

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1119**

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**Introduced by Assembly Member Emmerson**

February 27, 2009

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~~An act to amend Section 7108.5 of the Business and Professions Code, to amend Sections 3260, 3260.1, and 3262.5 of, and to add Section 3260.05 to, the Civil Code, and to amend Sections 7107, 10261.5, 10262, and 10262.5 of the Public Contract Code, relating to works of improvement.~~  
*An act to add Section 3260.05 to the Civil Code, relating to works of improvement.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1119, as amended, Emmerson. Works of improvement: payments.

Existing law requires an owner of a private work of improvement to release retention proceeds withheld from any payment within 45 days after the date of completion. Existing law requires a public entity to release retention proceeds withheld from any payment by the public entity within 60 days after the date of completion. Existing law requires an original contractor to pay any subcontractor within 10 days from the time that all or any portion of retention proceeds are received by the original contractor. Existing law requires an original contractor or subcontractor to pay any subcontractor within 10 days from the time of receipt of each progress payment, unless otherwise agreed to in writing. Existing law imposes a penalty of 2% on the amount due per month on funds that are improperly withheld in a contract dispute relating to public and private works of improvement, as specified. The Contractors' State License Law provides for the licensing and regulation of contractors by the Contractors' State License Board.

Existing law requires any person or corporation that has contracted to do business with a public utility to pay any subcontractor within 15 working days of receipt of each progress payment from the public utility, except as specified. Existing law also requires a state agency that fails to make any progress payment within 30 days after receipt of the payment request to pay interest at the rate of 10% per year.

~~This bill would revise, recast, and consolidate the above provisions governing the timely payment of progress payments, retention proceeds, and final payments under, notwithstanding any other provisions, require the owner to pay the contractor within 30 days of a demand for payment, except as specified, for a contract for a public or private work of improvement with respect to contracts entered into on or after January 1, 2010, and would subject a licensed contractor under the Contractors’ State License Law to disciplinary action by the Contractors’ State License Board for a violation of these provisions. The bill would require all owners, including a public utility or a state agency, to release retention proceeds withheld from any payment within a 45-day period, and, upon receipt of all or any portion of the retention proceeds or final payment, or any progress payment, would require an original contractor or subcontractor to pay his or her subcontractors within a 7-day period. The bill would also make the 2% penalty described above applicable to all owners of private and public works of improvement. The bill would additionally provide that the prevailing party in any action for the collection of funds wrongfully withheld is entitled to attorney’s fees and costs.~~

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 7108.5 of the Business and Professions~~
- 2 ~~Code is amended to read:~~
- 3 ~~7108.5. (a) With respect to a contract entered into prior to~~
- 4 ~~January 1, 2010, a prime contractor or subcontractor shall pay to~~
- 5 ~~any subcontractor, not later than 10 days of receipt of each progress~~
- 6 ~~payment, unless otherwise agreed to in writing, the respective~~
- 7 ~~amounts allowed the contractor on account of the work performed~~
- 8 ~~by the subcontractors, to the extent of each subcontractor’s interest~~
- 9 ~~therein. In the event that there is a good faith dispute over all or~~
- 10 ~~any portion of the amount due on a progress payment from the~~

1 prime contractor or subcontractor to a subcontractor, then the prime  
2 contractor or subcontractor may withhold no more than 150 percent  
3 of the disputed amount.

4 (b) A contract entered into on or after January 1, 2010, shall be  
5 governed by Section 3260.05 of the Civil Code and by subdivisions  
6 (e) to (e), inclusive.

7 (e) Any violation of this section or subdivision (d), (e), or (f)  
8 of Section 3260.05 of the Civil Code by a licensee shall constitute  
9 a cause for disciplinary action and shall subject the licensee to the  
10 penalty specified in subdivision (g) of Section 3260.05 of the Civil  
11 Code.

12 (d) The sanctions authorized under this section shall be separate  
13 from, and in addition to, all other remedies either civil,  
14 administrative, or criminal.

15 (e) This section applies to all private works of improvement  
16 and to all public works of improvement, except where Section  
17 10262 of the Public Contract Code applies.

