



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB3675

Introduced 2/22/2021, by Rep. Camille Y. Lilly

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Department of Transportation Law of the Civil Administrative Code of Illinois. Provides that a small business subcontractor may enter into an agreement with the Department of Transportation to receive direct payments from the Department on a construction project. Amends the State Prompt Payment Act. Requires contractors to pay each subcontractor and material supplier within 7 business days after receiving payment (currently, 10 business days or 15 calendar days). Provides that when a State official or agency responsible for administering a contract submits a voucher to the Comptroller for payment to a small business subcontractor who enters into a specified contract under the Department of Transportation Law, that State official or agency shall make available electronically the voucher information. Provides that if a contractor is assessed liquidated damages from the State, the contractor is still responsible to each subcontractor under subcontracts. Provides that contractors are responsible for reasonable attorneys' fees if an administrative law judge finds in favor of the subcontractor. Provides that if a contractor with the Department or a small business subcontractor claims that additional payment is due under the terms of the contract, and the Department of Transportation has not agreed that payment is due, the contractor or subcontractor desiring to pursue additional compensation shall file a claim according to the requirements and procedures specified by the Department. Provides that if the claim, after consideration by the Department, is found to have merit, the Department will make an equitable adjustment. Makes conforming changes.

LRB102 14588 RJF 19941 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 Department of Transportation Law of the  
5 Civil Administrative Code of Illinois is amended by adding  
6 Section 2705-620 as follows:

7 (20 ILCS 2705/2705-620 new)

8 Sec. 2705-620. Small business; Disadvantaged Business  
9 Enterprise; subcontractor direct payments.

10 (a) A small business subcontractor may enter into an  
11 agreement with the Department to receive direct payments from  
12 the Department on a construction project if the following  
13 conditions have been met:

14 (1) the subcontractor is listed on the Chief  
15 Procurement Office's Small Business Vendors Directory;

16 (2) the subcontractor is listed on the Department of  
17 Transportation Disadvantaged Business Enterprise  
18 Directory; and

19 (3) the Department has reviewed the contract and  
20 determined that it meets the requirements for fairness and  
21 responsiveness to the Department's bid specifications.

22 (b) Any contract entered into under this Section shall  
23 include the following terms:

1           (1) Any mobilization payment in the contract shall be  
2           capped at the same percentage as the mobilization payment  
3           in the contract between the Department and the prime  
4           contractor. "Mobilization payment" means an advance  
5           payment to a contractor that enables the contractor to  
6           purchase necessary machinery and tools for a project or  
7           its customary meaning in the context of the contract. The  
8           mobilization payments shall be set at a per year basis.  
9           Mobilization Payments on a multi-year project shall be  
10           paid on an annual basis.

11           (2) If the prime contractor and the Department agree  
12           to an accelerated pay schedule, the Department must agree  
13           to the new pay schedule for the subcontractor as well.

14           Section 10. The State Prompt Payment Act is amended by  
15           changing Section 7 and by adding Section 12 as follows:

16           (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

18           (a) When a State official or agency responsible for  
19           administering a contract submits a voucher to the Comptroller  
20           for payment to (i) a contractor; or (ii) a subcontractor who  
21           enters into a contract under Section 2705-620 of the  
22           Department of Transportation Law of the Civil Administrative  
23           Code of Illinois, that State official or agency shall promptly  
24           make available electronically the voucher number, the date of

1 the voucher, and the amount of the voucher. The State official  
2 or agency responsible for administering the contract shall  
3 provide subcontractors and material suppliers, known to the  
4 State official or agency, with instructions on how to access  
5 the electronic information.

6 (a-5) When a contractor receives any payment, the  
7 contractor shall pay each subcontractor and material supplier  
8 electronically within 7 ~~10~~ business days ~~or 15 calendar days,~~  
9 ~~whichever occurs earlier,~~ or, if paid by a printed check, the  
10 printed check must be postmarked within 7 ~~10~~ business days ~~or~~  
11 ~~15 calendar days, whichever occurs earlier,~~ after receiving  
12 payment in proportion to the work completed by each  
13 subcontractor and material supplier its application or pay  
14 estimate, plus interest received under this Act. When a  
15 contractor receives any payment, the contractor shall pay each  
16 lower-tiered subcontractor and material supplier and each  
17 subcontractor and material supplier shall make payment to its  
18 own respective subcontractors and material suppliers. If the  
19 contractor receives less than the full payment due under the  
20 public construction contract, the contractor shall be  
21 obligated to disburse on a pro rata basis those funds  
22 received, plus interest received under this Act, with the  
23 contractor, subcontractors and material suppliers each  
24 receiving a prorated portion based on the amount of payment  
25 each has earned. If the contractor is assessed liquidated  
26 damages from the State, the contractor is still responsible to

1 each subcontractor under the subcontracts. When, however, the  
2 State official or agency does not release the full payment due  
3 under the contract because there are specific areas of work or  
4 materials the State agency or official has determined are not  
5 suitable for payment, then those specific subcontractors or  
6 material suppliers involved shall not be paid for that portion  
7 of work rejected or deemed not suitable for payment and all  
8 other subcontractors and suppliers shall be paid based upon  
9 the amount of payment each has earned, plus interest received  
10 under this Act.

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

16 A contractor, who refuses to make prompt payment within 7  
17 ~~10~~ business days ~~or 15 calendar days, whichever occurs~~  
18 ~~earlier,~~ after receiving payment, in whole or in part, shall  
19 provide to the subcontractor or material supplier and the  
20 public owner or its agent, a written notice of that refusal.  
21 The written notice shall be made by a contractor no later than  
22 5 calendar days after payment is received by the contractor.  
23 The written notice shall identify the Department of  
24 Transportation's contract, any subcontract or material  
25 purchase agreement, a detailed reason for refusal, the value  
26 of the payment to be withheld, and the specific remedial

1 actions required of the subcontractor or material supplier so  
2 that payment may be made. Written notice of refusal may be  
3 given in a form and method which is acceptable to the parties  
4 and public owner.

