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AMENDED IN ASSEMBLY JUNE 1, 2015
AMENDED IN ASSEMBLY APRIL 13, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 626

**Introduced by Assembly ~~Member Low~~ *Members Chiu and Low*
(~~Principal coauthor: Assembly Member Roger Hernández~~)
(~~Coauthor: Assembly Member Dababneh~~)
(*Coauthor: Assembly Member Frazier*)
(*Coauthors: Senators Anderson, Cannella, and Gaines*)**

February 24, 2015

~~An act to amend Section 87482.6 of the Education Code, relating to community colleges. An act to add and repeal Section 9204 of the Public Contract Code, relating to public contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 626, as amended, ~~Low Chiu. Community colleges: employees. Public contracts: claim resolution.~~

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, 2017, a claim resolution process applicable to any claim by a contractor in connection with a public works project. The bill would define a claim as a separate demand by the contractor for one or more 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.

This 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 bill would authorize the 45-day period to 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 would require that the claim be deemed rejected in its entirety if the public entity fails to issue the written statement.

This 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.

This bill would require the text of these provisions, or a summary, 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 these rights 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, 2020, repeal the provision establishing the claim resolution process.

This bill would specify that these provisions constitute a matter of statewide concern.

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.

~~Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law establishes community college districts, which provide instruction to students at campuses throughout the state.~~

~~Existing law provides that, until specified statutory provisions are implemented regarding program-based funding, community college districts that have less than 75% of their hours of credit instruction taught by full-time instructors shall apply a portion of their program improvement allocations toward reaching that 75% standard, as specified. Existing law requires the board of governors to adopt regulations for the effective administration of the law concerning the appropriate percentage of hours of credit instruction taught by full-time instructors. Existing law requires the Chancellor of the California Community Colleges to compute the number of full-time faculty required to be secured using program improvement allocations, as specified, to determine the extent to which each community college district has hired that number of full-time faculty, and, to the extent that the cumulative number of full-time faculty have not been retained, to reduce the district's base budget for 1991-92 and subsequent fiscal years in accordance with a certain formula.~~

~~This bill would require the office of the Chancellor of the California Community Colleges to convene a group of stakeholders on or before July 1, 2016, and every 4 years thereafter, to develop recommendations on funding strategies to enable the community colleges to achieve the 75% standard and increase district participation in the support of part-time faculty. The bill would require the chancellor's office to report these recommendations to the Legislature, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-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 a public works project in the*
6 *state that is complete and not in dispute is paid in full and in a*
7 *timely manner.*

8 (b) *Notwithstanding any other law, including, but not limited*
9 *to, Article 7.1 (commencing with Section 10240) of Chapter 1 of*
10 *Part 2, Chapter 10 (commencing with Section 19100) of Part 2,*
11 *and Article 1.5 (commencing with Section 20104) of Chapter 1 of*
12 *Part 3, this section shall apply to any claim by a contractor in*
13 *connection with a public works project.*

14 (c) *For purposes of this section:*

15 (1) *“Claim” means a separate demand by a contractor sent by*
16 *registered mail or certified mail with return receipt requested, for*
17 *one or more of the following:*

18 (A) *A time extension, including, without limitation, for relief*
19 *from damages or penalties for delay assessed by a public entity*
20 *under a contract for a public works project.*

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

26 (C) *Payment of an amount that is disputed by the public entity.*

27 (2) *“Contractor” means any type of contractor within the*
28 *meaning of Chapter 9 (commencing with Section 7000) of Division*
29 *3 of the Business and Professions Code who has entered into a*
30 *direct contract with a public entity for a public works project.*

31 (3) (A) *“Public entity” means, without limitation, except as*
32 *provided in subparagraph (B), a state agency, department, office,*
33 *division, bureau, board, or commission, the California State*
34 *University, the University of California, a city, including a charter*
35 *city, county, including a charter county, city and county, including*
36 *a charter city and county, district, special district, public authority,*
37 *political subdivision, public corporation, or nonprofit transit*

1 corporation wholly owned by a public agency and formed to carry
2 out the purposes of the public agency.

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

4 (i) The Department of Water Resources as to any project under
5 the jurisdiction of that department.

6 (ii) The Department of Transportation as to any project under
7 the jurisdiction of that department.

8 (iii) The Department of Parks and Recreation as to any project
9 under the jurisdiction of that department.

10 (iv) The Department of Corrections and Rehabilitation with
11 respect to any project under its jurisdiction pursuant to Chapter
12 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal
13 Code.

14 (v) The Military Department as to any project under the
15 jurisdiction of that department.

16 (vi) The Department of General Services as to all other projects.

17 (vii) The High-Speed Rail Authority.

18 (4) “Public works project” means the erection, construction,
19 alteration, repair, or improvement of any public structure, building,
20 road, or other public improvement of any kind.

21 (5) “Subcontractor” means any type of contractor within the
22 meaning of Chapter 9 (commencing with Section 7000) of Division
23 3 of the Business and Professions Code who either is in direct
24 contract with a contractor or is a lower tier subcontractor.

