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MAR 22 1989

HOUSE FILE 737

Place On Calendar

BY COMMITTEE ON

TRANSPORTATION

(SUCCESSOR TO HF 618)

Passed House, Date 4-4-89 (p.1221) Passed Senate, Date 3/14/90 (P.1069)  
Vote: Ayes 96 Nays 0 Vote: Ayes 43 Nays 0  
Approved May 1, 1990

A BILL FOR

- 3746- 1 An Act requiring public corporations to pay the interest earned
- 2 on investments of retained funds to public improvement
- 3 construction contractors.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
- 5
- 6

HF

HOUSE FILE 737

H-3746

- 1 Amend House File 737 as follows:
- 2 1. Page 1, by striking line 8 and inserting the
- 3 following:
- 4 "b. If a public corporation other than a county or
- 5 city invests the retained funds,".
- 6 2. Title page, line 1, by inserting after the
- 7 word "requiring" the following: "certain".

By KOENIGS of Mitchell

H-3746 FILED MARCH 31 1989

adopted 4-4-89 (p.1221)

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1 Section 1. Section 573.12, subsection 3, Code 1989, is  
2 amended to read as follows:

3 3. INTEREST PAYMENTS.

4 a. If the contractor receives an interest payment under  
5 section 573.14, the contractor shall pay the subcontractor a  
6 share of the interest payment proportional to the payment for  
7 that subcontractor's work.

374- 8 b. If the public corporation invests the retained funds,  
9 the interest earned on those funds shall be payable at the  
10 time of final payment on the contract to the contractor.

11 Sec. 2. Section 573.14, unnumbered paragraph 2, Code 1989,  
12 is amended to read as follows:

13 The public corporation shall order payment of any amount  
14 due the contractor to be made in accordance with the terms of  
15 the contract. Failure to make payment within seventy days  
16 after the work under the contract has been completed and if  
17 the work has been accepted and all required materials,  
18 certifications, and other documentations required to be  
19 submitted by the contractor and specified by the contract have  
20 been furnished the awarding public corporation by the  
21 contractor, shall cause interest to accrue on the amount  
22 unpaid to the benefit of the unpaid party. Interest shall  
23 accrue during the period commencing the thirty-first day  
24 following the completion of work and satisfaction of the other  
25 requirements of this subsection and ending on the date of  
26 payment. The rate of interest shall be determined by the  
27 period of time during which interest accrues, and shall be the  
28 same as the rate of interest that is in effect under section  
29 453.6, as of the day interest begins to accrue, for a deposit  
30 of public funds for a comparable period of time. Nothing  
31 contained in this paragraph shall abridge any of the rights  
32 set forth in section 573.16. Interest Except as provided in  
33 section 573.12, interest shall not accrue on funds retained by  
34 the public corporation to satisfy the provisions of this  
35 section regarding claims on file. The provisions of this

1 chapter shall not apply if the public corporation has entered  
2 into a contract with the federal government or accepted a  
3 federal grant which is governed by federal law or rules that  
4 are contrary to the provisions of this chapter.

5 EXPLANATION

6 This bill provides that public corporations which invest  
7 funds retained from contractors for construction of public  
8 improvements pay the interest earned on those funds to the  
9 contractor at the time of final payment.

10 Public corporations are defined in section 573.1 as the  
11 state, all counties, cities, public school corporations, and  
12 all officers, boards, or commissions empowered by law to enter  
13 into contracts for the construction of public improvements.

14 This bill may include a state mandate as defined in section  
15 25B.3.

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HOUSE FILE 737  
FISCAL NOTE

A fiscal note for HOUSE FILE 737 is hereby submitted pursuant to Joint Rule 1. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 737 provides that public corporations which invest funds retained from contractors for construction of public improvements pay the interest earned on those funds at the time of final payment. Public corporations as defined in Section 573.1 Code of Iowa, as the State, all counties, cities, public school corporations, and all officers, boards or commissions empowered by law to enter into contracts for the construction of public improvements. House File 737 may include a State mandate.

