

ASSEMBLY BILL

No. 993

Introduced by Assembly Member Linder

February 22, 2013

An act to amend Section 7085.5 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 993, as introduced, Linder. Contractors: arbitration.

The Contractors' State License Law provides for licensing and regulation of contractors by the Contractors' State License Board. Existing law establishes an arbitration process administered by the board to resolve disputes between contractors and consumers. Existing law authorizes an arbitrator to grant any remedy or relief deemed just and equitable and within the scope of the board's referral to the arbitrator and the requirements of the board, including costs and expenses.

This bill would prohibit the arbitrator from awarding specific performance of any project, and from making a determination relative to any remedy not expressly authorized under these provisions, including attorney's fees, monetary damages for personal injury, and punitive damages.

Existing law requires the board or appointed arbitration association to provide the parties with a list of the times, dates, and locations of the hearing to be held, and requires the parties to notify the arbitrator of the convenient times and dates. A record is not required to be taken of the proceedings.

This bill would delete the requirement to notify the arbitrator of the convenient times and dates of the hearing. The bill would require a

party making a recording of a hearing to supply the recording to the arbitrator at the party’s expense.

Existing law authorizes the hearing to be reopened on the arbitrator’s own motion, and provides that service of any papers or process in connection with these proceedings shall be by personal service or by regular mail on a party at the last known address.

This bill would authorize the hearing to be reopened on the arbitrator’s motion prior to the rendering of an award, and would provide that service by first class mail is complete upon deposit into specified mail receptacles.

Existing law requires the registrar of contractors to advise the parties that names of industry experts may be obtained by requesting this information from the registrar.

This bill would delete this requirement.

The bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7085.5 of the Business and Professions
2 Code is amended to read:

3 7085.5. Arbitrations of disputes arising out of cases filed with
4 or by the board shall be conducted in accordance with the following
5 rules:

6 (a) All “agreements to arbitrate” shall include the names,
7 addresses, and telephone numbers of the parties to the dispute, the
8 issue in dispute, and the amount ~~in dollars or any other remedy of~~
9 *monetary damages* sought. *Except for the release of a mechanics*
10 *lien or the return of tools or materials, monetary damages are the*
11 *only remedy available pursuant to this article. The arbitrator shall*
12 *not order or provide for the specific performance of any project,*
13 *including, but not limited to, the completion of work, repairs, or*
14 *corrections. The appropriate fee for arbitration services shall be*
15 *paid to the appointed arbitration association by the board from*
16 *the Contractors’ License Fund.*

17 (b) (1) The board or appointed arbitration association shall
18 appoint an arbitrator in the following manner: immediately after
19 the filing of the agreement to arbitrate, the board or appointed
20 arbitration association shall submit simultaneously to each party

1 to the dispute, an identical list of names of persons chosen from
2 the panel. Each party to the dispute shall have seven days from
3 the mailing date in which to cross off any names to which it objects,
4 number the remaining names to indicate the order of preference,
5 and return the list to the board or appointed arbitration association.
6 If a party does not return the list within the time specified, all
7 persons named in the list are acceptable. From among the persons
8 who have been approved on both lists, and in accordance with the
9 designated order of mutual preference, the board or appointed
10 arbitration association shall appoint an arbitrator to serve. If the
11 parties fail to agree on any of the parties named, if acceptable
12 arbitrators are unable to act, or if, for any other reason, the
13 appointment cannot be made from the submitted lists, the board
14 or appointed arbitration association shall have the power to make
15 the appointment from among other members of the panel without
16 the submission of any additional lists. Each dispute shall be heard
17 and determined by one arbitrator unless the board or appointed
18 arbitration association, in its discretion, directs that a greater
19 number of arbitrators be appointed.

20 (2) In all cases in which a complaint has been referred to
21 arbitration pursuant to subdivision (b) of Section 7085, the board
22 or the appointed arbitration association shall have the power to
23 appoint an arbitrator to hear the matter.

24 (3) The board shall adopt regulations setting minimum
25 qualification standards for listed arbitrators based upon relevant
26 training, experience, and performance.

