

Small Business and Commerce: Blanshan, Chair; Hansen of Woodbury and Metcalf.

*Sen. Commerce 3/31/87 Amend (p. 898) & Do Pass 4/9/87 (p. 1198)*

FEB 12 1987

HOUSE FILE 244

SMALL BUSINESS AND COMMERCE

BY ROSENBERG

Passed House, Date 3-27-87 (p. 893) Passed Senate, Date 4/24/87 (p. 1536)

Vote: Ayes 61 Nays 35 Vote: Ayes 37 Nays 7

Approved May 28, 1987

*Motion to reconsider (p. 894)  
" Lost 3/30 (p. 952)*

*Referred Senate 5-6-87 (p. 1727)  
37-7*

**A BILL FOR**

- 1 An Act relating to progress payments, final payments, and
- 2 retention from payments made to subcontractors on public
- 3 improvement construction projects.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 244

H-3427

1 Amend House File 244 as follows:

- 2 1. Page 1, line 6, by inserting after the word
- 3 "law," the following: "including, but not limited to,
- 4 section 573.2 and 573.14,".

BY HUMMEL of Benton  
SKOW of Guthrie

H-3427 FILED MARCH 26, 1987

*Lost 3/27/87 (p. 893)*

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

S-3498 >  
S-3620

1 Section 1. Section 573.12, Code 1987, is amended to read  
2 as follows:

3 573.12 PAYMENTS AND RETENTION FROM PAYMENTS ON CONTRACTS.

H-3427

4 1. RETENTION. Payments made under contracts for the  
5 construction of public improvements, unless provided otherwise  
6 by law, shall be made on the basis of monthly estimates of  
7 labor performed and material delivered, as determined by the  
8 project architect or engineer. The public corporation shall  
9 retain from each monthly payment five percent of that amount  
10 which is determined to be due according to the estimate of the  
11 architect or engineer.

S-3520

12 The contractor may retain from each payment to a  
13 subcontractor not more than the lesser of five percent or the  
14 amount specified in the contract between the contractor and  
15 the subcontractor.

S-3520, S-3498

16 2. PROMPT PAYMENT. A progress payment or final payment to  
17 a subcontractor for satisfactory performance of the  
18 subcontractor's work shall be made no later than:

19 a. Seven days after the contractor receives payment for  
20 that subcontractor's work.

S-3547

21 b. A reasonable time after the contractor could have  
22 received payment for the subcontractor's work, if the reason  
23 for nonpayment is not the subcontractor's fault.

24 A contractor's acceptance of payment for one  
25 subcontractor's work is not a waiver of claims, and does not  
26 prejudice the rights of the contractor, as to any other claim  
27 related to the contract or project.

28 3. INTEREST PAYMENTS. If the contractor receives an  
29 interest payment under section 573.14, the contractor shall  
30 pay the subcontractor a share of the interest payment  
31 proportional to the payment for that subcontractor's work.

S-3520, S-3498 >

32 EXPLANATION

33 This bill provides a prompt payment provision for  
34 subcontractors and prohibits the contractor on a public  
35 improvement construction project from retaining a higher

1 percentage of periodic progress payments or final payments to  
2 subcontractors than the lesser of five percent or the  
3 percentage specified in the contract documents. Contractors  
4 are required to make periodic progress payments and final  
5 payments no later than seven days after the contractor  
6 receives a payment from the public corporation for the  
7 subcontractor's work, or within a reasonable time after the  
8 contractor could have received payment, if the reason for  
9 nonpayment is not the subcontractor's fault. If a contractor  
10 receives an interest payment under section 573.14, the  
11 contractor is also required to pay the subcontractor a share  
12 of the interest payment proportional to the payment for that  
13 subcontractor's work. A contractor's acceptance of payment  
14 for one subcontractor's work is not a waiver of claims, and  
15 does not prejudice the rights of a contractor, as to any other  
16 claim related to the contract or project.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

CORRECTED COMMERCE COMMITTEE AMENDMENT TO  
HOUSE FILE 244

S-3520

1 Amend House File 244, as passed by the House, as  
2 follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 573.2, Code 1987, is amended  
6 to read as follows:

7 573.2 PUBLIC IMPROVEMENTS -- BOND AND CONDITIONS.

