

AMENDED IN ASSEMBLY JUNE 18, 2007

AMENDED IN SENATE MAY 9, 2007

AMENDED IN SENATE APRIL 11, 2007

SENATE BILL

No. 593

Introduced by Senator Margett

February 22, 2007

~~An act to amend Sections 7200 and 10261 of, and to add Section 7201 to, the Public Contract Code, relating to public contracts. An act to add Section 7202 to the Public Contract Code, relating to public contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 593, as amended, Margett. Department of Transportation: ~~contracts; retention proceeds.~~

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.

This bill would authorize the Department of Transportation to withhold retention proceeds under specified circumstances and in a limited amount, as provided.

~~(1) Existing law sets forth the requirements respecting disbursement of retention proceeds withheld from any payment by a public entity, as defined, to the original contractor for a work of improvement, or withheld from any payment by the original contractor to a subcontractor and specifies that, with respect to a contract for the construction of any public work of improvement entered into on or after January 1, 1999, in a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder,~~

the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the public entity and the original contractor, except as specified.

This bill would, for contracts entered into on or after January 1, 2008, and subject to the above requirements, exclude the Department of Transportation from the definition of “public entity.” This bill would additionally authorize the Department of Transportation to withhold retention proceeds under specified circumstances and in a limited amount, as provided:

(2) The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of supplies, materials, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services and other state agencies in overseeing and implementing state contracting procedures and policies.

Existing law requires payments on contracts with progress payments to be made as the awarding department prescribes, as specified, with the department withholding not less than 5% of the contract until final completion and acceptance of the project, and, at any time after 95% of the work has been completed, authorizes the department to reduce the funds withheld to an amount not less than 125% of the estimated value of the work yet to be done, as specified.

This bill would exclude the Department of Transportation from the requirement that the awarding department withhold not less than 5% of the contract price for a contract with progress payments until final completion and acceptance of the project, and would remove the provision that, at any time after 95% of the work has been completed, authorizes the department to reduce the funds withheld to an amount not less than 125% of the estimated value of the work yet to be done.

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 7202 is added to the Public Contract
2 Code, to read:
3 7202. (a) (1) Notwithstanding any other law, in a contract
4 with the Department of Transportation where the number of
5 working days charged to the contract exceeds 75 percent of the
6 number of working days allowed in the current time of completion

1 and the percent of working days elapsed exceeds the percent of
2 work completed by more than 15 percentage points, the Department
3 of Transportation is authorized to withhold retention proceeds
4 when making progress payments to the contractor for work
5 performed.

6 (2) The percentage of the retention proceeds withheld pursuant
7 to paragraph (1) shall not exceed 10 percent of the progress
8 payment due.

9 (b) When the percent of working days elapsed minus the percent
10 of work completed is less than or equal to 15 percentage points,
11 any retention proceeds withheld shall be released with the next
12 progress payment.

13 (c) For purposes of this section, the following apply:

14 (1) "Number of contract working days in the current time of
15 completion" means the original number of contract working days
16 as increased or decreased by the time adjustments approved by
17 the engineer.

18 (2) "Percent of work completed" shall be calculated by dividing
19 the sum of all payments made by the Department of Transportation
20 plus any current amounts due by the current total estimated value
21 of the work, expressed as a percentage.

22 (3) "Percent of working days elapsed" shall be calculated by
23 dividing the number of working days charged to the contract by
24 the number of working days allowed in the current time of
25 completion, expressed as a percentage.

26 SECTION 1. ~~Section 7200 of the Public Contract Code is~~
27 ~~amended to read:~~

28 ~~7200. (a) (1) Except as provided in paragraph (3), this section~~
29 ~~shall apply with respect to all contracts entered into on or after~~
30 ~~January 1, 1999, between a public entity and an original contractor,~~
31 ~~between an original contractor and a subcontractor, and between~~
32 ~~all subcontractors thereunder, relating to the construction of any~~
33 ~~public work of improvement.~~

34 ~~(2) For purposes of this section, "public entity" means the state,~~
35 ~~including every state agency, office, department, division, bureau,~~
36 ~~board, or commission, a city, county, city and county, including~~
37 ~~chartered cities and chartered counties, district, special district,~~
38 ~~public authority, political subdivision, public corporation, or~~
39 ~~nonprofit transit corporation wholly owned by a public agency~~
40 ~~and formed to carry out the purposes of the public agency.~~

1 ~~(3) With respect to all contracts entered into on or after January~~
2 ~~1, 2008, “public entity” shall not include the Department of~~
3 ~~Transportation.~~

