

## Memorandum 2007-58

**Mechanics Lien Law  
(Draft of Recommendation)**

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The Commission renewed its study of mechanics lien law and associated construction remedies in 2004. A tentative recommendation, intended to simplify, clarify, organize, and modernize the existing statute, was circulated in June 2006. Since that date, the Commission has been studying comment on the tentative recommendation, and has made several additional revisions to the proposed law.

This memorandum presents a draft of the proposed legislation intended for inclusion in a final recommendation in this study. The draft of the narrative "preliminary part" of the final recommendation will be presented separately, either as a supplement to this memorandum or in a separate memorandum.

The attached draft of the proposed law incorporates all revisions approved by the Commission to date, as well as non-substantive technical corrections made by the staff.

After considering the issues raised in CLRC Memorandum 2007-57, and in any supplement to CLRC Memorandum 2007-57, the Commission will need to decide whether approve the staff draft for inclusion in a final recommendation, with or without changes.

Respectfully submitted,

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## PROPOSED LEGISLATION

1 **Civ. Code §§ 3081.1-3081.10 (repealed). Design professionals lien**

2 SEC. \_\_\_\_\_. Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of  
3 Division 3 of the Civil Code is repealed.

4 **Comment.** Former Chapter 8 (former Sections 3081.1-3081.10) is replaced by Chapter 3  
5 (Sections 8300-8318) of Part 6 of Division 4. For the disposition of the provisions of former  
6 Chapter 8, see table below. All dispositions are to the Civil Code.

7 For the source of each section in the new law or for further detail, see the Comment to the  
8 appropriate section in this draft *infra*.

9 **Civ. Code §§ 3082-3267 (repealed). Works of improvement**

10 SEC. \_\_\_\_\_. Title 15 (commencing with Section 3082) of Part 4 of Division 3 of  
11 the Civil Code is repealed.

12 **Comment.** Former Title 15 (former Sections 3082-3267) is replaced by new Part 6 (Sections  
13 8000-8848) of Division 4 of the Civil Code (private work of improvement) and by new Part 6  
14 (Sections 41010-45090) of Division 2 of the Public Contract Code (public works contract  
15 remedies). For the disposition of the provisions of former Title 15, see table below. Unless  
16 otherwise indicated, all dispositions are to the Civil Code.

17 For the source of each section in the new law or for further detail, see the Comment to the  
18 appropriate section in this draft *infra*.

19 **Civ. Code §§ 7100-7106 (repealed). Automatic checkout system**

20 SEC. \_\_\_\_\_. Part 8 (commencing with Section 7100) of Division 4 of the Civil  
21 Code is repealed.

22 **Comment.** Former Part 8 (former Sections 7100-7106) is relocated to new Title 1.4C (Sections  
23 1749.70-1749.76) of Part 4 of Division 3. The purpose of the relocation is to make space for new  
24 Part 6 (Sections 8000-8848), relating to private works of improvement. For the disposition of the  
25 provisions of former Part 8, see table below. All dispositions are to the Civil Code.

26 For the source of each section in the new law or for further detail, see the Comment to the  
27 appropriate section in this draft *infra*.

28 **PRIVATE WORK OF IMPROVEMENT**

29 **Civ. Code §§ 8000-8848 (added). Private work of improvement**

30 SEC. \_\_\_\_\_. Part 6 (commencing with Section 8000) is added to Division 4 of the  
31 Civil Code, to read:

1                   PART 6. PRIVATE WORK OF IMPROVEMENT

2                               CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

3   Article 1. Definitions

4   **§ 8000. Application of definitions**

5       8000. Unless the provision or context otherwise requires, the definitions in this  
6 article govern the construction of this part.

7       **Comment.** Section 8000 continues former Section 3082 without substantive change.

8   **§ 8002. Claimant**

9       8002. “Claimant” means a person that has a right under this part to record a  
10 claim of lien, give a stop payment notice, or assert a claim against a payment  
11 bond.

12       **Comment.** Section 8002 restates former Section 3085, omitting reference to the combination  
13 of remedies as unnecessary.

14       See also Sections 8024 (“lien”), 8030 (“payment bond”), 8032 (“person”), 8044 (“stop  
15 payment notice”).

16   **§ 8004. Commencement**

17       8004. A work of improvement “commences” on either of the following events:

18       (a) Delivery to the site of material or supplies that are thereafter used,  
19 consumed, or incorporated in the work of improvement.

20       (b) Visible work of a permanent nature on the site.

21       **Comment.** Section 8004 is new. It codifies case law. See, e.g., *Walker v. Lytton Sav. & Loan*  
22 *Ass’n*, 2 Cal. 3d 152, 159, 84 Cal. Rptr. 521 (1970); *Halbert’s Lumber, Inc. v. Lucky Stores, Inc.*,  
23 6 Cal. App. 4th 1233, 1240-1241, 8 Cal. Rptr. 2d 298 (1992).

24       Although mere delivery of material or supplies to a site can mark “commencement” of the  
25 work of improvement, the person delivering the material or supplies has no lien right until the  
26 material or supplies are actually used, consumed, or incorporated in the work of improvement.

27       See also Sections 8040 (“site”), 8050 (“work of improvement”).

28   **§ 8006. Construction lender**

29       8006. “Construction lender” means either of the following:

30       (a) A mortgagee or beneficiary under a deed of trust lending funds for payment  
31 of construction costs for all or part of a work of improvement, or the assignee or  
32 successor in interest of the mortgagee or beneficiary.

33       (b) An escrow holder or other person holding funds provided by an owner,  
34 lender, or another person as a fund for payment of construction costs for all or part  
35 of a work of improvement.

36       **Comment.** Section 8006 continues former Section 3087 without substantive change.

37       See also Sections 14 (present includes future), 8028 (“owner”), 8032 (“person”), 8050 (“work  
38 of improvement”).

1    **§ 8008. Contract**

2       8008. “Contract” means an agreement between an owner and a direct contractor  
3 that provides for all or part of a work of improvement. The term includes a  
4 contract change.

5       **Comment.** Section 8008 continues former Section 3088 and adds a reference to a contract  
6 change. The term “contract change” replaces “written modification of the contract” as used in  
7 former Section 3123. This codifies the effect of *Basic Modular Facilities, Inc. v. Ehsanipour*, 70  
8 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

9       There are instances in this part where the term is not used in its defined sense. See, e.g.,  
10 Sections 8028 (contract of purchase), 8130 (subcontract). See also Section 8000 (application of  
11 definitions).

12       See also Sections 8014 (“direct contractor”), 8028 (“owner”), 8050 (“work of improvement”).

13    **§ 8010. Contract price**

14       8010. “Contract price” means the price agreed to for a work of improvement,  
15 including a contract change. If the parties have not agreed to a price for the work  
16 of improvement, the contract price is the reasonable value of the work provided  
17 for the work of improvement.

18       **Comment.** Section 8010 generalizes provisions found in former Section 3123 (amount of lien)  
19 and throughout the mechanics lien law.

20       See also Sections 8008 (“contract”), 8050 (“work of improvement”).

21    **§ 8012. Design professional**

22       8012. “Design professional” means a person licensed as an architect pursuant to  
23 Chapter 3 (commencing with Section 5500) of Division 3 of the Business and  
24 Professions Code, registered as a professional engineer pursuant to Chapter 7  
25 (commencing with Section 6700) of Division 3 of the Business and Professions  
26 Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with  
27 Section 8700) of Division 3 of the Business and Professions Code that provides  
28 services pursuant to a written contract with a landowner for the design,  
29 engineering, or planning of a work of improvement.

30       **Comment.** Section 8012 restates the first paragraph of former Section 3081.1. The  
31 introductory clause and the second paragraph of former Section 3081.1 are not continued because  
32 they are surplus. See Section 8000 (application of definitions).

33       See also Sections 8008 (“contract”), 8050 (“work of improvement”).

34    **§ 8014. Direct contractor**

35       8014. “Direct contractor” means a contractor that has a direct contractual  
36 relationship with an owner.

37       **Comment.** Section 8014 supersedes former Section 3095 (“original contractor”). A direct  
38 contractor is not limited to a builder, and may include a surveyor, engineer, material supplier,  
39 artisan, or other person that contracts directly with the owner. A direct contractor within the  
40 meaning of this section is one that contracts directly with the owner and is not one such as a  
41 subcontractor or material provider that contracts with a general contractor acting as the owner’s  
42 “agent” for purposes of authorizing work.

43       See also Section 8028 (“owner”).

1    **§ 8016. Know or knowledge**

2       8016. A person “knows” or “has knowledge” of information if the person knows  
3 or should have known that information.

4       **Comment.** Section 8016 is new.  
5       See also Section 8032 (“person”).

6    **§ 8018. Labor, service, equipment, or material**

7       8018. “Labor, service, equipment, or material” includes but is not limited to  
8 labor, skills, services, material, supplies, equipment, appliances, power, and  
9 surveying provided for a work of improvement.

10      **Comment.** Section 8018 is a new definition. It is included for drafting convenience. The  
11 phrase is intended to replace various phrases used throughout the former law, including “labor or  
12 material,” “labor, services, equipment, or materials,” “appliances, teams, or power,” and the like,  
13 and is not intended to effect any change in the law. The definition applies to variant grammatical  
14 forms of the phrase used in this part, such as “labor, service, equipment, *and* material.”

15      See also Section 8050 (“work of improvement”).

16    **§ 8020. Laborer**

17       8020. (a) “Laborer” means a person who, acting as an employee, performs labor,  
18 or bestows skill or other necessary services, on a work of improvement.

19       (b) “Laborer” includes a person or entity to which a portion of a laborer’s  
20 compensation for a work of improvement, including but not limited to employer  
21 payments described in Section 1773.1 of the Labor Code and implementing  
22 regulations, is paid by agreement with that laborer or the collective bargaining  
23 agent of that laborer.

24       (c) A person or entity described in subdivision (b) that has standing under  
25 applicable law to maintain a direct legal action, in their own name or as an  
26 assignee, to collect any portion of compensation owed for a laborer for a work of  
27 improvement, shall have standing to enforce any rights or claims of the laborer  
28 under this part, to the extent of the compensation agreed to be paid to the person or  
29 entity for labor on that improvement. This subdivision is intended to give effect to  
30 the long-standing public policy of this state to protect the entire compensation of a  
31 laborer on a work of improvement, regardless of the form in which that  
32 compensation is to be paid.

33      **Comment.** Subdivision (a) of Section 8020 continues former Section 3089(a) without  
34 substantive change.

35      Subdivision (b) continues the first sentence of former Section 3089(b) and a part of former  
36 Section 3111, without substantive change.

37      Subdivision (c) continues the second and third sentences of former Section 3089(b), and a part  
38 of former Section 3111, without substantive change.

39      See also Section 8050 (“work of improvement”).



1    **§ 8022. Lending institution**

2    8022. “Lending institution” includes commercial bank, savings and loan  
3    institution, credit union, or other organization or person engaged in the business of  
4    financing loans.

5    **Comment.** Section 8022 continues the second paragraph of former Section 3237.  
6    See also Section 8032 (“person”).

7    **§ 8024. Lien**

8    8024. “Lien” means a lien under this part and includes a lien of a design  
9    professional under Section 8302, a lien for a work of improvement under Section  
10   8400, and a lien for a site improvement under Section 8402.

11   **Comment.** Section 8024 is a new definition. It is included for drafting convenience. There are  
12   instances in this part where the term is not used in its defined sense. See, e.g., Sections 8446(d)  
13   (multiple works of improvement), 8450(a) (priority of lien). See also Section 8000 (application of  
14   definitions).

15   See also Sections 8012 (“design professional”), 8042 (“site improvement”), 8050 (“work of  
16   improvement”).

17   **§ 8026. Material supplier**

18   8026. (a) “Material supplier” means a person that provides material or supplies  
19   to be used or consumed in a work of improvement.

20   (b) Materials or supplies delivered to a site are presumed to have been used or  
21   consumed in the work of improvement. The presumption established by this  
22   subdivision is a presumption affecting the burden of proof.

23   **Comment.** Subdivision (a) of Section 8026 continues former Section 3090 without substantive  
24   change. It replaces the term “materialman” with the term “material supplier” to conform to  
25   contemporary usage under this part.

26   Subdivision (b) is new. It reverses existing law. See, e.g., Consolidated Elec. Distributors, Inc.  
27   v. Kirkham, Chaon & Kirkham, Inc., 18 Cal. App. 3d 54, 58, 95 Cal. Rptr. 673 (1971).

28   See also Sections 8032 (“person”), 8050 (“work of improvement”).

29   **§ 8028. Owner**

30   8028. “Owner” means:

31   (a) With respect to a work of improvement, a person that contracts for the work  
32   of improvement.

33   (b) With respect to property on which a work of improvement is situated or  
34   planned, a person that owns the fee or a lesser interest in the property, including  
35   but not limited to an interest as lessee or as vendee under a contract of purchase.

36   (c) A successor in interest of a person described in subdivision (a) or (b).

37   **Comment.** Section 8028 generalizes provisions found in former Section 3092 (notice of  
38   cessation) and throughout the mechanics lien law.

39   For the authority of an owner to act on behalf of co-owners, and for the effect of notice to the  
40   owner of a lesser interest, see Section 8062 (co-owners). For general provisions on the authority  
41   of an agent, see Section 8064 (agency).

42   See also Sections 8032 (“person”), 8050 (“work of improvement”).

1    **§ 8030. Payment bond**

2       8030. “Payment bond” means a bond given under Chapter 6 (commencing with  
3    8600).

4       **Comment.** Section 8030 supersedes former Section 3096. See also Section 8600 (payment  
5    bond). There are instances in this part where the term is not used in its defined sense. See, e.g.,  
6    Sections 8452 (payment bond obtained by holder of mortgage or deed of trust), 8720-8722  
7    (payment bond as security for large project). See also Section 8000 (application of definitions).

8    **§ 8032. Person**

9       8032. “Person” means an individual, corporation, public entity, business trust,  
10   estate, trust, partnership, limited liability company, association, or other entity.

11      **Comment.** Section 8032 is a new definition. It is included for drafting convenience. It  
12   supplements Section 14 (“person” includes corporation as well as natural person).

13      See also Section 8036 (“public entity”).

14   **§ 8034. Preliminary notice**

15      8034. “Preliminary notice” means the notice provided for in Chapter 2  
16   (commencing with 8200).

17      **Comment.** Section 8034 supersedes former Section 3097. The substantive requirements for  
18   preliminary notice are relocated to Section 8200 *et seq.*

19   **§ 8036. Public entity**

20      8036. “Public entity” means the state, Regents of the University of California, a  
21   county, city, district, public authority, public agency, and any other political  
22   subdivision or public corporation in the state.

23      **Comment.** Section 8036 continues former Section 3099 without substantive change. This part  
24   does not apply to a public work, including a work of improvement governed by federal law. See  
25   Section 8052 (application of part). For remedies on a public work, see Public Contract Code  
26   Sections 41010-45090.

27      See also Section 14 (“county” includes city and county).

28   **§ 8038. Reputed owner, direct contractor, or construction lender**

29      8038. (a) “Reputed owner” means a person that a claimant reasonably and in  
30   good faith believes is an owner.

31      (b) “Reputed direct contractor” means a person that a claimant reasonably and in  
32   good faith believes is a direct contractor.

33      (c) “Reputed construction lender” means a person that a claimant reasonably and  
34   in good faith believes is a construction lender.

35      **Comment.** Section 8038 is new. It codifies case law. See *Kodiak Industries, Inc. v. Ellis*, 185  
36   Cal. App. 3d 75, 85, 229 Cal. Rptr. 418 (1986).

37      A reference in this part to a reputed owner, contractor, or lender, includes co-owners,  
38   contractors, or lenders. See Section 14 (the singular includes the plural).

1 § 8040. Site

2 8040. “Site” means the property on which a work of improvement is situated or  
3 planned.

4 **Comment.** Section 8040 continues former Section 3101, with the addition of a reference to a  
5 planned work of improvement. See Section 8302 (design professionals lien).

6 See also Section 8050 (“work of improvement”).

7 § 8042. Site improvement

8 8042. “Site improvement” means any of the following work on property:

9 (a) Demolition or removal of improvements, trees, or other vegetation.

10 (b) Drilling test holes.

11 (c) Grading, filling, or otherwise improving the property or a street, highway, or  
12 sidewalk in front of or adjoining the property.

13 (d) Construction or installation of sewers or other public utilities.

14 (e) Construction of areas, vaults, cellars, or rooms under sidewalks.

15 (f) Any other work or improvements in preparation of the site for a work of  
16 improvement.

17 **Comment.** Section 8042 continues former Section 3102 without substantive change.  
18 Subdivision (f) makes clear that the reference in former law to “making any improvements”  
19 means preparatory work, including infrastructure, and does not include construction of a  
20 structure.

21 See also Sections 8040 (“site”), 8050 (“work of improvement”).

22 § 8044. Stop payment notice

23 8044. (a) “Stop payment notice” means the notice given under Chapter 5  
24 (commencing with Section 8500). A reference in another statute to a “stop notice”  
25 in connection with the remedies provided in this part means a stop payment notice.

26 (b) A stop payment notice may be bonded or unbonded. A “bonded stop  
27 payment notice” is a notice given with a bond under Section 8532. An “unbonded  
28 stop payment notice” is a notice not given with a bond under Section 8532.

29 (c) Except to the extent this part distinguishes between a bonded and an  
30 unbonded stop payment notice, a reference in this part to a stop payment notice  
31 includes both a bonded and an unbonded notice.

32 **Comment.** Section 8044 supersedes former Section 3083. The term “stop payment notice”  
33 replaces the term “stop notice” used in former law.

34 § 8046. Subcontractor

35 8046. “Subcontractor” means a contractor that does not have a direct contractual  
36 relationship with an owner. The term includes a contractor that has a contractual  
37 relationship with a direct contractor or with another subcontractor.

38 **Comment.** The first sentence of Section 8046 continues former Section 3104 without  
39 substantive change. The second sentence is new; it makes clear that the term “subcontractor”  
40 includes a subcontractor of a subcontractor.

41 See also Section 8028 (“owner”).



1       **Comment.** Section 8054 continues the first sentence of former Section 3259 without  
2 substantive change. The second sentence of former Section 3259 is not continued; this part does  
3 not include special provisions relating to new trials or appeals.

4       Section 8054 makes former Section 3149, relating to consolidation of actions, unnecessary.  
5 Part 2 of the Code of Civil Procedure enables persons claiming liens on the same property to join  
6 in the same action to enforce their liens. See Code Civ. Proc. § 378 (permissive joinder). If  
7 separate actions are commenced, the court may consolidate them. See Code Civ. Proc. § 1048  
8 (consolidation of actions).

9       **§ 8056. Calculation of time**

10       8056. For purposes of this part, the term “day” means a calendar day.

11       **Comment.** Section 8056 is new. A reference to the term “day” in a statute typically means  
12 calendar day, unless otherwise specifically indicated. *Iverson v. Superior Court*, 167 Cal. App. 3d  
13 544, 548, 213 Cal. Rptr. 399 (1985).)

14       See also Sections 10 (computing time), 11 (holidays).

15       **§ 8058. Filing and recording of papers**

16       8058. (a) If this part provides for filing a contract, plan, or other paper with the  
17 county recorder, the provision is satisfied by filing the paper in the office of the  
18 county recorder of the county in which the work of improvement or part of it is  
19 situated.

20       (b) If this part provides for recording a notice, claim of lien, release of lien,  
21 payment bond, or other paper, the provision is satisfied by filing the paper for  
22 record in the office of the county recorder of the county in which the work of  
23 improvement or part of it is situated. A paper in otherwise proper form, verified  
24 and containing the information required by this part, shall be accepted by the  
25 recorder for recording and is deemed duly recorded without acknowledgment.

26       (c) The county recorder shall number, index, and preserve a contract, plan, or  
27 other paper presented for filing under this part, and shall number, index, and  
28 transcribe into the official records, in the same manner as a conveyance of real  
29 property, a notice, claim of lien, payment bond, or other paper recorded under this  
30 part.

31       (d) The county recorder shall charge and collect the fees provided in Article 5  
32 (commencing with Section 27360) of Chapter 6 of Part 3 of Division 2 of Title 3  
33 of the Government Code for performing duties under this section.

34       **Comment.** Subdivisions (a) and (b) of Section 8058 are new. They generalize a number of  
35 provisions of former law. The provision of subdivision (b) for recordation without  
36 acknowledgment is drawn from former Sections 3084 and 3093; it is an exception to the general  
37 rule of Government Code Sections 27280 and 27287.

38       Subdivisions (c) and (d) continue former Section 3258 without substantive change.

39       See also Sections 8008 (“contract”), 8024 (“lien”), 8030 (“payment bond”), 8050 (“work of  
40 improvement”).

1    **§ 8060. Effect of act by owner**

2       8060. No act of an owner in good faith and in compliance with a provision of  
3 this part shall be construed to prevent a direct contractor’s performance of the  
4 contract, or exonerate a surety on a performance or payment bond.

5       **Comment.** Section 8060 continues former Section 3263 without substantive change.

6       See also Section 8142 (no release of surety from liability).

7       See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8028 (“owner”).

8    **§ 8062. Co-owners**

9       8062. An owner may give a notice or execute or file a document under this part  
10 on behalf of a co-owner if the owner acts on the co-owner’s behalf and includes in  
11 the notice or document the name and address of the co-owner on whose behalf the  
12 owner acts.

13       **Comment.** Section 8062 is new. It generalizes provisions found in former Sections 3092  
14 (notice of cessation) and 3093 (notice of completion), and clarifies the effect of giving notice by a  
15 co-owner.

16       See also Section 8028 (“owner”).

17   **§ 8064. Agency**

18       8064. An act that may be done by or to a person under this part may be done by  
19 or to the person’s agent to the extent the act is within the scope of the agent’s  
20 authority.

21       **Comment.** Section 8064 is a specific application of Section 2305 (agent may perform acts  
22 required of principal by code). This section makes clear that an agent’s authority is limited to the  
23 scope of the agency. Thus, to the extent a direct contractor is deemed to be the agent of the  
24 principal for the purpose of engaging a subcontractor, the scope of the agency does not include  
25 other acts, such as compromise of litigation.

26       For provisions relating to the agent of an owner and to the agency authority of co-owners, see  
27 Sections 8028 (“owner”) and 8062 (co-owners).

28       See also Section 8032 (“person”).

29   **§ 8066. Relation to other statutes**

30       8066. (a) This part does not apply to a transaction governed by the Oil and Gas  
31 Lien Act, Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3 of  
32 the Code of Civil Procedure.

33       (b) This part does not apply to or change improvement security under the  
34 Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of  
35 the Government Code.

36       **Comment.** Subdivision (a) of Section 8066 restates former Section 3266(a) without  
37 substantive change. The substance of former Section 3266(b), which referred to former Streets  
38 and Highways Code Sections 5290-5297, is continued in Public Contract Code Section 42010  
39 (application of part). This part does not apply to a public work. See Section 8052 (application of  
40 part).

41       Subdivision (b) is new. It clarifies the interrelation between this part and the Subdivision Map  
42 Act. For relevant provisions of that act, see Government Code Sections 66499-66499.10  
43 (improvement security).

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### Article 3. Notice

#### § 8100. Written notice

8100. (a) Notice under this part shall be in writing.

(b) Written notice under this part may be given by electronic communication to the extent authorized under Section 8112.

**Comment.** Subdivision (a) of Section 8100 generalizes various provisions of former law. See, e.g., former Civ. Code §§ 3092 (notice of cessation), 3093 (notice of completion), 3094 (notice of nonresponsibility), 3097 (preliminary notice (private work)), 3103 (stop notice).

Subdivision (b) is new.

See also Section 14 (writing includes printing and typewriting).

#### § 8102. Contents of notice

8102. (a) Notice under this part shall, in addition to any other information required by statute for that type of notice, include all of the following information to the extent known to the person giving the notice:

(1) The name and address of the owner or reputed owner.

(2) The name and address of the direct contractor.

(3) The name and address of the construction lender, if any.

(4) A description of the site sufficient for identification, including the street address of the site, if any. If a sufficient legal description of the site is given, the effectiveness of the notice is not affected by the fact that the street address is erroneous or is omitted.

(5) The name, address, and relationship to the parties of the person giving the notice.

(6) If the person giving the notice is a claimant:

(i) A general statement of the work provided.

(ii) The name of the person to or for which the work is provided.

(iii) A statement or estimate of the claimant's demand, if any, after deducting all just credits and offsets.

(b) Notice is not invalid by reason of any variance from the requirements of this section if the notice is sufficient to substantially inform the person given notice of the information required by this section and other information required in the notice.

**Comment.** Section 8102 is new. It generalizes and standardizes provisions found throughout former law. See, e.g., former Sections 3092 (notice of cessation), 3093 (notice of completion), 3097 (preliminary notice), 3103 (stop notice), 3252 (notice to principal and surety).

#### § 8104. Notice of overdue laborer compensation

8104. (a) A direct contractor or subcontractor that employs a laborer and fails to pay the full compensation due the laborer, including any employer payments described in Section 1773.1 of the Labor Code and implementing regulations, shall not later than the date the compensation became delinquent, give the laborer, the laborer's bargaining representative, if any, the construction lender or reputed

1 construction lender, if any, and the owner, notice that includes all of the following  
2 information, in addition to the information required by Section 8102:

3 (1) The name and address of the laborer, and of any person or entity described in  
4 subdivision (b) of Section 8020 to which employer payments are due.

5 (2) The total number of straight time and overtime hours worked by the laborer  
6 on each job.

7 (3) The amount then past due and owing.

8 (b) Failure to give the notice required by subdivision (a) constitutes grounds for  
9 disciplinary action under the Contractors' State License Law, Chapter 9  
10 (commencing with Section 7000) of Division 3 of the Business and Professions  
11 Code.

12 **Comment.** Section 8104 restates former Section 3097(k), with the additional requirement that  
13 the information provided be given to the owner, and include the name and address of the unpaid  
14 laborer. See also Sections 8100-8118 (notice).

15 The reference to the Registrar of Contractors in the final sentence of former Section 3097(k) is  
16 revised to refer to the Contractors' State License Law. This is a technical, nonsubstantive change.

17 The information required in this notice is in addition to the information required by Section  
18 8102 (contents of notice).

19 Compliance with this section does not excuse compliance with Section 8202(b), if applicable.  
20 See Section 8202 (contents of preliminary notice).

21 See also Sections 8006 ("construction lender"), 8020 ("laborer"), 8028 ("owner"), 8046  
22 ("subcontractor"), 8052 (application of part).

23 **§ 8106. Manner of giving notice**

24 8106. Except as otherwise provided by statute, notice under this part may be  
25 given by any of the following means:

26 (a) Personal delivery.

27 (b) Mail in the manner provided in Section 8110.

28 (c) Leaving the notice and mailing a copy in the manner provided in Section  
29 415.20 of the Code of Civil Procedure for service of summons and complaint in a  
30 civil action.

31 **Comment.** Section 8106 is new. It generalizes and standardizes provisions found throughout  
32 former law. See, e.g., former Sections 3097 (preliminary notice), 3103 (stop notice), 3144.5  
33 (notice of release bond), 3227 (notice to principal and surety), 3259.5 (notice of recordation of  
34 notice of completion), 3260.2 (stop work notice).

35 When notice is given in the manner provided in Code of Civil Procedure Section 415.20 for  
36 service of summons and complaint, the notice is complete five days after mailing the notice. See  
37 Section 8116 (when notice complete). The 10 day delay provided in the Code of Civil Procedure  
38 for completion of service under that code is inapplicable.

39 This part may prescribe a different or more limited manner of giving a particular notice. See,  
40 e.g., Section 8486 (service of petition for order releasing lien).

41 **§ 8108. Address at which notice is given**

42 8108. Except as otherwise provided by this part, notice under this part shall be  
43 given to the person to be notified at any of the following addresses:

44 (a) The person's residence.

45 (b) The person's place of business.



1 (c) If the person to be notified is an owner, at the owner’s address shown on the  
2 contract, the building permit, or a construction trust deed.

3 (d) If the person to be notified is a construction lender, at the construction  
4 lender’s address shown on the construction loan agreement or construction trust  
5 deed.

6 (e) If the person to be notified is a direct contractor or a subcontractor, at the  
7 contractor’s address shown on the building permit, on the contractor’s contract, or  
8 on the records of the Contractors’ State License Board.

9 (f) If the person to be notified is a claimant, at the claimant’s address shown on  
10 the claimant’s contract, preliminary notice, claim of lien, stop payment notice, or  
11 claim against a payment bond, or on the records of the Contractors’ State License  
12 Board.

13 (g) If the person to be notified is a surety on a bond, at the surety’s address  
14 shown on the bond for service of notices, papers, and other documents, or on the  
15 records of the Department of Insurance.

16 **Comment.** Section 8108 is new. It generalizes and standardizes provisions found throughout  
17 former law. For an example of a more particularized notice provision, see Section 8506.

18 Subdivision (g) does not continue the unique provisions found in former Section 3227 for  
19 notice to alternate persons in the case of a personal surety or admitted surety insurer. The bond  
20 and undertaking law requires every bond to include the address at which the principal and sureties  
21 may be served with notices, papers, and other documents. Code Civ. Proc. § 995.320.

22 **§ 8110. Mailed notice**

23 8110. Except as otherwise provided by this part, notice by mail under this part  
24 shall be given by registered or certified mail, Express Mail, or overnight delivery  
25 by an express service carrier.