8 1. CONTRACTOR'S BOND. Contracts for the  
9 construction of a public improvement shall, when the  
10 contract price equals or exceeds twenty-five thousand  
11 dollars, be accompanied by a bond, with surety,  
12 conditioned for the faithful performance of the  
13 contract, and for the fulfillment of other  
14 requirements as provided by law. The bond may also be  
15 required when the contract price does not equal that  
16 amount.

17 2. SUBCONTRACTOR'S BOND. A subcontractor must  
18 post the following bond to be entitled to receive  
19 prompt payment under section 573.12, subsection 2.  
20 Subcontracts for the construction of a public  
21 improvement shall be accompanied by a bond, with  
22 surety, conditioned for the faithful performance of  
23 the subcontract, and for the fulfillment of other  
24 requirements as provided by law, in all cases where a  
25 contractor's bond is required.

26 3. INSOLVENCY OF THE SURETY. However, if a  
27 contractor or subcontractor provides a performance or  
28 maintenance bond as required by a public improvement  
29 contract governed by this chapter and subsequently the  
30 surety company becomes insolvent and the contractor or  
31 subcontractor is required to purchase a new bond, the  
32 contractor or subcontractor may apply for  
33 reimbursement from the governmental agency that  
34 required a second bond and the claims shall be  
35 reimbursed from funds allocated for road construction  
36 purposes."

37 2. Page 1, line 12, by striking the word "The"  
38 and inserting the following:

39 "If the subcontractor has posted a bond under  
40 section 573.2, subsection 2, the".

41 3. Page 1, line 15, by inserting after the word  
42 "subcontractor." the following: "If the subcontractor  
43 has not posted a bond under section 573.2, subsection  
44 2, the contractor may retain from each payment to a  
45 subcontractor an amount deemed by the contractor to be  
46 sufficient to assure full performance, unless  
47 otherwise limited by contract between the contractor  
48 and subcontractor."

49 4. Page 1, line 16, by striking the word "A" and  
50 inserting the following: "If the subcontractor has

S-3520 pg. 2

- 1 posted a bond under section 573.2, subsection 2, a".  
2 5. Page 1, line 17, by striking the word "a" and  
3 inserting the following: "the".  
4 6. Page 1, by inserting after line 31 the  
5 following:  
6 "Sec. \_\_\_\_. Section 573.14, unnumbered paragraph 1,  
7 Code 1987, is amended to read as follows:  
8 Said fund shall be retained by the public  
9 corporation for a period of thirty days after the  
10 completion and final acceptance of the improvement.  
11 If at the end of said thirty-day period claims are on  
12 file as herein provided the public corporation shall  
13 continue to retain from said unpaid funds a sum not  
14 less-than equal to double the total amount of all  
15 claims on file. The balance shall be paid to the con-  
16 tractor."  
17 7. By renumbering as necessary.

S-3520

Filed April 13, 1987  
*Adopted 4/27/87 (p. 1536)*

BY COMMITTEE ON COMMERCE  
WILLIAM D. PALMER, Chairperson

HOUSE FILE 244

S-3543

- 1 Amend House File 244, as passed by the House as  
2 follows:  
3 1. Page 1, by striking lines 22 and 23 and  
4 inserting the following: "received payment for the  
5 subcontractor's work if the subcontractor has not  
6 assumed the risk of nonpayment by the public  
7 corporation, and if the reason for nonpayment is not  
8 the subcontractor's fault."

S-3543

Filed April 14, 1987  
*Love 4/24 (p. 1536)*

BY RICHARD F. DRAKE

S-3684

1 Amend House File 244 as passed by the House as  
2 follows:

- 3 1. Page 1, line 15 by inserting after the word  
4 "subcontractor" the following: ", provided the  
5 subcontractor has presented the general contractor  
6 with a written notice listing all subcontractors and  
7 material suppliers and properly executed lien waivers  
8 from each subcontractor and material supplier listed".
- 9 2. Page 1, line 20 by inserting after the word  
10 "work" the following: ", provided the subcontractor  
11 has presented the general contractor with a written  
12 notice listing all subcontractors and material  
13 suppliers and properly executed lien waivers from each  
14 subcontractor and material supplier listed".
- 15 3. Page 1, line 22 by inserting after the word  
16 "work," the following: "provided that the  
17 subcontractor has presented the general contractor  
18 with a written notice listing all subcontractors and  
19 material suppliers and properly executed lien waivers  
20 from each subcontractor and material supplier  
21 listed,".