4 ~~(b) In a contract between the original contractor and a~~
5 ~~subcontractor, and in a contract between a subcontractor and any~~
6 ~~subcontractor thereunder, the percentage of the retention proceeds~~
7 ~~withheld may not exceed the percentage specified in the contract~~
8 ~~between the public entity and the original contractor.~~

9 ~~(c) When a performance and payment bond is required in the~~
10 ~~solicitation for bids, subdivision (b) shall not apply to either of the~~
11 ~~following:~~

12 ~~(1) The original contractor, if the subcontractor fails or refuses~~
13 ~~to provide a performance and payment bond, issued by an admitted~~
14 ~~surety insurer, to the original contractor.~~

15 ~~(2) The subcontractor, if a subcontractor thereunder fails or~~
16 ~~refuses to provide a performance and payment bond, issued by an~~
17 ~~admitted surety insurer, to the subcontractor.~~

18 ~~(d) No party identified in subdivision (b) shall require any other~~
19 ~~party to waive any provision of this section.~~

20 ~~(e) In the event that the contractor elects to substitute securities~~
21 ~~in lieu of retentions, the contractor may withhold from his or her~~
22 ~~subcontractors, who have not elected to substitute securities in lieu~~
23 ~~of retentions, the amount of retentions that would have otherwise~~
24 ~~been withheld.~~

25 ~~SEC. 2.— Section 7201 is added to the Public Contract Code, to~~
26 ~~read:~~

27 ~~7201. (a) (1) Notwithstanding any other provision of law, in~~
28 ~~a contract with the Department of Transportation where the number~~
29 ~~of working days charged to the contract exceeds 75 percent of the~~
30 ~~number of working days allowed in the current time of completion~~
31 ~~and the percent of working days elapsed exceeds the percent of~~
32 ~~work completed by more than 15 percentage points, the Department~~
33 ~~of Transportation is authorized to withhold retention proceeds~~
34 ~~when making progress payments to the contractor for work~~
35 ~~performed.~~

36 ~~(2) The percentage of the retention proceeds withheld pursuant~~
37 ~~to paragraph (1) shall not exceed 10 percent of the progress~~
38 ~~payment due.~~

39 ~~(b) When the percent of working days elapsed minus the percent~~
40 ~~of work completed is less than or equal to 15 percentage points,~~

1 any retention proceeds withheld shall be released with the next
2 progress payment.

3 (e) For purposes of this section, the following apply:

4 (1) “Number of contract working days in the current time of
5 completion” means the original number of contract working days
6 as increased or decreased by the time adjustments approved by the
7 engineer.

8 (2) “Percent of work completed” shall be calculated by dividing
9 the sum of all payments made by the Department of Transportation
10 plus any current amounts due by the current total estimated value
11 of the work, expressed as a percentage.

12 (3) “Percent of working days elapsed” shall be calculated by
13 dividing the number of working days charged to the contract by
14 the number of working days allowed in the current time of
15 completion, expressed as a percentage.

16 (d) Any retention proceeds withheld pursuant to this section
17 shall not be subject to Sections 7107 and 10261.5.

18 SEC. 3. Section 10261 of the Public Contract Code is amended
19 to read:

20 10261. (a) Payments upon contracts shall be made as the
21 department prescribes upon estimates made and approved by the
22 department.

23 (b) (1) Except as provided in paragraph (2), the progress
24 payments shall not be made in excess of 95 percent of the
25 percentage of actual work completed plus a like percentage of the
26 value of material delivered on the ground or stored subject to or
27 under the control of the state, and unused, except as otherwise
28 provided in this section. department shall withhold not less than
29 5 percent of the contract price until final completion and acceptance
30 of the project. However, at any time after 95 percent of the work
31 has been completed, the department may reduce the funds withheld
32 to an amount not less than 125 percent of the estimated value of
33 the work yet to be completed, as determined by the department, if
34 the reduction has been approved, in writing, by the surety on the
35 performance bond and by the surety on the payment bond.

36 (2) This subdivision shall not apply to contracts entered into or
37 subject to the approval of the Department of Transportation.

38 (c) The Controller shall draw his or her warrants upon estimates
39 so made and approved by the department and the Treasurer shall
40 pay them. The funds may be released by electronic transfer if that

- 1 ~~procedure is requested by the contractor, in writing, and if the~~
- 2 ~~public entity has, in place at the time of the request, the mechanism~~
- 3 ~~for the transfer.~~

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