18 SEC. 2. Section 3260 of the Civil Code is amended to read:

19 3260. (a) This section is applicable with respect to all contracts  
20 entered into on or after July 1, 1991, and prior to January 1, 2010,  
21 relating to the construction of any private work of improvement.  
22 However, the amendments made to this section during the 1992  
23 portion of the 1991-92 Regular Session of the Legislature are  
24 applicable only with respect to contracts entered into on or after  
25 January 1, 1993, relating to the construction of any private work  
26 of improvement. Moreover, the amendments made to this section  
27 during the 1993 portion of the 1993-94 Regular Session of the  
28 Legislature are applicable only with respect to contracts entered  
29 into on or after January 1, 1994, relating to the construction of any  
30 private work of improvement.

31 (b) The retention proceeds withheld from any payment by the  
32 owner from the original contractor, or by the original contractor  
33 from any subcontractor, shall be subject to this section.

34 (e) Within 45 days after the date of completion, the retention  
35 withheld by the owner shall be released. "Date of completion,"  
36 for purposes of this section, means any of the following:

37 (1) The date of issuance of any certificate of occupancy covering  
38 the work by the public agency issuing the building permit.

39 (2) The date of completion indicated on a valid notice of  
40 completion recorded pursuant to Section 3093.

1     ~~(3) The date of completion as defined in Section 3086.~~  
2     ~~However, release of retentions withheld for any portion of the~~  
3     ~~work of improvement which ultimately will become the property~~  
4     ~~of a public agency, may be conditioned upon the acceptance of~~  
5     ~~the work by the public agency. In the event of a dispute between~~  
6     ~~the owner and the original contractor, the owner may withhold~~  
7     ~~from the final payment an amount not to exceed 150 percent of~~  
8     ~~the disputed amount.~~  
9     ~~(d) Subject to subdivision (c), within 10 days from the time that~~  
10    ~~all or any portion of the retention proceeds are received by the~~  
11    ~~original contractor, the original contractor shall pay each of its~~  
12    ~~subcontractors from whom retention has been withheld, each~~  
13    ~~subcontractor's share of the retention received. However, if a~~  
14    ~~retention payment received by the original contractor is specifically~~  
15    ~~designated for a particular subcontractor, payment of the retention~~  
16    ~~shall be made to the designated subcontractor, if the payment is~~  
17    ~~consistent with the terms of the subcontract.~~  
18    ~~(e) If a bona fide dispute exists between a subcontractor and the~~  
19    ~~original contractor, the original contractor may withhold from that~~  
20    ~~subcontractor with whom the dispute exists its portion of the~~  
21    ~~retention proceeds. The amount withheld from the retention~~  
22    ~~payment shall not exceed 150 percent of the estimated value of~~  
23    ~~the disputed amount.~~  
24    ~~(f) Within 10 days of receipt of written notice by the owner~~  
25    ~~from the original contractor or by the original contractor from the~~  
26    ~~subcontractor, as the case may be, that any work in dispute has~~  
27    ~~been completed in accordance with the terms of the contract, the~~  
28    ~~owner or original contractor shall advise the notifying party of the~~  
29    ~~acceptance or rejection of the disputed work. Within 10 days of~~  
30    ~~acceptance of the disputed work, the owner or original contractor,~~  
31    ~~as the case may be, shall release the retained portion of the retention~~  
32    ~~proceeds.~~  
33    ~~(g) In the event that retention payments are not made within the~~  
34    ~~time periods required by this section, the owner or original~~  
35    ~~contractor withholding the unpaid amounts shall be subject to a~~  
36    ~~charge of 2 percent per month on the improperly withheld amount,~~  
37    ~~in lieu of any interest otherwise due. Additionally, in any action~~  
38    ~~for the collection of funds wrongfully withheld, the prevailing~~  
39    ~~party shall be entitled to his or her attorney's fees and costs.~~

1 ~~(h) It shall be against public policy for any party to require any~~  
2 ~~other party to waive any provision of this section.~~

3 ~~(i) This section shall not be construed to apply to retentions~~  
4 ~~withheld by a lender in accordance with the construction loan~~  
5 ~~agreement.~~

6 ~~(j) Contracts entered into on or after January 1, 2010, shall be~~  
7 ~~governed by Section 3260.05.~~

8 ~~SEC. 3.~~

9 *SECTION 1.* Section 3260.05 is added to the Civil Code, to  
10 read:

11 3260.05. (a) Notwithstanding *Sections 3260, 3260.1, and*  
12 *3262.5 of this code, Section 7108.5 of the Business and Professions*  
13 *Code, and Sections 7107, 10261.5, 10262, and 10262.5 of the*  
14 *Public Contract Code, or any other provision of law, this section*  
15 *applies to all contracts entered into on or after January 1, 2010,*  
16 *relating to the construction of any private or public work of*  
17 *improvement.*

18 (b) This section applies to contractual obligations between all  
19 of the following:

20 (1) Owners and original contractors.

