

AMENDED IN SENATE JULY 6, 2015  
AMENDED IN ASSEMBLY JUNE 1, 2015  
AMENDED IN ASSEMBLY APRIL 21, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1347**

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**Introduced by Assembly Member Chiu**  
**(Coauthor: Assembly Member Frazier)**  
(Coauthors: Senators *Anderson*, *Cannella* and, *Gaines*, *Galgiani*, and  
*Hertzberg*)

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1347, as amended, 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 claims by contractors in connection with public works. The bill would define a claim as a separate demand by the contractor for one or more of: a time extension for relief from damages or penalties for delay, payment of money or damages arising from work done pursuant to the contract for a public

work, or payment of an amount disputed by the public entity, as specified.

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.~~ *identifying the disputed and undisputed portions of the claim.* The bill would require any payment due on an undisputed portion of the claim to be processed within 30 days, as specified. The bill, if the public entity fails to issue the written statement, would require that the claim be deemed rejected in its entirety. The bill would authorize, if the claimant disputes the public entity’s written response or if the public entity fails to respond to a claim within the time prescribed, the claimant to demand to meet and confer for settlement of the issues in dispute. The bill would require any disputed portion of the claim that remains in dispute after the meet and confer conference to be subject to nonbinding mediation, as specified. The bill would provide that unpaid claim amounts accrue interest at 7% per annum. The bill would prescribe a procedure by which a subcontractor or lower tier contractor may make a claim through the contractor. The bill would require 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 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:

1 9204. (a) The Legislature finds and declares that it is in the  
2 best interests of the state and its citizens to ensure that all  
3 construction business performed on public works in the state that  
4 is complete and not in dispute is paid in full and in a timely manner.

5 (b) Notwithstanding any other law, including, but not limited  
6 to, Article 7.1 (commencing with Section 10240) of Chapter 1 of  
7 Part 2, Chapter 10 (commencing with Section 19100) of Part 2,  
8 and Article 1.5 (commencing with Section 20104) of Chapter 1 of  
9 Part 3, this section shall apply to all claims by contractors in  
10 connection with public works.

11 (c) For purposes of this section:

12 (1) "Claim" means a separate demand by the contractor for one  
13 or more of the following:

14 (A) A time extension, including, without limitation, for relief  
15 from damages or penalties for delay.

16 (B) Payment of money or damages arising from work done by,  
17 or on behalf of, the contractor pursuant to the contract for a public  
18 work and payment for which is not otherwise expressly provided  
19 or to which the claimant is not otherwise entitled.

20 (C) Payment of an amount that is disputed by the public entity.

21 (2) "Contractor" means any type of contractor within the  
22 meaning of Chapter 9 (commencing with Section 7000) of Division  
23 3 of the Business and Professions Code who has entered into a  
24 direct contract with a public entity for public works.

25 (3) "Public entity" means, without limitation, a state agency,  
26 department, office, division, bureau, board, or commission, the  
27 California State University, the University of California, a city,  
28 including a charter city, county, including a charter county, city  
29 and county, including a charter city and county, district, special  
30 district, public authority, political subdivision, public corporation,  
31 or nonprofit transit corporation wholly owned by a public agency  
32 and formed to carry out the purposes of the public agency.

33 (4) "Public work" means ~~"public works contract" as defined in~~  
34 ~~Section 1101:~~ *the erection, construction, alteration, repair, or*  
35 *improvement of any public structure, building, road, or other*  
36 *public improvement of any kind.*

37 (5) "Subcontractor" means any type of contractor within the  
38 meaning of Chapter 9 (commencing with Section 7000) of Division  
39 3 of the Business and Professions Code who either is in direct  
40 contract with a contractor or is a lower tier subcontractor.

1 (d) (1) (A) Upon receipt of a claim sent by registered mail, the  
2 public entity to which the claim applies shall conduct a reasonable  
3 review of the claim and, within a period not to exceed 30 days,  
4 shall provide the claimant a written statement identifying what  
5 portion of the claim is disputed and what portion is undisputed.

6 (B) The claimant shall furnish reasonable documentation to  
7 support the claim.

8 (C) If the public entity needs approval from its governing body  
9 to provide the claimant a written statement identifying the disputed  
10 portion and the undisputed portion of the claim, and the governing  
11 body does not meet within the 30 days following receipt of a claim  
12 sent by registered mail, the public agency shall have up to three  
13 days following the next duly publicly noticed meeting of the  
14 governing body to provide the claimant a written statement  
15 identifying the disputed portion and the undisputed portion.

16 (D) Any payment due on an undisputed portion of the claim  
17 shall be processed and made within 30 days after the public entity  
18 issues its written statement. If the public entity fails to issue a  
19 written statement, paragraph (3) shall apply.

20 (2) (A) If the claimant disputes the public entity’s written  
21 response, or if the public entity fails to respond to a claim issued  
22 pursuant to this section within the time prescribed, the claimant  
23 may demand in writing an informal conference to meet and confer  
24 for settlement of the issues in dispute. Upon receipt of a demand  
25 in writing sent by registered mail, the public entity shall schedule  
26 a meet and confer conference within 30 days for settlement of the  
27 dispute.

28 (B) Within five days following the conclusion of the meet and  
29 confer conference, if the claim or any portion of the claim remains  
30 in dispute, the public entity shall provide the claimant a written  
31 statement identifying the portion of the claim that remains in  
32 dispute and the portion that is undisputed. Any payment due on  
33 an undisputed portion of the claim shall be processed and made  
34 within 30 days after the public entity issues its written statement.  
35 Any disputed portion of the claim, as identified in writing, shall  
36 be submitted to nonbinding mediation, with the public entity and  
37 the claimant sharing the associated costs equally. The public entity  
38 and claimant shall mutually agree to a mediator within 10 days  
39 after the disputed portion of the claim has been identified in  
40 writing. If the parties cannot agree upon a mediator, each party

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

7 (C) For purposes of this section, mediation includes any  
8 nonbinding process, such as neutral evaluation or a dispute review  
9 board, in which an independent third party or board assists the  
10 parties in dispute resolution through negotiation or by issuance of  
11 an evaluation. Any mediation utilized must conform to the ~~time~~  
12 ~~frames~~ *timeframes* in this section.

13 (D) The mediation conducted pursuant to this section shall  
14 excuse any further obligation under Section 20104.4 to mediate  
15 (meet and confer) after litigation has been commenced.

16 (E) This section does not preclude an agency from requiring  
17 arbitration of disputes under private arbitration or the Public Works  
18 Contract Arbitration Program, if mediation does not resolve the  
19 parties' dispute.

20 (3) Failure by the public entity to respond to a claim from a  
21 contractor within the time period described in this subdivision  
22 shall result in the claim being deemed rejected in its entirety.

23 (4) Amounts not paid in a timely manner as required by this  
24 section shall bear interest at 7 percent per annum.

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

1 (e) The text of this section or a summary of it shall be set forth  
2 in the plans or specifications for any public works that may give  
3 rise to a claim under this section.

4 (f) A waiver of the rights granted by this section is void and  
5 contrary to public policy.

6 (g) This section applies to contracts entered into on or after  
7 January 1, 2016.

8 SEC. 2. If the Commission on State Mandates determines that  
9 this act contains costs mandated by the state, reimbursement to  
10 local agencies and school districts for those costs shall be made  
11 pursuant to Part 7 (commencing with Section 17500) of Division  
12 4 of Title 2 of the Government Code.

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