

# New Construction Laws for 2015

Over 4200 bills were introduced by the California Legislature in the 2013-2014 session. Below are summaries of some of the more important bills affecting contractors in their roles as contractors, effective January 1, 2015 unless otherwise noted.

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.

Many other bills will impact contractors in other roles, such as being businesses, taxpayers, and employers. For changes in the laws affecting employers in 2015, please visit the [Employment Law Notes](#) page of the McLennon Law Corp. website.

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## **Retention Cap Protection**

### **5% retention cap loophole closed. AB 1705 (Williams D)**

SB 293 last year capped, through the end of 2015, public works retention at 5% with certain exceptions including a finding by the public entity that the project is "substantially complex". Entities started immediately abusing this law by finding essentially every project to be "substantially complex". This law extends the operation of these provisions to January 1, 2018 and requires that the bid documents include details explaining the basis for any "substantially complex" finding. This transparency will allow contractors to challenge unfounded findings and enforce the 5% retention cap.

## **Design-Build**

Design-build projects continue to gain ground in California.

### **New health care district authorized to use design-build. SB 268 (Gaines R)**

Each health care district has specific duties and powers respecting the creation, administration, and maintenance of the districts, including to purchase, receive, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district. This law authorizes the Last Frontier Health Care District to use this design-build process when contracting for the construction of a building and improvements directly related to a hospital or health facility building at the Modoc Medical Center.

### **[Transit design-build authority extended. SB 1433 \(Hill D\)](#)**

The Local Agency Public Construction Act until January 1, 2015, authorizes a transit operator, as defined, to enter into a design-build contract, as specified. Current law requires certain information submitted in this regard to be provided under penalty of perjury. This law extends the authorization for a transit operator to enter into a design-build contract until January 1, 2017.

### **Payment Bonds**

#### **[Specified deposits allowed lieu of surety payment bond. AB 1856 \(Wilk R\)](#)**

This law allows all bonds and notes of the United States or the State of California and cashier's checks, payable to the officer, to be deposited with the officer in lieu of a bond, as specified. Payment bond claimants may have to deal with the entity's contracting officer instead of a surety in event of nonpayment.

### **Prevailing Wage Contractor Protection**

#### **[Contractor protected from late prevailing wage notice. AB 1939 \(Daly D\)](#)**

This law empowers a contractor to sue a private owner for increased costs, including labor costs, penalties, and legal fees incurred as a result of any decision by the Department of Industrial Relations, the Labor and Workforce Development Agency, or a court that classifies the project or any part thereof as a public work after bid acceptance, contract signing, or start of work, except under circumstances specified. This law shifts from contractor to owner the risk if improperly failing to classify the project as public work.

### **Public Works Builder's Risk Insurance**

#### **[Notice of deductible on master builder's risk policy required. AB 2376 \(Weber D\)](#)**

This law requires public entities to outline in requests for bids or proposals the contractor's deductible under the Director of General Services' master builders' risk insurance program for state construction projects during construction.

### **Licensure Enforcement**

#### **[CSLB gains site access and citation authority. SB 315 \(Lieu D\)](#)**

This law requires employers to grant free access to all places of labor to the CSLB's enforcement division when participating in the activities of the Joint Enforcement Strike Force on the Underground Economy. Further, the CSLB's authorized persons are empowered to issue written notices to appear in court.

#### **[Contractor license applicants must provide tax ID numbers. SB 1159 \(Lara\)](#)**

No later than January 1, 2016, this bill requires the State Contractors Licensing Board to require an applicant to provide the Board either an individual tax identification number or social security number if the applicant is an individual. The bill would require the CSLB to report to the Franchise Tax Board, and subject a licensee to a penalty, for failure to provide that information.

### **Lease-Leaseback**

**Prequalification process required for school lease-leasebacks. AB 1581 (Buchanan D)** Requires, until January 1, 2019, the lease instrument and the agreement with the lowest responsible bidder to include a requirement for the above-described prequalification questionnaire and financial statement requirements when the agreement is for a public project using moneys received pursuant to the Leroy F. Greene School Facilities Act of 1998 or moneys from future state school bonds that involves a projected expenditure of \$1,000,000 or more. Requires a school district using lease-lease back construction procurement to use the same prequalification process as required for design-bid-build construction.

### **Competitive Bidding**

**Raised threshold for competitive bidding on UC projects. SB 502 (Block D)** Current law provides that where the Regents of the University of California are of the view that a project of \$100,000 or less does not require the application of all provisions of law relating to competitive bidding by the university, the regents shall solicit bids in writing and award the work to the lowest responsible bidder or reject all bids. This bill raises this dollar threshold for the cost of a project to \$640,000. This bill contains other related provisions and other existing laws.

### **Gas Pipeline Work Notice**

#### **Gas pipeline work notice required. AB 1937 (Gordon)**

Requires a gas corporation to provide not less than 3 working days' notice to a school or hospital prior to undertaking nonemergency excavation or construction of a gas pipeline when the work is located within 500 feet of the school or hospital.

### **Recycled Paving Materials**

#### **Recycled paving materials use requirements. AB 2355 (Levine)**

Requires, by January 1, 2017, a local agency that has jurisdiction over a street or highway to 1) either adopt the standards developed by the Department of Transportation for recycled paving materials and for recycled base, sub-base, and pervious backfill materials, or 2) discuss at a regularly scheduled public hearing of the local agency's legislative or other governing body why the standards are not being adopted.

### **OSHA Safety Violations**

#### **OSHA violations abatement rules. AB 1634 (Skinner)**

Enacts various provisions of law related to an employer's obligation to abate an alleged workplace safety and health hazard. Prohibits the Division of Occupational Safety and Health from granting for serious violations, abatement or credit for abatement unless the employer has abated the violation or has submitted a statement to the division in accordance with existing law, and would additionally require

supporting evidence with the statement where necessary. The bill would authorize the division to grant such a modification only if the violation has been abated or the signed statement and supporting evidence is received within 10 working days after the end of the period fixed for abatement.

### **Failed Bills Likely to be Revisited**

**Los Angeles Unified School District: best value procurement: pilot. AB 1971 (Bocanegra D)** Would establish a pilot program to authorize the Los Angeles Unified School District to use, before person, firm, or corporation that constructs a building to be leased and used by the school district upon a designated site, including, but not limited to, the prime contractor and, if used, electrical, mechanical, and plumbing subcontractors, to comply with the January 1, 2017, a best value procurement method for bid evaluation and selection for public projects that exceed \$1,000,000. The bill would establish various requirements applicable to the use of the best value procurement method under this authorization. These provisions would be repealed on January 1, 2020. This bill contains other related provisions.

### **Public contracts: change orders. AB 2471 (Frazier D)**

Would require a public entity, as defined, when authorized to order changes or additions to the work in a public works contract awarded to the lowest bidder, to issue a change order promptly, and no later than 60 days after the extra work is performed and documentation has been submitted, as specified. The bill would, if this requirement is not met, make the public entity liable to the original contractor for the completed extra work.