21 (2) Original contractors and subcontractors.

22 (3) Subcontractors and subcontractors.

23 (c) The owner shall pay to the contractor, within 30 days  
24 following receipt of a demand for payment, any progress payment  
25 due as to which there is no good faith dispute between the parties.  
26 In the event of a dispute between the owner and the contractor,  
27 the owner may withhold from the progress payment an amount  
28 not to exceed 150 percent of the disputed amount. If any amount  
29 is wrongfully withheld in violation of this subdivision, the  
30 contractor shall be entitled to the penalty specified in subdivision  
31 (g).

32 (d) Subject to subdivision (f), within seven days from the date  
33 that all or any portion of any progress payment is received by the  
34 original contractor or subcontractor, the original contractor or  
35 subcontractor shall pay to any subcontractor, unless otherwise  
36 agreed to in writing, the respective amounts allowed the  
37 subcontractor on account of the work performed by the  
38 subcontractor, to the extent of each subcontractor's interest therein.

39 (e) The retention proceeds or final payment withheld from any  
40 payment by the owner from the original contractor, or by the

1 original contractor from any subcontractor, shall be subject to the  
2 following requirements:

3 (1) (A) Within 45 days after the date of completion, or 100  
4 days after cessation of labor, the retention proceeds or final  
5 payment withheld by the owner shall be released. “Date of  
6 completion,” for purposes of this subdivision, means any of the  
7 following:

8 (i) The date of issuance of any certificate of occupancy covering  
9 the work by the public agency issuing the building permit.

10 (ii) The date of completion indicated on a valid notice of  
11 completion recorded pursuant to Section 3093.

12 (iii) The date of completion, as defined in Section 3086.

13 (B) Notwithstanding subparagraph (A), the release of retention  
14 proceeds or final payments withheld for any portion of the work  
15 of improvement that ultimately will become the property of a  
16 public agency, may be conditioned upon the acceptance of the  
17 work by the public agency.

18 (2) Subject to subdivision (f), within seven days from the date  
19 that all or any portion of the retention proceeds or final payment  
20 is received by the original contractor, the original contractor shall  
21 pay, to each of its subcontractors from which the retention proceeds  
22 or final payment has been withheld, each subcontractor’s share of  
23 the retention proceeds or final payment received. However, if the  
24 retention proceeds or final payment received by the original  
25 contractor is specifically designated for a particular subcontractor,  
26 payment of the retention proceeds or final payment shall be made  
27 to the designated subcontractor.

28 (f) (1) If a bona fide dispute exists between an owner and  
29 original contractor, between the original contractor and a  
30 subcontractor, or between two subcontractors, the owner, original  
31 contractor, or subcontractor, as applicable, may withhold from the  
32 party with whom the dispute exists an amount not to exceed 150  
33 percent of the disputed amount. The amount withheld shall not  
34 exceed 150 percent of the estimated value of the disputed amount.  
35 If any amount is wrongfully withheld in violation of this  
36 subdivision, the aggrieved party shall be entitled to the penalty  
37 specified in subdivision (g).

38 (2) Within seven days of receipt by the owner, original  
39 contractor, or subcontractor, as applicable, of written notice from  
40 the party with whom the dispute exists pursuant to paragraph (1),

1 that any work in dispute has been completed in accordance with  
2 the terms of the contract, the owner or original contractor shall  
3 advise the notifying party of the acceptance or rejection of the  
4 disputed work. Within seven days of acceptance of the disputed  
5 work, the owner or original contractor shall release the retained  
6 portion of the disputed payment.

7 (g) If any payment is not made within the time periods required  
8 by this section, the owner, original contractor, or subcontractor  
9 withholding the unpaid amount shall be subject to a charge of 2  
10 percent per month on the improperly withheld amount, in addition  
11 to any interest otherwise due. Additionally, in any action for the  
12 collection of funds wrongfully withheld, the prevailing party shall  
13 be entitled to attorney's fees and costs.

14 (h) As applied to licensees under the Contractors' State License  
15 Law (Chapter 9 (commencing with Section 7000) of Division 3  
16 of the Business and Professions Code), a violation of this section  
17 shall also constitute a cause for disciplinary action under that  
18 chapter, and the sanctions authorized under this section shall be  
19 enforced by the Contractors' State License Board.