S-3684

Filed April 20, 1987

*Placed o/c 4/24 (p. 1536)*

BY JOHN W. JENSEN

S-3498

1 Amend House File 244, as passed by the House, as  
2 follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 573.2, Code 1987, is amended  
6 to read as follows:

7 573.2 PUBLIC IMPROVEMENTS -- BOND AND CONDITIONS.

8 1. CONTRACTOR'S BOND. Contracts for the  
9 construction of a public improvement shall, when the  
10 contract price equals or exceeds twenty-five thousand  
11 dollars, be accompanied by a bond, with surety,  
12 conditioned for the faithful performance of the  
13 contract, and for the fulfillment of other  
14 requirements as provided by law. The bond may also be  
15 required when the contract price does not equal that  
16 amount.

17 2. SUBCONTRACTOR'S BOND. A subcontractor must  
18 post the following bond to be entitled to receive  
19 prompt payment under section 573.12, subsection 2.  
20 Subcontracts for the construction of a public  
21 improvement shall be accompanied by a bond, with  
22 surety, conditioned for the faithful performance of  
23 the subcontract, and for the fulfillment of other  
24 requirements as provided by law, in all cases where a  
25 contractor's bond is required.

26 3. INSOLVENCY OF THE SURETY. However, if a  
27 contractor or subcontractor provides a performance or  
28 maintenance bond as required by a public improvement  
29 contract governed by this chapter and subsequently the  
30 surety company becomes insolvent and the contractor or  
31 subcontractor is required to purchase a new bond, the  
32 contractor or subcontractor may apply for  
33 reimbursement from the governmental agency that  
34 required a second bond and the claims shall be  
35 reimbursed from funds allocated for road construction  
36 purposes."

37 2. Page 1, line 16, by striking the word "A" and  
38 inserting the following: "If the subcontractor has  
39 posted a bond under section 573.2, subsection 2, a".

40 3. Page 1, line 17, by striking the word "a" and  
41 inserting the following: "the".

42 4. Page 1, by inserting after line 31 the  
43 following:

44 "Sec. \_\_\_\_ . Section 573.14, unnumbered paragraph 1,  
45 Code 1987, is amended to read as follows:

46 Said fund shall be retained by the public  
47 corporation for a period of thirty days after the  
48 completion and final acceptance of the improvement.  
49 If at the end of said thirty-day period claims are on  
50 file as herein provided the public corporation shall

Page 2

1 continue to retain from said unpaid funds a sum not  
2 ~~less than~~ equal to double the total amount of all  
3 claims on file. The balance shall be paid to the con-  
4 tractor."

5 5. By renumbering as necessary.

S-3498

Filed April 9, 1987

Placed 6/10 4/24 (p. 1536)

BY COMMITTEE ON COMMERCE

WILLIAM D. PALMER, Chairperson

SENATE AMENDMENT TO  
HOUSE FILE 244

036

1 Amend House File 244, as passed by the House, as  
2 follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 573.2, Code 1987, is amended  
6 to read as follows:

7 573.2 PUBLIC IMPROVEMENTS -- BOND AND CONDITIONS.

8 1. CONTRACTOR'S BOND. Contracts for the  
9 construction of a public improvement shall, when the  
10 contract price equals or exceeds twenty-five thousand  
11 dollars, be accompanied by a bond, with surety,  
12 conditioned for the faithful performance of the  
13 contract, and for the fulfillment of other  
14 requirements as provided by law. The bond may also be  
15 required when the contract price does not equal that  
16 amount.

