services of a subcontractor will be used. The  
10 contract shall include the names and addresses of all known  
11 subcontractors with subcontracts with an annual value of more  
12 than \$50,000, the general type of work to be performed by these  
13 subcontractors, and the expected amount of money each will  
14 receive under the contract. Upon the request of the chief  
15 procurement officer appointed pursuant to paragraph (2) of  
16 subsection (a) of Section 10-20, the contractor shall provide  
17 the chief procurement officer a copy of a subcontract so  
18 identified within 15 calendar days after the request is made. A  
19 subcontractor, or contractor on behalf of a subcontractor, may  
20 identify information that is deemed proprietary or  
21 confidential. If the chief procurement officer determines the  
22 information is not relevant to the primary contract, the chief  
23 procurement officer may excuse the inclusion of the

1 information. If the chief procurement officer determines the  
2 information is proprietary or could harm the business interest  
3 of the subcontractor, the chief procurement officer may, in his  
4 or her discretion, redact the information. Redacted  
5 information shall not become part of the public record.

6 (b) If at any time during the term of a contract, a  
7 contractor adds or changes any subcontractors, he or she shall  
8 promptly notify, in writing, the chief procurement officer,  
9 State purchasing officer, or their designee of the names and  
10 addresses of each new or replaced subcontractor and the general  
11 type of work to be performed. Upon the request of the chief  
12 procurement officer appointed pursuant to paragraph (2) of  
13 subsection (a) of Section 10-20, the contractor shall provide  
14 the chief procurement officer a copy of any new or amended  
15 subcontract so identified within 15 calendar days after the  
16 request is made.

17 (c) In addition to any other requirements of this Code, a  
18 subcontract subject to this Section must include all of the  
19 subcontractor's certifications required by Article 50 of the  
20 Code.

21 (c-5) The Capital Development Board and the Department of  
22 Transportation shall each, by rule, implement a pilot program  
23 under which select construction contracts granted under this  
24 Code and all subcontracts pursuant to those contracts shall  
25 contain provisions that if a subcontractor has performed in  
26 accordance with the provisions of his or her subcontract and

1 the work has been accepted by the appropriate State agency, the  
2 State agency shall pay the amount due the subcontractor  
3 directly to the subcontractor pursuant to the proper bill or  
4 invoice provided by the contractor to the State agency in  
5 accordance with the provisions of the State Prompt Payment Act.  
6 If a construction contract granted under this Code contains a  
7 provision that the State agency shall pay the subcontractor  
8 directly, the contractor shall deliver to the State agency a  
9 proper bill or invoice, as defined in the State Prompt Payment  
10 Act, for each subcontractor with whom the contractor has a  
11 subcontract. The program shall be implemented by January 1,  
12 2021.

13 (d) This Section applies to procurements solicited on or  
14 after the effective date of this amendatory Act of the 96th  
15 General Assembly. The changes made to this Section by this  
16 amendatory Act of the 97th General Assembly apply to  
17 procurements solicited on or after the effective date of this  
18 amendatory Act of the 97th General Assembly.

19 (Source: P.A. 97-895, eff. 8-3-12; 98-1076, eff. 1-1-15.)

20 Section 10. The State Prompt Payment Act is amended by  
21 changing Section 7 as follows:

22 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

23 Sec. 7. Payments to subcontractors and material suppliers.

24 (a) When a State official or agency responsible for

1 administering a contract submits a voucher to the Comptroller  
2 for payment to a contractor, that State official or agency  
3 shall promptly make available electronically the voucher  
4 number, the date of the voucher, and the amount of the voucher.  
5 The State official or agency responsible for administering the  
6 contract shall provide subcontractors and material suppliers,  
7 known to the State official or agency, with instructions on how  
8 to access the electronic information.

