



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB2436

Introduced 02/17/05, by Rep. Timothy L. Schmitz

SYNOPSIS AS INTRODUCED:

New Act

Creates the Fair Pay for Construction Act. Applies to State and local governments. Establishes guidelines and procedures for proper invoices and for payment of construction contracts. Provides remedies for nonpayment of the construction contracts. Exempts certain projects from the application of the Act. Effective immediately.

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FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning construction.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Fair
5 Pay for Construction Act.

6 Section 5. Definitions. As used in this Act:

7 "Construction contract" means a written agreement relating
8 to the construction, alteration, repair, maintenance, moving,
9 or demolition of any building, structure, or improvement or
10 relating to the excavation of or other development or
11 improvement to land. "Construction contract" includes a
12 subcontract for any of these provisions.

13 "Material supplier" means any entity that supplies
14 materials, services, or equipment to be used in conjunction
15 with the performance of work on a construction contract.

16 "Prime contractor" means any entity that has a direct
17 contract with an owner to perform work under a construction
18 contract.

19 "Owner" means any State government entity, municipality,
20 township, public trust, or any other publicly funded entity in
21 this State, or any entity designated by the owner to act on the
22 owner's behalf, that requests work to be performed by a
23 contractor under a construction contract.

24 "Proper invoice" means a request for payment or partial
25 payment based on work performed on a construction contract.

26 "Retainage" means funds due and payable for satisfactory
27 performance under a construction contract, but withheld until
28 substantial completion, or as set forth in the construction
29 contract documents.

30 "Subcontractor" means any entity that has a direct contract
31 with a prime contractor to perform a portion of the work under
32 a construction contract.

1 "Sub-subcontractor" means any entity that has a direct
2 contract with another subcontractor to perform a portion of the
3 work under a construction contract.

4 Section 10. Payment by owner; payment reductions.

5 (a) On all construction contracts exceeding \$25,000 in
6 value, an owner shall make progress payments to the prime
7 contractor for work performed and materials properly stored,
8 within 30 calendar days after a proper invoice is submitted to
9 the owner or a representative designated by the owner.

10 (b) An owner or entity designated by the owner, may not
11 reduce a payment application of a prime contractor without
12 detailing and forwarding to the prime contractor, within 7
13 calendar days of receipt of the proper invoice, the reasons for
14 reduction. The reduction may not be more than an amount that is
15 reasonable to correct the work, as set forth in writing.

16 (c) If a prime contractor, subcontractor,
17 sub-subcontractor, or materials supplier has had its proper
18 invoice reduced by an owner or representative designated by an
19 owner, prime contractor, subcontractor, sub-subcontractor, or
20 materials supplier all other affected entities having a
21 construction contract with the prime contractor,
22 subcontractor, sub-subcontractor, or materials supplier shall
23 be notified within 7 calendar days. Except as affected by a
24 prior reduction, a prime contractor or subcontractor may not
25 reduce the proper invoice of another subcontractor,
26 sub-subcontractor, or material supplier without detailing and
27 forwarding to the subcontractor, sub-subcontractor, or
28 material supplier, within 7 calendar days of receipt of the
29 proper invoice, the reasons for reduction. A prime contractor,
30 subcontractor, or sub-subcontractor may also reduce a payment
31 of a contracted party from a previous proper invoice. Any such
32 reductions may not be more than an amount that is reasonable to
33 correct the reasons for reduction, as set forth in writing. Any
34 owner, prime contractor, subcontractor or sub-subcontractor
35 may be exempt from notification if the reduction is less than

1 one percent of its net proper invoice or is due to mathematical
2 errors.

3 Section 15. Payments by contractor.

4 (a) If a subcontractor or material supplier has performed
5 in accordance with the provisions of a construction contract,
6 the prime contractor shall make payment to the subcontractor or
7 material supplier no later than 10 calendar days after the
8 prime contractor receives its corresponding payment for the
9 work performed.

10 (b) If a sub-subcontractor or material supplier has
11 performed in accordance with the provisions of a construction
12 contract, the sub-subcontractor or material supplier shall be
13 entitled to receive payment no later than 7 calendar days after
14 subcontractor receives its corresponding payment for the work
15 performed.

16 Section 20. Remedies for nonpayment.

17 (a) Any prime contractor that performs work under a
18 construction contract may suspend performance of the work or
19 may terminate a construction contract if the prime contractor
20 is not properly paid within 49 calendar days of the date that
21 the corresponding proper invoice is submitted. Written notice
22 must be received by the owner at least 7 calendar days before
23 an intended suspension or termination.

