

Introduced by Senator Ochoa Bogh
(Coauthor: Assembly Member Jeff Gonzalez)

February 18, 2025

An act to add and repeal Article 4 (commencing with Section 8850) of Chapter 8 of Title 2 of Part 6 of Division 4 of the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as introduced, Ochoa Bogh. Private Works Construction Fair Payment and Dispute Resolution Act.

Existing law contains various provisions relating to contracts for the performance of private works of improvement, including provisions applicable to a retention withholding by an owner from a direct contractor or by a direct contractor from a subcontractor.

This bill would establish, until January 1, 2030, for contracts entered into on or after January 1, 2026, a claim resolution process, as specified, applicable to any claim by a contractor in connection to a public work of improvement or site improvement. The bill would define a claim for these purposes as a separate demand by the contractor sent by registered mail or certified mail with return receipt requested, for, among other things, a time extension for relief from damages or penalties for delay assessed by an owner of property under contract for a work of improvement or site of improvement. The bill would make related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. This act may be cited as the Private Works Construction Fair Payment and Dispute Resolution Act.

SEC. 2. Article 4 (commencing with Section 8850) is added to Chapter 8 of Title 2 of Part 6 of Division 4 of the Civil Code, to read:

Article 4. Claims and Disputes

8850. (a) The Legislature finds and declares all of the following:

(1) It is in the best interests of the state and its citizens to ensure that all construction business performed on a private works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(2) Delays in payment for works of improvement and site improvements impose significant financial hardships on contractors, particularly small businesses, disadvantaged business enterprises, and disabled veteran business enterprises.

(3) The lack of clear procedures for resolving disputes related to change orders often leads to costly litigation where a predetermined method could avoid such costs.

(4) Prompt and fair payment promotes economic stability within the construction industry and ensures efficient project completion.

(b) Notwithstanding any other law, this section shall apply to any claim by a contractor in connection to a work of improvement or site improvement.

(c) For purposes of this section, the following terms apply:

(1) "Claim" means a separate demand by a 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 an owner of property under contract for a work of improvement or site improvement.

(B) Payment by the owner of property of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a work of improvement or site improvement

1 project and payment for which is not otherwise expressly provided
2 or to which the claimant is not otherwise entitled.

3 (C) Payment of an amount that is disputed by the owner of
4 property.

5 (2) (A) “Owner” means the owner who causes a building,
6 improvement, or structure to be constructed, altered, or repaired,
7 or that person’s successor in interest at the date a notice of
8 completion is recorded, whether the interest or estate of the owner
9 be in fee, as vendee under a contract of purchase, as lessee, or
10 other interest or estate less than the fee. Where the interest or estate
11 is held by two or more persons as joint tenants or tenants in
12 common, any one or more of the cotenants may be deemed to be
13 the “owner” within the meaning of this section.

14 (B) “Owner” shall not include a public entity, as defined in
15 paragraph (3) of subdivision (c) of Section 9204 of the Public
16 Contract Code.

17 (C) An owner shall have the right to a designated representative.

18 (d) (1) (A) Upon receipt of a claim pursuant to this section,
19 the owner to which the claim applies shall conclude a reasonable
20 review of the claim and, within a period not to exceed 30 days,
21 shall provide the claimant a written statement identifying what
22 portion of the claim is disputed and what portion of the claim is
23 undisputed.

24 (B) (i) The claimant shall furnish reasonable documentation to
25 support the claim.

26 (ii) Upon receipt of a claim, an owner and a contractor may, by
27 mutual agreement, extend the time period provided in this
28 subdivision.

29 (C) Any payment due on an undisputed portion of the claim
30 shall be processed and made within 60 days after the owner issues
31 its written statement.

32 (2) (A) (i) If the claimant disputes the owner’s written response,
33 or if the owner fails to respond to a claim issued pursuant to this
34 section with the timeframe prescribed, the claimant may demand
35 in writing an informal conference to meet and confer for settlement
36 of the issues in dispute.

37 (ii) Upon receipt of a demand in writing sent by registered mail
38 or certified mail, return receipt requested, the owner shall schedule
39 a meet and confer conference within 30 days for settlement of the
40 dispute.

1 (B) (i) Within 10 business days following the conclusion of the
2 meet and confer conference, if the claim or any portion of the claim
3 remains in dispute, the owner shall provide the claimant a written
4 statement identifying the portion of the claim that remains in
5 dispute and the portion that is undisputed.

