



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB5260

Introduced 1/25/2006, by Rep. Jim Durkin - Joseph M. Lyons - Annazette Collins

#### SYNOPSIS AS INTRODUCED:

30 ILCS 540/3-2	from Ch. 127, par. 132.403-2
30 ILCS 540/3-5 new	
30 ILCS 540/3-6 new	
30 ILCS 540/7	from Ch. 127, par. 132.407

Amends the State Prompt Payment Act to provide that notification to a vendor that a bill or invoice contains a defect must be given not later than 45 days after the bill was first submitted or not later than 30 days after the receipt of the goods or services, whichever is later. Sets forth that if the State official or agency whose approval is required for any invoice fails to approve or disapprove that invoice within this notification period, the interest for late payment of that invoice shall be computed from the date 60 days after the receipt of that invoice or the date 60 days after the goods or services are received, whichever is later. Provides that if the State fails to pay any invoice within 30 days of approval or fails to approve or disapprove the invoice within the period at which interest may accrue, plus an additional 30 days, the contractor and subcontractors not paid may suspend performance under the construction contract or subcontracts without penalty, until the overdue payment or payments are made. Authorizes contractors, subcontractors, and material suppliers to recover the interest payable under this Act in any action pursuant to Section 23 of the Mechanics Lien Act or pursuant to the Public Construction Bond Act.

LRB094 16231 RSP 51475 b

FISCAL NOTE ACT  
MAY APPLY

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 State Prompt Payment Act is amended by  
5 changing Sections 3-2 and 7 and by adding Sections 3-5 and 3-6  
6 as follows:

7 (30 ILCS 540/3-2) (from Ch. 127, par. 132.403-2)

8 Sec. 3-2. Beginning July 1, 1993, in any instance where a  
9 State official or agency is late in payment of a vendor's bill  
10 or invoice for goods or services furnished to the State, as  
11 defined in Section 1, properly approved in accordance with  
12 rules promulgated under Section 3-3, the State official or  
13 agency shall pay interest to the vendor in accordance with the  
14 following:

15 (1) Any bill approved for payment under this Section  
16 must be paid or the payment issued to the payee within 60  
17 days of receipt of a proper bill or invoice. If payment is  
18 not issued to the payee within this 60 day period, an  
19 interest penalty of 1.0% of any amount approved and unpaid  
20 shall be added for each month or fraction thereof after the  
21 end of this 60 day period, until final payment is made.

22 (1.1) A State agency shall review in a timely manner  
23 each bill or invoice after its receipt. If the State agency  
24 determines that the bill or invoice contains a defect  
25 making it unable to process the payment request, the agency  
26 shall notify the vendor requesting payment as soon as  
27 possible after discovering the defect pursuant to rules  
28 promulgated under Section 3-3, provided that the notice  
29 must be given not later than 45 days after the bill was  
30 first submitted or not later than 30 days after the receipt  
31 of the goods or services, whichever is later. The notice  
32 shall identify the defect and any additional information

1 necessary to correct the defect.

2 (2) Where a State official or agency is late in payment  
3 of a vendor's bill or invoice properly approved in  
4 accordance with this Act, and different late payment terms  
5 are not reduced to writing as a contractual agreement, the  
6 State official or agency shall automatically pay interest  
7 penalties required by this Section amounting to \$50 or more  
8 to the appropriate vendor. Each agency shall be responsible  
9 for determining whether an interest penalty is owed and for  
10 paying the interest to the vendor. For interest of at least  
11 \$5 but less than \$50, the vendor must initiate a written  
12 request for the interest penalty when such interest is due  
13 and payable. The Department of Central Management Services  
14 and the State Comptroller shall jointly promulgate rules  
15 establishing the conditions under which interest of less  
16 than \$5 may be claimed and paid. In the event an individual  
17 has paid a vendor for services in advance, the provisions  
18 of this Section shall apply until payment is made to that  
19 individual.

20 (Source: P.A. 92-384, eff. 7-1-02.)

21 (30 ILCS 540/3-5 new)

22 Sec. 3-5. Interest for late payment. If the State official  
23 or agency whose approval is required for any invoice fails to  
24 approve or disapprove that invoice within the period provided  
25 for approval by Section 3-2 of this Act, the interest for late  
26 payment of that invoice shall be computed from the date 60 days  
27 after the receipt of that invoice or the date 60 days after the  
28 goods or services are received, whichever is later.

29 (30 ILCS 540/3-6 new)

30 Sec. 3-6. Cessation of work for nonpayment. If the State  
31 fails to pay any invoice within 30 days of approval or fails to  
32 approve or disapprove the invoice within the time set forth in  
33 Section 3-5 of this Act, plus an additional 30 days, the  
34 contractor and subcontractors not paid may suspend performance

1 under the construction contract or subcontracts without  
2 penalty, until the overdue payment or payments are made.

3 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

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

33 Contractors, subcontractors, and material suppliers shall  
34 be entitled to recover interest payable under this Act in any  
35 action pursuant to Section 23 of the Mechanics Lien Act (770

1 ILCS 60/23) or pursuant to the Public Construction Bond Act (30  
2 ILCS 550/).

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

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

23 (2) The State official or agency, within 15 days after  
24 receipt of a subcontractor's or material supplier's  
25 written notice of the failure to receive payment from the  
26 contractor, shall hold a hearing convened by an  
27 administrative law judge to determine whether the  
28 contractor withheld payment, without reasonable cause,  
29 from the subcontractors and material suppliers and what  
30 amount, if any, is due to the subcontractors and material  
31 suppliers. The State official or agency shall provide  
32 appropriate notice to the parties of the date, time, and  
33 location of the hearing. Each contractor, subcontractor,  
34 and material supplier has the right to be represented by  
35 counsel at the hearing and to cross-examine witnesses and  
36 challenge documents.

1           (3) If there is a finding by the administrative law  
2 judge that the contractor failed to make payment in full,  
3 without reasonable cause, as provided in subsection (a),  
4 then the administrative law judge shall, in writing, direct  
5 the contractor to pay the amount owed to the subcontractors  
6 and material suppliers plus interest within 15 days after  
7 the finding.

8           (4) If a contractor fails to make full payment within  
9 15 days after the administrative law judge's finding, then  
10 the contractor shall be barred from entering into a State  
11 public construction contract for a period of one year  
12 beginning on the date of the administrative law judge's  
13 finding.

14 (Source: P.A. 94-672, eff. 1-1-06.)