



Rep. William Davis

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LRB100 08773 MLM 25371 a

1 AMENDMENT TO HOUSE BILL 2664

2 AMENDMENT NO. _____. Amend House Bill 2664 by replacing
3 everything after the enacting clause with the following:

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 how
16 to access the electronic information.

1 (a-5) When a contractor receives any payment, the
2 contractor shall pay each subcontractor and material supplier
3 in proportion to the work completed by each subcontractor and
4 material supplier ~~its~~ ~~their~~ application or pay estimate, plus
5 interest received under this Act, ~~less any retention~~. When a
6 contractor receives any payment, the contractor shall pay each
7 lower-tiered subcontractor and material supplier and each
8 subcontractor and material supplier shall make payment to its
9 own respective subcontractors and material suppliers. 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 each has
16 earned. When, however, the State official or agency ~~public~~
17 ~~owner~~ does not release the full payment due under the contract
18 because there are specific areas of work or materials the State
19 agency or official has determined ~~contractor is rejecting or~~
20 ~~because the contractor has otherwise determined such areas are~~
21 not suitable for payment, then those specific subcontractors or
22 material suppliers involved shall not be paid for that portion
23 of work rejected or deemed not suitable for payment and all
24 other subcontractors and suppliers shall be paid based upon the
25 amount of payment each has earned ~~in full~~, plus interest
26 received under this Act.

1 (a-10) For construction contracts with the Department of
2 Transportation, the contractor, subcontractor, or material
3 supplier, regardless of tier, shall not offset, decrease, or
4 diminish payment or payments that are due to its subcontractors
5 or material suppliers without reasonable cause.

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

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

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

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

25 (2) The State official or agency, within 15 calendar
26 days after receipt of a subcontractor's or material

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

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

25 (4) If a contractor fails to make full payment as
26 ordered under paragraph (3) of this subsection (b) within

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

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

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

26 (7) The written order of the administrative law judge

1 shall be final and appealable under the Administrative
2 Review Law.

3 (c) This Section shall not be construed to in any manner
4 diminish, negate, or interfere with the
5 contractor-subcontractor or contractor-material supplier
6 relationship or commercially useful function.

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

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

14 (f) As used in this Section,

15 "Payment" means the discharge of an obligation in money or
16 other valuable consideration or thing delivered in full or
17 partial satisfaction of an obligation to pay. "Payment" shall
18 include interest paid pursuant to this Act.

19 "Reasonable cause" may include, but is not limited to,
20 unsatisfactory workmanship or materials; failure to provide
21 documentation required by the contract, subcontract, or
22 material purchase agreement; claims made against the
23 Department of Transportation or the subcontractor pursuant to
24 subsection (c) of Section 23 of the Mechanics Lien Act or the
25 Public Construction Bond Act; judgments, levies, garnishments,
26 or other court-ordered assessments or offsets in favor of the

1 Department of Transportation or other State agency entered
2 against a subcontractor or material supplier. "Reasonable
3 cause" does not include payments issued to the contractor that
4 create a negative or reduced valuation pay application or pay
5 estimate due to a reduction of contract quantities or work not
6 performed or provided by the subcontractor or material
7 supplier; the interception or withholding of funds for reasons
8 not related to the subcontractor's or material supplier's work
9 on the contract; anticipated claims or assessments of third
10 parties not a party related to the contract or subcontract;
11 asserted claims or assessments of third parties that are not
12 authorized by court order, administrative tribunal, or
13 statute. "Reasonable cause" further does not include the
14 withholding, offset, or reduction of payment, in whole or in
15 part, due to the assessment of liquidated damages or penalties
16 assessed by the Department of Transportation against the
17 contractor, unless the subcontractor's performance or supplied
18 materials were the sole and proximate cause of the liquidated
19 damage or penalty.

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