

AMENDED IN SENATE AUGUST 19, 1999

AMENDED IN SENATE JUNE 23, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 806**

**Introduced by Assembly Member Keeley**

February 24, 1999

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An act to amend Section 10160 of, and to add Section 7201 to, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 806, as amended, Keeley. Public works contracts: retention proceeds: *financial statements*.

Under existing law, with respect to a contract for the construction of any public work of improvement entered into on or after January 1, 1999, in a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the public entity and the original contractor, except as specified.

This bill would impose a state-mandated local program by requiring that with respect to these contracts entered into on or after January 1, 2000, the retention proceeds withheld from any payment by a public entity from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder shall not

exceed 5% of the payment, and in no event shall the total retention proceeds withheld exceed 5% of the contract price.

*The State Contract Act requires prospective bidders on contracts to complete financial ability and experience questionnaires and statements.*

*This bill would revise and recast these prequalification requirements, as specified.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7201 is added to the Public  
2 Contract Code, to read:

3 7201. (a) (1) This section shall apply with respect to  
4 all contracts entered into on or after January 1, 2000,  
5 between a public entity and an original contractor,  
6 between an original contractor and a subcontractor, and  
7 between all subcontractors thereunder, relating to the  
8 construction of any public work of improvement.

9 (2) Under no circumstances shall any provision of this  
10 section be construed to limit the ability of any public  
11 entity to withhold 150 percent of the value of any  
12 disputed amount of work from the final payment, as  
13 provided for in subdivision (c) of Section 7107. In the  
14 event of a good faith dispute, nothing in this section shall  
15 be construed to require a public entity to pay for work  
16 that is not approved or accepted in accordance with the  
17 proper plans or specifications.



1 (3) For purposes of this section, “public entity” means  
2 the state, including every state agency, office,  
3 department, division, bureau, board, or commission, a  
4 city, county, city and county, including chartered cities  
5 and chartered counties, district, special district, public  
6 authority, political subdivision, public corporation, or  
7 nonprofit transit corporation wholly owned by a public  
8 agency and formed to carry out the purposes of the public  
9 agency.

10 (b) The retention proceeds withheld from any  
11 payment by a public entity from the original contractor,  
12 by the original contractor from any subcontractor, and by  
13 a subcontractor from any subcontractor thereunder shall  
14 not exceed 5 percent of the payment. In no event shall the  
15 total retention proceeds withheld exceed 5 percent of the  
16 contract price. In a contract between the original  
17 contractor and a subcontractor, and in a contract  
18 between a subcontractor and any subcontractor  
19 thereunder, the percentage of the retention proceeds  
20 withheld may not exceed the percentage specified in the  
21 contract between the public entity and the original  
22 contractor.

23 (c) Subdivision (b) shall not apply if the contractor  
24 provides written notice to the subcontractor, prior to or  
25 at the time that the bid is requested, that a bond may be  
26 required and the subcontractor subsequently is unable or  
27 refuses to furnish to the contractor a performance or  
28 payment bond issued by an admitted surety insurer.

29 (d) No party identified in subdivision (a) may require  
30 any other party to waive any provision of this section.

31 SEC. 2. *Section 10160 of the Public Contract Code is*  
32 *amended to read:*

33 10160. The department may require *any of the*  
34 *following* from prospective bidders ~~answers to questions~~  
35 ~~contained in a standard form of questionnaire and~~  
36 ~~financial statement including a complete statement:~~  
37 *financial statements, demonstration* of the prospective  
38 bidder’s financial ability and experience in performing  
39 public works *projects of similar size, type and complexity.*  
40 *This prequalification may be achieved by use of a*



1 *standard form questionnaire, an interview, or both.* When  
2 completed, the questionnaire and financial statement  
3 shall be verified under oath by the bidder in the manner  
4 in which pleadings in civil actions are verified.

5 Whenever prequalification is required of any bidder on  
6 a contract, it shall be required for all prospective bidders  
7 to that contract.

8 *SEC. 3.* Notwithstanding Section 17610 of the  
9 Government Code, if the Commission on State Mandates  
10 determines that this act contains costs mandated by the  
11 state, reimbursement to local agencies and school  
12 districts for those costs shall be made pursuant to Part 7  
13 (commencing with Section 17500) of Division 4 of Title  
14 2 of the Government Code. If the statewide cost of the  
15 claim for reimbursement does not exceed one million  
16 dollars (\$1,000,000), reimbursement shall be made from  
17 the State Mandates Claims Fund.

