



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4998

by Rep. Camille Y. Lilly

SYNOPSIS AS INTRODUCED:

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

from Ch. 127, par. 132.407

Amends the Department of Transportation Law of 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 State Prompt Payment Act. Provides that if a contractor is assessed liquidated damages from the State, the contractor is still responsible to each subcontractor under subcontracts. Provides that contractors are responsible for reasonable attorney fees if an administrative law judge finds in favor of the subcontractor. 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 18950 MLM 43339 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 State Prompt Payment Act is amended by
15 changing Section 7 and by adding Section 8 as follows:

16 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

18 (a) When a State official or agency responsible for
19 administering a contract submits a voucher to the Comptroller
20 for payment to (i) a contractor; or (ii) a subcontractor who
21 enters into a contract pursuant to Section 2705-615 of the
22 Department of Transportation Law of the Civil Administrative
23 Code of Illinois, that State official or agency shall promptly
24 make available electronically the voucher number, the date of

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

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

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

21 (2) The State official or agency, within 15 days after
22 receipt of a subcontractor's or material supplier's
23 written notice of the failure to receive payment from the
24 contractor, shall hold a hearing convened by an
25 administrative law judge to determine whether the
26 contractor withheld payment, without reasonable cause,

1 from the subcontractors and material suppliers and what
2 amount, if any, is due to the subcontractors and material
3 suppliers. The State official or agency shall provide
4 appropriate notice to the parties of the date, time, and
5 location of the hearing. Each contractor, subcontractor,
6 and material supplier has the right to be represented by
7 counsel at the hearing and to cross-examine witnesses and
8 challenge documents.

9 (3) If there is a finding by the administrative law
10 judge that the contractor failed to make payment in full,
11 without reasonable cause, as provided in subsection (a),
12 then the administrative law judge shall, in writing, direct
13 the contractor to pay the amount owed to the subcontractors
14 and material suppliers plus interest and all reasonable
15 attorney fees incurred by the subcontractor within 15 days
16 after the finding.

17 (4) If a contractor fails to make full payment within
18 15 days after the administrative law judge's finding, then
19 the contractor shall be barred from entering into a State
20 public construction contract for a period of one year
21 beginning on the date of the administrative law judge's
22 finding.

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

24 (30 ILCS 540/8 new)

25 Sec. 8. Contract Claims. If (i) a contractor who has a

1 contract with the Department of Transportation, or (ii) a
2 subcontractor who enters into a contract pursuant to Section
3 2705-615 of the Civil Administrative Code of Illinois claims
4 that additional payment is due under the terms of the contract,
5 or for any other reason arising out of the performance of the
6 contract, and the Department has not agreed during the ordinary
7 course of contract administration that the payment is due, then
8 the contractor or subcontractor may file a claim according to
9 the requirements and procedures specified by the Department. If
10 written notifications are not given, or if the Department is
11 not afforded reasonable access by the contractor or
12 subcontractor to complete records of actual costs or additional
13 time claimed, or if a claim is not filed according to the
14 procedures and within the time specified in the rules of the
15 Department of Transportation, then the contractor or
16 subcontractor's claim is waived and the Department is released
17 from any and all demands and claims under that contract by the
18 contract or subcontractor. The fact that the contractor or
19 subcontractor has provided a proper notification, provided a
20 properly filed claim, or provided the Department access to
21 records of actual cost shall not in any way be construed as
22 proving or substantiating the validity of the claim. If the
23 claim, after consideration by the Department, is found to have
24 merit, the Department will make an equitable adjustment either
25 in the amount of costs to be paid according to the basis of
26 payment specified by the Department or in the time required for

1 the work, or both. If the Department finds the claim to be
2 without merit, no adjustment will be made.