

Senate Study Bill 1092 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act relating to mechanics' liens and public construction
2 liens.

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

1 Section 1. Section 26.3, subsection 3, Code 2017, is amended
2 to read as follows:

3 3. Sections 26.4 through ~~26.13~~ 26.12 and section 573.28
4 apply to all competitive bidding pursuant to [this section](#).

5 Sec. 2. Section 314.1, subsection 2, Code 2017, is amended
6 to read as follows:

7 2. Notwithstanding any other provision of law to the
8 contrary, a public improvement that involves the construction,
9 reconstruction, or improvement of a highway, bridge, or culvert
10 and that has a cost in excess of the applicable threshold in
11 section 73A.18, [262.34](#), [297.7](#), [309.40](#), [310.14](#), or [313.10](#), as
12 modified by the bid threshold subcommittee pursuant to section
13 314.1B, shall be advertised and let for bid, except such public
14 improvements that involve emergency work pursuant to section
15 309.40A, [313.10](#), or [384.103](#), [subsection 2](#). For a city having
16 a population of fifty thousand or less, a public improvement
17 that involves the construction, reconstruction, or improvement
18 of a highway, bridge, or culvert that has a cost in excess of
19 twenty-five thousand dollars, as modified by the bid threshold
20 subcommittee pursuant to [section 314.1B](#), shall be advertised
21 and let for bid, excluding emergency work. However, a public
22 improvement that has an estimated total cost to a city in
23 excess of a threshold of fifty thousand dollars, as modified by
24 the bid threshold subcommittee pursuant to [section 314.1B](#), and
25 that involves the construction, reconstruction, or improvement
26 of a highway, bridge, or culvert that is under the jurisdiction
27 of a city with a population of more than fifty thousand,
28 shall be advertised and let for bid. Cities required to
29 competitively bid highway, bridge, or culvert work shall do so
30 in compliance with the contract letting procedures of sections
31 26.3 through ~~26.13~~ 26.12 and section 573.28.

32 Sec. 3. Section 572.7, Code 2017, is amended to read as
33 follows:

34 **572.7 In case of internal improvement.**

35 When the lien is for material furnished or labor performed in

1 the construction, repair, or equipment of any railroad, canal,
2 viaduct, or other similar improvement, ~~said~~ the lien shall
3 attach to the erections, excavations, embankments, bridges,
4 roadbeds, rolling stock, and other equipment and to all land
5 upon which such improvements or property may be situated,
6 ~~except~~ including the easement or right-of-way.

7 Sec. 4. Section 572.10, Code 2017, is amended to read as
8 follows:

9 **572.10 Perfecting lien after lapse of ninety days.**

10 A ~~general contractor or a~~ subcontractor may perfect a
11 mechanic's lien pursuant to [section 572.8](#) beyond ninety days
12 after the date on which the last of the material was furnished
13 or the last of the labor was performed by posting a lien to the
14 mechanics' notice and lien registry internet site and giving
15 written notice thereof to the owner. Such notice may be served
16 by any person in the manner original notices are required to be
17 served. If the party to be served is out of the county wherein
18 the property is situated, a return of that fact by the person
19 charged with making such service shall constitute sufficient
20 service from and after the time it was posted to the mechanics'
21 notice and lien registry internet site.

22 Sec. 5. Section 572.25, Code 2017, is amended to read as
23 follows:

24 **572.25 Place of bringing action.**

25 ~~An~~ A court or arbitration action to enforce a mechanic's
26 lien shall be brought in the county in which the property to be
27 affected, or some part thereof, is situated.

28 Sec. 6. Section 572.26, Code 2017, is amended to read as
29 follows:

30 **572.26 Kinds of action — amendment.**

31 1. An action to enforce a mechanic's lien shall be by
32 equitable proceedings, and no other cause of action shall be
33 joined therewith.

34 2. a. ~~Any~~ A lien statement ~~may~~ shall not be amended except
35 by leave of court in furtherance of justice, ~~except as to the~~

1 ~~amount demanded~~ or to decrease the amount demanded.

