

Date of Hearing: July 1, 2019

ASSEMBLY COMMITTEE ON TRANSPORTATION
Jim Frazier, Chair
SB 197 (Beall) – As Introduced January 31, 2019

SENATE VOTE: 38-0

SUBJECT: Department of Transportation: retention proceeds

SUMMARY: Eliminates the sunset date related to existing law prohibiting the California Department of Transportation (Caltrans) from withholding retention proceeds to its contractors when making progress payments for work performed on a public works project.

EXISTING LAW:

- 1) Prohibits, until January 1, 2020, Caltrans from withholding retention proceeds to its contractors when making progress payments for work performed on a public works project.
- 2) Provides that in a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any other subcontractor, the percentage of retention proceeds withheld cannot exceed the percentage specified in the contract between the public entity and the original contractor, and requires the distribution of retention proceeds by an original contractor to subcontractors within seven days of receipt of retention proceeds from the public agency.
- 3) Requires a contractor in a public works contract to file a performance bond with the public entity in specified amounts depending on the value of the contract.
- 4) Requires every contractor who is awarded a contract by a state entity involving expenditures in excess of \$5,000 for any public work to file a performance bond with the state entity in a sum not less than 100% of the total amount payable by the terms of the contract.

FISCAL EFFECT: According to the Senate Committee on Appropriations, Caltrans will benefit from ongoing minor cost savings and continued administrative efficiencies.

COMMENTS: Retention proceeds represent a percentage of the amount of a contract that is withheld by a public entity from a progress payment to the original contractor, or by the original contractor from one its subcontractors. By withholding a percentage of a contract, the public entity or the original contractor maintains a degree of financial control over a project. In general, the public entity or the original contractor withholds at least 5% of payment until the contract is completed to the satisfaction of the public entity or original contractor.

It was Caltrans' policy to not withhold retention proceeds on federally-funded projects between Caltrans and its prime contractors, and its contractors and their subcontractors. In 2008, the Legislature passed and Governor Schwarzenegger signed into law SB 593 (Margett), Chapter 341, which extended this practice and prohibited Caltrans from withholding retention proceeds to its contractors for work performed on any project until January 1, 2014. Prior to the enactment of SB 593, Caltrans managed a complex and administratively burdensome bifurcated contract payment system that provided for the withholding of retention proceeds on projects that did not

include federal funds, and excluded retention proceeds on federally-funded projects. While state-funded projects account for a small percentage of Caltrans projects, SB 593 afforded Caltrans some degree of administrative efficiency and cost savings by eliminating the need to have a two-tiered contract payment system.

In 2014, the Legislature enacted AB 1671 (Huffman), Chapter 290, which extended the retention prohibition sunset from 2014 to January 1, 2020. Caltrans has not reported any compromise of the state's interests as a result of the prohibition against retention, while contractors have benefited greatly. This bill eliminates the sunset and makes permanent the prohibition of Caltrans withholding retention proceeds to its contractors.

According to the author, "This bill will ensure Caltrans has a uniform contract payment system benefiting both contractors and the state in terms of time and cost-savings in contract administration. The prohibition on retention often goes unnoticed, but has an extremely positive impact on small and emerging construction businesses. It allows contractors to retain cash flow and to continue to bid on subsequent construction projects without having to obtain expensive lines of credit or having to operate on uncertain financial footing. This prevents delays in project completion and the resulting unnecessary costs to taxpayers."

Writing in support of this bill, United Contractors states, "Retention can have detrimental impacts on the construction industry. Contractors have a financial obligation close to one hundred cents on the dollar. Such obligations include meeting payroll, paying employee benefits, paying material suppliers and all taxes on the value of the work completed. There are several other more meaningful contract requirements that provide assurances to a public entity over a project to bring it to satisfactory completion."

Previous legislation. AB 1671 (Huffman), Chapter 290, Statutes of 2012, extended the retention prohibition sunset from 2014 to January 1, 2020.

SB 593 (Margett), Chapter 341, Statutes of 2008, prohibited Caltrans from withholding retention proceeds to its contractors when making progress payments for work performed on a public works project until January 1, 2014.

REGISTERED SUPPORT / OPPOSITION:

Support

American Society of Civil Engineers-Region 9
American Subcontractors Association-California
Associated Builders and Contractors Northern California Chapter
Flasher Barricade Association
International Union of Operating Engineers, Cal-Nevada Conference
Union Roofing Contractors Association
United Contractors

Opposition

None received

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