9 (a-5) When a contractor receives any payment, the  
10 contractor shall pay each subcontractor and material supplier  
11 in proportion to the work completed by each subcontractor and  
12 material supplier its application or pay estimate, plus  
13 interest received under this Act. When a contractor receives  
14 any payment, the contractor shall pay each lower-tiered  
15 subcontractor and material supplier and each subcontractor and  
16 material supplier shall make payment to its own respective  
17 subcontractors and material suppliers. If the contractor  
18 receives less than the full payment due under the public  
19 construction contract, the contractor shall be obligated to  
20 disburse on a pro rata basis those funds received, plus  
21 interest received under this Act, with the contractor,  
22 subcontractors and material suppliers each receiving a  
23 prorated portion based on the amount of payment each has  
24 earned. When, however, the State official or agency does not  
25 release the full payment due under the contract because there  
26 are specific areas of work or materials the State agency or

1 official has determined are not suitable for payment, then  
2 those specific subcontractors or material suppliers involved  
3 shall not be paid for that portion of work rejected or deemed  
4 not suitable for payment and all other subcontractors and  
5 suppliers shall be paid based upon the amount of payment each  
6 has earned, plus interest received under this Act.

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

12 A contractor, who refuses to make prompt payment, in whole  
13 or in part, shall provide to the subcontractor or material  
14 supplier and the public owner or its agent, a written notice of  
15 that refusal. The written notice shall be made by a contractor  
16 no later than 5 calendar days after payment is received by the  
17 contractor. The written notice shall identify the Department of  
18 Transportation's contract, any subcontract or material  
19 purchase agreement, a detailed reason for refusal, the value of  
20 the payment to be withheld, and the specific remedial actions  
21 required of the subcontractor or material supplier so that  
22 payment may be made. Written notice of refusal may be given in  
23 a form and method which is acceptable to the parties and public  
24 owner.

25 (b) If the contractor, without reasonable cause, fails to  
26 make full payment of amounts due under subsection (a) to its

1 subcontractors and material suppliers within 15 calendar days  
2 after receipt of payment from the State official or agency, the  
3 contractor shall pay to its subcontractors and material  
4 suppliers, in addition to the payment due them, interest in the  
5 amount of 2% per month, calculated from the expiration of the  
6 15-day period until fully paid. This subsection shall further  
7 apply to any payments made by subcontractors and material  
8 suppliers to their subcontractors and material suppliers and to  
9 all payments made to lower tier subcontractors and material  
10 suppliers throughout the contracting chain.

11 (1) If a contractor, without reasonable cause, fails to  
12 make payment in full as provided in subsection (a-5) within  
13 15 calendar days after receipt of payment under the public  
14 construction contract, any subcontractor or material  
15 supplier to whom payments are owed may file a written  
16 notice and request for administrative hearing with the  
17 State official or agency setting forth the amount owed by  
18 the contractor and the contractor's failure to timely pay  
19 the amount owed. The written notice and request for  
20 administrative hearing shall identify the public  
21 construction contract, the contractor, and the amount  
22 owed, and shall contain a sworn statement or attestation to  
23 verify the accuracy of the notice. The notice and request  
24 for administrative hearing shall be filed with the State  
25 official for the public construction contract, with a copy  
26 of the notice concurrently provided to the contractor.

1 Notice to the State official may be made by certified or  
2 registered mail, messenger service, or personal service,  
3 and must include proof of delivery to the State official.

4 (2) The State official or agency, within 15 calendar  
5 days after receipt of a subcontractor's or material  
6 supplier's written notice and request for administrative  
7 hearing, shall hold a hearing convened by an administrative  
8 law judge to determine whether the contractor withheld  
9 payment, without reasonable cause, from the subcontractors  
10 or material suppliers and what amount, if any, is due to  
11 the subcontractors or material suppliers, and the  
12 reasonable cause or causes asserted by the contractor. The  
13 State official or agency shall provide appropriate notice  
14 to the parties of the date, time, and location of the  
15 hearing. Each contractor, subcontractor, or material  
16 supplier has the right to be represented by counsel at a  
17 hearing and to cross-examine witnesses and challenge  
18 documents. Upon the request of the subcontractor or  
19 material supplier and a showing of good cause, reasonable  
20 continuances may be granted by the administrative law  
21 judge.

22 (3) Upon a finding by the administrative law judge that  
23 the contractor failed to make payment in full, without  
24 reasonable cause, as provided in subsection (a-10), then  
25 the administrative law judge shall, in writing, order the  
26 contractor to pay the amount owed to the subcontractors or



1 material suppliers plus interest within 15 calendar days  
2 after the order.