2 b. A lien statement amended without leave of court to
3 decrease the amount demanded shall be effected through the
4 mechanics' notice and lien registry.

5 c. A lien statement amended pursuant to this section shall
6 not affect the priority of the lien statement.

7 Sec. 7. Section 572.28, subsection 1, Code 2017, is amended
8 to read as follows:

9 1. Upon the written demand of the owner or general
10 contractor served on the claimant requiring the claimant to
11 commence action to enforce the lien, such action shall be
12 commenced within thirty days thereafter, or the lien and all
13 benefits derived therefrom shall be forfeited.

14 Sec. 8. Section 572.32, Code 2017, is amended to read as
15 follows:

16 **572.32 Attorney fees — remedies.**

17 1. In a court action to enforce a mechanic's lien, a the
18 court may award the prevailing plaintiff may be awarded party
19 reasonable attorney fees to be taxed as part of the costs in
20 the case.

21 2. In a court action to challenge a mechanic's lien
22 posted on a residential construction property, ~~if the person~~
23 ~~challenging the lien prevails,~~ the court may award the
24 prevailing party reasonable attorney fees ~~and actual damages~~
25 to be taxed as part of the costs in the case. If the court
26 determines that the mechanic's lien was posted in bad faith or
27 the supporting affidavit was materially false, the court shall
28 award the ~~owner~~ person challenging the lien reasonable attorney
29 fees plus an amount not less than five hundred dollars or the
30 amount of the lien, whichever is less.

31 Sec. 9. Section 573.2, unnumbered paragraph 2, Code 2017,
32 is amended to read as follows:

33 If the requirement for a bond is waived pursuant to section
34 12.44, a person, firm, or corporation, having a contract with
35 the targeted small business or with subcontractors of the

1 targeted small business, for labor performed or materials
2 furnished, in the performance of the contract on account of
3 which the bond was waived, is entitled to any remedy provided
4 under [this chapter](#). When a bond has been waived pursuant to
5 section 12.44, or if the public corporation fails to procure
6 a bond, the remedies provided for under this paragraph are
7 available in an action against the public corporation.

8 Sec. 10. Section 573.15, Code 2017, is amended by striking
9 the section and inserting in lieu thereof the following:

10 **573.15 Exception.**

11 A person, firm, or corporation that has performed labor
12 or furnished materials, service, or transportation to a
13 subcontractor shall not be entitled to a claim against the
14 retainage or bond under this chapter unless the person,
15 firm, or corporation that performed the labor or furnished
16 the materials, service, or transportation does all of the
17 following:

18 1. Notifies the principal contractor in writing with a
19 one-time notice containing the name, mailing address, and
20 telephone number of the person, firm, or corporation that
21 performed the labor or furnished the materials, service,
22 or transportation, and the name of the subcontractor for
23 whom the labor was performed or the materials, service, or
24 transportation were furnished, within thirty days of first
25 performing the labor or furnishing the materials, service, or
26 transportation for which a claim may be made. Additional labor
27 performed or materials, service, or transportation furnished by
28 the same person, firm, or corporation to the same subcontractor
29 for use in the same construction project shall be covered by
30 this notice.

31 2. Supports the claim with a certified statement that
32 the principal contractor received the notice described in
33 subsection 1.

