

Senate File 2129 - Introduced

SENATE FILE 2129

BY DOTZLER

A BILL FOR

1 An Act concerning the rights of parties to private and
2 public construction contracts and including applicability
3 provisions.

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

1 Section 1. NEW SECTION. 573B.1 Title.

2 This chapter shall be known as the "*Iowa Fairness in Private*
3 *Construction Contracts Act*".

4 Sec. 2. NEW SECTION. 573B.2 Definitions.

5 For the purposes of this chapter:

6 1. "*Construction*" means furnishing labor, equipment,
7 material, or supplies used or consumed for the design,
8 construction, alteration, renovation, repair, or maintenance of
9 a building, structure, appurtenance, or other improvement to
10 real property, including any moving, demolition, or excavation.

11 2. "*Contract*" means a contract or agreement concerning
12 construction entered into by and between an owner and
13 a contractor, a contractor and a subcontractor, or a
14 subcontractor and another subcontractor.

15 3. "*Contractor*" means a person or entity that engages in
16 the business of construction and has a contract with an owner
17 of the real property or with a trustee, agent, or spouse of an
18 owner.

19 4. "*Owner*" means the record titleholder or a person or
20 entity for whose use or benefit any construction is undertaken,
21 who has the capacity to contract, including a guardian.

22 5. "*Private construction*" means construction of or on
23 private property.

24 6. "*Retainage*" means money earned by a contractor or
25 subcontractor but withheld to ensure proper performance by the
26 contractor or subcontractor.

27 7. "*Subcontractor*" means a person or entity that engages
28 in the business of construction, except a person or entity
29 entering into a contract directly with the owner of the real
30 property.

31 Sec. 3. NEW SECTION. 573B.3 Private construction contracts
32 — payment — provisions against public policy — failure to pay.

33 1. A person or entity that enters into a contract for
34 private construction shall make all payments pursuant to the
35 terms of the contract and in accordance with this chapter.

1 2. The following provisions in a contract for private
2 construction are void and unenforceable as contrary to public
3 policy:

4 a. A provision that purports to waive, release, or
5 extinguish the right to resolve disputes through litigation
6 in court or substantive or procedural rights in connection
7 with such litigation. However, a contract may require
8 binding arbitration as a substitute for litigation or require
9 nonbinding alternative dispute resolution as a prerequisite to
10 litigation.

11 b. A provision that purports to waive, release, or
12 extinguish rights provided by chapter 660, except that a
13 contract may require a contractor or subcontractor to provide a
14 waiver or release of such rights as a condition for payment,
15 but only to the extent of the amount of payment received.

16 c. A provision that purports to waive, release, or
17 extinguish rights of subrogation for losses or claims covered
18 or paid by liability or workers' compensation insurance unless
19 permitted under chapter 87 or Title XIII, subtitle 1.

20 3. A provision in a contract for private construction
21 providing that a payment from a contractor or subcontractor
22 to a subcontractor is contingent or conditioned upon receipt
23 of a payment from any other private party is no defense to a
24 claim to enforce a mechanic's lien or bond to secure payment of
25 claims pursuant to chapter 660.

26 4. For a contract for private construction, if the owner
27 fails to pay the contractor by the date payment is due pursuant
28 to the contract, the owner shall pay interest to the contractor
29 beginning on the first business day after payment is due,
30 computed at the rate of eighteen percent per annum.

31 5. For a contract for private construction, a contractor
32 shall pay a subcontractor any amounts due within seven business
33 days of whichever of the following is later:

34 a. Receipt of payment by the contractor from the owner,
35 including payment of retainage, if retainage is released by the

1 owner.

2 *b.* The date payment to the subcontractor is due pursuant to
3 the contract.

4 6. If a contractor fails to pay a subcontractor pursuant
5 to subsection 5, the contractor shall pay interest to the
6 subcontractor beginning on the first business day after payment
7 becomes due, computed at the rate of eighteen percent per
8 annum.

9 7. The provisions of subsections 5 and 6 shall apply to a
10 payment from a subcontractor to its subcontractor.

11 Sec. 4. NEW SECTION. **573B.4 Retainage.**

12 1. An owner, contractor, or subcontractor may withhold
13 no more than ten percent retainage from the amount of any
14 undisputed payment due.

15 2. If an owner, contractor, or subcontractor fails to pay
16 retainage pursuant to the terms of a contract for private
17 construction or as required by this chapter, the owner,
18 contractor, or subcontractor shall pay interest to the
19 contractor or subcontractor to whom payment was due, beginning
20 on the first business day after the payment was due, at a rate
21 of eighteen percent per annum.

