

ASSEMBLY BILL

No. 1823

Introduced by Assembly Member Wagner

February 18, 2014

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 1823, as introduced, 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 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
- 6 respective amounts allowed the contractor on account of the work
- 7 performed by the subcontractors, to the extent of each
- 8 subcontractor's interest therein. In the event that there is a good

1 faith dispute over all or any portion of the amount due on a progress
2 payment from the prime contractor or subcontractor to a
3 subcontractor, the prime contractor or subcontractor may withhold
4 no more than 150 percent of the disputed amount.

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

9 (c) In any action for the collection of funds wrongfully withheld,
10 the prevailing party shall be entitled to his or her ~~attorney's~~
11 *attorneys' fees and costs.*

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 (f) *For purposes of this section, a "disputed amount" shall not*
19 *include the amount of any claim for additional compensation by*
20 *the subcontractor against the prime contractor.*

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

22 8800. (a) Except as otherwise agreed in writing by the owner
23 and direct contractor, the owner shall pay the direct contractor,
24 within 30 days after notice demanding payment pursuant to the
25 contract is given, any progress payment due as to which there is
26 no good faith dispute between them. The notice given shall comply
27 with the requirements of Chapter 2 (commencing with Section
28 8100) of Title 1.

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

33 (c) An owner that violates this section is liable to the direct
34 contractor for a penalty of 2 percent per month on the amount
35 wrongfully withheld, in place of any interest otherwise due. In an
36 action for collection of the amount wrongfully withheld, the
37 prevailing party is entitled to costs and ~~a reasonable attorney's fee~~
38 *attorneys' fees.*

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

4 (e) *For purposes of this section, a “disputed amount” shall not*
5 *include the amount of any claim for additional compensation by*
6 *the direct contractor against the owner.*

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

8 8802. (a) This section applies to a contract between a public
9 utility and a direct contractor for all or part of a work of
10 improvement.

11 (b) Unless the direct contractor and a subcontractor otherwise
12 agree in writing, within 21 days after receipt of a progress payment
13 from the public utility the direct contractor shall pay the
14 subcontractor the amount allowed the direct contractor on account
15 of the work performed by the subcontractor to the extent of the
16 subcontractor’s interest in the work. If there is a good faith dispute
17 over all or part of the amount due on a progress payment from the
18 direct contractor to a subcontractor, the direct contractor may
19 withhold an amount not in excess of 150 percent of the disputed
20 amount.

21 (c) A direct contractor that violates this section is liable to the
22 subcontractor for a penalty of 2 percent of the disputed amount
23 due per month for every month that payment is not made. In an
24 action for collection of the amount wrongfully withheld, the
25 prevailing party is entitled to costs and ~~a reasonable attorney’s fee~~
26 *attorneys’ fees.*

27 (d) This section does not limit or impair a contractual,
28 administrative, or judicial remedy otherwise available to a
29 contractor or subcontractor in a dispute involving late payment or
30 nonpayment by the contractor or deficient performance or
31 nonperformance by the subcontractor.

32 (e) *For purposes of this section, a “disputed amount” shall not*
33 *include the amount of any claim for additional compensation by*
34 *the subcontractor against the direct contractor.*

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

36 8812. (a) If an owner withholds a retention from a direct
37 contractor, the owner shall, within 45 days after completion of the
38 work of improvement, pay the retention to the contractor.

39 (b) If part of a work of improvement ultimately will become
40 the property of a public entity, the owner may condition payment

1 of a retention allocable to that part on acceptance of the part by
2 the public entity.

3 (c) If there is a good faith dispute between the owner and direct
4 contractor as to a retention payment due, the owner may withhold
5 from final payment an amount not in excess of 150 percent of the
6 disputed amount. *This withheld amount shall not be considered*
7 *wrongfully withheld.*

8 (d) *For purposes of this section, a “disputed amount” shall not*
9 *include 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 the amount of any claim for additional compensation by*
27 *the subcontractor against the direct contractor.*

28 SEC. 6. Section 7107 of the Public Contract Code is amended
29 to read:

30 7107. (a) This section is applicable with respect to all contracts
31 entered into on or after January 1, 1993, relating to the construction
32 of any public work of improvement.

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

36 (c) Within 60 days after the date of completion of the work of
37 improvement, the retention withheld by the public entity shall be
38 released. In the event of a dispute between the public entity and
39 the original contractor, the public entity may withhold from the
40 final payment an amount not to exceed 150 percent of the disputed

1 amount. For purposes of this subdivision, “completion” means any
2 of the following:

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

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

9 (3) After the commencement of a work of improvement, a
10 cessation of labor on the work of improvement for a continuous
11 period of 100 days or more, due to factors beyond the control of
12 the contractor.

13 (4) After the commencement of a work of improvement, a
14 cessation of labor on the work of improvement for a continuous
15 period of 30 days or more, if the public agency files for record a
16 notice of cessation or a notice of completion.

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

26 (e) The original contractor may withhold from a subcontractor
27 its portion of the retention proceeds if a bona fide dispute exists
28 between the subcontractor and the original contractor. The amount
29 withheld from the retention payment shall not exceed 150 percent
30 of the estimated value of the disputed amount.

31 (f) In the event that retention payments are not made within the
32 time periods required by this section, the public entity or original
33 contractor withholding the unpaid amounts shall be subject to a
34 charge of 2 percent per month on the improperly withheld amount,
35 in lieu of any interest otherwise due. Additionally, in any action
36 for the collection of funds wrongfully withheld, the prevailing
37 party shall be entitled to ~~attorney’s~~ *attorneys’* fees and costs.

38 (g) If a state agency retains an amount greater than 125 percent
39 of the estimated value of the work yet to be completed pursuant
40 to Section 10261, the state agency shall distribute undisputed

1 retention proceeds in accordance with subdivision (c). However,
2 notwithstanding subdivision (c), if a state agency retains an amount
3 equal to or less than 125 percent of the estimated value of the work
4 yet to be completed, the state agency shall have 90 days in which
5 to release undisputed retentions.

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

8 (i) *For purposes of this section, a “disputed amount” and “bona*
9 *fide dispute” shall not include the amount of any claim for*
10 *additional compensation by the original contractor or*
11 *subcontractor.*

12 SEC. 7. Section 10262.5 of the Public Contract Code is
13 amended to read:

14 10262.5. (a) (1) Notwithstanding any other law, a prime
15 contractor or subcontractor shall pay to any subcontractor, not later
16 than seven days after receipt of each progress payment, the
17 respective amounts allowed the contractor on account of the work
18 performed by the subcontractors, to the extent of each
19 subcontractor’s interest therein. In the event that there is a good
20 faith dispute over all or any portion of the amount due on a progress
21 payment from the prime contractor or subcontractor to a
22 subcontractor, then the prime contractor or subcontractor may
23 withhold no more than 150 percent of the disputed amount.

24 ~~Any~~

25 (2) *Any* contractor who violates this section shall pay to the
26 subcontractor a penalty of 2 percent of the amount due per month
27 for every month that payment is not made. In any action for the
28 collection of funds wrongfully withheld, the prevailing party shall
29 be entitled to his or her ~~attorney’s~~ *attorneys’* fees and costs.

30 (b) This section shall not be construed to limit or impair any
31 contractual, administrative, or judicial remedies otherwise available
32 to a contractor or a subcontractor in the event of a dispute involving
33 late payment or nonpayment by a contractor or deficient
34 subcontract performance or nonperformance by a subcontractor.

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

1 *(d) For purposes of this section, a “disputed amount” shall not*
2 *include the amount of any claim for additional compensation by*
3 *the subcontractor against the prime contractor.*

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