34 Sec. 11. Section 573.16, unnumbered paragraph 2, Code 2017,
35 is amended to read as follows:

1 Upon written demand of the public corporation, principal
2 contractor, or surety on any bond given for the performance
3 of the contract served, in the manner prescribed for original
4 notices, on the person filing a claim, requiring the claimant
5 to commence action in court to enforce the claim, an action
6 shall be commenced within thirty days, otherwise the retained
7 and unpaid funds due the principal contractor shall be
8 released. Unpaid funds shall be paid to the principal
9 contractor within twenty days of the receipt by the public
10 corporation of the release as determined pursuant to this
11 section. Failure to make payment by that date shall cause
12 interest to accrue on the unpaid amount. Interest shall accrue
13 during the period commencing the twenty-first day after the
14 date of release and ending on the date of the payment. The
15 rate of interest shall be determined pursuant to section
16 573.14. ~~After an action is commenced, upon the general~~
17 Upon the surety on any bond given for the performance of
18 the contract consenting, in writing, to the release of the
19 principal contractor of the unpaid funds, or upon the principal
20 contractor filing with the public corporation or person
21 withholding the funds, a surety bond in double the amount of
22 the claim in controversy, conditioned to pay upon the payment
23 of any final judgment rendered for the claims so filed, the
24 public corporation or person shall pay to the contractor the
25 amount of funds withheld.

26 Sec. 12. Section 573.21, Code 2017, is amended to read as
27 follows:

28 **573.21 Attorney fees.**

29 The court or arbitrator may tax, as part of the costs in the
30 case, a reasonable attorney fee fees in favor of the prevailing
31 party in any claimant for labor or materials who has, in whole
32 or in part, established court or arbitration action brought to
33 enforce a claim filed pursuant to section 573.7.

34 Sec. 13. NEW SECTION. **573.28 Early release of retained**
35 **funds.**

1 1. For purposes of this section:

2 a. *"Authorized contract representative"* means the person
3 chosen by the governmental entity or the department to
4 represent its interests or the person designated in the
5 contract as the party representing the governmental entity's
6 or the department's interest regarding administration and
7 oversight of the project.

8 b. *"Department"* means the state department of
9 transportation.

10 c. *"Governmental entity"* means the state, political
11 subdivisions of the state, public school corporations, and all
12 officers, boards, or commissions empowered by law to enter
13 into contracts for the construction of public improvements,
14 excluding the state board of regents and the department.

15 d. *"Public improvement"* means a building or construction
16 work which is constructed under the control of a governmental
17 entity and is paid for in whole or in part with funds of the
18 governmental entity, including a building or improvement
19 constructed or operated jointly with any other public or
20 private agency, but excluding urban renewal demolition and
21 low-rent housing projects, industrial aid projects authorized
22 under chapter 419, emergency work or repair or maintenance
23 work performed by employees of a governmental entity, and
24 excluding a highway, bridge, or culvert project, and excluding
25 construction or repair or maintenance work performed for a city
26 utility under chapter 388 by its employees or performed for a
27 rural water district under chapter 357A by its employees.

28 e. *"Repair or maintenance work"* means the preservation of a
29 building, storm sewer, sanitary sewer, or other public facility
30 or structure so that it remains in sound or proper condition,
31 including minor replacements and additions as necessary to
32 restore the public facility or structure to its original
33 condition with the same design.

34 f. *"Substantially completed"* means the first date on which
35 any of the following occurs:

1 (1) Completion of the public improvement project or the
2 highway, bridge, or culvert project or when the work on the
3 public improvement or the highway, bridge, or culvert project
4 has been substantially completed in general accordance with the
5 terms and provisions of the contract.

6 (2) The work on the public improvement or on the designated
7 portion is substantially completed in general accordance with
8 the terms of the contract so that the governmental entity or
9 the department can occupy or utilize the public improvement or
10 designated portion of the public improvement for its intended
11 purpose. This subparagraph shall not apply to highway, bridge,
12 or culvert projects.

13 (3) The public improvement project or the highway, bridge,
14 or culvert project is certified as having been substantially
15 completed by either of the following:

16 (a) The architect or engineer authorized to make such
17 certification.

18 (b) The authorized contract representative.

19 (4) The governmental entity or the department is occupying
20 or utilizing the public improvement for its intended purpose.
21 This subparagraph shall not apply to highway, bridge, or
22 culvert projects.

