

GOVERNOR SIGNS ASAC's ASSEMBLY BILL 1223

ASAC's Governmental Relations Committee, Chaired by Dan McLennon, Esq., decided in January 2017 to sponsor a bill this session that helps subcontractors get paid faster on public works projects. Several steps between then and now made the effort successful despite some initial strong opposition. Here's a recap:

First, upon the advice of our veteran Legislative Advocate Skip Daum (Capitol Communications Group), we needed to seek the best author for our bill from among 120 Assembly and Senate Members. The perfect person for the job was Assembly Member Anna Caballero (Democrat representing the counties of Monterey, San Benito, Santa Clara, and Santa Cruz) because of her full understanding of the prompt pay problems subcontractors face and the need for the State to timely disclose to its contracting partners and the public how much money was being expended on projects.

In addition, Assembly Member Caballero was asked by ASAC to help because of her prior position and experience in State government. From 2010 to 2016, she was Governor Edmund G. Brown's cabinet Secretary of the Business, Consumer Services and Housing Agency. As Secretary she oversaw the largest civil rights department in the country, the protection of consumer rights through the licensing of over three million individuals (including 238,000 subcontractors) and businesses in California, and the development and maintenance of affordable housing statewide. During her time working with Governor Brown, Anna was the highest-ranking Latina in State government.

Second, we needed to explain to others what our bill would actually do. ASAC members documented cases showing they weren't being timely paid by general contractors, and upon inquiring when they would be paid weren't getting an accurate or verifiable answer. Current law requires being paid within 10 days by the GC. Some cases exceeded one year!

A positive solution was to have public entities post on their web sites when they paid, how much was paid, on which project, and to whom. This public disclosure will enable subcontractors to see if the GC was paid and, citing this web information, politely ask for their prompt payment.

Immediately after the bill was introduced dozens of local public entities opposed the bill citing difficulties such as not having a web site, not enough staff to keep track, increasing employee costs, short time frame, and other issues. We decided to amend the bill to limit it to only State agencies which got the locals out of the way. We're confident that, in a rather short time after the bill takes effect in January 2018,

that local entities will start posting the information anyway in the interest of public transparency.

Third, we testified in numerous legislative policy hearings, garnering favorable votes because of the justification we provided and because of the respect legislators have for Assembly Member Caballero.

Two hearings in the Assembly and Senate Appropriations Committees were also required and we satisfactorily passed their muster and concerns about State costs.

Fourth, we negotiated amendments that removed conflicts with some entities that already do similar reporting, such as CalTrans.

Fifth, we, and the Assembly Member's communications director, met with the Governor's staff to explain the measure even before it arrived in his office.

Sixth, we dispatched a letter to the Governor requesting his signature. During our background research we discovered that he signed a similar bill during his first term as Governor in 1991, so we believed this was a good sign. That bill dealt with the Department of General Services. AB 1223 deals with every State agency.

In the end, these organizations helped ASAC move the bill to the Governor's desk:

- California Professional Association of Specialty Contractors
- Western Electrical Contractors Association
- National Electrical Contractors Association
- Various individuals
- Air Conditioning Sheet Metal Association
- Roofing Contractors Association of California
- Air-conditioning & Refrigeration Contractors Association
- Construction Preliens & Paperwork
- California Legislative Conference of the Plumbing, Heating and Piping Industry
- Plumbing-Heating-Cooling Contractors of California
- Western Fire Protection, Inc.
- Wall and Ceiling Alliance
- Finishing Contractors Association of Southern California
- American Fire Sprinkler Association
- Northern California Allied Trades
- Independent Roofing Contractors of California, Inc.
- Pacific Southwest Structures, Inc.
- Painting & Decorating Contractors of California Inc.
- Rua & Son Mechanical

- Tri-Co Floors, Inc.
- Union Roofing Contractors Association

Here's the text of the bill:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10261.7 is added to the Public Contract Code, to read:

10261.7. (a) Within 10 days of making a construction contract payment, a state agency that maintains an Internet Web site shall post on its Internet Web site the following:

- (1) The project for which the payment was made.
 - (2) The name of the construction contractor or company paid.
 - (3) The date the payment was made or the date the state agency transmitted instructions to the Controller or other payer to make the payment.
 - (4) The payment application number or other identifying information.
 - (5) The amount of the payment.
- (b) This section shall not apply to a construction contract valued below twenty-five thousand dollars (\$25,000).
- (c) This section shall not apply to progress payments published under Section 10262.3.

ASAC is very gratified by Assembly Member Caballero's ardent support for our bill. She stated "Subcontractors are required by law to pay their employees and material costs before receiving payment from a contractor for a construction job. AB 1223 is an important government transparency and accountability bill that gives subcontractors payment information about state contracts that will allow them to get paid on time for the work they perform."

Lastly, we trust that this report demonstrates to ASAC's members the value of being proactively engaged in State policy formation and that our members' commitment remains strong. The legislature reconvenes in January 2018!