Assumptions:

1. House File 737 would require public corporations to pay to the contractors the interest earned on the retainage funds at the time of final payment.
2. Interest earned on state funds, unless expressly defined otherwise is credited to the General Fund. The Treasurer of State is responsible for investing this interest. Interest earned by the Primary Road Fund and Road-to-Market Fund currently is credited back to those Funds.
3. Under the proposed legislation, interest earned on the retainages is paid back to the contractor by the public corporation at the time of final payment, instead of being credited to the General Fund and invested by the State Treasurer or credited back to the Primary Road Fund and Road-to-Market Fund. The following interest would be paid to the major contractors on the retainage based upon annual retainages at 7% simple interest:
  - a. For the Department of General Services the interest on retainage is \$67,400 (based upon the current fiscal year's project of restoration to the State Capitol Building and the completion last year to the new Historical Building)
  - b. For the Department of Natural Resources the interest on retainage is \$12,000 (based upon an annual retainage of \$200,000).
  - c. For the Department of Transportation the interest on retainage is \$581,586 for the Primary Road Fund, and Farm-to-Market Fund is \$79,910 (based upon actual retainage balances at the end of each month in calendar year 1988 at 7% simple interest.) In addition, the Department estimates an additional two positions at a cost of \$60,000 would be necessary to administer the provisions of House File 737; to track the interest due

*Am. TRANS - Amend per 5101 & 20 Pass 2/15/90 (p. 539)*

HOUSE FILE 737  
BY COMMITTEE ON  
TRANSPORTATION

(SUCCESSOR TO HF 618)

(As Amended and Passed April 4, 1989)

*per H-5761*  
Passed House, Date 3/26/90 (p. 1433) Passed Senate, Date 3/14/90 (p. 1069)  
Vote: Ayes 97 Nays 0 Vote: Ayes 43 Nays 0  
Approved \_\_\_\_\_

*Motion to reconsider (p. 1076)  
pre-voled 3/14*  
A BILL FOR *Repassed Senate 3/19/90 (p. 1159)*  
47-0

5101 An Act requiring certain public corporations to pay the interest  
2 earned on investments of retained funds to public improvement  
3 construction contractors.

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

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House Amendments \_\_\_\_\_

5/017

1 Section 1. Section 573.12, subsection 3, Code 1989, is  
2 amended to read as follows:

3 3. INTEREST PAYMENTS.

4 a. If the contractor receives an interest payment under  
5 section 573.14, the contractor shall pay the subcontractor a  
6 share of the interest payment proportional to the payment for  
7 that subcontractor's work.

5/018

8 b. If a public corporation other than a county or city  
9 invests the retained funds, the interest earned on those funds  
10 shall be payable at the time of final payment on the contract  
11 to the contractor.

5/017

12 Sec. 2. Section 573.14, unnumbered paragraph 2, Code 1989,  
13 is amended to read as follows:

14 The public corporation shall order payment of any amount  
15 due the contractor to be made in accordance with the terms of  
16 the contract. Failure to make payment within seventy days  
17 after the work under the contract has been completed and if  
18 the work has been accepted and all required materials,  
19 certifications, and other documentations required to be  
20 submitted by the contractor and specified by the contract have  
21 been furnished the awarding public corporation by the  
22 contractor, shall cause interest to accrue on the amount  
23 unpaid to the benefit of the unpaid party. Interest shall  
24 accrue during the period commencing the thirty-first day  
25 following the completion of work and satisfaction of the other  
26 requirements of this subsection and ending on the date of  
27 payment. The rate of interest shall be determined by the  
28 period of time during which interest accrues, and shall be the  
29 same as the rate of interest that is in effect under section  
30 453.6, as of the day interest begins to accrue, for a deposit  
31 of public funds for a comparable period of time. Nothing  
32 contained in this paragraph shall abridge any of the rights  
33 set forth in section 573.16. Interest Except as provided in  
34 section 573.12, interest shall not accrue on funds retained by  
35 the public corporation to satisfy the provisions of this

1 section regarding claims on file. The provisions of this  
2 chapter shall not apply if the public corporation has entered  
3 into a contract with the federal government or accepted a  
4 federal grant which is governed by federal law or rules that  
5 are contrary to the provisions of this chapter.