25 (d) (1) (A) Upon receipt of a claim pursuant to this section,
26 the public entity to which the claim applies shall conduct a
27 reasonable review of the claim and, within a period not to exceed
28 45 days, shall provide the claimant a written statement identifying
29 what portion of the claim is disputed and what portion is
30 undisputed. Upon receipt of a claim, a public entity and a
31 contractor may, by mutual agreement, extend the time period
32 provided in this subdivision.

33 (B) The claimant shall furnish reasonable documentation to
34 support the claim.

35 (C) If the public entity needs approval from its governing body
36 to provide the claimant a written statement identifying the disputed
37 portion and the undisputed portion of the claim, and the governing
38 body does not meet within the 45 days or within the mutually
39 agreed to extension of time following receipt of a claim sent by
40 registered mail or certified mail, return receipt requested, the

1 public entity shall have up to three days following the next duly
2 publicly noticed meeting of the governing body after the 45-day
3 period, or extension, expires to provide the claimant a written
4 statement identifying the disputed portion and the undisputed
5 portion.

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

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

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

38 (C) For purposes of this section, mediation includes any
39 nonbinding process, including, but not limited to, neutral
40 evaluation or a dispute review board, in which an independent

1 *third party or board assists the parties in dispute resolution*
2 *through negotiation or by issuance of an evaluation. Any mediation*
3 *utilized shall conform to the timeframes in this section.*

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

8 *(E) This section does not preclude a public entity from requiring*
9 *arbitration of disputes under private arbitration or the Public*
10 *Works Contract Arbitration Program, if mediation under this*
11 *section does not resolve the parties' dispute.*

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

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

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

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 project that*
 3 *may give rise to a claim under this section.*

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

14 (g) *This section applies to contracts entered into on or after*
 15 *January 1, 2017.*

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

20 (i) *This section shall remain in effect only until January 1, 2020,*
 21 *and as of that date is repealed, unless a later enacted statute, that*
 22 *is enacted before January 1, 2020, deletes or extends that date.*

23 *SEC. 2. The Legislature finds and declares that it is of statewide*
 24 *concern to require a charter city, charter county, or charter city*
 25 *and county to follow a prescribed claims resolution process to*
 26 *ensure there are uniform and equitable procurement practices.*

27 *SEC. 3. If the Commission on State Mandates determines that*
 28 *this act contains costs mandated by the state, reimbursement to*
 29 *local agencies and school districts for those costs shall be made*
 30 *pursuant to Part 7 (commencing with Section 17500) of Division*
 31 *4 of Title 2 of the Government Code.*

32 ~~SECTION 1. The Legislature finds and declares all of the~~
 33 ~~following:~~

34 ~~(a) In 1988, the Education Code was amended to read that “the~~
 35 ~~Legislature wishes to recognize and make efforts to address~~
 36 ~~longstanding policy of the board of governors that at least 75~~
 37 ~~percent of the hours of credit instruction in the California~~
 38 ~~Community Colleges, as a system, should be taught by full-time~~
 39 ~~instructors.”~~

1 ~~(b) The expectations for full-time faculty go beyond classroom~~
2 ~~instruction to include, among other full-service activities, all of~~
3 ~~the following: developing and evaluating academic programs;~~
4 ~~holding office hours and participating in meetings after classes;~~
5 ~~student advising; participation in institutional governance; and~~
6 ~~accreditation-related responsibilities such as the assessment of~~
7 ~~departmental and student learning outcomes, curriculum~~
8 ~~development, and preparing institutional self-studies.~~

9 ~~(c) In 2014, the percentage of credit courses taught by full-time~~
10 ~~faculty in the system was only 56.14 percent.~~

11 ~~(d) The Legislature acknowledged the commitment of the Board~~
12 ~~of Governors of the California Community Colleges, through its~~
13 ~~regular budget process, to evaluate resource needs and seek funding~~
14 ~~for essential educational priorities that contribute to student~~
15 ~~success. These priorities include, but are not necessarily limited~~
16 ~~to, the hiring of more full-time faculty and increasing support for~~
17 ~~part-time faculty.~~

18 ~~(e) In the Seymour-Campbell Student Success Act of 2012, the~~
19 ~~Legislature acknowledged the importance of counselors, who,~~
20 ~~along with librarians, are considered to be faculty for purposes of~~
21 ~~the 75-percent goal.~~

22 ~~(f) Students enrolled in noncredit education are most often~~
23 ~~deprived of the benefit of working with full-time faculty, as~~
24 ~~statewide goals relating to the ratio of full-time to part-time faculty~~
25 ~~have yet to be developed with respect to noncredit courses.~~

