

THIRD READING

Bill No: SB 33
Author: Cortese (D)
Amended: 1/5/26
Vote: 21

SENATE EDUCATION COMMITTEE: 6-1, 3/19/25

AYES: Pérez, Ochoa Bogh, Cabaldon, Cortese, Gonzalez, Laird

NOES: Choi

SENATE HUMAN SERVICES COMMITTEE: 5-0, 4/21/25

AYES: Arreguín, Ochoa Bogh, Becker, Limón, Pérez

SENATE JUDICIARY COMMITTEE: 13-0, 1/13/26

AYES: Umberg, Niello, Allen, Ashby, Caballero, Durazo, Laird, Reyes, Stern,
Valladares, Wahab, Weber Pierson, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Public contracts: claim resolution

SOURCE: California Legislative Conference of Plumbing, Heating and Piping
Industry

National Electrical Contractors Association (NECA)

United Contractors (UCON)

DIGEST: This bill deletes the sunset date of a claims resolution process that enables contractors to seek public agency review of claims that arise during public works projects.

ANALYSIS:

Existing law:

- 1) Establishes the Public Contract Code, which is the basis of contracts between most public entities in this state and their contractors and subcontractors. With regard to charter cities, this code applies in the absence of an express exemption or a city charter provision or ordinance that conflicts with the relevant provision of the code. (Public (Pub.) Contract (Cont.) Code § 1100.7.)
- 2) Defines “public works contract,” as an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Pub. Cont. Code § 1101.)
- 3) Establishes, for contracts entered into on or after January 1, 2017, a claim resolution process applicable to any claim by a contractor in connection with a public works project against a public entity. (Pub. Cont. Code § 9204)
- 4) Defines “claim” as a separate demand by the contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a public works contract;
 - b) payment by the public entity 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 that is not otherwise expressly provided or to which the claimant is not otherwise entitled; or
 - c) payment of an amount that is disputed by the public entity. (Pub. Cont. Code § 9204(c)(1).)
- 5) Defines “public entity” for these purposes as a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency. Generally, excludes from this definition the:
 - a) Department of Water Resources;
 - b) Department of Transportation;
 - c) Department of Parks and Recreation;
 - d) Department of Corrections and Rehabilitation;

- e) Military Department;
 - f) Department of General Services; and
 - g) High-Speed Rail Authority. (Pub. Cont. Code § 9204(c)(3).)
- 6) Requires a public entity, upon receipt of a claim from a contractor in connection with a public works project, to conduct a reasonable review and within 45 days provide the claimant with a written statement identifying the disputed and undisputed portions of the claim. (Pub. Cont. Code § 9204(d)(1)(C).) Undisputed portions of the claim must be paid within 60 days. (Pub. Cont. Code § 9204(d)(1)(D).)
- 7) Provides that if the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Requires the public entity, upon receipt of a demand in writing sent by registered mail or certified mail, with return receipt requested, to schedule a meet-and-confer conference within 30 days for settlement of the dispute. (Pub. Cont. Code § 9204(d)(2)(A).)
- 8) Requires, within 10 days following the meet-and-confer conference, the public entity, if the claim or any portion thereof remains in dispute, to provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any disputed portion of the claim, as identified by the contractor in writing, must be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. (Pub. Cont. Code § 9204(d)(2)(B).) Undisputed portions of the claim must be paid within 60 days. (*Ibid.*)
- 9) Specifies, if mediation does not resolve the dispute, that a public entity may require arbitration of the dispute under private arbitration or the Public Works Contract Arbitration Program. (Pub. Cont. Code § 9204(d)(3).)
- 10) Imposes a 7% annual interest rate on amounts not timely paid. (Pub. Cont. Code § 9204(d)(4).)
- 11) Provides that if a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of the subcontractor or lower tier subcontractor. A subcontractor may request

in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work that was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity must furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor must notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so. (Pub. Cont. Code § 9204(d)(5).)

- 12) Repeals the claims resolution process on January 1, 2027. Pub. Cont. Code § 9204(i).)

This bill removes the January 1, 2027, repeal date, thereby making the claim resolution process described above operative indefinitely.

Comments

In public works projects, a public agency contracts with a general contractor who submits a bid or estimated cost to provide the materials and services for the construction, alteration, demolition, installation, or repair work. At times, the cost of the materials and services is more than the general contractor's bid due to changes in the project, which may result from inaccurate or incomplete project plans and specifications, additional demands by the public agency, or unexpected difficulties. In these cases, contractors generally seek reimbursement for the increased costs by submitting a claim to the public entity, which may lead to a dispute. To facilitate the prompt resolution of these disputes, the Legislature enacted AB 626 (Chiu, Chapter 810, Statutes of 2016), which provided a claim resolution process applicable to any claim by a contractor in connection with a public works project against a public entity. These provisions are set to sunset on January 1, 2027.

