

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 536**

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**Introduced by Assembly Member Wagner**

February 20, 2013

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An act to amend Section 7108.5 of the Business and Professions Code, to amend Sections 8800, 8802, 8812, and 8814 of the Civil Code, and to amend Sections 7107 and 10262.5 of the Public Contract Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 536, as amended, Wagner. Contractors: payments.

Existing law allows specified persons to withhold from a contractor or subcontractor no more than 150% of the disputed amount if there is a good faith dispute over the amount due on a contract payment.

This bill would exclude ~~specified amounts~~ *the amount of specified claims* from being considered disputed amounts, *as provided*.

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 7108.5 of the Business and Professions
- 2 Code is amended to read:
- 3 7108.5. (a) A prime contractor or subcontractor shall pay to
- 4 any subcontractor, not later than seven days after receipt of each
- 5 progress payment, unless otherwise agreed to in writing, the

1 respective amounts allowed the contractor on account of the work  
2 performed by the subcontractors, to the extent of each  
3 subcontractor's interest therein. In the event that there is a good  
4 faith dispute over all or any portion of the amount due on a progress  
5 payment from the prime contractor or subcontractor to a  
6 subcontractor, the prime contractor or subcontractor may withhold  
7 no more than 150 percent of the disputed amount.

8 (b) Any violation of this section shall constitute a cause for  
9 disciplinary action and shall subject the licensee to a penalty,  
10 payable to the subcontractor, of 2 percent of the amount due per  
11 month for every month that payment is not made.

12 (c) In any action for the collection of funds wrongfully withheld,  
13 the prevailing party shall be entitled to his or her attorneys' fees  
14 and costs.

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

18 (e) This section applies to all private works of improvement  
19 and to all public works of improvement, except where Section  
20 10262 of the Public Contract Code applies.

21 (f) For purposes of this section, a "disputed amount" shall not  
22 include ~~any of the following:~~ *the amount of any claim for*  
23 *additional compensation by the subcontractor against the prime*  
24 *contractor.*

25 ~~(1) With respect to liquidated damages assessed by the owner~~  
26 ~~against the prime contractor, any amount in excess of the liquidated~~  
27 ~~damages that are owed by the subcontractor.~~

28 ~~(2) With respect to mechanics liens and stop payment notices~~  
29 ~~for which the subcontractor is responsible, any amount in excess~~  
30 ~~of what the owner is permitted by law to withhold from the prime~~  
31 ~~contractor on account of the mechanics lien or stop payment notice.~~

32 ~~(3) The amount of any claim for additional compensation by~~  
33 ~~the subcontractor against the prime contractor.~~

34 SEC. 2. Section 8800 of the Civil Code is amended to read:

35 8800. (a) Except as otherwise agreed in writing by the owner  
36 and direct contractor, the owner shall pay the direct contractor,  
37 within 30 days after notice demanding payment pursuant to the  
38 contract is given, any progress payment due as to which there is  
39 no good faith dispute between them. The notice given shall comply

1 with the requirements of Chapter 2 (commencing with Section  
2 8100) of Title 1.

3 (b) If there is a good faith dispute between the owner and direct  
4 contractor as to a progress payment due, the owner may withhold  
5 from the progress payment an amount not in excess of 150 percent  
6 of the disputed amount.

7 (c) An owner that violates this section is liable to the direct  
8 contractor for a penalty of 2 percent per month on the amount  
9 wrongfully withheld, in place of any interest otherwise due. In an  
10 action for collection of the amount wrongfully withheld, the  
11 prevailing party is entitled to costs and reasonable attorneys' fees.

12 (d) This section does not supersede any requirement of Article  
13 2 (commencing with Section 8810) relating to the withholding of  
14 a retention.

15 (e) For purposes of this section, a "disputed amount" shall not  
16 include ~~any of the following:~~ *the amount of any claim for*  
17 *additional compensation by the direct contractor against the*  
18 *owner.*

19 ~~(1) With respect to liquidated damages assessed by the owner,~~  
20 ~~any amount in excess of the liquidated damages assessment.~~

21 ~~(2) With respect to mechanics liens and stop payment notices,~~  
22 ~~any amount in excess of what the owner is permitted by law to~~  
23 ~~withhold from the direct contractor on account of the mechanics~~  
24 ~~lien or stop payment notice.~~

25 ~~(3) The amount of any claim for additional compensation by~~  
26 ~~the direct contractor against the owner.~~

27 SEC. 3. Section 8802 of the Civil Code is amended to read:

28 8802. (a) This section applies to a contract between a public  
29 utility and a direct contractor for all or part of a work of  
30 improvement.

31 (b) Unless the direct contractor and a subcontractor otherwise  
32 agree in writing, within 21 days after receipt of a progress payment  
33 from the public utility the direct contractor shall pay the  
34 subcontractor the amount allowed the direct contractor on account  
35 of the work performed by the subcontractor to the extent of the  
36 subcontractor's interest in the work. If there is a good faith dispute  
37 over all or part of the amount due on a progress payment from the  
38 direct contractor to a subcontractor, the direct contractor may  
39 withhold an amount not in excess of 150 percent of the disputed  
40 amount.

