

## CHAPTER 1097

### PUBLIC CONSTRUCTION BIDDING, MECHANIC'S LIENS, AND EARLY RELEASE OF RETAINED FUNDS

H.F. 2233

**AN ACT** relating to mechanics' liens, public construction liens, and the early release of retained funds.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. [Section 26.3, subsection 3](#), Code 2018, is amended to read as follows:

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

Sec. 2. [Section 314.1, subsection 2](#), Code 2018, is amended to read as follows:

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

Sec. 3. [Section 572.26](#), Code 2018, is amended to read as follows:

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

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

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

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

c. A claimant shall not amend a lien statement to increase the amount demanded.

Sec. 4. [Section 573.15](#), Code 2018, is amended by striking the section and inserting in lieu thereof the following:

#### **573.15 Exception.**

1. A person, firm, or corporation that has performed labor for or furnished materials, service, or transportation to a subcontractor shall not be entitled to a claim against the retainage or bond under [this chapter](#) unless the person, firm, or corporation that performed the labor or furnished the materials, service, or transportation does all of the following:

a. Notifies the principal contractor in writing with a one-time notice containing the name, mailing address, and telephone number of the person, firm, or corporation that performed the labor or furnished the materials, service, or transportation, and the name of the subcontractor for whom the labor was performed or the materials, service, or transportation

were furnished, within thirty days of first performing the labor or furnishing the materials, service, or transportation for which a claim may be made. Additional labor performed or materials, service, or transportation furnished by the same person, firm, or corporation to the same subcontractor for use in the same construction project shall be covered by this notice.

b. Supports the claim with a certified statement that the principal contractor received the notice described in paragraph “a”.

2. [This section](#) shall not apply to highway, bridge, or culvert projects as referred to in [section 573.28](#).

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

1. For purposes of [this section](#):

a. “*Authorized contract representative*” means the person chosen by the governmental entity or the department to represent its interests or the person designated in the contract as the party representing the governmental entity’s or the department’s interest regarding administration and oversight of the project.

b. “*Department*” means the state department of transportation.

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

d. “*Public improvement*” means a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of the governmental entity, including a building or improvement constructed or operated jointly with any other public or private agency, but excluding urban renewal demolition and low-rent housing projects, industrial aid projects authorized under [chapter 419](#), emergency work or repair or maintenance work performed by employees of a governmental entity, and excluding a highway, bridge, or culvert project, and excluding construction or repair or maintenance work performed for a city utility under [chapter 388](#) by its employees or performed for a rural water district under [chapter 357A](#) by its employees.

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

f. “*Substantially completed*” means the first date on which any of the following occurs:

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

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

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

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

(b) The authorized contract representative.

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

2. Payments made by a governmental entity or the department for the construction of public improvements and highway, bridge, or culvert projects shall be made in accordance with the provisions of [this chapter](#), except as provided in [this section](#):

a. At any time after all or any part of the work on the public improvement or highway, bridge, or culvert project is substantially completed, the contractor may request the release of all or part of the retained funds owed. The request shall be accompanied by a sworn statement of the contractor that, ten calendar days prior to filing the request, notice was given

as required by paragraphs “f” and “g” to all known subcontractors, sub-subcontractors, and suppliers.

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

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

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

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

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

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

NOTICE OF CONTRACTOR’S REQUEST  
FOR EARLY RELEASE OF RETAINED FUNDS

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

Sec. 6. REPEAL. [Section 26.13](#), Code 2018, is repealed.

Approved April 10, 2018