

Reprinted

SENATE FILE 346
BY VARN

Passed Senate, Date 4/5/91 (p. 1086) Passed House, Date _____
Vote: Ayes 47 Nays 0 Vote: Ayes _____ Nays _____
Approved May 9, 19

A BILL FOR

- 1 An Act relating to payments made pursuant to public contracts.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 346

S-3253

- 1 Amend Senate File 346 as follows:
 - 2 1. Page 1, line 5, by inserting after the word
 - 3 "the" the following: "public corporation's".
- By RICHARD VARN

S-3253 FILED APRIL 2, 1991
(adopted 4/5 (p. 1086))

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SF 346

1 Section 1. Section 573.12, subsection 2, Code 1991, is
2 amended to read as follows:

3 2. Prompt payment.

4 a. (1) Interest shall be paid to the contractor on any
5 progress payment that is approved as payable by the project
6 architect or engineer and remains unpaid in either of the
7 following circumstances:

8 (a) The amount is unpaid for a period of fourteen days
9 after receipt of the payment request at the place, or by the
10 person, designated in the contract, or by the public
11 corporation to first receive the request.

12 (b) The amount is unpaid for a time period greater than
13 fourteen days, as specified in the solicitation, if a time
14 period greater than fourteen days is required to afford the
15 public corporation a reasonable opportunity to inspect the
16 work and to determine the adequacy of the contractor's
17 performance under the contract.

18 (2) Interest shall accrue during the period commencing the
19 day after the expiration of the period defined in subparagraph
20 (1) and ending on the date of payment. The rate of interest
21 shall be determined as set forth in section 573.14.

22 b. A progress payment or final payment to a subcontractor
23 for satisfactory performance of the subcontractor's work shall
24 be made no later than one of the following, as applicable:

25 a-(1) Seven days after the contractor receives payment for
26 that subcontractor's work.

27 b-(2) A reasonable time after the contractor could have
28 received payment for the subcontractor's work, if the reason
29 for nonpayment is not the subcontractor's fault.

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

34 Sec. 2. Section 573.14, Code 1991, is amended to read as
35 follows:

1 573.14 RETENTION OF UNPAID FUNDS.

2 ~~Said~~ The fund provided for in section 573.13 shall be
3 retained by the public corporation for a period of thirty days
4 after the completion and final acceptance of the improvement.
5 If at the end of said the thirty-day period claims are on file
6 as herein provided the public corporation shall continue to
7 retain from said the unpaid funds a sum not less than equal to
8 double the total amount of all claims on file. The remaining
9 balance of the unpaid fund, or if no claims are on file, the
10 entire unpaid fund, shall be released and paid to the
11 contractor.

12 The public corporation shall order payment of any amount
13 due the contractor to be made in accordance with the terms of
14 the contract. ~~Failure~~ Except as provided in section 573.12
15 for progress payments, failure to make payment pursuant to
16 this section, of any amount due the contractor, within seventy
17 forty days after the work under the contract has been
18 completed and if the work has been accepted and all required
19 materials, certifications, and other documentations required
20 to be submitted by the contractor and specified by the
21 contract have been furnished the awarding public corporation
22 by the contractor, shall cause interest to accrue on the
23 amount unpaid to the benefit of the unpaid party. Interest
24 shall accrue during the period commencing the thirty-first day
25 following the completion of work and satisfaction of the other
26 requirements of this paragraph 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~~ This paragraph shall does not abridge any of
33 the rights set forth in section 573.16. Except as provided in
34 section sections 573.12 and 573.16, interest shall not accrue
35 on funds retained by the public corporation to satisfy the

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

7 Sec. 3. Section 573.16, unnumbered paragraph 2, Code 1991,
8 is amended to read as follows:

9 ~~Provided that upon~~ Upon written demand of the contractor
10 served, ~~in the manner prescribed for original notices,~~ on the
11 person or persons filing said claims a claim, requiring the
12 claimant to commence action in court to enforce the claim ~~in~~
13 ~~the manner as prescribed for original notices,~~ such an action
14 shall be commenced within thirty days thereafter, otherwise
15 ~~such~~ the retained and unpaid funds due the contractor shall be
16 released; ~~and it is further provided that, after,~~ Unpaid
17 funds shall be paid to the contractor within ten days of the
18 date of release as determined pursuant to this section.

