

## CHAPTER 464—S.F.No. 1665

*An act relating to public contracts; providing for progress payments; authorizing alternative means of securing full performance; amending Minnesota Statutes 1978, Sections 161.322; 162.04; 162.10; and 429.041, Subdivision 6.*

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

Section 1. [15.71] **PUBLIC CONTRACTS; SECURITY FOR COMPLETION OF PERFORMANCE; DEFINITIONS.** Subdivision 1. For the purposes of sections 1 to 4 unless the context clearly indicates otherwise, the terms defined in this section have the meanings given them.

Subd. 2. "Public contract" means any purchase, lease or sale by a public agency of personal property, public improvements or services, other than agreements which are exclusively for personal services.

Subd. 3. "Public agency" or "public contracting agency" means any agency of the state of Minnesota or any of its political subdivisions authorized by law to enter into public contracts.

Subd. 4. "Public improvement" means any construction of improvements on real property or highways by or for a public agency.

Subd. 5. "Retainage" means the difference between the amount earned by the contractor on a public contract and the amount paid on the contract by the public contracting agency.

Sec. 2. [15.72] **PROGRESS PAYMENTS ON PUBLIC CONTRACTS; RETAINAGE; INTEREST.** Subdivision 1. Unless the terms of the contract provide otherwise, a public contracting agency shall make progress payments on a public contract for a public improvement monthly as the work progresses. Payments shall be based upon estimates of work completed as approved by the public contracting agency. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

Subd. 2. A public contracting agency may reserve as retainage from any progress payment on a public contract for a public improvement an amount not to exceed five percent of the payment. A public agency may reduce the amount of the retainage and may eliminate retainage on any monthly contract payment if, in the agency's opinion, the work is progressing satisfactorily.

Sec. 3. [15.73] **ALTERNATIVE FORM OF RETAINAGE.** Subdivision 1. At the option of the contractor, retainage shall be paid to the contractor in accordance with this section.

Subd. 2. The contractor may deposit bonds or securities with the public contracting agency or in any bank or trust company to be held in lieu of cash retainage for the benefit of the public contracting agency. In that event the public

Changes or additions indicated by underline deletions by ~~strikeout~~

agency shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the contractor. Interest on the bonds or securities shall be payable to the contractor as it accrues.

Subd. 3. Bonds and securities deposited or acquired in lieu of retainage, as permitted by subdivision 2, shall be of a character approved by the state treasurer, including but not limited to:

- (a) Bills, certificates, notes or bonds of the United States;
- (b) Other obligations of the United States or its agencies;
- (c) Obligations of any corporation wholly owned by the federal government; or
- (d) Indebtedness of the Federal National Mortgage Association.

Subd. 4. If the public agency incurs additional costs as a result of the exercise of the option described in this section, the agency may recover the costs from the contractor by reducing the final payment due under the contract. As work on the contract progresses, the agency shall, upon demand, inform the contractor of all accrued costs.

Sec. 4. [15.74] Sections 1 to 3 apply to all public contracts except those contracts in which receipt of federal financing is conditioned on adherence to terms and conditions which are inconsistent with sections 1 to 3.

Sec. 5. Minnesota Statutes 1978, Section 161.322, is amended to read:

**161.322 PAYMENT OF INTEREST TO CONTRACTORS.** When any contract for the construction, improvement, or repair of any trunk highway has been entered into by the commissioner of transportation of the state of Minnesota, and the work provided for in the contract has been in all things completed to the satisfaction of the commissioner or his agent except for the release of sureties, in accordance with the contract, by the person with whom the commissioner has contracted, herein termed the contractor, unless final estimate for the work is made within 90 days after the contractor has so completed the work, he shall be entitled to receive interest at the rate of four percent per annum equal to the monthly index of long term United States bond yields for the month prior to the month in which this obligation is incurred from the date of the expiration of that 90 day period upon all amounts finally determined to be due him which were not paid prior to the expiration of that period, to be paid in the same manner as, and at the time of, the final payment under the contract. The 90 day requirement, and the interest provisions provided for herein, shall not apply if delay is caused by the contractor; nor shall the 90 day requirement apply to contracts over ~~one~~ two million dollars if the contract provides specifically for a different period of time in which to make such final estimate.