26 **Comment.** Section 8110 is a new provision included for drafting convenience. It generalizes a  
27 number of provisions of former law, and expands the methods of giving notice to include delivery  
28 by express service carrier.

29 For an example of a more particularized notice provision, see Section 8486.

30 **§ 8112. Notice by electronic communication**

31 8112. (a) As used in this section, “electronic record” has the meaning provided  
32 in Section 1633.2.

33 (b) A notice under this part may be given to a person in the form of an electronic  
34 record if the person has agreed to receive the notice in the form of an electronic  
35 record.

36 (c) If a person that has agreed to receive a notice in the form of an electronic  
37 record is a consumer within the meaning of Section 7006 of Title 15 of the United  
38 States Code, the person’s agreement shall satisfy the requirements of Section 7001  
39 of Title 15 of the United States Code relating to consumer consent to an electronic  
40 record.

41 **Comment.** Section 8112 is new. It combines the agreement requirement of the California  
42 Uniform Electronic Transactions Act (UETA) (Sections 1633.1-1633.17) with the consumer

1 protections of the federal Electronic Signatures in Global and National Commerce Act (E-Sign)  
2 (15 U.S.C. § 7001 *et seq.*).

3 A consumer within the meaning of E-Sign is “an individual who obtains products or services  
4 used primarily for personal, family, or household purposes.” 15 U.S.C. § 7006(1). The consumer  
5 consent requirements of E-Sign include (i) affirmative consent, (ii) disclosure, (iii) electronic  
6 access, (iv) software and hardware upgrades. See 15 U.S.C. § 7001(c)(1).

7 See also Section 8032 (“person”).

8 **§ 8114. Posting of notice**

9 8114. A notice required by this part to be posted shall be displayed in a  
10 conspicuous location at the site and at the main office of the site, if one exists.

11 **Comment.** Section 8114 is new. It generalizes and standardizes provisions found in former  
12 law. See, e.g., former Sections 3094 (notice of nonresponsibility), 3260.2 (stop work notice).

13 **§ 8116. When notice complete**

14 8116. Notice under this part is complete and deemed to have been given at the  
15 following times:

16 (a) If given by personal delivery, when delivered.

17 (b) If given by mail, when deposited in the mail or with an express service  
18 carrier in the manner provided in Section 1013 of the Code of Civil Procedure.

19 (c) If given by leaving the notice and mailing a copy in the manner provided in  
20 Section 415.20 of the Code of Civil Procedure for service of summons in a civil  
21 action, five days after mailing.

22 (d) If given by posting, when displayed.

23 (e) If given by recording, when recorded in the office of the county recorder.

24 (f) If given in the form of an electronic record, when the electronic record is  
25 transmitted.

26 **Comment.** Section 8116 is new. It generalizes and standardizes provisions found in former  
27 law. See, e.g., former Section 3097(f)(3) (service of preliminary notice).

28 Under subdivision (b), when notice is given in the manner provided in Code of Civil Procedure  
29 Section 1013, the notice is complete when deposited in the mail or with an express service carrier.  
30 The 10 and 20 day delays provided in the Code of Civil Procedure for completion of service  
31 under that code are inapplicable. For an exception to this rule, see Section 8486 (notice of hearing  
32 on lien release petition).

33 Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure  
34 Section 415.20 for service of summons and complaint, the notice is complete five days after  
35 mailing of the notice. The 10 day delay provided in the Code of Civil Procedure for completion of  
36 service under that code is inapplicable.

37 **§ 8118. Proof of notice**

38 8118. (a) Proof that notice was given to a person in the manner required by this  
39 part shall be made by a proof of notice declaration that states all of the following:

40 (1) The type or description of the notice given.

41 (2) The date, place, and manner of notice, and facts showing that notice was  
42 given in the manner required by statute.

1 (3) The name and address of the person to which notice was given, and, if  
2 appropriate, the title or capacity in which the person was given notice.

3 (b) If the notice is given by mail, the declaration shall be accompanied by one of  
4 the following:

5 (1) Documentation provided by the United States Post Office showing that  
6 payment was made to mail the notice using registered or certified mail.

7 (2) Documentation provided by an express service carrier showing that payment  
8 was made to send the notice using an overnight delivery service.

9 (3) A return receipt, delivery confirmation, signature confirmation, or other  
10 proof of delivery or attempted delivery provided by the United States Postal  
11 Service, or a photocopy of the record of delivery and receipt maintained by the  
12 United States Postal Service, showing the date of delivery and to whom delivered,  
13 or in the event of nondelivery, by the returned envelope itself.

14 (4) A tracking record or other documentation provided by an express service  
15 carrier showing delivery or attempted delivery of the notice.

16 (c) If notice is given in the form of an electronic record, the declaration shall  
17 also state that the document was served electronically and that no notice of non-  
18 transmission was received.

19 **Comment.** Section 8118 is new. It generalizes and standardizes provisions found throughout  
20 former law, and expands the methods of proof to include a certification of the mailing by the  
21 United States Postal Service and documentation by an express service carrier. See, e.g., former  
22 Sections 3097 (preliminary notice), 3260.2 (stop work notice).

## 23 Article 4. Construction Documents

### 24 § 8130. Contract forms

25 8130. (a) A written contract entered into between an owner and a direct  
26 contractor shall provide a space for the owner to enter the following information:

27 (1) The owner's name and address, and place of business if any.

28 (2) The name and address of the construction lender if any. This paragraph does  
29 not apply to a home improvement contract or swimming pool contract subject to  
30 Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the  
31 Business and Professions Code.

32 (b) A written contract entered into between a direct contractor and  
33 subcontractor, or between subcontractors, shall provide a space for the name and  
34 address of the owner, direct contractor, and construction lender if any.

35 **Comment.** Section 8130 continues the parts of former Section 3097(l)-(m) relating to the  
36 content of contracts, deleting the limitation to the owner's residence address. The reference to  
37 "written" contract is added to subdivision (b) for consistency with subdivision (a). The reference  
38 to "lender or lenders" in subdivision (a) is shortened to "lender" for consistency with subdivision  
39 (b). See Section 14 (singular includes plural, and plural includes singular). These and other minor  
40 wording changes are technical, nonsubstantive revisions. For the direct contractor's duty to  
41 provide information to persons seeking to serve a preliminary notice, see Section 8208.

42 This section does not require that all contracts between an owner and a direct contractor be in  
43 writing.

1 See also Sections 8006 (“construction lender”), 8014 (“direct contractor”), 8028 (“owner”),  
2 8046 (“subcontractor”).

3 **§ 8132. Designation of construction lender on building permit**

4 8132. (a) A public entity that issues building permits shall, in its application  
5 form for a building permit, provide space and a designation for the applicant to  
6 enter the name, branch designation, if any, and address of the construction lender  
7 and shall keep the information on file open for public inspection during the regular  
8 business hours of the public entity.

9 (b) If there is no known construction lender, the applicant shall note that fact in  
10 the designated space.

11 (c) Failure of the applicant to indicate the name and address of the construction  
12 lender on the application does not relieve a person required to give the  
13 construction lender preliminary notice from that duty.

14 **Comment.** Section 8132 continues former Section 3097(i) without substantive change.

15 See also Sections 8006 (“construction lender”), 8032 (“person”), 8034 (“preliminary notice”),  
16 8036 (“public entity”).

17 **§ 8134. Construction trust deed**

18 8134. (a) A mortgage, deed of trust, or other instrument securing a loan, any of  
19 the proceeds of which may be used for a work of improvement, shall bear the  
20 designation “Construction Trust Deed” prominently on its face and shall state all  
21 of the following:

22 (1) The name and address of the construction lender.

23 (2) The name and address of the owner of the property described in the  
24 instrument.

25 (3) A legal description of the property that secures the loan and, if known, the  
26 street address of the property.

27 (b) Failure to comply with subdivision (a) does not affect the validity of the  
28 mortgage, deed of trust, or other instrument.

29 (c) Failure to comply with subdivision (a) does not relieve a person required to  
30 give preliminary notice from that duty.

31 (d) The county recorder of the county in which the instrument is recorded shall  
32 indicate in the general index of the official records of the county that the  
33 instrument secures a construction loan.

34 **Comment.** Section 8134 continues former Section 3097(j) without substantive change.

35 See also Sections 8006 (“construction lender”), 8028 (“owner”), 8032 (“person”), 8034  
36 (“preliminary notice”), 8050 (“work of improvement”).

37 **Article 5. Bonds**

38 **§ 8140. Application of Bond and Undertaking Law**

39 8140. The Bond and Undertaking Law, Chapter 2 (commencing with Section  
40 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a bond

1 given under this part, except to the extent this part prescribes a different rule or is  
2 inconsistent.

3 **Comment.** Section 8140 is new. It is a specific application of Code of Civil Procedure Section  
4 995.020 (application of Bond and Undertaking Law).

5 Former Section 3227, relating to notice to principal and surety, is not continued. Its substance  
6 is superseded by Sections 8100-8118 (notice).

7 **§ 8142. No release of surety from liability**

8 8142. None of the following releases a surety from liability on a bond given  
9 under this part:

10 (a) A change to a contract, plan, specification, or agreement for a work of  
11 improvement or for work provided for a work of improvement.

12 (b) A change to the terms of payment or an extension of the time for payment  
13 for a work of improvement.

14 (c) A rescission or attempted rescission of a contract, agreement, or bond.

15 (d) A condition precedent or subsequent in the bond purporting to limit the right  
16 of recovery of a claimant otherwise entitled to recover pursuant to a contract,  
17 agreement, or bond.

18 (e) In the case of a bond given for the benefit of claimants, the fraud of a person  
19 other than the claimant seeking to recover on the bond.

20 **Comment.** Section 8142 restates former Section 3225 without substantive change. See also  
21 Section 8060 (effect of act by owner).

22 See also Sections 8002 (“claimant”), 8008 (“contract”), 8048 (“work”), 8032 (“person”), 8050  
23 (“work of improvement”).

24 **§ 8144. Construction of bond**

25 8144. (a) A bond given under this part shall be construed most strongly against  
26 the surety and in favor of the beneficiary.

27 (b) A surety is not released from liability to the beneficiary by reason of a  
28 breach of the contract between the owner and direct contractor or on the part of the  
29 beneficiary.

30 (c) Except as otherwise provided by statute, the sole conditions of recovery on  
31 the bond are that the beneficiary is a person described in Article 1 (commencing  
32 with Section 8400) of Chapter 4 and has not been paid the full amount of the  
33 claim.

34 **Comment.** Section 8144 restates former Section 3226 without substantive change. See also  
35 Sections 8400-8404 (who is entitled to lien).

36 See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8028 (“owner”), 8032  
37 (“person”).

38 *Cf.* Code Civ. Proc. § 995.130 (“beneficiary”).

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## Article 6. Completion

### § 8150. Completion

8150. (a) For the purpose of this part, completion of a work of improvement occurs at the earliest of the following times:

- (1) Substantial completion of the work of improvement.
- (2) Occupation or use by the owner accompanied by cessation of labor.
- (3) Cessation of labor for a continuous period of 60 days.
- (4) Recordation of a notice of completion after cessation of labor for a continuous period of 30 days.

(b) Notwithstanding subdivision (a), if a work of improvement is subject to acceptance by a public entity, completion occurs on acceptance.

**Comment.** Section 8150 restates former Section 3086 to the extent it applied to a private work. References to occupation or use by an owner include those actions by the owner's agent. See Section 8028 ("owner").

Subdivision (a)(1) replaces the term "actual completion" in former Section 3086 with "substantial completion," consistent with judicial interpretation of the former term. See cases collected in *Lewis v. Hopper*, 140 Cal. App. 2d 365, 367, 295 P.2d 93 (1956). This is a nonsubstantive change.

"Acceptance by the owner" is not continued as a form of completion.

The provision in subdivision (b) for acceptance by a public entity refers to acceptance pursuant to a legislative enactment of the public entity and not to inspection and approval or issuance of a certificate of occupancy under building regulations.

Subdivision (b) applies only to a private work of improvement. See Section 8052 (application of part).

See also Sections 8036 ("public entity"), 8050 ("work of improvement").

### § 8152. Notice of completion

8152. (a) An owner may record a notice of completion on or within 15 days after completion of a work of improvement.

(b) The notice of completion shall be signed and verified by the owner.

(c) The notice shall comply with Section 8102, and shall also include all of the following information:

(1) If the notice is given only of completion of a contract for a particular portion of the work of improvement as provided in Section 8154, the name of the direct contractor under that contract and a general statement of the work provided pursuant to the contract.

(2) If signed by the owner's successor in interest, the name and address of the successor's transferor.

(3) The nature of the interest or estate of the owner.

(4) The date of completion. An erroneous statement of the date of completion does not affect the effectiveness of the notice if the true date of completion is 15 days or less before the date of recordation of the notice.

(5) If the notice is based on cessation of labor, the date on or about which labor ceased.

1 (6) If the notice is based on cessation of labor under paragraph (4) of subdivision  
2 (a) of Section 8150, that cessation of labor has been continuous until recordation  
3 of the notice.

4 (d) A notice of completion that does not comply with the provisions of this  
5 section is not effective.

6 **Comment.** Section 8152 continues former Section 3093 (notice of completion). For the date of  
7 completion of a work of improvement, see Section 8150. For the effect of a notice of completion,  
8 see Sections 8412-8414 (time for claim of lien), 8460 (time for commencement of enforcement  
9 action). See also Sections 8100-8118 (notice).

10 The notice of completion may be recorded by an agent of the owner to the extent the act is  
11 within the scope of the agent's authority. See Section 8064 (agency).

12 This section extends the 10-day period for recording a notice of completion under former law  
13 to 15 days. A claim of lien must be filed within 30 or 60 days after recording a notice of  
14 completion (depending on the nature of the claimant). See Sections 8412 and 8414 (recordation  
15 of claim of lien).

16 A notice of completion is ineffective to shorten the time for a claim of lien unless notice of  
17 recordation is given to the person whose claim of lien is affected. See Section 8156 (notice of  
18 recordation by owner).

19 A notice of completion is recorded in the office of the county recorder of the county in which  
20 the work of improvement or part of it is situated. Section 8058(a) (filing and recording of papers).  
21 A notice of completion is recorded when it is filed for record. Section 8058(b).

22 As used in this section, the owner is the person that causes a building, improvement, or  
23 structure, to be constructed, altered, or repaired (or the owner's successor in interest on the date a  
24 notice of completion is recorded) whether the interest or estate of the owner is in fee, as vendee  
25 under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a  
26 cotenant. A notice of completion may be signed and verified by the owner's agent. See Sections  
27 8028 ("owner"), 8062 (co-owners).

28 The reference to a successor's "transferors" is omitted from subdivision (b)(2). See Section 14  
29 (singular includes plural).

30 See also Sections 8014 ("direct contractor"), 8040 ("site"), 8048 ("work"), 8050 ("work of  
31 improvement"), 8058 (filing and recording of papers).

32 **§ 8154. Notice of completion of contract for portion of work of improvement**

33 8154. If a work of improvement is made pursuant to two or more contracts, each  
34 covering a portion of the work of improvement:

35 (a) The owner may record a notice of completion of a contract for a portion of  
36 the work of improvement. On recordation of the notice of completion, for the  
37 purpose of Sections 8412 and 8414 a direct contractor is deemed to have  
38 completed the contract for which the notice of completion is recorded and a  
39 claimant other than a direct contractor is deemed to have ceased providing work.

40 (b) If the owner does not record a notice of completion under this section, the  
41 period for recording a claim of lien is that provided in Sections 8412 and 8414.

42 **Comment.** Section 8154 continues the substance of former Section 3117, but eliminates the  
43 10-day period for recording a notice of completion. A claim of lien must be filed within 60 days  
44 after recording a notice of completion (depending on the nature of the claimant), subject to a  
45 maximum of 90 days after actual completion. See Sections 8412 and 8414 (time for claim of  
46 lien). However, an owner that records a notice of completion that states an incorrect date of  
47 completion may be estopped from asserting the running of the filing period. See *Doherty v.*  
48 *Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58 (1959).

1 This section omits the rules found in former law governing the time for recording a claim of  
2 lien after a notice of completion for a portion of a work of improvement. The general rules  
3 governing the time for recording do not distinguish among types of notice of completion, and  
4 appear to be satisfactory for purposes of this section, with the clarification set out in subdivision  
5 (a). See Sections 8412 and 8414 (time for claim of lien).

6 See also Sections 8002 (“claimant”), 8008 (“contract”), 8014 (“direct contractor”), 8028  
7 (“owner”), 8048 (“work”), 8050 (“work of improvement”).

8 **§ 8156. Notice of recordation by owner**

9 8156. (a) An owner that records a notice of completion shall, within 10 days of  
10 the date the notice of completion is filed for record, give a copy of the notice to all  
11 of the following persons:

12 (1) A direct contractor.

13 (2) A claimant that has given the owner preliminary notice.

14 (b) The copy of the notice shall be given in compliance with the requirements of  
15 Article 3 (commencing with Section 8100).

16 (c) If the owner fails to give notice to a person as required by subdivision (a),  
17 the notice of completion is ineffective to shorten the time within which that person  
18 may record a claim of lien under Sections 8412 and 8414. The ineffectiveness of  
19 the notice of completion is the sole liability of the owner for failure to give notice  
20 to a person under subdivision (a).

21 (d) This section does not apply to any of the following owners:

22 (1) A person that occupies the property as a personal residence, if the dwelling  
23 contains four or fewer residential units.

24 (2) A person that has a security interest in the property.

25 (3) A person that obtains an interest in the property pursuant to a transfer  
26 described in subdivision (b), (c), or (d) of Section 1102.2.

27 **Comment.** Section 8156 restates former Section 3259.5, replacing the notice of recordation  
28 with a copy of the recorded notice and expanding the manner of notice. See Section 8106  
29 (manner of giving notice). This provision is limited to a private work. See Section 8052  
30 (application of part).

31 As used in this section “owner” includes a person who has an interest in property (or the  
32 person’s successor in interest on the date a notice of completion is recorded) that causes a  
33 building, improvement, or structure, to be constructed, altered, or repaired on the property, and  
34 includes a cotenant. See Section 8028 (“owner”). A notice is recorded when it is filed for record.  
35 Section 8058 (filing and recording of papers). The references to a “mechanic’s” lien in  
36 subdivision (a) are deleted. Subdivision (a) is intended to apply to a site improvement lien as  
37 well.

38 The notice may no longer be given by regular mail. For service and proof of service by mail,  
39 see Section 8110 (mailed notice).

40 Subdivision (b) is phrased in terms of the ineffectiveness of the notice of completion, in place  
41 of the former references to extension of time.

42 See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8032  
43 (“person”), 8034 (“preliminary notice”).



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## Article 7. Waiver and Release

### § 8160. Terms of contract

8160. An owner or direct contractor may not, by contract or otherwise, waive, affect, or impair a claimant’s rights under this part, whether with or without notice, and any term of a contract that purports to do so is void and unenforceable unless and until the claimant executes and delivers a waiver and release under this article.

**Comment.** Section 8160 continues the first and second sentences of former Section 3262(a) without substantive change. See Section 8002 (“claimant”).

See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8028 (“owner”).

### § 8162. Waiver and release

8162. A claimant’s waiver and release does not release the owner, construction lender, or surety on a payment bond from a lien or claim unless both of the following conditions are satisfied:

(a) The waiver and release is in substantially the form provided in this article and is signed by the claimant.

(b) If the release is a conditional release, there is evidence of payment to the claimant. Evidence of payment may be (1) the claimant’s endorsement on a single or joint payee check that has been paid by the financial institution on which it was drawn or (2) written acknowledgment of payment by the claimant.

**Comment.** Section 8162 continues the third and fourth sentences of former Section 3262(a) without substantive change. The waiver and release may be signed by the claimant’s agent. See Section 8064 (agency). The term “financial institution” replaces “bank” in subdivision (b) and in the forms provided in this article.

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8024 (“lien”), 8028 (“owner”).

### § 8164. Statement of claimant

8164. An oral or written statement purporting to waive, release, impair or otherwise adversely affect a lien or claim is void and unenforceable and does not create an estoppel or impairment of the lien or claim unless either of the following conditions is satisfied:

(a) The statement is pursuant to a waiver and release under this article.

(b) The claimant has actually received payment in full for the claim.

**Comment.** Section 8164 continues former Section 3262(b) without substantive change.

See also Section 8002 (“claimant”).

### § 8166. Reduction or release of stop payment notice

8166. (a) A claimant may reduce the amount of, or release in its entirety, a stop payment notice. The reduction or release shall be in writing and may be given in a form other than a waiver and release form provided in this article.

(b) The writing shall identify whether it is a reduction of the amount of the stop payment notice, or a release of the notice in its entirety. If the writing is a

1 reduction, it shall state the amount of the reduction, and the amount to remain  
2 withheld.

3 (c) A claimant’s reduction or release of a stop payment notice has the following  
4 effect:

5 (1) The reduction or release releases the claimant’s right to enforce payment of  
6 the claim stated in the notice to the extent of the reduction or release.

7 (2) The reduction or release releases the person given the notice from the  
8 obligation to withhold funds pursuant to the notice to the extent of the reduction or  
9 release.

10 (3) The reduction or release does not preclude the claimant from giving a  
11 subsequent stop payment notice that is timely and proper.

12 (4) The reduction or release does not release any right of the claimant other than  
13 the right to enforce payment of the claim stated in the stop payment notice to the  
14 extent of the reduction or release.

15 **Comment.** Section 8166 generalizes the second, third, and fourth sentences of subdivision (b)  
16 of former Section 3262 so as to apply to a stop payment notice given to a construction lender as  
17 well as to a stop payment notice given to an owner.

18 See also Sections 8002 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

19 **§ 8168. Accord and satisfaction or settlement agreement not affected**

20 8168. This article does not affect the enforceability of either an accord and  
21 satisfaction concerning a good faith dispute or an agreement made in settlement of  
22 an action pending in court if the accord and satisfaction or agreement and  
23 settlement make specific reference to the lien or claim.

24 **Comment.** Section 8168 continues former Section 3262(c) without substantive change.

25 See also Section 8024 (“lien”).

26 **§ 8170. Conditional waiver and release on progress payment**

27 8170. If a claimant is required to execute a waiver and release in exchange for,  
28 or in order to induce the payment of, a progress payment and the claimant is not,  
29 in fact, paid in exchange for the waiver and release or a single payee check or joint  
30 payee check is given in exchange for the waiver and release, the waiver and  
31 release shall be in substantially the following form:

32 **CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

33 **NOTICE.** This document waives the claimant’s lien and certain other rights  
34 effective on receipt of payment. A person should not rely on this document unless  
35 satisfied that the claimant has received payment.

36 **Identifying Information**

37 Name of Claimant: \_\_\_\_\_

38 Name of Customer: \_\_\_\_\_

39 Job Location: \_\_\_\_\_

1 Owner: \_\_\_\_\_  
2 Through Date: \_\_\_\_\_

3 **Conditional Waiver and Release**

4 This document waives and releases lien, stop payment notice, and payment bond  
5 rights the claimant has for labor and service provided, and equipment and material  
6 delivered, to the customer on this job through the Through Date of this document.  
7 This document is effective only on the claimant's receipt of payment from the  
8 financial institution on which the following check is drawn:

9 Maker of Check: \_\_\_\_\_  
10 Amount of Check: \$ \_\_\_\_\_  
11 Check Payable to: \_\_\_\_\_

12 **Exceptions**

13 This document does not apply to a lien right based on any of the following:

- 14 (1) Retentions.  
15 (2) Extras for which the claimant has not received payment.  
16 (3) The following progress payments for which the claimant has previously given  
17 a conditional waiver and release but has not received payment:

18 Date(s) of waiver and release: \_\_\_\_\_  
19 Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_

20 This document does not affect contract rights, including (i) a right based on  
21 rescission, abandonment, or breach of contract, and (ii) the right to recover  
22 compensation for work not compensated by the payment.

23 **Signature**

24 Claimant's Signature: \_\_\_\_\_  
25 Claimant's Title: \_\_\_\_\_  
26 Date of Signature: \_\_\_\_\_

27  
28 **Comment.** Section 8170 restates former Section 3262(d)(1), with the addition of language  
29 relating to progress payments covered by previous releases that have not been paid. The statutory  
30 form is recast for clarity.

31 See also Section 8002 ("claimant").

32 **§ 8172. Unconditional waiver and release on progress payment**

33 8172. If the claimant is required to execute a waiver and release in exchange for,  
34 or in order to induce payment of, a progress payment and the claimant asserts in  
35 the waiver it has, in fact, been paid the progress payment, the waiver and release  
36 shall be in substantially the following form, with the text of the "Notice to  
37 Claimant" in at least as large a type as the largest type otherwise in the form:

1 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

2 NOTICE TO CLAIMANT: This document waives and releases rights  
3 unconditionally and states that you have been paid for giving up those rights. This  
4 document is enforceable against you if you sign it, even if you have not been paid.

5 If you have not been paid, use a conditional waiver and release form.

6 **Identifying Information**

7 Name of Claimant: \_\_\_\_\_

8 Name of Customer: \_\_\_\_\_

9 Job Location: \_\_\_\_\_

10 Owner: \_\_\_\_\_

11 Through Date: \_\_\_\_\_

12 **Unconditional Waiver and Release**

13 This document waives and releases lien, stop payment notice, and payment bond  
14 rights the claimant has for labor and service provided, and equipment and material  
15 delivered, to the customer on this job through the Through Date of this document.

16 The claimant has received the following progress payment:

17 \$ \_\_\_\_\_

18 **Exceptions**

19 This document does not apply to a lien right based on any of the following:

20 (1) Retentions.

21 (2) Extras for which the claimant has not received payment.

22 This document does not affect contract rights, including (i) a right based on  
23 rescission, abandonment, or breach of contract, and (ii) the right to recover  
24 compensation for work not compensated by the payment.

25 **Signature**

26 Claimant's Signature: \_\_\_\_\_

27 Claimant's Title: \_\_\_\_\_

28 Date of Signature: \_\_\_\_\_

29 **Comment.** Section 8172 restates former Section 3262(d)(2) without substantive change. The  
30 references to a "mechanic's" lien are deleted from this section; it applies to a design professionals  
31 lien or a site improvement lien as well. The statutory form is recast for clarity.

32 See also Section 8002 ("claimant").

33 **§ 8174. Conditional waiver and release on final payment**

34 8174. If the claimant is required to execute a waiver and release in exchange for,  
35 or in order to induce the payment of, a final payment and the claimant is not, in  
36 fact, paid in exchange for the waiver and release or a single payee check or joint  
37 payee check is given in exchange for the waiver and release, the waiver and  
38 release shall be in substantially the following form:

1                                   CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

2 NOTICE. This document waives the claimant’s lien and certain other rights  
3 effective on receipt of payment. A person should not rely on this document unless  
4 satisfied that the claimant has received payment.

5 **Identifying Information**

6 Name of Claimant: \_\_\_\_\_  
7 Name of Customer: \_\_\_\_\_  
8 Job Location: \_\_\_\_\_  
9 Owner: \_\_\_\_\_

10 **Conditional Waiver and Release**

11 This document waives and releases lien, stop payment notice, and payment bond  
12 rights the claimant has for labor and service provided, and equipment and material  
13 delivered to the customer on this job.

14 This document is effective only on the claimant’s receipt of payment from the  
15 financial institution on which the following check is drawn:

16           Maker of Check: \_\_\_\_\_  
17           Amount of Check: \$ \_\_\_\_\_  
18           Check Payable to: \_\_\_\_\_

19 **Exceptions**

20 This document does not affect any of the following:

- 21 (1) Disputed claims for extras in the amount of \$ \_\_\_\_\_  
22 (2) The following progress payments for which the claimant has previously given  
23 a conditional waiver and release but has not received payment:

24           Date(s) of waiver and release: \_\_\_\_\_  
25           Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_

26 **Signature**

27 Claimant’s Signature: \_\_\_\_\_  
28 Claimant’s Title: \_\_\_\_\_  
29 Date of Signature: \_\_\_\_\_

30 **Comment.** Section 8174 continues former Section 3262(d)(3), with the addition of language  
31 relating to progress payments covered by previous releases that have not been paid, and the  
32 addition of a line for identification of the waivant’s customer. The references to a “mechanic’s”  
33 lien are deleted from this section; it applies to a design professionals lien or a site improvement  
34 lien as well. The statutory form is recast for clarity.

35       See also Section 8002 (“claimant”).

36 **§ 8176. Unconditional waiver and release on final payment**

37       8176. If the claimant is required to execute a waiver and release in exchange for,  
38 or in order to induce payment of, a final payment and the claimant asserts in the  
39 waiver it has, in fact, been paid the final payment, the waiver and release shall be

1 in substantially the following form, with the text of the “Notice to Claimant” in at  
2 least as large a type as the largest type otherwise in the form:

3 UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

4 NOTICE TO CLAIMANT: This document waives and releases rights unconditionally  
5 and states that you have been paid for giving up those rights. This document is  
6 enforceable against you if you sign it, even if you have not been paid. If you have  
7 not been paid, use a conditional waiver and release form.

8 **Identifying Information**

9 Name of Claimant: \_\_\_\_\_  
10 Name of Customer: \_\_\_\_\_  
11 Job Location: \_\_\_\_\_  
12 Owner: \_\_\_\_\_

13 **Unconditional Waiver and Release**

14 This document waives and releases lien, stop payment notice, and payment bond  
15 rights the claimant has for all labor and service provided, and equipment and  
16 material delivered, to the customer on this job. The claimant has been paid in full.

