

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)**

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 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.~~ *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 local agency, 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. The bill would require any payment due on an undisputed portion of the claim to be processed within ~~7~~ 30 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, *as specified*. The bill would provide that unpaid claim amounts accrue interest at a statutorily prescribed rate. The bill would ~~proscribe~~ *prescribe* 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.

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

7 (c) For purposes of this section:

8 ~~(1) “Claim” means a written demand or assertion by a contractor,~~  
9 ~~including a request for a modification, contract amendment, or~~  
10 ~~change order, seeking an adjustment or interpretation of the terms~~  
11 ~~of the contract documents, payment of money, extension of time,~~  
12 ~~or other relief, including a determination of disputes or matters~~  
13 ~~arising out of, or related to, the contract documents or the~~  
14 ~~performance of work on a public work.~~

15 *(1) “Claim” means a separate demand by the contractor 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.*

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

23 *(C) Payment of an amount that is disputed by the local agency.*

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

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

36 ~~(4) “Public works” has the meaning provided in Section 1720~~  
37 ~~of the Labor Code.~~

38 *(4) “Public work” means “public works contract” as defined*  
39 *in Section 1101.*

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

5 (d) (1) (A) Upon receipt of a claim sent by registered mail,  
6 the public entity to which the claim applies shall conduct a  
7 reasonable review of the claim and, within a period not to exceed  
8 30 days, shall provide the claimant a written statement identifying  
9 what portion of the claim is disputed and what portion is  
10 undisputed. ~~Any~~

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

19 (C) Any payment due on an undisputed portion of the claim  
20 shall be processed and made within ~~seven~~ 30 days after the public  
21 entity issues its written statement. If the public entity fails to issue  
22 a written statement, paragraph (3) shall apply.

23 (2) (A) Any disputed portion of the claim, as identified in  
24 writing, shall be submitted to nonbinding mediation. The public  
25 entity and contractor shall mutually agree to a mediator within 10  
26 days after the disputed portion of the claim has been identified in  
27 writing. If the parties cannot agree upon a mediator, each party  
28 shall select a mediator and those mediators shall select a qualified  
29 neutral third party to mediate with regard to the disputed portion  
30 of the claim. If either of the parties reject the mediator’s decision  
31 regarding all or part of the disputed portion of the claim, the parts  
32 of the claim remaining in dispute shall be subject to applicable  
33 procedures outside this section.

34 (B) *For purposes of this section, mediation includes any*  
35 *nonbinding process, such as neutral evaluation or a dispute review*  
36 *board, in which an independent third party or board assists the*  
37 *parties in dispute resolution through negotiation or by issuance*  
38 *of an evaluation. Any mediation utilized must conform to the time*  
39 *frames in this section.*

1 (C) *The mediation conducted pursuant to this section shall*  
2 *excuse any further obligation under Section 20104.4 to mediate*  
3 *(meet and confer) after litigation has been commenced.*

4 (D) *This section does not preclude an agency from requiring*  
5 *arbitration of disputes under private arbitration or the Public*  
6 *Works Contract Arbitration Program, if mediation does not resolve*  
7 *the parties' dispute.*

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

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

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

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

38 (f)

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 ~~(g)~~

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

7 ~~(h)~~

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

10 SEC. 2. If the Commission on State Mandates determines that  
11 this act contains costs mandated by the state, reimbursement to  
12 local agencies and school districts for those costs shall be made  
13 pursuant to Part 7 (commencing with Section 17500) of Division  
14 4 of Title 2 of the Government Code.

Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Rudy Salas, Chair

AB 1347 Chiu – As Amended April 21, 2015

**SUBJECT:** Public contracts: claims

**SUMMARY:** Establishes a claim resolution process for public works contracts when contractors and public entities are in dispute. Specifically, **this bill:**

- 1) Establishes that provisions of this bill supersede other code sections related to local and state contracting disputes.
- 2) Defines what constitutes a claim.
- 3) Requires a public agency to respond with a written statement to a claim within 30 days following receipt that identifies which parts of the claim are disputed and undisputed.
- 4) Creates an exception to the 30-day timeframe if a governing board does not meet during that time.
- 5) Requires payment of the undisputed portion within 30 days after the public entity's issuance of the written statement.
- 6) Deems the total amount in the claim due to the contractor if the public entity does not respond to the claim with a determination of disputed and undisputed amounts.
- 7) Requires the contractor and public entity to enter non-binding mediation within 10 days after the disputed portion of the claim has been identified in writing.
- 8) Subjects public entities to interest payments for late payments.
- 9) Allows contractors to file claims on behalf of subcontractors.