23 2. Payments made by a governmental entity or the department
24 for the construction of public improvements and highway,
25 bridge, or culvert projects shall be made in accordance with
26 the provisions of this chapter, except as provided in this
27 section:

28 a. At any time after all or any part of the work on the
29 public improvement or highway, bridge, or culvert project is
30 substantially completed, the contractor may request the release
31 of all or part of the retained funds owed. The request shall be
32 accompanied by a sworn statement of the contractor that, ten
33 calendar days prior to filing the request, notice was given as
34 required by paragraphs "f" and "g" to all known subcontractors,
35 sub-subcontractors, and suppliers.

1 *b.* Except as provided under paragraph "*c*", upon receipt of
2 the request, the governmental entity or the department shall
3 release all or part of the retained funds. Retained funds that
4 are approved as payable shall be paid at the time of the next
5 monthly payment or within thirty days, whichever is sooner. If
6 partial retained funds are released pursuant to a contractor's
7 request, no retained funds shall be subsequently held based
8 on that portion of the work. If within thirty days of when
9 payment becomes due the governmental entity or the department
10 does not release the retained funds due, interest shall accrue
11 on the amount of retained funds at the rate of interest that is
12 calculated as the prime rate plus one percent per year as of
13 the day interest begins to accrue until the amount is paid.

14 *c.* If labor and materials are yet to be provided at the
15 time the request for the release of the retained funds is made,
16 an amount equal to two hundred percent of the value of the
17 labor or materials yet to be provided, as determined by the
18 governmental entity's or the department's authorized contract
19 representative, may be withheld until such labor or materials
20 are provided.

21 *d.* An itemization of the labor or materials yet to be
22 provided, or the reason that the request for release of
23 retained funds is denied, shall be provided to the contractor
24 in writing within thirty calendar days of the receipt of the
25 request for release of retained funds.

26 *e.* The contractor shall release retained funds to the
27 subcontractor or subcontractors in the same manner as retained
28 funds are released to the contractor by the governmental entity
29 or the department. Each subcontractor shall pass through to
30 each lower-tier subcontractor all retained fund payments from
31 the contractor.

32 *f.* Prior to applying for release of retained funds, the
33 contractor shall send a notice to all known subcontractors,
34 sub-subcontractors, and suppliers that provided labor or
35 materials for the public improvement project or the highway,

1 bridge, or culvert project.

2 g. The notice shall be substantially similar to the
3 following:

4 NOTICE OF CONTRACTOR'S REQUEST
5 FOR EARLY RELEASE OF RETAINED FUNDS

6 You are hereby notified that [name of contractor] will be
7 requesting an early release of funds on a public improvement
8 project or a highway, bridge, or culvert project designated as
9 [name of project] for which you have or may have provided labor
10 or materials. The request will be made pursuant to Iowa Code
11 section 573.28. The request may be filed with the [name of
12 governmental entity or department] after ten calendar days from
13 the date of this notice. The purpose of the request is to have
14 [name of governmental entity or department] release and pay
15 funds for all work that has been performed and charged to [name
16 of governmental entity or department] as of the date of this
17 notice. This notice is provided in accordance with Iowa Code
18 section 573.28.

19 Sec. 14. REPEAL. Section 26.13, Code 2017, is repealed.

20 EXPLANATION

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

23 This bill relates to mechanics' liens and public
24 construction liens.

25 MECHANIC'S LIENS. Under current law, when a mechanic's
26 lien is for material furnished or labor performed in the
27 construction, repair, or equipment of any railroad, canal,
28 viaduct, or other similar improvement, the lien does not attach
29 to an easement or right-of-way. The bill provides that such a
30 mechanic's lien does attach to an easement or right-of-way.

31 Under Code section 572.8, a person shall perfect a
32 mechanic's lien by posting to the mechanics' notice and lien
33 registry internet site a verified statement of account of
34 the demand due the person setting forth certain specified
35 information. Currently, if a general contractor or a

1 subcontractor has not posted the mechanic's lien to the
2 registry within 90 days after the date on which the last
3 of the material was furnished or the last of the labor was
4 performed, the general contractor or subcontractor must post
5 the mechanic's lien on the registry and serve the owner with
6 notice of the posting to perfect the lien. The bill provides
7 that only a subcontractor must post the mechanic's lien and
8 serve the owner to perfect the mechanic's lien.

