

New California Construction Laws for 2017

The California Legislature introduced over 5103 bills in the 2015-2016 session. Below are summaries of some of the more important bills affecting contractors in their roles as contractors, effective January 1, 2017 unless otherwise noted. Many other bills will impact them in other roles, such as being businesses, taxpayers, and employers. For Smith Currie's California Law Note reporting on changes in the laws affecting employers in 2017, please visit our website's California Law Notes page. Each of the summaries is brief, focusing on the gist of the bill most important to contractors, while not mentioning additional, less important provisions. Each summary's title is a live link to the full text of the referenced bill, for those wanting to know in detail the provisions of the new law.

PROCUREMENT AND FINANCE

School Boards Required to Advertise for Bids for Lease/Leaseback Construction. AB 2316 (O'Donnell D)

This new law amends Education Code section 17400 to remove an exception from existing law that permitted school districts to enter so-called "lease/lease-back" arrangements without advertising for bids. Previously, the law authorized the governing board of a school district to lease real property for a minimum rental of \$1 per year if the instrument by which this property is leased required the lessee to construct, or provide for the construction of, a building to be used by the school district, so long as the title to the building vests in the school district at the end of the lease. School districts must now advertise for bids for these projects. This amendment also provides for payment of costs, but not profit, to contractors who performed work on a project a court later finds not in compliance with the former law.

CALFED Bay-Delta Program Authorized to Use Various Procurement Methods. AB 2551 (Gallagher R)

Sections 20928 through 20928.4 are added to the Public Contract Code to allow the CALFED Bay-Delta Program, a surface water storage program, to use the construction manager at-risk, design-build, or design-build operate method of delivery. The bill would require contracts under this program, including subcontracts, to be awarded on a best value basis or to the lowest responsible bidder. The Program must publish a procurement process for these contracts. This bill contains skilled workforce and other requirements.

University of California Best Value Procurement Pilot Program Extended to 2018. SB 1214 (Allen D)

Current law authorizes a pilot program for the Regents of the University of California to contract for certain types of projects on the university of the University of California based on the best value procedures. The law requires the Regents of the University of California to report to specific committees of the Legislature regarding the pilot program, including, among other information, a description of the projects awarded using the best value procedures. The authorizing statute, Section 10506.4 of the



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Public Contract Code, would expire per its terms on January 1, 2017. This section is amended to extend the expiration date to January 1, 2018 and repeals the reporting requirement. It also extends the pilot program to all University of California locations.

BONDS, LIENS & PAYMENTS

New California Public Works Claims Resolution Process--AB 626 (Chiu D)

Existing law applicable to state public contracts generally requires that the resolution of claims related to those contracts be subject to arbitration. It also provides a claims resolution procedure for local agency projects where the claim is valued at \$375,000 or less. For claims on contracts entered on or after January 1, 2017, Public Contract Code section 9204 is added to create a new claims resolution process that applies to all state and local agency projects, with the exception of certain state departments. Please click here to read Smith Currie's California Law Note discussing this new claims resolution procedure.

CONSTRUCTION DEFECTS

Construction Defect Pre-Litigation Dispute Resolution Process Extended through July 2024. AB 1963 (Calderon D)

The Davis-Stirling Common Interest Development Act requires specified conditions to be met before a homeowners' association may file a complaint for damages against a builder, developer, or general contractor of a common interest development based upon a claim for defects in the design or construction of the common interest development. Previously, this Act expired according to its terms on January 1, 2017. Section 6000 of the Civil Code is amended to extend the Act's expiration date to July 1, 2014.

CSLB

Harsh Licensing Compliance Rules Softened. AB 1793 (Holden D)

Under section 7031 of the Business and Professions Code, a contractor failing to be licensed at all times during a project is prohibited from suing to obtain payment for work done on that project, and the hiring party may recover back from the contractor all amounts paid for that project. Under existing law, a court may determine that a contractor has substantially complied with licensure requirements if specified conditions are met, including that the contractor did not know or should not reasonably have known that he or she was not duly licensed when the performance under the contract occurred. Also, to prove substantial compliance, the contractor must demonstrate that he or she acted promptly and in good faith to reinstate his or her license upon learning it was invalid. This law amends section 7031 to make it easier to prove substantial compliance by removing the condition that the contractor did not know or should not have reasonably have known that he or she was unlicensed during performance of the contract.

