

IC 5-16-5

Chapter 5. Withholding and Bond to Secure Payment of Subcontractors, Labor, and Materialmen

IC 5-16-5-0.4

"Person"

Sec. 0.4. As used in this chapter, "person" includes a natural person, firm, limited liability company, or corporation.

As added by P.L.75-2012, SEC.4.

IC 5-16-5-0.5

"Public body"

Sec. 0.5. As used in this chapter, "public body" refers to a board, commission, trustee, officer, or agent acting on behalf of the state or a commission created by law.

As added by P.L.75-2012, SEC.5.

IC 5-16-5-0.6

"Public work"

Sec. 0.6. As used in this chapter, "public work" refers to the construction, erection, alteration, or repair of a public building, public improvement, or other public work, the cost of which is paid for by funds derived from taxation. The term includes all roads, highways, streets, alleys, bridges, sewers, drains, or other public improvements.

As added by P.L.75-2012, SEC.6.

IC 5-16-5-1

Withholding final payments; filing claims for payment; release of surety

Sec. 1. (a) Except as otherwise provided in this chapter, when a public work is performed under contract at the expense of the state or a commission created by law, the public body shall withhold final payment to the contractor until the contractor has paid to:

- (1) all subcontractors;
- (2) all suppliers of materials for material furnished;
- (3) all labor employed in the public work; and
- (4) all those furnishing any service in relation to or in connection with the public work;

all bills due and owing to the persons described in subdivisions (1) through (4) who have filed a claim under subsection (c).

(b) If there is not a sufficient sum owing to the contractor on the contract to pay all the bills, then the sum owing on the contract shall be prorated in payment of all the bills among the persons entitled to payment.

(c) A person claiming payment under this section must file with the public body a claim not later than sixty (60) days after the last labor is performed, the last material is furnished, or the last service is rendered by that person, as provided in section 2 of this chapter.

(d) If there is no dispute among the claimants, the public body

shall pay all claims out of the funds due the contractor and take a receipt for each payment. The total of amounts paid under this subsection shall be deducted from the contract price.

(e) If there is a dispute among the claimants, the public body shall retain sufficient funds until the dispute is settled, the correct amounts are determined, and payment of those amounts shall be made as provided in subsection (d).

(f) Except for amounts required to be withheld under subsection (e) or as otherwise provided in this chapter, this chapter does not preclude a full, final, and complete settlement upon a contract with a contractor after thirty (30) days from the date of the completion and acceptance of the work as completed.

(g) The surety of a contractor may not be released until the expiration of one (1) year after the final settlement with the contractor.

(Formerly: Acts 1911, c.173, s.1; Acts 1925, c.44, s.1; Acts 1931, c.168, s.1; Acts 1933, c.258, s.1.) As amended by Acts 1981, P.L.57, SEC.10; P.L.75-2012, SEC.7.

IC 5-16-5-2

Payment provisions in contracts; payment bonds; statements of amount due; suits on bond; application of statute to bonds and claims on state highway projects

Sec. 2. (a) A contract awarded for a public work must provide for the payment of subcontractors, labor, suppliers of materials, and those performing service in connection with the public work. The contract must provide for the payment of subcontractors by withholding by the public body funds sufficient from the contract price to pay the subcontractors, labor, suppliers of materials, and those furnishing service in relation to or in connection with the public work. The contractor shall execute a bond to the state, approved by the public body in an amount equal to the total contract price. The bond shall be conditioned for payment by the contractor, the contractor's successors and assigns, and by the subcontractors, their successors and assigns, of all indebtedness, which may accrue to any person for any labor or service performed, materials furnished, or service rendered in the public work. The bond by its terms shall be conditioned to directly inure to the benefit of subcontractors, laborers, suppliers of materials, and those performing service who have furnished or supplied labor, material, or service for the public work.

(b) The bond required under subsection (a) shall be deposited with the public body for the benefit of a person interested in and entitled to the bond. The bond shall be conditioned that:

- (1) a change, modification, omission, or addition in and to the terms or conditions of the contract, plans, specifications, drawings, or profile; or
- (2) any irregularity or defect in the contract or in the proceedings preliminary to the letting and awarding of the contract;

does not affect or operate to release or discharge the surety.

(c) The provisions of this chapter become a part of the terms of a contract awarded under this chapter. A bond for a public work is subject to this chapter.

(d) A person to whom money is due for having performed labor or having furnished material or service for a public work under this chapter must, not later than sixty (60) days after that person completed the labor or service or after that person furnished the last item of material:

(1) file with the public body duplicate verified statements of the amount due to the person; and

(2) deliver a copy of the statement to the contractor.

The public body shall deliver to the surety on the bond one (1) of the duplicate statements. The failure to deliver a duplicate statement by the public body does not affect or invalidate the rights of the person to whom money is due, nor does the failure to deliver a duplicate statement operate as a defense for the surety.

(e) A suit may not be brought against a surety on a bond under this section before thirty (30) days after both of the following have occurred:

(1) The filing of the verified duplicate statement.

(2) A copy of the notice has been delivered to the contractor.

If the indebtedness is not paid in full after thirty (30) days, the person, may bring an action in a court of competent jurisdiction upon the bond. The action must be brought not later than sixty (60) days after the date of the final completion and acceptance of the public work. An action on the bond against a surety is barred if not brought within this time.

(f) IC 8-23-9, and not this chapter, applies to bonds and claims on state highway road and bridge contracts.

(Formerly: Acts 1911, c.173, s.2; Acts 1925, c.44, s.2; Acts 1931, c.168, s.2; Acts 1933, c.258, s.2.) As amended by Acts 1980, P.L.74, SEC.11; Acts 1981, P.L.57, SEC.11; P.L.18-1990, SEC.13; P.L.8-1993, SEC.63; P.L.75-2012, SEC.8.

IC 5-16-5-3

Conflicting laws

Sec. 3. This chapter shall not be construed as conflicting with any other laws for the protection of labor, subcontractors, or materialmen, but is supplemental to those laws.

(Formerly: Acts 1911, c.173, s.3.) As amended by P.L.25-1986, SEC.90.