19 Failure to make payment by that date shall cause interest to
20 accrue on the unpaid amount. Interest shall accrue during the
21 period commencing the eleventh day after the date of release
22 and ending on the date of the payment. The rate of interest
23 shall be determined pursuant to section 573.14. ~~such~~ After an
24 action is commenced, upon the general contractor filing with
25 the public corporation or person withholding ~~such~~ the funds, a
26 surety bond in double the amount of the claim in controversy,
27 conditioned to pay any final judgment rendered for ~~such~~ and
28 claims so filed, ~~said~~ the public corporation or person shall
29 pay to the contractor the amount of ~~such~~ funds so withheld.

30 Sec. 4. Section 573.18, Code 1991, is amended to read as
31 follows:

32 573.18 ADJUDICATION -- PAYMENT OF CLAIMS.

33 The court shall adjudicate all claims for which an action
34 is filed under section 573.16. Payments from ~~said~~ the
35 retained percentage, if still in the hands of the public

1 corporation, shall be made in the following order:

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

6 Upon settlement or adjudication of a claim and after
 7 judgment is entered, unpaid funds retained with respect to the
 8 claim which are not necessary to satisfy the judgment shall be
 9 released and paid to the contractor within ten days of entry
 10 of judgment or settlement of the claim. Failure to make
 11 payment by that date shall cause interest to accrue on the
 12 unpaid amount. Interest shall accrue during the period
 13 commencing on the eleventh day after entry of judgment and
 14 ending on the date of payment. The rate of interest shall be
 15 determined as set forth in section 573.14.

16 EXPLANATION

17 This bill provides for interest to be paid to a contractor
 18 on an approved progress payment under a public contract if the
 19 amount remains unpaid for a period of 14 days after receipt of
 20 the payment request, or if a greater time period is required
 21 to allow a public corporation a reasonable opportunity to
 22 inspect the work and the contract provides for a greater
 23 period. Interest accrues from the day after the expiration of
 24 the 14-day period, or greater period, until the date of
 25 payment.

26 This bill provides that funds unpaid and remaining in the
 27 fund provided for in section 573.13 for the payment of claims
 28 under the contract are to be released to the contractor if no
 29 claims are on file after 30 days after the completion and
 30 final acceptance of the improvement. If the funds are not
 31 paid within 10 days of the release they are to accrue interest
 32 commencing on the eleventh day and continuing until the funds
 33 are paid.

34 The bill also provides that upon settlement or adjudication
 35 of a claim arising under chapter 573, any unpaid funds which

1 are not necessary to satisfy the judgment are to be paid to
2 the contractor within 10 days of entry of the judgment or
3 settlement of the claim. If the amount is unpaid, interest is
4 to accrue in the same manner as provided for a late progress
5 payment.

6 The bill creates a state mandate under chapter 25B.

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House State Court. 4/9/91 Amend (3611) & Do Pass 4/12/91

SENATE FILE 346
BY VARN

(AS AMENDED AND PASSED BY THE SENATE APRIL 5, 1991)

~~_____~~ - New Language by the Senate

³⁵³⁶
Passed Senate, Date 4/24/91 (p. 1449) Passed House, Date 4/19/91 (p. 1398)
Vote: Ayes 49 Nays 0 Vote: Ayes 93 Nays 0
Approved May 9, 1991 (p. 1848)

A BILL FOR

1 An Act relating to payments made pursuant to public contracts.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 346

1 Section 1. Section 573.12, subsection 2, Code 1991, is
2 amended to read as follows:

3 2. Prompt payment.

4 a. (1) Interest shall be paid to the contractor on any
5 progress payment that is approved as payable by the public
6 corporation's project architect or engineer and remains unpaid
7 in either of the following circumstances:

8 (a) The amount is unpaid for a period of fourteen days
9 after receipt of the payment request at the place, or by the
10 person, designated in the contract, or by the public
11 corporation to first receive the request.

12 (b) The amount is unpaid for a time period greater than
13 fourteen days, as specified in the solicitation, if a time
14 period greater than fourteen days is required to afford the
15 public corporation a reasonable opportunity to inspect the
16 work and to determine the adequacy of the contractor's
17 performance under the contract.