26 ~~SEC. 2. Section 87482.6 of the Education Code is amended to~~
27 ~~read:~~

28 ~~87482.6. (a) Until the provisions of Section 84750.5 regarding~~
29 ~~program-based funding are implemented by a standard adopted~~
30 ~~by the board of governors that establishes the appropriate~~
31 ~~percentage of hours of credit instruction that should be taught by~~
32 ~~full-time instructors, the Legislature wishes to recognize and make~~
33 ~~efforts to address longstanding policy of the board of governors~~
34 ~~that at least 75 percent of the hours of credit instruction in the~~
35 ~~California Community Colleges, as a system, should be taught by~~
36 ~~full-time instructors. To this end, community college districts that~~
37 ~~have less than 75 percent of their hours of credit instruction taught~~
38 ~~by full-time instructors shall apply a portion of the program~~
39 ~~improvement allocation received pursuant to Section 84755 as~~
40 ~~follows:~~

1 (1) ~~Districts that, in the prior fiscal year, had between 67 percent~~
2 ~~and 75 percent of their hours of credit instruction taught by~~
3 ~~full-time instructors shall apply up to 33 percent of this allocation~~
4 ~~as necessary to reach the 75-percent standard. If a district in this~~
5 ~~category chooses instead not to improve its percentage, the board~~
6 ~~of governors shall withhold 33 percent of this allocation.~~

7 (2) ~~Districts that, in the prior fiscal year, had less than 67 percent~~
8 ~~of their hours of credit instruction taught by full-time instructors~~
9 ~~shall apply up to 40 percent of this allocation as necessary to reach~~
10 ~~the 75-percent standard. If a district in this category chooses instead~~
11 ~~not to improve its percentage, the board of governors shall withhold~~
12 ~~40 percent of this allocation.~~

13 (3) ~~Districts that maintain 75 percent or more of their hours of~~
14 ~~credit instruction taught by full-time instructors shall otherwise~~
15 ~~be free to use their program improvement allocation for any of the~~
16 ~~purposes specified in Section 84755.~~

17 (b) ~~The board of governors shall adopt regulations for the~~
18 ~~effective administration of this section. Unless and until amended~~
19 ~~by the board of governors, the regulations shall provide as follows:~~

20 (1) ~~In computing the percentage of hours of credit instruction~~
21 ~~taught by full-time instructors, the hours of overload teaching by~~
22 ~~full-time instructors shall be excluded from both the total hours~~
23 ~~of credit instruction taught by full-time and part-time instructors~~
24 ~~and the total hours of instruction taught by full-time instructors.~~

25 (2) ~~A full-time instructor shall be defined as any regular and~~
26 ~~contract faculty member teaching credit instruction.~~

27 (3) (A) ~~The chancellor shall compute and report to each~~
28 ~~community college district the number of full-time faculty (FTF)~~
29 ~~which are to be secured through the use of the prescribed portion~~
30 ~~of program improvement revenue allocated to each district. This~~
31 ~~computation shall be made by dividing the applicable portion of~~
32 ~~program improvement revenue (0 percent, 33 percent, or 40 percent~~
33 ~~of the program improvement allocation), by the statewide average~~
34 ~~“replacement cost” (a figure which represents the statewide average~~
35 ~~faculty salary plus benefits, minus the statewide average hourly~~
36 ~~rate of compensation for part-time instructors times the statewide~~
37 ~~average full-time teaching load). If the quotient is not a whole~~
38 ~~number, then the quotient shall be rounded down to the nearest~~
39 ~~whole number. If this quotient, once applied, will result in the~~
40 ~~district exceeding the 75-percent standard, the chancellor shall~~

1 further reduce the quotient to a whole number that will leave the
2 district as close as possible to, but in excess of, the 75-percent
3 standard.

4 (B) By March 15 of each year, the chancellor shall report to
5 each district an estimate of the number of FTF to be secured based
6 upon the appropriation of revenues contained in the annual Budget
7 Bill.

8 (4) On or before December 31, 1991, the chancellor shall
9 determine the extent to which each district, by September 30, 1991,
10 has hired the number of FTF determined pursuant to paragraph
11 (3) for the 1989-90 and 1990-91 fiscal years. To the extent that
12 the cumulative number of FTF have not been retained, the
13 chancellor shall reduce the district's base budget for 1991-92 and
14 subsequent fiscal years by an amount equivalent to the average
15 replacement cost times the deficiency in the number of FTF.

16 (e) The office of the Chancellor of the California Community
17 Colleges shall convene a group of stakeholders, which shall include
18 faculty and students, on or before July 1, 2016, and every four
19 years thereafter, to develop recommendations on funding strategies
20 to enable the community colleges to achieve the 75-percent
21 standard and increase the participation of districts in the support
22 of part-time faculty, including, but not limited to, support of
23 part-time faculty office hours. The office of the chancellor shall
24 report the recommendations developed by the stakeholder group
25 to the Legislature, as provided in Section 9795 of the Government
26 Code, on or before March 1, 2017, and every four years thereafter.

27 SEC. 3. It is the intent of the Legislature that the office of the
28 Chancellor of the California Community Colleges work together
29 with the Academic Senate for California Community Colleges and
30 other relevant entities to develop goals for the full-time to part-time
31 faculty ratio in noncredit education.