



Sen. Terry Link

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09400HB5260sam001

LRB094 16231 RSP 56931 a

1 AMENDMENT TO HOUSE BILL 5260

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5260 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 3-2 and 7 as follows:

6 (30 ILCS 540/3-2) (from Ch. 127, par. 132.403-2)

7 Sec. 3-2. Beginning July 1, 1993, in any instance where a  
8 State official or agency is late in payment of a vendor's bill  
9 or invoice for goods or services furnished to the State, as  
10 defined in Section 1, properly approved in accordance with  
11 rules promulgated under Section 3-3, the State official or  
12 agency shall pay interest to the vendor in accordance with the  
13 following:

14 (1) Any bill approved for payment under this Section  
15 must be paid or the payment issued to the payee within 60  
16 days of receipt of a proper bill or invoice. If payment is  
17 not issued to the payee within this 60 day period, an  
18 interest penalty of 1.0% of any amount approved and unpaid  
19 shall be added for each month or fraction thereof after the  
20 end of this 60 day period, until final payment is made.

21 (1.1) A State agency shall review in a timely manner  
22 each bill or invoice after its receipt. If the State agency  
23 determines that the bill or invoice contains a defect  
24 making it unable to process the payment request, the agency

1 shall notify the vendor requesting payment as soon as  
2 possible after discovering the defect pursuant to rules  
3 promulgated under Section 3-3; provided, however, that the  
4 notice for construction related bills or invoices must be  
5 given not later than 30 days after the bill or invoice was  
6 first submitted. The notice shall identify the defect and  
7 any additional information necessary to correct the  
8 defect. If one or more items on a construction related bill  
9 or invoice are disapproved, but not the entire bill or  
10 invoice, then the portion that is not disapproved shall be  
11 paid.

12 (2) Where a State official or agency is late in payment  
13 of a vendor's bill or invoice properly approved in  
14 accordance with this Act, and different late payment terms  
15 are not reduced to writing as a contractual agreement, the  
16 State official or agency shall automatically pay interest  
17 penalties required by this Section amounting to \$50 or more  
18 to the appropriate vendor. Each agency shall be responsible  
19 for determining whether an interest penalty is owed and for  
20 paying the interest to the vendor. For interest of at least  
21 \$5 but less than \$50, the vendor must initiate a written  
22 request for the interest penalty when such interest is due  
23 and payable. The Department of Central Management Services  
24 and the State Comptroller shall jointly promulgate rules  
25 establishing the conditions under which interest of less  
26 than \$5 may be claimed and paid. In the event an individual  
27 has paid a vendor for services in advance, the provisions  
28 of this Section shall apply until payment is made to that  
29 individual.

30 (Source: P.A. 92-384, eff. 7-1-02.)

31 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

33 (a) When a State official or agency responsible for

1 administering a contract submits a voucher to the Comptroller  
2 for payment to a contractor, that State official or agency  
3 shall promptly make available electronically the voucher  
4 number, the date of the voucher, and the amount of the voucher.  
5 The State official or agency responsible for administering the  
6 contract shall provide subcontractors and material suppliers,  
7 known to the State official or agency, with instructions on how  
8 to access the electronic information. When a contractor  
9 receives any payment, the contractor shall pay each  
10 subcontractor and material supplier in proportion to the work  
11 completed by each subcontractor and material supplier their  
12 application, plus interest received under this Act, less any  
13 retention. If the contractor receives less than the full  
14 payment due under the public construction contract, the  
15 contractor shall be obligated to disburse on a pro rata basis  
16 those funds received, plus interest received under this Act,  
17 with the contractor, subcontractors and material suppliers  
18 each receiving a prorated portion based on the amount of  
19 payment. When, however, the public owner does not release the  
20 full payment due under the contract because there are specific  
21 areas of work or materials the contractor is rejecting or  
22 because the contractor has otherwise determined such areas are  
23 not suitable for payment, then those specific subcontractors or  
24 suppliers involved shall not be paid for that portion of work  
25 rejected or deemed not suitable for payment and all other  
26 subcontractors and suppliers shall be paid in full, plus  
27 interest received under this Act.

28 (b) If the contractor, without reasonable cause, fails to  
29 make full payment of amounts due under subsection (a) to his  
30 subcontractors and material suppliers within 15 days after  
31 receipt of payment under the public construction contract, the  
32 contractor shall pay to his subcontractors and material  
33 suppliers, in addition to the payment due them, interest in the  
34 amount of 2% per month, calculated from the expiration of the

1 15-day period until fully paid. This subsection shall also  
2 apply to any payments made by subcontractors and material  
3 suppliers to their subcontractors and material suppliers and to  
4 all payments made to lower tier subcontractors and material  
5 suppliers throughout the contracting chain.