22 Sec. 5. NEW SECTION. **573B.5 Suspension of performance.**

23 If any undisputed payment is not made within seven business
24 days after the payment date established in this chapter, the
25 contractor and any subcontractors may provide written notice to
26 the owner and, in the case of a subcontractor, written notice
27 to the contractor. Seven business days after the provision of
28 the written notice, the contractor or subcontractor, without
29 prejudice to any other available remedy, may suspend further
30 performance until payment, including applicable interest,
31 is made. The contract period for each contract affected by
32 the suspension shall be extended for a period equal to the
33 duration of the suspension, and the contract sum for each
34 affected contract shall be increased by the suspending party's
35 reasonable costs of demobilization, delay, and remobilization.

1 Sec. 6. NEW SECTION. 573B.6 **Action or arbitration to**
2 **enforce.**

3 In any action to enforce the provisions of this chapter,
4 including arbitration, the court or arbitrator shall award
5 costs and reasonable attorney fees to the prevailing party.
6 Venue of such an action shall be in the county where the
7 applicable real property is located. The hearing in such an
8 arbitration shall be held in the county where the applicable
9 real property is located.

10 Sec. 7. NEW SECTION. 573B.7 **Waiver or variance prohibited.**

11 The rights and duties prescribed by this chapter shall not be
12 waived or varied under the terms of a contract. The terms of a
13 contract waiving or varying the rights and duties prescribed by
14 this chapter shall be unenforceable.

15 Sec. 8. NEW SECTION. 573B.8 **Applicability.**

16 The provisions of this chapter do not apply to single-family
17 residential housing and multifamily residential housing of four
18 units or less. The provisions of this chapter shall not apply
19 to public works or public improvement projects.

20 Sec. 9. NEW SECTION. 573C.1 **Title.**

21 This chapter shall be known as the "*Iowa Fairness in Public*
22 *Construction Contracts Act*".

23 Sec. 10. NEW SECTION. 573C.2 **Definitions.**

24 For the purposes of this chapter:

25 1. "*Construction*" means furnishing labor, equipment,
26 material, or supplies used or consumed for the design,
27 construction, alteration, renovation, repair, or maintenance of
28 a building, structure, appurtenance, or other improvement to
29 real property, including any moving, demolition, or excavation.

30 2. "*Contract*" means a contract or agreement concerning
31 construction entered into by and between an owner and
32 a contractor, a contractor and a subcontractor, or a
33 subcontractor and another subcontractor.

34 3. "*Contractor*" means a person or entity that engages in
35 the business of construction and has a contract with an owner

1 of the real property or with a trustee, agent, or spouse of an
2 owner.

3 4. "*Owner*" means the record titleholder or a person or
4 entity for whose use or benefit any construction is undertaken,
5 who has the capacity to contract, including a guardian.

6 5. "*Public construction*" means construction under the
7 control of a public entity and paid for in whole or in part with
8 funds of a public entity.

9 6. "*Public entity*" means the state, an agency of the state,
10 or a political subdivision.

11 7. "*Subcontractor*" means a person or entity that engages
12 in the business of construction, except a person or entity
13 entering into a contract directly with the owner of the real
14 property.

15 Sec. 11. NEW SECTION. 573C.3 Public construction contracts
16 — payment — provisions against public policy — failure to pay.

17 1. A person or entity that enters into a contract for public
18 construction shall make all payments pursuant to the terms of
19 the contract and in accordance with this chapter.

20 2. The following provisions in a contract for public
21 construction are void and unenforceable as contrary to public
22 policy:

23 a. A provision that purports to waive, release, or
24 extinguish the right to resolve disputes through litigation in
25 court or substantive or procedural rights in connection with
26 such litigation. However, a contract may require nonbinding
27 alternative dispute resolution as a prerequisite to litigation.

28 b. A provision that purports to waive, release, or
29 extinguish rights to file a claim against a payment or
30 performance bond, except that a contract may require a
31 contractor or subcontractor to provide a waiver or release of
32 such rights as a condition for payment, but only to the extent
33 of the amount of payment received.

34 c. A provision that purports to waive, release, or
35 extinguish rights of subrogation for losses or claims covered

1 or paid by liability or workers' compensation insurance unless
2 permitted under chapter 87 or Title XIII, subtitle 1.

3 *d.* A provision that purports to waive the right of a party
4 to collect damages for delays caused by another party.

5 3. For a contract for public construction, if the owner
6 fails to pay the contractor by the date payment is due pursuant
7 to the contract, the owner shall pay interest to the contractor
8 beginning on the first business day after payment is due,
9 computed at the rate of eighteen percent per annum.

10 4. For a contract for public construction, a contractor
11 shall pay a subcontractor any amounts due within seven business
12 days of whichever of the following is later:

13 *a.* Receipt of payment by the contractor from the owner.

