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California Legislative Conference

November 9, 2009.

IN DIFFICULT ECONOMIC TIMES

GOVERNOR SCHWARZENEGGER TERMINATES VITAL CONSTRUCTION LEGISLATION

Contributed by Eddie Bernacchi, Politico Group

SACRAMENTO - The State's financial collapse, cash shortages and overall fiscal ruin have not been exaggerated by the media. The state of California is in the midst of the worst fiscal crisis since the great depression. To be blunt, California's economy is in a state of emergency and its budget problems have eclipsed everything else in the Capitol. In the wake of this crisis, the construction industry has been hit especially hard.

To help offset the economic difficulties facing our contractors the Californian Legislative Conference of the Plumbing, Heating and Piping Industry (CLC) took the lead in sponsoring legislation to reform state laws relating to retention and prompt payment on public works projects. Our "Retention Reform" and "Prompt Pay" bill would cap retention on all public works at 5% and reduces the statutory payment times for progress payments from general contractors to subcontractors from 10 days to 7 days.

Current statute allows an administering agency to retain money from the prime and subcontractors in an amount no less than 5% (*common practice is 10% of the total project cost*) until after the project is complete. The law requires contractors on public works of improvement to post a performance bonds [*Public Contract Code Sections 10224 and 20129 (b)*] to ensure faithful completion of the project. A contractor must qualify for a bond through demonstrated experience and proper capitalization, for which the contractor is ultimately financially liable. Further, the law allows a public agency to hold retention for up to 60 days after completion and withhold an amount up to 150% of the value of disputed work from the final payment [*Public Contract Code Section 7107 (c)*].

Construction contractor's profit margins are typically less than 5% and any retention withheld for approved work above this amount is an unfair withholding of the contractors own money. Many times our contractors are forced to obtain lines of credit to cover 100% of the materials and labor used on a project and most importantly, to continue to bid on additional projects. As the credit market began to dry up in these difficult economic times, it became a top priority to legislatively address the cash flow issues our contractors faced.

We realize that it is very important for contractors to keep close controls on payments and money owed, as well as potential disputes so they can remain viable as employers and job creators. To address these issues the construction industry came together in support of a balanced approach to reduce retention, expedite progress payments and ensure that anyone that provides material and labor to a public works project gets paid for work performed and approved.

The resulting legislation, SB 802 was successfully navigated through the legislative process, but after months of intense work, unparalleled grass roots efforts by our contractors and close to unanimous support of the legislature, we were overwhelmingly disappointed and shocked by Governor Schwarzenegger's veto of the bill. **Continued**

DISCLAIMER

Articles appearing in this publication were obtained from a variety of different sources. Their re-publication is intended to keep CLIC members abreast of developments in labor relations, legislation, business or politics which may have a positive or detrimental effect on their business operations. The views expressed, however, do not signify endorsement by the California Landscape & Irrigation Council. The material is presented merely to give our members a balanced point of view of some of the issues which may affect them.

This administration has again failed our industry in a time of need. After turning its back on the construction industry during the negotiations on raising the state sales tax and not providing our industry its long standing exemption for fixed price contracts, his veto of SB 802 leaves us without much good to say about this administration and the legacy it will leave on our industry. We would like to thank Senator Mark Leno for championing this important cause and the other trade associations for their hard work and support on this issue. The Governor's veto message of SB 802 is below.

SB 802 VETO MESSAGE

To the Members of the California State Senate:

I am returning Senate Bill 802 without my signature.

Under current law, public entities, at a minimum, must retain 5 percent of a payment to a contractor completing a public works project. This bill would restrict the State's ability to retain more than 5 percent of payment and no more than 5 percent of the public work contract price.

When a contractor fails to complete a public works project, the public entity needs recourse to ensure that the project gets completed. Public works contracts have a higher level of risk as public entities usually have to accept the low bidder. Though there are options available to the State to go after a contractor who fails to complete the terms of a public works contract, retaining portions of payment to the contractor provides incentive for the contractor to complete the project. While I am sympathetic with the concerns of subcontractors, the State's responsibility is to protect the taxpayer to make certain that public works projects are completed correctly and within budget; limiting the retention amount hampers the State's ability to do that.

For these reasons, I am returning this bill. - Arnold Schwarzenegger

Eddie Bernacchi is the Legislative Advocate for the California Legislative Conference of the Plumbing, Heating and Piping Industry. The California Legislative Conference of the Plumbing, Heating and Piping Industry (CLC) has been active in legislative advocacy of the California Legislature since the early 1970s. The CLC was founded "...to promote the passage of statewide legislation and the effective administration of that legislation, to enhance and promote the plumbing and piping industry, the construction industry from a labor-management perspective and the public it serves and to oppose statewide legislation contrary to those interests." The mission of CLC is both aggressive and protective. Ron Barrow and Eddie Bernacchi represent the CLC through their governmental relations firm, the Politico Group. Eddie Bernacchi can be reached at Bernacchi@politicogroup.com.

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