



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB0173

by Rep. Camille Y. Lilly

#### SYNOPSIS AS INTRODUCED:

20 ILCS 2705/2705-615 new  
30 ILCS 540/7  
30 ILCS 540/12 new

from Ch. 127, par. 132.407

Amends the Department of Transportation Law of the Civil Administrative Code of Illinois. Provides that a small business subcontractor may enter into an agreement with the Department of Transportation to receive direct payments from the Department on a construction project. Amends the State Prompt Payment Act. Provides that when a State official or agency responsible for administering a contract submits a voucher to the Comptroller for payment to a small business subcontractor who enters into a specified contract under the Department of Transportation Law, that State official or agency shall make available electronically the voucher information. Provides that if a contractor is assessed liquidated damages from the State, the contractor is still responsible to each subcontractor under subcontracts. Provides that contractors are responsible for reasonable attorneys' fees if an administrative law judge finds in favor of the subcontractor. Provides that if a contractor with the Department or a small business subcontractor claims that additional payment is due under the terms of the contract, and the Department of Transportation has not agreed that payment is due, the contractor or subcontractor desiring to pursue additional compensation shall file a claim according to the requirements and procedures specified by the Department. Provides that if the claim, after consideration by the Department, is found to have merit, the Department will make an equitable adjustment.

LRB101 04717 RJF 49726 b

FISCAL NOTE ACT  
MAY APPLY

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 Department of Transportation Law of the  
5 Civil Administrative Code of Illinois is amended by adding  
6 Section 2705-615 as follows:

7 (20 ILCS 2705/2705-615 new)

8 Sec. 2705-615. Small business; Disadvantaged Business  
9 Enterprise; subcontractor direct payments.

10 (a) A small business subcontractor may enter into an  
11 agreement with the Department to receive direct payments from  
12 the Department on a construction project if the following  
13 conditions have been met:

14 (1) the subcontractor is listed on the Chief  
15 Procurement Office's Small Business Vendors Directory;

16 (2) the subcontractor is listed on the Department of  
17 Transportation Disadvantaged Business Enterprise  
18 Directory; and

19 (3) the Department has reviewed the contract and  
20 determined that it meets the requirements for fairness and  
21 responsiveness to the Department's bid specifications.

22 (b) Any contract entered into under this Section shall  
23 include the following terms:

1           (1) Any mobilization payment in the contract shall be  
2           capped at the same percentage as the mobilization payment  
3           in the contract between the Department and the prime  
4           contractor. "Mobilization payment" means an advance  
5           payment to a contractor that enables the contractor to  
6           purchase necessary machinery and tools for a project or its  
7           customary meaning in the context of the contract. The  
8           mobilization payments shall be set at a per year basis.  
9           Mobilization Payments on a multi-year project shall be paid  
10           on an annual basis.

11           (2) If the prime contractor and the Department agree to  
12           an accelerated pay schedule, the Department must agree to  
13           the new pay schedule for the subcontractor as well.

14           Section 10. The State Prompt Payment Act is amended by  
15           changing Section 7 and by adding Section 12 as follows:

16           (30 ILCS 540/7) (from Ch. 127, par. 132.407)

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

18           (a) When a State official or agency responsible for  
19           administering a contract submits a voucher to the Comptroller  
20           for payment to (i) a contractor; or (ii) a subcontractor who  
21           enters into a contract under Section 2705-615 of the Department  
22           of Transportation Law of the Civil Administrative Code of  
23           Illinois, that State official or agency shall promptly make  
24           available electronically the voucher number, the date of the

1 voucher, and the amount of the voucher. The State official or  
2 agency responsible for administering the contract shall  
3 provide subcontractors and material suppliers, known to the  
4 State official or agency, with instructions on how to access  
5 the electronic information.

6 (a-5) When a contractor receives any payment, the  
7 contractor shall pay each subcontractor and material supplier  
8 in proportion to the work completed by each subcontractor and  
9 material supplier its application or pay estimate, plus  
10 interest received under this Act. When a contractor receives  
11 any payment, the contractor shall pay each lower-tiered  
12 subcontractor and material supplier and each subcontractor and  
13 material supplier shall make payment to its own respective  
14 subcontractors and material suppliers. If the contractor  
15 receives less than the full payment due under the public  
16 construction contract, the contractor shall be obligated to  
17 disburse on a pro rata basis those funds received, plus  
18 interest received under this Act, with the contractor,  
19 subcontractors and material suppliers each receiving a  
20 prorated portion based on the amount of payment each has  
21 earned. If the contractor is assessed liquidated damages from  
22 the State, the contractor is still responsible to each  
23 subcontractor under the subcontracts. When, however, the State  
24 official or agency does not release the full payment due under  
25 the contract because there are specific areas of work or  
26 materials the State agency or official has determined are not

1 suitable for payment, then those specific subcontractors or  
2 material suppliers involved shall not be paid for that portion  
3 of work rejected or deemed not suitable for payment and all  
4 other subcontractors and suppliers shall be paid based upon the  
5 amount of payment each has earned, plus interest received under  
6 this Act.

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

12 A contractor, who refuses to make prompt payment, in whole  
13 or in part, shall provide to the subcontractor or material  
14 supplier and the public owner or its agent, a written notice of  
15 that refusal. The written notice shall be made by a contractor  
16 no later than 5 calendar days after payment is received by the  
17 contractor. The written notice shall identify the Department of  
18 Transportation's contract, any subcontract or material  
19 purchase agreement, a detailed reason for refusal, the value of  
20 the payment to be withheld, and the specific remedial actions  
21 required of the subcontractor or material supplier so that  
22 payment may be made. Written notice of refusal may be given in  
23 a form and method which is acceptable to the parties and public  
24 owner.

