

AMENDED IN SENATE JUNE 20, 2000

AMENDED IN ASSEMBLY MAY 9, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2230

Introduced by Assembly Member Wiggins

February 24, 2000

~~An act to amend Section 5536 of the Business and Professions Code, relating to architecture. An act to add Section 6106.5 to the Public Contract Code, relating to public contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2230, as amended, Wiggins. ~~Architecture~~ *Architectural and engineering services contracts.*

Under existing law, special provisions govern contracts between state agencies or departments and persons or entities providing architectural, engineering, land surveying, environmental, or construction project management services. These provisions specify negotiation procedures and establish deadlines for contract formation.

This bill would provide that any contract subject to the above provisions shall provide that retained moneys may be paid into an escrow account held by a state or federally chartered bank in this state, if the estimated amount of money to be retained by the state agency or department under the contract is greater than \$10,000.

~~Existing law provides for the licensing and regulation, under the administration of the California Board of Architectural Examiners, of persons engaged in the practice of architecture and makes it a misdemeanor, punishable by a maximum fine of \$1,000, or by imprisonment in a county jail not to exceed one year, or by both fine and imprisonment, for any person who is not licensed to practice as an architect to engage in that practice or other specified acts and for any person who is not registered or licensed by the state as a building designer to advertise or represent himself or herself as one.~~

~~This bill would increase the maximum amount of the fine imposed for the described misdemeanor offenses to \$5,000.~~

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

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

1 ~~SECTION 1.—Section 5536 of the Business and~~
2 *SECTION 1. Section 6106.5 is added to the Public*
3 *Contract Code, to read:*
4 *6106.5. (a) “State agency,” as used in this section,*
5 *means those departments defined in Section 10106 of the*
6 *Public Contract Code.*
7 *(b) “Contractor,” as used in this section, means*
8 *“Firm,” “Architectural, landscape architectural,*
9 *engineering, environmental, and land surveying*
10 *services,” “Construction project management,” and*
11 *“Environmental services” as defined in Section 4525 of*
12 *the Government Code.*
13 *(c) State agencies shall include a provision in*
14 *solicitations and in contracts, where the estimated*
15 *amount to be retained exceeds ten thousand dollars*
16 *(\$10,000), and the retention continues for a period of 60*
17 *days beyond the completion of phased services, to permit,*
18 *upon written request and the expense of the contractor,*
19 *the payment of retentions earned directly to a state or*
20 *federally chartered bank in this state, as the escrow agent.*
21 *The contractor may direct the investment of the*
22 *payments into securities, pursuant to paragraph (d), and*



1 the contractor shall receive the interest earned on the
2 investments. Upon satisfactory completion of the
3 contract, the contractor shall receive from the escrow
4 agent all securities, interest, and payments received by
5 the escrow agent from the owner, pursuant to the terms
6 of this section. State agencies, relative to contracts
7 entered into prior to enactment of this section, upon
8 written request of the contractor, and subject to the
9 approval of the state agency, may utilize the provisions of
10 this section.

11 (d) Securities eligible for investment under this
12 section shall include those listed in Section 16430 of the
13 Government Code, interest-bearing demand deposit
14 accounts, or any other investment mutually agreed to by
15 the contractor and the State Agency.

16 (e) (1) Any contractor who elects to receive interest
17 on moneys withheld in retention by a state agency shall,
18 at the request of any subcontractor, make that option
19 available to the subcontractor regarding any moneys
20 withheld in retention by the contractor from the
21 subcontractor. If the contractor elects to receive interest
22 on any moneys withheld in retention by a state agency,
23 then the subcontractor shall receive the identical rate of
24 interest received by the contractor on any retention
25 moneys withheld from the subcontractor by the
26 contractor, less any actual pro rata costs associated with
27 administering and calculating that interest. In the event
28 that the interest rate is a fluctuating rate, the rate for the
29 subcontractor shall be determined by calculating the
30 interest rate paid during the time that retentions were
31 withheld from the subcontractor. If the contractor elects
32 to substitute securities in lieu of retention, then, by
33 mutual consent of the contractor and subcontractor, the
34 subcontractor may substitute securities in exchange for
35 the release of moneys held in retention by the contractor.

36 (2) This subdivision shall apply only to those
37 subcontractors performing more than 5 percent of the
38 contractor's total fee.

39 (3) No contractor shall require any subcontractor to
40 waive any provision of this section.



1 (f) An escrow agreement used pursuant to this section
2 shall be null, void, and unenforceable unless it is
3 substantially similar to the following form:

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6 ESCROW AGREEMENT FOR SECURITY DEPOSITS

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This Escrow Agreement is made and entered into by and between

9
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whose address is _____

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hereinafter called "owner," _____

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whose address is _____

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hereinafter called "contractor," and _____

14
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whose address is _____

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hereinafter called "escrow agent."

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(1) Pursuant to Section 6106.5 of the Public Contract
Code of the State of California, upon written request of
the contractor, the owner shall make payments of
retention earnings required to be withheld by the owner
pursuant to the professional consulting services
agreement entered into between the owner and
contractor for _____ in the amount
of _____ dated _____ hereafter referred to as the
"contract."

