

ASSEMBLY BILL

No. 1354

Introduced by Assembly Member Huber

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1354, as introduced, Huber. Public works: payments: retention.

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 and for public works. Existing law provides that a contract entered into on or after January 1, 1999, relating to the construction of a public work of improvement between the original contractor and a subcontractor or between any subcontractors thereunder, the percentage of retention proceeds withheld cannot exceed the percentage specified in the contract between the public entity and the original contractor. Existing law also prohibits the Department of General Services from making payments upon such contracts in excess of 95% of the percentage of actual work completed plus a like percentage of the value of material delivered, as specified, and requires the department to withhold not less than 5% of the contract price until final completion and acceptance of the project.

This bill would delete the prohibition against payments being made in excess of 95% of the work completed and the requirement that the department withhold not less than 5% of the contract price until final completion and acceptance of the project, and would instead prohibit the retention of any amount with respect to all contracts entered into on or after January 1, 2012, between a public entity and an original

contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. 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, 2012, 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) A public entity shall not withhold retention proceeds
25 when making progress payments to a contractor for work
26 performed.

27 (2) In a contract between the original contractor and a
28 subcontractor, and in a contract between a subcontractor and any
29 subcontractor thereunder, there shall be no withholding of
30 retentions.

31 (c) Nothing in this section shall alter, amend, or impair the
32 rights, duties, and obligations of an original contractor, its

1 subcontractors, and all subcontractors thereunder, relating to the
2 construction of any public work of improvement as set forth in
3 Section 7200.

4 SEC. 2. Section 10261 of the Public Contract Code is amended
5 to read:

6 10261. ~~Payments~~ *For contracts entered into on and after*
7 *January 1, 2012, payments* upon contracts shall be made as the
8 department prescribes upon estimates made and approved by the
9 department, ~~but progress payments shall not be made in excess of~~
10 ~~95 percent of the percentage of actual work completed plus a like~~
11 ~~percentage of the value of material delivered on the ground or~~
12 ~~stored subject to or under the control of the state, and unused,~~
13 ~~except as otherwise provided in this section. The department shall~~
14 ~~withhold not less than 5 percent of the contract price until final~~
15 ~~completion and acceptance of the project. However, at any time~~
16 ~~after 95 percent of the work has been completed, the department~~
17 ~~may reduce the funds withheld to an amount not less than 125~~
18 ~~percent of the estimated value of the work yet to be completed, as~~
19 ~~determined by the department, if the reduction has been approved,~~
20 ~~in writing, by the surety on the performance bond and by the surety~~
21 ~~on the payment bond as set forth in Section 7201 and no amount~~
22 ~~may be retained from any payment.~~ The Controller shall draw his
23 or her warrants upon estimates so made and approved by the
24 department and the Treasurer shall pay them. The funds may be
25 released by electronic transfer if that procedure is requested by the
26 contractor, in writing, and if the public entity has, in place at the
27 time of the request, the mechanism for the transfer.