



Rep. John Connor

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LRB100 17563 RJF 40578 a

1 AMENDMENT TO SENATE BILL 3560

2 AMENDMENT NO. _____. Amend Senate Bill 3560 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The State Prompt Payment Act is amended by
5 adding Sections 3-3.5, 8, 9, 10, and 11 as follows:

6 (30 ILCS 540/3-3.5 new)

7 Sec. 3-3.5. Vendor payment contracts. Any contract
8 executed under the Vendor Payment Program specified in Section
9 900.125 of Title 74 of the Illinois Administrative Code prior
10 to June 30, 2018 shall remain in effect until those contracts
11 have expired. Those parties with existing contracts shall
12 comply with additional reporting requirements established
13 under this amendatory Act of the 100th General Assembly or
14 rules adopted hereunder.

15 (30 ILCS 540/8 new)

1 Sec. 8. Vendor Payment Program.

2 (a) As used in this Section:

3 "Applicant" means any entity seeking to be designated
4 as a qualified purchaser.

5 "Application period" means the time period when the
6 Program is accepting applications as determined by the
7 Department of Central Management Services.

8 "Assigned penalties" means penalties payable by the
9 State in accordance with this Act that are assigned to the
10 qualified purchaser of an assigned receivable.

11 "Assigned receivable" means the base invoice amount of
12 a qualified account receivable and any associated assigned
13 penalties due, currently and in the future, in accordance
14 with this Act.

15 "Assignment agreement" means an agreement executed and
16 delivered by a participating vendor and a qualified
17 purchaser, in which the participating vendor will assign
18 one or more qualified accounts receivable to the qualified
19 purchaser and make certain representations and warranties
20 in respect thereof.

21 "Base invoice amount" means the unpaid principal
22 amount of the invoice associated with an assigned
23 receivable.

24 "Department" means the Department of Central
25 Management Services.

26 "Medical assistance program" means any program which

1 provides medical assistance under Article V of the Illinois
2 Public Aid Code, including Medicaid.

3 "Participating vendor" means a vendor whose
4 application for the sale of a qualified account receivable
5 is accepted for purchase by a qualified purchaser under the
6 Program terms.

7 "Program" means a Vendor Payment Program.

8 "Prompt payment penalties" means penalties payable by
9 the State in accordance with this Act.

10 "Purchase price" means 100% of the base invoice amount
11 associated with an assigned receivable minus: (1) any
12 deductions against the assigned receivable arising from
13 State offsets; and (2) if and to the extent exercised by a
14 qualified purchaser, other deductions for amounts owed by
15 the participating vendor to the qualified purchaser for
16 State offsets applied against other accounts receivable
17 assigned by the participating vendor to the qualified
18 purchaser under the Program.

19 "Qualified account receivable" means an account
20 receivable due and payable by the State that is outstanding
21 for 90 days or more, is eligible to accrue prompt payment
22 penalties under this Act and is verified by the relevant
23 State agency. A qualified account receivable shall not
24 include any account receivable related to medical
25 assistance program (including Medicaid) payments or any
26 other accounts receivable, the transfer or assignment of

1 which is prohibited by, or otherwise prevented by,
2 applicable law.

3 "Qualified purchaser" means any entity that, during
4 any application period, is approved by the Department of
5 Central Management Services to participate in the Program
6 on the basis of certain qualifying criteria as determined
7 by the Department.

8 "State offsets" means any amount deducted from
9 payments made by the State in respect of any qualified
10 account receivable due to the State's exercise of any
11 offset or other contractual rights against a participating
12 vendor. For the purpose of this Section, "State offsets"
13 include statutorily required administrative fees imposed
14 under the State Comptroller Act.

15 "Sub-participant" means any individual or entity that
16 intends to purchase assigned receivables, directly or
17 indirectly, by or through an applicant or qualified
18 purchaser for the purposes of the Program.

19 "Sub-participant certification" means an instrument
20 executed and delivered to the Department of Central
21 Management Services by a sub-participant, in which the
22 sub-participant certifies its agreement, among others, to
23 be bound by the terms and conditions of the Program as a
24 condition to its participation in the Program as a
25 sub-participant.

26 (b) This Section reflects the provisions of Section 900.125

1 of Title 74 of the Illinois Administrative Code prior to
2 January 1, 2018. The requirements of this Section establish the
3 criteria for participation by participating vendors and
4 qualified purchasers in a Vendor Payment Program. Information
5 regarding the Vendor Payment Program may be found at the
6 Internet website for the Department of Central Management
7 Services.