27 (c) ~~No~~A person shall *not* serve as an arbitrator in any arbitration
28 in which that person has any financial or personal interest in the
29 result of the arbitration. Prior to accepting an appointment, the
30 prospective arbitrator shall disclose *to the appointed arbitration*
31 *association* any circumstances likely to prevent a prompt hearing
32 or to create a presumption of bias. Upon receipt of that information,
33 the board or appointed arbitration association shall immediately
34 replace the arbitrator or communicate the information to the parties
35 for their comments. Thereafter, the board or appointed arbitration
36 association shall determine whether the arbitrator should be
37 disqualified and shall inform the parties of its decision, which shall
38 be conclusive.

1 (d) The board or appointed arbitration association may appoint
2 another arbitrator if a vacancy occurs, or if an appointed arbitrator
3 is unable to serve in a timely manner.

4 (e) (1) The board or appointed arbitration association shall
5 provide the parties with a list of the times and, dates, and locations
6 of the hearing to be held. ~~The parties shall notify the arbitrator,~~
7 ~~within seven calendar days of the mailing of the list, of the times~~
8 ~~and dates convenient to each party. If the parties fail to respond~~
9 ~~to the arbitrator within the seven-day period, the arbitrator shall~~
10 ~~fix the time, place, and location of the hearing.~~ An arbitrator may,
11 at the arbitrator's sole discretion, make an inspection of the
12 construction site which is the subject of the arbitration. The
13 arbitrator shall notify the parties of the time and date set for the
14 inspection. Any party who so desires may be present at the
15 inspection.

16 (2) The board or appointed arbitration association shall fix the
17 time, ~~place~~ *date*, and location of the hearing for all cases referred
18 to arbitration pursuant to subdivision (b) of Section 7085. An
19 arbitrator may, at the arbitrator's sole discretion, make an
20 inspection of the construction site ~~which~~ *that* is the subject of the
21 arbitration. The arbitrator shall notify the parties of the time and
22 date set for the inspection. Any party who desires may be present
23 at the inspection.

24 (f) ~~Any~~ *A* person having a direct interest in the arbitration is
25 entitled to attend the hearing. The arbitrator shall otherwise have
26 the power to require the exclusion of any witness, other than a
27 party or other essential person, during the testimony of any other
28 witness. ~~It shall be discretionary with~~ *is in the discretion of* the
29 arbitrator to determine the propriety of the attendance of any other
30 person.

31 (g) ~~Hearings~~ *A hearing* shall be adjourned by the arbitrator ~~only~~
32 for good cause.

33 (h) A record is not required to be taken of the proceedings.
34 However, any party to the proceeding may have a record made at
35 its own expense. *A party making a recording of a hearing shall*
36 *supply the recording to the arbitrator at the party's own expense.*
37 The parties may make appropriate notes of the proceedings.

38 (i) The hearing shall be conducted by the arbitrator in any
39 manner ~~which~~ *that* will permit full and expeditious presentation
40 of the case by both parties. Consistent with the expedited nature

1 of arbitration, the arbitrator shall establish the extent of, and
2 schedule for, the production of relevant documents and other
3 information, the identification of any witnesses to be called, and
4 a schedule for any hearings to elicit facts solely within the
5 knowledge of one party. The complaining party shall present its
6 claims, proofs, and witnesses, who shall submit to questions or
7 other examination. The defending party shall then present its
8 defenses, proofs, and witnesses, who shall submit to questions or
9 other examination. The arbitrator has discretion to vary this
10 procedure, but shall afford full and equal opportunity to the parties
11 for the presentation of any material or relevant proofs.

12 (j) The arbitration may proceed in the absence of any party who,
13 after due notice, fails to be present. The arbitrator shall require the
14 attending party to submit supporting evidence in order to make an
15 award. An award for the attending party shall not be based solely
16 on the fact that the other party has failed to appear at the arbitration
17 hearing.