17 **Exceptions**

18 This document does not affect any of the following:

19 (1) Disputed claims for extras in the amount of \$ \_\_\_\_\_

20 **Signature**

21 Claimant’s Signature: \_\_\_\_\_  
22 Claimant’s Title: \_\_\_\_\_  
23 Date of Signature: \_\_\_\_\_

24

25 **Comment.** Section 8176 continues former Section 3262(d)(4) without substantive change. The  
26 references to a “mechanic’s” lien are deleted from this section; it applies to a design professionals  
27 lien or a site improvement lien as well. The statutory form is recast for clarity.

28 See also Section 8002 (“claimant”).

29 CHAPTER 2. PRELIMINARY NOTICE

30 **§ 8200. Preliminary notice prerequisite to remedies**

31 8200. (a) Except as otherwise provided by statute, before recording a lien claim,  
32 giving a stop payment notice, or asserting a claim against a payment bond, a  
33 claimant shall give preliminary notice to the following persons:

34 (1) The owner or reputed owner.

35 (2) The direct contractor or reputed direct contractor to whom the claimant  
36 provides work, either directly or through one or more subcontractors.

1 (3) The construction lender or reputed construction lender, if any.  
2 (b) The notice shall comply with the requirements of Article 3 (commencing  
3 with Section 8100) of Chapter 1.

4 (c) Notwithstanding subdivision (a):

5 (1) A laborer is not required to give preliminary notice.

6 (2) A claimant with a direct contractual relationship with an owner or reputed  
7 owner is required to give preliminary notice only to the construction lender or  
8 reputed construction lender, if any.

9 (d) Compliance with this section is a necessary prerequisite to the validity of a  
10 lien claim or stop payment notice.

11 (e) Compliance with this section or with Section 8612 is a necessary prerequisite  
12 to the validity of a claim against a payment bond.

13 **Comment.** Section 8200 restates the introductory clause and parts of subdivisions (a) and (b)  
14 of former Section 3097 without substantive change. Some repetitive detail is omitted in reliance  
15 on defined terms and other substantive provisions.

16 For an exception to the requirement that preliminary notice must be given before asserting a  
17 claim against a payment bond, see Section 8612.

18 The substance of former Sections 3097(f) and 3097.1 are continued in the general notice  
19 provisions of this part. See Sections 8100-8118 (notice).

20 The transitional provisions of former Section 3097(p) are obsolete and not continued.

21 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”),  
22 8020 (“laborer”), 8024 (“lien”), 8028 (“owner”), 8032 (“person”).

23 **§ 8202. Contents of preliminary notice**

24 8202. (a) In addition to the requirements of Section 8102, preliminary notice  
25 shall include the following statement in boldface type:

26 **NOTICE TO PROPERTY OWNER**

27 **EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN**  
28 **FULL, if the person or firm that has given you this notice is not paid in**  
29 **full for labor, service, equipment, or material provided or to be**  
30 **provided to your construction project, a lien may be placed on your**  
31 **property. Foreclosure of the lien may lead to loss of all or part of your**  
32 **property. You may wish to protect yourself against this by (1) requiring**  
33 **your contractor to provide a signed release by the person or firm that**  
34 **has given you this notice before making payment to your contractor, or**  
35 **(2) any other method that is appropriate under the circumstances.**

36 **This notice is required by law to be served by the undersigned as a**  
37 **statement of your legal rights. This notice is not intended to reflect upon**  
38 **the financial condition of the contractor or the person employed by you**  
39 **on the construction project.**

40 **If you record a notice of cessation or completion of your**  
41 **construction project, you must within 15 days after recording send a**  
42 **copy of the notice of completion to your contractor and the person or**

1 **firm that has given you this notice. The notice must be sent by**  
2 **registered or certified mail. Failure to send the notice will extend the**  
3 **deadline to record a claim of lien. You are not required to send the**  
4 **notice if you are a residential homeowner of a dwelling containing four**  
5 **or fewer units.**

6 (b) If preliminary notice is given by a subcontractor that has not paid all  
7 compensation due to a laborer, the notice shall include the name and address of the  
8 laborer and any person or entity described in subdivision (b) of Section 8020 to  
9 which payments are due.

10 (c) If an invoice for material or certified payroll contains the information  
11 required by this section and Section 8102, a copy of the invoice or payroll, given  
12 in compliance with the requirements of Article 3 (commencing with Section 8100)  
13 of Chapter 1, is sufficient.

14 **Comment.** Section 8202 continues the substance of former Section 3097(c)(1)-(6), the  
15 unnumbered paragraph following paragraph (6), and the requirement of former Section 3097(a)  
16 that the preliminary notice be written. See also Sections 8100-8118 (notice). The reference to an  
17 “express trust fund” is replaced by a reference to a generalized category of persons or entities  
18 included within the definition of “laborer.” See Section 8020 (“laborer”).

19 The information required in this notice is in addition to the information required by Section  
20 8102 (contents of notice).

21 See also Sections 8010 (“contract price”), 8018 (“labor, service, equipment, or material”), 8024  
22 (“lien”), 8032 (“person”), 8040 (“site”), 8046 (“subcontractor”).

23 **§ 8204. Effect of preliminary notice**

24 8204. (a) A claimant may record a claim of lien, file a stop payment notice, or  
25 assert a claim against a payment bond only for work provided within 20 days  
26 before giving preliminary notice or at any time thereafter.

27 (b) Notwithstanding subdivision (a), a design professional may record a claim of  
28 lien, file a stop payment notice, or assert a claim against a payment bond for  
29 design professional services provided for the design of the work of improvement if  
30 the design professional gives preliminary notice not later than 20 days after the  
31 work of improvement has commenced.

32 **Comment.** Subdivision (a) of Section 8204 supersedes former Section 3097(d). The provision  
33 is simplified so that it refers only to the effect of giving preliminary notice.

34 Subdivision (b) restates the unnumbered paragraph preceding former Section 3097(d).

35 See also Sections 8002 (“claimant”), 8012 (“design professional”), 8024 (“lien”), 8048  
36 (“work”), 8050 (“work of improvement”).

37 **§ 8206. Coverage of preliminary notice**

38 8206. (a) Except as provided in subdivision (b), a claimant need give only one  
39 preliminary notice to each person to which notice must be given under this chapter  
40 with respect to all work provided by the claimant for a work of improvement.

41 (b) If a claimant provides work pursuant to contracts with more than one  
42 subcontractor, the claimant shall give a separate preliminary notice with respect to  
43 work provided to each contractor.



1 (c) A preliminary notice that contains a general description of work provided by  
2 the claimant through the date of the notice also covers work provided by the  
3 claimant after the date of the notice whether or not they are within the scope of the  
4 general description contained in the notice.

5 **Comment.** Section 8206 restates former Section 3097(g) without substantive change.

6 See also Sections 8002 (“claimant”), 8032 (“person”), 8046 (“subcontractor”), 8048 (“work”),  
7 8050 (“work of improvement”).

8 **§ 8208. Direct contractor’s duty to provide information**

9 8208. A direct contractor shall make available to any person seeking to give  
10 preliminary notice the following information:

11 (a) The name and address of the owner.

12 (b) The name and address of the construction lender, if any.

13 **Comment.** Section 8208 continues the parts of former Section 3097(l)-(m) relating to the  
14 direct contractor’s duty to provide information, deleting the limitation to the owner’s residence  
15 address. For provisions concerning the content of contracts, see Section 8130 (contract forms).

16 See also Sections 14 (singular includes plural), 8006 (“construction lender”), 8014 (“direct  
17 contractor”), 8028 (“owner”), 8032 (“person”).

18 **§ 8210. Owner’s duty to give notice of construction loan**

19 8210. If a construction loan is obtained after commencement of a work of  
20 improvement, the owner shall give notice of the name and address of the  
21 construction lender to each person that has given the owner preliminary notice.

22 **Comment.** Section 8210 continues former Section 3097(n) without substantive change. The  
23 reference to commencement of construction is changed to commencement of work for  
24 consistency with the remainder of this part.

25 See also Sections 8006 (“construction lender”), 8028 (“owner”), 8032 (“person”).

26 **§ 8212. Waiver void**

27 8212. An agreement made or entered into by an owner whereby the owner  
28 agrees to waive the rights conferred on the owner by this chapter is void and  
29 unenforceable.

30 **Comment.** Section 8212 continues former Section 3097(e) without substantive change.

31 See also Section 8028 (“owner”).

32 **§ 8214. Notices filed with county recorder**

33 8214. The county recorder may cause to be destroyed all documents filed under  
34 subdivision (o) of former Section 3097.

35 **Comment.** Section 8214 supersedes former Section 3097(o) relating to filing preliminary  
36 notice with the county recorder. This part no longer provides for filing a preliminary notice with  
37 the county recorder or for the county recorder to give notice to persons who filed preliminary  
38 notice of the recording of a notice of completion or notice of cessation.

39 The former reference to the date after which the county recorder is authorized to act (January 1,  
40 2007) is deleted as a transitional provision that is now obsolete.

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### CHAPTER 3. DESIGN PROFESSIONALS LIEN

#### § 8300. Owner

8300. Notwithstanding Section 8028, for purposes of this chapter “owner” means a fee owner of a site.

**Comment.** Section 8300 is new. The defined term replaces the term “landowner” as used in former Sections 3081.1 through 3081.9.

See also Section 8040 (“site”).

#### § 8302. Lien

8302. (a) A design professional has, from the date of recordation of a claim of lien under this chapter, a lien on the site notwithstanding the absence of commencement of the planned work of improvement, if the owner that contracted for the design professional’s services is also the owner of the site at the time of recordation of the claim of lien.

(b) The lien of the design professional is for the amount of the design professional’s fee for services provided under the contract or the reasonable value of those services, whichever is less. The amount of the lien is reduced by the amount of any deposit or prior payment under the contract.

(c) A design professional may not record a claim of lien, and a lien may not be created, under this chapter unless a building permit or other governmental approval in furtherance of the work of improvement has been obtained in connection with or utilizing the services provided by the design professional.

**Comment.** Section 8302 restates former Section 3081.2. The amount of the lien is limited to the fee for services provided under the contract rather than the fee for services provided before commencement of the work of improvement, since the lien provided by this section is only available prior to commencement of the work of improvement. See also Section 8306 (lien terminates on commencement of work).

See also Sections 8012 (“design professional”), 8024 (“lien”), 8028 (“owner”), 8040 (“site”), 8050 (“work of improvement”).

#### § 8304. Prerequisites for lien

8304. A design professional is not entitled to a lien under this chapter unless all of the following conditions are satisfied:

(a) The work of improvement for which the design professional provided services has not commenced.

(b) The owner defaults in a payment required under the contract or refuses to pay the demand of the design professional made under the contract.

(c) Not less than 10 days before recording a claim of lien, the design professional gives the owner notice making a demand for payment, and stating that a default has occurred under the contract and the amount of the default.

(d) The design professional records a claim of lien. The claim of lien shall include all of the following information:

(1) The name of the design professional.

- 1 (2) The amount of the claim.
- 2 (3) The current owner of record of the site.
- 3 (4) A legal description of the site.
- 4 (5) Identification of the building permit or other governmental approval for the
- 5 work of improvement.

6 **Comment.** Section 8304 restates former Section 3081.3, with the clarification that a lien under  
7 this chapter is unavailable if construction has commenced. See subdivision (a).

8 A building permit or other governmental approval for the work of improvement obtained in  
9 connection with or utilizing the services provided by the design professional is required as a  
10 condition of recording the claim of lien under Section 8302 (lien).

11 See also Sections 8008 (“contract”), 8012 (“design professional”), 8024 (“lien”), 8028  
12 (“owner”), 8040 (“site”), 8050 (“work of improvement”).

### 13 § 8306. Creation, expiration, and release of lien

14 8306. (a) On recordation of the claim of lien, a lien is created in favor of the  
15 named design professional.

16 (b) The lien automatically expires and is null and void and of no further force or  
17 effect on the occurrence of either of the following events:

18 (1) The commencement of the work of improvement for which the design  
19 professional provided services.

20 (2) The expiration of 90 days after recording the claim of lien, unless the design  
21 professional commences an action to enforce the lien within that time.

22 (c) If the owner partially or fully satisfies the lien, the design professional shall  
23 execute and record a document that evidences a partial or full satisfaction and  
24 release of the lien, as the case may be.

25 **Comment.** Section 8306 restates former Section 3081.4. On expiration of the lien as a result of  
26 commencement of the work of improvement, the design professional may obtain a lien under  
27 Section 8400 (mechanics lien). See Section 8310 (mechanics lien right not affected).

28 See also Sections 8012 (“design professional”), 8024 (“lien”), 8028 (“owner”), 8050 (“work of  
29 improvement”).

### 30 § 8308. Enforcement of lien

31 8308. A lien created under this chapter is enforceable under Article 7  
32 (commencing with Section 8460) of Chapter 4.

33 **Comment.** Section 8308 restates former Section 3081.5.

34 See also Section 8024 (“lien” defined).

### 35 § 8310. Mechanics lien right not affected

36 8310. This chapter does not affect the ability of a design professional to obtain a  
37 lien for a work of improvement under Section 8400.

38 **Comment.** Section 8310 restates former Section 3081.6.

39 See also Sections 8012 (“design professional”), 8024 (“lien”), 8050 (“work of improvement”).

1    **§ 8312. Time for claim of lien**

2       8312. A design professional shall record a claim of lien under this chapter no  
3 later than 90 days after the design professional knows or has reason to know that  
4 the work of improvement will not be commenced.

5       **Comment.** Section 8312 restates former Section 3081.7.

6       See also Sections 8012 (“design professional”), 8024 (“lien”), 8028 (“owner”), 8050 (“work of  
7 improvement”).

8    **§ 8314. Right to pursue other remedies**

9       8314. The creation of a lien under this chapter does not affect the ability of the  
10 design professional to pursue other remedies.

11       **Comment.** Section 8314 restates former Section 3081.8.

12       See also Sections 8012 (“design professional”), 8024 (“lien”).

13    **§ 8316. Priorities**

14       8316. (a) No lien created under this chapter affects or takes priority over the  
15 interest of record of a purchaser, lessee, or encumbrancer, if the interest of the  
16 purchaser, lessee, or encumbrancer in the property was duly recorded before  
17 recordation of the claim of lien.

18       (b) No lien created under this chapter affects or takes priority over an  
19 encumbrance of a construction lender that funds the loan for the work of  
20 improvement for which the design professional provided services.

21       **Comment.** Section 8316 restates former Section 3081.9.

22       See also Sections 8006 (“construction lender”), 8012 (“design professional”), 8024 (“lien”),  
23 8028 (“owner”), 8050 (“work of improvement”).

24    **§ 8318. Exemption**

25       8318. A design professional may not obtain a lien under this chapter for services  
26 provided for a work of improvement relating to a single-family owner occupied  
27 residence for which the expected construction cost is less than one hundred  
28 thousand dollars (\$100,000).

29       **Comment.** Section 8318 restates former Section 3081.10. The exemption is based on expected  
30 construction cost, since the lien is only available if the work of improvement is not constructed.  
31 See Section 8306 (creation, expiration, and release of lien).

32       See also Sections 8010 (“contract price”), 8012 (“design professional”), 8024 (“lien”), 8028  
33 (“owner”), 8050 (“work of improvement”).

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## CHAPTER 4. MECHANICS LIEN

### Article 1. Who Is Entitled to Lien

#### § 8400. Persons entitled to lien

8400. A person that provides work authorized for a work of improvement, including but not limited to the following persons, has a lien right under this chapter:

- (a) Direct contractor.
- (b) Subcontractor.
- (c) Material supplier.
- (d) Equipment lessor.
- (e) Laborer.
- (f) Design professional.

**Comment.** Section 8400 supersedes the part of former Section 3110 providing a lien for contributions to a work of improvement. It implements the directive of Article XIV, Section 3, of the California Constitution that, “Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.”

The reference in the introductory portion of Section 8400 to work “authorized” replaces the references in former Section 3110 to the “instance or request of the owner or any other person acting by his authority or under him, as contractor or otherwise.” See Section 8404 (who may authorize work).

The type of contribution to the work of improvement that qualifies for a lien right is described in the introductory portion of Section 8400 as provision of “work.” Elimination of the former references to “bestowing skill or other necessary services” or “furnishing appliances, teams, or power” or “work done or materials furnished” is not a substantive change. See Section 8048 (“work”).

The listing of classes of persons with lien rights in subdivisions (a)-(f) restates without substantive change the comparable part of former Section 3110. This provision does not continue the former listing of types of contractors, subcontractors, laborers, and design professionals, such as mechanics, artisans, machinists, builders, teamsters, draymen, architects, registered engineers, and licensed land surveyors. This is not a substantive change; these classes are included in the defined terms used in this section.

A person or entity described in Section 8020(b) has the same lien right as the laborer in subdivision (e), to the extent of the laborer’s compensation agreed to be paid to the person or entity for labor on the improvement. See Section 8020 (“laborer”).

See also Sections 8012 (“design professional”), 8014 (“direct contractor”), 8024 (“lien”), 8026 (“material supplier”), 8032 (“person”), 8046 (“subcontractor”), 8048 (“work”), 8050 (“work of improvement”).

#### § 8402. Site improvement lien

8402. A person that provides work authorized for a site improvement has a lien right under this chapter.

**Comment.** Section 8402 supersedes former Section 3112. The reference to work done or material furnished is superseded by the reference to work. See Section 8048 (“work”). The reference to work at the instance or request of the owner or any person acting by or under

1 authority of the owner as contractor or otherwise is replaced by the reference to work authorized.  
2 See Section 8404 (who may authorize work).

3 A site improvement is treated in the same manner as a work of improvement under this  
4 chapter, except as provided in Sections 8448 (claim against separate residential units), 8450  
5 (priority of lien), 8458 (priority of site improvement lien). See also Section 8050 (“work of  
6 improvement”).

7 See also Sections 8024 (“lien”), 8032 (“person”), 8042 (“site improvement”).

8 **§ 8404. Who may authorize work**

9 8404. Work is authorized for a work of improvement or for a site improvement  
10 in any of the following circumstances:

11 (a) It is provided at the request of or agreed to by the owner.

12 (b) It is provided or authorized by a direct contractor, subcontractor, architect,  
13 project manager, or other person having charge of all or part of the work of  
14 improvement or site improvement.

15 **Comment.** Section 8404 restates parts of former Sections 3110 and 3112.

16 The reference to work provided at the request of an owner in subdivision (a) includes work  
17 provided at the instance of the owner, or of a person acting by or under the owner’s authority. See  
18 Section 8028 (“owner”).

19 The inclusion of project managers in subdivision (b) is new.

20 The references in former law to sub-subcontractors and builders are omitted as surplus. A  
21 contractor either has a contract with the owner (direct contractor) or does not (subcontractor).  
22 This part does not distinguish among levels of subcontractor. The term “builder” was not defined  
23 in former law and was used only in former Section 3110. A work of improvement includes a site  
24 improvement. See Section 8050 (“work of improvement”).

25 See also Sections 8014 (“direct contractor”), 8048 (“work”), 8032 (“person”), 8046  
26 (“subcontractor”).

27 **Article 2. Conditions to Enforcing a Lien**

28 **§ 8410. Preliminary notice required**

29 8410. A claimant may enforce a lien only if the claimant has given preliminary  
30 notice to the extent required by Chapter 2 (commencing with Section 8200) and  
31 made proof of notice.

32 **Comment.** Section 8410 continues former Section 3114 without substantive change. A  
33 claimant must give preliminary notice to the extent provided in the preliminary notice provisions  
34 of this part. See Section 8200 *et seq.* Preliminary notice is not required of a direct contractor or a  
35 laborer. Section 8200(b) (preliminary notice prerequisite to remedies).

36 See also Section 8118 (proof of notice).

37 See also Sections 8002 (“claimant”), 8024 (“lien”), 8034 (“preliminary notice”).

38 **§ 8412. Time for claim of lien by direct contractor**

39 8412. A direct contractor may not enforce a lien unless the contractor records a  
40 claim of lien after the contractor completes the contract, and before the earlier of  
41 the following times:

42 (a) Ninety days after completion of the work of improvement.

43 (b) Sixty days after the owner records a notice of completion.

1       **Comment.** Section 8412 restates former Section 3115. A contract is complete within the  
2 meaning of this section when the contractor’s obligations under it are substantially performed,  
3 excused, or otherwise discharged. See *Howard S. Wright Construction Co. v. BBIC Investors,*  
4 *LLC*, 136 Cal. App. 4th 228, 38 Cal. Rptr. 3d 769 (2006).

5       For “completion” of a work of improvement, see Section 8150. For recordation of a notice of  
6 completion, see Section 8152 (notice of completion). The notice of completion includes notice of  
7 cessation.

8       See also Sections 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”), 8050 (“work of  
9 improvement”).

10    **§ 8414. Time for claim of lien by claimant other than direct contractor**

11       8414. A claimant other than a direct contractor may not enforce a lien unless the  
12 claimant records a claim of lien within the following times:

13       (a) After the claimant ceases to provide work.

14       (b) Before the earlier of the following times:

15           (1) Ninety days after completion of the work of improvement.

16           (2) Thirty days after the owner records a notice of completion.

17       **Comment.** Section 8414 restates former Section 3116. For “completion” of a work of  
18 improvement, see Section 8150. For recordation of a notice of completion, see Section 8152  
19 (notice of completion). The notice of completion includes notice of cessation.

20       See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”),  
21 8048 (“work”), 8050 (“work of improvement”).

22    **§ 8416. Contents of claim of lien**

23       8416. A claim of lien shall be in writing, signed and verified by the claimant,  
24 and shall include all of the following information:

25       (a) An itemization of the claimant’s demand after deducting all just credits and  
26 offsets.

27       (b) The name of the owner or reputed owner, if known.

28       (c) A general statement of the kind of work provided by the claimant.

29       (d) The name of the person that contracted with the claimant for the work.

30       (e) A description of the site sufficient for identification.

31       (f) The claimant’s address.

32       **Comment.** Subdivisions (a)-(e) of Section 8416 continue former Section 3084 without  
33 substantive change. The claim of lien may be executed by the claimant’s authorized agent. See  
34 Section 8064 (agency).

35       Subdivision (d) requires the name of the person that “contracted for” the work, rather than who  
36 “employed” the claimant. See Section 8404 (who may authorize work). See also Section 8058  
37 (filing and recording of papers).

38       Subdivision (f) is new. It implements other provisions that invoke a claimant’s address. *Cf.*  
39 Sections 8424 (release bond), 8486 (time of hearing).

40       See also Sections 8002 (“claimant”), 8024 (“lien”), 8028 (“owner”), 8032 (“person”), 8040  
41 (“site”), 8048 (“work”).

42    **§ 8418. Notice of intended recording of claim of lien**

43       8418. (a) Before recording a claim of lien, the claimant shall give notice of the  
44 intended recording to the owner or reputed owner of property subject to the claim

1 of lien, if known. The notice shall comply with the requirements of Article 3  
2 (commencing with Section 8100) of Chapter 1.

3 (b) Notice of the intended recording of a claim of lien shall include a copy of the  
4 claim of lien.

5 **Comment.** Section 8418 is new. A claim of lien may not be recorded unless accompanied by  
6 proof of notice to the owner. Section 8420 (notice prerequisite to recording claim of lien).

7 See also Sections 8100-8118 (notice).

8 **§ 8420. Notice prerequisite to recording claim of lien**

9 8420. The county recorder shall not record a claim of lien that is filed for record  
10 unless accompanied by a declaration under penalty of perjury attesting to service  
11 of a true and accurate copy of the lien claim on the owner or reputed owner.

12 **Comment.** Section 8420 is new. *Cf.* Gov't Code § 27297.5 (notification by county recorder of  
13 person against which involuntary lien is recorded). See also Section 8118 (proof of notice).

14 **§ 8422. Forfeiture of lien for false claim**

15 8422. (a) Except as provided in subdivision (b), erroneous information contained  
16 in a claim of lien relating to the claimant's demand, credits and offsets deducted,  
17 the work provided, or the description of the site, does not invalidate the claim of  
18 lien.

19 (b) Erroneous information contained in a claim of lien relating to the claimant's  
20 demand, credits and offsets deducted, or the work provided, invalidates the claim  
21 of lien if the court determines either of the following:

22 (1) The claim of lien was made with intent to slander title or defraud.

23 (2) An innocent third party, without notice, actual or constructive, became the  
24 bona fide owner of the property after recordation of the claim of lien, and the  
25 claim of lien was so deficient that it did not put the party on further inquiry in any  
26 manner.

27 **Comment.** Section 8422 combines former Sections 3118 and 3261. The terminology of the  
28 combined provision is conformed to Section 8416 (content of claim of lien).

29 Subdivision (b)(1) expands the bases for invalidity to include intent to slander title.

30 See also Sections 8002 ("claimant"), 8048 ("work"), 8024 ("lien"), 8028 ("owner"), 8040  
31 ("site").

32 **§ 8424. Release bond**

33 8424. (a) An owner of property subject to a recorded claim of lien or a direct  
34 contractor or subcontractor affected by the claim of lien that disputes the  
35 correctness or validity of the claim may obtain release of the property from the  
36 claim of lien by recording a lien release bond. The principal on the bond may be  
37 the owner of the property, the direct contractor, or the subcontractor.

38 (b) The bond shall be conditioned on payment of any judgment and costs the  
39 claimant recovers on the lien. The bond shall be in an amount equal to 125 percent  
40 of the amount of the claim of lien or 125 percent of the amount allocated in the



1 claim of lien to the property to be released. The bond shall be executed by an  
2 admitted surety insurer.

3 (c) The bond may be recorded either before or after commencement of an action  
4 to enforce the lien. On recordation of the bond the property is released from the  
5 claim of lien and from any action to enforce the lien.

6 (d) A person that obtains and records a lien release bond shall give notice to the  
7 claimant. The notice shall comply with the requirements of Article 3 (commencing  
8 with Section 8100) of Chapter 1 and shall include a copy of the bond. Failure to  
9 give the notice required by this section does not affect the validity of the bond, but  
10 the statute of limitations for an action on the bond is tolled until notice is given.  
11 The claimant shall commence an action on the bond within six months after notice  
12 is given.

13 **Comment.** Subdivisions (a)-(c) of Section 8424 continue former Section 3143. The amount of  
14 the release bond is reduced to 125 percent of the amount of the claim of lien, consistent with the  
15 stop payment notice release bond. See Section 8510 (release bond). The language of the section is  
16 harmonized with the Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010)  
17 of Title 14 of Part 2 of the Code of Civil Procedure.

18 Subdivision (d) restates former Section 3144.5. See also Sections 8100-8118 (notice).

19 The owner of an interest in property may obtain a release bond. See Section 8028 (“owner”).  
20 The reference to recordation of the bond in the county in which the claim of lien is recorded is  
21 omitted as unnecessary. Both the claim of lien and the bond are recorded in the office of the  
22 county recorder of the county in which the work of improvement or part of it is situated. Section  
23 8058 (filing and recording of papers).

24 If an action to enforce a lien has been timely commenced before a release bond is recorded, the  
25 claimant may name the surety as a defendant and seek recovery against the bond in the  
26 enforcement action; the claimant is not required to commence a new action on the bond. See  
27 *Hutnick v. United States Fidelity & Guaranty Co.*, 47 Cal. 3d 456, 763 P.2d 1326, 253 Cal. Rptr.  
28 236 (1988).

29 See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8032  
30 (“person”), 8046 (“subcontractor”).

### 31 Article 3. Amount of Lien

#### 32 § 8430. Amount of lien

33 8430. (a) The lien is a direct lien for the lesser of the following amounts:

34 (1) The reasonable value of the work provided by the claimant.

35 (2) The price agreed to by the claimant and the person that contracted for the  
36 work.

37 (b) The lien is not limited in amount by the contract price for the work of  
38 improvement except as provided in Section 8602.

39 (c) This section does not preclude the claimant from including in a claim of lien  
40 work performed as a result of rescission, abandonment, or breach of the contract.  
41 If there is a rescission, abandonment, or breach of the contract, the amount of the  
42 lien may not exceed the reasonable value of the work provided by the claimant.

43 **Comment.** Section 8430 restates subdivisions (a) and (b) of former Section 3123 and a portion  
44 of former Section 3110. See also Section 8602 (payment bond). As used in this section, the

1 reasonable value of work includes the reasonable use value of appliances, equipment, teams, and  
2 power.

3 The term “contract price” in subdivision (b) includes contract changes. See Section 8010.

4 The provision of former Section 3123(c) that required an owner to give notice of a change of 5  
5 percent or more is not continued.

6 See also Sections 8002 (“claimant”), 8024 (“lien”), 8032 (“person”), 8048 (“work”), 8416  
7 (content of claim of lien).

8 **§ 8432. Lien limited to work included in contract or modification**

9 8432. (a) A lien does not extend to work, whether or not the work is authorized  
10 by a direct contractor or subcontractor, if the work is not included in a contract  
11 between the owner and direct contractor, and the claimant had actual knowledge  
12 or constructive notice of the provisions of that contract before providing the work.

13 (b) The filing of a contract with the county recorder, before the commencement  
14 of a work of improvement, is constructive notice of the provisions of the contract  
15 to a person providing work on that work of improvement.

