

January 31, 1951.

House File 288

Public Lands and Buildings. By SCHWENGEL, STRAWMAN, POSTON,
NELSON of Woodbury, PATRICK, PUTNEY,
KOSEK, MILLER of Shelby, RYAN.

Passed House, Date

Vote: Ayes..... Nays.....

Passed Senate, Date

Vote: Ayes..... Nays.....

Approved

A BILL FOR

An Act to provide for the termination of contracts for the construction of public improvements when construction or work thereon is stopped because of a national emergency, and to prescribe procedures, the adjustment and payment of compensation, and to provide a method for settlement of disputes in connection therewith.

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

1 Section 1. In the event work or construction upon a
2 public improvement is stopped directly or indirectly by or as
3 the result of an order or action of any federal or state
4 authority or of any court because of the occurrence or existence
5 of a national emergency, and the circumstances or conditions are
6 such that it is and will be impracticable to proceed with such
7 work or construction, then the public corporation and the
8 contractor or contractors may, by written agreement terminate
9 said contract. Such an agreement shall include the terms and
10 conditions of the termination of the contract and provision for
11 the payment of compensation or money, if any, which any party
12 shall pay to the other, or any other person, firm or corporation
13 under the facts and circumstances in the case.

1 Sec. 2. Whenever a public corporation and a contractor
2 or contractors, have entered into a contract for the construction
3 of a public improvement, and any party to such contract desires
4 to terminate said contract because of the occurrence of the event
5 and under the circumstances stated in section one (1) hereof, and
6 another party thereto will not agree to such termination, or said
7 parties having agreed upon the termination of the contract cannot
8 agree upon the terms and conditions thereof, then any party may
9 have the issues in dispute determined in the manner hereinafter
10 provided.

1 Sec. 3. Any party to the contract may petition the
2 district court of the county in which the public improvement or
3 any part thereof is located, to determine said issues in dispute
4 and to enter its findings and judgment thereon. The district
5 court shall have jurisdiction thereof and of all parties including
6 any public corporation as defined in this act, as in other actions.
7 Any party petitioning the court, as herein provided, shall serve
8 all other parties, including the subcontractors and the sureties
9 upon the bond or bonds given in connection with said contract, a
10 written notice thereof with a copy of the petition attached thereto,
11 which notice shall be served in the same manner as original
12 notices of actions in the district court of the state of Iowa
13 are served, except that the respondent or respondents shall be
14 required to appear in said court within ten (10) days after
15 service and to file answer. After service of said notice has
16 been completed upon all parties, the petitioner shall file proofs

17 of service of said notice with the clerk of the district court.
18 The clerk of the district court shall file and docket said case
19 in the same manner as other cases, and shall immediately inform
20 the court thereof. The district court shall give such cases
21 preference over other cases, except criminal cases, and they
22 shall be tried forthwith in equity. The court shall make
23 findings and render its judgment determining the issues involved
24 in accordance with the purpose and spirit of this Act. Any
25 party aggrieved by the findings and judgment of the court may
26 appeal to the Supreme Court, as in other cases, except that said
27 appeal shall be perfected within thirty (30) days after the entry
28 of the judgment in the district court, and it shall be given
29 preference in the supreme court over other cases.

1 Sec. 4. If the court determines that said contract should
2 be terminated, or if the parties have agreed to its termination,
3 the court shall include in its order:

4 1. The terms and conditions imposed upon each party to
5 the contract, including the extent of the liability of the
6 sureties upon any bond;

7 2. The protective requirements, if any be deemed
8 necessary, to protect the property, and provision for the payment
9 of the cost thereof;

10 3. The determination of the relative rights of the
11 parties involved, including the compensation or payments, if any,
12 which any party shall pay to any other person, firm or
13 corporation under the facts and circumstances of the case.

14 If the court determines that the contract shall not be
15 terminated, it shall state in its order the reasons therefor.
16 The court shall adjust and assess the costs in such manner as
17 may be equitable and fair under the circumstances.

1 Sec. 5. In no event shall the public corporation pay or
2 be required to pay compensation or monies in excess of the total
3 compensation stated in the contract for the construction of the
4 public improvement.

1 Sec. 6. The provisions of this Act shall apply to and be
2 a part of every contract made or entered into by a public
3 corporation in connection with or for the construction of a
4 public improvement, and of every bond given or filed in
5 connection therewith, from and after the effective date of this
6 Act.

1 Sec. 7. For the purposes of this Act:

2 1. "Public corporation" shall embrace the state, and all
3 counties, cities, towns, public schools, corporations, drainage
4 districts, and all officers, boards or commissions empowered by law
5 to enter into contracts for the construction of public
6 improvements;

7 2. "Public improvement" is one, the cost of which is
8 payable from taxes or other funds under the control of the public
9 corporation;

10 3. "Construction" shall, in addition to its ordinary
11 meaning, embrace repair and alteration.

1 Sec. 8. This Act being deemed of immediate importance

2 shall be in force and effect upon its publication in the
3, a newspaper published at
4, Iowa, and in the,
5 a newspaper published at, Iowa.

EXPLANATION OF H. F. 288

In times of national emergency when construction materials and equipment are frozen or diverted for emergency purposes, and work upon a public improvement is stopped by the order of a public authority because of such emergency, there is no provision in the law for taking care of such a situation. Public corporations, as well as contractors involved, may find it necessary to terminate the contract for the improvement and to adjust their respective rights. Under the present law, contracts for public improvements must be let on firm bids and there is nothing in the law providing for the handling of such an emergency. Also, contractors must bid high enough to protect themselves in cases of possible emergencies of this character. This Bill will afford a means by which such contracts can be terminated if it is impracticable to proceed with the construction because of a war or other national emergency. It should result in lower bids to the benefit of the public. Also the public body may desire to stop the work rather than have substitute materials and unskilled workmen if that is all that is available because of the emergency situation.