18 (2) Interest shall accrue during the period commencing the
19 day after the expiration of the period defined in subparagraph
20 (1) and ending on the date of payment. The rate of interest
21 shall be determined as set forth in section 573.14.

22 b. A progress payment or final payment to a subcontractor
23 for satisfactory performance of the subcontractor's work shall
24 be made no later than one of the following, as applicable:

25 a-(1) Seven days after the contractor receives payment for
26 that subcontractor's work.

27 b-(2) A reasonable time after the contractor could have
28 received payment for the subcontractor's work, if the reason
29 for nonpayment is not the subcontractor's fault.

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

34 Sec. 2. Section 573.14, Code 1991, is amended to read as
35 follows:

1 573.14 RETENTION OF UNPAID FUNDS.

2 ~~Said~~ The fund provided for in section 573.13 shall be
3 retained by the public corporation for a period of thirty days
4 after the completion and final acceptance of the improvement.
5 If at the end of ~~said~~ the thirty-day period claims are on file
6 as ~~herein~~ provided the public corporation shall continue to
7 retain from ~~said~~ the unpaid funds a sum ~~not-less-than~~ equal to
8 double the total amount of all claims on file. The remaining
9 balance of the unpaid fund, or if no claims are on file, the
10 entire unpaid fund, shall be released and paid to the
11 contractor.

12 The public corporation shall order payment of any amount
13 due the contractor to be made in accordance with the terms of
14 the contract. ~~Failure~~ Except as provided in section 573.12
15 for progress payments, failure to make payment pursuant to
16 this section, of any amount due the contractor, within seventy
17 forty days after the work under the contract has been
18 completed and if the work has been accepted and all required
19 materials, certifications, and other documentations required
20 to be submitted by the contractor and specified by the
21 contract have been furnished the awarding public corporation
22 by the contractor, shall cause interest to accrue on the
23 amount unpaid to the benefit of the unpaid party. Interest
24 shall accrue during the period commencing the thirty-first day
25 following the completion of work and satisfaction of the other
26 requirements of this paragraph 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~~ This paragraph shall does not abridge any of
33 the rights set forth in section 573.16. Except as provided in
34 section sections 573.12 and 573.16, interest shall not accrue
35 on funds retained by the public corporation to satisfy the

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

7 Sec. 3. Section 573.16, unnumbered paragraph 2, Code 1991,
8 is amended to read as follows:

9 ~~Provided that upon~~ Upon written demand of the contractor
10 served, in the manner prescribed for original notices, on the
11 ~~person or persons filing said claims~~ a claim, requiring the
12 claimant to commence action in court to enforce the claim in
13 ~~the manner as prescribed for original notices,~~ such an action
14 shall be commenced within thirty days ~~thereafter,~~ otherwise
15 ~~such the~~ retained and unpaid funds due the contractor shall be
16 ~~released; and it is further provided that, after.~~ Unpaid
17 funds shall be paid to the contractor within ten days of the
18 date of release as determined pursuant to this section.
19 Failure to make payment by that date shall cause interest to
20 accrue on the unpaid amount. Interest shall accrue during the
21 period commencing the eleventh day after the date of release
22 and ending on the date of the payment. The rate of interest
23 shall be determined pursuant to section 573.14. such After an
24 action is commenced, upon the general contractor filing with
25 the public corporation or person withholding ~~such the~~ funds, a
26 surety bond in double the amount of the claim in controversy,
27 conditioned to pay any final judgment rendered for ~~such the~~
28 claims so filed, ~~said the~~ public corporation or person shall
29 pay to the contractor the amount of ~~such funds so~~ withheld.
30 Sec. 4. Section 573.18, Code 1991, is amended to read as
31 follows:
32 573.18 ADJUDICATION -- PAYMENT OF CLAIMS.
33 The court shall adjudicate all claims for which an action
34 is filed under section 573.16. Payments from ~~said the~~
35 retained percentage, if still in the hands of the public

1 corporation, shall be made in the following order:

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

3726 Upon settlement or adjudication of a claim and after
 7 judgment is entered, unpaid funds retained with respect to the
 8 claim which are not necessary to satisfy the judgment shall be
 9 released and paid to the contractor within ten days of entry
 10 of judgment or settlement of the claim. Failure to make
 11 payment by that date shall cause interest to accrue on the
 12 unpaid amount. Interest shall accrue during the period
 13 commencing on the eleventh day after entry of judgment and
 14 ending on the date of payment. The rate of interest shall be
 15 determined as set forth in section 573.14.

