



Rep. Camille Y. Lilly

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LRB101 04773 RJF 60992 a

1 AMENDMENT TO SENATE BILL 104

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 104 by replacing  
3 everything after the enacting clause with the following:

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)

1 prevention, intervention, or treatment services and supports  
2 for persons with developmental disabilities, mental health  
3 services, alcohol and substance abuse services, rehabilitation  
4 services, and early intervention services provided by a vendor,  
5 and (iii) prevention, intervention, or treatment services and  
6 supports for youth provided by a vendor by virtue of a  
7 contractual grant agreement. For the purposes of items (ii) and  
8 (iii), a vendor includes but is not limited to sellers of goods  
9 and services, including community-based organizations that are  
10 licensed to provide prevention, intervention, or treatment  
11 services and supports for persons with developmental  
12 disabilities, mental illness, and substance abuse problems, or  
13 that provides prevention, intervention, or treatment services  
14 and supports for youth.

15 For the purposes of this Act, "appropriate State official  
16 or agency" is defined as the Director or Chief Executive or his  
17 designee of that State agency or department or facility of such  
18 agency or department. With respect to covered health care  
19 provided to eligible members and their dependents in accordance  
20 with the State Employees Group Insurance Act of 1971,  
21 "appropriate State official or agency" also includes an  
22 administrator of a program of health benefits under that Act.

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

1           As used in this Act, "a proper bill or invoice" means a  
2 bill or invoice, including, but not limited to, an invoice  
3 issued under a contractual grant agreement, that includes the  
4 information necessary for processing the payment as may be  
5 specified by a State agency and in rules adopted in accordance  
6 with this Act. Beginning on and after July 1, 2021, "a proper  
7 bill or invoice" shall also include the names of all  
8 subcontractors or subconsultants to be paid from the bill or  
9 invoice and the amounts due to each of them, if any.

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

11           (30 ILCS 540/7)   (from Ch. 127, par. 132.407)

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

13           (a) When a State official or agency responsible for  
14 administering a contract submits a voucher to the Comptroller  
15 for payment to a contractor, that State official or agency  
16 shall promptly make available electronically the voucher  
17 number, the date of the voucher, and the amount of the voucher.  
18 The State official or agency responsible for administering the  
19 contract shall provide subcontractors and material suppliers,  
20 known to the State official or agency, with instructions on how  
21 to access the electronic information.

22           (a-5) When a contractor receives any payment, the  
23 contractor shall pay each subcontractor and material supplier  
24 electronically within 10 business days or 15 calendar days,  
25 whichever occurs earlier, or, if paid by a printed check, the

1 printed check must be postmarked within 10 business days or 15  
2 calendar days, whichever occurs earlier, after receiving  
3 payment in proportion to the work completed by each  
4 subcontractor and material supplier its application or pay  
5 estimate, plus interest received under this Act. When a  
6 contractor receives any payment, the contractor shall pay each  
7 lower-tiered subcontractor and material supplier and each  
8 subcontractor and material supplier shall make payment to its  
9 own respective subcontractors and material suppliers. If the  
10 contractor receives less than the full payment due under the  
11 public construction contract, the contractor shall be  
12 obligated to disburse on a pro rata basis those funds received,  
13 plus interest received under this Act, with the contractor,  
14 subcontractors and material suppliers each receiving a  
15 prorated portion based on the amount of payment each has  
16 earned. When, however, the State official or agency does not  
17 release the full payment due under the contract because there  
18 are specific areas of work or materials the State agency or  
19 official has determined are not suitable for payment, then  
20 those specific subcontractors or material suppliers involved  
21 shall not be paid for that portion of work rejected or deemed  
22 not suitable for payment and all other subcontractors and  
23 suppliers shall be paid based upon the amount of payment each  
24 has earned, plus interest received under this Act.

25 (a-10) For construction contracts with the Department of  
26 Transportation, the contractor, subcontractor, or material

1 supplier, regardless of tier, shall not offset, decrease, or  
2 diminish payment or payments that are due to its subcontractors  
3 or material suppliers without reasonable cause.

