

AMENDED IN SENATE JUNE 14, 2010

AMENDED IN ASSEMBLY APRIL 27, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2036

Introduced by Assembly Member Bill Berryhill

February 17, 2010

~~An act to amend Section 3186 of the Civil Code, relating to works of improvement. An act to amend Section 7071.11 of the Business and Professions Code, relating to contractors.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2036, as amended, Bill Berryhill. ~~Public works: stop notices. Contractors.~~

Existing law, the Contractors State License Law, provides for the licensing and regulation of contractors by the Contractors' State License Board. Existing law requires the surety of a contractor to notify the Registrar of Contractors of any payment on any claim against the contractor's bond within 30 days of making the payment. Existing law, with specified exceptions, provides that any judgment or admitted claim against, or good faith payment from, a bond shall constitute grounds for disciplinary action against a contractor by the Contractors' State License Board.

This bill would require the surety of a contractor to notify the registrar of any good faith payment made from the contractor's bond pursuant to a court order or judgment within 30 days of making the payment. The bill, with respect to that payment, would provide that the contractor's license shall be suspended by operation of law if proof of payment of the amount owed to the surety has not been made by the

contractor within 90 days after the contractor is notified to that effect by the board. The bill would require a license suspension under these provisions to be disclosed indefinitely.

~~Existing law provides that all persons and laborers of every class, except for an original contractor, performing labor upon, bestowing skill or other necessary services on, furnishing materials or leasing equipment to be used or consumed in, or furnishing appliances, teams, or power contributing to, a public work of improvement may serve a stop notice upon the public entity responsible for the public work, as specified. Existing law imposes a duty on a public entity to withhold money or bonds due or to become due to the original contractor in an amount sufficient to answer the claim stated in the stop notice and to provide for the public entity’s reasonable cost of any litigation on the matter, as specified.~~

~~This bill would qualify the requirement that the public entity withhold money or bonds sufficient to provide for reasonable litigation costs to make it applicable only if the original contractor fails to promptly accept a tender of defense of the public entity in the litigation.~~

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 7071.11 of the Business and Professions
- 2 Code is amended to read:
- 3 7071.11. (a) The aggregate liability of a surety on a claim for
- 4 wages and fringe benefits brought against any bond required by
- 5 this article, other than a bond required by Section 7071.8, shall
- 6 not exceed the sum of four thousand dollars (\$4,000). If any bond
- 7 required by this article is insufficient to pay all claims in full, the
- 8 sum of the bond shall be distributed to all claimants in proportion
- 9 to the amount of their respective claims.
- 10 (b) No license may be renewed, reissued, or reinstated while
- 11 any judgment or admitted claim in excess of the amount of the
- 12 bond remains unsatisfied.
- 13 (c) Except for claims covered by subdivision (d), any action
- 14 against a bond required under this article, excluding the judgment
- 15 bond specified under Section 7071.17, shall be brought in
- 16 accordance with the following:

1 (1) Within two years after the expiration of the license period
2 during which the act or omission occurred. The provisions of this
3 paragraph shall be applicable only if the license has not been
4 inactivated, canceled, or revoked during the license period for
5 which the bond was posted and accepted by the registrar as
6 specified under Section 7071.7.

7 (2) If the license has been inactivated, canceled, or revoked, an
8 action shall be brought within two years of the date the license of
9 the active licensee would have expired had the license not been
10 inactivated, canceled, or revoked. For the provisions of this
11 paragraph to be applicable, the act or omission for which the action
12 is filed must have occurred prior to the date the license was
13 inactivated, canceled, or revoked.

14 (3) An action against a disciplinary bond filed by an active
15 licensee pursuant to Section 7071.8 shall be brought in accordance
16 with the provisions of paragraph (1) or (2), as applicable, or within
17 two years after the last date for which a disciplinary bond filed
18 pursuant to Section 7071.8 was required, whichever date is first.

19 (d) A claim to recover wages or fringe benefits shall be brought
20 within six months from the date that the wage or fringe benefit
21 delinquencies were discovered, but in no event shall a civil action
22 thereon be brought later than two years from the date the wage or
23 fringe benefit contributions were due.

24 (e) Whenever the surety makes payment on any claim against
25 a bond required by this article, whether or not payment is made
26 through a court action or otherwise, the surety shall, within 30
27 days of the payment, provide notice to the registrar. The notice
28 required by this subdivision shall provide the following information
29 by declaration on a form prescribed by the registrar:

- 30 (1) The name and license number of the contractor.
- 31 (2) The surety bond number.
- 32 (3) The amount of payment.
- 33 (4) The statutory basis upon which the claim is made.
- 34 (5) The names of the person or persons to whom payments have
35 been made.

36 (6) Whether or not the payments were the result of a good faith
37 action by the surety.

38 The notice shall also clearly indicate whether or not the licensee
39 filed a protest in accordance with this section.