3 (4) If a contractor fails to make full payment as  
4 ordered under paragraph (3) of this subsection (b) within  
5 15 days after the administrative law judge's order, then  
6 the contractor shall be barred from entering into a State  
7 public construction contract for a period of one year  
8 beginning on the date of the administrative law judge's  
9 order.

10 (5) If, on 2 or more occasions within a 3-calendar-year  
11 period, there is a finding by an administrative law judge  
12 that the contractor failed to make payment in full, without  
13 reasonable cause, and a written order was issued to a  
14 contractor under paragraph (3) of this subsection (b), then  
15 the contractor shall be barred from entering into a State  
16 public construction contract for a period of 6 months  
17 beginning on the date of the administrative law judge's  
18 second written order, even if the payments required under  
19 the orders were made in full.

20 (6) If a contractor fails to make full payment as  
21 ordered under paragraph (4) of this subsection (b), the  
22 subcontractor or material supplier may, within 30 days of  
23 the date of that order, petition the State agency for an  
24 order for reasonable attorney's fees and costs incurred in  
25 the prosecution of the action under this subsection (b).  
26 Upon that petition and taking of additional evidence, as

1           may be required, the administrative law judge may issue a  
2           supplemental order directing the contractor to pay those  
3           reasonable attorney's fees and costs.

4           (7) The written order of the administrative law judge  
5           shall be final and appealable under the Administrative  
6           Review Law.

7           (c) This Section shall not be construed to in any manner  
8           diminish, negate, or interfere with the  
9           contractor-subcontractor or contractor-material supplier  
10          relationship or commercially useful function.

11          (c-5) The provisions of this Section do not apply to  
12          payments to a subcontractor for work performed under a  
13          subcontract entered into with a construction contractor if the  
14          contract contains a provision that the State agency shall pay  
15          the subcontractor directly as required under a pilot program  
16          implemented by the Capital Development Board or the Department  
17          of Transportation under subsection (c-5) of Section 20-120 of  
18          the Illinois Procurement Code.

19          (d) This Section shall not preclude, bar, or stay the  
20          rights, remedies, and defenses available to the parties by way  
21          of the operation of their contract, purchase agreement, the  
22          Mechanics Lien Act, or the Public Construction Bond Act.

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

26          (f) As used in this Section:

1 "Payment" means the discharge of an obligation in money or  
2 other valuable consideration or thing delivered in full or  
3 partial satisfaction of an obligation to pay. "Payment" shall  
4 include interest paid pursuant to this Act.

5 "Reasonable cause" may include, but is not limited to,  
6 unsatisfactory workmanship or materials; failure to provide  
7 documentation required by the contract, subcontract, or  
8 material purchase agreement; claims made against the  
9 Department of Transportation or the subcontractor pursuant to  
10 subsection (c) of Section 23 of the Mechanics Lien Act or the  
11 Public Construction Bond Act; judgments, levies, garnishments,  
12 or other court-ordered assessments or offsets in favor of the  
13 Department of Transportation or other State agency entered  
14 against a subcontractor or material supplier. "Reasonable  
15 cause" does not include payments issued to the contractor that  
16 create a negative or reduced valuation pay application or pay  
17 estimate due to a reduction of contract quantities or work not  
18 performed or provided by the subcontractor or material  
19 supplier; the interception or withholding of funds for reasons  
20 not related to the subcontractor's or material supplier's work  
21 on the contract; anticipated claims or assessments of third  
22 parties not a party related to the contract or subcontract;  
23 asserted claims or assessments of third parties that are not  
24 authorized by court order, administrative tribunal, or  
25 statute. "Reasonable cause" further does not include the  
26 withholding, offset, or reduction of payment, in whole or in

1 part, due to the assessment of liquidated damages or penalties  
2 assessed by the Department of Transportation against the  
3 contractor, unless the subcontractor's performance or supplied  
4 materials were the sole and proximate cause of the liquidated  
5 damage or penalty.

6 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;  
7 100-863, eff. 8-14-18.)