Chancellor of Community Colleges Empowered to Track Outcomes of Career Technical Education Students. SB 66 (Leyva D)

This new law amends Education Code section 88650 to require the Chancellor of the California Community Colleges to implement performance accountability outcome measures for the economic and workforce development program that provide the Governor, Legislature, and general public with information that quantifies employer and student outcomes for those participating in the program. These performance accountability measures should, to the extent possible, align with the performance accountability measures of the federal Workforce Innovation and Opportunity Act (Public Law 113-128). To implement this reporting requirement, the Department of Consumer Affairs is directed, by amendment to section 30 of the Business and Professions code, to make available to the Chancellor specified information with respect to every licensee for the sole purpose of enabling the office of the chancellor to measure employment outcomes of students who participate in career technical education programs offered by the California Community Colleges and recommend how these programs may be improved. The new law is intended also to protect the privacy of the students and licensees.

Disclosure of Citations to be Listed Against all of the Qualifier's Licenses. SB 1209 (Morrell R)

Presently, the CSLB is required to make available to the public the date, nature, and disposition of all citations and legal actions against licensees. Existing law limits the disclosure of citations to a specified time period. This law amends section 7124.6 of the Business and Professions code to extend the time citations are disclosed coextensive with the end of disclosure of any concurrent disciplinary action.

Further, the amendment requires the CSLB to disclose the citation or other disciplinary action on the license record of all licenses on whose records appear the personnel of the disciplined license.

DESIGN BUILD

Authority to Use Design-Build Construction Process Expanded to Include All Health Care Districts. SB 957 (Hueso D)

Previously, Marin and Sonoma Counties were authorized to use design-build procurement for health care projects. This law amends 32132.5 of the Health and Safety Code and broadens that authority to include any health care district when contracting for the construction of a hospital or health facility building. This law “sunssets” and expires according to its terms on January 1, 2025.

EMPLOYMENT & EMPLOYEE WAGES

Department of Industrial Relations Now Required to Release Escrowed Funds Timely. AB 326 (Frazier D)

Existing law provides that there is no liability for liquidated damages if a contractor, subcontractor, or surety deposits with the Department of Industrial Relations the full amount of a civil wage and penalty assessment issued by the DIR pending administrative or judicial review. This law amends Labor Code section 1742.1 to require the DIR to release those funds, plus interest earned, within 30 days following the conclusion of all administrative and judicial review or receipt of written notice of settlement.

Apprentices Now Entitled to Prevailing Wage for Pre-Employment Activities. AB 1926 (Cooper D)

Existing law requires that apprentices be paid prevailing wages on public work projects for work in which the apprentice is registered. This law amends Labor Code section 1777.5 to require that apprentices be paid prevailing wages for any time performed, including travel time, on preemployment activities, such as filling out an application or undergoing testing, training, or an examination, or other preemployment process as a condition of employment. The apprentice need not be paid for undergoing a drug or alcohol test if he fails the test.

Prevailing Wage Per Diem Rates Now to Include Certain Union Fees. SB 954 (Hertzberg D)

Existing law requires the Director of Industrial Relations to determine the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is to be performed, and the general prevailing rate of per diem wages for holiday and overtime work. This bill amends section 1773.1 to require per diem wages to include industry advancement and collective bargaining agreements administrative fees if the payments are made pursuant to a collective bargaining agreement to which the employer is obligated.

MISCELLANEOUS

DOT Capital Projects Program Expands to Include Operation of Highways and Bridges. AB 2289 (Frazier D)

Under this bill, Section 14526.5 of the Government Code is amended to require the Department of Transportation to add to its state highway operation and protection program planning for the expenditure of transportation funds for major capital improvements that are necessary to preserve and protect the state highway system and that include capital projects relative to maintenance, safety, and rehabilitation of state highways and bridges that do not add a new traffic lane to the system.

Dig Safe Act Defines When Excavation May Start. SB 661 (Hill D)

This new law, the Dig Safe Act of 2016 amends several sections of the Government Code and the Public Utilities Code. The changes, among other things, define “working day” for purposes of determining excavation start date and time, creates the California Underground Facilities Safe Excavation Board, and creates immunity from liability for operators who comply with the marking and notification requirements of the Act.

Workers Compensation Medical Providers Must Provide Timely Billing and Information. SB 1175 (Mendoza D)

Existing law requires the employer to provide medical, surgical, chiropractic, acupuncture, and hospital treatment, as specified, that is

reasonably required to cure or relieve the injured worker from the effects of his or her injury. A provider of those services must submit, among other documents, its request for payment with an itemization of services provided and the charge for each service. This law amends Labor Code section 4603.2 to require for services on or after January 1, 2017, that requests for payment with an itemization of services provided and the charge for each service be submitted to the employer within 12 months of the date of service or within 12 months of the date of discharge for inpatient facility services. Requests for payment are barred if not timely presented.