17 2. SUBCONTRACTOR'S BOND. A subcontractor must  
18 post the following bond to be entitled to receive  
19 prompt payment under section 573.12, subsection 2.  
20 Subcontracts for the construction of a public  
21 improvement shall be accompanied by a bond, with  
22 surety, conditioned for the faithful performance of  
23 the subcontract, and for the fulfillment of other  
24 requirements as provided by law, in all cases where a  
25 contractor's bond is required.

26 3. INSOLVENCY OF THE SURETY. However, if a  
27 contractor or subcontractor provides a performance or  
28 maintenance bond as required by a public improvement  
29 contract governed by this chapter and subsequently the  
30 surety company becomes insolvent and the contractor or  
31 subcontractor is required to purchase a new bond, the  
32 contractor or subcontractor may apply for  
33 reimbursement from the governmental agency that  
34 required a second bond and the claims shall be  
35 reimbursed from funds allocated for road construction  
36 purposes."

37 2. Page 1, line 12, by striking the word "The"  
38 and inserting the following:

39 "If the subcontractor has posted a bond under  
40 section 573.2, subsection 2, the".

41 3. Page 1, line 15, by inserting after the word  
42 "subcontractor." the following: "If the subcontractor  
43 has not posted a bond under section 573.2, subsection  
44 2, the contractor may retain from each payment to a  
45 subcontractor an amount deemed by the contractor to be  
46 sufficient to assure full performance, unless  
47 otherwise limited by contract between the contractor  
48 and subcontractor."

49 4. Page 1, line 16, by striking the word "A" and  
inserting the following: "If the subcontractor has

H-4036

Page Two

- 1 posted a bond under section 573.2, subsection 2, a".  
2 5. Page 1, line 17, by striking the word "a" and  
3 inserting the following: "the".  
4 6. Page 1, by inserting after line 31 the  
5 following:  
6 "Sec. \_\_\_\_ . Section 573.14, unnumbered paragraph 1,  
7 Code 1987, is amended to read as follows:  
8 Said fund shall be retained by the public  
9 corporation for a period of thirty days after the  
10 completion and final acceptance of the improvement.  
11 If at the end of said thirty-day period claims are on  
12 file as herein provided the public corporation shall  
13 continue to retain from said unpaid funds a sum ~~not~~  
14 ~~less-than~~ equal to double the total amount of all  
15 claims on file. The balance shall be paid to the con-  
16 tractor."  
17 7. By renumbering as necessary.

H-4036 FILED APRIL 29, 1987 RECEIVED FROM THE SENATE

*House refused to concur 5/5 (p. 1955)*  
*Senate Receded 5/6/87 (p. 1727)*

HOUSE FILE 244

AN ACT  
RELATING TO PROGRESS PAYMENTS, FINAL PAYMENTS, AND RETENTION  
FROM PAYMENTS MADE TO SUBCONTRACTORS ON PUBLIC IMPROVEMENT  
CONSTRUCTION PROJECTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 573.12, Code 1987, is amended to read  
as follows:

573.12 PAYMENTS AND RETENTION FROM PAYMENTS ON CONTRACTS.

1. RETENTION. 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. 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.

The contractor may retain from each payment to a  
subcontractor not more than the lesser of five percent or the  
amount specified in the contract between the contractor and  
the subcontractor.

2. PROMPT PAYMENT. A progress payment or final payment to  
a subcontractor for satisfactory performance of the  
subcontractor's work shall be made no later than:

a. Seven days after the contractor receives payment for  
that subcontractor's work.

b. A reasonable time after the contractor could have  
received payment for the subcontractor's work, if the reason  
for nonpayment is not the subcontractor's fault.

A contractor's acceptance of payment for one  
subcontractor's work is not a waiver of claims, and does not  
prejudice the rights of the contractor, as to any other claim

related to the contract or project.

3. INTEREST PAYMENTS. If the contractor receives an  
interest payment under section 573.14, the contractor shall  
pay the subcontractor a share of the interest payment  
proportional to the payment for that subcontractor's work.

---

DONALD D. AVENSON  
Speaker of the House

---

JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and  
is known as House File 244, Seventy-second General Assembly.

---

JOSEPH O'HERN  
Chief Clerk of the House

Approved May 28, 1987

---

TERRY E. BRANSTAD  
Governor

HF 244