16 **Comment.** Section 8432 restates former Section 3124 without substantive change. “Direct  
17 contractor” is substituted for the undefined “contractor” in subdivision (a). The concept of  
18 “authorized” is substituted for “employed” in subdivision (a). See Section 8404 (who may  
19 authorize work). The reference to a modification of the contract is omitted in reliance of the  
20 definition of “contract,” which includes a contract change. See Section 8008 (“contract”).

21 See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”),  
22 8032 (“person”), 8046 (“subcontractor”), 8048 (“work”).

23 **§ 8434. Amount of recovery**

24 8434. A direct contractor or a subcontractor may enforce a lien only for the  
25 amount due pursuant to that contractor’s contract after deducting all lien claims of  
26 other claimants for work provided and embraced within that contract.

27 **Comment.** Section 8434 continues former Section 3140 without substantive change.

28 See also Sections 8002 (“claimant”), 8024 (“lien”), 8014 (“direct contractor”), 8046  
29 (“subcontractor”), 8048 (“work”).

30 **Article 4. Property Subject to Lien**

31 **§ 8440. Property subject to lien**

32 8440. Subject to Section 8442, a lien attaches to the work of improvement and to  
33 the property on which the work of improvement is situated, including as much  
34 space about the work of improvement as is required for the convenient use and  
35 occupation of the work of improvement.

36 **Comment.** Section 8440 restates the parts of former Sections 3128 and 3112 (site  
37 improvement lien on lot or tract of land) that described property subject to the lien, without  
38 substantive change. References to “property” are substituted for references to “land.”

39 See also Sections 8024 (“lien”), 8050 (“work of improvement”).

1    **§ 8442. Interest subject to lien**

2    8442. The following interests in property to which a lien attaches are subject to  
3    the lien:

4    (a) The interest of a person that contracted for the work of improvement.

5    (b) The interest of a person that did not contract for the work of improvement, if  
6    work for which the lien is claimed was provided with the knowledge of the person.  
7    This subdivision does not apply to the interest of a person that gives notice of  
8    nonresponsibility under Section 8444.

9    **Comment.** Section 8442 restates former Section 3129 and the last portion of former Section  
10   3128. A reference to “work” is substituted for the former reference to “commencement of the  
11   work or of the furnishing of the materials.” Cf. Section 8048 (“work”).

12   It should be noted that under this section, the interest of a person that contracts for a work of  
13   improvement indirectly, for example through a provision in a lease that requires a tenant to make  
14   the work of improvement, may be subject to the lien. Likewise, the interest of a person that did  
15   not contract for a work of improvement might in some circumstances be subject to the lien if the  
16   person is a “participating owner.” See, e.g., *Los Banos Gravel Co. v. Freeman*, 58 Cal. App. 3d  
17   785, 130 Cal. Rptr. 180 (1976).

18   See also Sections 8024 (“lien”), 8032 (“person”), 8050 (“work of improvement”).

19   **§ 8444. Notice of nonresponsibility**

20   8444. (a) An owner of property on which a work of improvement is situated that  
21   did not contract for the work of improvement may give notice of  
22   nonresponsibility.

23   (b) A notice of nonresponsibility shall be signed and verified by the owner.

24   (c) The notice shall comply with the requirements of Article 3 (commencing  
25   with Section 8100) of Chapter 1.

26   (d) The notice shall also include all of the following information:

27   (1) The nature of the owner’s title or interest.

28   (2) The name of a purchaser under contract, if any, or lessee, if known.

29   (3) A statement that the person giving the notice is not responsible for claims  
30   arising from the work of improvement.

31   (e) A notice of nonresponsibility is not effective unless, within 10 days after the  
32   person giving notice has knowledge of the work of improvement, the person both  
33   posts and records the notice.

34   **Comment.** Section 8444 restates former Section 3094 without substantive change. See also  
35   Sections 8100-8118 (notice). The information required in this notice is in addition to the  
36   information required by Section 8102 (contents of notice). The notice of nonresponsibility may be  
37   signed and verified by the owner or person owning or claiming an interest in the property, or by  
38   the owner or other person’s agent. See Section 8028 (“owner”). A notice of nonresponsibility is  
39   recorded in the office of the county recorder of the county in which the work of improvement or  
40   part of it is situated. Section 8058 (filing and recording of papers).

41   See also Sections 8032 (“person”), 8040 (“site”), 8050 (“work of improvement”).

42   **§ 8446. Multiple works of improvement**

43   8446. A claimant may record one claim of lien on two or more works of  
44   improvement, subject to the following conditions:

1 (a) The works of improvement have or are reputed to have the same owner, or  
2 the work was contracted for by the same person for the works of improvement  
3 whether or not they have the same owner.

4 (b) The claimant in the claim of lien designates the amount due for each work of  
5 improvement. If the claimant contracted for a lump sum payment for work  
6 provided for the works of improvement and the contract does not segregate the  
7 amount due for each work of improvement separately, the claimant may estimate  
8 an equitable distribution of the amount due for each work of improvement based  
9 on the proportionate amount of work provided for each. If the claimant does not  
10 designate the amount due for each work of improvement, the lien is subordinate to  
11 other liens.

12 (c) If there is a single structure on property of different owners, the claimant  
13 need not segregate the proportion of work provided for the portion of the structure  
14 situated on property of each owner. In the lien enforcement action the court may,  
15 if it determines it equitable to do so, designate an equitable distribution of the lien  
16 among the property of the owners.

17 (d) The lien does not extend beyond the amount designated as against other  
18 creditors having liens, by judgment, mortgage, or otherwise, on either the works of  
19 improvement or the property on which the works of improvement are situated.

20 **Comment.** Section 8446 restates former Section 3130 without substantive change. The concept  
21 of “contracted for” is substituted for “employed” in subdivisions (a) and (b). See Section 8404  
22 (who may authorize work).

23 Subdivision (c) is intended to apply to a single work of improvement situated on two or more  
24 parcels of land that have distinct owners.

25 See also Sections 8002 (“claimant”), 8024 (“lien”), 8028 (“owner”), 8032 (“person”), 8048  
26 (“work”), 8050 (“work of improvement”).

27 **§ 8448. Claim against separate residential units**

28 8448. (a) As used in this section, “separate residential unit” means one  
29 residential structure, including a residential structure containing multiple  
30 condominium units, together with any common area, garage, or other appurtenant  
31 improvements.

32 (b) If a work of improvement consists of the construction of two or more  
33 separate residential units:

34 (1) Each unit is deemed a separate work of improvement, and completion of  
35 each unit is determined separately for purposes of the time for recording a claim of  
36 lien on that unit. This paragraph does not affect any lien right under Section 8402  
37 or 8446.

38 (2) Material provided for the work of improvement is deemed to be provided for  
39 use or consumption in each separate residential unit in which the material is  
40 actually used or consumed; but if the claimant is unable to segregate the amounts  
41 used or consumed in separate residential units, the claimant has the right to all the  
42 benefits of Section 8446.

1 **Comment.** Section 8448 restates the first paragraph of former Section 3131 without  
2 substantive change. The reference to “filing” a claim of lien is changed to recording. See Sections  
3 8412, 8414 (recordation of claim of lien). For the purpose of this section, a claim of lien is not  
4 considered recorded unless done in the manner provided by Section 8058 (filing and recording of  
5 papers). See also Sections 8402 (site improvement lien) and 8446 (multiple works of  
6 improvement).

7 The second paragraph of former Section 3131 is continued in Section 7416 (special rule for  
8 express trust fund claim on separate residential unit in condominium).

9 For “completion” of a work of improvement, see Section 8150.

10 See also Section 8416 (claim of lien).

11 See also Sections 8002 (“claimant”), 8024 (“lien”), 8050 (“work of improvement”).

## 12 Article 5. Priorities

### 13 § 8450. Priority of lien

14 8450. (a) A lien under this chapter, other than a lien provided for in Section  
15 8402, has priority over a lien, mortgage, deed of trust, or other encumbrance on  
16 the work of improvement or the property on which the work of improvement is  
17 situated, that (1) attaches after commencement of the work of improvement, or (2)  
18 was unrecorded at the commencement of the work of improvement and of which  
19 the claimant had no notice.

20 (b) Subdivision (a) is subject to the exception provided for in Section 8452.

21 **Comment.** Section 8450 continues former Section 3134 without substantive change. For a site  
22 improvement lien, see Section 8458 (priority of site improvement lien). See also Sections 8402  
23 (site improvement lien), 8452 (payment bond).

24 See also Sections 8002 (“claimant”), 8024 (“lien”), 8042 (“site improvement”), 8050 (“work of  
25 improvement”).

### 26 § 8452. Payment bond obtained by holder of mortgage or deed of trust

27 8452. A mortgage or deed of trust, otherwise subordinate to a lien under Section  
28 8450, has priority over a lien for work provided after recordation of a payment  
29 bond that satisfies all of the following requirements:

30 (a) The bond refers to the mortgage or deed of trust.

31 (b) The bond is in an amount not less than 75 percent of the principal amount of  
32 the mortgage or deed of trust.

33 **Comment.** Section 8452 continues former Section 3138 without substantive change. See also  
34 Section 8058 (recordation of payment bond in county in which work of improvement is situated).

35 See also Sections 8024 (“lien”), 8030 (“payment bond”), 8048 (“work”).

### 36 § 8454. Separate contract for site improvement

37 8454. If a site improvement is provided for in a contract separate from the  
38 contract for the remainder of the work of improvement, the site improvement is  
39 deemed a separate work of improvement and commencement of the site  
40 improvement is not commencement of the remainder of the work of improvement.

41 **Comment.** Section 8454 restates former Section 3135 without substantive change.

42 See also Sections 8042 (“site improvement”), 8050 (“work of improvement”).

1     **§ 8456. Priority of advances by lender**

2     8456. (a) This section applies to a construction loan secured by a mortgage or  
3     deed of trust that has priority over a lien under this chapter.

4     (b) An optional advance of funds by the construction lender that is used for  
5     construction costs has the same priority as a mandatory advance of funds by the  
6     construction lender, provided that the total of all advances does not exceed the  
7     amount of the original construction loan.

8     **Comment.** Section 8456 rewrites former Section 3136 for clarity.

9     See also Sections 8006 (“construction lender”), 8024 (“lien”).

10    **§ 8458. Priority of site improvement lien**

11    8458. (a) Except as provided in subdivision (b), a lien provided for in Section  
12    8402 has priority over:

13    (1) A mortgage, deed of trust, or other encumbrance that attaches after  
14    commencement of the site improvement.

15    (2) A mortgage, deed of trust, or other encumbrance that was unrecorded at the  
16    commencement of the site improvement and of which the claimant had no notice.

17    (3) A mortgage, deed of trust, or other encumbrance that was recorded before  
18    commencement of the site improvement, if given for the sole or primary purpose  
19    of financing the site improvement. This subdivision does not apply if the loan  
20    proceeds are, in good faith, placed in the control of the lender pursuant to a  
21    binding agreement with the borrower to the effect that (i) the proceeds are to be  
22    applied to the payment of claimants and (ii) no portion of the proceeds will be paid  
23    to the borrower in the absence of satisfactory evidence that all claims have been  
24    paid or that the time for recording a claim of lien has expired and no claim of lien  
25    has been recorded.

26    (b) A mortgage or deed of trust, otherwise subordinate under subdivision (a), has  
27    priority over a lien provided for in Section 8402 if a payment bond in an amount  
28    not less than 50 percent of the principal amount of the mortgage or deed of trust is  
29    recorded before completion of the work of improvement.

30    **Comment.** Subdivision (a) of Section 8458 continues former Section 3137 without substantive  
31    change. See also Section 8402 (site improvement lien).

32    Subdivision (b) continues former Section 3139 without substantive change. See also Section  
33    8058 (filing and recording of papers).

34    See also Sections 8002 (“claimant”), 8024 (“lien”), 8030 (“payment bond”), 8042 (“site  
35    improvement”), 8050 (“work of improvement”).

36   Article 6. Enforcement of Lien

37    **§ 8460. Time for commencement of enforcement action**

38    8460. (a) The claimant shall commence an action to enforce a lien within 90  
39    days after recordation of the claim of lien and record a notice of the pendency of  
40    the action under Title 4.5 (commencing with Section 405) of Part 2 of the Code of  
41    Civil Procedure within 110 days after recordation of the claim of lien. If the

1 claimant does not commence an action and record notice of the pendency of the  
2 action within the time provided in this subdivision, the claim of lien expires and is  
3 unenforceable.

4 (b) Subdivision (a) does not apply if the claimant and owner agree to extend  
5 credit, and notice of the fact and terms of the extension of credit is recorded (1)  
6 within 90 days after recordation of the claim of lien or (2) more than 90 days after  
7 recordation of the claim of lien but before a purchaser or encumbrancer for value  
8 and in good faith acquires rights in the property. In that event the claimant shall  
9 commence an action to enforce the lien and record a notice of the pendency of the  
10 action within 90 days after the expiration of the credit, but in no case later than  
11 one year after completion of the work of improvement. If the claimant does not  
12 commence an action and record notice of the pendency of the action within the  
13 time provided in this subdivision, the claim of lien expires and is unenforceable.

14 **Comment.** Section 8460 restates former Sections 3144, 3145, and the first sentence of former  
15 Section 3146, adding the requirement that a claim of lien is unenforceable if a lis pendens is not  
16 recorded within the statutory periods. The reference to the lis pendens statute is corrected, to  
17 reflect the repeal of Code of Civil Procedure 409. See 1992 Cal. Stat. ch. 883, § 1. See also  
18 Section 8054 (rules of practice).

19 The second sentence of former Section 3146 is not continued. It is superseded by general  
20 provisions governing the effect of a lis pendens. See Code Civ. Proc. § 405.24 (constructive  
21 notice).

22 Subdivision (b) makes clear that the owner must be a party to the extension of credit, and  
23 allows for late recording of the extension of credit. This codifies the rule in *Richards v. Hillside*  
24 *Development Co.*, 177 Cal. App. 2d 776, 2 Cal. Rptr. 693 (1960), and overrules *Dorer v.*  
25 *McKinsey*, 188 Cal. App. 2d 199, 10 Cal. Rptr. 287 (1961).

26 For completion of a work of improvement, see Section 8150.

27 See also Sections 8002 (“claimant”), 8024 (“lien”), 8050 (“work of improvement”).

## 28 § 8462. Dismissal for lack of prosecution

29 8462. Notwithstanding Section 583.420 of the Code of Civil Procedure, the  
30 court may dismiss an action to enforce a lien that is not brought to trial within two  
31 years after commencement of the action.

32 **Comment.** Section 8462 continues former Section 3147 without substantive change. The  
33 cross-reference to the Code of Civil Procedure is added to make clear that this section modifies  
34 the general three-year period for discretionary dismissal. See also Section 8054 (rules of  
35 practice).

36 See also Section 8024 (“lien”).

## 37 § 8464. Costs

38 8464. In addition to any other costs allowed by law, the court in an action to  
39 enforce a lien shall allow as costs to each claimant whose lien is established the  
40 amount paid to verify and record the claim of lien, whether the claimant is a  
41 plaintiff or defendant.

42 **Comment.** Section 8464 continues former Section 3150 without substantive change.

43 See also Sections 8002 (“claimant”), 8024 (“lien”).

1    **§ 8466. Deficiency**

2    8466. If there is a deficiency of proceeds from the sale of property on a  
3 judgment for enforcement of a lien, a deficiency judgment may be entered against  
4 a party personally liable for the deficiency in the same manner and with the same  
5 effect as in an action to foreclose a mortgage.

6    **Comment.** Section 8466 restates former Section 3151 without substantive change.  
7    See also Section 8024 (“lien”).

8    **§ 8468. Other remedies**

9    8468. (a) This chapter does not affect any of the following rights of a claimant:

10   (1) The right to maintain a personal action to recover a debt against the person  
11 liable, either in a separate action or in an action to enforce a lien.

12   (2) The right to a writ of attachment. In an application for a writ of attachment,  
13 the claimant shall refer to this section. The claimant’s recording of a claim of lien  
14 does not affect the right to a writ of attachment.

15   (3) The right to enforce a judgment.

16   (b) A judgment obtained by the claimant in a personal action described in  
17 subdivision (a) does not impair or merge the claim of lien, but any amount  
18 collected on the judgment shall be credited on the amount of the lien.

19   **Comment.** Section 8468 restates former Section 3152 without substantive change. The  
20 reference in the introductory portion of the section to “this title” is changed to “this chapter”  
21 consistent with the scope of the chapter.

22   For provisions relating to attachment, see Code Civ. Proc. § 481.010 *et seq.* For provisions  
23 relating to enforcement of a money judgment, see Code Civ. Proc. § 681.010 *et seq.*

24   See also Sections 8002 (“claimant”), 8024 (“lien”), 8032 (“person”).

25   **§ 8470. Defense of lien enforcement action by contractor**

26   8470. In an action to enforce a lien for work provided to a contractor:

27   (a) The contractor shall defend the action at the contractor’s own expense.  
28 During the pendency of the action the owner may withhold from the direct  
29 contractor the amount of the lien claim.

30   (b) If the judgment in the action is against the owner or the owner’s property, the  
31 owner may deduct the amount of the judgment and costs from any amount owed to  
32 the direct contractor. If the amount of the judgment and costs exceeds the amount  
33 owed to the direct contractor, or if the owner has settled with the direct contractor  
34 in full, the owner may recover from the contractor, or the sureties on a bond given  
35 by the contractor for faithful performance of the contract, the amount of the  
36 judgment and costs that exceed the contract price and for which the contractor was  
37 originally liable.

38   **Comment.** Section 8470 restates former Section 3153 without substantive change. This section  
39 does not apply to an action to enforce a lien brought by a direct contractor.

40   See also Sections 8010 (“contract price”), 8024 (“lien”), 8014 (“direct contractor”), 8028  
41 (“owner”), 8048 (“work”).



Article 7. Release Order

§ 8480. Petition for release order

8480. (a) The owner of property subject to a claim of lien may petition the court for an order to release the property from the claim of lien for any of the following causes:

(1) The claimant has not commenced an action to enforce the lien within the time provided in Section 8460.

(2) The claimant's demand stated in the claim of lien has been paid to the claimant in full.

(3) None of the work stated in the claim of lien has been provided.

(4) The claimant was not licensed to provide the work stated in the claim of lien for which a license was required by statute.

(5) There is a final judgment in another proceeding that the petitioner is not indebted to the claimant for the demand on which the claim of lien is based.

(b) This article does not bar any other cause of action or claim for relief by the owner of the property, including but not limited to the filing of a complaint with the Contractors' State License Board. A release order does not bar any other cause of action or claim for relief by the claimant, other than an action to enforce the claim of lien that is the subject of the release order.

(c) A petition for a release order under this article may be joined with a pending action to enforce the claim of lien that is the subject of the petition. No other action or claim for relief may be joined with a petition under this article.

(d) Notwithstanding Section 8054, Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure does not apply to a proceeding under this article.

**Comment.** Subdivision (a)(1) of Section 8480 continues former Section 3154(a) without substantive change. Subdivisions (a)(2)-(6) are new. The owner need not wait until expiration of the time to commence an enforcement action before bringing a petition to release an invalid claim of lien under this section. Cf. Section 8422 (forfeiture of lien for false claim).

Subdivision (b) continues former Section 3154(h) without substantive change, and codifies the holding in *Solit v. Tokai Bank, Ltd. New York Branch*, 68 Cal. App. 4th 1435, 81 Cal. Rptr. 2d 243 (1999). A petition under this section only addresses the specific claims made in a specific recorded claim of lien, and does not address the existence or validity of the claimant's underlying lien right.

Subdivision (c) provides a limited exception to the last sentence of former Section 3154(h), allowing the petition to be joined with a pending action to enforce the claim of lien that is the subject of the petition.

Subdivision (d) continues former Section 3154(i) without substantive change,

See also Sections 8002 ("claimant"), 8024 ("lien"), 8048 ("work").

§ 8482. Demand prerequisite to petition

8482. An owner of property may not petition the court for a release order under this article unless at least 10 days before filing the petition the owner gives the claimant notice demanding that the claimant execute and record a release of the

1 claim of lien. The notice shall comply with the requirements of Article 3  
2 (commencing with Section 8100) of Chapter 1, and shall state the grounds for the  
3 demand.

4 **Comment.** Section 8482 is new. If the lien claimant complies with the demand, a release  
5 proceeding is unnecessary.

6 See also Sections 8002 (“claimant”), 8024 (“lien”), 8028 (“owner”).

7 **§ 8484. Contents of petition**

8 8484. A petition for a release order shall be verified and shall allege all of the  
9 following:

10 (a) The date of recordation of the claim of lien. A certified copy of the claim of  
11 lien shall be attached to the petition.

12 (b) The county in which the claim of lien is recorded.

13 (c) The book and page or series number of the place in the official records where  
14 the claim of lien is recorded.

15 (d) The legal description of the property subject to the claim of lien.

16 (e) The facts on which the petition is based. If the petition is based on expiration  
17 of the time to enforce the lien, the petition shall state whether an extension of  
18 credit has been granted under Section 8460, if so to what date, and shall allege that  
19 the time for commencement of an action to enforce the lien has expired.

20 (f) That the owner has given the claimant notice under Section 8482 demanding  
21 that the claimant execute and record a release of the lien and that the claimant is  
22 unable or unwilling to do so or cannot with reasonable diligence be found.

23 (g) Whether an action to enforce the lien is pending.

24 (h) Whether the owner has filed for relief in bankruptcy or there is another  
25 restraint that prevents the claimant from commencing an action to enforce the lien.

26 **Comment.** Section 8484 supersedes subdivision (b) of former Section 3154. As used in this  
27 section, the owner of property includes the owner of an interest in the property. See Section 8028  
28 (“owner”). See also Section 8100 (written notice).

29 The information included in the petition is intended to facilitate the court’s order under Section  
30 8488 (hearing and order). The reference to series number is added to cover a county in which the  
31 recorder uses a sequence number for record location.

32 See also Sections 8002 (“claimant”), 8024 (“lien”).

33 **§ 8486. Time of hearing**

34 8486. (a) On the filing of a petition for a release order, the clerk shall set a  
35 hearing date. The date shall be not more than 30 days after the filing of the  
36 petition. The court may continue the hearing only on a showing of good cause, but  
37 in any event the court shall rule and make any necessary orders on the petition not  
38 later than 60 days after the filing of the petition.

39 (b) The petitioner shall serve a copy of the petition and a notice of hearing on  
40 the claimant at least 15 days before the hearing. Service shall be made in the same  
41 manner as service of summons, or by certified or registered mail, postage prepaid,  
42 return receipt requested, addressed to the claimant as provided in Section 8108.

1 (c) Notwithstanding Section 8116, when service is made by mail, service is  
2 complete on the fifth day following deposit of the petition and notice in the mail.

3 **Comment.** Section 8486 continues subdivisions (c), (d), and the first sentence of (e) of former  
4 Section 3154 without substantive change, except the time for serving a copy of the petition and  
5 notice of hearing is increased to 15 days, and a requirement that the court act no later than 60  
6 days after the petition is filed is added.

7 The specific mailing requirements in subdivision (b) of Section 8486 supersede the general  
8 mailing requirements in Section 8110.

9 The reference to “if there is no clerk, the judge” is deleted. All courts now have a clerk.

10 See also Sections 8002 (“claimant”), 8024 (“lien”), 8034 (“preliminary notice”).

### 11 § 8488. Hearing and order

12 8488. (a) At the hearing both (i) the petition and (ii) the issue of compliance  
13 with the service and date for hearing requirements of this article are deemed  
14 controverted by the claimant. The petitioner has the initial burden of producing  
15 evidence on those matters. The petitioner has the burden of proof as to the issue of  
16 compliance with the service and date for hearing requirements of this article. The  
17 claimant has the burden of proof as to the validity of the lien.

18 (b) If judgment is in favor of the petitioner, the court shall order the property  
19 released from the claim of lien.

20 (c) The prevailing party is entitled to a reasonable attorney’s fee.

21 **Comment.** Subdivision (a) of Section 8488 continues the last sentence of former Section  
22 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change,  
23 except that language is added to clarify the burden of production and the burden of proof.

24 Subdivision (b) continues a portion of former Section 3154(f); the remainder of the former  
25 provision is continued in Article 8 (commencing with Section 8490) (removal of claim of lien  
26 from record). Subdivision (c) continues former Section 3154(g) with the exception of the \$2,000  
27 limitation.

28 See also Sections 8002 (“claimant”), 8024 (“lien”), Evid. Code §§ 500 (burden of proof), 550  
29 (burden of producing evidence).

## 30 Article 8. Removal of Claim of Lien from Record

### 31 § 8490. Court order

32 8490. (a) A court order dismissing a cause of action to enforce a lien or releasing  
33 property from a claim of lien, or a judgment that no lien exists, shall include all of  
34 the following information:

35 (1) The date of recordation of the claim of lien.

36 (2) The county in which the claim of lien is recorded.

37 (3) The book and page or series number of the place in the official records  
38 where the claim of lien is recorded.

39 (4) The legal description of the property.

40 (b) A court order under this section is a recordable instrument. On recordation of  
41 a certified copy of the court order, the property described in the order is released  
42 from the claim of lien.



1       **Comment.** Section 8500 continues Section 3264 without substantive change, except that it is  
2 limited to a private work. See Section 8052 (application of part). For a comparable provision  
3 applicable to a public work, see Pub. Cont. Code § 44110 (stop payment notice exclusive remedy  
4 to reach construction funds).

5       This section is not intended to either ratify or abrogate the holding of *Nibbi Brothers, Inc. v.*  
6 *Home Fed. Sav. & Loan Ass'n*, 205 Cal. App. 3d 1415, 253 Cal. Rptr. 289 (1988), that in an  
7 appropriate case a person providing labor or materials may recover from a construction lender on  
8 a theory of unjust enrichment.

9       See also Sections 8032 (“person”), 8048 (“work”).

10    **§ 8502. Contents of stop payment notice**

11       8502. (a) A stop payment notice shall comply with the requirements of Section  
12 8102, and shall be signed and verified by the claimant.

13       (b) The notice may only be given for the amount due the claimant for work  
14 provided.

15       (c) The claimant may include in a stop payment notice an amount due for work  
16 performed as a result of rescission, abandonment, or breach of the contract. If  
17 there is a rescission, abandonment, or breach of the contract, the amount of the  
18 stop payment notice may not exceed the reasonable value of the work provided by  
19 the claimant.

20       **Comment.** Subdivision (a) of Section 8502 supersedes subdivisions (a)-(d) of former Section  
21 3103. See also Sections 8100-8118 (notice). A stop payment notice may be executed by the  
22 claimant’s agent. See Section 8064 (agency).

23       This section does not preclude the claimant from including in a stop payment notice an amount  
24 due for work provided pursuant to a contract change. See Section 8008 (“contract”).

25       Subdivision (c) applies provisions applicable to a claim of lien to the stop payment notice. *Cf.*  
26 Section 8430 (amount of lien).

27       See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8032 (“person”), 8044  
28 (“stop payment notice”), 8048 (“work”).

29    **§ 8504. False stop payment notice**

30       8504. A claimant that willfully gives a false stop payment notice or that willfully  
31 includes in the notice work not provided or agreed to be provided to or for the  
32 person named in the notice forfeits all right to participate in the distribution of the  
33 funds withheld and all right to a lien under Article 3 (commencing with Section  
34 8100) of Chapter 1.

35       **Comment.** Section 8504 restates former Section 3168 without substantive change.

36       See also Sections 8002 (“claimant”), 8024 (“lien”), 8032 (“person”), 8044 (“stop payment  
37 notice”).

38    **§ 8506. Manner of giving stop payment notice**

39       8506. (a) A stop payment notice to an owner shall be given to the owner or to  
40 the owner’s architect, if any.

41       (b) A stop payment notice to a construction lender holding construction funds  
42 shall be given to the manager or other responsible officer or person at the office or  
43 branch of the lender administering or holding the construction funds.

1 (c) A stop payment notice shall comply with the requirements of Article 3  
2 (commencing with Section 8100) of Chapter 1.

3 **Comment.** Subdivisions (a) and (b) of Section 8506 restate a portion of the last two sentences  
4 of former Section 3083 and the second paragraph of former Section 3103.

5 Subdivision (c) is new. The effect of the last paragraph of former Section 3103 is continued in  
6 Section 8106 (manner of giving notice).

7 See also Sections 8006 (“construction lender”), 8028 (“owner”), 8032 (“person”), 8044 (“stop  
8 payment notice”).

9 **§ 8508. Requirements for valid stop payment notice**

10 8508. A stop payment notice is not valid unless both of the following conditions  
11 are satisfied:

12 (a) The claimant gave preliminary notice to the extent required by Chapter 2  
13 (commencing with Section 8200).

14 (b) The claimant gave the stop payment notice before expiration of the time  
15 within which a claim of lien must be recorded under Chapter 4 (commencing with  
16 Section 8400).

17 **Comment.** Section 8508 restates former Section 3160 and a portion of the first sentence of  
18 former Section 3159 without substantive change. For the time within which a claim of lien must  
19 be recorded, see Sections 8412-7416 (time for claim of lien); see also Section 8154 (notice of  
20 completion of contract for portion of work of improvement). For the person to whom the notice  
21 must be given, see Section 8506.

22 See also Sections 8002 (“claimant”), 8028 (“owner”), 8034 (“preliminary notice”), 8044 (“stop  
23 payment notice”), 8050 (“work of improvement”).

