

**Senate Study Bill 3059 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
STATE GOVERNMENT BILL BY  
CHAIRPERSON DANIELSON)

**A BILL FOR**

1 An Act concerning the rights of parties to private construction  
2 contracts and including applicability provisions.  
3 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. A provision in a contract for private construction  
2 that purports to waive, release, or extinguish the right to  
3 resolve disputes through litigation in court or substantive or  
4 procedural rights in connection with such litigation is void  
5 and unenforceable as contrary to public policy. However, a  
6 contract may require binding arbitration as a substitute for  
7 litigation or require nonbinding alternative dispute resolution  
8 as a prerequisite to litigation.

9     3. A provision in a contract for private construction  
10 providing that a payment from a contractor or subcontractor  
11 to a subcontractor is contingent or conditioned upon receipt  
12 of a payment from any other private party is no defense to a  
13 claim to enforce a mechanic's lien or bond to secure payment of  
14 claims pursuant to chapter 572.

15     4. A contract for private construction shall provide that  
16 payment of amounts due a contractor from an owner, except  
17 retainage, shall be made within thirty days after the owner  
18 receives a timely, properly completed, undisputed request for  
19 payment. If an owner fails to pay a contractor by the date  
20 payment is due, the owner shall pay interest to the contractor  
21 beginning on the first business day after payment is due,  
22 computed at the rate of twelve percent per annum.

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

26     a. Receipt of payment by the contractor from the owner,  
27 including payment of retainage, if retainage is released by the  
28 owner.

29     b. The date payment to the subcontractor is due pursuant to  
30 the contract.

31     6. If a contractor fails to pay a subcontractor pursuant  
32 to subsection 5, the contractor shall pay interest to the  
33 subcontractor beginning on the first business day after payment  
34 becomes due, computed at the rate of twelve percent per annum.

35     7. The provisions of subsections 5 and 6 shall apply to a

1 payment from a subcontractor to its subcontractor.

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

3 1. An owner, contractor, or subcontractor may withhold  
4 no more than five percent retainage from the amount of any  
5 undisputed payment due.

6 2. If an owner, contractor, or subcontractor fails to pay  
7 retainage pursuant to the terms of a contract for private  
8 construction or as required by this chapter, the owner,  
9 contractor, or subcontractor shall pay interest to the  
10 contractor or subcontractor to whom payment was due, beginning  
11 on the first business day after the payment was due, at a rate  
12 of twelve percent per annum.

13 Sec. 5. NEW SECTION. 573B.5 **Action or arbitration to**  
14 **enforce.**

15 In any action to enforce the provisions of this chapter,  
16 including arbitration, the court or arbitrator shall award  
17 costs and reasonable attorney fees to the prevailing party.  
18 Venue of such an action shall be in the county where the  
19 applicable real property is located. The hearing in such an  
20 arbitration shall be held in the county where the applicable  
21 real property is located.

22 Sec. 6. NEW SECTION. 573B.6 **Waiver or variance prohibited.**

23 The rights and duties prescribed by this chapter shall not be  
24 waived or varied under the terms of a contract. The terms of a  
25 contract waiving or varying the rights and duties prescribed by  
26 this chapter shall be unenforceable.

27 Sec. 7. NEW SECTION. 573B.7 **Applicability.**

28 The provisions of this chapter do not apply to single-family  
29 residential housing and multifamily residential housing of four  
30 units or less. The provisions of this chapter shall not apply  
31 to public works or public improvement projects.

32 Sec. 8. **APPLICABILITY.** This Act applies to construction  
33 contracts entered into on or after the effective date of this  
34 Act.

35

**EXPLANATION**

1           The inclusion of this explanation does not constitute agreement with  
2           the explanation's substance by the members of the general assembly.

3       This bill creates the "Iowa fairness in private construction  
4 contracts Act". The bill requires a person or entity that  
5 enters into a contract for private construction to make  
6 all payments pursuant to the terms of the contract and in  
7 accordance with the bill. The bill provides that a provision  
8 in a private construction contract that waives, releases, or  
9 extinguishes the right to resolve disputes through litigation  
10 is void as contrary to public policy, although arbitration  
11 may be required as a prerequisite to or a substitution for  
12 litigation.

13       The bill provides that a provision in a contract for  
14 private construction making a payment from a contractor or  
15 subcontractor to a subcontractor contingent or conditioned upon  
16 receipt of a payment from any other private party is no defense  
17 to a claim to enforce a mechanic's lien or bond to secure  
18 payment of claims pursuant to Code chapter 572.

19       The bill requires that a contract for private construction  
20 provide that payment of amounts due a contractor from an owner,  
21 except retainage, shall be made within 30 days after the owner  
22 receives a timely, properly completed, undisputed request for  
23 payment. The bill provides that if an owner fails to pay a  
24 contractor by the date payment is due, the owner must pay  
25 interest to the contractor beginning the first business day  
26 after payment is due, at the rate of 12 percent per annum.

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

1 rate of 12 percent per annum.

2 The bill defines "retainage" for the purposes of the "Iowa  
3 fairness in private construction contracts Act" as money  
4 earned by a contractor or subcontractor but withheld to ensure  
5 proper performance by the contractor or subcontractor. The  
6 bill provides that an owner, contractor, or subcontractor may  
7 withhold no more than 5 percent retainage from the amount of  
8 any undisputed payment due. The bill provides that if an  
9 owner, contractor, or subcontractor fails to pay retainage  
10 as required, they must pay interest beginning on the first  
11 business day after the payment was due, at a rate of 12 percent  
12 per annum.

13 The bill provides that in any action to enforce the  
14 provisions of the bill, including arbitration, the court or  
15 arbitrator will award costs and reasonable attorney fees to the  
16 prevailing party. The bill provides that such an action will  
17 take place in the county where the applicable real property is  
18 located.

19 The bill provides that the rights and duties prescribed  
20 by the bill cannot be waived or varied under the terms  
21 of a contract, and a provision of a contract doing so is  
22 unenforceable.

23 The bill does not apply to single-family residential housing  
24 and multifamily residential housing of four units or less or  
25 public works or public improvement projects.

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