



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2838

by Rep. Jennifer Gong-Gershowitz

SYNOPSIS AS INTRODUCED:

820 ILCS 115/13.5 new

Amends the Illinois Wage Payment and Collection Act. Provides that, for contracts entered into on or after July 1, 2019, a direct contractor making or taking a contract in the State for the erection, construction, alteration, or repair of a building, structure, or other private work shall assume, and is liable for, any debt owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the contract between the direct contractor and the owner. Provides for enforcement by the Department of Labor. Provides authorization for third parties owed fringe or other benefits or a joint labor-management cooperation committee to bring a civil action to enforce liability against a direct contractor. Provides exemptions for work done by an employee of the State or any political subdivision of the State. Provides requirements and guidelines for notice, awards, filing, and records retention. Provides that the new provisions are severable, and that the obligations and remedies provided are in addition to any obligations and remedies otherwise provided by law. Provides that nothing the Section shall alter specified obligations and penalties set forth in the State Prompt Payment Act. Effective immediately.

LRB101 07526 TAE 52571 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Wage Payment and Collection Act is
5 amended by adding Section 13.5 as follows:

6 (820 ILCS 115/13.5 new)

7 Sec. 13.5. Primary contractor responsibility in wage
8 claims in construction industry.

9 (a) (1) For contracts entered into on or after July 1, 2019,
10 a direct contractor making or taking a contract in the State
11 for the erection, construction, alteration, or repair of a
12 building, structure, or other private work shall assume, and is
13 liable for, any debt owed to a wage claimant or third party on
14 the wage claimant's behalf, incurred by a subcontractor at any
15 tier acting under, by, or for the direct contractor for the
16 wage claimant's performance of labor included in the subject of
17 the contract between the direct contractor and the owner.

18 (2) The direct contractor's liability under this Section
19 shall extend only to any unpaid wage, fringe or other benefit
20 payment or contribution, including interest owed, but shall not
21 extend to penalties or liquidated damages.

22 (3) A direct contractor or any other person shall not evade
23 or commit any act that negates the requirements of this

1 Section. This Section does not prohibit a direct contractor or
2 subcontractor at any tier from establishing by contract or
3 enforcing any otherwise lawful remedies against a
4 subcontractor it hires for liability created by the nonpayment
5 of wages, fringe or other benefit payments, or contributions by
6 that subcontractor or by a subcontractor at any tier working
7 under that subcontractor.

8 (b) (1) The Department of Labor may enforce against a direct
9 contractor the liability for unpaid wages created by subsection
10 (a) pursuant to this Act or through a civil action. The direct
11 contractor's liability shall be limited to unpaid wages,
12 including any interest owed.

13 (2) A third party owed fringe or other benefit payments or
14 contributions on a wage claimant's behalf may bring a civil
15 action against a direct contractor to enforce the liability
16 created by subsection (a). The court shall award a prevailing
17 plaintiff in such an action its reasonable attorney's fees and
18 costs, including expert witness fees.

19 (3) A joint labor-management cooperation committee
20 established pursuant to the federal Labor Management
21 Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an
22 action in any court of competent jurisdiction against a direct
23 contractor or subcontractor at any tier for unpaid wages owed
24 to a wage claimant by the direct contractor or subcontractor
25 for the performance of private work, including unpaid wages
26 owed by the direct contractor, pursuant to subsection (a). The

1 court shall award a prevailing plaintiff in such an action its
2 reasonable attorney's fees and costs, including expert witness
3 fees. Prior to commencement of an action against a direct
4 contractor to enforce the liability created by subsection (a),
5 the committee shall provide the direct contractor and
6 subcontractor that employed the wage claimant with at least 30
7 days' notice by first-class mail. The notice need only describe
8 the general nature of the claim and shall not limit the
9 liability of the direct contractor or preclude subsequent
10 amendments of an action to encompass additional wage claimants
11 employed by the subcontractor.

12 (4) No other party may bring an action against a direct
13 contractor to enforce the liability created by subsection (a).

14 (c) Unless otherwise provided by law, property of the
15 direct contractor may be attached, after trial, for the payment
16 of any judgment received pursuant to this Section.

17 (d) A civil action authorized by this Section must be
18 commenced within one year from the date the claimed labor was
19 performed or the claimed contract work was substantially
20 completed or abandoned, whichever occurred first.

21 (e) This Section does not apply to work performed by an
22 employee of the State, a special district, a city, a county, or
23 any political subdivision of the State.

24 (f) (1) Upon request by a direct contractor to a
25 subcontractor, the subcontractor and any lower-tier
26 subcontractors under contract to the subcontractor shall

1 provide payroll records, that, at a minimum, contain the
2 information set forth in Section 10 of its employees who are
3 providing labor on a private work, which payroll records shall
4 be marked or obliterated only to prevent disclosure of an
5 individual's full social security number, but shall provide the
6 last four digits of the social security number. The payroll
7 records must contain information sufficient to apprise the
8 requesting party of the subcontractor's payment status in
9 making fringe or other benefit payments or contributions to a
10 third party on the employee's behalf.

11 (2) Upon request of a direct contractor to a subcontractor,
12 the subcontractor and any lower-tier subcontractors under
13 contract to the subcontractor shall provide the direct
14 contractor award information that includes the project name,
15 name and address of the subcontractor, contractor with whom the
16 subcontractor is under contract, anticipated start date,
17 duration, and estimated journeymen and apprentice hours, and
18 contact information for its subcontractors on the project.

19 (3) A subcontractor's failure to comply with this
20 subsection shall not relieve a direct contractor from any of
21 the obligations contained in this Section.

22 (g) For purposes of this Section, "direct contractor" means
23 a contractor that has a direct contractual relationship with an
24 owner. A reference in another statute to a "prime contractor"
25 in connection with the provisions in this Section means a
26 "direct contractor." "Subcontractor" means a contractor that

1 does not have a direct contractual relationship with an owner.

2 "Subcontractor" includes a contractor that has a contractual
3 relationship with a direct contractor or with another
4 subcontractor.

5 (h) The obligations and remedies provided in this Section
6 shall be in addition to any obligations and remedies otherwise
7 provided by law, except that nothing in this Section shall be
8 construed to impose liability on a direct contractor for
9 anything other than unpaid wages and fringe or other benefit
10 payments or contributions, including interest owed.

11 (i) Nothing in this Section shall alter the owner's
12 obligation to timely pay a direct contractor as set forth in
13 Section 3-2 of the State Prompt Payment Act, or a direct
14 contractor's obligation to timely pay a subcontractor as set
15 forth in subsection (a) of Section 7 of the State Prompt
16 Payment Act, or the penalties for failing to make a timely
17 payment as set forth in subsection (b) of Section 7 of the
18 State Prompt Payment Act, except that if a subcontractor does
19 not timely provide the information requested under paragraphs
20 (1) and (2) of subsection (f), the director contractor may
21 withhold as "disputed" all sums owed until that information is
22 provided.

23 (j) The provisions of this Section are severable. If any
24 provision of this Section or its application is held invalid,
25 that invalidity shall not affect other provisions or
26 applications that can be given effect without the invalid

1 provision or application.

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.