

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 changing Sections 1 and 7 as follows:

6 (30 ILCS 540/1) (from Ch. 127, par. 132.401)

7 Sec. 1. This Act applies to any State official or agency
8 authorized to provide for payment from State funds, by virtue
9 of any appropriation of the General Assembly, for goods or
10 services furnished to the State.

11 For purposes of this Act, "goods or services furnished to
12 the State" include but are not limited to (i) covered health
13 care provided to eligible members and their covered dependents
14 in accordance with the State Employees Group Insurance Act of
15 1971, including coverage through a physician-owned health
16 maintenance organization under Section 6.1 of that Act, (ii)
17 prevention, intervention, or treatment services and supports
18 for persons with developmental disabilities, mental health
19 services, alcohol and substance abuse services, rehabilitation
20 services, and early intervention services provided by a vendor,
21 and (iii) prevention, intervention, or treatment services and
22 supports for youth provided by a vendor by virtue of a
23 contractual grant agreement. For the purposes of items (ii) and

1 (iii), a vendor includes but is not limited to sellers of goods
2 and services, including community-based organizations that are
3 licensed to provide prevention, intervention, or treatment
4 services and supports for persons with developmental
5 disabilities, mental illness, and substance abuse problems, or
6 that provides prevention, intervention, or treatment services
7 and supports for youth.

8 For the purposes of this Act, "appropriate State official
9 or agency" is defined as the Director or Chief Executive or his
10 designee of that State agency or department or facility of such
11 agency or department. With respect to covered health care
12 provided to eligible members and their dependents in accordance
13 with the State Employees Group Insurance Act of 1971,
14 "appropriate State official or agency" also includes an
15 administrator of a program of health benefits under that Act.

16 As used in this Act, "eligible member" means a member who
17 is eligible for health benefits under the State Employees Group
18 Insurance Act of 1971, and "member" and "dependent" have the
19 meanings ascribed to those terms in that Act.

20 As used in this Act, "a proper bill or invoice" means a
21 bill or invoice, including, but not limited to, an invoice
22 issued under a contractual grant agreement, that includes the
23 information necessary for processing the payment as may be
24 specified by a State agency and in rules adopted in accordance
25 with this Act. Beginning on and after July 1, 2021, "a proper
26 bill or invoice" shall also include the names of all

1 subcontractors or subconsultants to be paid from the bill or
2 invoice and the amounts due to each of them, if any.

3 (Source: P.A. 100-549, eff. 1-1-18.)

4 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

6 (a) When a State official or agency responsible for
7 administering a contract submits a voucher to the Comptroller
8 for payment to a contractor, that State official or agency
9 shall promptly make available electronically the voucher
10 number, the date of the voucher, and the amount of the voucher.
11 The State official or agency responsible for administering the
12 contract shall provide subcontractors and material suppliers,
13 known to the State official or agency, with instructions on how
14 to access the electronic information.

15 (a-5) When a contractor receives any payment, the
16 contractor shall pay each subcontractor and material supplier
17 electronically within 10 business days or 15 calendar days,
18 whichever occurs earlier, or, if paid by a printed check, the
19 printed check must be postmarked within 10 business days or 15
20 calendar days, whichever occurs earlier, after receiving
21 payment in proportion to the work completed by each
22 subcontractor and material supplier its application or pay
23 estimate, plus interest received under this Act. When a
24 contractor receives any payment, the contractor shall pay each
25 lower-tiered subcontractor and material supplier and each

1 subcontractor and material supplier shall make payment to its
2 own respective subcontractors and material suppliers. If the
3 contractor receives less than the full payment due under the
4 public construction contract, the contractor shall be
5 obligated to disburse on a pro rata basis those funds received,
6 plus interest received under this Act, with the contractor,
7 subcontractors and material suppliers each receiving a
8 prorated portion based on the amount of payment each has
9 earned. When, however, the State official or agency does not
10 release the full payment due under the contract because there
11 are specific areas of work or materials the State agency or
12 official has determined are not suitable for payment, then
13 those specific subcontractors or material suppliers involved
14 shall not be paid for that portion of work rejected or deemed
15 not suitable for payment and all other subcontractors and
16 suppliers shall be paid based upon the amount of payment each
17 has earned, plus interest received under this Act.

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

23 A contractor, who refuses to make prompt payment within 10
24 business days or 15 calendar days, whichever occurs earlier,
25 after receiving payment, in whole or in part, shall provide to
26 the subcontractor or material supplier and the public owner or

1 its agent, a written notice of that refusal. The written notice
2 shall be made by a contractor no later than 5 calendar days
3 after payment is received by the contractor. The written notice
4 shall identify the Department of Transportation's contract,
5 any subcontract or material purchase agreement, a detailed
6 reason for refusal, the value of the payment to be withheld,
7 and the specific remedial actions required of the subcontractor
8 or material supplier so that payment may be made. Written
9 notice of refusal may be given in a form and method which is
10 acceptable to the parties and public owner.

11 (b) If the contractor, without reasonable cause, fails to
12 make full payment of amounts due under subsection (a) to its
13 subcontractors and material suppliers within 10 business days
14 or 15 calendar days, whichever occurs earlier, ~~15 calendar days~~
15 after receipt of payment from the State official or agency, the
16 contractor shall pay to its subcontractors and material
17 suppliers, in addition to the payment due them, interest in the
18 amount of 2% per month, calculated from the expiration of the
19 10-business-day period or the 15-calendar-day ~~15-day~~ period
20 until fully paid. This subsection shall further apply to any
21 payments made by subcontractors and material suppliers to their
22 subcontractors and material suppliers and to all payments made
23 to lower tier subcontractors and material suppliers throughout
24 the contracting chain.