20 (i) The remedies authorized pursuant to this section are separate  
21 from, and in addition to, any other remedy authorized by law, and  
22 shall also be enforceable by civil, administrative, or criminal  
23 proceedings.

24 (j) It shall be against public policy for any party to require any  
25 other party to waive any provision of this section.

26 ~~SEC. 4. Section 3260.1 of the Civil Code is amended to read:~~

27 ~~3260.1. (a) This section is applicable with respect to all~~  
28 ~~contracts entered into on or after January 1, 1992, and prior to~~  
29 ~~January 1, 2010, relating to the construction of any private work~~  
30 ~~of improvement.~~

31 ~~(b) Except as otherwise agreed in writing, the owner shall pay~~  
32 ~~to the contractor, within 30 days following receipt of a demand~~  
33 ~~for payment in accordance with the contract, any progress payment~~  
34 ~~due thereunder as to which there is no good faith dispute between~~  
35 ~~the parties. In the event of a dispute between the owner and the~~  
36 ~~contractor, the owner may withhold from the progress payment~~  
37 ~~an amount not to exceed 150 percent of the disputed amount. If~~  
38 ~~any amount is wrongfully withheld in violation of this subdivision,~~  
39 ~~the contractor shall be entitled to the penalty specified in~~  
40 ~~subdivision (g) of Section 3260.~~

1 ~~(e) Nothing in this section shall be deemed to supersede any~~  
2 ~~requirement of Section 3260 respecting the withholding of retention~~  
3 ~~proceeds.~~

4 ~~(d) Contracts entered into on or after January 1, 2010, shall be~~  
5 ~~governed by Section 3260.05.~~

6 ~~SEC. 5. Section 3262.5 of the Civil Code is amended to read:~~

7 ~~3262.5. (a) With respect to contracts entered into prior to~~  
8 ~~January 1, 2010, any person or corporation that has contracted to~~  
9 ~~do business with a public utility, hereafter referred to in this section~~  
10 ~~as a contractor, shall pay any subcontractors within 15 working~~  
11 ~~days of receipt of each progress payment from the public utility,~~  
12 ~~unless otherwise agreed in writing by the parties, the respective~~  
13 ~~amounts allowed the contractor on account of the work performed~~  
14 ~~by the subcontractors, to the extent of each of the subcontractors'~~  
15 ~~interest in that work. In the event that there is a good faith dispute~~  
16 ~~over all or any portion of the amount due on a progress payment~~  
17 ~~from a contractor to a subcontractor, then the contractor may~~  
18 ~~withhold no more than 150 percent of the disputed amount.~~

19 ~~(b) Any contractor who violates this section shall pay to the~~  
20 ~~subcontractor a penalty of 2 percent of the disputed amount due~~  
21 ~~per month for every month that payment is not made. In any action~~  
22 ~~for the collection of funds wrongfully withheld, the prevailing~~  
23 ~~party shall be entitled to his or her attorney's fees and costs.~~

24 ~~(c) This section shall not be construed to limit or impair any~~  
25 ~~contractual, administrative, or judicial remedies otherwise available~~  
26 ~~to a contractor or a subcontractor in the event of a dispute involving~~  
27 ~~late payment or nonpayment by a contractor, or deficient~~  
28 ~~performance or nonperformance by a subcontractor.~~

29 ~~(d) Contracts entered into on or after January 1, 2010, shall be~~  
30 ~~governed by Section 3260.05.~~

31 ~~SEC. 6. Section 7107 of the Public Contract Code is amended~~  
32 ~~to read:~~

33 ~~7107. (a) This section is applicable with respect to all contracts~~  
34 ~~entered into on or after January 1, 1993, and prior to January 1,~~  
35 ~~2010, relating to the construction of any public work of~~  
36 ~~improvement.~~

37 ~~(b) The retention proceeds withheld from any payment by the~~  
38 ~~public entity from the original contractor, or by the original~~  
39 ~~contractor from any subcontractor, shall be subject to this section.~~

1 ~~(e) Within 60 days after the date of completion of the work of~~  
2 ~~improvement, the retention withheld by the public entity shall be~~  
3 ~~released. In the event of a dispute between the public entity and~~  
4 ~~the original contractor, the public entity may withhold from the~~  
5 ~~final payment an amount not to exceed 150 percent of the disputed~~  
6 ~~amount. For purposes of this subdivision, “completion” means any~~  
7 ~~of the following:~~