6 (ii) Any payment due on an undisputed portion of the claim
7 shall be processed and made within 60 days after the owner issues
8 its written statement.

9 (iii) (I) Any disputed portion of the claim, as identified by the
10 contractor in writing, shall be submitted to nonbinding mediation,
11 with the owner and the claimant sharing the associated costs
12 equally.

13 (II) The owner and claimant shall mutually agree to a mediator
14 within 10 business days after the disputed operation of the claim
15 has been identified in writing.

16 (III) If the parties cannot agree upon a mediator, each party shall
17 select a mediator and those mediators shall select a qualified neutral
18 third party to mediate with regard to the disputed portion of the
19 claim.

20 (IV) Each party shall bear the fees and costs charged by its
21 respective mediator in connection with the selection of the neutral
22 mediator.

23 (V) If mediation is unsuccessful, the parts of the claim remaining
24 in dispute shall be subject to applicable procedures outside this
25 section.

26 (3) (A) Failure by the owner to respond to a claim from a
27 contractor within the time periods described in this subdivision or
28 to otherwise meet the time requirements of this section shall result
29 in the claim being deemed rejected in its entirety.

30 (B) A claim that is denied by reason of the owner's failure to
31 have responded to a claim, or its failure to otherwise meet the time
32 requirements of the section, shall not constitute an adverse finding
33 with regard to the merits of the claim or the responsibility or
34 qualifications of the claim.

35 (4) Amounts not paid in a timely manner as required by this
36 section shall bear interest at 2 percent per month.

37 (5) A court or arbitrator shall award reasonable attorney's costs
38 and fees, including expert witness fees, to a contractor if any of
39 the following apply:

1 (A) The court or arbitrator determines that an owner failed to
2 comply with any of the timeframes established in this section.

3 (B) The contractor makes an offer to settle any disputed portion
4 of the claim that is not accepted and the owner fails to obtain a
5 more favorable judgment or award.

6 (6) (A) (i) If a subcontractor or a lower tier subcontractor lacks
7 legal standing to assert a claim against an owner because privity
8 of contract does not exist, the contractor shall present to the owner
9 a claim on behalf of a subcontractor or lower tier subcontractor.

10 (ii) A subcontractor may request in writing, either on their own
11 behalf or on behalf of a lower tier subcontractor, that the contractor
12 present a claim for work that was performed by the subcontractor
13 or by a lower tier subcontractor on behalf of the subcontractor.

14 (iii) The subcontractor requesting that the claim be presented
15 to the owner shall furnish reasonable documentation to support
16 the claim.

17 (iv) Within 30 days of receipt of this written request, the
18 contractor shall notify the subcontractor in writing as to whether
19 the contractor presented the claim to the owner and, if the original
20 contractor did not present the claim, provide the subcontractor
21 with a statement of the reasons for not doing so.

22 (B) Nothing in this paragraph precludes a subcontractor from
23 exercising its lien rights and its stop work notice rights.

24 (7) The contractors and the subcontractors shall have the right
25 to suspend performance, of any work, without penalty, until
26 payment is received if the following procedure is followed:

27 (A) The owner is informed by registered mail or certified mail,
28 return receipt requested, that a payment due pursuant to the terms
29 of the construction contract was not received.

30 (B) Thirty days after the notice of late payment is sent to the
31 owner, the contractor or subcontractor sends a 10-day written
32 notice of intent to stop work to the owner.

33 (e) The text of this section or a summary of it shall be set forth
34 in the plans and specifications for any work of improvement or
35 site improvement that may give rise to a claim under this section.

36 (f) A waiver of the rights granted by this section is void and
37 contrary to public policy, provided, however, that (1) upon receipt
38 of a claim, the parties may mutually agree to waive, in writing,
39 mediation and proceed directly to the commencement of a civil
40 action or binding arbitration, as applicable; and (2) an owner may

1 prescribe reasonable change order, claim, and dispute resolution
2 procedures and requirements in addition to the provisions of this
3 section, so long as the contractual provisions do not conflict with
4 or otherwise impair the timeframes and procedures set forth in this
5 section.

6 (g) This section shall apply to contracts entered into on or after
7 January 1, 2026.

8 8851. This article shall remain in effect only until January 1,
9 2030, and as of that date is repealed.

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