

CHAPTER 127

RETENTION FROM PAYMENTS ON PUBLIC CONTRACTS

S. F. 225

AN ACT relating to retainage withheld from payment to contractors under contracts for public improvements.

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

Section 1. Section 384.57, Code 1981, is amended to read as follows:

384.57 MONTHLY PAYMENTS. The city may contract to pay not to exceed ~~ninety~~ ninety-five percent of the engineer's estimated value of the acceptable work completed during the month to the contractor at the end of each month. Payment may be made in warrants drawn on any ~~fund-or~~ funds from which payment for the work may be made. If such funds are depleted, anticipatory warrants may be issued bearing a rate of interest not exceeding that permitted by chapter 74A, which do not constitute a violation of section 384.10, even if the collection of taxes or special assessments or income from the sale of bonds applicable to the public improvement is after the end of the fiscal year in which the warrants are issued. If the city arranges for the private sale of anticipatory warrants, they may be sold and the proceeds used to pay the contractor. Such Anticipatory warrants may also be used to pay other persons furnishing services constituting a part of the cost of the public improvement. The provisions of this section and section 384.58 shall not apply if the city has entered into a contract with the federal government or accepted a federal grant which is governed by federal laws or rules that are contrary to this section and section 384.58.

Sec. 2. Section 384.58, subsection 4, Code 1981, is amended to read as follows:

4. Upon accepting the work, the council ~~may~~ shall order payment of any amount due the contractor, to be made by warrants issued in the manner provided by section 384.57 or by other means. The city shall order payment of any amount due the contractor to be made in accordance with the terms of the contract. Failure to make payment within seventy days after the work under the contract has been completed and if the work has been accepted and all required materials, certifications, and other documentations required to be submitted by the contractor and specified by the contract have been furnished the awarding city by the contractor, shall cause interest to accrue on the amount unpaid to the benefit of the unpaid party. Interest shall not accrue on funds retained by a city to satisfy the provisions of section 573.14 regarding claims on file. Interest shall accrue during the period commencing the thirty-first day following the completion of work and satisfaction of the other requirements of this subsection and ending on the date of payment. The rate of interest shall be determined, by the period of time during which interest accrues, and shall be the same as the rate of

interest that is in effect under section 453.6, as of the day interest begins to accrue, for a deposit of public funds for a comparable period of time. Nothing contained in this subsection shall abridge any of the rights set forth in section 573.16.

Sec. 3. Section 573.12, Code 1981, is amended to read as follows:

573.12 RETENTION FROM PAYMENTS ON 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, as determined by the project architect or engineer. ~~In making said payments, there shall be retained ten percent of each said monthly estimate by the public corporation, provided, however, that if the contract is for more than fifty thousand dollars, and if the public corporation at any time after fifty percent of the improvement has been completed finds that satisfactory progress is being made, the public corporation may authorize any of such remaining payments to be made in full.~~ The public corporation shall retain from each monthly payment five percent of that amount which is determined to be due according to the estimate of the architect or engineer.

Sec. 4. Section 573.14, Code 1981, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The public corporation shall order payment of any amount due the contractor to be made in accordance with the terms of the contract. Failure to make payment within seventy days after the work under the contract has been completed and if the work has been accepted and all required materials, certifications, and other documentations required to be submitted by the contractor and specified by the contract have been furnished the awarding public corporation by the contractor, shall cause interest to accrue on the amount unpaid to the benefit of the unpaid party. Interest shall accrue during the period commencing the thirty-first day following the completion of work and satisfaction of the other requirements of this subsection and ending on the date of payment. The rate of interest shall be determined by the period of time during which interest accrues, and shall be the same as the rate of interest that is in effect under section 453.6, as of the day interest begins to accrue, for a deposit of public funds for a comparable period of time. Nothing contained in this paragraph shall abridge any of the rights set forth in section 573.16. Interest shall not accrue on funds retained by the public corporation to satisfy the provisions of this section regarding claims on file. The provisions of this chapter shall not apply if the public corporation has entered into a contract with the federal government or accepted a federal grant which is governed by federal law or rules that are contrary to the provisions of this chapter.

Approved May 14, 1981