

AMENDED IN SENATE APRIL 28, 2025

SENATE BILL

No. 440

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 amended, 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 *or subcontractor, as described*, in connection to a ~~public~~ work of improvement or ~~site improvement~~. *improvement, except as specified*. The bill would define a claim for these purposes as a *timely and* separate demand by the contractor *or subcontractor, as described*, 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 require a contractor or subcontractor bringing a claim under these provisions to bear the burden of proof, by a preponderance of the evidence, to demonstrate that any disputed*

claim was agreed upon by the owner or project manager, as specified.
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 *of amounts due and owing* 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~~ *contractor, or where authorized pursuant*
to this article, a subcontractor, 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 *and timely* demand by ~~a contractor~~
contractor, or where authorized pursuant to this article, a
subcontractor, sent by registered mail or certified mail with return
receipt requested, ~~for one or more~~ *either* of the following:

1 (A) A time extension, including, without limitation, for relief
2 from damages or penalties for delay assessed by an owner of
3 property under contract for a work of improvement or site
4 improvement.

5 (B) ~~Payment by the owner of property of money or damages~~
6 ~~arising from work done by, or on behalf of, the contractor pursuant~~
7 ~~to the contract for a work of improvement or site improvement~~
8 ~~project and payment for which is not otherwise expressly provided~~
9 ~~or to which the claimant is not otherwise entitled. of additional~~
10 *compensation by an owner for approved changes to the*
11 *contractor's scope of work in connection with a work of*
12 *improvement or site improvement, whether disputed or undisputed.*

13 (C) ~~Payment of an amount that is disputed by the owner of~~
14 ~~property.~~

15 (2) (A) "Owner" means the owner who causes a building,
16 improvement, or structure to be constructed, altered, or repaired,
17 or that person's successor in interest at the date a notice of
18 completion is recorded, whether the interest or estate of the owner
19 be in fee, as vendee under a contract of purchase, as lessee, or
20 other interest or estate less than the fee. Where the interest or estate
21 is held by two or more persons as joint tenants or tenants in
22 common, any one or more of the cotenants may be deemed to be
23 the "owner" within the meaning of this section.

24 (B) "Owner" shall not include a public entity, as defined in
25 paragraph (3) of subdivision (c) of Section 9204 of the Public
26 Contract Code.

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

28 (3) (A) *"Project manager" means a person, partnership,*
29 *corporation, or other legal entity that is designated by the owner*
30 *to direct construction and represent the owner during the*
31 *performance of the services covered under the construction*
32 *contract and is authorized to make changes, adjustments, and*
33 *interpretations of the contract in order to facilitate the completion*
34 *of the project.*

35 (B) *In the absence of the appointment of a project manager by*
36 *the owner, the owner shall serve as project manager on a project.*

37 (4) *"Type V construction" has the same meaning as that term*
38 *is defined in Section 602.5 of Title 24 of the California Code of*
39 *Regulations.*

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

~~(B) (i)~~

(2) (A) The claimant shall furnish ~~reasonable documentation to support the claim~~ *all claims within 60 days of the basis for the claim being discovered and shall include, at a minimum, both of the following:*

(i) The reason for the claim.

(ii) The method of calculating the time or additional compensation sought.

(B) The owner, contractor, and subcontractor may agree to additional documentation which shall be included in support of a claim and to the use of standardized forms for the submission of claims.

~~(ii)~~

(3) Upon receipt of a claim, an owner and a contractor may, by mutual agreement, extend the time ~~period~~ *periods* provided in ~~this subdivision~~ *paragraphs (1) and (2), in writing.*

~~(C) Any payment due on an~~

(4) ~~Payment of any undisputed portion of the claim~~ *claim, less retention where authorized by contract, shall be processed and made within 60 days after the owner issues its written statement.*

~~(2) (A) (i)~~

(e) (1) If the claimant disputes all or any portion of the owner's written response, response to the claim, or if the owner fails to respond to a claim issued pursuant to this section with within the timeframe prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute.

~~(ii)~~

(2) Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the owner shall schedule a meet and confer conference *with the claimant* within 30 days for settlement of the dispute.

~~(B) (i)~~

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

~~(ii) Any payment due on an~~

(4) *Payment of any undisputed portion of the claim claim, less retention where authorized by contract, shall be processed and made within 60 days after the owner issues its written statement.*

~~(iii) (I) Any~~

(f) *(1) If, following the informal conference, there remains any disputed portion of the claim, as identified by the contractor in writing, the remaining disputed portion of the claim shall be submitted to nonbinding mediation, with the owner and the claimant sharing the associated costs equally.*

~~(H)~~

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

~~(HH)~~

(3) (A) If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. *mediator within the time allotted, the contractor may select the mediator to be used.*

(B) *If the owner refuses mediation, the contractor may carry out the process described in subdivision (k).*

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

~~(V)~~

(4) If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to ~~applicable procedures outside this section.~~ *the dispute resolution procedures elected in the written contract of the parties, or, if no such election exists, by final judgment or by operation of law.*

~~(3) (A)~~

(g) (1) Failure by the owner to respond to a claim from a contractor within the time periods described in this subdivision

1 ~~section~~ or to otherwise meet the ~~time~~ requirements of this section
2 shall result in the claim being deemed ~~rejected~~ *denied* in its entirety.

