



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3486

by Rep. William Davis

#### SYNOPSIS AS INTRODUCED:

20 ILCS 2705/2705-615 new  
30 ILCS 500/45-45  
30 ILCS 540/7  
30 ILCS 540/8 new

from Ch. 127, par. 132.407

Amends 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 Procurement Code. Provides that any construction project under the authority of the chief procurement officer valued at \$195,000 or less shall be designated for a small business set-aside. Amends the State Prompt Payment Act. 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 contract, that State official or agency shall make available electronically the voucher information. 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.

LRB099 09361 SXM 31696 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 2705-615 as follows:

7 (20 ILCS 2705/2705-615 new)

8 Sec. 2705-615. 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 pursuant to 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 its  
7           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 paid  
10           on an annual basis.

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

14           Section 10. The Illinois Procurement Code is amended by  
15           changing Section 45-45 as follows:

16           (30 ILCS 500/45-45)

17           Sec. 45-45. Small businesses.

18           (a) Set-asides. Each chief procurement officer has  
19           authority to designate as small business set-asides a fair  
20           proportion of construction, supply, and service contracts for  
21           award to small businesses in Illinois. Any construction project  
22           under the authority of the chief procurement officer appointed  
23           pursuant to paragraph (2) of subsection (a) of Section 10-20  
24           valued at \$195,000 or less shall be designated for a small

1 business set-aside. Advertisements for bids or offers for those  
2 contracts shall specify designation as small business  
3 set-asides. In awarding the contracts, only bids or offers from  
4 qualified small businesses shall be considered.

5 (b) Small business. "Small business" means a business that  
6 is independently owned and operated and that is not dominant in  
7 its field of operation. The chief procurement officer shall  
8 establish a detailed definition by rule, using in addition to  
9 the foregoing criteria other criteria, including the number of  
10 employees and the dollar volume of business. When computing the  
11 size status of a potential contractor, annual sales and  
12 receipts of the potential contractor and all of its affiliates  
13 shall be included. The maximum number of employees and the  
14 maximum dollar volume that a small business may have under the  
15 rules promulgated by the chief procurement officer may vary  
16 from industry to industry to the extent necessary to reflect  
17 differing characteristics of those industries, subject to the  
18 following limitations:

19 (1) No wholesale business is a small business if its  
20 annual sales for its most recently completed fiscal year  
21 exceed \$13,000,000.

22 (2) No retail business or business selling services is  
23 a small business if its annual sales and receipts exceed  
24 \$8,000,000.

25 (3) No manufacturing business is a small business if it  
26 employs more than 250 persons.

1           (4) No construction business is a small business if its  
2           annual sales and receipts exceed \$14,000,000.

3           (c) Fair proportion. For the purpose of subsection (a), for  
4           State agencies of the executive branch, a fair proportion of  
5           construction contracts shall be no less than 25% nor more than  
6           40% of the annual total contracts for construction.

7           (d) Withdrawal of designation. A small business set-aside  
8           designation may be withdrawn by the purchasing agency when  
9           deemed in the best interests of the State. Upon withdrawal, all  
10          bids or offers shall be rejected, and the bidders or offerors  
11          shall be notified of the reason for rejection. The contract  
12          shall then be awarded in accordance with this Code without the  
13          designation of small business set-aside.

14          (e) Small business specialist. The chief procurement  
15          officer shall designate a State purchasing officer who will be  
16          responsible for engaging an experienced contract negotiator to  
17          serve as its small business specialist, whose duties shall  
18          include:

19               (1) Compiling and maintaining a comprehensive list of  
20               potential small contractors. In this duty, he or she shall  
21               cooperate with the Federal Small Business Administration  
22               in locating potential sources for various products and  
23               services.

24               (2) Assisting small businesses in complying with the  
25               procedures for bidding on State contracts.

26               (3) Examining requests from State agencies for the

1 purchase of property or services to help determine which  
2 invitations to bid are to be designated small business  
3 set-asides.

4 (4) Making recommendations to the chief procurement  
5 officer for the simplification of specifications and terms  
6 in order to increase the opportunities for small business  
7 participation.

8 (5) Assisting in investigations by purchasing agencies  
9 to determine the responsibility of bidders or offerors on  
10 small business set-asides.

