



Rep. Camille Y. Lilly

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LRB101 04717 RJF 57631 a

1 AMENDMENT TO HOUSE BILL 173

2 AMENDMENT NO. _____. Amend House Bill 173 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The State Prompt Payment Act is amended by
5 changing Sections 1 and 7 as follows:

6 (30 ILCS 540/1) (from Ch. 127, par. 132.401)

7 Sec. 1. This Act applies to any State official or agency
8 authorized to provide for payment from State funds, by virtue
9 of any appropriation of the General Assembly, for goods or
10 services furnished to the State.

11 For purposes of this Act, "goods or services furnished to
12 the State" include but are not limited to (i) covered health
13 care provided to eligible members and their covered dependents
14 in accordance with the State Employees Group Insurance Act of
15 1971, including coverage through a physician-owned health
16 maintenance organization under Section 6.1 of that Act, (ii)

1 prevention, intervention, or treatment services and supports
2 for persons with developmental disabilities, mental health
3 services, alcohol and substance abuse services, rehabilitation
4 services, and early intervention services provided by a vendor,
5 and (iii) prevention, intervention, or treatment services and
6 supports for youth provided by a vendor by virtue of a
7 contractual grant agreement. For the purposes of items (ii) and
8 (iii), a vendor includes but is not limited to sellers of goods
9 and services, including community-based organizations that are
10 licensed to provide prevention, intervention, or treatment
11 services and supports for persons with developmental
12 disabilities, mental illness, and substance abuse problems, or
13 that provides prevention, intervention, or treatment services
14 and supports for youth.

15 For the purposes of this Act, "appropriate State official
16 or agency" is defined as the Director or Chief Executive or his
17 designee of that State agency or department or facility of such
18 agency or department. With respect to covered health care
19 provided to eligible members and their dependents in accordance
20 with the State Employees Group Insurance Act of 1971,
21 "appropriate State official or agency" also includes an
22 administrator of a program of health benefits under that Act.

23 As used in this Act, "eligible member" means a member who
24 is eligible for health benefits under the State Employees Group
25 Insurance Act of 1971, and "member" and "dependent" have the
26 meanings ascribed to those terms in that Act.

1 As used in this Act, "a proper bill or invoice" means a
2 bill or invoice, including, but not limited to, an invoice
3 issued under a contractual grant agreement, that includes the
4 information necessary for processing the payment as may be
5 specified by a State agency and in rules adopted in accordance
6 with this Act, including the names of all subcontractors or
7 subconsultants to be paid from the bill or invoice and the
8 amounts due to each of them, if any.

9 (Source: P.A. 100-549, eff. 1-1-18.)

10 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

12 (a) When a State official or agency responsible for
13 administering a contract submits a voucher to the Comptroller
14 for payment to a contractor, that State official or agency
15 shall promptly make available electronically the voucher
16 number, the date of the voucher, and the amount of the voucher.
17 The State official or agency responsible for administering the
18 contract shall provide subcontractors and material suppliers,
19 known to the State official or agency, with instructions on how
20 to access the electronic information.

21 (a-5) When a contractor receives any payment, the
22 contractor shall pay each subcontractor and material supplier
23 electronically within 7 business days or, if paid via a printed
24 check, the printed check must be received by each subcontractor
25 and material supplier within 7 business days after receiving

1 payment in proportion to the work completed by each
2 subcontractor and material supplier its application or pay
3 estimate, plus interest received under this Act. When a
4 contractor receives any payment, the contractor shall pay each
5 lower-tiered subcontractor and material supplier and each
6 subcontractor and material supplier shall make payment to its
7 own respective subcontractors and material suppliers. If the
8 contractor receives less than the full payment due under the
9 public construction contract, the contractor shall be
10 obligated to disburse on a pro rata basis those funds received,
11 plus interest received under this Act, with the contractor,
12 subcontractors and material suppliers each receiving a
13 prorated portion based on the amount of payment each has
14 earned. When, however, the State official or agency does not
15 release the full payment due under the contract because there
16 are specific areas of work or materials the State agency or
17 official has determined are not suitable for payment, then
18 those specific subcontractors or material suppliers involved
19 shall not be paid for that portion of work rejected or deemed
20 not suitable for payment and all other subcontractors and
21 suppliers shall be paid based upon the amount of payment each
22 has earned, plus interest received under this Act.

23 (a-10) For construction contracts with the Department of
24 Transportation, the contractor, subcontractor, or material
25 supplier, regardless of tier, shall not offset, decrease, or
26 diminish payment or payments that are due to its subcontractors

1 or material suppliers without reasonable cause.