24 **§ 8510. Release bond**

25 8510. (a) A person may obtain release of funds withheld pursuant to a stop  
26 payment notice by giving the person withholding the funds a release bond.

27 (b) A release bond shall be given by an admitted surety insurer and shall be  
28 conditioned for payment of any amount not exceeding the penal obligation of the  
29 bond that the claimant recovers on the claim, together with costs of suit awarded  
30 in the action. The bond shall be in an amount equal to 125 percent of the amount  
31 claimed in the stop payment notice.

32 (c) On receipt of a release bond, the person withholding funds pursuant to the  
33 stop payment notice shall release them.

34 **Comment.** Section 8510 restates former Section 3171, but eliminates the restrictions on the  
35 persons and the conditions under which a release bond may be given, and requires the bond to be  
36 given by an admitted surety insurer. See Section 8140 (application of Bond and Undertaking  
37 Law); Code Civ. Proc. § 995.120 (“admitted surety insurer”).

38 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”),  
39 8028 (“owner”), 8032 (“person”), 8044 (“stop payment notice”), 8046 (“subcontractor”).

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## Article 2. Stop Payment Notice to Owner

### § 8520. Stop payment notice to owner

8520. (a) A person that has a lien right under Chapter 4 (commencing with Section 8400), other than a direct contractor, may give the owner a stop payment notice.

(b) The owner may give notice, in compliance with the requirements of Article 3 (commencing with Section 8100) of Chapter 1, demanding that a person that has a lien right under Chapter 4 (commencing with Section 8400) give the owner a stop payment notice. If the person fails to give the owner a bonded or unbonded stop payment notice, the person forfeits the right to a lien under Chapter 4 (commencing with Section 8400).

**Comment.** Section 8520 restates former Section 3158. It makes clear that the owner’s demand under this section requires only an unbonded stop payment notice.

See also Sections 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”), 8032 (“person”), 8044 (“stop payment notice”).

### § 8522. Duty of owner

8522. (a) Except as provided in subdivision (b), on receipt of a stop payment notice an owner shall withhold from the direct contractor or from any person acting under authority of a direct contractor a sufficient amount due or to become due to the direct contractor to pay the claim stated in the notice.

(b) The owner may, but is not required to, withhold funds if the owner has previously recorded a payment bond under Section 8602. If the owner does not withhold funds, the owner shall, within 30 days after receipt of the stop payment notice, give notice to the claimant that a payment bond has been recorded and provide the claimant a copy of the bond. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

**Comment.** Section 8522 restates former Section 3161.

See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”), 8030 (“payment bond”), 8032 (“person”), 8044 (“stop payment notice”).

## Article 3. Stop Payment Notice to Construction Lender

### § 8530. Stop payment notice to construction lender

8530. A person that has a lien right under Chapter 4 (commencing with Section 8400) may give a construction lender a stop payment notice.

**Comment.** Section 8530 restates a portion of the first sentence of former Section 3159 without substantive change. See also Sections 8044 (“stop payment notice”), 8508 (requirements for valid stop payment notice).

For provisions governing the amount withheld where the person giving a stop payment notice is a direct contractor or subcontractor and there is a claim of another subcontractor or material supplier, see Section 8542 (amount withheld).

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”), 8024 (“lien”), 8032 (“person”), 8048 (“work”).

1    **§ 8532. Bonded stop payment notice**

2       8532. A claimant may give a construction lender a stop payment notice  
3 accompanied by a bond in an amount equal to 125 percent of the amount of the  
4 claim. The bond shall be conditioned that if the defendant recovers judgment in an  
5 action to enforce payment of the claim stated in the stop payment notice or to  
6 enforce a claim of lien recorded by the claimant, the claimant will pay all costs  
7 that are awarded the owner, direct contractor, or construction lender, and all  
8 damages to the owner, direct contractor, or construction lender that result from the  
9 stop payment notice or recordation of the claim of lien, not exceeding the amount  
10 of the bond.

11       **Comment.** Section 8532 restates the first sentence of former Section 3083 without substantive  
12 change. The former reference to “good and sufficient sureties” on the bond is omitted as  
13 unnecessary. See Code Civ. Proc. § 995.310 (sufficient sureties on bond required). The second  
14 two sentences of former Section 3083 are continued in Section 8506(a)(2) (manner of giving stop  
15 payment notice).

16       See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”),  
17 8024 (“lien”), 8028 (“owner”), 8044 (“stop payment notice”).

18    **§ 8534. Objection to bond**

19       8534. (a) A construction lender that objects to the sufficiency of sureties on the  
20 bond given with a bonded stop payment notice shall give notice to the claimant of  
21 the objection, within 20 days after the bonded stop payment notice is given. The  
22 notice shall comply with the requirements of Article 3 (commencing with Section  
23 8100) of Chapter 1.

24       (b) The claimant may within 10 days after notice of the objection is given  
25 substitute for the initial bond a bond executed by an admitted surety insurer. If the  
26 claimant does not substitute a bond executed by an admitted surety insurer, the  
27 construction lender may disregard the bonded stop payment notice and release all  
28 funds withheld in response to that notice.

29       **Comment.** Section 8534 restates former Section 3163 without substantive change. *Cf.* Section  
30 8100 (written notice); Code Civ. Proc. § 995.120 (“admitted surety insurer”).

31       See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8044 (“stop payment  
32 notice”).

33    **§ 8536. Duty of construction lender**

34       8536. (a) Except as provided in subdivision (b), on receipt of a stop payment  
35 notice a construction lender shall withhold from the borrower or other person to  
36 which the lender or the owner is obligated to make payments or advancement out  
37 of the construction fund sufficient funds to pay the claim.

38       (b) The construction lender may, at its option, elect not to withhold funds in any  
39 of the following circumstances:

40       (1) The stop payment notice is unbonded.

41       (2) The stop payment notice is given by a claimant other than a direct contractor,  
42 and a payment bond is recorded before the lender is given any stop payment  
43 notice.



1 **Comment.** Section 8536 restates paragraphs (1) and (2) of subdivision (a) of former Section  
2 3159, and subdivision (a)(1)-(2) of former Section 3162. The requirement in former Section  
3 3162(a) that the lender withhold sufficient funds to pay “any claim of lien that may be recorded  
4 therefor” is omitted; any amount paid pursuant to a stop payment notice reduces the claim of lien.  
5 The reference to recordation of a payment bond “in the office of the county recorder where the  
6 site is located” is omitted from subdivision (b)(2) as unnecessary. See Section 8058 (filing and  
7 recording of papers).

8 If a bonded stop payment notice is given by a direct contractor, the construction lender must  
9 withhold funds regardless of whether a payment bond has previously been recorded under Section  
10 8602.

11 For provisions governing the amount withheld where the person giving a stop payment notice  
12 is a direct contractor or subcontractor and there is a claim of another subcontractor or material  
13 supplier, see Section 8542 (amount withheld).

14 See also Sections 8006 (“construction lender”), 8014 (“direct contractor”), 8024 (“lien”), 8028  
15 (“owner”), 8030 (“payment bond”), 8032 (“person”), 8044 (“stop payment notice”).

16 **§ 8538. Notice of election**

17 8538. (a) The claimant may make a written request for notice of an election by  
18 the construction lender under Section 8536 not to withhold funds. The request  
19 shall be made at the time the claimant gives the construction lender the stop  
20 payment notice and shall be accompanied by a preaddressed, stamped envelope.

21 (b) If the construction lender elects not to withhold funds under Section 8536,  
22 the lender shall, within 30 days after making the election, give notice of that fact  
23 to a claimant that has requested notice of the election under subdivision (a). The  
24 notice shall comply with the requirements of Article 3 (commencing with Section  
25 8100) of Chapter 1. If the basis of the election is the recordation of a payment  
26 bond under Section 8602, the construction lender shall include a copy of the bond  
27 with the notice.

28 (c) A construction lender is not liable for failure to include a copy of the bond  
29 with the notice under this section if all of the following conditions are satisfied:

30 (1) The failure was not intentional and resulted from a bona fide error.

31 (2) The lender maintains reasonable procedures to avoid an error of that type.

32 (3) The lender corrected the error not later than 20 days after the date the lender  
33 discovered the violation.

34 **Comment.** Section 8538 restates paragraph (3) of subdivision (a) of former Sections 3159 and  
35 3162 without substantive change. The last sentence of former Section 3159(a)(3) is continued in  
36 Section 8530(b) (notice to construction lender to withhold funds).

37 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8030 (“payment bond”),  
38 8044 (“stop payment notice”).

39 **Article 4. Priorities**

40 **§ 8540. Distribution of funds withheld pursuant to stop payment notice**

41 8540. (a) Funds withheld pursuant to a stop payment notice shall be distributed  
42 in the following order of priority:

1 (1) First, to pay claims of persons that have given a bonded stop payment notice.  
2 If funds are insufficient to pay the claims of those persons in full, the funds shall  
3 be distributed pro rata among the claimants in the ratio that the claim of each bears  
4 to the aggregate of all claims for which a bonded stop payment notice is given.

5 (2) Second, to pay claims of persons that have given an unbonded stop payment  
6 notice. If funds are insufficient to pay the claims of those persons in full, the funds  
7 shall be distributed among the claimants in the ratio that the claim of each bears to  
8 the aggregate of all claims for which an unbonded stop payment notice is given.

9 (b) Pro rata distribution under this section shall be made among the persons  
10 entitled to share in the distribution without regard to the order in which the person  
11 has given a stop payment notice or commenced an enforcement action.

12 **Comment.** Section 8540 restates former Section 3167 without substantive change. Only valid  
13 claims, as determined in an enforcement action, are entitled to participate in the distribution. *Cf.*  
14 *Idaho Lumber Co. v. Northwestern S. & L. Ass'n*, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422  
15 (1968). The amount of the claim of a contractor is governed by Section 8542.

16 See also Sections 8002 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

17 **§ 8542. Amount withheld**

18 8542. Notwithstanding Section 8540:

19 (a) If funds are withheld pursuant to a stop payment notice given to a  
20 construction lender by a direct contractor or subcontractor, the direct contractor or  
21 subcontractor may recover only the net amount due the direct contractor or  
22 subcontractor after deducting any funds that are withheld by the construction  
23 lender pursuant to the claims of subcontractors and material suppliers that have  
24 given a stop payment notice for work done on behalf of the direct contractor or  
25 subcontractor.

26 (b) In no event is the construction lender required to withhold, pursuant to a stop  
27 payment notice, more than the net amount provided in subdivision (a).  
28 Notwithstanding any other provision of this chapter, a construction lender is not  
29 liable for failure to withhold more than that net amount on receipt of a stop  
30 payment notice.

31 **Comment.** Section 8542 restates subdivisions (b) and (c) of former Sections 3159 and 3162,  
32 except that the rules governing a bonded notice are generalized and also apply to funds that a  
33 construction lender actually withholds pursuant to an unbonded notice.

34 See also Sections 8006 (“construction lender”), 8014 (“direct contractor”), 8026 (“material  
35 supplier), 8044 (“stop payment notice”), 8046 (“subcontractor”).

36 **§ 8544. Effect of stop payment notice on assignment of funds**

37 8544. The rights of a claimant that gives a construction lender a stop payment  
38 notice are not affected by an assignment of construction loan funds made by the  
39 owner or direct contractor, and the stop payment notice has priority over the  
40 assignment, whether the assignment is made before or after the stop payment  
41 notice is given.

42 **Comment.** Section 8544 restates former Section 3166 without substantive change.

1 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”),  
2 8028 (“owner”), 8044 (“stop payment notice”).

3 Article 5. Enforcement of Claim Stated in Stop Payment Notice

4 **§ 8550. Time for enforcement of claim stated in stop payment notice**

5 8550. (a) A claimant shall commence an action to enforce the claim stated in a  
6 stop payment notice not earlier than 10 days after the date the claimant gives the  
7 notice and not later than 90 days after expiration of the time within which a stop  
8 payment notice must be given. The action may not be brought to trial or judgment  
9 entered before expiration of the time prescribed in this subdivision.

10 (b) If a claimant does not commence an action to enforce payment of the claim  
11 stated in a stop payment notice within the time prescribed in subdivision (a), the  
12 notice ceases to be effective and the person withholding funds pursuant to the  
13 notice shall release them.

14 (c) Within five days after commencement of an action to enforce payment of the  
15 claim stated in a stop payment notice, the claimant shall give notice of  
16 commencement of the action to the persons to which the stop payment notice was  
17 given. The notice shall comply with the requirements of Article 3 (commencing  
18 with Section 8100) of Chapter 1.

19 **Comment.** Section 8550 restates former Section 3172 without substantive change. A stop  
20 payment notice must be given before expiration of the time within which a claim of lien must be  
21 recorded under Chapter 4 (commencing with Section 8400). See Section 8508 (requirements for  
22 valid stop payment notice).

23 For the manner in which notice of commencement of an enforcement action is to be given, see  
24 Section 8506 (manner of giving stop payment notice).

25 Funds released for failure to timely commence an enforcement action must be paid or delivered  
26 to the person to which they are due.

27 See also Sections 8002 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

28 **§ 8552. Joinder, consolidation, and interpleader**

29 8552. If more than one claimant has given a stop payment notice:

30 (a) Any number of claimants may join in the same enforcement action.

31 (b) If claimants commence separate actions, the court first acquiring jurisdiction  
32 may order the actions consolidated.

33 (c) On motion of the owner or construction lender the court shall require all  
34 claimants to be impleaded in one action, to the end that the rights of all parties  
35 may be adjudicated in the action.

36 **Comment.** Section 8552 restates former Section 3175 without substantive change. Subdivision  
37 (a) is a specific application of the general rule stated in Section 8054 (rules of practice).

38 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8028 (“owner”), 8044  
39 (“stop payment notice”).

1    **§ 8554. Dismissal of enforcement action for lack of prosecution**

2       8554. Notwithstanding Section 583.420 of the Code of Civil Procedure, the  
3       court may dismiss an action to enforce payment of the claim stated in a stop  
4       payment notice that is not brought to trial within two years after commencement  
5       of the action.

6       **Comment.** Section 8554 restates former Section 3173 without substantive change. The cross-  
7       reference to the Code of Civil Procedure is added to make clear that this section modifies the  
8       general three-year period for discretionary dismissal. *Cf.* Section 8054 (rules of practice).

9       See also Section 8044 (“stop payment notice”).

10   **§ 8556. Dismissal of action or judgment against claimant**

11       8556. A stop payment notice ceases to be effective, and a person withholding  
12       funds pursuant to the notice shall release them, in either of the following  
13       circumstances:

14       (a) An action to enforce payment of the claim stated in the stop payment notice  
15       is dismissed, unless expressly stated to be without prejudice.

16       (b) Judgment in an action to enforce payment of the claim stated in the stop  
17       payment notice is against the claimant.

18       **Comment.** Section 8556 restates former Section 3174 without substantive change. Funds  
19       released as a result of dismissal of the action or judgment against the claimant must be paid or  
20       delivered to the person to which they are due.

21       See also Sections 8002 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

22   **§ 8558. Attorney’s fee in action to enforce payment of claim stated in bonded stop payment**  
23       **notice**

24       8558. (a) In an action to enforce payment of the claim stated in a bonded stop  
25       payment notice, the prevailing party is entitled to a reasonable attorney’s fee in  
26       addition to costs and damages.

27       (b) The court, on notice and motion by a party, shall determine which is the  
28       prevailing party or that there is no prevailing party for the purpose of this section,  
29       regardless of whether the action proceeds to final judgment. The prevailing party  
30       is the party that recovers greater relief in the action, subject to the following  
31       limitations:

32       (1) If the action is voluntarily dismissed or dismissed pursuant to a settlement,  
33       there is no prevailing party.

34       (2) If the defendant tenders to the claimant the full amount to which the  
35       defendant is entitled, and deposits in court for the claimant the amount so  
36       tendered, and alleges those facts in the answer and the allegation is determined to  
37       be true, the defendant is deemed to be the prevailing party.

38       **Comment.** Section 8558 restates former Section 3176 without substantive change.

39       See also Sections 8002 (“claimant”), 8044 (“stop payment notice”).



1    **§ 8604. Bond required by lending institution**

2       8604. If a lending institution requires that a payment bond be given as a  
3 condition of lending money to finance a work of improvement, and accepts in  
4 writing as sufficient a bond given in fulfillment of the requirement, the lending  
5 institution may not thereafter object to the borrower as to the validity of the bond  
6 or refuse to make the loan based on an objection to the bond if the bond is given  
7 by an admitted surety insurer.

8       **Comment.** Section 8604 supersedes former Section 3237. It makes clear that the lender may  
9 not object to the bond if given by an admitted surety insurer. *Cf.* Code Civ. Proc. § 995.120  
10 (“admitted surety insurer” means corporate insurer to which Insurance Commissioner has issued  
11 certificate of authority to transact surety insurance in state).

12       See also Sections 8022 (“lending institution”), 8030 (“payment bond”), 8032 (“person”), 8050  
13 (“work of improvement”).

14       See also Code Civ. Proc. §§ 995.130 (“beneficiary”), 995.140 (“bond”), 995.185 (“surety”).

15    **§ 8606. Conditions of payment bond**

16       8606. (a) A payment bond under this part shall be conditioned for the payment  
17 in full of the claims of all claimants and shall by its terms inure to the benefit of all  
18 claimants so as to give a claimant a right of action to enforce the liability on the  
19 bond. The bond shall be given by an admitted surety insurer.

20       (b) An owner, direct contractor, or subcontractor may be the principal on the  
21 bond.

22       (c) A claimant may enforce the liability on the bond in an action to enforce a  
23 lien under this part or in a separate action on the bond.

24       **Comment.** Section 8606 restates former Section 3096 without substantive change, except to  
25 add a requirement that the bond be given by an admitted surety insurer. See also Section 8140  
26 (application of Bond and Undertaking Law). The statute is relocated to the general provisions on  
27 payment bonds because it states substantive rules.

28       See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”),  
29 8046 (“subcontractor”).

30    **§ 8608. Limitation on part**

31       8608. (a) This part does not give a claimant a right to recover on a direct  
32 contractor’s payment bond given under this chapter unless the claimant provided  
33 work to the direct contractor either directly or through one or more subcontractors,  
34 pursuant to a contract between the direct contractor and the owner.

35       (b) Nothing in this section affects the stop payment notice right of, and relative  
36 priorities among, design professionals and holders of secured interests in the  
37 property.

38       **Comment.** Section 8608 restates former Section 3267, but clarifies that claimants providing  
39 work to subcontractors at every level have a right to recover against a direct contractor’s payment  
40 bond as provided in this section. See *Union Asphalt, Inc. v. Planet Ins. Co.*, 21 Cal. App. 4th  
41 1762, 27 Cal. Rptr. 2d 371 (1994).

42       See also Sections 8002 (“claimant”), 8008 (“contract”), 8012 (“design professional”), 8014  
43 (“direct contractor”), 8028 (“owner”), 8046 (“subcontractor”), 8048 (“work”).

1    **§ 8610. Statute of limitations for suit on recorded bond**

2       8610. If a payment bond under this part is recorded before completion of a work  
3 of improvement, an action to enforce the liability on the bond may not be  
4 commenced later than six months after completion of the work of improvement.

5       **Comment.** Section 8610 restates former Section 3240, and broadens it to cover enforcement of  
6 any liability on the bond, not limited to the liability of the surety. *Cf.* Code Civ. Proc. § 996.440  
7 (judgment on bond against principal and sureties). It supersedes former Section 3239 (provision  
8 shortening statute of limitations). See also Sections 8058 (filing and recording of papers), 8150  
9 (completion).

10      See also Sections 8030 (“payment bond”), 8050 (“work of improvement”).

11      See also Code Civ. Proc. §§ 995.130 (“beneficiary”), 995.140 (“bond”).

12    **§ 8612. Notice prerequisite to enforcement**

13       8612. (a) In order to enforce a claim against a payment bond under this part, a  
14 claimant shall give the preliminary notice provided in Chapter 2 (commencing  
15 with Section 8200).

16       (b) If preliminary notice was not given as provided in Chapter 2 (commencing  
17 with Section 8200), a claimant may enforce a claim by giving written notice to the  
18 surety and the bond principal within 15 days after recordation of a notice of  
19 completion. If no notice of completion has been recorded, the time for giving  
20 written notice to the surety and the bond principal is extended to 75 days after  
21 completion of the work of improvement.

22       **Comment.** Section 8612 restates former Section 3242 without substantive change. See also  
23 Sections 8100-8118 (notice). The former limitation to a contract entered into on or after January  
24 1, 1995, is omitted due to lapse of time.

25       See also Sections 14 (singular includes plural), 8110 (mailed notice), 8150 (completion), 8152  
26 (notice of completion).

27       See also Sections 8002 (“claimant”), 8030 (“payment bond”), 8034 (“preliminary notice”),  
28 8050 (“work of improvement”).

29                                    CHAPTER 7. SECURITY FOR LARGE PROJECT

30    Article 1. Application of Chapter

31    **§ 8700. Application of chapter**

32       8700. (a) This chapter applies if any of the following conditions is satisfied:

33       (1) The owner of the fee interest in property contracts for a work of  
34 improvement on the property with a contract price greater than five million dollars  
35 (\$5,000,000).

36       (2) The owner of a less than fee interest in property contracts for a work of  
37 improvement on the property with a contract price greater than one million dollars  
38 (\$1,000,000).

39       (b) For the purpose of this section:

1 (1) The owner of the fee interest in property is not deemed to be the owner of a  
2 less than fee interest by reason of a mortgage, deed of trust, ground lease, or other  
3 lien or encumbrance or right of occupancy that encumbers the fee interest.

4 (2) A lessee of property is deemed to be the owner of a fee interest in the  
5 property if all of the following conditions are satisfied:

6 (A) The initial term of the lease is at least 35 years.

7 (B) The lease covers one or more lawful parcels under the Subdivision Map Act,  
8 Division 2 (commencing with Section 66410) of Title 7 of the Government Code,  
9 and any applicable local ordinance adopted under that Act, in their entirety,  
10 including but not limited to a parcel approved pursuant to a certificate of  
11 compliance proceeding.

12 **Comment.** Subdivision (a) of Section 8700 restates former Section 3110.5(a)(2) without  
13 substantive change. Subdivision (b) restates former Section 3110.5(a)(1) without substantive  
14 change.

15 This section standardizes terminology consistent with the remainder of the mechanics lien law.  
16 A less than fee interest includes a leasehold interest in the property. See Section 8028 (“owner”).  
17 See also Section 8050 (“work of improvement”).

18 Under this section, if the owner that contracts for the work of improvement owns the fee  
19 interest in the property, the owner of a less than fee interest that does not contract for the work of  
20 improvement is not required to provide security or to comply with any other obligation of an  
21 owner under this chapter.

22 If the owner that contracts for a work of improvement owns a less than fee interest in the  
23 property, the owner of the fee interest that does not contract for the work of improvement is not  
24 required to provide security or to comply with any other obligation of an owner under this  
25 chapter.

26 **§ 8702. Single-family residence and low income housing excluded**

27 8702. This chapter does not apply to any of the following works of  
28 improvement:

29 (a) A single-family residence, including a single-family residence located within  
30 a subdivision, and any associated fixed work that requires the services of a general  
31 engineering contractor as defined in Section 7056 of the Business and Professions  
32 Code. As used in this subdivision, “single-family residence” means a real property  
33 improvement used or intended to be used as a dwelling unit for one family.

34 (b) A housing development eligible for a density bonus under Section 65915 of  
35 the Government Code.

36 **Comment.** Section 8702 restates former Section 3110.5(e) without substantive change,  
37 omitting reference to a public work. This part does not apply to a public work. See Section 8052  
38 (application of part).

39 **§ 8704. Qualified publicly traded company and qualified private company excluded**

40 8704. This chapter does not apply to any of the following owners:

41 (a) A qualified publicly traded company or a wholly owned subsidiary of a  
42 qualified publicly traded company, if the obligations of the subsidiary pursuant to  
43 the contract for the work of improvement are guaranteed by the parent. As used in  
44 this subdivision, “qualified publicly traded company” means a company having a



1 class of equity securities listed for trading on the New York Stock Exchange, the  
2 American Stock Exchange, or the NASDAQ stock market, and the  
3 nonsubordinated debt securities of which are rated as “investment grade” by either  
4 Fitch ICBA, Inc., Moody’s Investor Services, Inc., Standard & Poor’s Ratings  
5 Services, or a similar statistical rating organization that is nationally recognized  
6 for rating the creditworthiness of a publicly traded company. If at any time before  
7 final payment of all amounts due pursuant to the contract the nonsubordinated debt  
8 securities of the qualified publicly traded company are downgraded to below  
9 “investment grade” by any of those rating organizations, the owner is no longer  
10 exempt from this chapter.

11 (b) A qualified private company or a wholly owned subsidiary of a qualified  
12 private company, if the obligations of the subsidiary pursuant to the contract for  
13 the work of improvement are guaranteed by the parent. As used in this  
14 subdivision, “qualified private company” means a company that has no equity  
15 securities listed for trading on the New York Stock Exchange, the American Stock  
16 Exchange, or the NASDAQ stock market, and that has a net worth determined in  
17 accordance with generally accepted accounting principles in excess of fifty million  
18 dollars (\$50,000,000). If at any time before final payment of all amounts due  
19 pursuant to the contract the net worth of the qualified private company is reduced  
20 below that level, the owner is no longer exempt from this chapter.

21 **Comment.** Section 8704 restates former Section 3110.5(f) without substantive change.  
22 See also Sections 8008 (“contract”), 8028 (“owner”), 8050 (“work of improvement”).

## 23 Article 2. Security Requirement

### 24 § 8710. Security for owner’s payment obligation

25 8710. An owner shall provide the direct contractor all of the following:

26 (a) Security for the owner’s payment obligation pursuant to the contract. The  
27 security shall be used only if the owner defaults on the payment obligation to the  
28 direct contractor. This subdivision does not apply to an owner that is the majority  
29 owner of the direct contractor.

30 (b) A copy, certified by the county recorder, of any recorded mortgage or deed  
31 of trust that secures the construction loan of a lending institution for the work of  
32 improvement, disclosing the amount of the loan.

33 **Comment.** Section 8710 restates the first parts of subdivisions (a) and (b) of former Section  
34 3110.5 without substantive change. As used in this section, “owner” includes the owner of the fee  
35 simple absolute interest or any lesser interest in the property. See Section 8028 (“owner”). The  
36 reference to a “work of improvement” includes construction, alteration, addition to, or repair  
37 upon, the property. See Section 8050 (“work of improvement”).

38 See also Sections 8100-8118 (notice), 8134 (construction trust deed).

39 See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8022 (“lending institution”).

1 § 8712. Demand for security

2 8712. If an owner fails to provide or maintain the security required by this  
3 chapter, the direct contractor may give the owner notice demanding security. The  
4 notice shall comply with the requirements of Article 3 (commencing with Section  
5 8100) of Chapter 1. If the owner does not provide or maintain the security within  
6 10 days after notice demanding security is given, the direct contractor may  
7 suspend work until the owner provides or maintains the security.

8 **Comment.** Section 8712 restates the second sentence of former Section 3110.5(c) without  
9 substantive change.

10 See also Sections 8014 (“direct contractor”), 8028 (“owner”).

11 § 8714. Security not waivable

12 8714. It is against public policy by contract to waive the provisions of this  
13 chapter.

14 **Comment.** Section 8714 restates former Section 3110.5(g) without substantive change. This  
15 part does not apply to a public work. See Section 8052 (application of part).

16 See also Section 8008 (“contract”).

17 § 8716. Rights of subcontractor not affected

18 8716. This chapter does not affect any statute providing a subcontractor the right  
19 to record a claim of lien, file a stop payment notice, assert a claim against a  
20 payment bond, or receive prompt payment, including the direct contractor’s  
21 payment responsibilities under Section 7108.5 of the Business and Professions  
22 Code.

23 **Comment.** Section 8716 restates former Section 3110.5(d), omitting the reference to Public  
24 Contract Code Section 10262. This chapter does not apply to a public works contract. *Cf.* Section  
25 8052 (application of part).

26 See also Sections 8014 (“direct contractor”), 8024 (“lien”), 8030 (“payment bond”), 8046  
27 (“subcontractor”).

28 Article 3. Form of Security

29 § 8720. Form of security

30 8720. An owner shall provide security by any of the following means:

31 (a) A bond that satisfies Section 8722.

32 (b) An irrevocable letter of credit that satisfies Section 8724.

33 (c) An escrow account that satisfies Section 8726.

34 **Comment.** Section 8720 restates a part of former Section 3110.5(b) without substantive  
35 change.

36 See also Section 8028 (“owner”).

37 § 8722. Bond

38 8722. A bond under this chapter shall satisfy all of the following requirements:

39 (a) The bond shall be executed by an admitted surety insurer that is either listed  
40 in the Department of the Treasury’s Listing of Approved Sureties (Department

1 Circular 570) or that has an A.M. Best rating of A or better and has an  
2 underwriting limitation, under Section 12090 of the Insurance Code, greater than  
3 the amount of the bond.

4 (b) The bond shall be in an amount not less than 15 percent of the contract price  
5 for the work of improvement or, if the work of improvement is to be substantially  
6 completed within six months after the commencement of work, not less than 25  
7 percent of the contract price.

8 (c) The bond shall be conditioned for payment on default by the owner of any  
9 undisputed amount pursuant to the contract that is due and payable for more than  
10 30 days.