8 (c) The State Comptroller and the Department of Central
9 Management Services are authorized to establish and implement
10 the Program under Section 3-3. This Section applies to all
11 qualified accounts receivable not otherwise excluded from
12 receiving prompt payment interest under Section 900.120 of
13 Title 74 of the Illinois Administrative Code. This Section
14 shall not apply to the purchase of any accounts receivable
15 related to payments made under a medical assistance program,
16 including Medicaid payments, or any other purchase of accounts
17 receivable that is otherwise prohibited by law.

18 (d) Under the Program, qualified purchasers may purchase
19 from participating vendors certain qualified accounts
20 receivable owed by the State to the participating vendors. A
21 participating vendor shall not simultaneously apply to sell the
22 same qualified account receivable to more than one qualified
23 purchaser. In consideration of the payment of the purchase
24 price, a participating vendor shall assign to the qualified
25 purchaser all of its rights to payment of the qualified account
26 receivable, including all current and future prompt payment

1 penalties due to that qualified account receivable in
2 accordance with this Act.

3 (e) A vendor may apply to participate in the Program if:

4 (1) the vendor is owed an account receivable by the
5 State for which prompt payment penalties have commenced
6 accruing;

7 (2) the vendor's account receivable is eligible to
8 accrue prompt payment penalty interest under this Act;

9 (3) the vendor's account receivable is not for payments
10 under a medical assistance program; and

11 (4) the vendor's account receivable is not prohibited
12 by, or otherwise prevented by, applicable law from being
13 transferred or assigned under this Section.

14 (f) The Department shall review and approve or disapprove
15 each applicant seeking a qualified purchaser designation.
16 Factors to be considered by the Department in determining
17 whether an applicant shall be designated as a qualified
18 purchaser include, but are not limited to, the following:

19 (1) the qualified purchaser's agreement to commit a
20 minimum purchase amount as established from time to time by
21 the Department based upon the current needs of the Program
22 and the qualified purchaser's demonstrated ability to fund
23 its commitment;

24 (2) the demonstrated ability of a qualified
25 purchaser's sub-participants to fund their portions of a
26 qualified purchaser's minimum purchase commitment;

1 (3) the ability of a qualified purchaser and its
2 sub-participants to meet standards of responsibility
3 substantially in accordance with the requirements of the
4 Standards of Responsibility found in subsection (b) of
5 Section 1.2046 of Title 44 of the Illinois Administrative
6 Code concerning government contracts, procurement, and
7 property management;

8 (4) the agreement of each qualified purchaser, at its
9 sole cost and expense, to administer and facilitate the
10 operation of the Program with respect to that qualified
11 purchaser, including, without limitation, assisting
12 potential participating vendors with the application and
13 assignment process;

14 (5) the agreement of each qualified purchaser, at its
15 sole cost and expense, to establish a website that is
16 determined by the Department to be sufficient to administer
17 the Program in accordance with the terms and conditions of
18 the Program;

19 (6) the agreement of each qualified purchaser, at its
20 sole cost and expense, to market the Program to potential
21 participating vendors;

22 (7) the agreement of each qualified purchaser, at its
23 sole cost and expense, to educate participating vendors
24 about the benefits and risks associated with participation
25 in the Program;

26 (8) the agreement of each qualified purchaser, at its

1 sole cost and expense, to deposit funds into, release funds
2 from, and otherwise maintain all required accounts in
3 accordance with the terms and conditions of the Program.
4 Subject to the Program terms, all required accounts shall
5 be maintained and controlled by the qualified purchaser at
6 the qualified purchaser's sole cost and at no cost, whether
7 in the form of fees or otherwise, to the participating
8 vendors;

9 (9) the agreement of each qualified purchaser, at its
10 sole cost and expense, to submit a monthly written report,
11 in an acceptable electronic format, to the State
12 Comptroller or its designee and the Department or its
13 designee, within 10 days after the end of each month,
14 which, unless otherwise specified by the Department, at a
15 minimum, shall contain:

16 (A) a listing of each assigned receivable
17 purchased by that qualified purchaser during the
18 month, specifying the base invoice amount and invoice
19 date of that assigned receivable and the name of the
20 participating vendor, State contract number, voucher
21 number, and State agency associated with that assigned
22 receivable;