**EXISTING LAW:**

- 1) Sets a resolution process for disputes between contractors and state entities for public works contracts that relies primarily on arbitration.
- 2) Sets a separate resolution process for disputes between contractors and local entities for public works contracts for claims of \$375,000 or less.

**FISCAL EFFECT:** Unknown

**COMMENTS:** This bill creates a claim resolution process for public works contracts when contractors and public entities are in dispute. It applies to both state and local public entities and specifies that the new section added by this bill takes precedence over the current resolution of claims processes described in Public Contract Code sections 10240-10240.13 and 20100-20929.

This bill defines a claim as one or more of the following: a time extension, including without limitation, for relief from damages or penalties for delay; payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled; or payment of an amount that is disputed by the local agency.

The author explains that this bill is meant to ensure contractors are paid in a timely manner for work, which is not specified in the original contract, but becomes necessary to complete a public works project.

According to the author, this bill "addresses the indefinite delay of payment to California's public works contractors for extra work performed. There is a loophole in current prompt payment law when it comes to resolving disputes in the claims process." The author states that some contractors have to wait months or even years until they are paid.

This bill allows contractors to submit claims to public entities and requires an entity to respond within 30 days following receipt with a written statement identifying which parts of the claim are disputed and undisputed. This bill extends the 30-day timeframe if the public entity needs approval from its governing board and the board does not meet within the 30 days following receipt of the claim. In such a case, the response would instead be due three days after the next publicly noticed meeting of the governing body.

For amounts determined to be undisputed, this bill would require the public entity to pay the contractor within 30 days after the public entity's issuance of the written statement. If the entity does not reply within 30 days or the extended time provided due to governing body meeting dates, the entire claim is deemed approved. Payments would be due to the contractor 30 days after the expiration of the time period.

For disputed portions of a claim, this bill requires the contractor and public entity to enter non-binding mediation within 10 days after the disputed portion of the claim has been identified in writing. If both sides cannot agree on a mediator, they are each required to choose a mediator and those mediators decide on a neutral third party to mediate the disputed portion of the claim. If an agreement cannot be reached in mediation, other procedures already set forth in existing law would apply.

This bill specifies that amounts not paid in a timely manner would accrue interest at the rate specified by a section in the Code of Civil Procedure. This section sets the interest rate at 10% per year.

In addition to allowing contractors to submit claims, this bill lets contractors submit claims on behalf of a subcontractor. Within 45 days of receiving the claim from a subcontractor, the contractor must notify the subcontractor in writing as to whether or not the contractor presented the claim to the public entity. If the claim was not presented, the contractor must provide the subcontractor with a statement explaining why the claim was not submitted.

Opposition to this bill, which primarily includes organizations that represent local governments and special districts as well as individual counties and special districts, have expressed several concerns about this bill.

Specifically, the opponents state that this bill is redundant because there are already claims resolution processes in place under current law; the timelines are not feasible for public entities as some claims are complex and might not include enough supporting documents from the contractor; the 10% interest rate for late payments is inappropriate; and deeming the claim approved for missing a response deadline puts public agencies and therefore taxpayers at financial risk.

An opposition letter from a coalition that includes the California State Association of Counties (CSAC) and 16 others, says "Overall, we are very concerned with the new claims resolution process envisioned by AB 1347 as it will only add time and squander taxpayer funding by usurping a process which works well a significant majority of the time."

In response to identified concerns, the author recently took amendments, which are incorporated in this analysis. However, no groups that registered opposition contacted the committee to remove their opposition.