1 (f) (1) *If, after providing 30 days notice to the licensee, a surety*
2 *makes a good faith payment from the bond pursuant to a court*
3 *order or court judgment, the surety shall, within 30 days after that*
4 *payment, provide notice to the registrar. The notice required by*
5 *this paragraph shall provide the following information by*
6 *declaration on a form prescribed by the registrar:*

- 7 (A) *The name and license number of the contractor.*
- 8 (B) *The surety bond number.*
- 9 (C) *The amount of the court-ordered payment or judgment.*
- 10 (D) *The name of the claimant or claimants who were party to*
11 *the court action and the statutory basis for each claimant’s claim.*
- 12 (E) *A copy of the court order or judgment.*
- 13 (F) *The date notice was sent to the licensee that the surety*
14 *intended to make payment pursuant to a court order or judgment.*
- 15 (G) *A clear indication whether or not the licensee, within the*
16 *30-day notice period provided in this paragraph, contested the*
17 *court-ordered payment or judgment.*

18 (2) *Any licensee that fails to contest the court-ordered payment*
19 *or judgment by the surety as specified in this subdivision shall*
20 *have 90 days from the date of notification by the board to submit*
21 *proof of payment of the actual amount owed to the surety and, if*
22 *applicable, proof of payment of any judgment or admitted claim*
23 *in excess of the amount of the bond or, by operation of law, the*
24 *license shall be suspended at the end of the 90 days. A license*
25 *suspension pursuant to this subdivision shall be disclosed*
26 *indefinitely as a failure to settle outstanding final liabilities in*
27 *violation of this chapter.*

28 (g) *Prior to the settlement of a claim through a good faith*
29 *payment by the surety, a licensee shall have not less than 15 days*
30 *in which to provide a written protest. This protest shall instruct*
31 *the surety not to make payment from the bond on the licensee’s*
32 *account upon the specific grounds that the claim is opposed by the*
33 *licensee, and provide the surety a specific and reasonable basis for*
34 *the licensee’s opposition to payment.*

35 (1) *Whenever a licensee files a protest in accordance with this*
36 *subdivision, the board shall investigate the matter and file*
37 *disciplinary action as set forth under this chapter if there is*
38 *evidence that the surety has sustained a loss as the result of a good*
39 *faith payment made for the purpose of mitigating any damages*
40 *incurred by any person or entity covered under Section 7071.5.*

1 (2) Any licensee that fails to file a protest as specified in this
2 subdivision shall have 90 days from the date of notification by the
3 board to submit proof of payment of the actual amount owed to
4 the surety and, if applicable, proof of payment of any judgment or
5 admitted claim in excess of the amount of the bond or, by operation
6 of law, the license shall be suspended at the end of the 90 days. A
7 license suspension pursuant to this subdivision shall be disclosed
8 indefinitely as a failure to settle outstanding final liabilities in
9 violation of this chapter. The disclosure specified by this
10 subdivision shall also be applicable to all licenses covered by the
11 provisions of subdivision ~~(g)~~ (h).

12 ~~(g)~~

13 (h) No license may be renewed, reissued, or reinstated while
14 any surety remains unreimbursed for any loss or expense sustained
15 on any bond issued for the licensee or for any entity of which any
16 officer, director, member, partner, or qualifying person was an
17 officer, director, member, partner, or qualifying person of the
18 licensee while the licensee was subject to suspension or disciplinary
19 action under this section.

20 ~~(h)~~

21 (i) The licensee may provide the board with a notarized copy
22 of an accord, reached with the surety to satisfy the debt in lieu of
23 full payment. By operation of law, failure to abide by the accord
24 shall result in the automatic suspension of any license to which
25 this section applies. A license that is suspended for failure to abide
26 by the accord may only be renewed or reinstated when proof of
27 satisfaction of all debts is made.

28 ~~(i)~~

29 (j) Legal fees may not be charged against the bond by the board.

30 ~~SECTION 1. Section 3186 of the Civil Code is amended to~~
31 ~~read:~~

32 ~~3186. It shall be the duty of the public entity, upon receipt of~~
33 ~~a stop notice pursuant to this chapter, to withhold from the original~~
34 ~~contractor, or from any person acting under his or her authority,~~
35 ~~money or bonds, if bonds are to be issued in payment for the work~~
36 ~~of improvement, that are due or to become due to that contractor~~
37 ~~in an amount sufficient to (a) answer the claim stated in the stop~~
38 ~~notice and (b) provide for the public entity's reasonable cost of~~
39 ~~any litigation thereunder, if the original contractor fails to promptly~~
40 ~~accept a tender of defense of the public entity in the litigation. The~~

- 1 ~~public entity may satisfy this duty by refusing to release money~~
- 2 ~~held in escrow pursuant to Section 10263 or 22300 of the Public~~
- 3 ~~Contract Code.~~

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