



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB2816

Introduced 2/16/2023, by Rep. Camille Y. Lilly

SYNOPSIS AS INTRODUCED:

20 ILCS 2705/2705-625 new
30 ILCS 540/7
30 ILCS 540/12 new

from Ch. 127, par. 132.407

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 attorney's 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.

LRB103 29422 DTM 55813 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 Department of Transportation Law of the
5 Civil Administrative Code of Illinois is amended by adding
6 Section 2705-625 as follows:

7 (20 ILCS 2705/2705-625 new)

8 Sec. 2705-625. 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 a subcontractor who enters into a contract
21 under Section 2705-620 of the Department of Transportation Law
22 of the Civil Administrative Code of Illinois or a contractor,
23 that State official or agency shall promptly make available
24 electronically the voucher number, the date of the voucher,

1 and the amount of the voucher. The State official or agency
2 responsible for administering the contract shall provide
3 subcontractors and material suppliers, known to the State
4 official or agency, with instructions on how to access the
5 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 attorney's 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 a contractor who has a
21 contract with the Department of Transportation or 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, if
6 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.