New Laws for 2013 that Affect Contractors

Over 4,000 were introduced by the California Legislature in 2011-2012. Below are summaries of some of the more important bills affecting contractors in their roles as contractors. Many other bills will impact them in other roles, such as being businesses, taxpayers, and employers. Each of the summaries are brief, focusing on the gist of the bill, while most of the bills have additional provisions that are not mentioned. Links are provided to the full text of each of the bills for those wanting to know in detail the provisions of the new law. Lastly, reference is made to failed bills that are likely to be revisited next session.

**Indemnity Reform**

**SB 474 (Evans D)** Type 1 indemnity outlawed in California. Supported by ASAC.

To make construction businesses responsible for losses they cause on commercial construction projects, the Legislature removed construction businesses’ ability to obtain indemnity for their own active fault from other parties connected with the job. Further, it may limit contractors’ rights to require insurance coverage as an additional insured from subcontractors and suppliers on their insurance policies. The new rule also limits contractors' rights to require by contract that subcontractors and suppliers under them provide a defense for the contractor's active negligence, and contractors may now obtain only defense proportionate to the extent of damage caused by the subcontractor or supplier. The law applies to contracts and amendments (which would include change orders) entered on and after January 1, 2013. For analysis and discussion, please click this link to go to: http://mclennonlaw.com/blog/?page_id=1144.

**Retention**

**AB 1671 (Huffman D)** Zero retention practice by CalTrans extended. Supported by ASAC.

CalTrans’ zero retention practice is extended to 2020. Current law prohibits the Department of Transportation from withholding retention proceeds in any amount when making progress payments for work performed by a contractor. The current law expires 12.31.13. This bill extends these provisions to January 1, 2020. The bill would also makes statements of legislative findings strongly in favor of zero retention withholding.

**Insurance**

**SB 863 (De León D)** Workers’ compensation reform bill.

Workers compensation reform bill of 119 pages. Increases workers’ compensation permanent disability benefits by an estimated $750 million per year. This bill provides for limits on self-dealing by medical examiners; establishes $120 million annual return-to-work program in DIR; imposes new requirements for self-insured companies; revises and recasts eligibility for permanent disability payments; revises and recasts dispute resolution procedures; revises method for determining permanent partial disability payments; provides for a supplemental job displacement benefit in the form of a voucher for up to $6,000 to cover various education-related retraining and skill enhancement expenses; places limits on home health care benefits; new provisions for
medical billing and dispute resolution; provides for new medical review procedures; provides for handling of medical and other liens; and many other changes.

**AB 2219 (Knight R)** Special workers’ compensation requirements for roofing contractors. Supported by ASAC.

The bill was sponsored by Union Roofing Contractors Association primarily to make permanent the requirement that roofing contractors must have on file with the CSLB a current and valid proof of workers' compensation coverage, even if the roofing contractor says it has no employees. It also calls for in-person audits by workers compensation carriers to ensure that roofing contractors provide workers compensation insurance for all employees.

**AB 1794 (Williams D)** Sharing of employee information by the EDD.

This bill authorizes the Employment Development Department to share certain employee information with the Joint Enforcement Strike Force on the Underground Economy, the Contractors' State License Board, and the State Compensation Insurance Fund. This law is in effect until January 1, 2019.

**SB 691 (Lieu D)** Sharing of employee information for workers’ compensation fraud investigation.

Under current law, the information obtained in the administration of the Unemployment Insurance Code is for the exclusive use and information of the Director of Employment Development in the discharge of his or her duties and is not open to the public. However, current law permits the use of the information for specified purposes, such as for workers’ compensation insurance fraud investigation.

**Employment**

**AB 240 (Bonilla D)** Liquidated damages for underpaid employees.

This bill permits an employee to recover liquidated damages pursuant to a complaint brought before the Labor Commissioner alleging payment of less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute.

**AB 2675 (Swanson D)** Written contract required for employee paid by commissions.

Current law requires that whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract must be in writing and set forth the method by which the commissions are to be computed and paid. This bill exempts from this requirement temporary, variable incentive payments that increase, but do not decrease, payment under the written contract (bonuses).