4 A contractor, who refuses to make prompt payment within 10  
5 business days or 15 calendar days, whichever occurs earlier,  
6 after receiving payment, in whole or in part, shall provide to  
7 the subcontractor or material supplier and the public owner or  
8 its agent, a written notice of that refusal. The written notice  
9 shall be made by a contractor no later than 5 calendar days  
10 after payment is received by the contractor. The written notice  
11 shall identify the Department of Transportation's contract,  
12 any subcontract or material purchase agreement, a detailed  
13 reason for refusal, the value of the payment to be withheld,  
14 and the specific remedial actions required of the subcontractor  
15 or material supplier so that payment may be made. Written  
16 notice of refusal may be given in a form and method which is  
17 acceptable to the parties and public owner.

18 (b) If the contractor, without reasonable cause, fails to  
19 make full payment of amounts due under subsection (a) to its  
20 subcontractors and material suppliers within 10 business days  
21 or 15 calendar days, whichever occurs earlier, ~~15 calendar days~~  
22 after receipt of payment from the State official or agency, the  
23 contractor shall pay to its subcontractors and material  
24 suppliers, in addition to the payment due them, interest in the  
25 amount of 2% per month, calculated from the expiration of the  
26 10-business-day period or the 15-calendar-day ~~15-day~~ period

1 until fully paid. This subsection shall further apply to any  
2 payments made by subcontractors and material suppliers to their  
3 subcontractors and material suppliers and to all payments made  
4 to lower tier subcontractors and material suppliers throughout  
5 the contracting chain.

6 (1) If a contractor, without reasonable cause, fails to  
7 make payment in full as provided in subsection (a-5) within  
8 10 business days or 15 calendar days, whichever occurs  
9 earlier, ~~15 calendar days~~ after receipt of payment under  
10 the public construction contract, any subcontractor or  
11 material supplier to whom payments are owed may file a  
12 written notice and request for administrative hearing with  
13 the State official or agency setting forth the amount owed  
14 by the contractor and the contractor's failure to timely  
15 pay the amount owed. The written notice and request for  
16 administrative hearing shall identify the public  
17 construction contract, the contractor, and the amount  
18 owed, and shall contain a sworn statement or attestation to  
19 verify the accuracy of the notice. The notice and request  
20 for administrative hearing shall be filed with the State  
21 official for the public construction contract, with a copy  
22 of the notice concurrently provided to the contractor.  
23 Notice to the State official may be made by certified or  
24 registered mail, messenger service, or personal service,  
25 and must include proof of delivery to the State official.

26 (2) The State official or agency, within 15 calendar

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

18 (3) Upon a finding by the administrative law judge that  
19 the contractor failed to make payment in full, without  
20 reasonable cause, as provided in subsection (a-10), then  
21 the administrative law judge shall, in writing, order the  
22 contractor to pay the amount owed to the subcontractors or  
23 material suppliers plus interest within 15 calendar days  
24 after the order.

25 (4) If a contractor fails to make full payment as  
26 ordered under paragraph (3) of this subsection (b) within

1 15 days after the administrative law judge's order, then  
2 the contractor shall be barred from entering into a State  
3 public construction contract for a period of one year  
4 beginning on the date of the administrative law judge's  
5 order.

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

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

26 (7) The written order of the administrative law judge



1 shall be final and appealable under the Administrative  
2 Review Law.

3 (b-5) On or before July 2021, the Department of  
4 Transportation shall publish on its website a searchable  
5 database that allows for queries for each active construction  
6 contract by the name of a subcontractor or the pay item such  
7 that each pay item is associated with either the prime  
8 contractor or a subcontractor.

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

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

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

20 (f) As used in this Section:

21 "Payment" means the discharge of an obligation in money or  
22 other valuable consideration or thing delivered in full or  
23 partial satisfaction of an obligation to pay. "Payment" shall  
24 include interest paid pursuant to this Act.

25 "Reasonable cause" may include, but is not limited to,  
26 unsatisfactory workmanship or materials; failure to provide

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

26 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;

1 100-863, eff. 8-14-18.)".