11 **Comment.** Section 8722 restates former Section 3110.5(b)(1).

12 See also Code Civ. Proc. § 995.120 (“admitted surety insurer”).

13 See also Sections 8008 (“contract”), 8010 (“contract price”), 8028 (“owner”), 8050 (“work of  
14 improvement”).

15 **§ 8724. Irrevocable letter of credit**

16 8724. An irrevocable letter of credit under this chapter shall satisfy all of the  
17 following requirements:

18 (a) The letter of credit shall be issued by a financial institution, as defined in  
19 Section 5107 of the Financial Code, inuring to the benefit of the direct contractor.

20 (b) The letter of credit shall be in an amount not less than 15 percent of the  
21 contract price for the work of improvement or, if the work of improvement is to be  
22 substantially completed within six months after the commencement of work, not  
23 less than 25 percent of the contract price.

24 (c) The maturity date and other terms of the letter of credit shall be determined  
25 by agreement between the owner, the direct contractor, and the financial  
26 institution, except that the owner shall maintain the letter of credit in effect until  
27 the owner has satisfied its payment obligation to the direct contractor.

28 **Comment.** Section 8724 restates former Section 3110.5(b)(2) without substantive change.

29 See also Sections 8010 (“contract price”), 8014 (“direct contractor”), 8028 (“owner”), 8050  
30 (“work of improvement”).

31 **§ 8726. Escrow account**

32 8726. An escrow account under this chapter shall satisfy all of the following  
33 requirements:

34 (a) The account shall be designated as a “construction security escrow account.”

35 (b) The account shall be located in this state and maintained with an escrow  
36 agent licensed under the Escrow Law, Division 6 (commencing with Section  
37 17000) of the Financial Code, or with any person exempt from the Escrow Law  
38 under paragraph (1) or (3) of subdivision (a) of Section 17006 of the Financial  
39 Code.

40 (c) The owner shall deposit funds in the account in the amount provided in  
41 Section 8728. This chapter does not require a construction lender to agree to  
42 deposit proceeds of a construction loan in the account.

1 (d) The owner shall grant the direct contractor a perfected, first priority security  
2 interest in the account and in all funds deposited by the owner in the account and  
3 in their proceeds, established to the reasonable satisfaction of the direct contractor,  
4 which may be by a written opinion of legal counsel for the owner.

5 (e) The funds on deposit in the account shall be the sole property of the owner,  
6 subject to the security interest of the direct contractor. The owner and the direct  
7 contractor shall instruct the escrowholder to hold the funds on deposit in the  
8 account for the purpose of perfecting the direct contractor's security interest in the  
9 account and to disburse those funds only on joint authorization of the owner and  
10 the direct contractor, or pursuant to a court order that is binding on both of them.

11 **Comment.** Section 8726 restates portions of former Section 3110.5(b)(3) without substantive  
12 change.

13 See also Sections 8006 ("construction lender"), 8014 ("direct contractor"), 8028 ("owner").

14 **§ 8728. Deposits to and disbursements from escrow account**

15 8728. The following provisions govern a deposit to or disbursement from a  
16 construction security escrow account under this chapter:

17 (a) Before the commencement of work the owner shall make an initial deposit to  
18 the account in an amount not less than 15 percent of the contract price for the work  
19 of improvement or, if the work of improvement is to be substantially completed  
20 within six months after the commencement of work, not less than 25 percent of the  
21 contract price.

22 (b) If the contract provides for a retention to be withheld from a periodic  
23 payment to the direct contractor, the owner shall deposit to the account the amount  
24 withheld as retention at the time the owner makes the corresponding payment to  
25 the direct contractor from which the retention is withheld.

26 (c) The amount required to be maintained on deposit shall not exceed the total  
27 amount remaining to be paid to the direct contractor pursuant to the contract or as  
28 adjusted by agreement between the owner and the direct contractor. If the amount  
29 on deposit equals or exceeds the total amount remaining to be paid to the direct  
30 contractor, the owner and the direct contractor shall authorize disbursement to the  
31 direct contractor for progress payments then due the direct contractor, but a party  
32 is not obligated to authorize disbursement that would cause the amount remaining  
33 on deposit following the disbursement to be less than the total amount remaining  
34 to be paid to the direct contractor.

35 (d) The owner and the direct contractor shall authorize the disbursement to the  
36 owner of any funds remaining on deposit after the direct contractor has been paid  
37 all amounts due pursuant to the contract. The owner and the direct contractor shall  
38 authorize the disbursement of funds on deposit pursuant to a court order that is  
39 binding on both of them. The owner and the direct contractor may agree in the  
40 contract to additional conditions for the disbursement of funds on deposit, except  
41 that the conditions may not cause the amount remaining on deposit to be less than  
42 the amount required under this section.

1       **Comment.** Section 8728 restates portions of former Section 3110.5(b)(3) without substantive  
2 change.

3       See also Sections 8008 (“contract”), 8010 (“contract price”), 8014 (“direct contractor”), 8028  
4 (“owner”), 8050 (“work of improvement”).

5       **§ 8730. Contract price**

6       8730. If the contract price for a work of improvement is not a fixed price, the  
7 amount of security provided under this chapter shall be the guaranteed maximum  
8 price or, if there is no guaranteed maximum price, the owner’s and direct  
9 contractor’s good faith estimate of the reasonable value of the work to be provided  
10 pursuant to the contract.

11       **Comment.** Section 8730 restates the first sentence of former Section 3110.5(c) without  
12 substantive change.

13       See also Sections 8008 (“contract”), 8010 (“contract price”), 8014 (“direct contractor”), 8028  
14 (“owner”), 8050 (“work of improvement”).

15                               CHAPTER 8. PROMPT PAYMENT

16   Article 1. Progress Payment

17       **§ 8800. Progress payment between owner and direct contractor**

18       8800. (a) Except as otherwise agreed in writing by the owner and direct  
19 contractor, the owner shall pay the direct contractor, within 30 days after notice  
20 demanding payment pursuant to the contract, any progress payment due as to  
21 which there is no good faith dispute between them. The notice given shall comply  
22 with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

23       (b) If there is a good faith dispute between the owner and direct contractor, the  
24 owner may withhold from the progress payment an amount not in excess of 150  
25 percent of the disputed amount.

26       (c) An owner that violates this section is liable to the direct contractor for a  
27 penalty of two percent per month on the amount wrongfully withheld, in place of  
28 any interest otherwise due. In an action for collection of the amount wrongfully  
29 withheld, the prevailing party is entitled to costs and a reasonable attorney’s fee.

30       (d) This section does not supersede any requirement of Article 2 (commencing  
31 with Section 8810) relating to the withholding of a retention.

32       **Comment.** Section 8800 restates former Section 3260.1, with the addition of a reasonableness  
33 limitation on an attorney’s fee. This section is limited to a private work. See Section 8052  
34 (application of part). The operative date provision of subdivision (a) of former Section 3260.1 is  
35 omitted due to lapse of time.

36       The owner’s duty runs from the time notice is complete, rather than the time of “receipt.” See  
37 Section 8116 (when notice is complete).

38       See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8028 (“owner”).

1 **§ 8802. Progress payment between direct contractor and subcontractor on public utility**  
2 **work**

3 8802. (a) This section applies to a contract between a public utility and a direct  
4 contractor for all or part of a work of improvement.

5 (b) Unless the direct contractor and a subcontractor otherwise agree in writing,  
6 within 21 days after receipt of a progress payment from the public utility the direct  
7 contractor shall pay the subcontractor the amount allowed the direct contractor on  
8 account of the work performed by the subcontractor to the extent of the  
9 subcontractor's interest in the work. If there is a good faith dispute over all or part  
10 of the amount due on a progress payment from the direct contractor to a  
11 subcontractor, the direct contractor may withhold an amount not in excess of 150  
12 percent of the disputed amount.

13 (c) A direct contractor that violates this section is liable to the subcontractor for  
14 a penalty of two percent of the disputed amount due per month for every month  
15 that payment is not made. In an action for collection of the amount wrongfully  
16 withheld, the prevailing party is entitled to costs and a reasonable attorney's fee.

17 (d) This section does not limit or impair a contractual, administrative, or judicial  
18 remedy otherwise available to a contractor or subcontractor in a dispute involving  
19 late payment or nonpayment by the contractor or deficient performance or  
20 nonperformance by the subcontractor.

21 **Comment.** Section 8802 restates former Section 3262.5, with the addition of a reasonableness  
22 limitation on an attorney's fee. The reference to 15 "working days" is converted to 21 "days,"  
23 consistent with the remainder of the mechanics lien law. *Cf.* Section 9 (business day).

24 See also Sections 8008 ("contract"), 8014 ("direct contractor"), 8046 ("subcontractor"), 8050  
25 ("work of improvement").

26 **Article 2. Retention Payment**

27 **§ 8810. Application of article**

28 8810. This article governs a retention withheld by an owner from a direct  
29 contractor or by a direct contractor from a subcontractor.

30 **Comment.** Section 8810 restates subdivision (b) of former Section 3260 without substantive  
31 change. This article is limited to a private work. See Section 8052 (application of part). The  
32 transitional provision found in subdivision (a) of former Section 3260, relating to contracts  
33 entered into before 1991, 1993, and 1994, is omitted due to lapse of time.

34 See also Sections 8014 ("direct contractor"), 8028 ("owner"), 8046 ("subcontractor").

35 **§ 8812. Payment of retention by owner**

36 8812. (a) If an owner withholds a retention from a direct contractor, the owner  
37 shall, within 45 days after completion of the work of improvement, pay the  
38 retention to the contractor.

39 (b) If part of a work of improvement ultimately will become the property of a  
40 public entity, the owner may condition payment of a retention allocable to that part  
41 on acceptance of the part by the public entity.

1 (c) If there is a good faith dispute between the owner and direct contractor, the  
2 owner may withhold from final payment an amount not in excess of 150 percent of  
3 the disputed amount.

4 **Comment.** Section 8812 restates subdivision (c) of former Section 3260, except that detailed  
5 provisions defining the date of completion are eliminated in reliance on the general provisions of  
6 this part governing completion. See Section 8150 (completion). The right of the owner to  
7 withhold disputed amounts is made subject to a condition of good faith, consistent with other  
8 provisions of this part.

9 See also Sections 8014 (“direct contractor”), 8028 (“owner”), 8036 (“public entity”), 8050  
10 (“work of improvement”).

#### 11 **§ 8814. Payment of retention by direct contractor**

12 8814. (a) If a direct contractor has withheld a retention from a subcontractor, the  
13 direct contractor shall, within 10 days after receiving all or part of a retention  
14 payment, pay the subcontractor its share of the payment.

15 (b) If a retention payment received by the direct contractor is specifically  
16 designated for a particular subcontractor, the direct contractor shall pay the  
17 retention payment to the designated subcontractor, if consistent with the terms of  
18 the subcontract.

19 (c) If a good faith dispute exists between the direct contractor and a  
20 subcontractor, the direct contractor may withhold from the retention payment to  
21 the subcontractor an amount not in excess of 150 percent of the estimated value of  
22 the disputed amount.

23 **Comment.** Section 8814 restates subdivisions (d) and (e) of former Section 3260 without  
24 substantive change.

25 See also Sections 8014 (“direct contractor”), 8046 (“subcontractor”).

#### 26 **§ 8816. Payment for disputed work**

27 8816. (a) If the direct contractor gives the owner, or a subcontractor gives the  
28 direct contractor, notice that work in dispute has been completed in accordance  
29 with the contract, the owner or direct contractor shall within 10 days give notice  
30 advising the notifying party of the acceptance or rejection of the disputed work.  
31 Both notices shall comply with the requirements of Article 3 (commencing with  
32 Section 8100) of Chapter 1.

33 (b) Within 10 days after acceptance of disputed work, the owner or direct  
34 contractor shall pay the portion of the retention relating to the disputed work.

35 **Comment.** Section 8816 restates subdivision (f) of former Section 3260 without substantive  
36 change. See also Sections 8100-8118 (notice).

37 See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8028 (“owner”), 8046  
38 (“subcontractor”).

#### 39 **§ 8818. Wrongful withholding**

40 8818. If an owner or direct contractor does not make a retention payment within  
41 the time required by this article:

1 (a) The owner or direct contractor is liable to the person to which payment is  
2 owed for a penalty of two percent per month on the amount wrongfully withheld,  
3 in place of any interest otherwise due.

4 (b) In an action for collection of the amount wrongfully withheld, the prevailing  
5 party is entitled to costs and a reasonable attorney's fee.

6 **Comment.** Section 8818 restates subdivision (g) of former Section 3260, with the addition of a  
7 reasonableness limitation on an attorney's fee.

8 See also Sections 8014 ("direct contractor"), 8028 ("owner"), 8032 ("person").

9 **§ 8820. Waiver against public policy**

10 8820. It is against public policy by contract to waive the provisions of this  
11 article.

12 **Comment.** Section 8820 restates subdivision (h) of former Section 3260 without substantive  
13 change.

14 **§ 8822. Construction loan exempt**

15 8822. This article does not apply to a retention withheld by a lender pursuant to  
16 a construction loan agreement.

17 **Comment.** Section 8822 restates subdivision (i) of former Section 3260.

18 **Article 3. Stop Work Notice**

19 **§ 8830. "Stop work notice" defined**

20 8830. "Stop work notice" means notice given under this article by a direct  
21 contractor to an owner that the contractor will stop work if the amount owed the  
22 contractor is not paid within 10 days after notice is given.

23 **Comment.** Section 8830 restates a part of the first sentence of former Section 3260.2(a)  
24 without substantive change. This article is limited to a private work of improvement. See Section  
25 8052 (application of part).

26 Former Section 3260.2(g), relating to the mechanics of the notice, is superseded by Sections  
27 8100-8118 (notice).

28 See also Sections 8014 ("direct contractor"), 8028 ("owner").

29 **§ 8832. Stop work notice**

30 8832. If a direct contractor is not paid the amount due pursuant to a written  
31 contract within 35 days after the date payment is due under the contract, and there  
32 is no dispute as to the satisfactory performance of the contractor, the contractor  
33 may give the owner a stop work notice. The notice shall comply with the  
34 requirements of Article 3 (commencing with Section 8100) of Chapter 1.

35 **Comment.** Section 8832 restates a portion of the first sentence of former Section 3260.2(a)  
36 without substantive change.

37 See also Sections 8008 ("contract"), 8014 ("direct contractor"), 8028 ("owner").



1    **§ 8834. Additional notice**

2    8834. A direct contractor that gives an owner a stop work notice shall give the  
3 following additional notice:

4    (a) At least five days before giving the stop work notice, the contractor shall  
5 post notice of intent to give a stop work notice. The notice shall comply with the  
6 requirements of Article 3 (commencing with Section 8100) of Chapter 1.

7    (b) At the same time the contractor gives the stop work notice, the contractor  
8 shall give a copy of the stop work notice to all subcontractors with which the  
9 contractor has a direct contractual relationship on the work of improvement.

10    **Comment.** Section 8834 restates the second and third sentences of former Section 3260.2(a),  
11 and requires that the contractor give a copy of the stop work notice. See also Section 8114  
12 (posting).

13    See also Sections 8014 (“direct contractor”), 8028 (“owner”), 8040 (“site”), 8046  
14 (“subcontractor”), 8050 (“work of improvement”).

15    **§ 8836. Notice to construction lender**

16    8836. Within five days after receipt of a stop work notice from a direct  
17 contractor, the owner shall give a copy of the notice to the construction lender, if  
18 any. The copy of the notice shall be given in compliance with the requirements of  
19 Article 3 (commencing with Section 8100) of Chapter 1.

20    **Comment.** Section 8836 restates the fourth sentence of former Section 3260.2(a). See also  
21 Sections 8100-8118 (notice).

22    See also Sections 8006 (“construction lender”), 8014 (“direct contractor”), 8028 (“owner”).

23    **§ 8838. Immunity from liability**

24    8838. (a) The direct contractor or the direct contractor’s surety, or a  
25 subcontractor or a subcontractor’s surety, is not liable for delay or damage that the  
26 owner or a subcontractor may suffer as a result of the direct contractor giving a  
27 stop work notice and subsequently stopping work for nonpayment, if the notice  
28 and posting requirements of this article are satisfied.

29    (b) A direct contractor’s or subcontractor’s liability to a subcontractor or  
30 material supplier after the direct contractor stops work under this article is limited  
31 to the amount the subcontractor or material supplier could otherwise recover under  
32 this part for work provided up to the date the subcontractor or material supplier  
33 ceases work, subject to the following exceptions:

34    (1) The direct contractor’s or subcontractor’s liability continues for work  
35 provided up to and including the 10 day notice period and not beyond.

36    (2) This subdivision does not limit liability for custom work, including materials  
37 that have been fabricated, manufactured, or ordered to specifications that are  
38 unique to the job.

39    **Comment.** Section 8838 restates former Section 3260.2(c), and corrects two inadvertent  
40 drafting errors.

41    See also Sections 8014 (“direct contractor”), 8026 (“material supplier”), 8028 (“owner”), 8046  
42 (“subcontractor”), 8048 (“work”).

1    **§ 8840. Notice of resolution of dispute or cancellation of stop work notice**

2       8840. On resolution of the claim in stop work notice or the direct contractor's  
3       cancellation of the stop work notice, the contractor shall post, and give  
4       subcontractors with which the contractor has a direct contractual relationship on  
5       the work of improvement, notice of the resolution or cancellation. The notice shall  
6       comply with the requirements of Article 3 (commencing with Section 8100) of  
7       Chapter 1.

8       **Comment.** Section 8840 restates the second paragraph of former Section 3260.2(a) without  
9       substantive change. See also Section 8114 (posting).

10      See also Sections 8014 ("direct contractor"), 8040 ("site"), 8046 ("subcontractor"), 8050  
11      ("work of improvement").

12    **§ 8842. Stop work remedy not exclusive**

13      8842. A direct contractor's right to stop work under this article is in addition to  
14      other rights the direct contractor may have under the law.

15      **Comment.** Section 8842 restates former Section 3260.2(b) without substantive change.

16      See also Section 8014 ("direct contractor").

17    **§ 8844. Judicial proceeding**

18      8844. (a) If payment of the amount claimed is not made within 10 days after a  
19      stop work notice is given, the direct contractor, the direct contractor's surety, or an  
20      owner may in an expedited proceeding seek a judicial determination of liability for  
21      the amount due.

22      (b) The expedited proceeding shall be set for hearing or trial at the earliest  
23      possible date in order that it shall be quickly heard and determined, and shall take  
24      precedence over all other cases except older matter of the same character and other  
25      matters to which special precedence has been given.

26      **Comment.** Subdivision (a) of Section 8844 restates former Section 3260.2(d), and additionally  
27      allows an owner to seek a judicial determination of liability for the amount due in an expedited  
28      proceeding.

29      Subdivision (b) is comparable to Code of Civil Procedure Sections 1062.3 and 1260.010.

30      See also Section 8014 ("direct contractor").

31    **§ 8846. Waiver against public policy**

32      8846. It is against public policy by contract to waive the provisions of this  
33      article.

34      **Comment.** Section 8846 restates former Section 3260.2(e) without substantive change.

35    **§ 8848. Application of article**

36      8848. (a) This article applies to a contract entered into on or after January 1,  
37      1999.

38      (b) This article does not apply to a retention withheld by a lender pursuant to a  
39      construction loan agreement.

40      **Comment.** Section 8848 restates former Section 3260.2(f) without substantive change.

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PUBLIC WORK OF IMPROVEMENT

**Pub. Cont. Code §§ 41010-45090 (added). Public works contract remedies**

SEC. \_\_\_\_\_. Part 6 (commencing with Section 41010) is added to Division 2 of the Public Contract Code, to read:

PART 6. PUBLIC WORKS CONTRACT  
REMEDIES

CHAPTER 1. DEFINITIONS

**§ 41010. Application of definitions**

41010. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

**Comment.** Section 41010 supersedes former Civil Code Section 3082.

**§ 41020. Claimant**

41020. “Claimant” means a person that has right under this part to give a stop payment notice or assert a claim against a payment bond.

**Comment.** Section 41020 restates former Civil Code Section 3085, omitting as unnecessary the reference to the claimant’s “entitlement” and to the combination of remedies. For persons having the right to give a stop payment notice or assert a claim against a payment bond, see Section 42030 (who may use remedies).

See also Sections 41080 (“payment bond”), 41090 (“person”), 41140 (“stop payment notice”).

**§ 41030. Design professional**

41030. “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

**Comment.** Section 41030 is a new definition. It is included for drafting convenience. It generalizes provisions of former Civil Code Sections 3247 and 3267.

See also Section 41090 (“person”).

**§ 41040. Direct contractor**

41040. “Direct contractor” means a contractor that has a direct contractual relationship with a public entity. With respect to the amount due or to become due to a direct contractor, the term includes the direct contractor’s assignee.

**Comment.** Section 41040 supersedes former Civil Code Section 3095 (“original contractor”). The definition generalizes provisions of former Civil Code Section 3187 relating to payment of the assignee of a direct contractor. See also Section 44340 (effect of assignment or garnishment).

See also Section 41110 (“public entity”).

1    **§ 41050. Funds**

2    41050. “Funds” means warrant, check, money, or bonds (if bonds are to be  
3 issued in payment of the public works contract).

4    **Comment.** Section 41050 is a new definition. It is included for drafting convenience. It  
5 generalizes provisions of former Civil Code Sections 3186, 3187, and 3196.

6    See also Section 41120 (“public works contract”).

7    **§ 41060. Labor, service, equipment, or material**

8    41060. “Labor, service, equipment, or material” includes but is not limited to  
9 labor, skills, services, material, supplies, equipment, appliances, power, and  
10 surveying provided pursuant to a public works contract.

11    **Comment.** Section 41060 is a new definition. It is included for drafting convenience. The  
12 phrase is intended to encompass all things of value provided pursuant to a public works contract,  
13 and replaces various phrases used throughout the former law, including “labor or material,”  
14 “labor, services, equipment, or materials,” “appliances, teams, or power,” “provisions, provender,  
15 or other supplies,” and the like. The definition applies to variant grammatical forms of the phrase  
16 used in this part, such as “labor, service, equipment, *and* material.”

17    See also Section 41120 (“public works contract”).

18    **§ 41070. Laborer**

19    41070. (a) “Laborer” means a person who, acting as an employee, performs  
20 labor, or bestows skill or other necessary services, pursuant to a public works  
21 contract.

22    (b) “Laborer” includes a person or entity to which a portion of a laborer’s  
23 compensation for a public works contract, including but not limited to employer  
24 payments described in Section 1773.1 of the Labor Code and implementing  
25 regulations, is paid by agreement with that laborer or the collective bargaining  
26 agent of that laborer.

27    (c) A person or entity described in subdivision (b) that has standing under  
28 applicable law to maintain a direct legal action, in their own name or as an  
29 assignee, to collect any portion of compensation owed for a laborer for work  
30 pursuant to a public works contract, shall have standing to enforce any rights or  
31 claims of the laborer under this part, to the extent of the compensation agreed to be  
32 paid to the person or entity for that work. This subdivision is intended to give  
33 effect to the long-standing public policy of this state to protect the entire  
34 compensation of a laborer, regardless of the form in which that compensation is to  
35 be paid.

36    **Comment.** Subdivision (a) of Section 41070 continues former Civil Code Section 3089(a)  
37 without substantive change.

38    Subdivision (b) continues the first sentence of former Civil Code Section 3089(b) and a part of  
39 former Civil Code Section 3111, without substantive change.

40    Subdivision (c) continues the second and third sentences of former Civil Code Section 3089(b),  
41 and a part of former Civil Code Section 3111, without substantive change.

1    **§ 41080. Payment bond**

2       41080. “Payment bond” means a payment bond required by Section 45010.

3       **Comment.** Section 41080 supersedes former Civil Code Section 3096.

4    **§ 41090. Person**

5       41090. “Person” means an individual, corporation, public entity, business trust,  
6       estate, trust, partnership, limited liability company, association, or other entity.

7       **Comment.** Section 41090 is a new definition. It is included for drafting convenience.

8       See also Section 41110 (“public entity”).

9    **§ 41100. Preliminary notice**

10       41100. “Preliminary notice” means the notice provided for in Chapter 3  
11       (commencing with Section 43010).

12       **Comment.** Section 41100 supersedes former Civil Code Section 3098. The substantive  
13       requirements for preliminary notice are relocated to Chapter 3 (commencing with Section 43010).

14   **§ 41110. Public entity**

15       41110. (a) “Public entity” has the meaning provided in Section 1100 and  
16       includes all of the following:

17           (1) The Regents of the University of California.

18           (2) An officer authorized to act for a public entity.

19       (b) A reference in this part to a public entity means the public entity that  
20       awarded the public works contract.

21       **Comment.** Subdivision (a) of Section 41110 restates former Civil Code Section 3099. Under  
22       Section 1100, “public entity” means the state, county, city, city and county, district, public  
23       authority, public agency, municipal corporation, or any other political subdivision or public  
24       corporation in the state. This part does not apply to a public works contract governed by federal  
25       law. See Section 42010 (application of part). The reference to an officer of the public entity is  
26       included for drafting convenience. *Cf.* former Civ. Code §§ 3247, 3250, 3251 (public entity or  
27       officer).

28       Subdivision (b) is new; it is included for drafting convenience. *Cf.* former Civ. Code §§ 3247,  
29       3250, 3251.

30       See also Section 41120 (“public works contract”).

31   **§ 41120. Public works contract**

32       41120. “Public works contract” has the meaning provided in Section 1101.

33       **Comment.** Section 41120 supersedes former Civil Code Section 3100 (“public work”). Under  
34       Section 1101, “public works contract” means an agreement for the erection, construction,  
35       alteration, repair, or improvement of any public structure, building, road, or other public  
36       improvement of any kind. This part does not apply to a public works contract governed by federal  
37       law. See Section 42010 (application of part).

38   **§ 41130. Site**

39       41130. “Site” means the property on which a public works contract is performed  
40       or is to be performed.

1       **Comment.** Section 41130 restates former Civil Code Section 3101 to the extent it applied to a  
2 public works contract.

3       See also Section 41120 (“public works contract”).

4       **§ 41140. Stop payment notice**

5       41140. “Stop payment notice” means a notice given under Chapter 4  
6 (commencing with Section 44110).

7       **Comment.** Section 41140 supersedes former Civil Code Section 3103.

8       **§ 41150. Subcontractor**

9       41150. “Subcontractor” means a contractor that does not have a direct  
10 contractual relationship with a public entity. The term includes a contractor that  
11 has a contractual relationship with a direct contractor or with another  
12 subcontractor.

13       **Comment.** The first sentence of Section 8046 continues former Section 3104 to the extent it  
14 applied to a public works contract. The second sentence is new; it makes clear that the term  
15 “subcontractor” includes a subcontractor of a subcontractor.

16       **§ 41160. Work**

17       41160. “Work” means labor, service, equipment, or material provided pursuant  
18 to a public works contract.

19       **Comment.** Section 41160 is a new definition. It is included for drafting convenience.

20       See also Sections 41060 (“labor, service, equipment, or material”), 41120 (“public works  
21 contract”).

22       **§ 41170. Work of improvement**

23       41170. (a) “Work of improvement” includes but is not limited to:

24       (1) Construction, alteration, repair, demolition, or removal, in whole or in part,  
25 of, or addition to, a building, wharf, bridge, ditch, flume, aqueduct, well, tunnel,  
26 fence, machinery, railroad, or road.

27       (2) Seeding, sodding, or planting of property for landscaping purposes.

28       (3) Filling, leveling, or grading of property.

29       (b) Except as otherwise provided in this part, “work of improvement” means the  
30 entire structure or scheme of improvement as a whole, and includes site  
31 improvement.

32       **Comment.** Section 41170 restates former Section 3106. The section is revised to reorganize  
33 and tabulate the different types of works falling within the definition, to expand the coverage of  
34 the definition, and to make various technical, nonsubstantive revisions. The term “property”  
35 replaces “lot or tract of land.”

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## CHAPTER 2. GENERAL PROVISIONS

### Article 1. Miscellaneous Provisions

#### § 42010. Application of part

42010. (a) This part applies to a public works contract awarded by a public entity.

(b) This part does not apply to any of the following:

(1) A public works contract governed by federal law.

(2) A transaction governed by Sections 20457 to 20464, inclusive.

**Comment.** Subdivision (a) of Section 42010 restates former Civil Code Sections 3100 and 3179.

Paragraph (1) of subdivision (b) is new.

Paragraph (2) of subdivision (b) restates former Civil Code Section 3266(b). This provision updates the former cross-reference to Streets and Highways Code Sections 5290-5297, which were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch. 465, § 56. The repealed sections were superseded by Public Contract Code Sections 20457-20464. See 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work” projects under Division 2 (commencing with Section 1600) (general provisions) of the Public Contract Code. See Pub. Cont. Code § 20457.

See also Sections 41110 (“public entity”), 41120 (“public works contract”).

#### § 42020. Relation to other statutes

42020. (a) This part does not apply to or change improvement security under the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code.

(b) The Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a bond given under this part, except to the extent this part prescribes a different rule or is inconsistent.

**Comment.** Subdivision (a) of Section 42020 is new. It clarifies the interrelation between this part and the Subdivision Map Act. For relevant provisions of that act, see Gov’t Code §§ 66499-66499.10 (improvement security).

