



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5388

Introduced 2/15/2012, by Rep. Ann Williams

SYNOPSIS AS INTRODUCED:

30 ILCS 500/50-33 new

30 ILCS 500/50-60

740 ILCS 175/4

from Ch. 127, par. 4104

Amends the Illinois Procurement Code. Requires all State contracts to contain a certification that vendors are in compliance with various anti-fraud and anti-corruption statutes. Provides that the chief procurement officer may declare the contract void if the vendor's certification is false. Amends the Illinois False Claims Act. Provides that certain false claim actions must, unless opposed by the State, be dismissed by the court if substantially the same allegations or transactions as alleged in the action were publicly disclosed. Redefines "original source". Provides that a civil action for relief from retaliatory actions may not be brought more than 3 years after the date when the retaliation occurred.

LRB097 20244 PJG 65698 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

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

4 Section 5. The Illinois Procurement Code is amended by
5 changing Section 50-60 and by adding Section 50-33 as follows:

6 (30 ILCS 500/50-33 new)

7 Sec. 50-33. Lawful and ethical conduct.

8 (a) No person shall enter into or perform a contract with a
9 State agency or enter into or perform a subcontract under this
10 Code if that person has engaged in conduct, alone or in concert
11 with any other person, relating to the contract or subcontract
12 that would constitute a violation of Section 17-9, Section
13 17-10.2, Section 17-10.3, Section 17-24, Article 33, or Article
14 33E of the Criminal Code of 1961, or any similar federal
15 offense.

16 (b) Every bid submitted and contract executed by the State
17 and every subcontract subject to Section 20-120 of this Code
18 shall contain a certification by the bidder, contractor, or
19 subcontractor, respectively, that the bidder, contractor, or
20 subcontractor is not barred from bidding for, entering into, or
21 performing a contract under subsection (a) of this Section and
22 that he or she acknowledges that the chief procurement officer
23 may declare the related contract void if any of the

1 certifications completed pursuant to this subsection (b) are
2 false.

3 (30 ILCS 50/50-60)

4 Sec. 50-60. Voidable contracts.

5 (a) If any contract or amendment thereto is entered into or
6 purchase or expenditure of funds is made at any time in
7 violation of this Code or any other law, the contract or
8 amendment thereto may be declared void by the chief procurement
9 officer or may be ratified and affirmed, provided the chief
10 procurement officer determines that ratification is in the best
11 interests of the State. If the contract is ratified and
12 affirmed, it shall be without prejudice to the State's rights
13 to any appropriate damages.

14 (b) If, during the term of a contract, the chief
15 procurement officer determines that the contractor is
16 delinquent in the payment of debt as set forth in Section 50-11
17 of this Code, the chief procurement officer may declare the
18 contract void if it determines that voiding the contract is in
19 the best interests of the State. The Debt Collection Bureau
20 shall adopt rules for the implementation of this subsection
21 (b).

22 (c) If, during the term of a contract, the chief
23 procurement officer determines that the contractor is in
24 violation of Section 50-10.5 of this Code, the chief
25 procurement officer shall declare the contract void.

1 (d) If, during the term of a contract, the contracting
2 agency learns from an annual certification or otherwise
3 determines that the contractor no longer qualifies to enter
4 into State contracts by reason of Section 50-5, 50-10, 50-12,
5 50-14, ~~or~~ 50-14.5, or 50-33 of this Article, the chief
6 procurement officer may declare the contract void if it
7 determines that voiding the contract is in the best interests
8 of the State.

9 (e) If, during the term of a contract, the chief
10 procurement officer learns from an annual certification or
11 otherwise determines that a subcontractor subject to Section
12 20-120 no longer qualifies to enter into State contracts by
13 reason of Section 50-5, 50-10, 50-10.5, 50-11, 50-12, 50-14, ~~or~~
14 50-14.5, or 50-33 of this Article, the chief procurement
15 officer may declare the related contract void if it determines
16 that voiding the contract is in the best interests of the
17 State.

18 (f) The changes to this Section made by Public Act 96-795
19 apply to actions taken by the chief procurement officer on or
20 after July 1, 2010.

21 (Source: P.A. 96-493, eff. 1-1-10; 96-795, eff. 7-1-10 (see
22 Section 5 of P.A. 96-793 for the effective date of changes made
23 by P.A. 96-795); 96-1000, eff. 7-2-10.)

