

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1223 (Caballero) – As Amended April 18, 2017

SUBJECT: Construction contract payments: Internet Web site posting.

SUMMARY: Requires state and local agencies to post specified information about construction contract payments on their websites within 21 days of making a payment. Specifically, **this bill:**

- 1) Requires state and local agencies to post the following information on their websites, if they maintain one, within 21 days of making a construction contract payment for contracts valued at \$25,000 or more:
 - a) The project for which the payment was made;
 - b) The name of the construction contractor or company paid;
 - c) The date the payment was made;
 - d) The payment application number or other identifying information; and,
 - e) The amount of the payment.
- 2) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

EXISTING LAW:

- 1) Provides for the prompt payment of contractors who perform undisputed work for public agencies.
- 2) Requires a public entity to pay a general contractor within 30 days after receipt of an undisputed payment invoice.
- 3) Directs a general contractor to pay its subcontractors within seven days after receipt of a progress payment.
- 4) Establishes an arbitration-based claims resolution process for payment disputes.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill requires state and local agencies to post specified information on their websites, if they maintain one, within 21 days of making a construction contract payment for contracts valued at \$25,000 or more. The information that must be posted includes:

- a) The project for which the payment was made;
- b) The name of the construction contractor or company paid;
- c) The date the payment was made;
- d) The payment application number or other identifying information; and,
- e) The amount of the payment.

This bill is sponsored by the American Subcontractors Association California, Inc.

- 2) **Author's Statement.** According to the author, "This bill will enable construction subcontractors to verify that public project owners have paid their general contractors for work performed by the subcontractors. This will streamline the payments to subcontractors...It is my due diligence to ensure our California workers are paid in a timely manner, regardless of job sector. I want to promote governmental transparency and accountability, by making such payment information easily accessible to the public."
- 3) **Background.** Most public works projects require a public agency to provide progress payments to its general contractor, which is typically based on stages of completion of the project. Progress payments, in turn, result in required payments to subcontractors who have performed labor or provided materials for the job.

Current law generally requires a general contractor to pay any subcontractor within seven days of receipt of a progress payment. When a general contractor fails to pay the subcontractor on time, current law prescribes various remedies available to the subcontractor to collect payment. For example, provisions in the Business and Professions Code and the Public Contract Code specify that failure to pay a subcontractor in a timely manner subjects the general contractor to a penalty, payable to the subcontractor, of 2% of the amount due per month for every month that payment is not made. In addition, failure of a general contractor to pay subcontractors on time can be cause for disciplinary action by the Contractors' State License Board. The Civil Code also identifies a number of other legal remedies that a subcontractor can rely on when a general contractor fails to make timely payments.

The author's office points to a recent project at Southwestern College in San Diego. According to the author's office, "The General Contractor for the project was paid for November and December billings (\$1,700,000 combined) for Pacific Southwest Structures, Inc. (PSSI) work on February 13, 2017. By law the General Contractor should have paid PSSI no later than February 20, 2017. (However, the) (s)ubcontractor (did not receive) payment until March 6, 2017. Current law allows for the collection of interest for delayed payments when General Contractors have been paid and do not pay the subcontractor within the specified time. By the letter of the law, at 24% interest per annum, that works out to over \$16,000.00 for the project completed by PSSI. It should be noted that all paperwork for this construction project was submitted in a timely manner and in no way delayed the General Contractor from paying the Subcontractor."

According to the sponsor, the California Department of Transportation and the City of San Diego currently post construction contract payment information on their respective websites.

- 4) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Accountability Shift.** This bill imposes a new requirement on state and local agencies for a problem they have not created – general contractors not paying subcontractors on time. The Committee may wish to consider if this is an appropriate shift of accountability from general contractors to public agencies.
 - b) **Will Problem Be Remedied?** It is not clear that general contractors will be motivated by the provisions of this bill to make timely payments to their subcontractors. The Committee may wish to consider if the provisions of this bill will solve the stated problem.
- 5) **Arguments in Support.** The American Subcontractors Association California, Inc., sponsor of this bill, state, "It is very often difficult for subcontractors to enforce their right to be timely paid because they cannot verify when the general contractor has been paid; AB 1223 enables them to timely request their payment...(Other remedies) can incur legal costs, further delay payments, spoil the relationship with the GC, and put the subcontractors farther behind the money curve when they need the cash now to pay employee wages, taxes, union trust funds, insurance, and to purchase materials."
- 6) **Arguments in Opposition.** The Association of California Healthcare Districts, Association of California School Administrators, California School Boards Association, California Special Districts Association, California State Association of Counties, League of California Cities, and Urban Counties of California, in opposition, write, "AB 1223...would require hundreds of postings over the course of several months or years in some instances depending on the size and scope of the project. Unfortunately, AB 1223 confuses the relationship between a public agency and their contractor's subcontractor while draining resources from those agencies. This measure puts a local agency on the hook despite that they have met their contractual obligation and duty to pay with no benefit to that agency."
- 7) **Double-Referral.** This bill was heard in the Assembly Accountability and Administrative Review Committee, where it passed on April 5, 2017, with a 6-1 vote.

REGISTERED SUPPORT / OPPOSITION:**Support**

American Subcontractors Association California, Inc. [SPONSOR]
Air Conditioning Sheet Metal Association
Air-conditioning & Refrigeration Contractors Association
American Fire Sprinkler Association
California Legislative Conference of the Plumbing, Heating and Piping Industry
Finishing Contractors Association of Southern California
Independent Roofing Contractors of California, Inc.
National Electrical Contractors Association
Northern California Allied Trades
Plumbing-Heating-Cooling Contractors Association of California
Union Roofing Contractors Association
Wall and Ceiling Alliance
Western Electrical Contractors Association
Seven individual supporters

Opposition

Association of California Healthcare Districts
Association of California School Administrators
California School Boards Association
California Special Districts Association
California State Association of Counties
League of California Cities
Urban Counties of California

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958