1 (c) A direct contractor that violates this section is liable to the  
2 subcontractor for a penalty of 2 percent of the disputed amount  
3 due per month for every month that payment is not made. In an  
4 action for collection of the amount wrongfully withheld, the  
5 prevailing party is entitled to costs and reasonable attorneys' fees.

6 (d) This section does not limit or impair a contractual,  
7 administrative, or judicial remedy otherwise available to a  
8 contractor or subcontractor in a dispute involving late payment or  
9 nonpayment by the contractor or deficient performance or  
10 nonperformance by the subcontractor.

11 (e) For purposes of this section, a "disputed amount" shall not  
12 include ~~any of the following:~~ *the amount of any claim for*  
13 *additional compensation by the subcontractor against the direct*  
14 *contractor.*

15 ~~(1) With respect to liquidated damages assessed by the public~~  
16 ~~utility against the direct contractor, any amount in excess of the~~  
17 ~~liquidated damages that are owed by the subcontractor.~~

18 ~~(2) With respect to mechanics liens and stop payment notices~~  
19 ~~for which the subcontractor is responsible, any amount in excess~~  
20 ~~of what the public utility is permitted by law to withhold from the~~  
21 ~~direct contractor on account of the mechanics lien or stop payment~~  
22 ~~notice.~~

23 ~~(3) The amount of any claim for additional compensation by~~  
24 ~~the subcontractor against the direct contractor.~~

25 SEC. 4. Section 8812 of the Civil Code is amended to read:

26 8812. (a) If an owner withholds a retention from a direct  
27 contractor, the owner shall, within 45 days after completion of the  
28 work of improvement, pay the retention to the contractor.

29 (b) If part of a work of improvement ultimately will become  
30 the property of a public entity, the owner may condition payment  
31 of a retention allocable to that part on acceptance of the part by  
32 the public entity.

33 (c) If there is a good faith dispute between the owner and direct  
34 contractor as to a retention payment due, the owner may withhold  
35 from final payment an amount not in excess of 150 percent of the  
36 disputed amount. This withheld amount shall not be considered  
37 wrongfully withheld.

38 (d) For purposes of this section, a "disputed amount" shall not  
39 include ~~any of the following:~~ *the amount of any claim for*

1 *additional compensation by the direct contractor against the*  
2 *owner.*

3 ~~(1) With respect to liquidated damages assessed by the owner,~~  
4 ~~any amount in excess of the liquidated damages assessment.~~

5 ~~(2) With respect to mechanics liens and stop payment notices,~~  
6 ~~any amount in excess of what the owner is permitted by law to~~  
7 ~~withhold from the direct contractor on account of the mechanics~~  
8 ~~lien or stop payment notice.~~

9 ~~(3) The amount of any claim for additional compensation by~~  
10 ~~the direct contractor against the owner.~~

11 SEC. 5. Section 8814 of the Civil Code is amended to read:

12 8814. (a) If a direct contractor has withheld a retention from  
13 one or more subcontractors, the direct contractor shall, within 10  
14 days after receiving all or part of a retention payment, pay to each  
15 subcontractor from whom retention has been withheld that  
16 subcontractor's share of the payment.

17 (b) If a retention received by the direct contractor is specifically  
18 designated for a particular subcontractor, the direct contractor shall  
19 pay the retention payment to the designated subcontractor, if  
20 consistent with the terms of the subcontract.

21 (c) If a good faith dispute exists between the direct contractor  
22 and a subcontractor, the direct contractor may withhold from the  
23 retention to the subcontractor an amount not in excess of 150  
24 percent of the estimated value of the disputed amount.

25 (d) For purposes of this section, a "disputed amount" shall not  
26 include ~~any of the following:~~ *the amount of any claim for*  
27 *additional compensation by the subcontractor against the direct*  
28 *contractor.*

29 ~~(1) With respect to liquidated damages assessed by the owner~~  
30 ~~against the direct contractor, any amount in excess of the liquidated~~  
31 ~~damages that are owed by the subcontractor.~~

32 ~~(2) With respect to mechanics liens and stop payment notices~~  
33 ~~for which the subcontractor is responsible, any amount in excess~~  
34 ~~of what the owner is permitted by law to withhold from the direct~~  
35 ~~contractor on account of the mechanics lien or stop payment notice.~~

36 ~~(3) The amount of any claim for additional compensation by~~  
37 ~~the subcontractor against the direct contractor.~~

38 SEC. 6. Section 7107 of the Public Contract Code is amended  
39 to read:

1 7107. (a) This section is applicable with respect to all contracts  
2 entered into on or after January 1, 1993, relating to the construction  
3 of any public work of improvement.

4 (b) The retention proceeds withheld from any payment by the  
5 public entity from the original contractor, or by the original  
6 contractor from any subcontractor, shall be subject to this section.

