

AMENDED IN SENATE SEPTEMBER 4, 2015

AMENDED IN SENATE SEPTEMBER 1, 2015

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

Introduced by Assembly Member Chiu

(Coauthor: Assembly Member Frazier)

(Coauthors: Senators Anderson, Cannella, Gaines, Galgiani, and
Hertzberg)

February 27, 2015

An act to add and repeal Section 9204 to of 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~~ *of the following*: 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, *defined to exclude certain state entities*, upon receipt of a claim sent by registered or certified mail, to review it and, within 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 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, 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.

This bill would, on January 1, 2019, repeal the provision establishing the claim resolution process.

(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 assessed by a public entity
19 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) (A) "Public entity" means, without limitation, a state agency,
31 department, office, division, bureau, board, or commission, the

1 California State University, the University of California, a city,
2 including a charter city, county, including a charter county, city
3 and county, including a charter city and county, district, special
4 district, public authority, political subdivision, public corporation,
5 or nonprofit transit corporation wholly owned by a public agency
6 and formed to carry out the purposes of the public agency.

7 (B) “Public entity” shall not include the following:

8 (i) *The Department of Water Resources as to any project under*
9 *the jurisdiction of that department.*

10 (ii) *The Division of Boating and Waterways in the Department*
11 *of Parks and Recreation as to any project under the jurisdiction*
12 *of that division pursuant to Article 2.5 (commencing with Section*
13 *65) of Chapter 2 of Division 1 of the Harbors and Navigation*
14 *Code.*

15 (iii) *The Department of Corrections and Rehabilitation with*
16 *respect to any project under its jurisdiction pursuant to Chapter*
17 *11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal*
18 *Code.*

19 (iv) *The Military Department as to any project under the*
20 *jurisdiction of that department.*

21 (v) *The Department of General Services as to all other projects.*

22 (vi) *The High-Speed Rail Authority.*

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

26 (5) “Subcontractor” 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 either is in direct
29 contract with a contractor or is a lower tier subcontractor.

30 (d) (1) (A) Upon receipt of a claim pursuant to this section,
31 the public entity to which the claim applies shall conduct a
32 reasonable review of the claim and, within a period not to exceed
33 45 days, shall provide the claimant a written statement identifying
34 what portion of the claim is disputed and what portion is
35 undisputed. Upon receipt of a claim, a public entity and a contractor
36 may, by mutual agreement, extend the time period provided in this
37 subdivision.

38 (B) The claimant shall furnish reasonable documentation to
39 support the claim.

1 (C) If the public entity needs approval from its governing body
2 to provide the claimant a written statement identifying the disputed
3 portion and the undisputed portion of the claim, and the governing
4 body does not meet within the 45 days or within the mutually
5 agreed to extension of time following receipt of a claim sent by
6 registered mail or certified mail, return receipt requested, the public
7 entity shall have up to three days following the next duly publicly
8 noticed meeting of the governing body after the 45-day period, or
9 extension, expires to provide the claimant a written statement
10 identifying the disputed portion and the undisputed portion.

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

15 (2) (A) If the claimant disputes the public entity's written
16 response, or if the public entity fails to respond to a claim issued
17 pursuant to this section within the time prescribed, the claimant
18 may demand in writing an informal conference to meet and confer
19 for settlement of the issues in dispute. Upon receipt of a demand
20 in writing sent by registered mail or certified mail, return receipt
21 requested, the public entity shall schedule a meet and confer
22 conference within 30 days for settlement of the dispute.

23 (B) Within 10 business days following the conclusion of the
24 meet and confer conference, if the claim or any portion of the claim
25 remains in dispute, the public entity shall provide the claimant a
26 written statement identifying the portion of the claim that remains
27 in dispute and the portion that is undisputed. Any payment due on
28 an undisputed portion of the claim shall be processed and made
29 within 60 days after the public entity issues its written statement.
30 Any disputed portion of the claim, as identified by the contractor
31 in writing, shall be submitted to nonbinding mediation, with the
32 public entity and the claimant sharing the associated costs equally.
33 The public entity and claimant shall mutually agree to a mediator
34 within 10 business days after the disputed portion of the claim has
35 been identified in writing. If the parties cannot agree upon a
36 mediator, each party shall select a mediator and those mediators
37 shall select a qualified neutral third party to mediate with regard
38 to the disputed portion of the claim. Each party shall bear the fees
39 and costs charged by its respective mediator in connection with
40 the selection of the neutral mediator. If mediation is unsuccessful,

1 the parts of the claim remaining in dispute shall be subject to
2 applicable procedures outside this section.

3 (C) For purposes of this section, mediation includes any
4 nonbinding process, such as neutral evaluation or a dispute review
5 board, in which an independent third party or board assists the
6 parties in dispute resolution through negotiation or by issuance of
7 an evaluation. Any mediation utilized shall conform to the
8 timeframes in this section.

9 (D) Unless otherwise agreed to by the public entity and the
10 contractor in writing, the mediation conducted pursuant to this
11 section shall excuse any further obligation under Section 20104.4
12 to mediate after litigation has been commenced.

13 (E) This section does not preclude a public entity from requiring
14 arbitration of disputes under private arbitration or the Public Works
15 Contract Arbitration Program, if mediation under this section does
16 not resolve the parties' dispute.

17 (3) Failure by the public entity to respond to a claim from a
18 contractor within the time periods described in this subdivision or
19 to otherwise meet the time requirements of this section shall result
20 in the claim being deemed rejected in its entirety. A claim that is
21 denied by reason of the public entity's failure to have responded
22 to a claim, or its failure to otherwise meet the time requirements
23 of this section, shall not constitute an adverse finding with regard
24 to the merits of the claim or the responsibility or qualifications of
25 the claimant.

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

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

1 public entity and, if the original contractor did not present the
2 claim, provide the subcontractor with a statement of the reasons
3 for not having done so.

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

7 (f) A waiver of the rights granted by this section is void and
8 contrary to public policy, provided, however, that (1) upon receipt
9 of a claim, the parties may mutually agree to waive, in writing,
10 mediation and proceed directly to the commencement of a civil
11 action or binding arbitration, as applicable; and (2) a public entity
12 in its public works contracts may include dispute resolution
13 provisions that comply with this section, including the timeframes
14 set forth herein, and that prescribe additional reasonable and
15 equitable terms regarding actions or procedures to be taken by the
16 parties.

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

19 (h) Nothing in this section shall impose liability upon a public
20 entity that makes loans or grants available through a competitive
21 application process, for the failure of an awardee to meet its
22 contractual obligations.

23 (i) This section shall remain in effect only until January 1, 2019,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2019, deletes or extends that date.

26 SEC. 2. If the Commission on State Mandates determines that
27 this act contains costs mandated by the state, reimbursement to
28 local agencies and school districts for those costs shall be made
29 pursuant to Part 7 (commencing with Section 17500) of Division
30 4 of Title 2 of the Government Code.