

**House File 2233 - Reprinted**

HOUSE FILE 2233  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 524)

(As Amended and Passed by the House February 27, 2018)

**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 claimant may only amend a  
6 lien statement by leave of court in furtherance of justice.

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

12     c. A claimant shall not amend a lien statement to increase  
13 the 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.