24 Section 10. The Illinois False Claims Act is amended by
25 changing Section 4 as follows:

1 (740 ILCS 175/4) (from Ch. 127, par. 4104)

2 Sec. 4. Civil actions for false claims.

3 (a) Responsibilities of the Attorney General and the
4 Department of State Police. The Attorney General or the
5 Department of State Police shall diligently investigate a civil
6 violation under Section 3. If the Attorney General finds that a
7 person violated or is violating Section 3, the Attorney General
8 may bring a civil action under this Section against the person.

9 The State shall receive an amount for reasonable expenses
10 that the court finds to have been necessarily incurred by the
11 Attorney General, including reasonable attorneys' fees and
12 costs. All such expenses, fees, and costs shall be awarded
13 against the defendant. The court may award amounts from the
14 proceeds of an action or settlement that it considers
15 appropriate to any governmental entity or program that has been
16 adversely affected by a defendant. The Attorney General, if
17 necessary, shall direct the State Treasurer to make a
18 disbursement of funds as provided in court orders or settlement
19 agreements.

20 (b) Actions by private persons.

21 (1) A person may bring a civil action for a violation
22 of Section 3 for the person and for the State. The action
23 shall be brought in the name of the State. The action may
24 be dismissed only if the court and the Attorney General
25 give written consent to the dismissal and their reasons for

1 consenting.

2 (2) A copy of the complaint and written disclosure of
3 substantially all material evidence and information the
4 person possesses shall be served on the State. The
5 complaint shall be filed in camera, shall remain under seal
6 for at least 60 days, and shall not be served on the
7 defendant until the court so orders. The State may elect to
8 intervene and proceed with the action within 60 days after
9 it receives both the complaint and the material evidence
10 and information.

11 (3) The State may, for good cause shown, move the court
12 for extensions of the time during which the complaint
13 remains under seal under paragraph (2). Any such motions
14 may be supported by affidavits or other submissions in
15 camera. The defendant shall not be required to respond to
16 any complaint filed under this Section until 20 days after
17 the complaint is unsealed and served upon the defendant.

18 (4) Before the expiration of the 60-day period or any
19 extensions obtained under paragraph (3), the State shall:

20 (A) proceed with the action, in which case the
21 action shall be conducted by the State; or

22 (B) notify the court that it declines to take over
23 the action, in which case the person bringing the
24 action shall have the right to conduct the action.

25 (5) When a person brings an action under this
26 subsection (b), no person other than the State may

1 intervene or bring a related action based on the facts
2 underlying the pending action.

3 (c) Rights of the parties to Qui Tam actions.

4 (1) If the State proceeds with the action, it shall
5 have the primary responsibility for prosecuting the
6 action, and shall not be bound by an act of the person
7 bringing the action. Such person shall have the right to
8 continue as a party to the action, subject to the
9 limitations set forth in paragraph (2).

10 (2) (A) The State may dismiss the action
11 notwithstanding the objections of the person initiating
12 the action if the person has been notified by the State of
13 the filing of the motion and the court has provided the
14 person with an opportunity for a hearing on the motion.

15 (B) The State may settle the action with the defendant
16 notwithstanding the objections of the person initiating
17 the action if the court determines, after a hearing, that
18 the proposed settlement is fair, adequate, and reasonable
19 under all the circumstances. Upon a showing of good cause,
20 such hearing may be held in camera.

21 (C) Upon a showing by the State that unrestricted
22 participation during the course of the litigation by the
23 person initiating the action would interfere with or unduly
24 delay the State's prosecution of the case, or would be
25 repetitious, irrelevant, or for purposes of harassment,
26 the court may, in its discretion, impose limitations on the

1 person's participation, such as:

2 (i) limiting the number of witnesses the person may
3 call:

4 (ii) limiting the length of the testimony of such
5 witnesses;

6 (iii) limiting the person's cross-examination of
7 witnesses; or

8 (iv) otherwise limiting the participation by the
9 person in the litigation.

10 (D) Upon a showing by the defendant that unrestricted
11 participation during the course of the litigation by the
12 person initiating the action would be for purposes of
13 harassment or would cause the defendant undue burden or
14 unnecessary expense, the court may limit the participation
15 by the person in the litigation.

16 (3) If the State elects not to proceed with the action,
17 the person who initiated the action shall have the right to
18 conduct the action. If the State so requests, it shall be
19 served with copies of all pleadings filed in the action and
20 shall be supplied with copies of all deposition transcripts
21 (at the State's expense). When a person proceeds with the
22 action, the court, without limiting the status and rights
23 of the person initiating the action, may nevertheless
24 permit the State to intervene at a later date upon a
25 showing of good cause.