Subdivision (b) is new. It is a specific application of Code of Civil Procedure Section 995.020 (application of Bond and Undertaking Law).

#### § 42030. Who may use remedies

42030. (a) Except as provided in subdivision (b), any of the following persons that has not been paid in full may give a stop payment notice to the public entity or assert a claim against a payment bond:

(1) A person that provides work for a public works contract, if the work is authorized by a direct contractor, subcontractor, architect, project manager, or other person having charge of all or part of the public works contract.

(2) A laborer.

(3) A person described in Section 4107.7.

1 (b) A direct contractor may not give a stop payment notice or assert a claim  
2 against a payment bond under this part.

3 **Comment.** Section 42030 restates former Civil Code Section 3181, and parts of former  
4 Sections 3110, 3111, and 3112. The former references to site improvement work and to  
5 provisions, provender, or other supplies are included within the meaning of subdivision (a). See  
6 Sections 41060 (“labor, service, equipment, or material”), 41160 (“work”).

7 The reference to an “express trust fund” is replaced by a reference to a generalized category of  
8 persons or entities included within the definition of “laborer.” See Section 41070 (“laborer”).

9 See also Sections 41040 (“direct contractor”), 41060 (“labor, service, equipment, or material”),  
10 41070 (“laborer”), 41080 (“payment bond”), 41090 (“person”), 41110 (“public entity”), 41120  
11 (“public works contract”), 41140 (“stop payment notice”), 41160 (“work”).

12 **§ 42040. Rules of practice**

13 42040. Except as otherwise provided in this part, Part 2 (commencing with  
14 Section 307) of the Code of Civil Procedure provides the rules of practice in  
15 proceedings under this part.

16 **Comment.** Section 42040 continues the first sentence of former Civil Code Section 3259  
17 without substantive change. The second sentence of former Civil Code Section 3259 is not  
18 continued; this part does not include special provisions relating to new trials or appeals.

19 **§ 42050. Calculation of time**

20 42050. For purposes of this part, the term “day” means a calendar day.

21 **Comment.** Section 42050 is new. A reference to the term “day” in a statute typically means a  
22 calendar day, unless otherwise specifically indicated. *Iverson v. Superior Court*, 167 Cal. App. 3d  
23 544, 548, 213 Cal. Rptr. 399 (1985).

24 See also Civil Code Sections 10 (computing time), 11 (holidays).

25 **§ 42060. Agency**

26 42060. An act that may be done by or to a person under this part may be done by  
27 or to the person’s agent to the extent the act is within the scope of the agent’s  
28 authority.

29 **Comment.** Section 42060 generalizes a provision of former Civil Code Section 3103. It makes  
30 clear that an agent’s authority is limited to the scope of the agency. Thus, to the extent a direct  
31 contractor is deemed to be the agent of the principal for the purpose of engaging a subcontractor,  
32 the scope of the agency does not include other acts, such as compromise of litigation.

33 See also Section 41090 (“person”).

34 **§ 42070. Liability of surety**

35 42070. None of the following releases a surety from liability on a bond given  
36 under this part:

37 (a) A change to a contract, plan, specification, or agreement for a public works  
38 contract or for work provided for a public works contract.

39 (b) A change to the terms of payment or an extension of the time for payment  
40 for a public works contract.

41 (c) A rescission or attempted rescission of a contract, agreement, or bond.



1 (d) A condition precedent or subsequent in the bond purporting to limit the right  
2 of recovery of a claimant otherwise entitled to recover pursuant to a contract,  
3 agreement, or bond.

4 (e) In the case of a bond given for the benefit of claimants, the fraud of a person  
5 other than the claimant seeking to recover on the bond.

6 **Comment.** Section 42070 restates former Civil Code Section 3225.

7 See also Sections 41020 (“claimant”), 41090 (“person”), 41120 (“public works contract”),  
8 41160 (“work”).

9 Article 2. Notice

10 § 42110. Written notice

11 42110. (a) Notice under this part shall be in writing. Writing includes printing  
12 and typewriting.

13 (b) Written notice under this part may be given by electronic communication to  
14 the extent authorized under Section 42110.

15 **Comment.** Subdivision (a) of Section 42110 generalizes various provisions of former law. See,  
16 e.g., former Civ. Code §§ 3092 (notice of cessation), 3093 (notice of completion), 3098  
17 (preliminary notice), 3103 (stop notice).

18 Subdivision (b) is new.

19 § 42120. Contents of notice

20 42120. (a) Notice under this part shall, in addition to any other information  
21 required by statute for that type of notice, include all of the following information  
22 to the extent known to the person giving the notice:

23 (1) The name and address of the public entity.

24 (2) The name and address of the direct contractor.

25 (3) A description of the site sufficient for identification, including the street  
26 address of the site, if any. If a sufficient legal description of the site is given, the  
27 effectiveness of the notice is not affected by the fact that the street address is  
28 erroneous or is omitted.

29 (4) The name, address, and relationship to the parties of the person giving the  
30 notice.

31 (5) If the person giving the notice is a claimant:

32 (i) A general statement of the labor, service, equipment or material provided or  
33 to be provided by the claimant.

34 (ii) The name of the person who contracted for the labor, service, equipment or  
35 material provided or to be provided.

36 (iii) A statement or estimate of the claimant’s demand, if any, after deducting all  
37 just credits and offsets.

38 (b) Notice is not invalid by reason of any variance from the requirements of this  
39 section if the notice is sufficient to substantially inform the person given notice of  
40 the information required by this section and other information required in the  
41 notice.

1       **Comment.** Section 42120 is new. It generalizes and standardizes provisions found throughout  
2 former law. See, e.g., former Civ. Code §§ 3092 (notice of cessation), 3093 (notice of  
3 completion), 3098 (preliminary notice), 3103 (stop notice), 3252 (notice to principal and surety).

4       **§ 42130. Notice of overdue laborer compensation**

5       42130. (a) A direct contractor or subcontractor that employs a laborer and fails  
6 to pay the full compensation due the laborer, including any employer payments  
7 described in Section 1773.1 of the Labor Code and implementing regulations,  
8 shall not later than the date the compensation became delinquent, give the laborer,  
9 the laborer’s bargaining representative, if any, and the public entity, notice that  
10 includes all of the following information, in addition to the information specified  
11 in Section 43030:

12       (1) The name and address of the laborer, and of any person or entity described in  
13 subdivision (b) of Section 41070 to which employer payments are due.

14       (2) The total number of straight time and overtime hours worked by the laborer  
15 on each job.

16       (3) The amount then past due and owing.

17       (b) Failure to give the notice required by subdivision (a) constitutes grounds for  
18 disciplinary action under the Contractors’ State License Law, Chapter 9  
19 (commencing with Section 7000) of Division 3 of the Business and Professions  
20 Code.

21       **Comment.** Section 42130 continues former Civil Code Section 3097(k), with the additional  
22 requirement that the information provided be given to the public entity, and include the name and  
23 address of the unpaid laborer.

24       Former Civil Code Section 3098(b), providing for disciplinary action if a subcontractor fails to  
25 give preliminary notice on a work of improvement exceeding \$400, is not continued.

26       The reference to the Registrar of Contractors in the final sentence of former Section 3097(k) is  
27 revised to refer to the Contractors’ State License Law. This is a technical, nonsubstantive change.

28       Compliance with this section does not excuse compliance with Section 43010, if applicable.

29       Nothing in this section affects any requirement to provide similar information for other  
30 purposes. See, e.g., Lab. Code § 1776 (payroll records).

31       See also Sections 41040 (“direct contractor”), 41070 (“laborer”), 41110 (“public entity”),  
32 41150 (“subcontractor”), 42010 (application of part).

33       **§ 42140. Manner of giving notice**

34       42140. Except as otherwise provided by statute, notice under this part may be  
35 given by any of the following means:

36       (a) Personal delivery.

37       (b) Mail in the manner provided in Section 42160.

38       (c) Leaving the notice and mailing a copy in the manner provided in Section  
39 415.20 of the Code of Civil Procedure for service of summons and complaint in a  
40 civil action.

41       **Comment.** Section 42140 is new. It generalizes and standardizes provisions found throughout  
42 former law. See, e.g., former Civ. Code §§ 3098 (preliminary notice), 3103 (stop notice), 3185  
43 (notice of expiration of time to give stop notice), 3199 (notice of release of funds), 3227 (notice  
44 to principal and surety).

1 Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure  
2 Section 415.20 for service of summons and complaint, the notice is complete five days after  
3 mailing the notice. See Section 42180 (when notice complete). The 10 day delay provided in the  
4 Code of Civil Procedure for completion of service under that code is inapplicable.

5 **§ 42150. Address at which notice is given**

6 42150. Except as otherwise provided by this part, notice under this part shall be  
7 given to the person to be notified at the following addresses:

8 (a) If the person to be notified is the public entity, at the office of the public  
9 entity or at another address specified by the public entity in the contract or  
10 elsewhere for service of notices, papers, and other documents.

11 (b) If the person to be notified is a direct contractor or a subcontractor, at the  
12 contractor's residence or place of business, or at the contractor's address shown on  
13 the building permit, on the contractor's contract, or on the records of the  
14 Contractors' State License Board.

15 (c) If the person to be notified is a claimant, at the claimant's residence or place  
16 of business, or at the claimant's address shown on the claimant's contract,  
17 preliminary notice, stop payment notice, or claim against a payment bond, or on  
18 the records of the Contractors' State License Board.

19 (d) If the person to be notified is the surety on a bond, at the surety's residence  
20 or place of business, or at the surety's address shown on the bond for service of  
21 notices, papers, and other documents, or on the records of the Department of  
22 Insurance.

23 **Comment.** Section 42150 is new. It generalizes and standardizes provisions found throughout  
24 former law.

25 For examples of two more particularized notice provisions, see Sections 43040 (giving  
26 preliminary notice), 44130 (giving of stop payment notice).

27 Subdivision (d) does not continue the unique provisions found in former Section 3227 for  
28 notice to alternate persons in the case of a personal surety or admitted surety insurer. The bond  
29 and undertaking law requires every bond to include the address at which the principal and sureties  
30 may be served with notices, papers, and other documents. Code Civ. Proc. § 995.320.

31 **§ 42160. Mailed notice**

32 42160. Notice given by mail under this part shall be given by registered or  
33 certified mail, Express Mail, or overnight delivery by an express service carrier.

34 **Comment.** Section 42160 is a new provision included for drafting convenience. It generalizes  
35 a number of provisions of former law, and expands the methods of giving notice to include  
36 delivery by express service carrier.

37 **§ 42170. Notice by electronic communication**

38 42170. (a) As used in this section, "electronic record" has the meaning provided  
39 in Civil Code Section 1633.2.

40 (b) A notice under this part may be given to a person in the form of an electronic  
41 record if the person has agreed to receive the notice in the form of an electronic  
42 record.

1 (c) If a person that has agreed to receive a notice in the form of an electronic  
2 record is a consumer within the meaning of Section 7006 of Title 15 of the United  
3 States Code, the person's agreement shall satisfy the requirements of Section 7001  
4 of Title 15 of the United States Code relating to consumer consent to an electronic  
5 record.

6 **Comment.** Section 42170 is new. It makes the California Uniform Electronic Transactions Act  
7 (UETA) (Civil Code Sections 1633.1-1633.17) expressly applicable to notices under this part.

8 A consumer within the meaning of E-Sign is "an individual who obtains products or services  
9 used primarily for personal, family, or household purposes." 15 U.S.C. § 7006(1). The consumer  
10 consent requirements of E-Sign include (i) affirmative consent, (ii) disclosure, (iii) electronic  
11 access, (iv) software and hardware upgrades. See 15 U.S.C. § 7001(c)(1).

12 **§ 42180. When notice complete**

13 42180. Notice under this part is complete and deemed to have been given at the  
14 following times:

15 (a) If given by personal delivery, when delivered.

16 (b) If given by mail, when deposited in the mail or with an express service  
17 carrier in the manner provided in Section 1013 of the Code of Civil Procedure.

18 (c) If given by leaving the notice and mailing a copy in the manner provided in  
19 Section 415.20 of the Code of Civil Procedure for service of summons in a civil  
20 action, five days after mailing.

21 (d) If given in the form of an electronic record, when the electronic record is  
22 transmitted.

23 **Comment.** Section 42180 is new. It generalizes and standardizes provisions found in former  
24 law.

25 Under subdivision (b), when notice is given in the manner provided in Code of Civil Procedure  
26 Section 1013, the notice is complete when deposited in the mail or with an express service carrier.  
27 The delays provided in the Code of Civil Procedure for completion of service under that code are  
28 inapplicable.

29 Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure  
30 Section 415.20 for service of summons and complaint, the notice is complete five days after  
31 mailing of the notice. The 10 day delay provided in the Code of Civil Procedure for completion of  
32 service under that code is inapplicable.

33 **§ 42190. Proof of notice**

34 42190. (a) Proof that notice was given to a person in the manner required by this  
35 part shall be made by a proof of notice declaration that states all of the following:

36 (1) The type or description of the notice given.

37 (2) The date, place, and manner of notice and facts showing that notice was  
38 given in the manner required by statute.

39 (3) The name and address of the person to which notice was given, and, if  
40 appropriate, the title or capacity in which the person was given notice.

41 (b) If the notice is given by mail, the declaration shall be accompanied by one of  
42 the following:

43 (1) Documentation provided by the United States Post Office showing that  
44 payment was made to mail the notice using registered or certified mail.

1 (2) Documentation provided by an express service carrier showing that payment  
2 was made to send the notice using an overnight delivery service.

3 (3) A return receipt, delivery confirmation, signature confirmation, or other  
4 proof of delivery or attempted delivery provided by the United States Postal  
5 Service, or a photocopy of the record of delivery and receipt maintained by the  
6 United States Postal Service, showing the date of delivery and to whom delivered,  
7 or in the event of nondelivery, by the returned envelope itself.

8 (4) A tracking record or other documentation provided by an express service  
9 carrier showing delivery or attempted delivery of the notice.

10 (c) If notice is given in the form of an electronic record, the declaration shall  
11 also state that the document was served electronically and that no notice of non-  
12 transmission was received.

13 **Comment.** Section 42190 is a new provision included for drafting convenience. It generalizes  
14 a number of provisions of former law, and expands the methods of proof to include a certification  
15 of the mailing by the United States Postal Service.

### 16 Article 3. Completion

#### 17 § 42210. Completion

18 42210. For the purpose of this part, completion of a work of improvement  
19 occurs at the earliest of the following times:

20 (a) Acceptance of the work of improvement by the public entity.

21 (b) Cessation of labor on the work of improvement for a continuous period of 60  
22 days. This subdivision does not apply to a contract awarded under the State  
23 Contract Act, Part 2 (commencing with Section 10100).

24 **Comment.** Section 42210 restates former Civil Code Section 3086 to the extent it applied to a  
25 public work of improvement, but extends the period of continuous cessation of labor necessary to  
26 constitute completion from 30 days to 60 days. See also Section 42230 (notice of completion).

27 See also Sections 41110 (“public entity”), 41170 (“work of improvement”).

#### 28 § 42220. Notice of cessation

29 42220. (a) A public entity may record a notice of cessation if there has been a  
30 continuous cessation of labor for at least 30 days prior to the recordation that  
31 continues through the date of the recordation.

32 (b) The notice shall be signed and verified by the public entity or its agent.

33 (c) The notice shall comply with the requirements of Article 2 (commencing  
34 with Section 42110), and shall also include all of the following information:

35 (1) The date on or about which the labor ceased.

36 (2) A statement that the cessation has continued until the recordation of the  
37 notice.

38 **Comment.** Section 42220 continues former Civil Code Section 3092 (notice of cessation), to  
39 the extent it applied to a public works contract. For the effect of recordation of a notice of  
40 cessation, see Sections 44140 (time for giving stop payment notice) and 45050 (time for  
41 enforcing payment bond).

1 A notice of cessation is recorded in the office of the county recorder of the county in which the  
2 public works contract or part of it is performed. Section 42250 (recordation of notice). A notice of  
3 cessation is recorded when it is filed for record. Section 42250 (recordation of notice).

4 See also Section 41110 (“public entity”).

5 **§ 42230. Notice of completion**

6 42230. (a) A public entity may record a notice of completion on or within 15  
7 days after completion of a work of improvement.

8 (b) The notice shall be signed and verified by the public entity or its agent.

9 (c) The notice shall comply with the requirements of Article 2 (commencing  
10 with Section 42110), and shall also include the date of completion. An erroneous  
11 statement of the date of completion does not affect the effectiveness of the notice  
12 if the true date of completion is 15 days or less before the date of recordation of  
13 the notice.

14 **Comment.** Section 42230 continues former Civil Code Section 3093 (notice of completion), to  
15 the extent it applied to a public works contract, and extends the 10-day period for recording a  
16 notice of completion under former law to 15 days. For the effect of recordation of a notice of  
17 completion, see Sections 44140 (time for giving stop payment notice) and 45070 (notice to  
18 principal and surety on payment bond).

19 For the date of completion of a work of improvement, see Section 42210.

20 A notice of completion is recorded in the office of the county recorder of the county in which  
21 the public works contract or part of it is performed. Section 42250 (recordation of notice). A  
22 notice of completion is recorded when it is filed for record. Section 42250 (recordation of notice).

23 See also Sections 41040 (“direct contractor”), 41110 (“public entity”), 41120 (“public works  
24 contract”), 41130 (“site”).

25 **§ 42240. Notice of completion of contract for portion of work of improvement**

26 42240. (a) If a work of improvement is made pursuant to two or more contracts  
27 with a public entity, each covering a portion of the work of improvement, the  
28 public entity may record a notice of completion of a contract with the public entity  
29 for a portion of the work of improvement.

30 (b) The recordation of a notice of completion of a contract under this section  
31 governs only work provided pursuant to that contract.

32 **Comment.** Section 42240 is new. It is adopted from former Civil Code Section 3117.

33 See also Sections 41110 (“public entity”), 41160 (“work”), 41170 (“work of improvement”).

34 **§ 42250. Recordation of notice**

35 42250. (a) A notice of cessation or completion is recorded when filed for record  
36 in the office of the county recorder of the county in which the public works  
37 contract or part of it is performed. A notice in otherwise proper form containing  
38 the information required by Sections 42220 or 42230 shall be accepted by the  
39 recorder for recording and is deemed duly recorded without acknowledgment.

40 (b) The county recorder shall number, index, and preserve a notice of cessation  
41 or completion presented for filing under this part, and shall number, index, and  
42 transcribe into the official records, in the same manner as a conveyance of real  
43 property, a notice of completion recorded under this part.

1 (c) The county recorder shall charge and collect the fees provided in Article 5  
2 (commencing with Section 27460) of Chapter 6 of Part 3 of Division 2 of Title 3  
3 of the Government Code for performing duties under this section.

4 **Comment.** Section 42250 generalizes a number of provisions of former law, to the extent they  
5 applied to a public works contract. *Cf.* former Civ. Code § 3258.

6 See also Sections 42220 (notice of cessation), 42230 (notice of completion).

7 See also Section 41120 (“public works contract”).

## 8 Article 4. Waiver and Release

### 9 § 42310. Terms of contract

10 42310. (a) A public entity or direct contractor may not, by contract or otherwise,  
11 waive, affect, or impair a claimant’s rights under this part, whether with or without  
12 notice, except with the claimant’s written consent, and any term of a contract that  
13 purports to do so is void and unenforceable.

14 (b) A claimant’s written consent is void and unenforceable unless and until the  
15 claimant executes and delivers a waiver and release under this article.

16 **Comment.** Section 42310 continues the first and second sentences of former Civil Code  
17 Section 3262(a) without substantive change, to the extent they related to a public works contract.  
18 See Section 41020 (“claimant”).

19 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41110 (“public entity”).

### 20 § 42320. Waiver and release

21 42320. A claimant’s waiver and release does not release the public entity or  
22 surety on a payment bond from a claim unless both of the following conditions are  
23 satisfied:

24 (a) The waiver and release is in substantially the form provided in this article  
25 and is signed by the claimant.

26 (b) If the release is a conditional release, there is evidence of payment to the  
27 claimant. Evidence of payment may be either of the following:

28 (1) The claimant’s endorsement on a single or joint payee check that has been  
29 paid by the financial institution on which it was drawn.

30 (2) Written acknowledgment of payment by the claimant.

31 **Comment.** Section 42320 continues the third and fourth sentences of former Civil Code  
32 Section 3262(a) without substantive change, to the extent they related to a public works contract.  
33 The waiver and release may be signed by the claimant’s agent. See Section 42060 (agency).

34 See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41110 (“public entity”).

### 35 § 42330. Statement of claimant

36 42330. An oral or written statement purporting to waive, release, impair or  
37 otherwise adversely affect a claim is void and unenforceable and does not create  
38 an estoppel or impairment of the claim unless either of the following conditions is  
39 satisfied:

40 (1) The statement is pursuant to a waiver and release under this article.

1 (2) The claimant has actually received payment in full for the claim.

2 **Comment.** Section 42330 continues former Civil Code Section 3262(b) without substantive  
3 change, to the extent it related to a public works contract.

4 See also Section 41020 (“claimant”).

5 **§ 42340. Reduction or release of stop payment notice**

6 42340. (a) A claimant may reduce the amount of, or release in its entirety, a stop  
7 payment notice. The reduction or release shall comply with Article 2  
8 (commencing with Section 42110), but need not be a waiver and release form  
9 provided in this article.

10 (b) The writing shall identify whether it is a reduction of the amount of the stop  
11 payment notice, or a release of the notice in its entirety. If the writing is a  
12 reduction, it shall state the amount of the reduction, and the amount to remain  
13 withheld after the reduction.

14 (c) A claimant’s reduction or release of a stop payment notice has the following  
15 effect:

16 (1) The reduction or release releases the claimant’s right to enforce payment of  
17 the claim stated in the notice to the extent of the reduction or release.

18 (2) The reduction or release releases the public entity from the obligation to  
19 withhold funds pursuant to the notice to the extent of the reduction or release.

20 (3) The reduction or release does not preclude the claimant from giving a  
21 subsequent stop payment notice that is timely and proper.

22 (4) The reduction or release does not release any right of the claimant other than  
23 the right to enforce payment of the claim stated in the stop payment notice to the  
24 extent of the reduction or release.

25 **Comment.** Subdivisions (a) and (c) of Section 42340 restate the second, third, and fourth  
26 sentences of subdivision (b) of former Civil Code Section 3262, to the extent they related to a  
27 public works contract.

28 Subdivision (b) of Section 42340 is new.

29 See also Sections 41020 (“claimant”), 41090 (“person”), 41110 (“public entity”), 41140 (“stop  
30 payment notice”).

31 **§ 42350. Accord and satisfaction or settlement agreement not affected**

32 42350. This article does not affect the enforceability of either an accord and  
33 satisfaction concerning a good faith dispute or an agreement made in settlement of  
34 an action pending in court if the accord and satisfaction or agreement and  
35 settlement make specific reference to the claim.

36 **Comment.** Section 42350 continues former Civil Code Section 3262(c) without substantive  
37 change, to the extent it related to a public works contract.

38 **§ 42360. Conditional waiver and release on progress payment**

39 42360. If a claimant is required to execute a waiver and release in exchange for,  
40 or in order to induce the payment of, a progress payment and the claimant is not,  
41 in fact, paid in exchange for the waiver and release or a single payee check or joint



1 payee check is given in exchange for the waiver and release, the waiver and  
2 release shall be in substantially the following form:

3                   CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

4 NOTICE. This document waives certain rights of the claimant effective on receipt  
5 of payment. A person should not rely on this document unless satisfied that the  
6 claimant has received payment.

7 **Identifying Information**

8 Name of Claimant: \_\_\_\_\_

9 Name of Customer: \_\_\_\_\_

10 Job Location: \_\_\_\_\_

11 Public Entity: \_\_\_\_\_

12 Through Date: \_\_\_\_\_

13 **Conditional Waiver and Release**

14 This document waives and releases stop payment notice and payment bond rights  
15 the claimant has for labor and service provided, and equipment and material  
16 delivered, to the customer on this job through the Through Date of this document.  
17 This document is effective only on the claimant's receipt of payment from the  
18 financial institution on which the following check is drawn:

19           Maker of Check: \_\_\_\_\_

20           Amount of Check: \$ \_\_\_\_\_

21           Check Payable to: \_\_\_\_\_

22 **Exceptions**

23 This document does not affect any of the following:

24 (1) Retentions.

25 (2) Extras for which the claimant has not received payment.

26 (3) The following progress payments for which the claimant has previously given  
27 a conditional waiver and release but has not received payment:

28           Date(s) of waiver and release: \_\_\_\_\_

29           Amounts of unpaid progress payments: \_\_\_\_\_

30 (4) Contract rights, including (i) a right based on rescission, abandonment, or  
31 breach of contract, and (ii) the right to recover compensation for work not  
32 compensated by the payment.

33 **Signature**

34 Claimant's Signature: \_\_\_\_\_

35 Claimant's Title: \_\_\_\_\_

36 Date of Signature: \_\_\_\_\_

37

1 **Comment.** Section 42360 restates former Civil Code Section 3262(d)(1), to the extent it  
2 related to a public works contract, with the addition of language relating to progress payments  
3 covered by previous releases that have not been paid. The statutory form is recast for clarity.

4 See also Section 41020 (“claimant”).

5 **§ 42370. Unconditional waiver and release on progress payment**

6 42370. If the claimant is required to execute a waiver and release in exchange  
7 for, or in order to induce payment of, a progress payment and the claimant asserts  
8 in the waiver it has, in fact, been paid the progress payment, the waiver and release  
9 shall be in substantially the following form:

10 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

11 NOTICE TO CLAIMANT: This document waives and releases rights  
12 unconditionally and states that you have been paid for giving up those rights. This  
13 document is enforceable against you if you sign it, even if you have not been paid.

14 If you have not been paid, use a conditional waiver and release form.

15 **Identifying Information**

16 Name of Claimant: \_\_\_\_\_

17 Name of Customer: \_\_\_\_\_

18 Job Location: \_\_\_\_\_

19 Public Entity: \_\_\_\_\_

20 Through Date: \_\_\_\_\_

21 **Unconditional Waiver and Release**

22 This document waives and releases stop payment notice and payment  
23 bond rights the claimant has for labor and service provided, and equipment and  
24 material delivered, to the customer on this job through the Through Date of this  
25 document.

26 The claimant has received the following progress payment:

27 \$ \_\_\_\_\_

28 **Exceptions**

29 This document does not affect any of the following:

30 (1) Retentions.

31 (2) Extras for which the claimant has not received payment.

32 (3) Contract rights, including (i) a right based on rescission, abandonment, or  
33 breach of contract, and (ii) the right to recover compensation for work not  
34 compensated by the payment.

35 **Signature**

36 Claimant’s Signature: \_\_\_\_\_

37 Claimant’s Title: \_\_\_\_\_

1 Date of Signature: \_\_\_\_\_

2 **Comment.** Section 42370 continues former Civil Code Section 3262(d)(2) without substantive  
3 change, to the extent it related to a public works contract. The statutory form is recast for clarity.  
4 See also Section 41020 (“claimant”).

5 **§ 42380. Conditional waiver and release on final payment**

6 42380. If the claimant is required to execute a waiver and release in exchange  
7 for, or in order to induce the payment of, a final payment and the claimant is not,  
8 in fact, paid in exchange for the waiver and release or a single payee check or joint  
9 payee check is given in exchange for the waiver and release, the waiver and  
10 release shall be in substantially the following form:

11 **CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

12 NOTICE. This document waives certain rights of the claimant effective on receipt  
13 of payment. A person should not rely on this document unless satisfied that the  
14 claimant has received payment.

15 **Identifying Information**

16 Name of Claimant: \_\_\_\_\_

17 Name of Customer: \_\_\_\_\_

18 Job Location: \_\_\_\_\_

19 Public Entity: \_\_\_\_\_

20

21 **Conditional Waiver and Release**

22 This document waives and releases stop payment notice and payment bond rights  
23 the claimant has for all labor and service provided, and equipment and material  
24 delivered, to the customer on this job. This document is effective only on the  
25 claimant’s receipt of payment from the financial institution on which the following  
26 check is drawn:

27 Maker of Check: \_\_\_\_\_

28 Amount of Check: \$ \_\_\_\_\_

29 Check Payable to: \_\_\_\_\_

30 **Exceptions**

31 This document does not affect any of the following:

32 (1) Disputed claims for extras in the amount of \$ \_\_\_\_\_

33 (2) The following progress payments for which the claimant has previously given  
34 a conditional waiver and release but has not received payment:

35 Date(s) of waiver and release: \_\_\_\_\_

36 Amount(s) of unpaid progress payment(s): \_\_\_\_\_

37 **Signature**

38 Claimant’s Signature: \_\_\_\_\_

1 Claimant's Title: \_\_\_\_\_

2 Date of Signature: \_\_\_\_\_

3

4 **Comment.** Section 42380 continues former Civil Code Section 3262(d)(3), to the extent it  
5 related to a public works contract, with the addition of language relating to progress payments  
6 covered by previous releases that have not been paid, and the addition of a line for identification  
7 of the waivant's customer. The statutory form is recast for clarity.