**Licensing**

**AB 2237 (Monning D)** Construction managers must be licensed for home improvement contracts. Supported by ASAC.

This bill requires licensing for construction managers, by defining the term "consultant" for purposes of the definition of a contractor to include a person who provides a bid, or who arranges for and sets up work schedules and maintains oversight of a construction project, with respect to a home improvement contract, as specified. Violation is subject to criminal penalties.
**AB 2554 (Berryhill, Bill R)** CSLB retains jurisdiction over revoked licenses.

The Contractors' State License Board is charged with the licensure and regulation of contractors. Under current law, the CSLB has jurisdiction over licenses that have expired or been canceled, forfeited, suspended, or surrendered, and CSLB can proceed with investigation or disciplinary proceeding against the license. This bill specifies that revocation of a license does not deprive the board of jurisdiction.

**Vehicles**

**SB 341 (Lowenthal D)** Backup alarms required for heavy construction vehicles.

This bill requires an automatic audible backup alarm for a construction vehicle that operates at or transports any construction or industrial material to and from a mine or construction site. It applies to vehicles with a gross vehicle weight rating (GVWR) in excess of 14,000 pounds. Alarm must be capable of emitting sound audible under normal conditions from a distance of not less than 200 feet.

**Public Works Protections**

**AB 1598 (Buchanan D)** Modular public buildings are included in definition of public works.

This bill brings into the definition of “public works” for purposes of prevailing wage (and listing laws) modular buildings such as portable classrooms, by modifying the definition of “installation” to include the assembly and disassembly of freestanding and affixed modular office systems.

**AB 1565 (Fuentes D)** Prequalification and rating of bidders on school projects.

This bill requires the governing board of a school district (except for school districts with an average daily attendance of less than 2,500) using a questionnaire and uniform system of rating bidders to ensure they include issues covered by the standardized questionnaire and model guidelines for rating bidders developed by the Department of Industrial Relations. Using the questionnaire and uniform system does not preclude the governing board from prequalifying or disqualifying a subcontractor. Under this bill bidders subject to the questionnaire and uniform system would include the general contractor and all electrical, mechanical, and plumbing subcontractors. The board of the district is authorized to establish a process for prequalifying prospective bidders on a quarterly or annual basis. This bill applies to contracts awarded on and after January 1, 2014 and until January 1, 2019.

**AB 2580 (Furutani D)** LAUSD job order contracting extended and refined.

This bill extends to December 31, 2020 authorization for job order contracting by the Los Angeles Unified School District. This bill requires the job order contracts to be awarded to the most qualified bidder so long as that bidder is in compliance with the unified school district's project stabilization agreement. This bill requires the primary job order contractor to provide the specified notice and take bids for work available for subcontractors and to provide notice and justification in order to make a substitution to the subcontractor list. The bill authorizes the district to set a hearing to evaluate the substitution request.

**Project Delivery Methods**

**AB 2498 (Gordon D)** Pilot Program: CalTrans authorized to use Construction Manager/General Contractor project method.

This bill authorizes the Department of Transportation as a pilot program to engage in a Construction Manager/General Contractor project delivery method for projects for the construction of six projects such as highways, bridges, or tunnels. The Construction Manager/General Contractor would provide advice during the design process including, but not limited to, scheduling, pricing, and phasing to assist the department to design a
more constructible project. Also, liability and risk for cost containment and project schedule would be shifted to
the construction manager. This bill does not disturb existing listing law protections for subcontractors.

**SB 1509 (Simitian D)** Design-Build authority for schools extended to January 1, 2020.

Current law authorizes school districts and community college districts to enter into design-build contracts for both
the design and construction of a school facility or community college facility, respectively. Current law expires
January 1, 2014. This bill would extend this design-build authority to January 1, 2020.

**AB 720 (Hall D)** Public contracts: uniform construction cost accounting provisions: alternative
procedures. Chaptered. Supported by ASAC.

