

Senate Study Bill 3039 - Introduced

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

A BILL FOR

1 An Act relating to mechanics' liens, public construction liens,
2 and the early release of retained funds.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 26.3, subsection 3, Code 2018, is amended
2 to read as follows:

3 3. Sections 26.4 through ~~26.13~~ 26.12 apply to all
4 competitive bidding pursuant to this section.

5 Sec. 2. Section 314.1, subsection 2, Code 2018, 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
11 in section 73A.18, 262.34, 297.7, 309.40, 310.14, or 313.10,
12 as modified by the bid threshold subcommittee pursuant to
13 section 314.1B, shall be advertised and let for bid, except
14 such public improvements that involve emergency work pursuant
15 to section 309.40A, 313.10, or 384.103, subsection 2. For a
16 city having a population of fifty thousand or less, a public
17 improvement that involves the construction, reconstruction, or
18 improvement of a highway, bridge, or culvert that has a cost
19 in excess of twenty-five thousand dollars, as modified by the
20 bid threshold subcommittee pursuant to section 314.1B, shall be
21 advertised and let for bid, excluding emergency work. However,
22 a public improvement that has an estimated total cost to a
23 city in excess of a threshold of fifty thousand dollars, as
24 modified by the bid threshold subcommittee pursuant to section
25 314.1B, and that involves the construction, reconstruction, or
26 improvement of a highway, bridge, or culvert that is under the
27 jurisdiction of a city with a population of more than fifty
28 thousand, shall be advertised and let for bid. Cities required
29 to competitively bid highway, bridge, or culvert work shall
30 do so in compliance with the contract letting procedures of
31 sections 26.3 through ~~26.13~~ 26.12.

32 Sec. 3. Section 572.26, Code 2018, is amended to read as
33 follows:

34 **572.26 Kinds of action — amendment.**

35 1. An action to enforce a mechanic's lien shall be by

1 equitable proceedings, and no other cause of action shall be
2 joined therewith.

3 2. a. Any lien statement may be amended by leave of court
4 in furtherance of justice, except as to the amount demanded
5 Except as provided in paragraph "b", a lien statement may only
6 be amended by leave of court in furtherance of justice.

7 b. A lien statement may be amended without leave of court
8 to decrease the amount demanded, and such amendment shall be
9 effected through the mechanics' notice and lien registry.
10 Amendment of a lien statement pursuant to this subparagraph
11 shall not change or otherwise affect its priority.

12 c. A lien statement shall not be amended to increase the
13 amount demanded.

14 Sec. 4. Section 573.15, Code 2018, is amended by striking
15 the section and inserting in lieu thereof the following:

16 **573.15 Exception.**

17 A person, firm, or corporation that has performed labor
18 for or furnished materials, service, or transportation to
19 a subcontractor shall not be entitled to a claim against
20 the retainage or bond under this chapter unless the person,
21 firm, or corporation that performed the labor or furnished
22 the materials, service, or transportation does all of the
23 following:

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

1 this notice.

2 2. Supports the claim with a certified statement that
3 the principal contractor received the notice described in
4 subsection 1.

5 Sec. 5. NEW SECTION. 573.28 **Early release of retained**
6 **funds.**

7 1. For purposes of this section:

8 a. "*Authorized contract representative*" means the person
9 chosen by the governmental entity or the department to
10 represent its interests or the person designated in the
11 contract as the party representing the governmental entity's
12 or the department's interest regarding administration and
13 oversight of the project.

14 b. "*Department*" means the state department of
15 transportation.

16 c. "*Governmental entity*" means the state, political
17 subdivisions of the state, public school corporations, and all
18 officers, boards, or commissions empowered by law to enter
19 into contracts for the construction of public improvements,
20 excluding the state board of regents and the department.

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

34 e. "*Repair or maintenance work*" means the preservation of a
35 building, storm sewer, sanitary sewer, or other public facility

1 or structure so that it remains in sound or proper condition,
2 including minor replacements and additions as necessary to
3 restore the public facility or structure to its original
4 condition with the same design.

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

7 (1) Completion of the public improvement project or the
8 highway, bridge, or culvert project or when the work on the
9 public improvement or the highway, bridge, or culvert project
10 has been substantially completed in general accordance with the
11 terms and provisions of the contract.

12 (2) The work on the public improvement or on the designated
13 portion is substantially completed in general accordance with
14 the terms of the contract so that the governmental entity or
15 the department can occupy or utilize the public improvement or
16 designated portion of the public improvement for its intended
17 purpose. This subparagraph shall not apply to highway, bridge,
18 or culvert projects.

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

22 (a) The architect or engineer authorized to make such
23 certification.

24 (b) The authorized contract representative.

25 (4) The governmental entity or the department is occupying
26 or utilizing the public improvement for its intended purpose.
27 This subparagraph shall not apply to highway, bridge, or
28 culvert projects.

29 2. Payments made by a governmental entity or the department
30 for the construction of public improvements and highway,
31 bridge, or culvert projects shall be made in accordance with
32 the provisions of this chapter, except as provided in this
33 section:

34 *a.* At any time after all or any part of the work on the
35 public improvement or highway, bridge, or culvert project is

1 substantially completed, the contractor may request the release
2 of all or part of the retained funds owed. The request shall be
3 accompanied by a sworn statement of the contractor that, ten
4 calendar days prior to filing the request, notice was given as
5 required by paragraphs "f" and "g" to all known subcontractors,
6 sub-subcontractors, and suppliers.

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

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

27 *d.* An itemization of the labor or materials yet to be
28 provided, or the reason that the request for release of
29 retained funds is denied, shall be provided to the contractor
30 in writing within thirty calendar days of the receipt of the
31 request for release of retained funds.

32 *e.* The contractor shall release retained funds to the
33 subcontractor or subcontractors in the same manner as retained
34 funds are released to the contractor by the governmental entity
35 or the department. Each subcontractor shall pass through to

1 each lower-tier subcontractor all retained fund payments from
2 the contractor.

3 *f.* Prior to applying for release of retained funds, the
4 contractor shall send a notice to all known subcontractors,
5 sub-subcontractors, and suppliers that provided labor or
6 materials for the public improvement project or the highway,
7 bridge, or culvert project.

8 *g.* The notice shall be substantially similar to the
9 following:

10 NOTICE OF CONTRACTOR'S REQUEST
11 FOR EARLY RELEASE OF RETAINED FUNDS

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

25 Sec. 6. REPEAL. Section 26.13, Code 2018, is repealed.

26 EXPLANATION

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

29 This bill relates to mechanics' liens and public
30 construction liens.

31 MECHANIC'S LIENS. Under current law, a lien statement may
32 only be amended by leave of court in furtherance of justice
33 or as to the amount demanded. The bill provides that a lien
34 statement may only be amended by leave of court in furtherance
35 of justice or to decrease the amount demanded. An amendment to

1 decrease the amount demanded must be accomplished through the
2 mechanics' notice and lien registry. The bill provides that
3 amending a lien statement to decrease the amount demanded does
4 not affect the priority of the lien statement. The bill also
5 provides that a lien statement shall not be amended to increase
6 the amount demanded.

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

22 The bill repeals Code section 26.13 (public construction
23 bidding — early release of retained funds), creates new Code
24 section 573.28 with the same language except for corrected
25 internal references, and provides that the Code section no
26 longer applies to all competitive bidding done pursuant to Code
27 section 26.3 or 314.1.