

LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

H. F. 254

AN ACT to amend, revise, and codify chapter seven (7) of title twenty-four (24), sections eighty-four hundred twenty-nine (8429) and eighty-four hundred thirty (8430) of the compiled code of Iowa, and sections eighty-four hundred twenty-seven (8427) and eighty-four hundred twenty-eight (8428) of the supplement to said code, relating to bonds for the performance of contracts for public improvements, and to the rights of persons who furnish labor or materials on such improvements.

Be It Enacted by the General Assembly of the State of Iowa:

That chapter seven (7) of title twenty-four (24), sections eighty-four hundred twenty-nine (8429) and eighty-four hundred thirty (8430) of the compiled Code of Iowa, and sections eighty-four hundred twenty-seven (8427) and eighty-four hundred twenty-eight (8428) of the supplement to said Code are amended, revised, and codified to read as follows:

Section 1. Terms defined. For the purpose of this title:

1. "Public corporation" shall embrace the state, and all counties, cities, towns, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements.

2. "Public improvement" is one, the cost of which is payable from taxes or other funds under the control of the public corporation, except in cases of public improvement for drainage or levee purposes the provisions of the drainage law in cases of conflict shall govern.

3. "Construction" shall, in addition to its ordinary meaning, embrace repair and alteration.

4. "Material" shall, in addition to its ordinary meaning, embrace feed provisions and fuel.

Sec. 2. Public improvements - bond and conditions. Contracts for the construction of a public improvement shall, when the contract price equals or exceeds one thousand dollars (\$1,000.00), be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of such other requirements as may be provided by law. Such bond may also be required when the contract price does not equal said amount.

Sec. 3. Bond mandatory. The obligation of the public corporation to require, and the contractor to execute and deliver, said bond, shall not be limited or avoided by contract.

Sec. 4. Deposit in lieu of bond. A deposit of money, or a certified check on a solvent bank of the county in which the improvement is to be located, or state or federal bonds, or bonds issued by any city, town, school corporation, or county of this state, or bonds issued on behalf of any drainage or highway paying district of this state, may be received in an amount equal to the amount of the bond and held in lieu of a surety on such bond, and when so received such securities shall be held on the terms and conditions applicable to a surety.

Sec. 5. Amount of bond. Said bond shall run to the public corporation. The amount thereof shall be fixed, and the bond approved, by the official board

or officer empowered to let the contract, in an amount not less than seventy-five per cent (75%) of the contract price, and sufficient to comply with all requirements of said contract and to insure the fulfillment of every condition, expressly or impliedly embraced in said bond. Except that in contracts where no part of the contract price is paid until after the completion of the public improvement the amount of said bond may be fixed at not less than twenty-five per cent (25%) of the contract price.

Sec. 6. Subcontractors on public improvements. The following provision shall be held to be a part of every bond given for the performance of a contract for the construction of a public improvement, whether said provision be inserted in such bond or not, to wit:

"The principal and sureties on this bond hereby agree to pay to all persons, firms, or corporations having contracts directly with the principal or with subcontractors, all just claims due them for labor performed or materials furnished, in the performance of the contract on account of which this bond is given, when the same are not satisfied out of the portion of the contract price which the public corporation is required to retain until completion of the public improvement, but the principal and sureties shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law."

Every surety on this bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

1. To any extension of time to the contractor in which to perform the contract.
2. To any change in the plans, specifications or contract, when such change does not involve an increase of more than twenty per cent of the total contract price, and shall then be released only as to such excess increase.
3. That no provision of this bond or of any other contract shall be valid which limits to less than one year from the time of the acceptance of the work the right to sue on this bond for defects in workmanship or material not discovered or known to the obligee at the time such work was accepted.

Sec. 7. Claims for material or labor. Any person, firm, or corporation who has, under a contract with the principal contractor or with subcontractors, performed labor or furnished material, service or transportation, in the construction of a public improvement, may file, with the officer authorized by law to issue warrants in payment of such improvement, an itemized, sworn, written statement of the claim for such labor or material, service or transportation.

Sec. 8. Filing claims in case of highway improvements. In case of highway improvements by the county, claims shall be filed with the county auditor of the county letting the contract.

Sec. 9. Officer to indorse time of filing claim. The officer shall indorse over his official signature upon every claim filed with him, the date and hour of filing.

Sec. 10. Time of filing claims. Claims may be filed with said officer as follows:

1. At any time before the expiration of thirty (30) days immediately following the completion and final acceptance of the improvement.
2. At any time after said thirty (30) day period, if the public corporation has not paid the full contract price as herein authorized, and no action is pending to adjudicate rights in and to the unpaid portion of the contract price.

Sec. 11. Claims filed after action brought. The court may permit claims

to be filed with it during the pendency of the action hereinafter authorized, if it be made to appear that such belated filing will not materially delay the action.