25 (b) If the contractor, without reasonable cause, fails to  
26 make full payment of amounts due under subsection (a) to its

1 subcontractors and material suppliers within 15 calendar days  
2 after receipt of payment from the State official or agency, the  
3 contractor shall pay to its subcontractors and material  
4 suppliers, in addition to the payment due them, interest in the  
5 amount of 2% per month, calculated from the expiration of the  
6 15-day period until fully paid. This subsection shall further  
7 apply to any payments made by subcontractors and material  
8 suppliers to their subcontractors and material suppliers and to  
9 all payments made to lower tier subcontractors and material  
10 suppliers throughout the contracting chain.

11 (1) If a contractor, without reasonable cause, fails to  
12 make payment in full as provided in subsection (a-5) within  
13 15 calendar days after receipt of payment under the public  
14 construction contract, any subcontractor or material  
15 supplier to whom payments are owed may file a written  
16 notice and request for administrative hearing with the  
17 State official or agency setting forth the amount owed by  
18 the contractor and the contractor's failure to timely pay  
19 the amount owed. The written notice and request for  
20 administrative hearing shall identify the public  
21 construction contract, the contractor, and the amount  
22 owed, and shall contain a sworn statement or attestation to  
23 verify the accuracy of the notice. The notice and request  
24 for administrative hearing shall be filed with the State  
25 official for the public construction contract, with a copy  
26 of the notice concurrently provided to the contractor.

1 Notice to the State official may be made by certified or  
2 registered mail, messenger service, or personal service,  
3 and must include proof of delivery to the State official.

4 (2) The State official or agency, within 15 calendar  
5 days after receipt of a subcontractor's or material  
6 supplier's written notice and request for administrative  
7 hearing, shall hold a hearing convened by an administrative  
8 law judge to determine whether the contractor withheld  
9 payment, without reasonable cause, from the subcontractors  
10 or material suppliers and what amount, if any, is due to  
11 the subcontractors or material suppliers, and the  
12 reasonable cause or causes asserted by the contractor. The  
13 State official or agency shall provide appropriate notice  
14 to the parties of the date, time, and location of the  
15 hearing. Each contractor, subcontractor, or material  
16 supplier has the right to be represented by counsel at a  
17 hearing and to cross-examine witnesses and challenge  
18 documents. Upon the request of the subcontractor or  
19 material supplier and a showing of good cause, reasonable  
20 continuances may be granted by the administrative law  
21 judge.

22 (3) Upon a finding by the administrative law judge that  
23 the contractor failed to make payment in full, without  
24 reasonable cause, ~~as provided in subsection (a-10), then~~  
25 the administrative law judge shall, in writing, order the  
26 contractor to pay the amount owed to the subcontractors or

1 material suppliers plus interest and all reasonable  
2 attorneys' fees incurred by the subcontractor within 15  
3 calendar days after the order.

4 (4) If a contractor fails to make full payment as  
5 ordered under paragraph (3) of this subsection (b) within  
6 15 days after the administrative law judge's order, 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 order.

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

21 (6) If a contractor fails to make full payment as  
22 ordered under paragraph (4) of this subsection (b), the  
23 subcontractor or material supplier may, within 30 days of  
24 the date of that order, petition the State agency for an  
25 order for reasonable attorney's fees and costs incurred in  
26 the prosecution of the action under this subsection (b).



1           Upon that petition and taking of additional evidence, as  
2           may be required, the administrative law judge may issue a  
3           supplemental order directing the contractor to pay those  
4           reasonable attorney's fees and costs.

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

8           (c) This Section shall not be construed to in any manner  
9           diminish, negate, or interfere with the  
10          contractor-subcontractor or contractor-material supplier  
11          relationship or commercially useful function.

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

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

19          (f) As used in this Section:

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

24                 "Reasonable cause" may include, but is not limited to,  
25                 unsatisfactory workmanship or materials; failure to provide  
26                 documentation required by the contract, subcontract, or

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

25 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;  
26 100-863, eff. 8-14-18.)

1 (30 ILCS 540/12 new)

2 Sec. 12. Contract claims. If (i) a contractor who has a  
3 contract with the Department of Transportation; or (ii) a  
4 subcontractor who enters into a contract under Section 2705-615  
5 of the Civil Administrative Code of Illinois claims that  
6 additional payment is due under the terms of the contract, or  
7 for any other reason arising out of the performance of the  
8 contract, and the Department has not agreed during the ordinary  
9 course of contract administration that the payment is due, then  
10 the contractor or subcontractor may file a claim according to  
11 the requirements and procedures specified by the Department. If  
12 written notifications are not given, or if the Department is  
13 not afforded reasonable access by the contractor or  
14 subcontractor to complete records of actual costs or additional  
15 time claimed, or if a claim is not filed according to the  
16 procedures and within the time specified in the rules of the  
17 Department of Transportation, then the contractor or  
18 subcontractor's claim is waived and the Department is released  
19 from any and all demands and claims under that contract by the  
20 contractor or subcontractor. The fact that the contractor or  
21 subcontractor has provided a proper notification, provided a  
22 properly filed claim, or provided the Department access to  
23 records of actual cost shall not in any way be construed as  
24 proving or substantiating the validity of the claim. If the  
25 claim, after consideration by the Department, is found to have

1 merit, the Department will make an equitable adjustment either  
2 in the amount of costs to be paid according to the basis of  
3 payment specified by the Department or in the time required for  
4 the work, or both. If the Department finds the claim to be  
5 without merit, no adjustment will be made.