

SB0133



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB0133

Introduced 1/27/2011, by Sen. Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

30 ILCS 500/20-120
30 ILCS 540/7

from Ch. 127, par. 132.407

Amends the Illinois Procurement Code. Provides that all subcontracts shall be deemed to provide that if the subcontractor has performed in accordance with the provisions of his or her subcontract and the work has been accepted by the appropriate State official or agency, the State official or agency shall pay the amount due the subcontractor directly to the subcontractor pursuant to the proper bill or invoice provided by the contractor to the State official or agency. Amends the State Prompt Payment Act. Provides that the provisions of a Section concerning payments to subcontractors and material suppliers do not apply to subcontracts entered into pursuant to the Illinois Procurement Code.

LRB097 06276 PJG 46352 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 Illinois Procurement Code is amended by
5 changing Section 20-120 as follows:

6 (30 ILCS 500/20-120)

7 Sec. 20-120. Subcontractors.

8 (a) Any contract granted under this Code shall state
9 whether the services of a subcontractor will or may be used.
10 The contract shall include the names and addresses of all known
11 subcontractors with subcontracts with an annual value of more
12 than \$25,000 and the expected amount of money each will receive
13 under the contract. For procurements subject to the authority
14 of the chief procurement officer appointed pursuant to
15 subsection (a) (2) of Section 10-20, the contract shall include
16 only the names and addresses of all known subcontractors of the
17 primary contractor with subcontracts with an annual value of
18 more than \$25,000. The contractor shall provide the chief
19 procurement officer or State purchasing officer a copy of any
20 subcontract with an annual value of more than \$25,000 so
21 identified within 20 days after the execution of the State
22 contract or after execution of the subcontract, whichever is
23 later. A subcontractor, or contractor on behalf of a

1 subcontractor, may identify information that is deemed
2 proprietary or confidential. If the chief procurement officer
3 determines the information is not relevant to the primary
4 contract, the chief procurement officer may excuse the
5 inclusion of the information. If the chief procurement officer
6 determines the information is proprietary or could harm the
7 business interest of the subcontractor, the chief procurement
8 officer may, in his or her discretion, redact the information.
9 Redacted information shall not become part of the public
10 record.

11 (b) If at any time during the term of a contract, a
12 contractor adds or changes any subcontractors, he or she shall
13 promptly notify, in writing, the chief procurement officer,
14 State purchasing officer, or their designee of the names and
15 addresses and the expected amount of money each new or replaced
16 subcontractor will receive. The contractor shall provide to the
17 responsible chief procurement officer a copy of the subcontract
18 within 20 days after the execution of the subcontract.

19 (c) In addition to any other requirements of this Code, a
20 subcontract subject to this Section must include all of the
21 subcontractor's certifications required by Article 50 of the
22 Code.

23 (c-5) All contracts granted under this Code and all
24 subcontracts pursuant to those contracts shall be deemed to
25 provide that if a subcontractor has performed in accordance
26 with the provisions of his or her subcontract and the work has

1 been accepted by the appropriate State agency, the State agency
2 shall pay the amount due the subcontractor directly to the
3 subcontractor pursuant to the proper bill or invoice provided
4 by the contractor to the State agency in accordance with the
5 provisions of the State Prompt Payment Act. For any contract
6 granted under this Code, a contractor shall deliver to the
7 State agency, upon completion of the contract, a proper bill or
8 invoice, as defined in the State Prompt Payment Act, for each
9 subcontractor with whom the contractor has a subcontract.

10 (d) This Section applies to procurements solicited on or
11 after the effective date of this amendatory Act of the 96th
12 General Assembly.

13 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793
14 for the effective date of P.A. 96-795); 96-920, eff. 7-1-10.)

15 Section 10. The State Prompt Payment Act is amended by
16 changing Section 7 as follows:

17 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

19 (a) When a State official or agency responsible for
20 administering a contract submits a voucher to the Comptroller
21 for payment to a contractor, that State official or agency
22 shall promptly make available electronically the voucher
23 number, the date of the voucher, and the amount of the voucher.
24 The State official or agency responsible for administering the

1 contract shall provide subcontractors and material suppliers,
2 known to the State official or agency, with instructions on how
3 to access the electronic information. When a contractor
4 receives any payment, the contractor shall pay each
5 subcontractor and material supplier in proportion to the work
6 completed by each subcontractor and material supplier their
7 application, plus interest received under this Act, less any
8 retention. 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. When, however, the public owner does not release the
15 full payment due under the contract because there are specific
16 areas of work or materials the contractor is rejecting or
17 because the contractor has otherwise determined such areas are
18 not suitable for payment, then those specific subcontractors or
19 suppliers involved shall not be paid for that portion of work
20 rejected or deemed not suitable for payment and all other
21 subcontractors and suppliers shall be paid in full, plus
22 interest received under this Act.

23 (b) If the contractor, without reasonable cause, fails to
24 make full payment of amounts due under subsection (a) to his
25 subcontractors and material suppliers within 15 days after
26 receipt of payment under the public construction contract, the

1 contractor shall pay to his subcontractors and material
2 suppliers, in addition to the payment due them, interest in the
3 amount of 2% per month, calculated from the expiration of the
4 15-day period until fully paid. This subsection shall also
5 apply to any payments made by subcontractors and material
6 suppliers to their subcontractors and material suppliers and to
7 all payments made to lower tier subcontractors and material
8 suppliers throughout the contracting chain.

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

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

1 location of the hearing. Each contractor, subcontractor,
2 and material supplier has the right to be represented by
3 counsel at the hearing and to cross-examine witnesses and
4 challenge documents.

5 (3) If there is a finding by the administrative law
6 judge that the contractor failed to make payment in full,
7 without reasonable cause, as provided in subsection (a),
8 then the administrative law judge shall, in writing, direct
9 the contractor to pay the amount owed to the subcontractors
10 and material suppliers plus interest within 15 days after
11 the finding.

12 (4) If a contractor fails to make full payment within
13 15 days after the administrative law judge's finding, then
14 the contractor shall be barred from entering into a State
15 public construction contract for a period of one year
16 beginning on the date of the administrative law judge's
17 finding.

18 (c) The provisions of this Section do not apply to payments
19 to a subcontractor for work performed under a subcontract
20 entered into with a contractor under the Illinois Procurement
21 Code.

22 (Source: P.A. 94-672, eff. 1-1-06; 94-972, eff. 7-1-07.)