2 A contractor, who refuses to make prompt payment
3 electronically within 7 business days after receiving payment,
4 in whole or in part, shall provide to the subcontractor or
5 material supplier and the public owner or its agent, a written
6 notice of that refusal. The written notice shall be made by a
7 contractor no later than 5 calendar days after payment is
8 received by the contractor. The written notice shall identify
9 the Department of Transportation's contract, any subcontract
10 or material purchase agreement, a detailed reason for refusal,
11 the value of the payment to be withheld, and the specific
12 remedial actions required of the subcontractor or material
13 supplier so that payment may be made. Written notice of refusal
14 may be given in a form and method which is acceptable to the
15 parties and public owner.

16 (b) If the contractor, without reasonable cause, fails to
17 make full payment of amounts due under subsection (a) to its
18 subcontractors and material suppliers within 7 business days ~~15~~
19 ~~calendar days~~ after receipt of payment from the State official
20 or agency, the contractor shall pay to its subcontractors and
21 material suppliers, in addition to the payment due them,
22 interest in the amount of 2% per month, calculated from the
23 expiration of the 7-business-day ~~15-day~~ period until fully
24 paid. This subsection shall further apply to any payments made
25 by subcontractors and material suppliers to their
26 subcontractors and material suppliers and to all payments made

1 to lower tier subcontractors and material suppliers throughout
2 the contracting chain.

3 (1) If a contractor, without reasonable cause, fails to
4 make payment in full as provided in subsection (a-5) within
5 7 business days ~~15 calendar days~~ after receipt of payment
6 under the public construction contract, any subcontractor
7 or material supplier to whom payments are owed may file a
8 written notice and request for administrative hearing with
9 the State official or agency setting forth the amount owed
10 by the contractor and the contractor's failure to timely
11 pay the amount owed. The written notice and request for
12 administrative hearing shall identify the public
13 construction contract, the contractor, and the amount
14 owed, and shall contain a sworn statement or attestation to
15 verify the accuracy of the notice. The notice and request
16 for administrative hearing shall be filed with the State
17 official for the public construction contract, with a copy
18 of the notice concurrently provided to the contractor.
19 Notice to the State official may be made by certified or
20 registered mail, messenger service, or personal service,
21 and must include proof of delivery to the State official.

22 (2) The State official or agency, within 15 calendar
23 days after receipt of a subcontractor's or material
24 supplier's written notice and request for administrative
25 hearing, shall hold a hearing convened by an administrative
26 law judge to determine whether the contractor withheld

1 payment, without reasonable cause, from the subcontractors
2 or material suppliers and what amount, if any, is due to
3 the subcontractors or material suppliers, and the
4 reasonable cause or causes asserted by the contractor. The
5 State official or agency shall provide appropriate notice
6 to the parties of the date, time, and location of the
7 hearing. Each contractor, subcontractor, or material
8 supplier has the right to be represented by counsel at a
9 hearing and to cross-examine witnesses and challenge
10 documents. Upon the request of the subcontractor or
11 material supplier and a showing of good cause, reasonable
12 continuances may be granted by the administrative law
13 judge.

14 (3) Upon a finding by the administrative law judge that
15 the contractor failed to make payment in full, without
16 reasonable cause, as provided in subsection (a-10), then
17 the administrative law judge shall, in writing, order the
18 contractor to pay the amount owed to the subcontractors or
19 material suppliers plus interest within 15 calendar days
20 after the order.

21 (4) If a contractor fails to make full payment as
22 ordered under paragraph (3) of this subsection (b) within
23 15 days after the administrative law judge's order, then
24 the contractor shall be barred from entering into a State
25 public construction contract for a period of one year
26 beginning on the date of the administrative law judge's

1 order.

2 (5) If, on 2 or more occasions within a 3-calendar-year
3 period, there is a finding by an administrative law judge
4 that the contractor failed to make payment in full, without
5 reasonable cause, and a written order was issued to a
6 contractor under paragraph (3) of this subsection (b), then
7 the contractor shall be barred from entering into a State
8 public construction contract for a period of 6 months
9 beginning on the date of the administrative law judge's
10 second written order, even if the payments required under
11 the orders were made in full.

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

22 (7) The written order of the administrative law judge
23 shall be final and appealable under the Administrative
24 Review Law.

25 (b-5) On or before July 2021, the Department of
26 Transportation shall publish on its website a searchable

1 database that allows for queries by the name of a subcontractor
2 or the pay item of each pay period such that each pay item is
3 associated with either the prime contractor or a subcontractor.

4 (c) This Section shall not be construed to in any manner
5 diminish, negate, or interfere with the
6 contractor-subcontractor or contractor-material supplier
7 relationship or commercially useful function.

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

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

15 (f) As used in this Section:

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

20 "Reasonable cause" may include, but is not limited to,
21 unsatisfactory workmanship or materials; failure to provide
22 documentation required by the contract, subcontract, or
23 material purchase agreement; claims made against the
24 Department of Transportation or the subcontractor pursuant to
25 subsection (c) of Section 23 of the Mechanics Lien Act or the
26 Public Construction Bond Act; judgments, levies, garnishments,

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

21 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;
22 100-863, eff. 8-14-18.)".