9 Under current law, a court action to enforce a mechanic's
10 lien must be brought in the county in which the property to be
11 affected is situated. The bill provides that same rule applies
12 to arbitration actions.

13 Under current law, a lien statement may only be amended by
14 leave of court in furtherance of justice or as to the amount
15 demanded. The bill provides that a lien statement may only be
16 amended by leave of court in further of justice or to decrease
17 the amount demanded. An amendment to decrease the amount
18 demanded must be accomplished through the mechanics' notice
19 and lien registry. The bill provides that amending a lien
20 statement by leave of court in furtherance of justice or to
21 decrease the amount demanded does not affect the priority of
22 the lien statement.

23 Under current law, the owner of property subject to a
24 mechanic's lien may serve written demand on the claimant
25 requiring the claimant to commence action to enforce the lien
26 within 30 days of the notice. If the claimant fails to do so,
27 the lien and all benefits derived therefrom are forfeited.
28 The bill provides that, in addition to an owner, a general
29 contractor may make such a demand.

30 Under current law, in a court action to enforce a mechanic's
31 lien, the court may award a prevailing plaintiff reasonable
32 attorney fees. The bill provides that the court may award
33 attorney fees to any prevailing party in an action to enforce
34 a mechanic's lien.

35 Under current law, in a court action to challenge a

1 mechanic's lien posted on a residential construction property,
2 the court may award reasonable attorney fees and actual damages
3 to the person challenging the lien if such person prevails.
4 The bill provides that the court may award reasonable attorney
5 fees to the prevailing party in an action to challenge a
6 mechanic's lien posted on a residential construction property.

7 PUBLIC CONSTRUCTION LIENS. Under Code chapter 573 (labor
8 and material on public improvements), and subject to certain
9 exceptions, contracts for construction of public improvements
10 must be accompanied by a bond if the contract price equals
11 or exceeds \$25,000. The bill provides that if the public
12 corporation fails to procure a bond, the public corporation is
13 liable to claimants for the contractor's nonpayment.

14 Current Code section 573.15 provides an exception to the
15 requirement that a public corporation retain a portion of funds
16 due a contractor on a public improvement project in a fund
17 for the payment of claims for materials furnished and labor
18 performed. The exception provides that a public corporation
19 need only retain funds due a supplier of material to a general
20 contractor if the supplier provides the general contractor
21 with one of two permitted types of notice after the materials
22 are supplied. The bill provides that, in addition to claims
23 for materials, the exception shall apply to claims for labor,
24 service, or transportation. The bill also amends the notice
25 requirement to provide that a supplier of labor, materials,
26 service, or transportation to a general contractor must give
27 only one type of notice, along with a certified statement that
28 such notice was given.

29 Current Code section 573.16 provides that even if a claimant
30 has commenced an action for payment of funds, the public
31 corporation shall release the unpaid funds to the contractor if
32 the contractor files a surety bond in double the amount of the
33 claim in controversy, conditioned upon the payment of any final
34 judgment rendered for the claims. The bill provides that the
35 unpaid funds shall also be released to the contractor if the

1 surety on any bond given for the performance of the contract
2 gives written consent to the release of the unpaid funds.

3 Current Code section 573.21 provides that if a claimant
4 establishes a claim for labor or materials under Code chapter
5 573, the court may tax reasonable attorney fees in favor of the
6 claimant. The bill provides that a court or arbitrator may tax
7 reasonable attorney fees in favor of any prevailing party in
8 a court or arbitrarian action brought for labor or materials
9 under Code chapter 573.

10 The bill repeals Code section 26.13 (public construction
11 bidding — early release of retained funds) and creates new
12 Code section 573.28 with the same language except for corrected
13 internal references.