



Sen. Martin A. Sandoval

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LRB101 04773 RJF 58136 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 7 business days or, if paid by a printed  
25 check, the printed check must be postmarked within 7 business

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

23 (a-10) For construction contracts with the Department of  
24 Transportation, the contractor, subcontractor, or material  
25 supplier, regardless of tier, shall not offset, decrease, or  
26 diminish payment or payments that are due to its subcontractors

1 or material suppliers without reasonable cause.

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

16 (b) If the contractor, without reasonable cause, fails to  
17 make full payment of amounts due under subsection (a) to its  
18 subcontractors and material suppliers within 7 business days ~~15~~  
19 ~~calendar days~~ after receipt of payment from the State official  
20 or agency, the contractor shall pay to its subcontractors and  
21 material suppliers, in addition to the payment due them,  
22 interest in the amount of 2% per month, calculated from the  
23 expiration of the 7-business-day ~~15-day~~ period until fully  
24 paid. This subsection shall further apply to any payments made  
25 by subcontractors and material suppliers to their  
26 subcontractors and material suppliers and to all payments made

1 to lower tier subcontractors and material suppliers throughout  
2 the contracting chain.

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

22 (2) The State official or agency, within 15 calendar  
23 days after receipt of a subcontractor's or material  
24 supplier's written notice and request for administrative  
25 hearing, shall hold a hearing convened by an administrative  
26 law judge to determine whether the contractor withheld

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

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

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

1 order.

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

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

22 (7) The written order of the administrative law judge  
23 shall be final and appealable under the Administrative  
24 Review Law.

25 (b-5) On or before July 2021, the Department of  
26 Transportation shall publish on its website a searchable



1 database that allows for queries by the name of a subcontractor  
2 or the pay item such that each pay item is associated with  
3 either the prime contractor or a subcontractor.

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

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

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

15 (f) As used in this Section:

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

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

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

21 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;  
22 100-863, eff. 8-14-18.)".