26 (4) Whether or not the State proceeds with the action,

1 upon a showing by the State that certain actions of
2 discovery by the person initiating the action would
3 interfere with the State's investigation or prosecution of
4 a criminal or civil matter arising out of the same facts,
5 the court may stay such discovery for a period of not more
6 than 60 days. Such a showing shall be conducted in camera.
7 The court may extend the 60-day period upon a further
8 showing in camera that the State has pursued the criminal
9 or civil investigation or proceedings with reasonable
10 diligence and any proposed discovery in the civil action
11 will interfere with the ongoing criminal or civil
12 investigation or proceedings.

13 (5) Notwithstanding subsection (b), the State may
14 elect to pursue its claim through any alternate remedy
15 available to the State, including any administrative
16 proceeding to determine a civil money penalty. If any such
17 alternate remedy is pursued in another proceeding, the
18 person initiating the action shall have the same rights in
19 such proceeding as such person would have had if the action
20 had continued under this Section. Any finding of fact or
21 conclusion of law made in such other proceeding that has
22 become final shall be conclusive on all parties to an
23 action under this Section. For purposes of the preceding
24 sentence, a finding or conclusion is final if it has been
25 finally determined on appeal to the appropriate court, if
26 all time for filing such an appeal with respect to the

1 finding or conclusion has expired, or if the finding or
2 conclusion is not subject to judicial review.

3 (d) Award to Qui Tam plaintiff.

4 (1) If the State proceeds with an action brought by a
5 person under subsection (b), such person shall, subject to
6 the second sentence of this paragraph, receive at least 15%
7 but not more than 25% of the proceeds of the action or
8 settlement of the claim, depending upon the extent to which
9 the person substantially contributed to the prosecution of
10 the action. Where the action is one which the court finds
11 to be based primarily on disclosures of specific
12 information (other than information provided by the person
13 bringing the action) relating to allegations or
14 transactions in a criminal, civil, or administrative
15 hearing, in a legislative, administrative, or Auditor
16 General's report, hearing, audit, or investigation, or
17 from the news media, the court may award such sums as it
18 considers appropriate, but in no case more than 10% of the
19 proceeds, taking into account the significance of the
20 information and the role of the person bringing the action
21 in advancing the case to litigation. Any payment to a
22 person under the first or second sentence of this paragraph
23 (1) shall be made from the proceeds. Any such person shall
24 also receive an amount for reasonable expenses which the
25 court finds to have been necessarily incurred, plus
26 reasonable attorneys' fees and costs. The State shall also

1 receive an amount for reasonable expenses which the court
2 finds to have been necessarily incurred by the Attorney
3 General, including reasonable attorneys' fees and costs.
4 All such expenses, fees, and costs shall be awarded against
5 the defendant. The court may award amounts from the
6 proceeds of an action or settlement that it considers
7 appropriate to any governmental entity or program that has
8 been adversely affected by a defendant. The Attorney
9 General, if necessary, shall direct the State Treasurer to
10 make a disbursement of funds as provided in court orders or
11 settlement agreements.

12 (2) If the State does not proceed with an action under
13 this Section, the person bringing the action or settling
14 the claim shall receive an amount which the court decides
15 is reasonable for collecting the civil penalty and damages.
16 The amount shall be not less than 25% and not more than 30%
17 of the proceeds of the action or settlement and shall be
18 paid out of such proceeds. Such person shall also receive
19 an amount for reasonable expenses which the court finds to
20 have been necessarily incurred, plus reasonable attorneys'
21 fees and costs. All such expenses, fees, and costs shall be
22 awarded against the defendant. The court may award amounts
23 from the proceeds of an action or settlement that it
24 considers appropriate to any governmental entity or
25 program that has been adversely affected by a defendant.
26 The Attorney General, if necessary, shall direct the State

1 Treasurer to make a disbursement of funds as provided in
2 court orders or settlement agreements.

3 (3) Whether or not the State proceeds with the action,
4 if the court finds that the action was brought by a person
5 who planned and initiated the violation of Section 3 upon
6 which the action was brought, then the court may, to the
7 extent the court considers appropriate, reduce the share of
8 the proceeds of the action which the person would otherwise
9 receive under paragraph (1) or (2) of this subsection (d),
10 taking into account the role of that person in advancing
11 the case to litigation and any relevant circumstances
12 pertaining to the violation. If the person bringing the
13 action is convicted of criminal conduct arising from his or
14 her role in the violation of Section 3, that person shall
15 be dismissed from the civil action and shall not receive
16 any share of the proceeds of the action. Such dismissal
17 shall not prejudice the right of the State to continue the
18 action, represented by the Attorney General.