14 *b.* The date payment to the subcontractor is due pursuant to
15 the contract.

16 5. If a contractor fails to pay a subcontractor pursuant
17 to subsection 4, the contractor shall pay interest to the
18 subcontractor beginning on the first business day after payment
19 becomes due, computed at the rate of eighteen percent per
20 annum.

21 6. The provisions of subsections 4 and 5 shall apply to a
22 payment from a subcontractor to its subcontractor.

23 Sec. 12. NEW SECTION. 573C.4 **Suspension of performance.**

24 If any undisputed payment is not made within seven business
25 days after the payment date established in this chapter, the
26 contractor and any subcontractors may provide written notice to
27 the owner and, in the case of a subcontractor, written notice
28 to the contractor. Seven business days after the provision of
29 the written notice, the contractor or subcontractor, without
30 prejudice to any other available remedy, may suspend further
31 performance until payment, including applicable interest,
32 is made. The contract period for each contract affected by
33 the suspension shall be extended for a period equal to the
34 duration of the suspension, and the contract sum for each
35 affected contract shall be increased by the suspending party's

1 reasonable costs of demobilization, delay, and remobilization.

2 Sec. 13. NEW SECTION. 573C.5 Action or arbitration to
3 enforce.

4 In any action to enforce the provisions of this chapter,
5 including arbitration, between a contractor and a subcontractor
6 or a subcontractor and a subcontractor, the court or arbitrator
7 shall award costs and reasonable attorney fees to the
8 prevailing party. Venue of such an action shall be in the
9 county where the applicable real property is located. The
10 hearing in such an arbitration shall be held in the county
11 where the applicable real property is located.

12 Sec. 14. NEW SECTION. 573C.6 Waiver or variance prohibited.

13 The rights and duties prescribed by this chapter shall not
14 be waivable or varied under the terms of a contract. The terms
15 of a contract waiving the rights and duties prescribed by this
16 chapter shall be unenforceable.

17 Sec. 15. NEW SECTION. 573C.7 Applicability.

18 This chapter does not apply to retainage or the retention
19 of funds as those terms are used in chapter 573. This chapter
20 shall not be construed to prohibit the parties to a contract
21 for public construction from contracting for the applicability
22 of the provisions of chapter 573A.

23 Sec. 16. APPLICABILITY. This Act applies to construction
24 contracts entered into on or after the effective date of this
25 Act.

26 EXPLANATION

27 This bill relates to the rights of parties to private and
28 public construction contracts.

29 The bill creates the "Iowa Fairness in Private Construction
30 Contracts Act". The bill requires a person or entity that
31 enters into a contract for private construction to make
32 all payments pursuant to the terms of the contract and in
33 accordance with the bill. The bill provides that certain
34 provisions in a private construction contract are void and
35 unenforceable as contrary to public policy, including a

1 provision that waives, releases, or extinguishes the right
2 to resolve disputes through litigation, although arbitration
3 may be required as a prerequisite to or a substitution for
4 litigation; a provision that waives, releases, or extinguishes
5 rights provided by Code chapter 660 relating to quo warranto
6 rights, although a contractor or subcontractor may be required
7 to waive such rights as a condition for payment, to the extent
8 of the amount of payment received; and a provision that waives,
9 releases, or extinguishes rights of subrogation for losses or
10 claims covered or paid by liability or workers' compensation
11 insurance unless otherwise permitted under Code chapter 87
12 or Code Title XIII, subtitle 1, relating to regulation of
13 insurance.

14 The bill provides that a provision in a contract for
15 private construction making a payment from a contractor or
16 subcontractor to a subcontractor contingent or conditioned upon
17 receipt of a payment from any other private party is no defense
18 to a claim to enforce a mechanic's lien or bond to secure
19 payment of claims pursuant to Code chapter 660.

20 The bill provides that for a contract for private
21 construction, if the owner fails to pay the contractor by the
22 date payment is due pursuant to the contract, the owner must
23 pay interest to the contractor beginning the first business day
24 after payment is due, at a rate of 18 percent per annum.

25 The bill provides that for a contract for private
26 construction, a contractor must pay a subcontractor any
27 amounts due within seven business days of the later of either
28 the receipt of payment by the contractor from the owner,
29 including retainage, if released, or the date payment to the
30 subcontractor is due pursuant to the subcontract. The bill
31 provides that if a contractor fails to pay a subcontractor in
32 this way, the contractor must pay interest to the subcontractor
33 beginning the first business day after payment is due, at a
34 rate of 18 percent per annum.