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S-5101

1 Amend House File 737, as amended, passed, and re-  
2 printed by the House, as follows:

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

5 "Section 1. Section 573.12, subsection 1,  
6 unnumbered paragraph 1, Code 1989, is amended to read  
7 as follows:

8 Payments made under contracts for the construction  
9 of public improvements, unless provided otherwise by  
10 law, shall be made on the basis of monthly estimates  
11 of labor performed and material delivered, as  
12 determined by the project architect or engineer. The  
13 public corporation shall retain from each monthly  
14 payment not more than five percent of that amount  
15 which is determined to be due according to the  
16 estimate of the architect or engineer."

17 2. Page 1, by striking lines 8 through 12 and  
18 inserting the following:

19 "b. If a public corporation other than a county or  
20 city retains funds, the interest earned on those funds  
21 shall be payable at the time of final payment on the  
22 contract in accordance with the schedule and  
23 exemptions specified by the public corporation in its  
24 administrative rules. The rate of interest shall be  
25 determined by the period of time during which interest  
26 accrues, and shall be the same as the rate of interest  
27 that is in effect under section 453.6 as of the day  
28 interest begins to accrue."

29 3. Page 1, by inserting before line 12 the  
30 following:

31 "Sec. \_\_\_\_ . Section 573.13, Code 1989, is amended  
32 to read as follows:

33 573.13 INVIOABILITY AND DISPOSITION OF FUND.

34 ~~No~~ A public corporation shall ~~not~~ be permitted to  
35 plead noncompliance with section 573.12, and the  
36 retained percentage of the contract price, which in no  
37 case shall be ~~less~~ more than five percent, shall  
38 ~~constitute~~ constitutes a fund for the payment of  
39 claims for materials furnished and labor performed on  
40 ~~said the~~ improvement, and shall be held and disposed  
41 of by the public corporation as ~~hereinafter~~ provided  
42 in this chapter."

43 4. Title page, by striking lines 1 through 3 and  
44 inserting the following: "An Act relating to  
45 retentions from payments to contractors on contracts  
46 for the construction of public improvements."

By COMMITTEE ON TRANSPORTATION  
C. JOSEPH COLEMAN, Chairperson

S-5101 FILED FEBRUARY 15, 1990

*Adopted as amended 5468 3/14 (p. 1069)*  
*Reconsidered further amended by 5511*  
*Adopted 3/19 (p. 1159)*

HOUSE FILE 737

S-5380

- 1 Amend House File 737, as amended, passed, and re-
- 2 printed by the House, as follows:
- 3 1. Page 1, line 8, by striking the word "county"
- 4 and inserting the following: "school corporation,
- 5 county,".

By LARRY MURPHY  
WALLY HORN

S-5380 FILED MARCH 7, 1990

*Placed o/o 3/14 (p.1069)*

HOUSE FILE 737

S-5468

- 1 Amend the amendment, S-5101, to House File 737, as
- 2 amended, passed, and reprinted by the House, as
- 3 follows:
- 4 1. Page 1, line 16, by striking the word
- 5 "engineer." and inserting the following: "engineer.
- 6 However, institutions governed pursuant to chapter 262
- 7 may, on contracts where a bond is required under
- 8 section 573.2, make payments under this section
- 9 without retention until ninety-five percent of the
- 10 contract amount has been paid and the remaining five
- 11 percent of the contract amount shall be paid as
- 12 provided under section 573.14."
- 13 2. Page 1, line 17, by striking the figure "12"
- 14 and inserting the figure "11".

By WILLIAM W. DIELEMAN

S-5468 FILED MARCH 13, 1990

*Adopted 3/14 (p.1069)*

HOUSE FILE 737

S-5511

- 1 Amend amendment, S-5101, to House File 737, as
- 2 amended, passed, and reprinted by the House, as
- 3 follows:
- 4 1. Page 1, line 19, by striking the word "county"
- 5 and inserting the following: "school corporation,
- 6 county,".

