

1 AN ACT concerning State government.

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 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
16 how to access the electronic information.

17 (a-5) When a contractor receives any payment, the
18 contractor shall pay each subcontractor and material supplier
19 electronically within 10 business days or 15 calendar days,
20 whichever occurs earlier, or, if paid by a printed check, the
21 printed check must be postmarked within 10 business days or 15
22 calendar days, whichever occurs earlier, after receiving
23 payment in proportion to the work completed by each

1 subcontractor and material supplier its application or pay
2 estimate, plus interest received under this Act. When a
3 contractor receives any payment, the contractor shall pay each
4 lower-tiered subcontractor and material supplier and each
5 subcontractor and material supplier shall make payment to its
6 own respective subcontractors and material suppliers. If the
7 contractor receives less than the full payment due under the
8 public construction contract, the contractor shall be
9 obligated to disburse on a pro rata basis those funds
10 received, plus interest received under this Act, with the
11 contractor, subcontractors and material suppliers each
12 receiving a prorated portion based on the amount of payment
13 each has earned. When, however, the State official or agency
14 does not release the full payment due under the contract
15 because there are specific areas of work or materials the
16 State agency or official has determined are not suitable for
17 payment, then those specific subcontractors or material
18 suppliers involved shall not be paid for that portion of work
19 rejected or deemed not suitable for payment and all other
20 subcontractors and suppliers shall be paid based upon the
21 amount of payment each has earned, plus interest received
22 under this Act.

23 (a-10) For construction contracts with the Department of
24 Transportation or the Capital Development Board, the
25 contractor, subcontractor, or material supplier, regardless of
26 tier, shall not offset, decrease, or diminish payment or

1 payments that are due to its subcontractors or material
2 suppliers without reasonable cause.

3 A contractor, who refuses to make prompt payment within 10
4 business days or 15 calendar days, whichever occurs earlier,
5 after receiving payment, in whole or in part, shall provide to
6 the subcontractor or material supplier and the public owner or
7 its agent, a written notice of that refusal. The written
8 notice shall be made by a contractor no later than 5 calendar
9 days after payment is received by the contractor. The written
10 notice shall identify the Department of Transportation's or
11 the Capital Development Board's contract, any subcontract or
12 material purchase agreement, a detailed reason for refusal,
13 the value of the payment to be withheld, and the specific
14 remedial actions required of the subcontractor or material
15 supplier so that payment may be made. Written notice of
16 refusal may be given in a form and method which is acceptable
17 to the parties and public owner.

18 (b) If the contractor, without reasonable cause, fails to
19 make full payment of amounts due under subsection (a) to its
20 subcontractors and material suppliers within 10 business days
21 or 15 calendar days, whichever occurs earlier, after receipt
22 of payment from the State official or agency, the contractor
23 shall pay to its subcontractors and material suppliers, in
24 addition to the payment due them, interest in the amount of 2%
25 per month, calculated from the expiration of the
26 10-business-day period or the 15-calendar-day period until

1 fully paid. This subsection shall further apply to any
2 payments made by subcontractors and material suppliers to
3 their subcontractors and material suppliers and to all
4 payments made to lower tier subcontractors and material
5 suppliers throughout the contracting chain.

6 (1) If a contractor, without reasonable cause, fails
7 to make payment in full as provided in subsection (a-5)
8 within 10 business days or 15 calendar days, whichever
9 occurs earlier, after receipt of payment under the public
10 construction contract, any subcontractor or material
11 supplier to whom payments are owed may file a written
12 notice and request for administrative hearing with the
13 State official or agency setting forth the amount owed by
14 the contractor and the contractor's failure to timely pay
15 the amount owed. The written notice and request for
16 administrative hearing shall identify the public
17 construction contract, the contractor, and the amount
18 owed, and shall contain a sworn statement or attestation
19 to verify the accuracy of the notice. The notice and
20 request for administrative hearing shall be filed with the
21 State official for the public construction contract, with
22 a copy of the notice concurrently provided to the
23 contractor. Notice to the State official may be made by
24 certified or registered mail, messenger service, or
25 personal service, and must include proof of delivery to
26 the State official.