18 (k) The arbitrator shall be the sole judge of the relevancy and
19 materiality of the evidence offered, and conformity to legal rules
20 of evidence shall not be required.

21 (l) The arbitrator may receive and consider documentary
22 evidence. Documents to be considered by the arbitrator may be
23 submitted prior to the hearing. However, a copy shall be
24 simultaneously transmitted to all other parties and to the board or
25 appointed arbitration association for transmittal to the arbitrator
26 or board appointed arbitrator.

27 (m) The arbitrator shall specifically inquire of the parties
28 whether they have any further proofs to offer or witnesses to be
29 heard. Upon receiving negative replies, the arbitrator shall declare
30 the hearing closed and minutes thereof shall be recorded. If briefs
31 are to be filed, the hearing shall be declared closed as of the final
32 date set by the arbitrator for the receipt of briefs. If documents are
33 to be filed as requested by the arbitrator and the date set for their
34 receipt is later than that set for the receipt of briefs, the later date
35 shall be the date of closing the ~~hearings~~ *hearing*. The time limit
36 within which the arbitrator is required to make the award shall
37 commence to run, in the absence of other agreements by the parties,
38 upon the closing of the ~~hearings~~ *hearing*.

39 (n) The hearing may be reopened on the arbitrator's own motion
40 *prior to the rendering of an award.*

1 (o) ~~Any~~A party who proceeds with the arbitration after
2 knowledge that any provision or requirement of these rules has
3 not been complied with, and who fails to state his or her objections
4 to the arbitrator in writing, within 10 calendar days of close of *the*
5 hearing, shall be deemed to have waived his or her right to object.

6 (p) (1) Except as provided in paragraph (2), any papers or
7 process necessary or proper for the initiation or continuation of an
8 arbitration under these rules, and for any court action in connection
9 therewith, or for the entry of judgment on an award made
10 thereunder, may be served upon ~~any party (A)~~ *by regular a party*
11 *by first-class* mail addressed to that party or his or her attorney at
12 the party's last known address, or ~~(B)~~ by personal service. *Service*
13 *by first-class mail is complete upon deposit in a post office,*
14 *mailbox, subpost office, substation, or mail chute, or other like*
15 *facility regularly maintained by the United States Postal Service*
16 *in a sealed addressed envelope, with postage paid.*

17 (2) Notwithstanding paragraph (1), in all cases referred to
18 arbitration pursuant to subdivision (b) of Section 7085 in which
19 the contractor fails or refuses to return an executed copy of the
20 notice to arbitrate within the time specified, any papers or process
21 specified in paragraph (1) to be sent to the contractor, including
22 the notice of hearing, shall be mailed by certified mail to the
23 contractor's address of record.

24 (q) The award shall be made promptly by the arbitrator, ~~and~~
25 ~~unless.~~ *Unless otherwise agreed by the parties, the award shall be*
26 *made no later than 30 calendar days from the date of closing the*
27 *hearing, from closing a reopened hearing, or if oral hearing has*
28 *been waived, from the date of transmitting the final statements*
29 *and proofs to the arbitrator.*

30 The arbitrator may for good cause extend any period of time
31 established by these rules, except the time for making the award.
32 The arbitrator shall notify the parties of any extension and the
33 reason therefor.

34 (r) (1) The arbitrator may grant any remedy or relief *authorized*
35 *pursuant to this section* that the arbitrator deems just and equitable
36 ~~and, and that is~~ within the scope of the board's referral and the
37 requirements of the board. The arbitrator, in his or her sole
38 discretion, may award costs or expenses, *but shall not award*
39 *specific performance of any project or make a determination*
40 *relative to any remedy not expressly authorized under this article,*

1 *including, but not limited to, attorney’s fees, monetary damages*
2 *for personal injury, and punitive damages.*

3 (2) ~~The amendments made in paragraph (1) during the 2003–04~~
4 ~~Regular Session shall not be interpreted to prevent an arbitrator~~
5 ~~from awarding a complainant~~ *An arbitrator may award all direct*
6 *costs and expenses for the completion or repair of the project.*

7 (s) (1) The award shall become final 30 calendar days from the
8 date the arbitration award is issued, *notwithstanding the actual*
9 *date either party receives the award.* The arbitrator, upon written
10 application of a party to the arbitration, may correct the award
11 upon the following grounds:

12 (1)

13 (A) There was an evident miscalculation of figures or an evident
14 mistake in the description of any person, things, or property
15 referred to in the award.