By LARRY MURPHY  
WALLY HORN

ELAINE SZYMONIAK  
JOY CORNING

S-5511 FILED MARCH 15, 1990

*Adopted 3/19 (p.1159)*

SENATE AMENDMENT TO HOUSE FILE 737

H-5761

1 Amend House File 737, as amended, passed, and re-  
2 printed by the House, as follows:

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

5 "Section 1. Section 573.12, subsection 1,  
6 unnumbered paragraph 1, Code 1989, is amended to read  
7 as follows:

8 Payments made under contracts for the construction  
9 of public improvements, unless provided otherwise by  
10 law, shall be made on the basis of monthly estimates  
11 of labor performed and material delivered, as  
12 determined by the project architect or engineer. The  
13 public corporation shall retain from each monthly  
14 payment not more than five percent of that amount  
15 which is determined to be due according to the  
16 estimate of the architect or engineer. However,  
17 institutions governed pursuant to chapter 262 may, on  
18 contracts where a bond is required under section  
19 573.2, make payments under this section without  
20 retention until ninety-five percent of the contract  
21 amount has been paid and the remaining five percent of  
22 the contract amount shall be paid as provided under  
23 section 573.14."

24 2. Page 1, by striking lines 8 through 11 and  
25 inserting the following:

26 "b. If a public corporation other than a school  
27 corporation, county, or city retains funds, the  
28 interest earned on those funds shall be payable at the  
29 time of final payment on the contract in accordance  
30 with the schedule and exemptions specified by the  
31 public corporation in its administrative rules. The  
32 rate of interest shall be determined by the period of  
33 time during which interest accrues, and shall be the  
34 same as the rate of interest that is in effect under  
35 section 453.6 as of the day interest begins to  
36 accrue."

37 3. Page 1, by inserting before line 12 the  
38 following:

39 "Sec. \_\_\_\_ . Section 573.13, Code 1989, is amended  
40 to read as follows:

41 573.13 INVIOABILITY AND DISPOSITION OF FUND.

42 ~~No~~ A public corporation shall not be permitted to  
43 plead noncompliance with section 573.12, and the  
44 retained percentage of the contract price which in no  
45 case shall be ~~less more~~ than five percent, shall  
46 ~~constitute~~ constitutes a fund for the payment of  
47 claims for materials furnished and labor performed on  
48 ~~said~~ the improvement, and shall be held and disposed  
49 of by the public corporation as hereinafter provided  
50 in this chapter."

Page 2

1 4. Title page, by striking lines 1 through 3 and  
2 inserting the following: "An Act relating to  
3 retentions from payments to contractors on contracts  
4 for the construction of public improvements."

RECEIVED FROM THE SENATE

H-5761 FILED MARCH 19, 1990

*House concurred 3/26 (p. 1422)*

HOUSE FILE 737

AN ACT

RELATING TO RETENTIONS FROM PAYMENTS TO CONTRACTORS ON CONTRACTS  
FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS.

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

Section 1. Section 573.12, subsection 1, unnumbered paragraph 1, Code 1989, is amended to read as follows:

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 not more than five percent of that amount which is determined to be due according to the estimate of the architect or engineer. However, institutions governed pursuant to chapter 262 may, on contracts where a bond is required under section 573.2, make payments under this section without retention until ninety-five percent of the contract amount has been paid and the remaining five percent of the contract amount shall be paid as provided under section 573.14.

Sec. 2. Section 573.12, subsection 3, Code 1989, is amended to read as follows:

3. INTEREST PAYMENTS.

a. 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.

b. If a public corporation other than a school corporation, county, or city retains funds, the interest earned on those funds shall be payable at the time of final payment on the contract in accordance with the schedule and

exemptions specified by the public corporation in its administrative rules. 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.

Sec. 3. Section 573.13, Code 1989, is amended to read as follows:

573.13 INVIOABILITY AND DISPOSITION OF FUND.

No A public corporation shall not be permitted to plead noncompliance with section 573.12; and the retained percentage of the contract price, which in no case shall be ~~less~~ more than five percent, ~~shall constitute~~ constitutes a fund for the payment of claims for materials furnished and labor performed on ~~said the~~ the improvement; and shall be held and disposed of by the public corporation as ~~hereinafter~~ provided in this chapter.

Sec. 4. Section 573.14, unnumbered paragraph 2, Code 1989, is amended to read as follows:

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 Except as provided in section 573.12, 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.

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DONALD D. AVENSON  
Speaker of the House

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JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 737, Seventy-third General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved \_\_\_\_\_, 1990

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TERRY E. BRANSTAD  
Governor