11 (f) Small business annual report. The State purchasing  
12 officer designated under subsection (e) shall annually before  
13 December 1 report in writing to the General Assembly concerning  
14 the awarding of contracts to small businesses. The report shall  
15 include the total value of awards made in the preceding fiscal  
16 year under the designation of small business set-aside. The  
17 report shall also include the total value of awards made to  
18 businesses owned by minorities, females, and persons with  
19 disabilities, as defined in the Business Enterprise for  
20 Minorities, Females, and Persons with Disabilities Act, in the  
21 preceding fiscal year under the designation of small business  
22 set-aside.

23 The requirement for reporting to the General Assembly shall  
24 be satisfied by filing copies of the report as required by  
25 Section 3.1 of the General Assembly Organization Act.

26 (Source: P.A. 98-1076, eff. 1-1-15.)

1 Section 15. The State Prompt Payment Act is amended by  
2 changing Section 7 and by adding Section 8 as follows:

3 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

5 (a) When a State official or agency responsible for  
6 administering a contract submits a voucher to the Comptroller  
7 for payment to (i) a contractor; or (ii) a subcontractor who  
8 enters into a contract pursuant to Section 2705-615 of the  
9 Civil Administrative Code of Illinois, that State official or  
10 agency shall promptly make available electronically the  
11 voucher number, the date of the voucher, and the amount of the  
12 voucher. The State official or agency responsible for  
13 administering the contract shall provide subcontractors and  
14 material suppliers, known to the State official or agency, with  
15 instructions on how to access the electronic information. When  
16 a contractor receives any payment, the contractor shall pay  
17 each subcontractor and material supplier in proportion to the  
18 work completed by each subcontractor and material supplier  
19 their application, plus interest received under this Act, less  
20 any retention. If the contractor receives less than the full  
21 payment due under the public construction contract, the  
22 contractor shall be obligated to disburse on a pro rata basis  
23 those funds received, plus interest received under this Act,  
24 with the contractor, subcontractors and material suppliers

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

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

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



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

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

19 (3) If there is a finding by the administrative law  
20 judge that the contractor failed to make payment in full,  
21 without reasonable cause, as provided in subsection (a),  
22 then the administrative law judge shall, in writing, direct  
23 the contractor to pay the amount owed to the subcontractors  
24 and material suppliers plus interest within 15 days after  
25 the finding.

26 (4) If a contractor fails to make full payment within

1 15 days after the administrative law judge's finding, then  
2 the contractor shall be barred from entering into a State  
3 public construction contract for a period of one year  
4 beginning on the date of the administrative law judge's  
5 finding.

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

7 (30 ILCS 540/8 new)

8 Sec. 8. Contract Claims. If (i) a contractor who has a  
9 contract with the Department of Transportation, or (ii) a  
10 subcontractor who enters into a contract pursuant to Section  
11 2705-615 of the Civil Administrative Code of Illinois claims  
12 that additional payment is due under the terms of the contract,  
13 or for any other reason arising out of the performance of the  
14 contract, and the Department has not agreed during the ordinary  
15 course of contract administration that the payment is due, then  
16 the contractor or subcontractor may file a claim according to  
17 the requirements and procedures specified by the Department. If  
18 written notifications are not given, or if the Department is  
19 not afforded reasonable access by the contractor or  
20 subcontractor to complete records of actual costs or additional  
21 time claimed, or if a claim is not filed according to the  
22 procedures and within the time specified in the rules of the  
23 Department of Transportation, then the contractor or  
24 subcontractor's claim is waived and the Department is released  
25 from any and all demands and claims under that contract by the

1 contract or subcontractor. The fact that the contractor or  
2 subcontractor has provided a proper notification, provided a  
3 properly filed claim, or provided the Department access to  
4 records of actual cost shall not in any way be construed as  
5 proving or substantiating the validity of the claim. If the  
6 claim, after consideration by the Department, is found to have  
7 merit, the Department will make an equitable adjustment either  
8 in the amount of costs to be paid according to the basis of  
9 payment specified by the Department or in the time required for  
10 the work, or both. If the Department finds the claim to be  
11 without merit, no adjustment will be made.