35 The bill defines "retainage" for the purposes of the "Iowa

1 Fairness in Private Construction Contracts Act" as money
2 earned by a contractor or subcontractor but withheld to ensure
3 proper performance by the contractor or subcontractor. The
4 bill provides that an owner, contractor, or subcontractor may
5 withhold no more than 10 percent retainage from the amount
6 of any undisputed payment due. The bill provides that if an
7 owner, contractor, or subcontractor fails to pay retainage
8 as required, they must pay interest beginning on the first
9 business day after the payment was due, at a rate of 18 percent
10 per annum.

11 The bill provides that if an undisputed payment is not
12 made within seven business days after payment is due, the
13 contractor and any subcontractors may provide written notice
14 to the owner and, if payment is not made for another seven
15 business days, may suspend further performance until payment,
16 including applicable interest, is made. The bill provides
17 that the contract period shall be extended for a period equal
18 to the duration of the suspension, and the contract sum will
19 be increased by the suspending party's reasonable costs of
20 demobilization, delay, and remobilization. The bill provides
21 that in any action to enforce the provisions of the bill,
22 including arbitration, the court or arbitrator will award costs
23 and reasonable attorney fees to the prevailing party. The bill
24 provides that such an action will take place in the county
25 where the applicable real property is located.

26 The bill provides that the rights and duties prescribed
27 by the bill cannot be waived or varied under the terms
28 of a contract, and a provision of a contract doing so is
29 unenforceable. The bill specifies that these provisions of
30 the bill do not apply to single-family residential housing and
31 multifamily residential housing of four units or less or public
32 works or public improvement projects.

33 The bill creates the "Iowa Fairness in Public Construction
34 Contracts Act". The bill requires a person or entity that
35 enters into a contract for public construction to make

1 all payments pursuant to the terms of the contract and in
2 accordance with the bill. The bill provides that certain
3 provisions in a public construction contract are void and
4 unenforceable as contrary to public policy, including a
5 provision that waives, releases, or extinguishes the right
6 to resolve disputes through litigation, although arbitration
7 may be required as a prerequisite to litigation; a provision
8 that waives, releases, or extinguishes rights to file a claim
9 against a payment or performance bond, although a contractor
10 or subcontractor may be required to waive such rights as a
11 condition for payment, to the extent of the amount of payment
12 received; a provision that waives, releases, or extinguishes
13 rights of subrogation for losses or claims covered or paid by
14 liability or workers' compensation insurance unless otherwise
15 permitted under Code chapter 87 or Code Title XIII, subtitle
16 1, relating to regulation of insurance; and a provision that
17 waives the right to collect damages for delays caused by
18 another party.

19 The bill provides that for a contract for public
20 construction, if the owner fails to pay the contractor by the
21 date payment is due pursuant to the contract, the owner must
22 pay interest to the contractor beginning the first business day
23 after payment is due, at a rate of 18 percent per annum.

24 The bill provides that for a contract for public
25 construction, a contractor must pay a subcontractor any
26 amounts due within seven business days of the later of either
27 the receipt of payment by the contractor from the owner or
28 the date payment to the subcontractor is due pursuant to the
29 subcontract. The bill provides that if a contractor fails
30 to pay a subcontractor in this way, the contractor must pay
31 interest to the subcontractor beginning the first business day
32 after payment is due, at a rate of 18 percent per annum.

33 The bill provides that if an undisputed payment is not
34 made within seven business days after payment is due, the
35 contractor and any subcontractors may provide written notice

1 to the owner and, if payment is not made for another seven
2 business days, may suspend further performance until payment,
3 including applicable interest, is made. The bill provides
4 that the contract period will be extended for a period equal
5 to the duration of the suspension, and the contract sum will
6 be increased by the suspending party's reasonable costs of
7 demobilization, delay, and remobilization. The bill provides
8 that in any action to enforce the provisions of the bill,
9 including arbitration, between a contractor and a subcontractor
10 or a subcontractor and a subcontractor, the court or arbitrator
11 will award costs and reasonable attorney fees to the prevailing
12 party. The bill provides that such an action will take place
13 in the county where the applicable real property is located.

14 The bill provides that the rights and duties prescribed
15 by the bill cannot be waived or varied under the terms
16 of a contract, and a provision of a contract doing so is
17 unenforceable. The bill specifies that the provisions of the
18 "Iowa Fairness in Public Construction Contracts Act" do not
19 apply to retainage or the retention of funds as those terms are
20 used in Code chapter 573. The bill specifies that the bill is
21 not to be construed to prohibit the parties to a contract for
22 public construction from contracting for the applicability of
23 the provisions of Code chapter 573A, relating to stoppage of
24 public contracts in the event of an emergency.

25 The bill applies to construction contracts entered into on
26 or after the effective date of the bill.