

AMENDED IN SENATE AUGUST 17, 2015

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, 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 *or certified* mail, to review it and, within ~~30~~ 45 days, provide a written statement identifying the disputed and undisputed portions of the claim. *The 45-day period may be extended by mutual agreement.* The bill would require any payment due on an undisputed portion of the claim to be processed within ~~30~~ 60 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.~~ *policy, except as specified. The bill would also specify that it does not impose liability on a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.* 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.

13 (c) For purposes of this section:

14 (1) "Claim" means a separate demand by the contractor *sent by*  
15 *registered mail or certified mail with return receipt requested*, for  
16 one or more of the following:

17 (A) A time extension, including, without limitation, for relief  
18 from damages or penalties for ~~delay~~. *delay assessed by a public*  
19 *entity under a public works contract*.

20 (B) Payment *by the public entity* of money or damages arising  
21 from work done by, or on behalf of, the contractor pursuant to the  
22 contract for a public work and payment for which is not otherwise  
23 expressly provided or to which the claimant is not otherwise  
24 entitled.

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

26 (2) "Contractor" means any type of contractor within the  
27 meaning of Chapter 9 (commencing with Section 7000) of Division  
28 3 of the Business and Professions Code who has entered into a  
29 direct contract with a public entity for public works.

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

1 (4) “Public work” means the erection, construction, alteration,  
2 repair, or improvement of any public structure, building, road, or  
3 other public improvement of any kind.

4 (5) “Subcontractor” means any type of contractor within the  
5 meaning of Chapter 9 (commencing with Section 7000) of Division  
6 3 of the Business and Professions Code who either is in direct  
7 contract with a contractor or is a lower tier subcontractor.

8 (d) (1) (A) Upon receipt of a claim ~~sent by registered mail,~~  
9 *pursuant to this section*, the public entity to which the claim applies  
10 shall conduct a reasonable review of the claim and, within a period  
11 not to exceed ~~30~~ 45 days, shall provide the claimant a written  
12 statement identifying what portion of the claim is disputed and  
13 what portion is undisputed. *Upon receipt of a claim, a public entity*  
14 *and a contractor may, by mutual agreement, extend the time period*  
15 *provided in this subdivision.*

16 (B) The claimant shall furnish reasonable documentation to  
17 support the claim.

18 (C) If the public entity needs approval from its governing body  
19 to provide the claimant a written statement identifying the disputed  
20 portion and the undisputed portion of the claim, and the governing  
21 body does not meet within the ~~30~~ 45 days *or within the mutually*  
22 *agreed to extension of time* following receipt of a claim sent by  
23 ~~registered mail, mail or certified mail, return receipt requested,~~  
24 the public ~~agency~~ entity shall have up to three days following the  
25 next duly publicly noticed meeting of the governing body *after*  
26 *the 45-day period, or extension, expires* to provide the claimant a  
27 written statement identifying the disputed portion and the  
28 undisputed portion.

29 (D) Any payment due on an undisputed portion of the claim  
30 shall be processed and made within ~~30~~ 60 days after the public  
31 entity issues its written statement. If the public entity fails to issue  
32 a written statement, paragraph (3) shall apply.

33 (2) (A) If the claimant disputes the public entity’s written  
34 response, or if the public entity fails to respond to a claim issued  
35 pursuant to this section within the time prescribed, the claimant  
36 may demand in writing an informal conference to meet and confer  
37 for settlement of the issues in dispute. Upon receipt of a demand  
38 in writing sent by ~~registered mail, mail or certified mail, return~~  
39 *receipt requested*, the public entity shall schedule a meet and confer  
40 conference within 30 days for settlement of the dispute.

1 (B) Within ~~five~~ *10 business* days following the conclusion of  
2 the meet and confer conference, if the claim or any portion of the  
3 claim remains in dispute, the public entity shall provide the  
4 claimant a written statement identifying the portion of the claim  
5 that remains in dispute and the portion that is undisputed. Any  
6 payment due on an undisputed portion of the claim shall be  
7 processed and made within ~~30~~ *60* days after the public entity issues  
8 its written statement. Any disputed portion of the claim, as  
9 identified *by the contractor* in writing, shall be submitted to  
10 nonbinding mediation, with the public entity and the claimant  
11 sharing the associated costs equally. The public entity and claimant  
12 shall mutually agree to a mediator within *10 business* days after  
13 the disputed portion of the claim has been identified in writing. If  
14 the parties cannot agree upon a mediator, each party shall select a  
15 mediator and those mediators shall select a qualified neutral third  
16 party to mediate with regard to the disputed portion of the claim.  
17 ~~If either of the parties rejects the mediator's decision regarding all~~  
18 ~~or part of the disputed portion of the claim,~~ *Each party shall bear*  
19 *the fees and costs charged by its respective mediator in connection*  
20 *with the selection of the neutral mediator. If mediation is*  
21 *unsuccessful,* the parts of the claim remaining in dispute shall be  
22 subject to applicable procedures outside this section.

23 (C) For purposes of this section, mediation includes any  
24 nonbinding process, such as neutral evaluation or a dispute review  
25 board, in which an independent third party or board assists the  
26 parties in dispute resolution through negotiation or by issuance of  
27 an evaluation. Any mediation utilized ~~must~~ *shall* conform to the  
28 timeframes in this section.

29 (D) ~~The~~ *Unless otherwise agreed to by the public entity and the*  
30 *contractor in writing, the* mediation conducted pursuant to this  
31 section shall excuse any further obligation under Section 20104.4  
32 to mediate ~~(meet and confer)~~ after litigation has been commenced.

33 (E) This section does not preclude ~~an agency~~ *a public entity*  
34 from requiring arbitration of disputes under private arbitration or  
35 the Public Works Contract Arbitration Program, if mediation *under*  
36 *this section* does not resolve the parties' dispute.

37 (3) Failure by the public entity to respond to a claim from a  
38 contractor within the time ~~period~~ *periods* described in this  
39 subdivision *or to otherwise meet the time requirements of this*  
40 *section* shall result in the claim being deemed rejected in its

1 entirety. *A claim that is denied by reason of the public entity's*  
2 *failure to have responded to a claim, or its failure to otherwise*  
3 *meet the time requirements of this section, shall not constitute an*  
4 *adverse finding with regard to the merits of the claim or the*  
5 *responsibility or qualifications of the claimant.*

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

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

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

27 (f) A waiver of the rights granted by this section is void and  
28 contrary to public ~~policy~~: *policy, provided, however, that (1) upon*  
29 *receipt of a claim, the parties may mutually agree to waive, in*  
30 *writing, mediation and proceed directly to the commencement of*  
31 *a civil action or binding arbitration, as applicable; and (2) a public*  
32 *entity in its public works contracts may include dispute resolution*  
33 *provisions that comply with this section, including the timeframes*  
34 *set forth herein, and that prescribe additional reasonable and*  
35 *equitable terms regarding actions or procedures to be taken by*  
36 *the parties.*

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

39 (h) *Nothing in this section shall impose liability upon a public*  
40 *entity that makes loans or grants available through a competitive*

1 *application process, for the failure of an awardee to meet its*  
2 *contractual obligations.*

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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