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

19 (3) Upon a finding by the administrative law judge
20 that the contractor failed to make payment in full,
21 without reasonable cause, as provided in subsection
22 (a-10), then the administrative law judge shall, in
23 writing, order the contractor to pay the amount owed to
24 the subcontractors or material suppliers plus interest
25 within 15 calendar days after the order.

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

1 ordered under paragraph (3) of this subsection (b) within
2 15 days after the administrative law judge's order, 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 order.

7 (5) If, on 2 or more occasions within a
8 3-calendar-year period, there is a finding by an
9 administrative law judge that the contractor failed to
10 make payment in full, without reasonable cause, and a
11 written order was issued to a contractor under paragraph
12 (3) of this subsection (b), then the contractor shall be
13 barred from entering into a State public construction
14 contract for a period of 6 months beginning on the date of
15 the administrative law judge's second written order, even
16 if the payments required under the orders were made in
17 full.

18 (6) If a contractor fails to make full payment as
19 ordered under paragraph (4) of this subsection (b), the
20 subcontractor or material supplier may, within 30 days of
21 the date of that order, petition the State agency for an
22 order for reasonable attorney's fees and costs incurred in
23 the prosecution of the action under this subsection (b).
24 Upon that petition and taking of additional evidence, as
25 may be required, the administrative law judge may issue a
26 supplemental order directing the contractor to pay those

1 reasonable attorney's fees and costs.

2 (7) The written order of the administrative law judge
3 shall be final and appealable under the Administrative
4 Review Law.

5 (b-5) On or before July 2021, the Department of
6 Transportation shall publish on its website a searchable
7 database that allows for queries for each active construction
8 contract by the name of a subcontractor or the pay item such
9 that each pay item is associated with either the prime
10 contractor or a subcontractor.

11 (c) This Section shall not be construed to in any manner
12 diminish, negate, or interfere with the
13 contractor-subcontractor or contractor-material supplier
14 relationship or commercially useful function.

15 (d) This Section shall not preclude, bar, or stay the
16 rights, remedies, and defenses available to the parties by way
17 of the operation of their contract, purchase agreement, the
18 Mechanics Lien Act, or the Public Construction Bond Act.

19 (e) State officials and agencies may adopt rules as may be
20 deemed necessary in order to establish the formal procedures
21 required under this Section.

22 (f) As used in this Section:

23 "Payment" means the discharge of an obligation in money or
24 other valuable consideration or thing delivered in full or
25 partial satisfaction of an obligation to pay. "Payment" shall
26 include interest paid pursuant to this Act.

1 "Reasonable cause" may include, but is not limited to,
2 unsatisfactory workmanship or materials; failure to provide
3 documentation required by the contract, subcontract, or
4 material purchase agreement; claims made against the
5 Department of Transportation, the Capital Development Board,
6 or the subcontractor pursuant to subsection (c) of Section 23
7 of the Mechanics Lien Act or the Public Construction Bond Act;
8 judgments, levies, garnishments, or other court-ordered
9 assessments or offsets in favor of the Department of
10 Transportation, the Capital Development Board, or other State
11 agency entered against a subcontractor or material supplier.
12 "Reasonable cause" does not include payments issued to the
13 contractor that create a negative or reduced valuation pay
14 application or pay estimate due to a reduction of contract
15 quantities or work not performed or provided by the
16 subcontractor or material supplier; the interception or
17 withholding of funds for reasons not related to the
18 subcontractor's or material supplier's work on the contract;
19 anticipated claims or assessments of third parties not a party
20 related to the contract or subcontract; asserted claims or
21 assessments of third parties that are not authorized by court
22 order, administrative tribunal, or statute. "Reasonable cause"
23 further does not include the withholding, offset, or reduction
24 of payment, in whole or in part, due to the assessment of
25 liquidated damages or penalties assessed by the Department of
26 Transportation or the Capital Development Board against the

1 contractor, unless the subcontractor's performance or supplied
2 materials were the sole and proximate cause of the liquidated
3 damage or penalty.

4 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;
5 100-863, eff. 8-14-18; 101-524, eff. 1-1-20.)