This bill limits authority of a board of supervisors or a county road commissioner governing county highway
contracts in use of alternative procedures for construction projects. After January 1, 2013, the alternative
procedures may be used for maintenance and emergency work and for new road construction and road
reconstruction not exceeding a published value. The bill would permit counties with a population of less than
50,000 to continue to use alternative procedures for county highway contracts. This bill also raises the size of
projects for which force accounts may be used from $30,000 to $45,000 and raises the size of projects not
requiring formal bidding from $125,000 to $175,000.

**SB 1549 (Vargas D)** San Diego alternative public transit project delivery.

This bill allows the San Diego Association of Governments to utilize alternative project delivery methods, as
defined, for public transit projects within its jurisdiction. Upon completion of a project the owner must submit a
progress report to the San Diego Association of Governments, etc. This bill will subject projects to certain
prevailing wage enforcement requirements.

**Public-Private-Partnerships**

**SJR 16 (Vargas D)** Resolution regarding use of PPP for Calexico West Port of Entry project.

The Legislature declares its support for a private-public partnership to renovate and expand the Calexico West
Port of Entry. This measure urges Congress to enact guiding legislation to authorize private-public partnerships
such as the one proposed for the expansion of the Calexico West Port of Entry.

**Green Building**

**AB 930 (Gordon D)** Qualified green builder member required for California Building Standards
Commission.

Current law establishes the California Building Standards Commission and sets forth the qualifications for
members appointed to the commission. This bill requires that at least one member of the commission be a person
who is experienced and knowledgeable in sustainable building, design, construction, and operation.

**Education**

**SB 1070 (Steinberg D)** Career Technical Education Pathways Program. Chaptered. Supported by ASAC.

This bill establishes the Career Technical Education Pathways Program until June 30, 2015, which would require
the Chancellor of the California Community Colleges and the Superintendent of Public Instruction to assist
economic and workforce regional development centers and consortia, community colleges, middle schools, high
schools, and regional occupational centers and programs to improve linkages and career technical education
pathways between high schools and community colleges to accomplish specified objectives. This assistance
would be required to be provided in the form of contracts and competitive grants administered jointly by the chancellor and the Superintendent for programs and initiatives that demonstrate a plan for close collaboration among regional institutions and entities to jointly accomplish specified goals.

**Bills Not Enacted, But Likely to Be Revisited**


**SB 975** (Wright D) Professions and vocations: regulatory authority. Would prohibit local governments and districts from imposing additional licensing requirements on professionals licensed by the State. Supported by ASAC. Vetoed.

**AB 2027** (Valadao R) and **AB 249** (Berryhill, Bill R) Contractors. Bill would reduce harshness of laws penalizing legitimate contractors whose licenses were suspended for a period of time. Supported in concept by ASAC. 2 year bill. Dead.

**SB 1516** (Leno D) Public contracts: bids. Would protect innovation in contracting by protecting “or equal” submissions from being shared before award of contract. Supported by ASAC. 2 year bill. Dead.

**AB 1804** (Valadao R) Public contracts: public entities: project labor agreements. Would continue to allow Charter Cities to prohibit use of project labor agreements on state funded projects. 2 year bill. Dead.

**SB 1185** (Price D) Centralized Intelligence Partnership Act: pilot program. Would foster cooperation and sharing of information among state departments to assist to ferret out and combat underground businesses. 2 year bill. Dead.

**AB 457** (Wagner R) Public works contracts: relief for bidders. Would allow attorney fees recovery to successful challenger against award of contract. Supported by ASAC. 2 year bill. Dead.

**AB 2021** (Wagner R) Works of improvement: disputed amounts. Would define circumstances and amounts of withholding for disputed amounts from progress payments. ASAC supports in concept. 2 year bill. Dead.

**AB 2353** (Knight R) Public contracts: subcontracting: substituting. Would require specified notice to subcontractor before being substituted out of a project. ASAC supports. 2 year bill. Dead.

**SB 497** (Rubio D) Public contracts: state agencies: bid preferences. Bid preferences of 5% to a California business. ASAC supports. 2 year bill. Dead.

**SB 693** (Dutton R) Public contracts: local agencies. Would allow for public private partnerships. ASAC supports in concept, so long as payment protections for contractors are included. 2 year bill. Dead.