23 (B) a listing of each assigned receivable with
24 respect to which the qualified purchaser has received
25 payment of the base invoice amount from the State
26 during that month, including the amount of and date on

1 which that payment was made and the name of the
2 participating vendor, State contract number, voucher
3 number, and State agency associated with the assigned
4 receivable, and identifying the relevant application
5 period for each assigned receivable;

6 (C) a listing of any payments of assigned penalties
7 received from the State during the month, including the
8 amount of and date on which the payment was made, the
9 name of the participating vendor, the voucher number
10 for the assigned penalty receivable, and the
11 associated assigned receivable, including the State
12 contract number, voucher number, and State agency
13 associated with the assigned receivable, and
14 identifying the relevant application period for each
15 assigned receivable;

16 (D) the aggregate number and dollar value of
17 assigned receivables purchased by the qualified
18 purchaser from the date on which that qualified
19 purchaser commenced participating in the Program
20 through the last day of the month;

21 (E) the aggregate number and dollar value of
22 assigned receivables purchased by the qualified
23 purchaser for which no payment by the State of the base
24 invoice amount has yet been received, from the date on
25 which the qualified purchaser commenced participating
26 in the Program through the last day of the month;

1 (F) the aggregate number and dollar value of
2 invoices purchased by the qualified purchaser for
3 which no voucher has been submitted; and

4 (G) any other data the State Comptroller and the
5 Department may reasonably request from time to time;

6 (10) the agreement of each qualified purchaser to use
7 its reasonable best efforts, and for any sub-participant to
8 cause a qualified purchaser to use its reasonable best
9 efforts, to diligently pursue receipt of assigned
10 penalties associated with the assigned receivables,
11 including, without limitation, by promptly notifying the
12 relevant State agency that an assigned penalty is due and,
13 if necessary, seeking payment of assigned penalties
14 through the Illinois Court of Claims; and

15 (11) the agreement of each qualified purchaser and any
16 sub-participant to use their reasonable best efforts to
17 implement the Program terms and to perform their
18 obligations under the Program in a timely fashion.

19 (g) Each qualified purchaser's performance and
20 implementation of its obligations under subsection (f) shall be
21 subject to review by the Department and the State Comptroller
22 at any time to confirm that the qualified purchaser is
23 undertaking those obligations in a manner consistent with the
24 terms and conditions of the Program. A qualified purchaser's
25 failure to so perform its obligations including, without
26 limitation, its obligations to diligently pursue receipt of

1 assigned penalties associated with assigned receivables, shall
2 be grounds for the Department and the State Comptroller to
3 terminate the qualified purchaser's participation in the
4 Program under subsection (i). Any such termination shall be
5 without prejudice to any rights a participating vendor may have
6 against that qualified purchaser, in law or in equity,
7 including, without limitation, the right to enforce the terms
8 of the assignment agreement and of the Program against the
9 qualified purchaser.

10 (h) In determining whether any applicant shall be
11 designated as a qualified purchaser, the Department shall have
12 the right to review or approve sub-participants that intend to
13 purchase assigned receivables, directly or indirectly, by or
14 through the applicant. The Department reserves the right to
15 reject or terminate the designation of any applicant as a
16 qualified purchaser or require an applicant to exclude a
17 proposed sub-participant in order to become or remain a
18 qualified purchaser on the basis of a review, whether prior to
19 or after the designation. Each applicant and each qualified
20 purchaser has an affirmative obligation to promptly notify the
21 Department of any change or proposed change in the identity of
22 the sub-participants that it disclosed to the Department no
23 later than 3 business days after that change. Each
24 sub-participant shall be required to execute a sub-participant
25 certification that will be attached to the corresponding
26 qualified purchaser designation. Sub-participants shall meet,

1 at a minimum, the requirements of paragraphs (2), (3), (10),
2 and (11) of subsection (f).

3 (i) The Program, as codified under this Section, shall
4 continue until terminated or suspended as follows:

5 (1) The Program may be terminated or suspended: (A) by
6 the State Comptroller, after consulting with the
7 Department, by giving 10 days prior written notice to the
8 Department and the qualified purchasers in the Program; or
9 (B) by the Department, after consulting with the State
10 Comptroller, by giving 10 days prior written notice to the
11 State Comptroller and the qualified purchasers in the
12 Program.

