



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3203

Introduced 2/19/2021, by Rep. Jaime M. Andrade, Jr.

SYNOPSIS AS INTRODUCED:

30 ILCS 500/20-120
30 ILCS 540/7

from Ch. 127, par. 132.407

Amends the Illinois Procurement Code. Provides that the Capital Development Board and the Department of Transportation shall each, by rule, implement a pilot program under which select construction contracts shall contain provisions that if a subcontractor has performed in accordance with the provisions of the subcontract and the work has been accepted by the State agency, the State agency shall pay the subcontractor directly. Provides that the program shall be implemented by January 1, 2023. Amends the State Prompt Payment Act. Provides that certain provisions concerning payments to subcontractors do not apply to payments to a subcontractor for work performed under a subcontract entered into with a construction contractor if the contract contains a provision that the State agency shall pay the subcontractor directly.

LRB102 17000 RJF 22420 b

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 Illinois Procurement Code is amended by
5 changing Section 20-120 as follows:

6 (30 ILCS 500/20-120)

7 Sec. 20-120. Subcontractors.

8 (a) Any contract granted under this Code shall state
9 whether the services of a subcontractor will be used. The
10 contract shall include the names and addresses of all known
11 subcontractors with subcontracts with an annual value of more
12 than \$50,000, the general type of work to be performed by these
13 subcontractors, and the expected amount of money each will
14 receive under the contract. Upon the request of the chief
15 procurement officer appointed pursuant to paragraph (2) of
16 subsection (a) of Section 10-20, the contractor shall provide
17 the chief procurement officer a copy of a subcontract so
18 identified within 15 calendar days after the request is made.
19 A subcontractor, or contractor on behalf of a subcontractor,
20 may identify information that is deemed proprietary or
21 confidential. If the chief procurement officer determines the
22 information is not relevant to the primary contract, the chief
23 procurement officer may excuse the inclusion of the

1 information. If the chief procurement officer determines the
2 information is proprietary or could harm the business interest
3 of the subcontractor, the chief procurement officer may, in
4 his or her discretion, redact the information. Redacted
5 information shall not become part of the public record.

6 (b) If at any time during the term of a contract, a
7 contractor adds or changes any subcontractors, he or she shall
8 promptly notify, in writing, the chief procurement officer,
9 State purchasing officer, or their designee of the names and
10 addresses of each new or replaced subcontractor and the
11 general type of work to be performed. Upon the request of the
12 chief procurement officer appointed pursuant to paragraph (2)
13 of subsection (a) of Section 10-20, the contractor shall
14 provide the chief procurement officer a copy of any new or
15 amended subcontract so identified within 15 calendar days
16 after the request is made.

17 (c) In addition to any other requirements of this Code, a
18 subcontract subject to this Section must include all of the
19 subcontractor's certifications required by Article 50 of the
20 Code.

21 (c-5) The Capital Development Board and the Department of
22 Transportation shall each, by rule, implement a pilot program
23 under which select construction contracts granted under this
24 Code and all subcontracts pursuant to those contracts shall
25 contain provisions that if a subcontractor has performed in
26 accordance with the provisions of his or her subcontract and

1 the work has been accepted by the appropriate State agency,
2 the State agency shall pay the amount due the subcontractor
3 directly to the subcontractor pursuant to the proper bill or
4 invoice provided by the contractor to the State agency in
5 accordance with the provisions of the State Prompt Payment
6 Act. If a construction contract granted under this Code
7 contains a provision that the State agency shall pay the
8 subcontractor directly, the contractor shall deliver to the
9 State agency a proper bill or invoice, as defined in the State
10 Prompt Payment Act, for each subcontractor with whom the
11 contractor has a subcontract. The program shall be implemented
12 by January 1, 2023.

13 (d) This Section applies to procurements solicited on or
14 after the effective date of this amendatory Act of the 96th
15 General Assembly. The changes made to this Section by this
16 amendatory Act of the 97th General Assembly apply to
17 procurements solicited on or after the effective date of this
18 amendatory Act of the 97th General Assembly.

