

AMENDED IN SENATE JUNE 28, 2010

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 7071.11 of the Business and Professions Code, relating to contractors.~~ *An act to add Section 10170 to the Public Contract Code, relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2036, as amended, Bill Berryhill. ~~Contractors.~~ *Public contracts: contract document distribution.*

Existing law imposes various requirements with respect to contracting by public agencies.

This bill would require an officer, department, board, or commission, taking bids for the construction of a public work or improvement, to distribute contract documents, as specified, to a prospective bidder, subcontractor bidder, supplier, and contractor plan room service, as prescribed.

~~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.

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 10170 is added to the Public Contract
2 Code, to read:

3 10170. An officer, department, board, or commission taking
4 bids for the construction of a public work or improvement shall
5 distribute a paper or electronic copy of the project's contract
6 documents, including all drawings, plans, specifications, and
7 estimated total costs of the proposed public improvement, at no
8 charge to a prospective bidder, subcontractor bidder, supplier,
9 and contractor plan room service when requested by a contractor
10 plan room service. If a deposit is required as part of a paper
11 contract documents distribution policy by the officer, department,
12 board, or commission, the deposit shall not exceed two hundred
13 fifty dollars (\$250) per set, which shall be refunded upon the return
14 of the contract documents within 14 business days after the award
15 of the project. If the contract documents are not returned in 30
16 business days and in reusable condition, the deposit shall be
17 forfeited. The government entity shall reimburse a landscape
18 architect, architect, or professional engineer for the actual costs
19 of preparation and distribution of plans and specifications.

20 SECTION 1. Section 7071.11 of the Business and Professions
21 Code is amended to read:

22 7071.11. (a) The aggregate liability of a surety on a claim for
23 wages and fringe benefits brought against any bond required by
24 this article, other than a bond required by Section 7071.8, shall

1 not exceed the sum of four thousand dollars (\$4,000). If any bond
2 required by this article is insufficient to pay all claims in full, the
3 sum of the bond shall be distributed to all claimants in proportion
4 to the amount of their respective claims.

5 ~~(b) No license may be renewed, reissued, or reinstated while
6 any judgment or admitted claim in excess of the amount of the
7 bond remains unsatisfied.~~

8 ~~(c) Except for claims covered by subdivision (d), any action
9 against a bond required under this article, excluding the judgment
10 bond specified under Section 7071.17, shall be brought in
11 accordance with the following:~~

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

18 ~~(2) If the license has been inactivated, canceled, or revoked, an
19 action shall be brought within two years of the date the license of
20 the active licensee would have expired had the license not been
21 inactivated, canceled, or revoked. For the provisions of this
22 paragraph to be applicable, the act or omission for which the action
23 is filed must have occurred prior to the date the license was
24 inactivated, canceled, or revoked.~~

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

30 ~~(d) A claim to recover wages or fringe benefits shall be brought
31 within six months from the date that the wage or fringe benefit
32 delinquencies were discovered, but in no event shall a civil action
33 thereon be brought later than two years from the date the wage or
34 fringe benefit contributions were due.~~

35 ~~(e) Whenever the surety makes payment on any claim against
36 a bond required by this article, whether or not payment is made
37 through a court action or otherwise, the surety shall, within 30
38 days of the payment, provide notice to the registrar. The notice
39 required by this subdivision shall provide the following information
40 by declaration on a form prescribed by the registrar:~~

1 ~~(1) The name and license number of the contractor.~~
2 ~~(2) The surety bond number.~~
3 ~~(3) The amount of payment.~~
4 ~~(4) The statutory basis upon which the claim is made.~~
5 ~~(5) The names of the person or persons to whom payments have~~
6 ~~been made.~~
7 ~~(6) Whether or not the payments were the result of a good faith~~
8 ~~action by the surety.~~
9 The notice shall also clearly indicate whether or not the licensee
10 filed a protest in accordance with this section.
11 ~~(f) (1) If, after providing 30 days notice to the licensee, a surety~~
12 ~~makes a good faith payment from the bond pursuant to a court~~
13 ~~order or court judgment, the surety shall, within 30 days after that~~
14 ~~payment, provide notice to the registrar. The notice required by~~
15 ~~this paragraph shall provide the following information by~~
16 ~~declaration on a form prescribed by the registrar:~~
17 ~~(A) The name and license number of the contractor.~~
18 ~~(B) The surety bond number.~~
19 ~~(C) The amount of the court-ordered payment or judgment.~~
20 ~~(D) The name of the claimant or claimants who were party to~~
21 ~~the court action and the statutory basis for each claimant's claim.~~
22 ~~(E) A copy of the court order or judgment.~~
23 ~~(F) The date notice was sent to the licensee that the surety~~
24 ~~intended to make payment pursuant to a court order or judgment.~~
25 ~~(G) A clear indication whether or not the licensee, within the~~
26 ~~30-day notice period provided in this paragraph, contested the~~
27 ~~court-ordered payment or judgment.~~
28 ~~(2) Any licensee that fails to contest the court-ordered payment~~
29 ~~or judgment by the surety as specified in this subdivision shall~~
30 ~~have 90 days from the date of notification by the board to submit~~
31 ~~proof of payment of the actual amount owed to the surety and, if~~
32 ~~applicable, proof of payment of any judgment or admitted claim~~
33 ~~in excess of the amount of the bond or, by operation of law, the~~
34 ~~license shall be suspended at the end of the 90 days. A license~~
35 ~~suspension pursuant to this subdivision shall be disclosed~~
36 ~~indefinitely as a failure to settle outstanding final liabilities in~~
37 ~~violation of this chapter.~~
38 ~~(g) Prior to the settlement of a claim through a good faith~~
39 ~~payment by the surety, a licensee shall have not less than 15 days~~
40 ~~in which to provide a written protest. This protest shall instruct~~

1 the surety not to make payment from the bond on the licensee's
2 account upon the specific grounds that the claim is opposed by the
3 licensee, and provide the surety a specific and reasonable basis for
4 the licensee's opposition to payment.

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

11 (2) ~~Any licensee that fails to file a protest as specified in this
12 subdivision shall have 90 days from the date of notification by the
13 board to submit proof of payment of the actual amount owed to
14 the surety and, if applicable, proof of payment of any judgment or
15 admitted claim in excess of the amount of the bond or, by operation
16 of law, the license shall be suspended at the end of the 90 days. A
17 license suspension pursuant to this subdivision shall be disclosed
18 indefinitely as a failure to settle outstanding final liabilities in
19 violation of this chapter. The disclosure specified by this
20 subdivision shall also be applicable to all licenses covered by the
21 provisions of subdivision (h).~~

22 (h) ~~No license may be renewed, reissued, or reinstated while
23 any surety remains unreimbursed for any loss or expense sustained
24 on any bond issued for the licensee or for any entity of which any
25 officer, director, member, partner, or qualifying person was an
26 officer, director, member, partner, or qualifying person of the
27 licensee while the licensee was subject to suspension or disciplinary
28 action under this section.~~

29 (i) ~~The licensee may provide the board with a notarized copy
30 of an accord, reached with the surety to satisfy the debt in lieu of
31 full payment. By operation of law, failure to abide by the accord
32 shall result in the automatic suspension of any license to which
33 this section applies. A license that is suspended for failure to abide
34 by the accord may only be renewed or reinstated when proof of
35 satisfaction of all debts is made.~~

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

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