7 (c) Within 60 days after the date of completion of the work of  
8 improvement, the retention withheld by the public entity shall be  
9 released. In the event of a dispute between the public entity and  
10 the original contractor, the public entity may withhold from the  
11 final payment an amount not to exceed 150 percent of the disputed  
12 amount. For purposes of this subdivision, “completion” means any  
13 of the following:

14 (1) The occupation, beneficial use, and enjoyment of a work of  
15 improvement, excluding any operation only for testing, startup, or  
16 commissioning, by the public agency, or its agent, accompanied  
17 by cessation of labor on the work of improvement.

18 (2) The acceptance by the public agency, or its agent, of the  
19 work of improvement.

20 (3) After the commencement of a work of improvement, a  
21 cessation of labor on the work of improvement for a continuous  
22 period of 100 days or more, due to factors beyond the control of  
23 the contractor.

24 (4) After the commencement of a work of improvement, a  
25 cessation of labor on the work of improvement for a continuous  
26 period of 30 days or more, if the public agency files for record a  
27 notice of cessation or a notice of completion.

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

37 (e) The original contractor may withhold from a subcontractor  
38 its portion of the retention proceeds if a bona fide dispute exists  
39 between the subcontractor and the original contractor. The amount

1 withheld from the retention payment shall not exceed 150 percent  
2 of the estimated value of the disputed amount.

3 (f) In the event that retention payments are not made within the  
4 time periods required by this section, the public entity or original  
5 contractor withholding the unpaid amounts shall be subject to a  
6 charge of 2 percent per month on the improperly withheld amount,  
7 in lieu of any interest otherwise due. Additionally, in any action  
8 for the collection of funds wrongfully withheld, the prevailing  
9 party shall be entitled to attorneys' fees and costs.

10 (g) If a state agency retains an amount greater than 125 percent  
11 of the estimated value of the work yet to be completed pursuant  
12 to Section 10261, the state agency shall distribute undisputed  
13 retention proceeds in accordance with subdivision (c). However,  
14 notwithstanding subdivision (c), if a state agency retains an amount  
15 equal to or less than 125 percent of the estimated value of the work  
16 yet to be completed, the state agency shall have 90 days in which  
17 to release undisputed retentions.

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

20 (i) For purposes of this section, a "disputed amount" and "bona  
21 fide dispute" shall not include ~~any of the following:~~ *the amount*  
22 *of any claim for additional compensation by the original contractor*  
23 *or subcontractor.*

24 ~~(1) With respect to liquidated damages assessed by the public~~  
25 ~~entity, any amount in excess of the liquidated damages assessment.~~

26 ~~(2) With respect to mechanics liens and stop payment notices~~  
27 ~~for which the subcontractor is responsible, any amount in excess~~  
28 ~~of what the owner is permitted by law to withhold from the prime~~  
29 ~~contractor on account of the mechanics lien or stop payment notice.~~

30 ~~(3) The amount of any claim for additional compensation by~~  
31 ~~the original contractor or subcontractor.~~

32 SEC. 7. Section 10262.5 of the Public Contract Code is  
33 amended to read:

34 10262.5. (a) (1) Notwithstanding any other law, a prime  
35 contractor or subcontractor shall pay to any subcontractor, not later  
36 than seven days after receipt of each progress payment, the  
37 respective amounts allowed the contractor on account of the work  
38 performed by the subcontractors, to the extent of each  
39 subcontractor's interest therein. In the event that there is a good  
40 faith dispute over all or any portion of the amount due on a progress

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

4 (2) Any contractor who violates this section shall pay to the  
5 subcontractor a penalty of 2 percent of the amount due per month  
6 for every month that payment is not made. In any action for the  
7 collection of funds wrongfully withheld, the prevailing party shall  
8 be entitled to his or her attorneys' fees and costs.

9 (b) This section shall not be construed to limit or impair any  
10 contractual, administrative, or judicial remedies otherwise available  
11 to a contractor or a subcontractor in the event of a dispute involving  
12 late payment or nonpayment by a contractor or deficient  
13 subcontract performance or nonperformance by a subcontractor.

14 (c) On or before September 1 of each year, the head of each  
15 state agency shall submit to the Legislature a report on the number  
16 and dollar volume of written complaints received from  
17 subcontractors and prime contractors on contracts in excess of  
18 three hundred thousand dollars (\$300,000), relating to violations  
19 of this section.

20 (d) For purposes of this section, a "disputed amount" shall not  
21 include ~~any of the following:~~ *the amount of any claim for*  
22 *additional compensation by the subcontractor against the prime*  
23 *contractor.*

24 ~~(1) With respect to liquidated damages assessed by the public~~  
25 ~~entity against the prime contractor, any amount in excess of the~~  
26 ~~liquidated damages that are owed by the subcontractor.~~

27 ~~(2) With respect to stop payment notices for which the~~  
28 ~~subcontractor is responsible, any amount in excess of what the~~  
29 ~~public entity is permitted by law to withhold from the prime~~  
30 ~~contractor on account of the stop payment notice.~~

31 ~~(3) The amount of any claim for additional compensation by~~  
32 ~~the subcontractor against the prime contractor.~~