3 ~~(B)~~

4 (2) A claim that is denied by reason of the owner's failure to
5 have responded to a claim, or its failure to otherwise meet the time
6 requirements of the section, shall not constitute an adverse finding
7 with regard to the merits of the claim or the responsibility or
8 qualifications of the claim.

9 ~~(4) Amounts~~

10 ~~(h) (1) Undisputed amounts~~ not paid in a timely manner as
11 required by this section shall bear interest at 2 percent per month.

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

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

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

20 (2) *Disputed amounts which are later found to be owed through*
21 *the dispute resolution procedures elected in the written contract*
22 *of the parties, or, if no such election exists, by final judgment or*
23 *by operation of law, shall bear interest at 2 percent per month,*
24 *beginning from the date on which those amounts would have been*
25 *due had they not been disputed.*

26 (i) *Nothing in this section shall prevent either party from*
27 *submitting, or otherwise limit the applicability of, a statutory offer*
28 *of settlement under Section 998 of the Code of Civil Procedure.*

29 ~~(6) (A) (i)~~

30 (j) (1) If a subcontractor or a lower tier subcontractor lacks
31 legal standing to assert a claim against an owner because privity
32 of contract does not exist, *except as provided in paragraph (4),*
33 the contractor shall present to the owner a claim on behalf of a
34 subcontractor or lower tier subcontractor.

35 ~~(ii)~~

36 (2) A subcontractor may request in writing, either on their own
37 behalf or on behalf of a lower tier subcontractor, that the contractor
38 present a claim for work that was performed by the subcontractor
39 or by a lower tier subcontractor on behalf of the subcontractor.

40 ~~(iii)~~

1 (3) (A) The subcontractor requesting that the claim be presented
2 to the owner shall furnish *the contractor with timely and* reasonable
3 documentation to support ~~the claim.~~ *subcontractor's claim to*
4 *enable the contractor to meet their obligations under subdivision*
5 *(d) and shall thereafter cooperate with the contractor in the*
6 *informal conference, mediation, and dispute resolution processes*
7 *required pursuant to this section relating to the subcontractor's*
8 *claim.*

9 (B) *The contractor shall exercise good faith in fulfilling their*
10 *obligations on behalf of the subcontractor under subdivisions (d),*
11 *(e), and (f) and shall make no settlement of any claim to which the*
12 *subcontractor does not approve, in writing.*

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

19 ~~(B)~~
20 (5) Nothing in this ~~paragraph~~ *subdivision* precludes a
21 subcontractor from exercising its lien rights and its stop work
22 notice rights.

23 ~~(7)~~
24 (k) ~~The contractors~~ *contractor* and ~~the subcontractors~~
25 *subcontractor* shall have the right to suspend ~~performance, of any~~
26 *performance of their work*, without penalty, *if the owner fails to*
27 *make payment of undisputed amounts due when and as required*
28 *under this section, until the payment is received if the following*
29 *procedure is followed:*

30 ~~(A)~~
31 (1) The owner is informed by registered mail or certified mail,
32 return receipt requested, that ~~a an undisputed payment is past due~~
33 ~~pursuant to the terms of the construction contract was not received.~~
34 *this section, or where the claim is deemed denied pursuant to*
35 *subdivision (g).*

36 ~~(B)~~
37 (2) Thirty days after the notice of late payment is sent to the
38 owner, the contractor or subcontractor sends a 10-day written
39 notice of intent to stop work to ~~the owner.~~ *owner by registered*
40 *mail or certified mail, return receipt requested.*

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

(l) Any disputed amount which the owner, at any point, agrees to pay, or is found to owe through dispute resolution, by final judgment, or by operation of law, shall, from the date of the agreement or finding, be considered an undisputed amount for the purpose of any timelines or processes established under this article.

(m) A contractor or subcontractor bringing a claim under this article shall bear the burden of proof, by a preponderance of the evidence, to demonstrate either of the following:

(1) Any disputed claim was agreed upon by the owner, or an agent of an owner who was reasonably believed, by the contractor or subcontractor, to have the authority to amend the construction contract.

(2) Any disputed claim was agreed upon by the project manager in the case of minor changes that are not inconsistent with the intent of the original construction contract.

~~(f)~~

(n) (1) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt policy.

(2) Notwithstanding paragraph (1), all of the following apply:

(A) Upon receipt of a claim, the parties may mutually agree to waive, in writing, the informal conference and mediation provisions in this section and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) an owner may prescribe reasonable applicable.

(B) Owners, contractors, and subcontractors may agree to reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

~~(g)~~

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

(p) This section shall not apply to the construction of residential or multifamily dwellings, nor Type V construction.

1 8851. This article shall remain in effect only until January 1,
2 2030, and as of that date is repealed.

O