

# SB1266



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1266

Introduced 2/9/2017, by Sen. Martin A. Sandoval

### SYNOPSIS AS INTRODUCED:

30 ILCS 540/7

from Ch. 127, par. 132.407

Amends the Prompt Payment Act. Provides that a contractor may require either a performance bond or retention of payment of a subcontractor as part of the subcontract. Provides that a contractor may not require both.

LRB100 08808 MLM 18949 b

A BILL FOR

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 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. When a contractor  
17 receives any payment, the contractor shall pay each  
18 subcontractor and material supplier in proportion to the work  
19 completed by each subcontractor and material supplier their  
20 application, plus interest received under this Act, less any  
21 retention. If the contractor receives less than the full  
22 payment due under the public construction contract, the  
23 contractor shall be obligated to disburse on a pro rata basis

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

13 A contractor may require either a performance bond or  
14 retention of payment of a subcontractor as part of the  
15 subcontract. However, a contractor may not require both.

16 (b) If the contractor, without reasonable cause, fails to  
17 make full payment of amounts due under subsection (a) to his  
18 subcontractors and material suppliers within 15 days after  
19 receipt of payment under the public construction contract, the  
20 contractor shall pay to his subcontractors and material  
21 suppliers, in addition to the payment due them, interest in the  
22 amount of 2% per month, calculated from the expiration of the  
23 15-day period until fully paid. This subsection shall also  
24 apply to any payments made by subcontractors and material  
25 suppliers to their subcontractors and material suppliers and to  
26 all payments made to lower tier subcontractors and material

1 suppliers throughout the contracting chain.

2 (1) If a contractor, without reasonable cause, fails to  
3 make payment in full as provided in subsection (a) within  
4 15 days after receipt of payment under the public  
5 construction contract, any subcontractor or material  
6 supplier to whom payments are owed may file a written  
7 notice with the State official or agency setting forth the  
8 amount owed by the contractor and the contractor's failure  
9 to timely pay the amount owed.

10 (2) The State official or agency, within 15 days after  
11 receipt of a subcontractor's or material supplier's  
12 written notice of the failure to receive payment from the  
13 contractor, shall hold a hearing convened by an  
14 administrative law judge to determine whether the  
15 contractor withheld payment, without reasonable cause,  
16 from the subcontractors and material suppliers and what  
17 amount, if any, is due to the subcontractors and material  
18 suppliers. The State official or agency shall provide  
19 appropriate notice to the parties of the date, time, and  
20 location of the hearing. Each contractor, subcontractor,  
21 and material supplier has the right to be represented by  
22 counsel at the hearing and to cross-examine witnesses and  
23 challenge documents.

24 (3) If there is a finding by the administrative law  
25 judge that the contractor failed to make payment in full,  
26 without reasonable cause, as provided in subsection (a),

1           then the administrative law judge shall, in writing, direct  
2           the contractor to pay the amount owed to the subcontractors  
3           and material suppliers plus interest within 15 days after  
4           the finding.

5           (4) If a contractor fails to make full payment within  
6           15 days after the administrative law judge's finding, then  
7           the contractor shall be barred from entering into a State  
8           public construction contract for a period of one year  
9           beginning on the date of the administrative law judge's  
10          finding.

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