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HOUSE AMENDMENT TO
SENATE FILE 346

S-3536

- 1 Amend Senate File 346, as amended, passed, and
2 reprinted, by the Senate, as follows:
- 3 1. Page 1, by striking lines 7 and 8 and insert-
4 ing the following: "for a period of fourteen days".
- 5 2. Page 1, by striking lines 11 through 17 and
6 inserting the following: "corporation to first re-
7 ceive the request, or for a time period greater than
8 fourteen days, unless a time period greater than
9 fourteen days is specified in the contract documents,
10 not to exceed thirty days, to afford the public
11 corporation a reasonable opportunity to inspect the
12 work and to determine the adequacy of the contractor's
13 performance under the contract."
- 14 3. Page 2, line 17, by inserting after the word
15 "days" the following: ", unless a greater time period
16 not to exceed fifty days is specified in the contract
17 documents,".
- 18 4. Page 3, line 17, by striking the word "ten"
19 and inserting the following: "twenty".
- 20 5. Page 3, line 18, by striking the words "date
21 of" and inserting the following: "receipt by the
22 public corporation of the".
- 23 6. Page 3, line 21, by striking the word
24 "eleventh" and inserting the following: "twenty-
25 first".
- 26 7. Page 4, by striking line 9, and inserting the
27 following: "released and paid to the contractor
28 within twenty days of receipt by the public
29 corporation of evidence of entry".
- 30 8. Page 4, by striking line 13, and inserting the
31 following: "commencing on the twenty-first day after
32 receipt by the public corporation of evidence of entry
33 of judgment and".
- 34 9. By renumbering, relettering, or redesignating
35 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3536 FILED APRIL 23, 1991

Senate concurred 4/24/91 (p. 1449)

SENATE FILE 346

H-3611

1 Amend Senate File 346, as amended, passed, and re-
2 printed by the Senate, as follows:

3 1. Page 1, by striking lines 7 and 8 and insert-
4 ing the following: "for a period of fourteen days".

5 2. Page 1, by striking lines 11 through 17 and
6 inserting the following: "corporation to first re-
7 ceive the request, or for a time period greater than
8 fourteen days, unless a time period greater than
9 fourteen days is specified in the contract documents,
10 not to exceed thirty days, to afford the public
11 corporation a reasonable opportunity to inspect the
12 work and to determine the adequacy of the contractor's
13 performance under the contract."

14 3. Page 2, line 17, by inserting after the word
15 "days" the following: ", unless a greater time period
16 not to exceed fifty days is specified in the contract
17 documents,".

By COMMITTEE ON STATE GOVERNMENT
BLANSHAN of Greene, Chairperson

H-3611 FILED APRIL 12, 1991

Adopted 4/19/91 (p. 1398)

SENATE FILE 346

H-3722

1 Amend Senate File 346, as amended, passed, and
2 reprinted, by the Senate, as follows:

3 1. Page 3, line 17, by striking the word "ten"
4 and inserting the following: "twenty".

5 2. Page 3, line 18, by striking the words "date
6 of" and inserting the following: "receipt by the
7 public corporation of the".

8 3. Page 3, line 21, by striking the word
9 "eleventh" and inserting the following: "twenty-
10 first".

11 4. Page 4, by striking line 9, and inserting the
12 following: "released and paid to the contractor
13 within twenty days of receipt by the public
14 corporation of evidence of entry".

15 5. Page 4, by striking line 13, and inserting the
16 following: "commencing on the twenty-first day after
17 receipt by the public corporation of evidence of entry
18 of judgment and".

By BLANSHAN of Greene

H-3722 FILED APRIL 18, 1991

Adopted 4/19/91 (p. 1398)

SENATE FILE 346

AN ACT

RELATING TO PAYMENTS MADE PURSUANT TO PUBLIC CONTRACTS.

