



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3235

Introduced 2/1/2012, 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 the Department of Transportation shall, by rule, implement a pilot program under which select construction contracts shall contain provisions that if a subcontractor has performed in accordance with the provisions of the subcontract and the work has been accepted by the Department, the Department shall pay the subcontractor directly. Provides that the program shall apply only to state-funded contracts under \$10 million in value and to those contracts with subcontracts that contain provisions corresponding to pay items that are exclusively and completely performed by the subcontractor. Provides that the program shall be implemented by January 1, 2013 and shall expire on January 1, 2014. Amends the State Prompt Payment Act. Provides that certain provisions concerning payments to subcontractors do not apply to payments to a subcontractor for work performed under a subcontract entered into with a construction contractor if the contract contains a provision that the State agency shall pay the subcontractor directly. Effective immediately.

LRB097 15540 PJG 60670 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) The Department of Transportation shall, by rule,
24 implement a pilot program under which select construction
25 contracts granted under this Code and all subcontracts pursuant
26 to those contracts shall contain provisions that if a

1 subcontractor has performed in accordance with the provisions
2 of his or her subcontract and the work has been accepted by the
3 Department, the Department shall pay the amount due the
4 subcontractor directly to the subcontractor pursuant to the
5 proper bill or invoice provided by the contractor to the
6 Department in accordance with the provisions of the State
7 Prompt Payment Act. If a construction contract granted under
8 this Code contains a provision that the Department shall pay
9 the subcontractor directly, the contractor shall deliver to the
10 Department a proper bill or invoice, as defined in the State
11 Prompt Payment Act, for each subcontractor with whom the
12 contractor has a subcontract. The pilot program shall apply
13 only to state-funded contracts under \$10 million in value and
14 to those contracts with subcontracts that contain provisions
15 corresponding to pay items that are exclusively and completely
16 performed by the subcontractor. The Secretary of
17 Transportation may exempt any contract from the pilot program
18 if the Secretary determines that the particular contract and
19 its related subcontracts are administratively burdensome. The
20 pilot program shall be implemented by January 1, 2013 and shall
21 expire on January 1, 2014. The Department and the Comptroller
22 shall report to the General Assembly the results of the pilot
23 program with recommendations on whether or not to continue the
24 program and any suggested improvements to the program.

25 (d) This Section applies to procurements solicited on or
26 after the effective date of this amendatory Act of the 96th

1 General Assembly.

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

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

6 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

8 (a) When a State official or agency responsible for
9 administering a contract submits a voucher to the Comptroller
10 for payment to a contractor, that State official or agency
11 shall promptly make available electronically the voucher
12 number, the date of the voucher, and the amount of the voucher.
13 The State official or agency responsible for administering the
14 contract shall provide subcontractors and material suppliers,
15 known to the State official or agency, with instructions on how
16 to access the electronic information. When a contractor
17 receives any payment, the contractor shall pay each
18 subcontractor and material supplier in proportion to the work
19 completed by each subcontractor and material supplier their
20 application, plus interest received under this Act, less any
21 retention. If the contractor receives less than the full
22 payment due under the public construction contract, the
23 contractor shall be obligated to disburse on a pro rata basis
24 those funds received, plus interest received under this Act,

1 with the contractor, subcontractors and material suppliers
2 each receiving a prorated portion based on the amount of
3 payment. When, however, the public owner does not release the
4 full payment due under the contract because there are specific
5 areas of work or materials the contractor is rejecting or
6 because the contractor has otherwise determined such areas are
7 not suitable for payment, then those specific subcontractors or
8 suppliers involved shall not be paid for that portion of work
9 rejected or deemed not suitable for payment and all other
10 subcontractors and suppliers shall be paid in full, plus
11 interest received under this Act.

12 (b) If the contractor, without reasonable cause, fails to
13 make full payment of amounts due under subsection (a) to his
14 subcontractors and material suppliers within 15 days after
15 receipt of payment under the public construction contract, the
16 contractor shall pay to his subcontractors and material
17 suppliers, in addition to the payment due them, interest in the
18 amount of 2% per month, calculated from the expiration of the
19 15-day period until fully paid. This subsection shall also
20 apply to any payments made by subcontractors and material
21 suppliers to their subcontractors and material suppliers and to
22 all payments made to lower tier subcontractors and material
23 suppliers throughout the contracting chain.

24 (1) If a contractor, without reasonable cause, fails to
25 make payment in full as provided in subsection (a) within
26 15 days after receipt of payment under the public

1 construction contract, any subcontractor or material
2 supplier to whom payments are owed may file a written
3 notice with the State official or agency setting forth the
4 amount owed by the contractor and the contractor's failure
5 to timely pay the amount owed.

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

20 (3) If there is a finding by the administrative law
21 judge that the contractor failed to make payment in full,
22 without reasonable cause, as provided in subsection (a),
23 then the administrative law judge shall, in writing, direct
24 the contractor to pay the amount owed to the subcontractors
25 and material suppliers plus interest within 15 days after
26 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 (c) The provisions of this Section do not apply to payments
8 to a subcontractor for work performed under a subcontract
9 entered into with a construction contractor if the contract
10 contains a provision that the State agency shall pay the
11 subcontractor directly as required under a pilot program
12 implemented by the Department of Transportation.

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

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.