Sec. 12. Payments under public contracts. Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered; said payments to be made for not more than ninety per cent (90%) of said estimates and to be so made that at least ten per cent (10%) of the contract price will remain unpaid at the date of the completion of the contract, anything in the contract to the contrary notwithstanding.

Sec. 13. Inviolibility and disposition of fund. No public corporation shall be permitted to plead noncompliance with the preceding section, and the retained percentage of the contract price, which in no case shall be less than ten per cent (10%), shall constitute a fund for the payment of claims for materials furnished and labor performed on said improvement, and shall be held and disposed of by the public corporation as hereinafter provided.

Sec. 14. Retention of unpaid funds. Said fund shall be retained by the public corporation for a period of thirty (30) days after the completion and final acceptance of the improvement. If at the end of said thirty (30) day period claims are on file as herein provided the public corporation shall continue to retain from said unpaid funds a sum not less than double the total amount of all claims on file.

Sec. 16. Action to determine rights to fund. The public corporation, the principal contractor, any claimant for labor or material who has filed his claim, or the surety on any bond given for the performance of the contract, may, at any time after the expiration of thirty (30) days, and not later than six (6) months, following the completion and final acceptance of said improvement, bring action in equity in the county where the improvement is located to adjudicate all rights to said fund, or to enforce liability on said bond.

Sec. 17. Parties. The official board or officer letting the contract, the principal contractor, all claimants for labor and material who have filed their claim, and the surety on any bond given for the performance of the contract shall be joined as plaintiffs or defendants.

Sec. 18. Adjudication - payment of claims. The court shall adjudicate all claims. Payments from said retained percentage, if still in the hands of the public corporation, shall be made in the following order:

1. Costs of the action.
2. Claims for labor.
3. Claims for materials.
4. Claims of the public corporation.

Sec. 19. Insufficiency of funds. When the retained percentage aforesaid is insufficient to pay all claims for labor or materials, the court shall, in making distribution under the preceding section, order the claims in each class paid in the order of filing the same.

Sec. 20. Converting property into money. When it appears that the unpaid portion of the contract price for the public improvement, or a part thereof, is represented, in whole or in part, by property other than money, or if a deposit has been made in lieu of a surety, the court shall have jurisdiction thereover, and may cause the same to be sold, under such procedure as it may deem just and proper, and disburse the proceeds as in other cases.

Sec. 21. Attorney fees. The court may tax, as costs, a reasonable attorney fee in favor of any claimant for labor or materials who has, in whole or in part, established his claim.

Sec. 22. Unpaid claimants - judgment on bond. If, after the said retained percentage has been applied to the payment of duly filed and established claims, there remain any such claims unpaid in whole or in part, judgment shall be entered for the amount thereof against the principal and sureties on the bond. In case the said percentage has been paid over as herein provided, judgment shall be entered against the principal and sureties on all such claims.

Sec. 23. Abandonment of public work - effect. When a contractor abandons the work on a public improvement or is legally excluded therefrom, the improvement shall be deemed completed for the purpose of filing claims as herein provided, from the date of the official cancellation of the contract. The only fund available for the payment of the claims of persons for labor performed or material furnished shall be the amount then due the contractor, if any, and if said amount be insufficient to satisfy said claims, the claimants shall have a right of action on the bond given for the performance of the contract.

Sec. 24. Retention of funds in case of highway improvement. If payment for such improvement is to be made in whole or in part from the primary road fund, the county auditor shall immediately notify the state highway commission of the filing of all claims.

Sec. 25. Filing of claim - effect. The filing of any claim shall not work the withholding of any funds from the contractor except the retained percentage, as provided in this chapter.

Sec. 26. Public corporation - action on bond. Nothing in this chapter shall be construed as limiting in any manner the right of the public corporation to pursue any remedy on the bond given for the performance of the contract.

Approved April 9, 1924.

CHAPTER 162

APPOINTMENTS AND BONDS OF GUARDIANS

H. F. 256

AN ACT to amend, revise, and codify sections sixty-six hundred forty-five (6645) and sixty-six hundred seventy-one (6671) of the compiled code of Iowa, and sections sixty-six hundred fifty-two (6652), sixty-six hundred seventy (6670), seventy-eight hundred forty-eight (7848), and seventy-eight hundred forty-eight-a one (7848-a1) of the supplement to said code, relating to the appointment and bonds of guardians, and to the sale or mortgage of the property of persons under guardianship, and of persons deceased.

Be It Enacted by the General Assembly of the State of Iowa:

That section sixty-six hundred forty-five (6645) of the compiled Code of Iowa is amended, revised, and codified to read as follows:

Section 1. Bond and oath of guardian of property. Guardians of the property of a minor shall give bond, with surety to be approved by the court or