

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 15, 2010
POSITION: Oppose

BILL NUMBER: AB 2216
AUTHOR: F. Fuentes
RELATED BILLS: SB 802

BILL SUMMARY: Works of Improvement

This bill would limit the amount of retention proceeds of public contracts including all contractors and subcontractors thereunder to five percent for progress payments and overall contract amounts. Additionally, this bill would require payment to any non-prime contractor or subcontractor to be made within seven days of receipt of each progress payment.

FISCAL SUMMARY

According to staff at the Department of General Services (DGS), this bill would likely result in significant cost increases to construction projects because private contractors would have less incentive to fulfill their contractual obligations. In turn, the state would be more likely to incur additional construction costs because of the subsequent construction delays associated with rebidding for the unfinished work.

COMMENTS

The Department of Finance opposes this bill because it could potentially generate significant cost increases as well as negatively impact the timely completion of construction projects. By placing a five-percent ceiling on retention proceeds, the state could incur greater costs for construction projects due to the likelihood of contractors not finishing their construction assignments. Additionally, this bill would do the following:

- Limit the retention proceeds withheld from any payment by a public entity from the original contractor, by the original contractor from any subcontractor, or by a subcontractor from any subcontractor thereunder to no more than five percent of any payment and not exceeding five percent of the total contract price.
Require that the percentage of the retention proceeds withheld between the original contractor and a subcontractor or between a subcontractor and any subcontractor thereunder may not exceed the percentage specified in the contract between the public entity and the original contractor.
Specify that these provisions will apply to all contracts entered into on or after January 1, 2011, through January 1, 2015.
Reduces the time required for a prime contractor or subcontractor to pay any subcontractor, to no later than seven days from receipt of each progress payment.
Beginning January 1, 2011, if the 20-day public work preliminary bond notice was not provided, a claimant may enforce the claim by giving written notice to the surety or bond principal, prior to project completion or recorded notice of completion.

A similar bill, SB 802 (M. Leno) was vetoed on October 11, 2009. In the veto message, the Governor stated that the bill would potentially generate significant cost increases as well as negatively impact the timely completion of construction projects. The state would incur greater costs for construction projects due to the likelihood of contractors not finishing their construction assignments because it would cost the contractors less to lose their retention proceeds than it would for them to finish their work. It would potentially delay the completion of construction projects due to the rebidding process.

(Continued)

Analyst/Principal Date Program Budget Manager Date
(0672)N. Brady Karen Finn

Department Deputy Director Date

Governor's Office: By: Date: Position Approved
Position Disapproved

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

F. Fuentes

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AB 2216

COMMENTS (continued)

According to staff from the DGS, current state policy regarding the level of retention proceeds is five to ten percent. The author's office believes that the five to ten percent level of retention proceeds for public contracts diminishes the likelihood of California small businesses being able to fully participate in the next wave of infrastructure projects and public-works developments that were approved by voters in 2006.

By placing a five-percent ceiling on retention proceeds, staff from the DGS assert that the state could incur greater costs for construction projects due to the likelihood of contractors not finishing their construction assignments because, in some cases, it could cost the contractors less to lose their retention proceeds than it would for them to finish their work. According to the DGS, this bill would increase the risks for construction-cost overruns and other costs associated with having to hire replacement contractors. One specific example offered by the DGS dealt with the task of "air balancing" a building's heating, ventilation, and air-conditioning system (HVAC). Air balancing requires a contractor to perform tests of a building's uniformed temperature and appropriate air flow. This task can be very time consuming and it is one of the last duties that a contractor will have to provide in order to finish a new construction project. If the retention proceeds are limited to five-percent of a payment or total contract amount, it would be advantageous for a contractor to forfeit the retention proceeds in favor of avoiding the amount of time that could be necessary to finish this part of a project. In addition, it would potentially delay the completion of construction projects due to the rebidding process.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP							
	RV	98	FC	2010-2011	FC	2011-2012	FC	2012-2013	
1760/Dept Gen Svc	SO	No		-----	See Fiscal Summary	-----			0001