Sec. 6. Minnesota Statutes 1978, Section 162.04, is amended to read:

**162.04 LIMITATION ON PAYMENT OF CONTRACT PRICE.** Whenever the construction or improvement of any county state-aid highway is to be done by

**Changes or additions indicated by underline deletions by ~~strikeout~~**

contract, and the construction or improvement is not financed in whole or in part by federal aid highway money, the county board shall agree in the contract to pay the contractor on account an amount not to exceed 90 95 percent of the value of the work from time to time actually completed as shown by monthly estimates thereof, made by the county engineer on the basis of the contract prices, and shall further agree that when the work is 90 95 percent or more completed upon the recommendation of the county engineer such portions of the retained price shall be released as the county board determines are not required to be retained to protect the county's interest in completion of the contract. In such case it shall be lawful for the county auditor to issue a warrant on the county treasurer to the contractor for an amount consistent with the above prescribed limitations of the value of the work so completed and specified in the engineer's monthly estimate without allowance of a claim therefor by the county board. Failure to pay any amount due and payable under the terms of the contract within 30 days of a monthly estimate or 90 days after the final estimate of the value of the work completed shall obligate the county to pay to the contractor simple interest on the past due amount at an annual rate equal to the monthly index of long term United States bond yields for the month prior to the month in which this obligation is incurred plus an additional one percent per annum. Interest shall not be imposed with respect to any amount which a county may legally withhold as a result of breach of contract or other contractual claim, or if the delay is caused by the contractor.

Sec. 7. Minnesota Statutes 1978, Section 162.10, is amended to read:

**162.10 LIMITATION ON PAYMENT OF CONTRACT PRICES.** Whenever the construction or improvement of any municipal state-aid street is to be done by contract, and the construction or improvement is not financed in whole or in part by federal aid highway money, the governing body of the city shall agree in the contract to pay the contractor an amount not exceeding 90 95 percent of the value of the work from time to time actually completed, as shown by monthly estimates thereof made by the engineer of the city on the basis of the contract prices, and shall further agree that when the work is 90 95 percent or more completed upon the recommendation of the city engineer such portions of the retained price shall be released as the governing body of the city determines are not required to be retained to protect the city's interest in completion of the contract. In such case it shall be lawful for the appropriate disbursing officers of the city to pay the contractor an amount consistent with the above prescribed limitations of the value of the work so completed and specified in the engineer's monthly estimate without allowance of a claim therefor by the governing body of the city. Failure to pay any amount due and payable under the terms of the contract within 30 days of a monthly estimate or 90 days after the final estimate of the value of the work completed shall obligate the city to pay to the contractor simple interest on the past due amount at an annual rate equal to the monthly index of long term United States bond yields for the month prior to the month in which this obligation is incurred plus an additional one percent per annum. Interest shall not be imposed with respect to any amount which a city may legally withhold as a result of breach of contract or other contractual claim, or if the delay is caused by the contractor.

Changes or additions indicated by underline deletions by ~~strikeout~~

Sec. 8. Minnesota Statutes 1978, Section 429.041, Subdivision 6, is amended to read:

Subd. 6. **PERCENTAGE PAYMENT ON ENGINEER'S ESTIMATE.** In case the contractor properly performs the work, the council shall, from month to month before completion of the work, pay him not to exceed 90 95 percent of the amount already earned under the contract, upon the estimate of the engineer or other competent person selected by the council, and the contract shall so provide, and shall further agree that when the work is 90 95 percent or more completed upon the recommendation of the engineer such portions of the retained price shall be released as the governing body of the municipality determines are not required to be retained to protect the municipality's interest in satisfactory completion of the contract. Failure to pay any amount due and payable under the terms of the contract within 30 days of a monthly estimate or 90 days after the final estimate of the amount earned shall obligate the municipality to pay to the contractor simple interest on the past due amount at an annual rate equal to the monthly index of long term United States bond yields for the month prior to the month in which this obligation is incurred plus an additional one percent per annum. Interest shall not be imposed with respect to any amount which a municipality may legally withhold as a result of breach of contract or other contractual claim or if the delay is caused by the contractor.

Sec. 9. **EFFECTIVE DATE.** This act is effective July 1, 1980 and applies to all public contracts entered into on or after that date.

Approved April 3, 1980

#### CHAPTER 465—S.F.No. 1679

*An act relating to transportation; permitting certain exemptions from motor carrier reporting requirements; requiring driver qualifications and safety requirements for certain carriers; creating a single annual renewal date for holders of multiple permits; permitting issuance of "floater" identification cards to motor carriers; clarifying enforcement powers; amending Minnesota Statutes 1978, Sections 221.031, Subdivision 1; 221.131; 221.221; and Minnesota Statutes, 1979 Supplement, Section 221.011, Subdivision 22.*

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

Section 1. Minnesota Statutes, 1979 Supplement, Section 221.011, Subdivision 22, is amended to read:

Subd. 22. "Exempt carrier" means any carrier exempt from this chapter, or exempted from any other law or rule by the commissioner or commission. The following are so exempt except as otherwise specifically provided in clause (c):

Changes or additions indicated by underline deletions by ~~strikeout~~