19 (Source: P.A. 97-895, eff. 8-3-12; 98-1076, eff. 1-1-15.)

20 Section 10. The State Prompt Payment Act is amended by
21 changing Section 7 as follows:

22 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

24 (a) When a State official or agency responsible for

1 administering a contract submits a voucher to the Comptroller
2 for payment to a contractor, that State official or agency
3 shall promptly make available electronically the voucher
4 number, the date of the voucher, and the amount of the voucher.
5 The State official or agency responsible for administering the
6 contract shall provide subcontractors and material suppliers,
7 known to the State official or agency, with instructions on
8 how to access the electronic information.

9 (a-5) When a contractor receives any payment, the
10 contractor shall pay each subcontractor and material supplier
11 electronically within 10 business days or 15 calendar days,
12 whichever occurs earlier, or, if paid by a printed check, the
13 printed check must be postmarked within 10 business days or 15
14 calendar days, whichever occurs earlier, after receiving
15 payment in proportion to the work completed by each
16 subcontractor and material supplier its application or pay
17 estimate, plus interest received under this Act. When a
18 contractor receives any payment, the contractor shall pay each
19 lower-tiered subcontractor and material supplier and each
20 subcontractor and material supplier shall make payment to its
21 own respective subcontractors and material suppliers. If the
22 contractor receives less than the full payment due under the
23 public construction contract, the contractor shall be
24 obligated to disburse on a pro rata basis those funds
25 received, plus interest received under this Act, with the
26 contractor, subcontractors and material suppliers each

1 receiving a prorated portion based on the amount of payment
2 each has earned. When, however, the State official or agency
3 does not release the full payment due under the contract
4 because there are specific areas of work or materials the
5 State agency or official has determined are not suitable for
6 payment, then those specific subcontractors or material
7 suppliers involved shall not be paid for that portion of work
8 rejected or deemed not suitable for payment and all other
9 subcontractors and suppliers shall be paid based upon the
10 amount of payment each has earned, plus interest received
11 under this Act.

12 (a-10) For construction contracts with the Department of
13 Transportation, the contractor, subcontractor, or material
14 supplier, regardless of tier, shall not offset, decrease, or
15 diminish payment or payments that are due to its
16 subcontractors or material suppliers without reasonable cause.

17 A contractor, who refuses to make prompt payment within 10
18 business days or 15 calendar days, whichever occurs earlier,
19 after receiving payment, in whole or in part, shall provide to
20 the subcontractor or material supplier and the public owner or
21 its agent, a written notice of that refusal. The written
22 notice shall be made by a contractor no later than 5 calendar
23 days after payment is received by the contractor. The written
24 notice shall identify the Department of Transportation's
25 contract, any subcontract or material purchase agreement, a
26 detailed reason for refusal, the value of the payment to be

1 withheld, and the specific remedial actions required of the
2 subcontractor or material supplier so that payment may be
3 made. Written notice of refusal may be given in a form and
4 method which is acceptable to the parties and public owner.

5 (b) If the contractor, without reasonable cause, fails to
6 make full payment of amounts due under subsection (a) to its
7 subcontractors and material suppliers within 10 business days
8 or 15 calendar days, whichever occurs earlier, after receipt
9 of payment from the State official or agency, the contractor
10 shall pay to its subcontractors and material suppliers, in
11 addition to the payment due them, interest in the amount of 2%
12 per month, calculated from the expiration of the
13 10-business-day period or the 15-calendar-day period until
14 fully paid. This subsection shall further apply to any
15 payments made by subcontractors and material suppliers to
16 their subcontractors and material suppliers and to all
17 payments made to lower tier subcontractors and material
18 suppliers throughout the contracting chain.