25 (1) If a contractor, without reasonable cause, fails to
26 make payment in full as provided in subsection (a-5) within

1 10 business days or 15 calendar days, whichever occurs
2 earlier, ~~15 calendar days~~ after receipt of payment under
3 the public construction contract, any subcontractor or
4 material supplier to whom payments are owed may file a
5 written notice and request for administrative hearing with
6 the State official or agency setting forth the amount owed
7 by the contractor and the contractor's failure to timely
8 pay the amount owed. The written notice and request for
9 administrative hearing shall identify the public
10 construction contract, the contractor, and the amount
11 owed, and shall contain a sworn statement or attestation to
12 verify the accuracy of the notice. The notice and request
13 for administrative hearing shall be filed with the State
14 official for the public construction contract, with a copy
15 of the notice concurrently provided to the contractor.
16 Notice to the State official may be made by certified or
17 registered mail, messenger service, or personal service,
18 and must include proof of delivery to the State official.

19 (2) The State official or agency, within 15 calendar
20 days after receipt of a subcontractor's or material
21 supplier's written notice and request for administrative
22 hearing, shall hold a hearing convened by an administrative
23 law judge to determine whether the contractor withheld
24 payment, without reasonable cause, from the subcontractors
25 or material suppliers and what amount, if any, is due to
26 the subcontractors or material suppliers, and the

1 reasonable cause or causes asserted by the contractor. The
2 State official or agency shall provide appropriate notice
3 to the parties of the date, time, and location of the
4 hearing. Each contractor, subcontractor, or material
5 supplier has the right to be represented by counsel at a
6 hearing and to cross-examine witnesses and challenge
7 documents. Upon the request of the subcontractor or
8 material supplier and a showing of good cause, reasonable
9 continuances may be granted by the administrative law
10 judge.

11 (3) Upon a finding by the administrative law judge that
12 the contractor failed to make payment in full, without
13 reasonable cause, as provided in subsection (a-10), then
14 the administrative law judge shall, in writing, order the
15 contractor to pay the amount owed to the subcontractors or
16 material suppliers plus interest within 15 calendar days
17 after the order.

18 (4) If a contractor fails to make full payment as
19 ordered under paragraph (3) of this subsection (b) within
20 15 days after the administrative law judge's order, then
21 the contractor shall be barred from entering into a State
22 public construction contract for a period of one year
23 beginning on the date of the administrative law judge's
24 order.

25 (5) If, on 2 or more occasions within a 3-calendar-year
26 period, there is a finding by an administrative law judge

1 that the contractor failed to make payment in full, without
2 reasonable cause, and a written order was issued to a
3 contractor under paragraph (3) of this subsection (b), then
4 the contractor shall be barred from entering into a State
5 public construction contract for a period of 6 months
6 beginning on the date of the administrative law judge's
7 second written order, even if the payments required under
8 the orders were made in full.

9 (6) If a contractor fails to make full payment as
10 ordered under paragraph (4) of this subsection (b), the
11 subcontractor or material supplier may, within 30 days of
12 the date of that order, petition the State agency for an
13 order for reasonable attorney's fees and costs incurred in
14 the prosecution of the action under this subsection (b).
15 Upon that petition and taking of additional evidence, as
16 may be required, the administrative law judge may issue a
17 supplemental order directing the contractor to pay those
18 reasonable attorney's fees and costs.

19 (7) The written order of the administrative law judge
20 shall be final and appealable under the Administrative
21 Review Law.

22 (b-5) On or before July 2021, the Department of
23 Transportation shall publish on its website a searchable
24 database that allows for queries for each active construction
25 contract by the name of a subcontractor or the pay item such
26 that each pay item is associated with either the prime

1 contractor or a subcontractor.

2 (c) This Section shall not be construed to in any manner
3 diminish, negate, or interfere with the
4 contractor-subcontractor or contractor-material supplier
5 relationship or commercially useful function.

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

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

13 (f) As used in this Section:

14 "Payment" means the discharge of an obligation in money or
15 other valuable consideration or thing delivered in full or
16 partial satisfaction of an obligation to pay. "Payment" shall
17 include interest paid pursuant to this Act.

18 "Reasonable cause" may include, but is not limited to,
19 unsatisfactory workmanship or materials; failure to provide
20 documentation required by the contract, subcontract, or
21 material purchase agreement; claims made against the
22 Department of Transportation or the subcontractor pursuant to
23 subsection (c) of Section 23 of the Mechanics Lien Act or the
24 Public Construction Bond Act; judgments, levies, garnishments,
25 or other court-ordered assessments or offsets in favor of the
26 Department of Transportation or other State agency entered

1 against a subcontractor or material supplier. "Reasonable
2 cause" does not include payments issued to the contractor that
3 create a negative or reduced valuation pay application or pay
4 estimate due to a reduction of contract quantities or work not
5 performed or provided by the subcontractor or material
6 supplier; the interception or withholding of funds for reasons
7 not related to the subcontractor's or material supplier's work
8 on the contract; anticipated claims or assessments of third
9 parties not a party related to the contract or subcontract;
10 asserted claims or assessments of third parties that are not
11 authorized by court order, administrative tribunal, or
12 statute. "Reasonable cause" further does not include the
13 withholding, offset, or reduction of payment, in whole or in
14 part, due to the assessment of liquidated damages or penalties
15 assessed by the Department of Transportation against the
16 contractor, unless the subcontractor's performance or supplied
17 materials were the sole and proximate cause of the liquidated
18 damage or penalty.

19 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;
20 100-863, eff. 8-14-18.)