Failed Bills that May Be Brought Again Next Year

SB 1387 (De León D) South Coast Air Quality Management District board. Died in Assembly.

Current law establishes the South Coast Air Quality Management District vested with the authority to regulate air emissions from stationary sources located in the South Coast Air Basin and establishes a district board, consisting of 13 members. This bill, until January 1, 2025, would add 3 members to the district board, as specified. The bill would make various conforming changes. This bill contains other related provisions.

SB 959 (Lara D) University of California: contracts: bidding. Vetoed.

This bill would have beginning January 1, 2018, required a bidder, to qualify as a lowest responsible bidder or best value awardee on contracts for specified services, among other requirements, to certify in writing to the University of California (UC) that the bid includes a total employee compensation package that is valued on a per-employee basis at a level sufficient that it does not materially undercut the average per-employee value of total compensation for UC employees who perform comparable work at the relevant campus, medical center, or laboratory at which the bidder proposes to perform the work.

AB 2270 (Bonta D) California Infrastructure and Economic Development Bank: surety bond program. Died in committee.

The Small Business Financial Assistance Act of 2013 authorizes bank programs to offer surety bond guarantees. The act prohibits a corporation from guaranteeing any loan unless and until it makes specified determinations, including that there is a low probability that the surety bond would be granted by a financial institution or financial company under reasonable terms or conditions, and the beneficiary has demonstrated a reasonable prospect of successful completion of the project. This bill would modify that prohibition to refer to a surety bond instead of a loan and would add private bonding companies to those entities considered when calculating the probability that a surety bond would be granted.

SB 885 (Wolk D) Contracts: design professionals: indemnity. Died in committee.

This bill would have specified, with certain exceptions, for contracts and amendments to them entered into on or after January 1, 2017, that a design professional, as defined, only has the duty to defend himself or herself from claims or lawsuits that arise out of, or pertain or relate to, negligence, recklessness, or willful misconduct of the design professional. The bill would prohibit these provisions from being construed to affect any duty of a design professional to defend any claims brought against him or her on an ongoing basis during their pendency or the design professional's obligation to reimburse reasonable defense costs incurred by other persons or entities, limited to the design professional's degree of fault, as determined by a court, arbitration, or negotiated settlement.

AB 2286 (Mullin D) Contractors: home improvement salespersons. Died in committee.

Current law authorizes the Contractors' State License Board to set fees by regulation and sets forth certain limitations on those fees. Current law, in connection with a delinquent application for the renewal of registration of a home improvement salesperson, establishes a delinquent renewal penalty. This bill would increase various fee limitations and would additionally provide that the application fee to add personnel to an existing license be no more than \$150.

SB 994 (Hill D) Health care districts: design-build. Died in committee.

Would authorize, until January 1, 2022, the Beach Cities Health District and the Peninsula Health Care District to use the design-build process for the construction of facilities or other buildings in those districts, as specified. Because the bill would expand the application

of the procurement process to additional design-build entities, the bill would expand the crime of perjury, thereby imposing a state mandated local program. This bill contains other related provisions and other existing laws.

AB 1317 (Salas D) Labor Code Private Attorneys General Act of 2004. Died in committee.

This bill would have provided the employer with the right to cure any violation of the Labor Code covered by the Labor Code Private Attorneys General Act of 2004 before the employee may bring a civil action. That right to cure would be provided before, and in addition to, any other specified procedures the employee is required to follow prior to bringing an action.

SB 1170 (Wieckowski D) Public contracts: water pollution prevention plans: delegation. Died in committee.

This bill would have, except as specified, prohibited a public entity, charter city, or charter county from delegating to a contractor the development of a plan, as defined, used to prevent or reduce water pollution or runoff on a public works contract. The bill would also have prohibited a public entity, charter city, or charter county from requiring a contractor on a public works contract that includes compliance with a plan to assume responsibility for the completeness and accuracy of a plan developed by that entity.

AB 520 (Levine D) Private employment: occupational safety and apprenticeships. Died in Assembly.

This bill would have required the Occupational Safety and Health Standards Board, by June 1, 2017, to adopt a standard that requires an employer performing corrosion prevention work on industrial and infrastructure projects to use trained and certified personnel, as specified. Because certain violations of these new requirements would be a misdemeanor, the bill would impose a state-mandated local program.