

AMENDED IN SENATE AUGUST 29, 2012

AMENDED IN SENATE AUGUST 23, 2012

AMENDED IN SENATE AUGUST 7, 2012

AMENDED IN SENATE JUNE 7, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2021

Introduced by Assembly Member Wagner

February 23, 2012

An act to amend Section 7108.5 of the Business and Professions Code, and to amend Sections 8800, 8812, and 8814 of the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2021, as amended, Wagner. Works of improvement: disputed amounts.

Existing law contains various provisions relating to contracts for the performance of private works of improvement, including provisions for the withholding and disbursement of retention proceeds. Existing law provides that, with respect to those contracts for works of improvement, the retention proceeds withheld from any payment may not exceed 150% of the disputed amount.

This bill would increase the amount that may be withheld from progress payments or final payments, depending on the circumstances, to a sum of various amounts and percentages, as specified.

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, ~~unless otherwise agreed to in~~
9 ~~writing~~. In the event that there is a good faith dispute over the
10 amount due on a progress payment, the prime contractor or
11 subcontractor may withhold from the progress payment an amount
12 not to exceed the sum of the following:
13 (1) The delay damages for which the subcontractor may be
14 liable.
15 (2) One hundred fifty percent of the estimated cost of repair or
16 replacement of subcontract work that was not performed according
17 to the subcontract.
18 (3) The amount of any written claim against the prime contractor
19 for a violation of the Labor Code or a collective bargaining
20 agreement by the subcontractor or any other person performing
21 work required by the subcontract.
22 (4) That portion of any mechanics lien or stop payment notice
23 claim by the subcontractor or any other person performing work
24 required by the subcontract for which the subcontractor has already
25 been paid.
26 (5) The amount that would have been withheld by the owner
27 pursuant to Section 8470 or 8522 of the Civil Code, but for a bond
28 provided by the prime contractor pursuant to Section 8424 or 8510
29 of the Civil Code.
30 (b) Any violation of this section shall constitute a cause for
31 disciplinary action and shall subject the licensee to a penalty,
32 payable to the subcontractor, of 2 percent of the amount due per
33 month for every month that payment is not made. In any action
34 for the collection of funds wrongfully withheld, the prevailing
35 party shall be entitled to his or her attorney's fees and costs.

1 (c) 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 (d) This section applies to all private works of improvement
5 and to all public works of improvement, except where Section
6 10262 of the Public Contract Code applies.

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

8 8800. (a) Except as otherwise agreed in writing by the owner
9 and direct contractor, the owner shall pay the direct contractor,
10 within 30 days after notice demanding payment pursuant to the
11 contract is given, any progress payment due as to which there is
12 no good faith dispute between them. The notice given shall comply
13 with the requirements of Chapter 2 (commencing with Section
14 8100) of Title 1.

15 (b) If there is a good faith dispute between the owner and direct
16 contractor as to a progress payment due, the owner may withhold
17 from the progress payment an amount not in excess of the sum of
18 both of the following:

19 (1) The liquidated damages assessed against the contractor.

20 (2) One hundred fifty percent of the estimated cost of repair or
21 replacement of contract work that was not performed according
22 to the contract.

23 (3) The amount of any written claim against the owner for a
24 violation of the Labor Code or a collective bargaining agreement
25 by any contractor.

26 (4) That portion of any mechanics lien or stop payment notice
27 claim by any contractor for which the direct contractor has already
28 been paid.

29 (c) An owner that violates this section is liable to the direct
30 contractor for a penalty of 2 percent per month on the amount
31 wrongfully withheld, in place of any interest otherwise due. In an
32 action for collection of the amount wrongfully withheld, the
33 prevailing party is entitled to costs and a reasonable attorney's fee.

34 (d) This section does not supersede any requirement of Article
35 2 (commencing with Section 8810) relating to the withholding of
36 a retention.

37 SEC. 3. Section 8812 of the Civil Code is amended to read:

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

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

(c) If there is a good faith dispute between the owner and direct contractor as to a retention payment due, the owner may withhold from final payment, unless already withheld from a progress payment, an amount not in excess of the sum of all of the following:

(1) The liquidated damages assessed against the contractor.

(2) The amounts withheld pursuant to Sections 8470 and 8522.

(3) One hundred fifty percent of the estimated cost of uncompleted contract work, except for those costs that are withheld under any paragraph of any subdivision of this section.

(4) One hundred fifty percent of the estimated cost to repair or replace contract work that was not performed according to the contract, except for those costs that are withheld under any other paragraph of any subdivision of this section.

(5) The amount of any written claim against the owner for a violation of the Labor Code or a collective bargaining agreement by any contractor.

(6) That portion of any mechanics lien or stop payment notice claim by any contractor for which the direct contractor has already been paid.

SEC. 4. Section 8814 of the Civil Code is amended to read:

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

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

(c) If a good faith dispute exists between the direct contractor and a subcontractor, the direct contractor may withhold from the retention to the subcontractor an amount not in excess of the sum of all of the following:

(1) The delay damages for which the subcontractor may be liable.

1 (2) That portion of any mechanics lien or stop payment notice
2 claim by the subcontractor or any other person performing work
3 required by the subcontract for which the subcontractor has already
4 been paid.

5 (3) The amount that would have been withheld by the owner
6 pursuant to Section 8470 or 8522, but for a bond provided by the
7 direct contractor pursuant to Section 8424 or 8510.

8 (4) One hundred fifty percent of the estimated cost of
9 uncompleted subcontract work, except for those costs that are
10 withheld under any other paragraph of any subdivision of this
11 section.

12 (5) One hundred fifty percent of the estimated cost to repair or
13 replace subcontract work that was not performed according to the
14 subcontract, except for those costs that are withheld under any
15 other paragraph of any subdivision of this section.

16 (6) The amount of any written claim against the direct contractor
17 for a violation of the Labor Code or a collective bargaining
18 agreement by the subcontractor or any other person performing
19 work required by the subcontract.