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(2) When the owner makes payment of retentions
earned directly to the escrow agent, the escrow agent
shall hold them for the benefit of the contractor until such
time as the escrow created under this contract is
terminated. The contractor may direct the investment of
the payments into securities pursuant to Section
6106.5(d) of the Public Contract Code. All terms and
conditions of this agreement and the rights and
responsibilities of the parties shall be equally applicable
and binding when the owner pays the escrow agent
directly.

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(3) The contractor shall be responsible for paying all
fees for the expenses incurred by the escrow agent in
administering the escrow account. These expenses and

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1 *payment terms shall be determined by the contractor*
2 *and escrow agent.*

3 *(4) The contractor shall have the right to withdraw all*
4 *or any part of the principal or interest in the escrow*
5 *account only by written notice to the escrow agent*
6 *accompanied by written authorization from the owner to*
7 *the escrow agent that the owner consents to the*
8 *withdrawal of the amount sought to be withdrawn by*
9 *contractor.*

10 *(5) The owner shall have a right to draw upon the*
11 *escrow account in the event of default by the contractor.*
12 *Upon seven days' written notice to the escrow agent from*
13 *the owner of the default, the escrow agent shall*
14 *immediately distribute the cash as instructed by the*
15 *owner.*

16 *(6) Upon receipt of written notification from the*
17 *owner certifying that the contract is final and complete,*
18 *and that the contractor has complied with all*
19 *requirements and procedures applicable to the contract,*
20 *the escrow agent shall release to the contractor all*
21 *deposits and interest on deposits less escrow fees and*
22 *charges of the escrow account. The escrow shall be closed*
23 *immediately upon disbursement of all moneys on deposit*
24 *and payments of fees and charges.*

25 *(7) The escrow agent shall rely on the written*
26 *notifications from the owner and the contractor pursuant*
27 *to Sections (1) to (6), inclusive, of this agreement and the*
28 *owner and contractor shall hold the escrow agent*
29 *harmless from the escrow agent's release, conversion, and*
30 *disbursement of the securities and interest as set forth*
31 *above.*

32 *(8) The names of the persons who are authorized to*
33 *give written notice or to receive written notice on behalf*
34 *of the owner and on behalf of the contractor in*
35 *connection with the foregoing, and exemplars of their*
36 *respective signatures are as follows:*

37



1	<i>On behalf of the owner:</i>	<i>On behalf of the contractor:</i>
2	_____	_____
3	<i>Title</i>	<i>Title</i>
4	_____	_____
5	<i>Name</i>	<i>Name</i>
6	_____	_____
7	<i>Address</i>	<i>Address</i>
8	_____	_____

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10 *On behalf of the escrow agent:*

11 _____

12 *Title*

13 _____

14 *Name*

15 _____

16 *Signature*

17 _____

18 *Address*

19 _____

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21 *At the time the escrow account is opened, the owner*

22 *and contractor shall deliver to the escrow agent a fully*

23 *executed counterpart of this Agreement.*

24

25 *IN WITNESS WHEREOF, the parties have executed*

26 *this Agreement by their proper officers on the date first*

27 *set forth above.*

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29	<i>Owner</i>	<i>Contractor</i>
30		
31	_____	_____
32	<i>Title</i>	<i>Title</i>
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34	_____	_____
35	<i>Name</i>	<i>Name</i>
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37	_____	_____



1 *Signature*

Signature

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5 Professions Code is amended to read:

6 ~~5536. (a) It is a misdemeanor, punishable by a fine of~~
7 ~~not less than one hundred dollars (\$100) nor more than~~
8 ~~five thousand dollars (\$5,000), or by imprisonment in the~~
9 ~~county jail not exceeding one year, or by both fine and~~
10 ~~imprisonment, for any person who is not licensed to~~
11 ~~practice architecture under this chapter to practice~~
12 ~~architecture in this state, to use any term confusingly~~
13 ~~similar to the word architect, to use the stamp of a~~
14 ~~licensed architect, as provided in Section 5536.1, or to~~
15 ~~advertise or put out any sign or card or other device~~
16 ~~which might indicate to the public that he or she is an~~
17 ~~architect, that he or she is qualified to engage in the~~
18 ~~practice of architecture, or that he or she is an~~
19 ~~architectural designer.~~

20 ~~(b) It is a misdemeanor, punishable as specified in~~
21 ~~subdivision (a), for any person who is not licensed to~~
22 ~~practice architecture under this chapter to affix a stamp~~
23 ~~or seal which bears the legend "State of California" or~~
24 ~~words or symbols that represent or imply that the person~~
25 ~~is so licensed by the state to plans, specifications, or~~
26 ~~instruments of service.~~

27 ~~(c) It is a misdemeanor, punishable as specified in~~
28 ~~subdivision (a), for any person to advertise or represent~~
29 ~~that he or she is a "registered building designer" or is~~
30 ~~registered or otherwise licensed by the state as a building~~
31 ~~designer.~~

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