

AMENDED IN ASSEMBLY MAY 11, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2216

Introduced by Assembly Member Fuentes

February 18, 2010

An act to amend Section 7108.5 of the Business and Professions Code, to amend Section 3252 of the Civil Code, and to amend Sections 10262 and 10262.5 of the Public Contract Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2216, as amended, Fuentes. Works of improvement.

(1) Existing law requires that, for private and public works of improvement, and in a public works contract, a prime contractor or subcontractor pay to any subcontractor, not later than 10 days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amount allowed the contractor on account of the work performed by the subcontractors, to the extent of each contractor's interest therein, as prescribed.

This bill would, instead, require that those amounts be paid not later than 7 days after receipt of each progress payment.

(2) Existing law requires, with regard to a contract entered into on or after January 1, 1995, in order to enforce a claim upon any payment bond given in connection with a public work, that a claimant give the 20-day public works bond preliminary notice, as provided. Existing law further authorizes a claimant, if the 20-day public works preliminary bond notice was not given as prescribed by statute, to enforce a claim by giving written notice to the surety and the bond principal, as provided, within 15 days after recordation of a notice of completion, or if no notice

of completion has been recorded, within 75 days after completion of the work of improvement.

This bill would, instead, with regard to a contract entered into on or after January 1, 2010, require that the written notice to be given to the surety and the bond principal be given prior to the completion, as defined, of the project, or recordation of a notice of completion. *This bill would also require that every project entity give written notice to each subcontractor, 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) This section applies to all private works of
- 4 improvement and to all public works of improvement, except where
- 5 Section 10262 of the Public Contract Code applies.
- 6 (b) Except as provided in subdivision (c), a prime contractor or
- 7 subcontractor shall pay to any subcontractor, not later than seven
- 8 days of receipt of each progress payment, unless otherwise agreed
- 9 to in writing, the respective amounts allowed the contractor on
- 10 account of the work performed by the subcontractors, to the extent
- 11 of each subcontractor's interest therein. A prime contractor or
- 12 subcontractor that fails to comply with this subdivision shall be
- 13 subject to a penalty, payable to the subcontractor, of 2 percent of
- 14 the amount due per month for every month that payment is not
- 15 made as required under this subdivision.
- 16 (c) If there is a good faith dispute over all or any portion of the
- 17 amount due on a progress payment from the prime contractor or
- 18 subcontractor to a subcontractor, the prime contractor or
- 19 subcontractor may withhold no more than 150 percent of the
- 20 disputed amount.
- 21 (d) A violation of this section shall constitute a cause for
- 22 disciplinary action.
- 23 (e) In any action for the collection of funds wrongfully withheld,
- 24 the prevailing party shall be entitled to his or her attorney's fees
- 25 and costs.

1 (f) The sanctions authorized under this section shall be separate
2 from, and in addition to, all other remedies, either civil,
3 administrative, or criminal.

4 SEC. 2. Section 3252 of the Civil Code is amended to read:

5 3252. (a) With regard to a contract entered into on or after
6 January 1, 1995, in order to enforce a claim upon any payment
7 bond given in connection with a public work, a claimant shall give
8 the 20-day public works preliminary bond notice as provided in
9 Section 3098.

10 (b) With regard to a project completed on or before December
11 31, 2010, if the 20-day public work preliminary bond notice was
12 not given as provided in Section 3098, a claimant may enforce a
13 claim by giving written notice to the surety and the bond principal
14 as provided in Section 3227 within 15 days after recordation of a
15 notice of completion. If no notice of completion has been recorded,
16 the time for giving written notice to the surety and the bond
17 principal is extended to 75 days after completion of the work of
18 improvement.

19 (c) Commencing January 1, 2011, and except as provided in
20 subdivision (b), if the 20-day public works preliminary bond notice
21 was not given as provided in Section 3098, a claimant may enforce
22 a claim by giving written notice to the surety and bond principal,
23 as provided in Section 3227, prior to completion, as defined in
24 Section 3086, of the project, or recordation of a notice of
25 completion, *whichever is later. Prior to completion or recordation*
26 *of a notice of completion, every project entity shall provide written*
27 *notice of pending completion to each subcontractor that has*
28 *provided a 20-day preliminary bond notice as provided in Section*
29 *3098.*

30 SEC. 3. Section 10262 of the Public Contract Code is amended
31 to read:

32 10262. The contractor shall pay to his or her subcontractors,
33 within seven days of receipt of each progress payment, the
34 respective amounts allowed the contractor on account of the work
35 performed by his or her subcontractors, to the extent of each
36 subcontractor's interest therein. The payments to subcontractors
37 shall be based on estimates made pursuant to Section 10261. Any
38 diversion by the contractor of payments received for prosecution
39 of a contract, or failure to reasonably account for the application
40 or use of the payments constitutes ground for actions proscribed

1 in Section 10253, in addition to disciplinary action by the
2 Contractors' State License Board. The subcontractor shall notify,
3 in writing, the Contractors' State License Board and the department
4 of any payment less than the amount or percentage approved for
5 the class or item of work as set forth in Section 10261.

6 SEC. 4. Section 10262.5 of the Public Contract Code is
7 amended to read:

8 10262.5. (a) Notwithstanding any other provision of law, a
9 prime contractor or subcontractor shall pay to any subcontractor,
10 not later than seven days of receipt of each progress payment, the
11 respective amounts allowed the contractor on account of the work
12 performed by the subcontractors, to the extent of each
13 subcontractor's interest therein. In the event that there is a good
14 faith dispute over all or any portion of the amount due on a progress
15 payment from the prime contractor or subcontractor to a
16 subcontractor, then the prime contractor or subcontractor may
17 withhold no more than 150 percent of the disputed amount.

18 Any contractor who violates this section shall pay to the
19 subcontractor a penalty of 2 percent of the amount due per month
20 for every month that payment is not made. In any action for the
21 collection of funds wrongfully withheld, the prevailing party shall
22 be entitled to his or her attorney's fees and costs.

23 (b) This section shall not be construed to limit or impair any
24 contractual, administrative, or judicial remedies otherwise available
25 to a contractor or a subcontractor in the event of a dispute involving
26 late payment or nonpayment by a contractor or deficient
27 subcontract performance or nonperformance by a subcontractor.

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