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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2225

02/25/2014 Authored by Ward, J.E.,
The bill was read for the first time and referred to the Committee on Transportation Policy

1.1 A bill for an act
1.2 relating to transportation; surety bonds; amending provisions governing
1.3 Department of Transportation contracting and payment bonds; amending
1.4 Minnesota Statutes 2012, sections 161.32, by adding a subdivision; 574.31,
1.5 subdivision 2.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2012, section 161.32, is amended by adding a
1.8 subdivision to read:

1.9 Subd. 8. Payments; uncompensated work. (a) For purposes of this subdivision,
1.10 the following terms have the meaning given:

1.11 (1) "agreement for trunk highway work" means an enforceable agreement, or
1.12 combination or series of agreements, by which a private contractor agrees with the
1.13 commissioner of transportation to provide work related to the trunk highway system
1.14 that requires surety under section 574.26, including but not limited to (i) construction,
1.15 maintenance, or improvement of a trunk highway, or (ii) professional or technical
1.16 services; and

1.17 (2) "labor and materials" has the meaning given under section 574.26, subdivision 1.

1.18 (b) The commissioner may make payments to the employee of a contractor operating
1.19 under an agreement for trunk highway work if:

1.20 (1) based on a review, the commissioner determines that the employee has been
1.21 insufficiently compensated for labor and materials provided under the agreement;

1.22 (2) the commissioner has initiated sanctions, including but not limited to withholding
1.23 or suspending payment of contract funds, arranging to reject future bids under subdivision
1.24 1d, or terminating the contract, against the contractor;

1.25 (3) a claim under chapter 574 is filed and coverage is denied; and

2.1 (4) the agreement has not been finalized and closed out.

2.2 (c) The commissioner may not make a payment under this subdivision that exceeds
2.3 the amount specified under the agreement, including any supplemental agreements or
2.4 adjustments, less the total payments previously made.

2.5 **EFFECTIVE DATE.** This section is effective the day following final enactment and
2.6 applies to contracts that are active on that date, or that are executed on or after that date.

2.7 Sec. 2. Minnesota Statutes 2012, section 574.31, subdivision 2, is amended to read:

2.8 Subd. 2. **Claims on payment bonds.** (a) In the event of a claim on a payment bond
2.9 by a person furnishing labor and materials, no action shall be maintained on the payment
2.10 bond unless, ~~within 120 days after completion, delivery, or provision by the person of its~~
2.11 ~~last item of labor and materials, for the public work,~~ the person:

2.12 (1) serves written notice of claim under the payment bond personally or by certified
2.13 mail upon the surety that issued the bond and the contractor on whose behalf the bond
2.14 was issued, at their addresses as stated in the bond, specifying the nature and amount of
2.15 the claim and the date the claimant furnished its last item of labor and materials for the
2.16 public work; and

2.17 (2) serves the notice:

2.18 (i) within 120 days after completion, delivery, or provision by the person of its last
2.19 item of labor and materials for the public work; or

2.20 (ii) with respect to a payment bond on a project of the Department of Transportation,
2.21 prior to finalization and closeout of the contract under which the person furnished labor
2.22 and materials.

2.23 The addresses of the contractor and the surety listed on the bond must be addresses
2.24 at which the companies are authorized to accept service of the notice of the claim. If an
2.25 agent or attorney-in-fact is authorized to accept service of notice of the claim for the
2.26 contractor or surety, that fact must be expressly stated in the bond along with the address
2.27 of the agent or attorney-in-fact at which service of the notice of the claim can be made.
2.28 For the purpose of this section, notice is sufficient if served personally or via certified mail
2.29 to the addresses of the contractor and surety listed on the bond. The form of notice is
2.30 sufficient if it is substantially as follows:

2.31 NOTICE OF CLAIM ON PAYMENT BOND FOR PUBLIC WORK

2.32 TO:

2.33 (Surety that issued payment bond)

2.34 and

2.35 (The contractor on whose behalf the bond was issued)

3.1 NOTICE IS HEREBY GIVEN that the undersigned claimant has
 3.2 a claim against the above-named surety for labor and materials
 3.3 furnished by the undersigned for the public work described as
 3.4 follows:.....
 3.5

3.6 (Description of the public work)

3.7 The labor and materials were furnished under a contract or agreement
 3.8 with

3.9
 3.10 (Name and address of contractor or supplier requesting labor
 3.11 and materials from the claimant)

3.12 The nature of the labor and materials furnished is as follows:

3.13
 3.14 The amount of the claim is:.....

3.15 The date the claimant last furnished labor and materials to this public
 3.16 work is the day of,

3.17 Claimant seeks payment of the claim according to the law.

3.18
 3.19 Claimant

3.20
 3.21 Address

3.22
 3.23 STATE OF

3.24 ss.

3.25 COUNTY OF

3.26 being duly sworn on oath says that
 3.27 is of the claimant named above and has
 3.28 knowledge of the claim and that the claim is correct, and no
 3.29 part of the claim has been paid.

3.30
 3.31 Signed and sworn to before me
 3.32 on,
 3.33 by (Notary Seal)

3.34
 3.35 Notary Public

3.36 (b) If the contractor providing the payment bond fails to comply with the filing
 3.37 requirements of section 574.28 by failing to state both its address and the address of the
 3.38 surety providing the bond, then a claimant under the bond need not provide either the
 3.39 surety or the contractor written notice of its claim under paragraph (a).

3.40 (c) An action to enforce a claim against the surety under the bond must be
 3.41 commenced:

3.42 (1) within one year from the date of completion, delivery, or provision by the claimant
 3.43 of its last item of labor and materials for the public work stated in its notice of claim;

4.1 (2) with respect to a bond on a project of the Department of Transportation, prior
4.2 finalization and closeout of the contract under which the person furnished labor and
4.3 materials; or

4.4 (3) if clause (2) does not apply and no notice of claim was required because the
4.5 contractor providing the bond failed to comply with the requirements of section 574.28,
4.6 then any action under the bond must be commenced within one year from the actual date
4.7 of completion, delivery, or provision by the claimant of its last item of labor and materials
4.8 for the public work.

4.9 (d) Any other person having a cause of action on a payment bond may be admitted,
4.10 on motion, as a party to the action, and the court shall determine the rights of all parties.
4.11 If the amount realized on the bond is insufficient to discharge all the claims in full, the
4.12 amount must be prorated among the parties.

4.13 ~~(d)~~ (e) The claimant can extend the time within which to bring an action to enforce a
4.14 claim under the bond to beyond that specified in paragraph (c) either by: (1) written
4.15 stipulation between the claimant and surety stating the extended deadline and executed by
4.16 both parties before the expiration of one year from the actual date of completion, delivery,
4.17 or provision by the claimant of its last item of labor and materials for the public work the
4.18 deadline that otherwise applies under paragraph (c); or (2) written notice extending by one
4.19 year the deadline specified in paragraph (c) sent by the claimant to the surety via certified
4.20 mail 90 days before the expiration of the deadline specified in paragraph (c), which notice
4.21 is not objected to in a return written notice sent by the surety to the claimant via certified
4.22 mail within 30 days after the surety's receipt of claimant's notice.

4.23 (f) If a claimant's payment is not yet contractually due within one year from the
4.24 actual date of completion, delivery, or provision by the claimant of its last item of labor
4.25 and materials at the time an action is commenced, the court shall continue and not dismiss
4.26 the action until the payment is due.

4.27 **EFFECTIVE DATE.** This section is effective August 1, 2014, and applies to
4.28 contracts executed on or after that date.