8 ~~(1) The occupation, beneficial use, and enjoyment of a work of~~  
9 ~~improvement, excluding any operation only for testing, startup, or~~  
10 ~~commissioning, by the public agency, or its agent, accompanied~~  
11 ~~by cessation of labor on the work of improvement.~~

12 ~~(2) The acceptance by the public agency, or its agent, of the~~  
13 ~~work of improvement.~~

14 ~~(3) After the commencement of a work of improvement, a~~  
15 ~~cessation of labor on the work of improvement for a continuous~~  
16 ~~period of 100 days or more, due to factors beyond the control of~~  
17 ~~the contractor.~~

18 ~~(4) After the commencement of a work of improvement, a~~  
19 ~~cessation of labor on the work of improvement for a continuous~~  
20 ~~period of 30 days or more, if the public agency files for record a~~  
21 ~~notice of cessation or a notice of completion.~~

22 ~~(d) Subject to subdivision (e), within seven days from the time~~  
23 ~~that all or any portion of the retention proceeds are received by~~  
24 ~~the original contractor, the original contractor shall pay each of its~~  
25 ~~subcontractors from whom retention has been withheld, each~~  
26 ~~subcontractor’s share of the retention received. However, if a~~  
27 ~~retention payment received by the original contractor is specifically~~  
28 ~~designated for a particular subcontractor, payment of the retention~~  
29 ~~shall be made to the designated subcontractor, if the payment is~~  
30 ~~consistent with the terms of the subcontract.~~

31 ~~(e) The original contractor may withhold from a subcontractor~~  
32 ~~its portion of the retention proceeds if a bona fide dispute exists~~  
33 ~~between the subcontractor and the original contractor. The amount~~  
34 ~~withheld from the retention payment shall not exceed 150 percent~~  
35 ~~of the estimated value of the disputed amount.~~

36 ~~(f) In the event that retention payments are not made within the~~  
37 ~~time periods required by this section, the public entity or original~~  
38 ~~contractor withholding the unpaid amounts shall be subject to a~~  
39 ~~charge of 2 percent per month on the improperly withheld amount,~~  
40 ~~in lieu of any interest otherwise due. Additionally, in any action~~

1 for the collection of funds wrongfully withheld, the prevailing  
2 party shall be entitled to attorney’s fees and costs.

3 (g) If a state agency retains an amount greater than 125 percent  
4 of the estimated value of the work yet to be completed pursuant  
5 to Section 10261, the state agency shall distribute undisputed  
6 retention proceeds in accordance with subdivision (e). However,  
7 notwithstanding subdivision (e), if a state agency retains an amount  
8 equal to or less than 125 percent of the estimated value of the work  
9 yet to be completed, the state agency shall have 90 days in which  
10 to release undisputed retentions.

11 (h) Any attempted waiver of the provisions of this section shall  
12 be void as against the public policy of this state.

13 (i) Contracts entered into on or after January 1, 2010, shall be  
14 governed by Section 3260.05 of the Civil Code.

15 SEC. 7. Section 10261.5 of the Public Contract Code is  
16 amended to read:

17 10261.5. (a) With respect to contracts entered into prior to  
18 January 1, 2010, any state agency that fails to make any progress  
19 payment within 30 days after receipt of the payment request from  
20 a contractor on a construction contract for an undisputed payment  
21 request, that was properly submitted by the contractor to the  
22 agency, shall pay interest to the contractor equivalent to the legal  
23 rate set forth in subdivision (a) of Section 685.010 of the Code of  
24 Civil Procedure. Any state agency that independently calculates  
25 the amount due on a progress payment and that fails to make a  
26 progress payment within 30 days of the first submittal of the  
27 estimate for each contract by the engineer, shall pay interest to the  
28 contractor equivalent to the legal rate set forth in subdivision (a)  
29 of Section 685.010 of the Code of Civil Procedure. In the event  
30 that the payment is not made within 30 days of receipt of the  
31 contractor’s request or the first submittal by the engineer, and the  
32 Controller has processed the payment within 14 days of receipt of  
33 the request or submittal, the contracting state agency shall pay  
34 interest to the contractor equivalent to the legal rate set forth in  
35 subdivision (a) of Section 685.010 of the Code of Civil Procedure.  
36 In the event that the payment is not made within 30 days of receipt  
37 of the contractor’s request or the first submittal by the engineer,  
38 and the contracting state agency has processed the payment within  
39 16 days after receipt of the request or submittal, the Controller

1 shall pay interest as provided in Section 685.010 of the Code of  
2 Civil Procedure.