24 (b) Any prime contractor, subcontractor,
25 sub-subcontractor, or material supplier that suspends
26 performance as provided in this Act, including those entities
27 that suspend performance due to the suspension of a prime
28 contractor, is not required to furnish further performance
29 until the entity is paid for the full amount, less retainage,
30 of work performed, material supplied, or services rendered,
31 together with any costs incurred for mobilization resulting
32 from the shutdown and start-up of a project.

33 (c) Any prime contractor, subcontractor,
34 sub-subcontractor, or materials supplier that suspends

1 performance of the work or terminates a construction contract
2 for nonpayment under this Act shall not be held in breach of
3 the construction contract.

4 (d) If the owner delays in making payments to the prime
5 contractor, any agreed-upon schedule or completion date and its
6 resulting penalties, damages, bonuses, or rewards shall be
7 extended by the same amount of calendar days that payments were
8 late.

9 (e) If a payment to a prime contractor is received later
10 than as specified in this Act, that prime contractor shall be
11 entitled to receive interest at the rate of one and one-half
12 percent per month, if it is the prevailing party in any action
13 brought to seek enforcement pursuant to this Act. In addition,
14 the prevailing party may not be precluded from seeking dispute
15 costs in a reasonable amount.

16 (f) If a payment to a subcontractor, sub-subcontractor, or
17 material supplier is received later than as specified in this
18 Act, that subcontractor, sub-subcontractor, or material
19 supplier shall be entitled to receive interest at the rate of
20 one and one-half percent per month, if it is the prevailing
21 party in any action brought to seek enforcement pursuant to
22 this Act. In addition, the prevailing party may not be
23 precluded from seeking dispute costs in a reasonable amount.

24 Section 25. Retainage.

25 (a) A construction contract may include a provision for a
26 retainage of a portion of the payment due. The retainage is not
27 to exceed 10% of the amount of the payment due. When the gross
28 proper invoice of the prime contractor first equals or exceeds
29 50% of the value of the contract, the amount of retainage
30 withheld thereafter shall not exceed 5% of the total proper
31 invoice.

32 (b) A subcontract may include a provision for a retainage
33 of a portion of the payment due. The retainage is not to exceed
34 10% of the amount of the payment due. When the gross proper
35 invoice of the subcontractor or sub-subcontractor first equals

1 or exceeds 50% of the value of the subcontract, the retainage
2 percentage withheld thereafter shall not exceed 5% of the total
3 proper invoice.

4 (c) No later than 21 calendar days after a certificate of
5 substantial completion is issued for the project or separate
6 usable phase of the project and upon adequate performance of
7 the prime contractor and with approval of any applicable
8 surety, the retainage shall be released by the owner to the
9 prime contractor less an amount no greater than 150% of the
10 estimated costs to correct any incomplete or defective work as
11 identified, itemized, and attached to the certificate of
12 substantial completion. All remaining funds shall be released
13 as each deficiency is satisfactorily completed. The prime
14 contractor shall release within 10 calendar days of receipt,
15 the share of those funds that have been withheld from other
16 entities. All other entities shall release within 7 calendar
17 days of receipt, the share of those funds that have been
18 withheld from other entities.

19 Section 30. Exemptions.

20 (a) This Act shall not apply to highway construction or to
21 railroad construction.

22 (b) Except as provided for in a construction contract, this
23 Act shall not apply to:

- 24 (1) roads;
- 25 (2) bridges;
- 26 (3) utilities;
- 27 (4) traffic control;
- 28 (5) drainage construction;
- 29 (6) sanitary sewer construction; or
- 30 (7) waterline construction.

31 (c) This Act shall not apply to any contract relating to a
32 single-family, two-family, three-family, or four-family
33 dwellings.

34 Section 35. Unenforceable contracts. The following are

1 against the public policy of this State and are void and
2 unenforceable:

3 (1) a provision, covenant, clause, or understanding in,
4 collateral to, or affecting a construction contract that makes
5 the contract subject to the laws of another state or that
6 requires any litigation, arbitration, or other dispute
7 resolution proceeding arising from the contract to be conducted
8 in another state; and

9 (2) a provision, covenant, clause, or understanding in,
10 collateral to, or affecting a construction contract that
11 disallows or alters the rights of any prime contractor,
12 subcontractor, sub-subcontractor, or material supplier to
13 receive and enforce any rights under this Act.

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.