13 (2) In the event a qualified purchaser or
14 sub-participant breaches or fails to meet any of the terms
15 or conditions of the Program, that qualified purchaser or
16 sub-participant may be terminated from the Program: (A) by
17 the State Comptroller, after consulting with the
18 Department. The termination shall be effective immediately
19 upon the State Comptroller giving written notice to the
20 Department and the qualified purchaser or sub-participant;
21 or (B) by the Department, after consulting with the State
22 Comptroller. The termination shall be effective
23 immediately upon the Department giving written notice to
24 the State Comptroller and the qualified purchaser or
25 sub-participant.

26 (3) A qualified purchaser or sub-participant may

1 terminate its participation in the Program, solely with
2 respect to its own participation in the Program, in the
3 event of any change to this Act from the form that existed
4 on the date that the qualified purchaser or the
5 sub-participant, as applicable, submitted the necessary
6 documentation for admission into the Program if the change
7 materially and adversely affects the qualified purchaser's
8 or the sub-participant's ability to purchase and receive
9 payment on receivables on the terms described in this
10 Section.

11 If the Program, a qualified purchaser, or a sub-participant
12 is terminated or suspended under paragraphs (1) or (2) of this
13 subsection (i), the Program, qualified purchaser, or
14 sub-participant may be reinstated only by written agreement of
15 the State Comptroller and the Department. No termination or
16 suspension under paragraphs (1), (2), or (3) of this subsection
17 (i) shall alter or affect the qualified purchaser's or
18 sub-participant's obligations with respect to assigned
19 receivables purchased by or through the qualified purchaser
20 prior to the termination.

21 (30 ILCS 540/9 new)

22 Sec. 9. Vendor Payment Program financial backer
23 disclosure.

24 (a) Within 60 days after the effective date of this
25 amendatory Act of the 100th General Assembly, at the time of

1 application, and annually on July 1 of each year, each
2 qualified purchaser shall submit to the Department and the
3 State Comptroller the following information about each person,
4 director, owner, officer, association, financial backer,
5 partnership, other entity, corporation, or trust with an
6 indirect or direct financial interest in each qualified
7 purchaser:

8 (1) percent ownership;

9 (2) type of ownership;

10 (3) first name, middle name, last name, maiden name (if
11 applicable), including aliases or former names;

12 (4) mailing address;

13 (5) type of business entity, if applicable;

14 (6) dates and jurisdiction of business formation or
15 incorporation, if applicable;

16 (7) names of controlling shareholders, class of stock,
17 percentage ownership;

18 (8) any indirect earnings resulting from the Program;
19 and

20 (9) any earnings associated with the Program to any
21 parties not previously disclosed.

22 (b) Within 60 days after the effective date of this
23 amendatory Act of the 100th General Assembly, at the time of
24 application, and annually on July 1 of each year, each trust
25 associated with the qualified purchaser shall submit to the
26 Department and the State Comptroller the following

1 information:

2 (1) names, addresses, dates of birth, and percentages
3 of interest of all beneficiaries;

4 (2) any indirect earnings resulting from the Program;
5 and

6 (3) any earnings associated with the Program to any
7 parties not previously disclosed.

8 (c) Each qualified purchaser must submit a statement to the
9 State Comptroller and the Department of Central Management
10 Services disclosing whether such qualified purchaser or any
11 related person, director, owner, officer, or financial backer
12 has previously or currently retained or contracted with any
13 registered lobbyist, lawyer, accountant, or other consultant
14 to prepare the disclosure required under this Section.

15 (30 ILCS 540/10 new)

16 Sec. 10. Vendor Payment Program audit. The Office of the
17 Auditor General shall perform a performance audit of the
18 Program established under Section 8. The audit shall include,
19 but not be limited to, a review of the administration of the
20 Program and compliance with requirements applicable to
21 participating vendors, qualified purchasers, qualified
22 accounts receivable, and financial backer disclosures. The
23 audit shall cover the Program's operations for fiscal years
24 2019 and 2020. Upon its completion and release, the Auditor
25 General's report shall be posted on the Internet website of the

1 Auditor General.

2 (30 ILCS 540/11 new)

3 Sec. 11. Vendor Payment Program accountability portal. The
4 Department of Central Management Services and the State
5 Comptroller shall publish on their respective Internet
6 websites: (1) the monthly report information submitted under
7 paragraph 9 of subsection (f) of Section 8; and (2) the
8 information required to be submitted under Section 9.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.".