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

Section 1. Section 573.12, subsection 2, Code 1991, is amended to read as follows:

2. Prompt payment.

a. ... (1) Interest shall be paid to the contractor on any progress payment that is approved as payable by the public corporation's project architect or engineer and remains unpaid for a period of fourteen days after receipt of the payment request at the place, or by the person, designated in the contract, or by the public corporation to first receive the request, or for a time period greater than fourteen days, unless a time period greater than fourteen days is specified in the contract documents, not to exceed thirty days, to afford the public corporation a reasonable opportunity to inspect the work and to determine the adequacy of the contractor's performance under the contract.

(2) Interest shall accrue during the period commencing the day after the expiration of the period defined in subparagraph (1) and ending on the date of payment. The rate of interest shall be determined as set forth in section 573.14.

b. A progress payment or final payment to a subcontractor for satisfactory performance of the subcontractor's work shall be made no later than one of the following, as applicable:

a-(1) Seven days after the contractor receives payment for that subcontractor's work.

b-(2) 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.

Sec. 2. Section 573.14, Code 1991, is amended to read as follows:

573.14 RETENTION OF UNPAID FUNDS.

Said The fund provided for in section 573.13 shall be retained by the public corporation for a period of thirty days after the completion and final acceptance of the improvement. If at the end of said the thirty-day period claims are on file as herein provided the public corporation shall continue to retain from said the unpaid funds a sum not-less-than equal to double the total amount of all claims on file. The remaining balance of the unpaid fund, or if no claims are on file, the entire unpaid fund, shall be released and paid to the contractor.

The public corporation shall order payment of any amount due the contractor to be made in accordance with the terms of the contract. Failure Except as provided in section 573.12 for progress payments, failure to make payment pursuant to this section, of any amount due the contractor, within seventy forty days, unless a greater time period not to exceed fifty

days is specified in the contract documents, 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 paragraph 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~~ This paragraph ~~shall does not~~ abridge any of the rights set forth in section 573.16. Except as provided in ~~section sections~~ 573.12 and 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~~ This chapter ~~shall does 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.

Sec. 3. Section 573.16, unnumbered paragraph 2, Code 1991, is amended to read as follows:

~~Provided that upon~~ Upon written demand of the contractor served, in the manner prescribed for original notices, on the person ~~or persons~~ filing ~~said claims~~ a claim, requiring the claimant to commence action in court to enforce the claim ~~in the manner as prescribed for original notices~~, such an action shall be commenced within thirty days thereafter, otherwise ~~such the~~ retained and unpaid funds due the contractor shall be released; ~~and it is further provided that~~ after. Unpaid

funds shall be paid to the contractor within twenty days of the receipt by the public corporation of the release as determined pursuant to this section. Failure to make payment by that date shall cause interest to accrue on the unpaid amount. Interest shall accrue during the period commencing the twenty-first day after the date of release and ending on the date of the payment. The rate of interest shall be determined pursuant to section 573.14. ~~such~~ After an action is commenced, upon the general contractor filing with the public corporation or person withholding ~~such the~~ funds, a surety bond in double the amount of the claim in controversy, conditioned to pay any final judgment rendered for ~~such the~~ claims so filed, ~~said the~~ public corporation or person shall pay to the contractor the amount of ~~such~~ funds so withheld.

Sec. 4. Section 573.18, Code 1991, is amended to read as follows:

573.18 ADJUDICATION -- PAYMENT OF CLAIMS.

The court shall adjudicate all claims for which an action is filed under section 573.16. Payments from ~~said the~~ 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.

Upon settlement or adjudication of a claim and after judgment is entered, unpaid funds retained with respect to the claim which are not necessary to satisfy the judgment shall be released and paid to the contractor within twenty days of receipt by the public corporation of evidence of entry of judgment or settlement of the claim. Failure to make payment by that date shall cause interest to accrue on the unpaid amount. Interest shall accrue during the period commencing on the twenty-first day after receipt by the public corporation of evidence of entry of judgment and ending on the date of

payment. The rate of interest shall be determined as set forth in section 573.14.

JOE J. WELSH
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 346, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 9, 1991

TERRY E. BRANSTAD
Governor

SF 346