In general, "public works" refers to the construction, alteration, demolition, installation, or repair work (including maintenance) of any public structure, building, road, or other improvement done under contract and paid with public funds, or if private funds are used, more than 50% of the square footage is leased to a public entity. Several laws regulate various aspects of public works projects to safeguard the public's interest. Public works projects do not include those done by a public agency with its own employees.

Before AB 626, a general contractor with cost overruns for which the contractor was not responsible had no recourse to resolve a claim dispute outside of arbitration or a civil action. Additionally, a subcontractor that performed additional services or provided materials outside the scope of the original contract, but necessary to complete the project, could not seek payment from the public agency for lack of contractual privity. Delays in payment for the extra work provided by the contractor or subcontractor often placed the contractor or subcontractor at financial risk and jeopardized the project. These recurrent issues occasionally culminated in costly litigation that drained the resources of the public agency, contractors, and subcontractors.

In 2016, following multiple failed attempts to address pre-litigation claim disputes, then Governor Brown signed AB 626 into law. AB 626 added section 9204, which provides for a claim resolution process applicable to any claim by a contractor in connection with a public works project against a public entity. Public entities must then provide a written response to claims within 45 days that details disputed and undisputed amounts. Section 9204 requires the payment of undisputed amounts and sets a process to resolve remaining disputes. Contractors can demand a meet-and-confer conference with the entity for remaining disputes. Items not resolved during the conference are submitted to nonbinding mediation. Finally, section 9204 provides that if a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of the subcontractor or lower tier subcontractor. AB 626 passed this Committee unanimously. When AB 626 was enacted, it contained a January 1, 2020, sunset date.

The Committee's analysis of AB 626 noted that it would provide a simplified, cost-effective claims resolution procedure to resolve contractor claims before arbitration or civil action.¹ Additionally, the analysis explained that AB 626 would provide a clear process for a subcontractor to submit claims through a general contractor in order to provide the subcontractor with information as to whether the general contractor has rejected the request to submit the subcontractor's claim to the public agency.² In 2019, AB 456 (Chiu, Chapter 489, Statutes of 2019), as it was heard by this Committee, would have removed the sunset date on the claims process indefinitely and passed the Committee unanimously. AB 456 was subsequently amended to instead extend the sunset date until January 1, 2027.

¹ Sen. Jud. Comm. analysis of AB 456 as amended June 8, 2016 (2015-16 reg. sess.).

² *Ibid.*

This bill removes Section 9204's sunset date, thereby continuing the process established by AB 626 indefinitely. This bill does not make any other substantive changes to the scope or operation of Section 9204.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 1/21/26)

California Legislative Conference of Plumbing, Heating and Piping Industry
(source)

National Electrical Contractors Association (source)

United Contractors (source)

California State Council of Laborers

Finishing Contractors Association of Southern California

Northern California Allied Trades

Northern California Floor Covering Association

Politico Group

Southern California Glass Management Association

Wall and Ceiling Alliance

Western Painting and Coating Contractors Association

Western Wall and Ceiling Contractors Association

OPPOSITION: (Verified 1/21/26)

None received

ARGUMENTS IN SUPPORT: The author writes:

California is in an infrastructure crisis. To address these vital infrastructure weaknesses, we need contractors to know that they will be paid properly and without delay when they accept public contracts. Even further, contractors need the reassurance that if there are discrepancies, there will be equitable options for mediation and resolution. To accomplish this goal, SB 33 eliminates the sunset date of Public Contract Code §9204 and makes it permanent. This code established the fair, cost-saving process that has decreased construction delays, reduced litigation, and improved project delivery for public agencies, taxpayers, and contractors that has been in use for nearly a decade.

Without eliminating the sunset, this cost-saving framework, originally enacted through a carefully negotiated policy that resolved public-agency opposition, will expire on January 1, 2027, and our infrastructure crisis will only worsen.

This bill is supported by several labor organizations, who write in support stating:

Public Contract Code § 9204 has been in effect for nearly a decade and has proven to be a cost saving, litigation reducing framework that benefits public agencies, taxpayers, and contractors alike. The statute requires public agencies to timely respond to contractor claims for extra or change order work, promptly pay undisputed amounts, and engage in a structured dispute resolution process, including meet and confer discussions and nonbinding mediation, before disputes escalate into costly litigation.

Prior to enactment of this statute, contractors performing required extra work often waited months or even years for payment, despite continuing to pay wages, benefits, materials, and overhead in real time. These delays strained working capital, reduced competition, increased bid prices, and, in some cases, forced otherwise responsible contractors out of business. SB 33 preserves a system that restores balance, predictability, and fairness to public works contracting.

Importantly, § 9204 was the product of a carefully negotiated policy compromise that resolved public agency opposition at the time of enactment. Since then, the statute has demonstrated that timely claim review and early dispute resolution improve project delivery without imposing undue burdens on public owners.

Absent SB 33, this proven framework will expire on January 1, 2027, undoing years of progress and returning public works to a system that incentivizes delay, increases disputes, and drives up costs for taxpayers.

Prepared by: Amanda Mattson / JUD. / (916) 651-4113
1/21/26 16:05:19

**** END ****