16 (2)

17 (B) There is any other clerical error in the award, not affecting
18 the merits of the controversy.

19 ~~An~~

20 (2) *An* application for correction of the award shall be made
21 within 10 calendar days of the date of service of the award by
22 serving a copy of the application on the arbitrator, and all other
23 parties to the arbitration. ~~Any~~ *A* party to the arbitration may make
24 a written objection to the application for correction by serving a
25 copy of the written objection on the arbitrator, the board, and all
26 other parties to the arbitration, within 10 calendar days of the date
27 of service of the application for correction.

28 ~~The~~

29 (3) *The* arbitrator shall either deny the application or correct the
30 award within 30 calendar days of the date of service of the original
31 award by mailing a copy of the denial or correction to all parties
32 to the arbitration. Any appeal from the denial or correction shall
33 be filed with a court of competent jurisdiction and a true copy
34 thereof shall be filed with the ~~arbitrator or~~ appointed arbitration
35 association within 30 calendar days after the award has become
36 final. The award shall be in writing, and shall be signed by the
37 arbitrator or a majority of them. If no ~~appeal~~ *request for correction*
38 is filed within the 30-calendar day period, it shall become a final
39 order of the registrar.

1 (t) Service of the award by certified mail shall be effective if a
 2 certified letter containing the award, or a true copy thereof, is
 3 mailed by the ~~arbitrator or~~ arbitration association to each party or
 4 to a party's attorney of record at their last known address, address
 5 of record, or by personally serving any party. ~~Service may be~~
 6 ~~proved in the manner authorized in civil actions.~~ *Service by*
 7 *certified mail is complete upon deposit in a post office, mailbox,*
 8 *subpost office, substation, or mail chute, or other like facility*
 9 *regularly maintained by the United States Postal Service in a*
 10 *sealed addressed envelope, with postage paid.*

11 (u) (1) The board shall pay the expenses of one expert witness
 12 appointed by the board ~~when the~~ *if both of the following apply:*

13 (A) *The services of an expert witness are requested by either*
 14 *party involved in arbitration pursuant to this ~~article and the~~ article.*

15 (B) *The case involves workmanship issues that are itemized in*
 16 *the complaint and have not been repaired or replaced. ~~Parties who~~*
 17 *choose*

18 (2) *A party that chooses to present the findings of another expert*
 19 *witness as evidence shall pay for those services. Payment for expert*
 20 *witnesses appointed by the board shall be limited to the expert*
 21 *witness costs for inspection of the problem at the construction site,*
 22 *preparation of the expert witness' report, and expert witness fees*
 23 *for appearing or testifying at a hearing. All requests for payment*
 24 *to an expert witness shall be submitted on a form that has been*
 25 *approved by the registrar. All requests for payment to an expert*
 26 *witness shall be reviewed and approved by the board prior to*
 27 *payment. ~~The registrar shall advise the parties that names of~~*
 28 *industry experts may be obtained by requesting this information*
 29 *from the registrar.*

30 (v) The arbitrator shall interpret and apply these rules insofar
 31 as they relate to his or her powers and duties.

32 (w) The following shall apply as to court procedure and
 33 exclusion of liability:

34 (1) The board, the appointed arbitration association, or any
 35 arbitrator in a proceeding under these rules is not a necessary party
 36 in judicial proceedings relating to the arbitration.

37 (2) Parties to these rules shall be deemed to have consented that
 38 judgment upon the arbitration award may be entered in any federal
 39 or state court having jurisdiction thereof.

1 (3) The board, the appointed arbitration association, or any
2 arbitrator is not liable to any party for any act or omission in
3 connection with any arbitration conducted under these rules.

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