3 For purposes of this section, a payment request shall be  
4 considered properly executed if funds are available for payment  
5 of the payment request, and payment is not delayed due to an audit  
6 inquiry by the Controller.

7 (b) Upon receipt of a payment request, each agency shall require:

8 (1) That each payment request be reviewed as soon as  
9 practicable after receipt for the purpose of determining that a  
10 payment request is a proper payment request.

11 (2) Any payment request determined not to be a proper payment  
12 request suitable for payment shall be returned as soon as  
13 practicable, but not later than seven days, after receipt, specifying  
14 the reasons that the payment request is not a proper payment  
15 request.

16 (3) The number of days available to a state agency to make a  
17 timely payment of payment request without incurring interest shall  
18 be reduced by the number of days by which an agency exceeds  
19 the requirements of paragraph (2).

20 (e) Contracts entered into on or after January 1, 2010, shall be  
21 governed by Section 3260.05 of the Civil Code.

22 SEC. 8. Section 10262 of the Public Contract Code is amended  
23 to read:

24 10262. (a) With respect to contracts entered into prior to  
25 January 1, 2010, the contractor shall pay to his or her  
26 subcontractors, within 10 days of receipt of each progress payment,  
27 the respective amounts allowed the contractor on account of the  
28 work performed by his or her subcontractors, to the extent of each  
29 subcontractor's interest therein. The payments to subcontractors  
30 shall be based on estimates made pursuant to Section 10261. Any  
31 diversion by the contractor of payments received for prosecution  
32 of a contract, or failure to reasonably account for the application  
33 or use of the payments constitutes ground for actions prescribed  
34 in Section 10253, in addition to disciplinary action by the  
35 Contractors' State License Board. The subcontractor shall notify,  
36 in writing, the Contractors' State License Board and the department  
37 of any payment less than the amount or percentage approved for  
38 the class or item of work as set forth in Section 10261.

39 (b) Contracts entered into on or after January 1, 2010, shall be  
40 governed by Section 3260.05 of the Civil Code.

1 SEC. 9. ~~Section 10262.5 of the Public Contract Code is~~  
2 ~~amended to read:~~

3 ~~10262.5. (a) Notwithstanding any other provision of law, with~~  
4 ~~respect to contracts entered into prior to January 1, 2010, a prime~~  
5 ~~contractor or subcontractor shall pay to any subcontractor, not later~~  
6 ~~than 10 days of receipt of each progress payment, the respective~~  
7 ~~amounts allowed the contractor on account of the work performed~~  
8 ~~by the subcontractors, to the extent of each subcontractor's interest~~  
9 ~~therein. In the event that there is a good faith dispute over all or~~  
10 ~~any portion of the amount due on a progress payment from the~~  
11 ~~prime contractor or subcontractor to a subcontractor, then the prime~~  
12 ~~contractor or subcontractor may withhold no more than 150 percent~~  
13 ~~of the disputed amount.~~

14 ~~Any contractor who violates this section shall pay to the~~  
15 ~~subcontractor a penalty of 2 percent of the amount due per month~~  
16 ~~for every month that payment is not made. In any action for the~~  
17 ~~collection of funds wrongfully withheld, the prevailing party shall~~  
18 ~~be entitled to his or her attorney's fees and costs.~~

19 ~~(b) This section shall not be construed to limit or impair any~~  
20 ~~contractual, administrative, or judicial remedies otherwise available~~  
21 ~~to a contractor or a subcontractor in the event of a dispute involving~~  
22 ~~late payment or nonpayment by a contractor or deficient~~  
23 ~~subcontract performance or nonperformance by a subcontractor.~~

24 ~~(c) On or before September 1 of each year, the head of each~~  
25 ~~state agency shall submit to the Legislature a report on the number~~  
26 ~~and dollar volume of written complaints received from~~  
27 ~~subcontractors and prime contractors on contracts in excess of~~  
28 ~~three hundred thousand dollars (\$300,000), relating to violations~~  
29 ~~of this section.~~

30 ~~(d) Contracts entered into on or after January 1, 2010, shall be~~  
31 ~~governed by Section 3260.05 of the Civil Code.~~

O