5 (b) If the contractor, without reasonable cause, fails to  
6 make full payment of amounts due under subsection (a) to its  
7 subcontractors and material suppliers within 7 ~~10~~ business  
8 days ~~or 15 calendar days, whichever occurs earlier,~~ after  
9 receipt of payment from the State official or agency, the  
10 contractor shall pay to its subcontractors and material  
11 suppliers, in addition to the payment due them, interest in  
12 the amount of 2% per month, calculated from the expiration of  
13 the 7-business-day period ~~10-business-day period or the~~  
14 ~~15-calendar-day period~~ until fully paid. This subsection shall  
15 further apply to any payments made by subcontractors and  
16 material suppliers to their subcontractors and material  
17 suppliers and to all payments made to lower tier  
18 subcontractors and material suppliers throughout the  
19 contracting chain.

20 (1) If a contractor, without reasonable cause, fails  
21 to make payment in full as provided in subsection (a-5)  
22 within 7 ~~10~~ business days ~~or 15 calendar days, whichever~~  
23 ~~occurs earlier,~~ after receipt of payment under the public  
24 construction contract, any subcontractor or material  
25 supplier to whom payments are owed may file a written  
26 notice and request for administrative hearing with the

1 State official or agency setting forth the amount owed by  
2 the contractor and the contractor's failure to timely pay  
3 the amount owed. The written notice and request for  
4 administrative hearing shall identify the public  
5 construction contract, the contractor, and the amount  
6 owed, and shall contain a sworn statement or attestation  
7 to verify the accuracy of the notice. The notice and  
8 request for administrative hearing shall be filed with the  
9 State official for the public construction contract, with  
10 a copy of the notice concurrently provided to the  
11 contractor. Notice to the State official may be made by  
12 certified or registered mail, messenger service, or  
13 personal service, and must include proof of delivery to  
14 the State official.

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

1 or material supplier has the right to be represented by  
2 counsel at a hearing and to cross-examine witnesses and  
3 challenge documents. Upon the request of the subcontractor  
4 or material supplier and a showing of good cause,  
5 reasonable continuances may be granted by the  
6 administrative law judge.

7 (3) Upon a finding by the administrative law judge  
8 that the contractor failed to make payment in full,  
9 without reasonable cause, ~~as provided in subsection~~  
10 ~~(a 10), then~~ the administrative law judge shall, in  
11 writing, order the contractor to pay the amount owed to  
12 the subcontractors or material suppliers plus interest and  
13 all reasonable attorneys' fees incurred by the  
14 subcontractor within 15 calendar days after the order.

15 (4) If a contractor fails to make full payment as  
16 ordered under paragraph (3) of this subsection (b) within  
17 15 days after the administrative law judge's order, then  
18 the contractor shall be barred from entering into a State  
19 public construction contract for a period of one year  
20 beginning on the date of the administrative law judge's  
21 order.

22 (5) If, on 2 or more occasions within a  
23 3-calendar-year period, there is a finding by an  
24 administrative law judge that the contractor failed to  
25 make payment in full, without reasonable cause, and a  
26 written order was issued to a contractor under paragraph



1 (3) of this subsection (b), then the contractor shall be  
2 barred from entering into a State public construction  
3 contract for a period of 6 months beginning on the date of  
4 the administrative law judge's second written order, even  
5 if the payments required under the orders were made in  
6 full.

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

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

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

26 (c) This Section shall not be construed to in any manner

1 diminish, negate, or interfere with the  
2 contractor-subcontractor or contractor-material supplier  
3 relationship or commercially useful function.

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

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

11 (f) As used in this Section:

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

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

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

17 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;  
18 100-863, eff. 8-14-18; 101-524, eff. 1-1-20.)

19 (30 ILCS 540/12 new)

20 Sec. 12. Contract claims. If (i) a contractor who has a  
21 contract with the Department of Transportation; or (ii) a  
22 subcontractor who enters into a contract under Section  
23 2705-620 of the Civil Administrative Code of Illinois claims  
24 that additional payment is due under the terms of the  
25 contract, or for any other reason arising out of the

1 performance of the contract, and the Department has not agreed  
2 during the ordinary course of contract administration that the  
3 payment is due, then the contractor or subcontractor may file  
4 a claim according to the requirements and procedures specified  
5 by the Department. If written notifications are not given, or  
6 if the Department is not afforded reasonable access by the  
7 contractor or subcontractor to complete records of actual  
8 costs or additional time claimed, or if a claim is not filed  
9 according to the procedures and within the time specified in  
10 the rules of the Department of Transportation, then the  
11 contractor or subcontractor's claim is waived and the  
12 Department is released from any and all demands and claims  
13 under that contract by the contractor or subcontractor. The  
14 fact that the contractor or subcontractor has provided a  
15 proper notification, provided a properly filed claim, or  
16 provided the Department access to records of actual cost shall  
17 not in any way be construed as proving or substantiating the  
18 validity of the claim. If the claim, after consideration by  
19 the Department, is found to have merit, the Department will  
20 make an equitable adjustment either in the amount of costs to  
21 be paid according to the basis of payment specified by the  
22 Department or in the time required for the work, or both. If  
23 the Department finds the claim to be without merit, no  
24 adjustment will be made.

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2

Statutes amended in order of appearance

3

20 ILCS 2705/2705-620 new

4

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

5

30 ILCS 540/12 new