19 (1) If a contractor, without reasonable cause, fails
20 to make payment in full as provided in subsection (a-5)
21 within 10 business days or 15 calendar days, whichever
22 occurs earlier, after receipt of payment under the public
23 construction contract, any subcontractor or material
24 supplier to whom payments are owed may file a written
25 notice and request for administrative hearing with the
26 State official or agency setting forth the amount owed by

1 the contractor and the contractor's failure to timely pay
2 the amount owed. The written notice and request for
3 administrative hearing shall identify the public
4 construction contract, the contractor, and the amount
5 owed, and shall contain a sworn statement or attestation
6 to verify the accuracy of the notice. The notice and
7 request for administrative hearing shall be filed with the
8 State official for the public construction contract, with
9 a copy of the notice concurrently provided to the
10 contractor. Notice to the State official may be made by
11 certified or registered mail, messenger service, or
12 personal service, and must include proof of delivery to
13 the State official.

14 (2) The State official or agency, within 15 calendar
15 days after receipt of a subcontractor's or material
16 supplier's written notice and request for administrative
17 hearing, shall hold a hearing convened by an
18 administrative law judge to determine whether the
19 contractor withheld payment, without reasonable cause,
20 from the subcontractors or material suppliers and what
21 amount, if any, is due to the subcontractors or material
22 suppliers, and the reasonable cause or causes asserted by
23 the contractor. The State official or agency shall provide
24 appropriate notice to the parties of the date, time, and
25 location of the hearing. Each contractor, subcontractor,
26 or material supplier has the right to be represented by

1 counsel at a hearing and to cross-examine witnesses and
2 challenge documents. Upon the request of the subcontractor
3 or material supplier and a showing of good cause,
4 reasonable continuances may be granted by the
5 administrative law judge.

6 (3) Upon a finding by the administrative law judge
7 that the contractor failed to make payment in full,
8 without reasonable cause, as provided in subsection
9 (a-10), then the administrative law judge shall, in
10 writing, order the contractor to pay the amount owed to
11 the subcontractors or material suppliers plus interest
12 within 15 calendar days after the order.

13 (4) If a contractor fails to make full payment as
14 ordered under paragraph (3) of this subsection (b) within
15 15 days after the administrative law judge's order, then
16 the contractor shall be barred from entering into a State
17 public construction contract for a period of one year
18 beginning on the date of the administrative law judge's
19 order.

20 (5) If, on 2 or more occasions within a
21 3-calendar-year period, there is a finding by an
22 administrative law judge that the contractor failed to
23 make payment in full, without reasonable cause, and a
24 written order was issued to a contractor under paragraph
25 (3) of this subsection (b), then the contractor shall be
26 barred from entering into a State public construction

1 contract for a period of 6 months beginning on the date of
2 the administrative law judge's second written order, even
3 if the payments required under the orders were made in
4 full.

5 (6) If a contractor fails to make full payment as
6 ordered under paragraph (4) of this subsection (b), the
7 subcontractor or material supplier may, within 30 days of
8 the date of that order, petition the State agency for an
9 order for reasonable attorney's fees and costs incurred in
10 the prosecution of the action under this subsection (b).
11 Upon that petition and taking of additional evidence, as
12 may be required, the administrative law judge may issue a
13 supplemental order directing the contractor to pay those
14 reasonable attorney's fees and costs.

15 (7) The written order of the administrative law judge
16 shall be final and appealable under the Administrative
17 Review Law.

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

24 (c) This Section shall not be construed to in any manner
25 diminish, negate, or interfere with the
26 contractor-subcontractor or contractor-material supplier

1 relationship or commercially useful function.

2 (c-5) The provisions of this Section do not apply to
3 payments to a subcontractor for work performed under a
4 subcontract entered into with a construction contractor if the
5 contract contains a provision that the State agency shall pay
6 the subcontractor directly as required under a pilot program
7 implemented by the Capital Development Board or the Department
8 of Transportation under subsection (c-5) of Section 20-120 of
9 the Illinois Procurement Code.

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

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

17 (f) As used in this Section:

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

22 "Reasonable cause" may include, but is not limited to,
23 unsatisfactory workmanship or materials; failure to provide
24 documentation required by the contract, subcontract, or
25 material purchase agreement; claims made against the
26 Department of Transportation or the subcontractor pursuant to

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

23 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;
24 100-863, eff. 8-14-18; 101-524, eff. 1-1-20.)