**PRIOR LEGISLATION:** AB 2471 (Frazier) of 2014 would have required a public entity to pay a contractor for a change order for extra work that occurred in a public works project within 60 days of the completion of the work. AB 2471 was held in the Senate Appropriations Committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

United Contractors (co-sponsor)  
 California Chapters of the National Electrical Contractors Association (co-sponsor)  
 California State Council of Laborers (co-sponsor)  
 California-Nevada Conference of Operating Engineers (co-sponsor)  
 State Building and Construction Trades Council of California (co-sponsor)  
 Air Conditioning Sheet Metal Association (prior version)  
 Air-conditioning & Refrigeration Contractors Association (prior version)  
 Associated General Contractors, California Chapters (prior version)  
 American Subcontractors Association, California  
 California Association of Sheet Metal and Air Conditioning Contractors (prior version)  
 California Landscape & Irrigation Council (prior version)  
 California Legislative Conference of the Plumbing, Heating and Piping Industry (prior version)  
 California State Association of Electrical Workers (prior version)  
 California State Pipe Trades Council (prior version)  
 California Plumbing and Mechanical Contractors Association (prior version)  
 Finishing Contractors Association of Southern California (prior version)  
 Union Roofing Contractors Association (prior version)  
 Western Line Constructors (prior version)  
 Western States Council of Sheet Metal Workers (prior version)

### **Opposition**

Alameda County Board of Supervisors  
 Alpine County Board of Supervisors (prior version)

Association of California Healthcare Districts  
Association of California School Administrators  
California Airports Council (prior version)  
California Association of Sanitation Agencies  
California Association of School Business Officials  
California Special Districts Association  
California State University  
Coalition for Adequate School Housing  
Community College Facility Coalition  
Contra Costa County Board of Supervisors (prior version)  
County of San Bernardino (prior version)  
County of Tulare (prior version)  
County School Facilities Consortium  
CSAC  
Desert Water Agency  
El Dorado Irrigation District  
Kern County Board of Supervisors (prior version)  
League of California Cities  
Los Angeles County Board of Supervisors (prior version)  
Mendocino County (prior version)  
Modoc County Board of Supervisors (prior version)  
Municipal Water District of Orange County  
Rural County Representatives of California  
Sacramento County Board of Supervisors (prior version)  
Three Valleys MWD  
Urban Counties Caucus  
Ventura County Board of Supervisors  
Yuba County Board of Supervisors (prior version)

**Analysis Prepared by:** Scott Herbstman / A. & A.R. / (916) 319-3600



April 2, 2015

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The Honorable David Chiu  
Member, California State Assembly  
State Capitol, Room 2196  
Sacramento, CA 95814

**Re: AB 1347 (Chiu): Public Contracts: Claims Resolution Process  
As introduced on February 27, 2015 – OPPOSE**

Dear Assembly Member Chiu:

The California State Association of Counties (CSAC) regrets to inform you of our opposition to your Assembly Bill 1347 related to claims resolution for public contracts. AB 1347 would mandate a new overly broad claims resolution process on all public contracts with unfeasible timelines, disproportionate requirements and remedies, and it is duplicative of existing processes in current public contracts. Moreover, this measure would force taxpayers to bear the costs when a contractor has failed to fully vet and understand the terms of a contract with a public agency, especially including any terms related to claims resolution procedures.

**Duplicative Requirements.** Counties already include a clearly defined claims resolution process in public contracts. Public contracts also define how and when a public agency will respond to requests for information. In the case of road projects, many counties use the California Department of Transportation's Standard Specifications, which includes a claims resolution process that has been refined and improved over decades and used countless times. Importantly, whether it is the Caltrans process or another mechanism, a dispute resolution processes agreed to by both parties through the execution of a mutually agreed-upon contract inherently results in a process that is fair to both parties. This measure would instead skew the process in favor of contractors by adding additional burdens, paperwork, and process with no public benefit.

**Overly Broad.** AB 1347 would apply to a "written demand or assertion," which is defined as "a request for 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 contract." This list includes a majority of the interactions between public agencies and contractors. It would not only be impossibly burdensome and unrealistic, but also costly and time consuming to have to communicate via certified mail for all of the aforementioned exchanges. Moreover, contracts should be vetted, reviewed, and fully understood by both parties prior to execution. It defeats the purpose of having a contract at all if one party can unilaterally change the content and administration of a contract after the final agreement and signatures.