19 (4) If the State does not proceed with the action and
20 the person bringing the action conducts the action, the
21 court may award to the defendant its reasonable attorneys'
22 fees and expenses if the defendant prevails in the action
23 and the court finds that the claim of the person bringing
24 the action was clearly frivolous, clearly vexatious, or
25 brought primarily for purposes of harassment.

26 (e) Certain actions barred.

1 (1) No court shall have jurisdiction over an action
2 brought by a former or present member of the Guard under
3 subsection (b) of this Section against a member of the
4 Guard arising out of such person's service in the Guard.

5 (2) (A) No court shall have jurisdiction over an action
6 brought under subsection (b) against a member of the
7 General Assembly, a member of the judiciary, or an exempt
8 official if the action is based on evidence or information
9 known to the State when the action was brought.

10 (B) For purposes of this paragraph (2), "exempt
11 official" means any of the following officials in State
12 service: directors of departments established under the
13 Civil Administrative Code of Illinois, the Adjutant
14 General, the Assistant Adjutant General, the Director of
15 the State Emergency Services and Disaster Agency, members
16 of the boards and commissions, and all other positions
17 appointed by the Governor by and with the consent of the
18 Senate.

19 (3) In no event may a person bring an action under
20 subsection (b) which is based upon allegations or
21 transactions which are the subject of a civil suit or an
22 administrative civil money penalty proceeding in which the
23 State is already a party.

24 (4) (A) The court shall dismiss an action or claim under
25 this Section, unless opposed by the State, if substantially
26 the same allegations or transactions as alleged in the

1 ~~action or claim were publicly disclosed: No court shall~~
2 ~~have jurisdiction over an action under this Section based~~
3 ~~upon the public disclosure of allegations or transactions~~

4 (i) in a criminal, civil, or administrative
5 hearing in which the State or its agent is a party; 7

6 (ii) in a State legislative, State administrative,
7 ~~or Auditor General, or other State General's~~ report,
8 hearing, audit, or investigation; 7 or

9 (iii) from the news media,

10 unless the action is brought by the Attorney General or the
11 person bringing the action is an original source of the
12 information.

13 (B) For purposes of this paragraph (4), "original
14 source" means an individual who either (i) prior to a
15 public disclosure under subparagraph (A) of this paragraph
16 (4), has voluntarily disclosed to the State the information
17 on which allegations or transactions in a claim are based,
18 or (ii) has knowledge that is independent of and materially
19 adds to the publicly disclosed allegations or
20 transactions, has direct and independent knowledge of the
21 ~~information on which the allegations are based~~ and who has
22 voluntarily provided the information to the State before
23 filing an action under this Section ~~which is based on the~~
24 ~~information.~~

25 (f) State not liable for certain expenses. The State is not
26 liable for expenses which a person incurs in bringing an action

1 under this Section.

2 (g) Relief from retaliatory actions.

3 (1) In general, any employee, contractor, or agent
4 shall be ~~is~~ entitled to all relief necessary to make that
5 employee, contractor, or agent whole, if that employee,
6 contractor, or agent is discharged, demoted, suspended,
7 threatened, harassed, or in any other manner discriminated
8 against in the terms and conditions of employment because
9 of lawful acts done by the employee, contractor, ~~or agent~~
10 ~~on behalf of the employee, contractor, or agent,~~ or
11 associated others in furtherance of an action under this
12 Section or other efforts to stop one or more violations of
13 this Act.

14 (2) Relief under paragraph (1) shall include
15 reinstatement with the same seniority status that the
16 employee, contractor, or agent would have had but for the
17 discrimination, 2 times the amount of back pay, interest on
18 the back pay, and compensation for any special damages
19 sustained as a result of the discrimination, including
20 litigation costs and reasonable attorneys' fees. An action
21 under this subsection (g) may be brought in the appropriate
22 circuit court for the relief provided in this subsection
23 (g).

24 (3) A civil action under this subsection may not be
25 brought more than 3 years after the date when the
26 retaliation occurred.

1 (Source: P.A. 96-1304, eff. 7-27-10.)