



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2741

Introduced 1/20/2006, by Sen. Terry Link

SYNOPSIS AS INTRODUCED:

30 ILCS 540/3-2	from Ch. 127, par. 132.403-2
30 ILCS 540/3-5 new	
30 ILCS 540/3-6 new	
30 ILCS 540/7	from Ch. 127, par. 132.407

Amends the State Prompt Payment Act to provide that notification to a vendor that a bill or invoice contains a defect must be given not later than 45 days after the bill was first submitted or not later than 30 days after the receipt of the goods or services, whichever is later. Sets forth that if the State official or agency whose approval is required for any invoice fails to approve or disapprove that invoice within this notification period, the interest for late payment of that invoice shall be computed from the date 60 days after the receipt of that invoice or the date 60 days after the goods or services are received, whichever is later. Provides that if the State fails to pay any invoice within 30 days of approval or fails to approve or disapprove the invoice within the period at which interest may accrue, plus an additional 30 days, the contractor and subcontractors not paid may suspend performance under the construction contract or subcontracts without penalty, until the overdue payment or payments are made. Authorizes contractors, subcontractors, and material suppliers to recover the interest payable under this Act in any action pursuant to Section 23 of the Mechanics Lien Act or pursuant to the Public Construction Bond Act.

LRB094 16230 RSP 51474 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 State Prompt Payment Act is amended by
5 changing Sections 3-2 and 7 and by adding Sections 3-5 and 3-6
6 as follows:

7 (30 ILCS 540/3-2) (from Ch. 127, par. 132.403-2)

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

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

22 (1.1) A State agency shall review in a timely manner
23 each bill or invoice after its receipt. If the State agency
24 determines that the bill or invoice contains a defect
25 making it unable to process the payment request, the agency
26 shall notify the vendor requesting payment as soon as
27 possible after discovering the defect pursuant to rules
28 promulgated under Section 3-3, provided that the notice
29 must be given not later than 45 days after the bill was
30 first submitted or not later than 30 days after the receipt
31 of the goods or services, whichever is later. The notice
32 shall identify the defect and any additional information

1 necessary to correct the defect.

2 (2) Where a State official or agency is late in payment
3 of a vendor's bill or invoice properly approved in
4 accordance with this Act, and different late payment terms
5 are not reduced to writing as a contractual agreement, the
6 State official or agency shall automatically pay interest
7 penalties required by this Section amounting to \$50 or more
8 to the appropriate vendor. Each agency shall be responsible
9 for determining whether an interest penalty is owed and for
10 paying the interest to the vendor. For interest of at least
11 \$5 but less than \$50, the vendor must initiate a written
12 request for the interest penalty when such interest is due
13 and payable. The Department of Central Management Services
14 and the State Comptroller shall jointly promulgate rules
15 establishing the conditions under which interest of less
16 than \$5 may be claimed and paid. In the event an individual
17 has paid a vendor for services in advance, the provisions
18 of this Section shall apply until payment is made to that
19 individual.

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

21 (30 ILCS 540/3-5 new)

22 Sec. 3-5. Interest for late payment. If the State official
23 or agency whose approval is required for any invoice fails to
24 approve or disapprove that invoice within the period provided
25 for approval by Section 3-2 of this Act, the interest for late
26 payment of that invoice shall be computed from the date 60 days
27 after the receipt of that invoice or the date 60 days after the
28 goods or services are received, whichever is later.

29 (30 ILCS 540/3-6 new)

30 Sec. 3-6. Cessation of work for nonpayment. If the State
31 fails to pay any invoice within 30 days of approval or fails to
32 approve or disapprove the invoice within the time set forth in
33 Section 3-5 of this Act, plus an additional 30 days, the
34 contractor and subcontractors not paid may suspend performance

1 under the construction contract or subcontracts without
2 penalty, until the overdue payment or payments are made.

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

33 Contractors, subcontractors, and material suppliers shall
34 be entitled to recover interest payable under this Act in any
35 action pursuant to Section 23 of the Mechanics Lien Act (770

1 ILCS 60/23) or pursuant to the Public Construction Bond Act (30
2 ILCS 550/).

3 (b) If the contractor, without reasonable cause, fails to
4 make full payment of amounts due under subsection (a) to his
5 subcontractors and material suppliers within 15 days after
6 receipt of payment under the public construction contract, the
7 contractor shall pay to his subcontractors and material
8 suppliers, in addition to the payment due them, interest in the
9 amount of 2% per month, calculated from the expiration of the
10 15-day period until fully paid. This subsection shall also
11 apply to any payments made by subcontractors and material
12 suppliers to their subcontractors and material suppliers and to
13 all payments made to lower tier subcontractors and material
14 suppliers throughout the contracting chain.

15 (1) If a contractor, without reasonable cause, fails to
16 make payment in full as provided in subsection (a) within
17 15 days after receipt of payment under the public
18 construction contract, any subcontractor or material
19 supplier to whom payments are owed may file a written
20 notice with the State official or agency setting forth the
21 amount owed by the contractor and the contractor's failure
22 to timely pay the amount owed.

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

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

8 (4) If a contractor fails to make full payment within
9 15 days after the administrative law judge's finding, then
10 the contractor shall be barred from entering into a State
11 public construction contract for a period of one year
12 beginning on the date of the administrative law judge's
13 finding.

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