**One-Sided and Unfeasible Timelines.** The measure would require public agencies to complete certain actions within unworkably rigid timelines without imposing similar burdens on contractors. First, an agency would have to respond to a written demand within 30 days addressing what portions of the claim are disputed or

undisputed. Public contracts vary in terms of size, scope and complexity. The timeline set forth in AB 1347 does not account for differences among the variety of contracts public agencies enter into. Furthermore, counties often receive claims with very little—sometimes no— supporting data at all. At the very least, any timeline in statute should only start once the agency receives sufficient supporting data to ascertain the veracity of the claim.

Second, AB 1347 would require payment due on any undisputed portion of the claim to be made within seven days after the public agency issues its written response to a written demand or assertion. This timeline is much shorter than current prompt payment law which requires public agencies to make a progress payments within 30 days after receipt of an undisputed and properly submitted payment request (Government Code §20104.50). Even the largest and most sophisticated public agencies are unable to process a payment within seven days. The treasurers of smaller public agencies may only issue treasury warrants on a bi-weekly basis. Given their fiduciary duties as stewards of taxpayer money, public agencies have procedures in place to ensure that any payments are made and accounted for properly. Imposing arbitrarily-short timeframes on payments would erode well-warranted protections on the expenditure of taxpayer funds.

**Usurious Interest Rate.** If a public agency failed to respond to a written demand, AB 1347 would apply a 10 percent per annum. This rate is inflated above current rates than can be obtained in interest-bearing accounts, especially considering the well-warranted limitations on types of accounts in which county treasurers may deposit public funds. We further find this provision to be redundant, as public agencies define the amount of interest to be paid and how it will be calculated in existing contract specifications. These provisions are tied to the requirement of timely payments to the contractor. Indeed, in some cases counties do pay interest on late payments as outlined in the mutually agreed-upon public contract specifications.

**Deemed Approved.** Especially given the aforementioned concerns with the timelines proscribed in the bill, deeming a contract approved in its entirety is a significant overreach. However, even with more appropriate timelines, deeming a contract approved just because of a missed deadline, puts the public agency, at ultimately the tax payers, at financial risk.

**Nonbinding Mediation.** Counties appreciate efforts to find resolution of disputes outside of the court system, however, because mediation is nonbinding, one party can always object to the outcome if the proceedings go badly from their perspective. Nonbinding mediation has the potential to add additional time and cost to the public contracting process, but for intractable disputes would yield the same outcome: a final decision being made in court.

**False Claims Act Exemption.** AB 1347 would exempt claims made under this act from the False Claims Act (Government Code §12650). The False Claims Act is a public agency's primary tool to address fraud against government. It is nonsensical to exempt claims made to a government from one of the most important tools local governments have to protect the public's money against false claims.

Overall, we are very concerned with the new claims resolution process envisioned by AB 1347 as it will only add time and squander taxpayer funding by usurping a process which works well a significant majority of the

time. Under the framework envisioned by AB 1347, counties completing public works projects would be distracted from their primary responsibility to protect the public's investment in infrastructure by ensuring that projects are built to an acceptable standard of quality and at a reasonable cost. Instead, counties would be bogged down in contract review, responding to written demands or assertions on extremely tight timelines, and fearing interest penalties. Finally, the existing claims process within public contracts works well: contractors have the obligation to substantiate their claims, while public agencies are bound to be fair and reasonable stewards of taxpayer funds. To the extent that any adjustments are needed to the existing processes, principles of subsidiarity and good sense would dictate that contractors should address the rare issue with a specific dispute resolution procedure prior to executing a binding contract with a public agency.

For these reasons, we must oppose AB 1347. Please do not hesitate to contact me at (916) 327.7500 x. 566 or at [kbuss@counties.org](mailto:kbuss@counties.org) to discuss our position on this measure.

Sincerely,



Kiana Buss  
Legislative Representative