6 (1) If a contractor, without reasonable cause, fails to  
7 make payment in full as provided in subsection (a) within  
8 15 days after receipt of payment under the public  
9 construction contract, any subcontractor or material  
10 supplier to whom payments are owed may file a written  
11 notice with the State official or agency setting forth the  
12 amount owed by the contractor and the contractor's failure  
13 to timely pay the amount owed.

14 (2) The State official or agency, within 15 days after  
15 receipt of a subcontractor's or material supplier's  
16 written notice of the failure to receive payment from the  
17 contractor, shall hold a hearing convened by an  
18 administrative law judge to determine whether the  
19 contractor withheld payment, without reasonable cause,  
20 from the subcontractors and material suppliers and what  
21 amount, if any, is due to the subcontractors and material  
22 suppliers. The State official or agency shall provide  
23 appropriate notice to the parties of the date, time, and  
24 location of the hearing. Each contractor, subcontractor,  
25 and material supplier has the right to be represented by  
26 counsel at the hearing and to cross-examine witnesses and  
27 challenge documents.

28 (3) If there is a finding by the administrative law  
29 judge that the contractor failed to make payment in full,  
30 without reasonable cause, as provided in subsection (a),  
31 then the administrative law judge shall, in writing, direct  
32 the contractor to pay the amount owed to the subcontractors  
33 and material suppliers plus interest within 15 days after  
34 the finding.

1           (4) If a contractor fails to make full payment within  
2           15 days after the administrative law judge's finding, then  
3           the contractor shall be barred from entering into a State  
4           public construction contract for a period of one year  
5           beginning on the date of the administrative law judge's  
6           finding.

7           (Source: P.A. 94-672, eff. 1-1-06.)

8           Section 10. The Local Government Prompt Payment Act is  
9           amended by changing Sections 3 and 9 as follows:

10           (50 ILCS 505/3) (from Ch. 85, par. 5603)

11           Sec. 3. The appropriate local governmental official or  
12           agency receiving goods or services must approve or disapprove a  
13           bill from a vendor or contractor for goods or services  
14           furnished the local governmental agency within 30 days after  
15           the receipt of such bill or within 30 days after the date on  
16           which the goods or services were received, whichever is later.  
17           If one or more items on a construction related bill or invoice  
18           are disapproved, but not the entire bill or invoice, then the  
19           portion that is not disapproved shall be paid. When safety or  
20           quality assurance testing of goods by the local governmental  
21           agency is necessary before the approval or disapproval of a  
22           bill and such testing cannot be completed within 30 days after  
23           receipt of the goods, approval or disapproval of the bill must  
24           be made immediately upon completion of the testing or within 60  
25           days after receipt of the goods, whichever occurs first.  
26           Written notice shall be mailed to the vendor or contractor  
27           immediately if a bill is disapproved.

28           (Source: P.A. 87-773.)

29           (50 ILCS 505/9) (from Ch. 85, par. 5609)

30           Sec. 9. Payments to subcontractors and material suppliers;  
31           failure to make timely payments; additional amount due. When a

1 contractor receives any payment, the contractor shall pay each  
2 subcontractor and material supplier in proportion to the work  
3 completed by each subcontractor and material supplier their  
4 application less any retention. If the contractor receives less  
5 than the full payment due under the public construction  
6 contract, the contractor shall be obligated to disburse on a  
7 pro rata basis those funds received, with the contractor,  
8 subcontractors and material suppliers each receiving a  
9 prorated portion based on the amount of payment. All interest  
10 payments received pursuant to Section 4 also shall be disbursed  
11 to subcontractors and material suppliers to whom payment has  
12 been delayed, on a pro rata basis. When, however, the public  
13 owner does not release the full payment due under the contract  
14 because there are specific areas of work or materials the  
15 contractor is rejecting or because the contractor has otherwise  
16 determined such areas are not suitable for payment, then those  
17 specific subcontractors or suppliers involved shall not be paid  
18 for that portion of the work rejected or deemed not suitable  
19 for payment and all other subcontractors and suppliers shall be  
20 paid in full.

21 If the contractor, without reasonable cause, fails to make  
22 any payment to his subcontractors and material suppliers within  
23 15 days after receipt of payment under the public construction  
24 contract, the contractor shall pay to his subcontractors and  
25 material suppliers, in addition to the payment due them,  
26 interest in the amount of 2% per month, calculated from the  
27 expiration of the 15-day period until fully paid. This Section  
28 ~~subsection~~ shall also apply to any payments made by  
29 subcontractors and material suppliers to their subcontractors  
30 and material suppliers and to all payments made to lower tier  
31 subcontractors and material suppliers throughout the  
32 contracting chain.

33 (Source: P.A. 87-773.)

1           Section 99. Effective date. This Act takes effect July 1,  
2    2007.".