

ASSEMBLY BILL

No. 1347

**Introduced by Assembly Member Chiu
(Coauthor: Assembly Member Frazier)**

February 27, 2015

An act to add Section 9204 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1347, as introduced, Chiu. Public contracts: claims.

(1) Existing law prescribes various requirements regarding the formation, content, and enforcement of state and local public contracts. Existing law applicable to state public contracts generally requires that the resolution of claims related to those contracts be subject to arbitration. Existing law applicable to local agency contracts prescribes a process for the resolution of claims related to those contracts of \$375,000 or less.

This bill would establish, for contracts entered into on or after January 1, 2016, a claim resolution process applicable to all public entity contracts. The bill would define a claim as a contractor's written demand or assertion, including a request for a modification, contract amendment, or change order, seeking an adjustment or interpretation of the terms of the contract documents, payment of money, extension of time, or other relief, including a determination of disputes or matters arising out of, or related to, the contract documents or the performance of work on a public work.

The bill would require a public entity, upon receipt of a claim sent by registered mail, to review it and, within 30 days, provide a written statement addressing what parts of the claim are disputed and what parts

are undisputed. The bill would require any payment due on an undisputed portion of the claim to be processed within 7 days, as specified. The bill would provide an alternative procedure if the public entity fails to issue the written statement and would require that the claim be deemed approved in its entirety. The bill would require disputed parts of the claim to be subject to nonbinding mediation. The bill would provide that unpaid claim amounts accrue interest at a statutorily prescribed rate. The bill would proscribe a procedure by which a subcontractor or lower tier contractor may make a claim through the contractor. The bill would require that the text of these provisions or a summary of them to be set forth in the plans or specifications for any public work which may give rise to a claim. The bill would except these provisions from laws relating to false claims. The bill would specify that a waiver of the rights granted by its provisions is void and contrary to public policy. By increasing the duties of local agencies and officials, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 9204 is added to the Public Contract
 2 Code, to read:
 3 9204. (a) The Legislature finds and declares that it is in the
 4 best interests of the state and its citizens to ensure that all
 5 construction business performed on public works in the state that
 6 is complete and not in dispute is paid in full and in a timely manner.
 7 (b) Notwithstanding any other law, including, but not limited
 8 to, Article 7.1 (commencing with Section 10240) of Chapter 1 of
 9 Part 2, Chapter 10 (commencing with Section 19100) of Part 2,
 10 and Article 1.5 (commencing with Section 20104) of Chapter 1 of
 11 Part 3, this section shall apply to all claims by contractors in
 12 connection with public works.

1 (c) For purposes of this section:

2 (1) “Claim” means a written demand or assertion by a contractor,
3 including a request for a modification, contract amendment, or
4 change order, seeking an adjustment or interpretation of the terms
5 of the contract documents, payment of money, extension of time,
6 or other relief, including a determination of disputes or matters
7 arising out of, or related to, the contract documents or the
8 performance of work on a public work.

9 (2) “Contractor” means any type of contractor within the
10 meaning of Chapter 9 (commencing with Section 7000) of Division
11 3 of the Business and Professions Code who has entered into a
12 direct contract with a public entity for public works.

13 (3) “Public entity” means, without limitation, a state agency,
14 department, office, division, bureau, board, or commission, the
15 California State University, the University of California, a city,
16 including a charter city, county, including a charter county, city
17 and county, including a charter city and county, district, special
18 district, public authority, political subdivision, public corporation,
19 or nonprofit transit corporation wholly owned by a public agency
20 and formed to carry out the purposes of the public agency.

21 (4) “Public works” has the meaning provided in Section 1720
22 of the Labor Code.

23 (5) “Subcontractor” means any type of contractor within the
24 meaning of Chapter 9 (commencing with Section 7000) of Division
25 3 of the Business and Professions Code who either is in direct
26 contract with a contractor or is a lower tier subcontractor.

27 (d) (1) Upon receipt of a claim sent by registered mail, the
28 public entity to which the claim applies shall conduct a reasonable
29 review of the claim and, within a period not to exceed 30 days,
30 shall provide the claimant a written statement identifying what
31 portion of the claim is disputed and what portion is undisputed.
32 Any payment due on an undisputed portion of the claim shall be
33 processed and made within seven days after the public entity issues
34 its written statement. If the public entity fails to issue a written
35 statement, paragraph (3) shall apply.

36 (2) Any disputed portion of the claim, as identified in writing,
37 shall be submitted to nonbinding mediation. The public entity and
38 contractor shall mutually agree to a mediator within 10 days after
39 the disputed portion of the claim has been identified in writing. If
40 the parties cannot agree upon a mediator, each party shall select a

1 mediator and those mediators shall select a qualified neutral third
2 party to mediate with regard to the disputed portion of the claim.
3 If either of the parties reject the mediator’s decision regarding all
4 or part of the disputed portion of the claim, the parts of the claim
5 remaining in dispute shall be subject to applicable procedures
6 outside this section.

7 (3) Failure by the public entity to respond to a claim from a
8 contractor within the 30-day period described in paragraph (1)
9 shall result in the claim being deemed approved in its entirety,
10 with the claim to be processed and paid within seven days from
11 the expiration of the 30-day period in paragraph (1) or as mutually
12 extended by the parties.

13 (4) Amounts not paid in a timely manner as required by this
14 section shall bear interest at the legal rate prescribed by subdivision
15 (a) of Section 685.010 of the Code of Civil Procedure.

16 (5) If a subcontractor or a lower tier subcontractor lacks legal
17 standings to assert a claim against a public entity because privity
18 of contract does not exist, the contractor may present to the public
19 entity a claim on behalf of a subcontractor or lower tier
20 subcontractor. A subcontractor may request in writing, either on
21 his or her own behalf or on behalf of a lower tier subcontractor,
22 that the contractor present a claim for work which was performed
23 by the subcontractor or by a lower tier subcontractor on behalf of
24 the subcontractor. The subcontractor requesting that the claim be
25 presented to the public entity shall furnish reasonable
26 documentation to support the claim. Within 45 days of receipt of
27 this written request, the contractor shall notify the subcontractor
28 in writing as to whether the contractor presented the claim to the
29 public entity and, if the original contractor did not present the
30 claim, provide the subcontractor with a statement of the reasons
31 for not having done so.

32 (e) The provisions of the California False Claims Act (Article
33 9 (commencing with Section 12650) of Chapter 6 or Part 2 of
34 Division 3 of Title 2 of Government Code) shall not apply to claims
35 made under this section.

36 (f) The text of this section or a summary of it shall be set forth
37 in the plans or specifications for any public works that may give
38 rise to a claim under this section.

39 (g) A waiver of the rights granted by this section is void and
40 contrary to public policy.

1 (h) This section applies to contracts entered into on or after
2 January 1, 2016.

3 SEC. 2. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

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