

Introduced by Senator LenoFebruary 27, 2009

An act to amend Section 10261 of, and to add Section 7201 to, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 802, as introduced, Leno. Public contracts: retention proceeds.

(1) Existing law authorizes the Department of General Services, or any other department with authority to enter into contracts, to contract with suppliers for goods and services. Existing law provides that in a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of retention proceeds withheld cannot exceed the percentage specified in the contract between the public entity and the original contractor.

This bill would instead prohibit retention proceeds to exceed 5% of the payment, as specified, for all contracts entered into on or after January 1, 2010, between a public entity, as defined, and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder.

(2) Existing law contains various provisions relating to contracts for the performance of public works of improvement, including provisions for the disbursing and withholding of retention proceeds. Existing law requires the Department of General Services to withhold not less than 5% of the contract price until final completion and acceptance of the project.

This bill would require the Department of General Services to withhold not more than 5% of the contract price until final completion and acceptance of the project.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7201 is added to the Public Contract
2 Code, to read:
3 7201. (a) (1) This section shall apply with respect to all
4 contracts entered into on or after January 1, 2010, between a public
5 entity and an original contractor, between an original contractor
6 and a subcontractor, and between all subcontractors thereunder,
7 relating to the construction of any public work of improvement.
8 (2) Under no circumstances shall any provision of this section
9 be construed to limit the ability of any public entity to withhold
10 150 percent of the value of any disputed amount of work from the
11 final payment, as provided for in subdivision (c) of Section 7107.
12 In the event of a good faith dispute, nothing in this section shall
13 be construed to require a public entity to pay for work that is not
14 approved or accepted in accordance with the proper plans or
15 specifications.
16 (3) For purposes of this section, “public entity” means the state,
17 including every state agency, office, department, division, bureau,
18 board, or commission, the California State University, the
19 University of California, a city, county, city and county, including
20 chartered cities and chartered counties, district, special district,
21 public authority, political subdivision, public corporation, or
22 nonprofit transit corporation wholly owned by a public agency
23 and formed to carry out the purposes of the public agency.
24 (b) (1) The retention proceeds withheld from any payment by
25 a public entity from the original contractor, by the original
26 contractor from any subcontractor, and by a subcontractor from
27 any subcontractor thereunder shall not exceed 5 percent of the
28 payment. In no event shall the total retention proceeds withheld
29 exceed 5 percent of the contract price. In a contract between the
30 original contractor and a subcontractor, and in a contract between
31 a subcontractor and any subcontractor thereunder, the percentage
32 of the retention proceeds withheld shall not exceed the percentage
33 specified in the contract between the public entity and the original
34 contractor.

1 (2) This subdivision shall not apply if the contractor provides
2 written notice to the subcontractor, prior to or at the time that the
3 bid is requested, that a bond may be required and the subcontractor
4 subsequently is unable or refuses to furnish to the contractor a
5 performance or payment bond issued by an admitted surety insurer.

6 (c) A party identified in subdivision (a) shall not require any
7 other party to waive any provision of this section.

8 SEC. 2. Section 10261 of the Public Contract Code is amended
9 to read:

10 10261. Payments upon contracts shall be made as the
11 department prescribes upon estimates made and approved by the
12 department, but progress payments shall not be made in excess of
13 95 percent of the percentage of actual work completed plus a like
14 percentage of the value of material delivered on the ground or
15 stored subject to or under the control of the state, and unused,
16 except as otherwise provided in this section. The department shall
17 withhold not ~~less~~ *more* than 5 percent of the contract price until
18 final completion and acceptance of the project. However, at any
19 time after 95 percent of the work has been completed, the
20 department may reduce the funds withheld to an amount not less
21 than 125 percent of the estimated value of the work yet to be
22 completed, as determined by the department, if the reduction has
23 been approved, in writing, by the surety on the performance bond
24 and by the surety on the payment bond. The Controller shall draw
25 his or her warrants upon estimates so made and approved by the
26 department and the Treasurer shall pay them. The funds may be
27 released by electronic transfer if that procedure is requested by the
28 contractor, in writing, and if the public entity has, in place at the
29 time of the request, the mechanism for the transfer.

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