8 See also Section 41020 ("claimant").

9 **§ 42390. Unconditional waiver and release on final payment**

10 42390. If the claimant is required to execute a waiver and release in exchange  
11 for, or in order to induce payment of, a final payment and the claimant asserts in  
12 the waiver it has, in fact, been paid the final payment, the waiver and release shall  
13 be in substantially the following form:

14 UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

15 NOTICE TO CLAIMANT: This document waives and releases rights  
16 unconditionally and states that you have been paid for giving up those rights. This  
17 document is enforceable against you if you sign it, even if you have not been paid.  
18 If you have not been paid, use a conditional waiver and release form.

19 **Identifying Information**

20 Name of Claimant: \_\_\_\_\_

21 Name of Customer: \_\_\_\_\_

22 Job Location: \_\_\_\_\_

23 Public Entity: \_\_\_\_\_

24 **Unconditional Waiver and Release**

25 This document waives and releases stop payment notice and payment bond rights  
26 the claimant has for all labor and service provided, and equipment and material  
27 delivered, to the customer on this job. The claimant has been paid in full.

28 **Exceptions**

29 This document does not affect any of the following:

30 (1) Disputed claims for extras in the amount of \$ \_\_\_\_\_

31 **Signature**

32 Claimant's Signature: \_\_\_\_\_

33 Claimant's Title: \_\_\_\_\_

34 Date of Signature: \_\_\_\_\_

35

36 **Comment.** Section 42390 continues former Civil Code Section 3262(d)(4) without substantive  
37 change, to the extent it related to a public works contract. The statutory form is recast for clarity.

38 See also Section 41020 ("claimant").

1 CHAPTER 3. PRELIMINARY NOTICE

2 **§ 43010. Preliminary notice prerequisite to remedies**

3 43010. (a) Except as otherwise provided by statute, preliminary notice is a  
4 necessary prerequisite to the validity of a stop payment notice or a claim against a  
5 payment bond under this part.

6 (b) A laborer is not required to give preliminary notice.

7 (c) A claimant that has a direct contractual relationship with a direct contractor  
8 is not required to give preliminary notice.

9 **Comment.** Subdivision (a) of Section 43010 restates part of the introductory clause of former  
10 Civil Code Section 3098. For a statutory exception to the preliminary notice requirement, see  
11 Section 45070 (notice to principal and surety).

12 Subdivision (b) restates former Civil Code Section 3098(c).

13 Subdivision (c) restates a portion of former Civil Code Section 3098(a).

14 The transitional provision of former Civil Code Section 3098(e) is not continued due to lapse  
15 of time.

16 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41080 (“payment bond”),  
17 41100 (“preliminary notice”), 41140 (“stop payment notice”).

18 **§ 43020. Persons to be given preliminary notice**

19 43020. Before giving a stop payment notice or asserting a claim against a  
20 payment bond, a claimant shall give preliminary notice to the public entity and the  
21 direct contractor.

22 **Comment.** Section 43020 restates part of the introductory clause and subdivision (a) of former  
23 Civil Code Section 3098. Repetitive detail is omitted, in reliance on defined terms and other  
24 substantive provisions.

25 See Section 45070 for an exception to this provision when a claimant asserts a claim against a  
26 payment bond.

27 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41080 (“payment bond”),  
28 41100 (“preliminary notice”), 41110 (“public entity”), 41140 (“stop payment notice”), 41160  
29 (“work”).

30 **§ 43040. Giving preliminary notice**

31 43040. (a) Except as provided in subdivision (b), preliminary notice shall be  
32 given in compliance with the requirements of Article 2 (commencing with Section  
33 42110) of Chapter 2.

34 (b) If the public works contract is for work constructed by the Department of  
35 Public Works or the Department of General Services of the state, preliminary  
36 notice to the public entity shall be given to the disbursing officer of the department  
37 constructing the work.

38 **Comment.** Section 43040 restates the second and fourth sentences of former Civil Code  
39 Section 3098(a).

40 See also Sections 41100 (“preliminary notice”), 41110 (“public entity”), 41120 (“public works  
41 contract”).

1    **§ 43050. Effect of preliminary notice**

2       43050. A claimant may give a stop payment notice or assert a claim against a  
3    payment bond only for work provided within 20 days before giving preliminary  
4    notice and at any time thereafter.

5       **Comment.** Section 43050 restates parts of subdivisions (a) and (d) of former Civil Code  
6    Section 3098.

7       See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41100 (“preliminary notice”),  
8    41140 (“stop payment notice”), 41160 (“work”).

9    CHAPTER 4. STOP PAYMENT NOTICE

10    Article 1. General Provisions

11    **§ 44110. Stop payment notice exclusive remedy to reach construction funds**

12       44110. The rights of all persons furnishing work pursuant to a public works  
13    contract, with respect to any fund for payment of construction costs, are governed  
14    exclusively by this chapter, and no person may assert any legal or equitable right  
15    with respect to such fund, other than a right created by direct written contract  
16    between such person and the person holding the fund, except pursuant to the  
17    provisions of this chapter.

18       **Comment.** Section 44110 restates former Civil Code Section 3264 to the extent it applied to a  
19    public works contract. See Section 42010 (application of part). For a comparable provision  
20    applicable to a private work, see Civ. Code § 8500.

21       See also Sections 41050 (“funds”), 41090 (“person”), 41160 (“work”).

22    **§ 44120. Contents of stop payment notice**

23       44120. (a) A stop payment notice shall comply with the requirements of Section  
24    42120, and shall be signed and verified by the claimant.

25       (b) The notice may only be given for the amount due the claimant for work  
26    provided.

27       (c) The claimant may include in a stop payment notice an amount due for work  
28    performed as a result of rescission, abandonment, or breach of the contract. If  
29    there is a rescission, abandonment, or breach of the contract, the amount of the  
30    stop payment notice may not exceed the reasonable value of the work provided by  
31    the claimant.

32       **Comment.** Subdivisions (a) and (b) of Section 44120 supersede subdivisions (a)-(d) of former  
33    Section 3103. See also Sections 42110-42190 (notice). A stop payment notice may be executed  
34    by the claimant’s agent. See Section 42060 (agency).

35       Subdivision (c) is similar to former Civil Code Section 3123(b).

36       See also Sections 41020 (“claimant”), 41160 (“work”).

37    **§ 44130. Giving of stop payment notice**

38       44130. (a) Except as provided in subdivision (b), a stop payment notice shall be  
39    given in compliance with the requirements of Article 2 (commencing with Section  
40    42110) of Chapter 2.

1 (b) A stop payment notice shall be given to the public entity by giving the notice  
2 to the following person:

3 (1) In the case of a public works contract of the state, the director of the  
4 department that awarded the contract.

5 (2) In the case of a public works contract of a public entity other than the state,  
6 the office of the controller, auditor, or other public disbursing officer whose duty it  
7 is to make payment pursuant to the contract, or the commissioners, managers,  
8 trustees, officers, board of supervisors, board of trustees, common council, or  
9 other body by which the contract was awarded.

10 **Comment.** Section 44130 restates the first unnumbered paragraph of former Civil Code  
11 Section 3103.

12 A claimant wishing to receive return notice of the time within which payment of the claim  
13 stated in a stop payment notice must be enforced must pay the public entity ten dollars (\$10) at  
14 the time of giving the stop payment notice. See Section 44170.

15 See also Sections 41110 (“public entity”), 41120 (“public works contract”), 41140 (“stop  
16 payment notice”).

17 **§ 44140. Time for giving notice**

18 44140. A stop payment notice is not effective unless given before the earlier of  
19 the following times:

20 (1) Ninety days after cessation or completion.

21 (2) Thirty days after recordation of a notice of cessation or completion.

22 **Comment.** Section 44140 continues former Civil Code Section 3184 without substantive  
23 change. See Sections 42210 (completion), 42220 (notice of cessation), and 42230 (notice of  
24 completion).

25 See also Section 41140 (“stop payment notice”).

26 **§ 44150. Duty to withhold funds**

27 44150. (a) The public entity shall, on receipt of a stop payment notice, withhold  
28 from the direct contractor sufficient funds due or to become due to the direct  
29 contractor to pay the claim stated in the stop payment notice and to provide for the  
30 public entity’s reasonable cost of any litigation pursuant to the stop payment  
31 notice.

32 (b) The public entity may satisfy its duty under this section by refusing to  
33 release funds held in escrow under Section 10263 or 22300.

34 **Comment.** Section 44150 restates former Civil Code Section 3186. See also Section 42060  
35 (agency).

36 See also Sections 41040 (“direct contractor”), 41050 (“funds”), 41110 (“public entity”), 41140  
37 (“stop payment notice”).

38 **§ 44160. Payment notwithstanding stop payment notice**

39 44160. (a) This chapter does not prohibit payment of funds to a direct contractor  
40 if a stop payment notice is not received before the disbursing officer actually  
41 surrenders possession of the funds.

1 (b) This chapter does not prohibit payment of any amount due to a direct  
2 contractor in excess of the amount necessary to pay the total amount of all claims  
3 stated in stop payment notices received by the public entity at the time of payment  
4 plus any interest and court costs that might reasonably be anticipated in connection  
5 with the claims.

6 **Comment.** Section 44160 restates former Civil Code Section 3187. Authority in this section  
7 for payment of a direct contractor includes payment of the direct contractor's assignee. See  
8 Section 41040 ("direct contractor").

9 See also Sections 41050 ("funds"), 41140 ("stop payment notice").

10 **§ 44170. Notice to claimant**

11 44170. (a) Not later than 10 days after completion of a work of improvement,  
12 and not later than 10 days after recordation of a notice of cessation or completion,  
13 the public entity shall give notice to each claimant that has given a stop payment  
14 notice of the time within which payment of the claim stated in a stop payment  
15 notice must be enforced. The notice shall comply with the requirements of Article  
16 2 (commencing with Section 42110) of Chapter 2.

17 (b) A public entity need not give notice under this section unless the claimant  
18 has paid the public entity ten dollars (\$10) at the time of giving the stop payment  
19 notice.

20 **Comment.** Section 44170 restates former Civil Code Section 3185. See also Sections 42210  
21 (completion), 42220 (notice of cessation), 42230 (notice of completion), 44420 (time for  
22 enforcement of payment of claim stated in stop payment notice). The \$2 fee is increased to \$10 in  
23 recognition of the change in the value of the dollar since the fee's enactment.

24 See also Sections 41020 ("claimant"), 41110 ("public entity"), 41120 ("public works  
25 contract"), 41140 ("stop payment notice").

26 **§ 44180. Release bond**

27 44180. (a) A public entity may, in its discretion, permit the direct contractor to  
28 give the public entity a release bond. The bond shall be executed by an admitted  
29 surety insurer, in an amount equal to 125 percent of the claim stated in the stop  
30 payment notice, conditioned for the payment of any amount the claimant recovers  
31 in an action on the claim, together with court costs if the claimant prevails.

32 (b) On receipt of a release bond, the public entity shall not withhold funds from  
33 the direct contractor pursuant to the stop payment notice.

34 (c) The surety on a release bond is jointly and severally liable to the claimant  
35 with the sureties on any payment bond given under Chapter 5 (commencing with  
36 Section 45010).

37 **Comment.** Section 44180 restates former Civil Code Section 3196.

38 See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41050 ("funds"), 41080  
39 ("payment bond"), 41110 ("public entity"), 41140 ("stop payment notice").



1 Article 2. Summary Proceeding for Release of Funds

2 **§ 44210. Grounds for summary proceeding**

3 44210. A direct contractor may obtain release of funds withheld pursuant to a  
4 stop payment notice under the summary proceeding provided in this article on any  
5 of the following grounds:

6 (a) The claim on which the notice is based is not a type for which a stop  
7 payment notice is authorized under this chapter.

8 (b) The claimant is not a person authorized under Section 42030 to give a stop  
9 payment notice.

10 (c) The amount of the claim stated in the stop payment notice is excessive.

11 (d) There is no basis for the claim stated in the stop payment notice.

12 **Comment.** Section 44210 restates former Civil Code Section 3197.

13 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41090  
14 (“person”), 41140 (“stop payment notice”).

15 **§ 44220. Contractor’s affidavit and demand for release**

16 44220. The direct contractor shall serve on the public entity an affidavit,  
17 together with a copy of the affidavit, that includes all of the following information:

18 (a) An allegation of the grounds for release of the funds and a statement of the  
19 facts supporting the allegation.

20 (b) A demand for the release of all or the portion of the funds that are alleged to  
21 be withheld improperly or in an excessive amount.

22 (c) A statement of the address of the contractor within the state for the purpose  
23 of permitting service by mail on the contractor of any notice or document.

24 **Comment.** Section 44220 restates former Civil Code Section 3198. The grounds for release are  
25 provided in Section 44210.

26 See also Sections 41040 (“direct contractor”), 41050 (“funds”), 41110 (“public entity”).

27 **§ 44230. Notice to claimant**

28 44230. The public entity shall serve on the claimant a copy of the direct  
29 contractor’s affidavit, together with a notice stating that the public entity will  
30 release the funds withheld, or the portion of the funds demanded, unless the  
31 claimant serves on the public entity a counteraffidavit on or before the time stated  
32 in the notice. The time stated in the notice shall be not less than 10 nor more than  
33 20 days after service on the claimant of the copy of the affidavit.

34 **Comment.** Section 44230 restates former Civil Code Section 3199. See also Section 42060  
35 (written notice).

36 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41110  
37 (“public entity”).

38 **§ 44240. Claimant’s counteraffidavit**

39 44240. (a) A claimant that contests the direct contractor’s affidavit shall serve  
40 on the public entity a counteraffidavit alleging the details of the claim and

1 describing the specific basis on which the claimant contests or rebuts the  
2 allegations of the contractor's affidavit. The counteraffidavit shall be served  
3 within the time stated in the public entity's notice, together with proof of service  
4 of a copy of the counteraffidavit on the direct contractor.

5 (b) If no counteraffidavit with proof of service is served on the public entity  
6 within the time stated in the public entity's notice, the public entity shall  
7 immediately release the funds, or the portion of the funds demanded by the  
8 affidavit, without further notice to the claimant, and the public entity is not liable  
9 in any manner for their release.

10 (c) The public entity is not responsible for the validity of an affidavit or  
11 counteraffidavit under this article.

12 **Comment.** Section 44240 restates former Civil Code Section 3200.

13 See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41050 ("funds"), 41110  
14 ("public entity").

15 **§ 44250. Commencement of action**

16 44250. (a) If a counteraffidavit, together with proof of service, is served under  
17 Section 44240, either the direct contractor or the claimant may commence an  
18 action for a declaration of the rights of the parties.

19 (b) After commencement of the action, either the direct contractor or the  
20 claimant may move the court for a determination of rights under the affidavit and  
21 counteraffidavit. The party making the motion shall give not less than five days'  
22 notice of the hearing to the public entity and to the other party.

23 (c) The court shall hear the motion within 15 days after the date of the motion,  
24 unless the court continues the hearing for good cause.

25 **Comment.** Section 44250 restates former Civil Code Section 3201. See also Sections 42040  
26 (rules of practice), 42060 (written notice).

27 See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41110 ("public entity").

28 **§ 44260. Pleadings and burden of proof**

29 44260. (a) The affidavit and counteraffidavit shall be filed with the court by the  
30 public entity and shall constitute the pleadings, subject to the power of the court to  
31 permit an amendment in the interest of justice. The affidavit of the direct  
32 contractor shall be deemed controverted by the counteraffidavit of the claimant,  
33 and both shall be received in evidence.

34 (b) At the hearing, the direct contractor has the burden of proof.

35 **Comment.** Section 44260 restates former Civil Code Section 3202.

36 See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41110 ("public entity").

37 **§ 44270. Court determination**

38 44270. (a) No findings are required in a summary proceeding under this article.

39 (b) If at the hearing no evidence other than the affidavit and counteraffidavit is  
40 offered, the court may, if satisfied that sufficient facts are shown, make a  
41 determination on the basis of the affidavit and counteraffidavit. If the court is not

1 satisfied that sufficient facts are shown, the court shall order the hearing continued  
2 for production of other evidence, oral or documentary, or the filing of other  
3 affidavits and counteraffidavits.

4 (c) At the conclusion of the hearing, the court shall make an order determining  
5 whether the demand for release is allowed. The court's order is determinative of  
6 the right of the claimant to have funds further withheld by the public entity.

7 (d) The direct contractor shall serve a copy of the court's order on the public  
8 entity.

9 **Comment.** Section 44270 restates former Civil Code Section 3203. Former Civil Code Section  
10 3204 relating to jury trial is not continued; proceedings under this article are tried to the judge,  
11 not to a jury.

12 See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41050 ("funds"), 41110  
13 ("public entity").

14 **§ 44280. Summary determination not res judicata**

15 44280. A determination in a summary proceeding under this article is not res  
16 judicata with respect to a right of action by the claimant against either the principal  
17 or surety on a payment bond or with respect to a right of action against a party  
18 personally liable to the claimant.

19 **Comment.** Section 44280 restates former Civil Code Section 3205. The former reference to a  
20 "labor or material bond" is replaced by a reference to a payment bond.

21 See also Sections 41020 ("claimant"), 41080 ("payment bond").

22 **Article 3. Distribution of Funds Withheld**

23 **§ 44310. Distribution of funds withheld pursuant to stop payment notice**

24 44310. If funds withheld pursuant to a stop payment notice are insufficient to  
25 pay in full the claims of all persons that have given a stop payment notice, the  
26 funds shall be distributed among the claimants in the ratio that the claim of each  
27 bears to the aggregate of all claims for which a stop payment notice is given,  
28 without regard to the order in which the notices were given or enforcement actions  
29 were commenced.

30 **Comment.** Section 44310 restates former Civil Code Section 3190. Only valid claims, as  
31 determined in an enforcement action, are entitled to participate in the distribution. *Cf.* Idaho  
32 Lumber Co. v. Northwestern S. & L. Ass'n, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422 (1968). The  
33 amount of the claim for which payment is required is determined under Article 4 (commencing  
34 with Section 40410) (enforcement of payment of claim stated in stop payment notice).

35 See also Sections 41020 ("claimant"), 41050 ("funds"), 41090 ("person"), 41140 ("stop  
36 payment notice").

37 **§ 44320. Stop payment notice remedy not exclusive**

38 44320. Nothing in this chapter impairs the right of a claimant to recover from  
39 the direct contractor or the contractor's sureties in an action on a payment bond  
40 under Chapter 5 (commencing with Section 45010) any deficit that remains unpaid  
41 after the distribution under Section 44310.



1 See also Sections 41020 (“claimant”), 41100 (“preliminary notice”), 41140 (“stop payment  
2 notice”).

3 **§ 44420. Time for enforcement of payment of claim stated in stop payment notice**

4 44420. (a) The claimant shall commence an action against the public entity and  
5 the direct contractor to enforce payment of the claim stated in a stop payment  
6 notice not earlier than 10 days after the date the claimant gives the stop payment  
7 notice.

8 (b) The claimant shall commence an action against the public entity and the  
9 direct contractor to enforce payment of the claim stated in a stop payment notice  
10 not later than 90 days after expiration of the time within which a stop payment  
11 notice must be given.

12 (c) An action under this section may not be brought to trial or judgment entered  
13 before expiration of the time provided in subdivision (b).

14 (d) If a claimant does not commence an action to enforce payment of the claim  
15 stated in a stop payment notice within the time provided in subdivision (b), the  
16 notice ceases to be effective and the public entity shall release funds withheld  
17 pursuant to the notice.

18 **Comment.** Section 44420 restates former Civil Code Section 3210. See also Section 44140  
19 (time within which stop payment notice must be given).

20 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41110  
21 (“public entity”), 41140 (“stop payment notice”).

22 **§ 44430. Notice of action**

23 44430. Within five days after commencement of an action to enforce payment of  
24 the claim stated in a stop payment notice, the claimant shall give notice of  
25 commencement of the action to the public entity in the same manner that a stop  
26 payment notice is given.

27 **Comment.** Section 44430 restates former Civil Code Section 3211. See Section 44130 (giving  
28 of stop payment notice).

29 See also Sections 41020 (“claimant”), 41110 (“public entity”), 41140 (“stop payment notice”).

30 **§ 44440. Joinder, consolidation, and interpleader**

31 44440. If more than one claimant has given a stop payment notice:

32 (a) Any number of claimants may join in the same enforcement action.

33 (b) If claimants commence separate actions, the court that first acquires  
34 jurisdiction may order the actions consolidated.

35 (c) On request of the public entity the court shall require that all claimants be  
36 impleaded in one action and shall adjudicate the rights of all parties in the action.

37 **Comment.** Section 44440 restates former Civil Code Section 3214 without substantive change.  
38 See also Section 42040 (rules of practice).

39 See also Sections 41020 (“claimant”), 41110 (“public entity”), 41140 (“stop payment notice”).



1 See also Sections 41030 (“design professional”), 41040 (“direct contractor”), 41080 (“payment  
2 bond”), 41110 (“public entity”), 41120 (“public works contract”).

3 **§ 45020. Consequences of failure to give bond**

4 45020. If a payment bond is not given and approved as required by Section  
5 45010:

6 (a) The public entity awarding the public works contract shall not audit, allow,  
7 or pay a claim of the direct contractor pursuant to the contract.

8 (b) A claimant shall receive payment of a claim pursuant to a stop payment  
9 notice in the manner provided by Chapter 4 (commencing with Section 44110).

10 **Comment.** Section 45020 restates former Civil Code Section 3251. The former operative date  
11 provision is deleted due to lapse of time.

12 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41080 (“payment bond”),  
13 41110 (“public entity”), 41140 (“stop payment notice”).

14 **§ 45030. Bond requirements**

15 45030. (a) A payment bond shall be in an amount not less than one hundred  
16 percent of the total amount payable pursuant to the public works contract. The  
17 bond shall be in the form of a bond and not a deposit in lieu of bond.

18 (b) The payment bond shall provide that if the direct contractor or a  
19 subcontractor fails to pay any of the following, the surety will pay the obligation  
20 and, if an action is brought to enforce the liability on the bond, a reasonable  
21 attorney’s fee, to be fixed by the court:

22 (1) A person authorized under Section 42030 to assert a claim against a payment  
23 bond.

24 (2) Amounts due under the Unemployment Insurance Code with respect to work  
25 or labor performed pursuant to the public works contract.

26 (3) Amounts required to be deducted, withheld, and paid over to the  
27 Employment Development Department from the wages of employees of the  
28 contractor and subcontractors under Section 13020 of the Unemployment  
29 Insurance Code with respect to the work and labor.

30 (c) The payment bond shall by its terms inure to the benefit of any person  
31 authorized under Section 42030 to assert a claim against a payment bond so as to  
32 give a right of action to that person or that person’s assigns in an action to enforce  
33 the liability on the bond.

34 (d) The direct contractor may require that a subcontractor give a bond to  
35 indemnify the direct contractor for any loss sustained by the direct contractor  
36 because of any default of the subcontractor.

37 **Comment.** Section 45030 restates former Civil Code Section 3248 and supersedes former  
38 Civil Code Section 3096.

39 See also Sections 41040 (“direct contractor”), 41080 (“payment bond”), 41090 (“person”).

1    **§ 45040. Construction of bond**

2       45040. (a) A payment bond shall be construed most strongly against the surety  
3       and in favor of the beneficiary.

4       (b) A surety is not released from liability to the beneficiary by reason of a  
5       breach of the public works contract between the public entity and the direct  
6       contractor or on the part of the beneficiary.

7       (c) Except as otherwise provided by statute, the sole conditions of recovery on  
8       the bond are that the beneficiary is a person authorized under Section 42030 to  
9       assert a claim against a payment bond and has not been paid the full amount of the  
10      claim.

11      **Comment.** Section 45040 restates former Civil Code Section 3226.

12      See also Sections 41040 (“direct contractor”), 41080 (“payment bond”), 41090 (“person”),  
13      41110 (“public entity”).

14      *Cf.* Code Civ. Proc. § 995.130 (“beneficiary”).

15    **§ 45050. Statute of limitations**

16      45050. A claimant may commence an action to enforce the liability on a  
17      payment bond at any time after the claimant ceases to provide work, but not later  
18      than six months after the period in which a stop payment notice may be given  
19      under Section 44140.

20      **Comment.** Section 45050 restates former Civil Code Section 3249, and broadens it to cover  
21      enforcement of any liability on the bond, not limited to the liability of the surety. Code Civ. Proc.  
22      § 996.440 (judgment on bond against principal and sureties).

23      See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41140 (“stop payment  
24      notice”), 41160 (“work”).

25    **§ 45060. Notice required**

26      45060. (a) In order to enforce a claim against a payment bond, a claimant shall  
27      give the preliminary notice provided in Chapter 3 (commencing with Section  
28      43010).

29      (b) If preliminary notice was not given as provided in Chapter 3 (commencing  
30      with Section 43010), a claimant may enforce a claim by giving written notice to  
31      the surety and the bond principal within 15 days after recordation of a notice of  
32      completion. If no notice of completion has been recorded, the time for giving  
33      written notice to the surety and the bond principal is extended to 75 days after  
34      completion of the work of improvement.

35      **Comment.** Section 45060 restates former Civil Code Section 3252(a). The former limitation to  
36      a contract entered into on or after January 1, 1995, is omitted due to lapse of time.

37      See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41100 (“preliminary notice”),  
38      42210 (completion (including acceptance and cessation)), 42230 (notice of completion).

39    **§ 45070. Notice to principal and surety**

40      45070. Notice to the principal and surety under Section 45060 shall comply with  
41      the requirements of Article 2 (commencing with Section 42110) of Chapter 2.

42      **Comment.** Section 45070 restates former Civil Code Section 3227.



1 Cf. Code Civ. Proc. § 995.170 (“principal”).

2 **§ 45080. Action on bond**

3 45080. (a) A claimant may maintain an action to enforce the liability of a surety  
4 on a payment bond whether or not the claimant has given the public entity a stop  
5 payment notice.

6 (b) A claimant may maintain an action to enforce the liability on the bond  
7 separately from and without commencement of an action against the public entity.

8 (c) In an action to enforce the liability on the bond, the court shall award the  
9 prevailing party a reasonable attorney’s fee.

10 **Comment.** Section 45080 restates former Civil Code Section 3250. The provision that a  
11 reasonable attorney’s fee is “to be taxed as costs” is deleted as surplus. See Code Civ. Proc.  
12 § 1033.5(a)(10)(B) (attorney’s fee allowable as costs). See also Section 42040 (rules of practice).

13 See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41110 (“public entity”), 41140  
14 (“stop payment notice”).

15 **§ 45090. Limitation on chapter**

16 45090. (a) A claimant does not have a right to recover on a payment bond unless  
17 the claimant provided work to the direct contractor either directly or through one  
18 or more subcontractors pursuant to a public works contract.

19 (b) Nothing in this section affects the stop payment notice rights of, and relative  
20 priorities among, design professionals.

21 **Comment.** Section 45090 restates former Civil Code Section 3267, but clarifies that claimants  
22 providing work to subcontractors at every level have a right to recover against a direct  
23 contractor’s payment bond as provided in this section. See *Union Asphalt, Inc. v. Planet Ins. Co.*,  
24 21 Cal. App. 4th 1762, 27 Cal. Rptr. 2d 371 (1994).

25 This section omits the reference in former law to holders of secured interests in the land;  
26 although the relevance of that provision to a public works contract is limited, this section is not  
27 intended to affect priorities among those interests to the extent they may exist.

28 See also Sections 41020 (“claimant”), 41030 (“design professional”), 41040 (“direct  
29 contractor”), 41080 (“payment bond”), 41120 (“public works contract”), 41140 (“stop payment  
30 notice”), 41160 (“work”).

31 **Operative Date and Transitional Provision**

32 SEC. \_\_\_\_\_. (a) This act is operative January 1, 2009.

33 (b) Except as otherwise provided in this section, this act applies to a contract for  
34 a work of improvement executed before, on, or after the operative date.

35 (c) The effectiveness of a notice given, or other action taken, before the  
36 operative date is governed by the applicable law in effect before the operative date  
37 and not by this act.

38 **CONFORMING REVISIONS**

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BUSINESS AND PROFESSIONS CODE

**Bus. & Prof. Code § 7034 (amended). Prohibited contract clauses**

SEC. \_\_\_\_\_. Section 7034 of the Business and Professions Code is amended to read:

7034. (a) No contractor who is required to be licensed under this chapter shall insert in any contract, or be a party, with a subcontractor who is licensed under this chapter to any contract which contains, a provision, clause, covenant, or agreement which is void or unenforceable under Section 2782 of the Civil Code.

(b) No contractor who is required to be licensed under this chapter shall require a waiver of lien rights from any subcontractor, employee, or supplier in violation of Section ~~3262~~ 8160 of the Civil Code or Section 42310 of the Public Contract Code.

**Comment.** Section 7034 is amended to correct a cross-reference.

**Bus. & Prof. Code § 7071.5 (amended). Contractor’s bond**

SEC. \_\_\_\_\_. Section 7071.5 of the Business and Professions Code is amended to read:

7071.5. The contractor’s bond required by this article shall be executed by an admitted surety in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the licensee or applicant. The contractor’s bond shall be for the benefit of the following:

(a) Any homeowner contracting for home improvement upon the homeowner’s personal family residence damaged as a result of a violation of this chapter by the licensee.

(b) Any person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in the execution or performance of a construction contract.

(c) Any employee of the licensee damaged by the licensee’s failure to pay wages.

(d) Any person or entity, ~~including an express trust fund described in Section 3111 of the Civil Code~~, to whom a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, damaged as the result of the licensee’s failure to pay fringe benefits for its employees, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder (without regard to whether the work was performed on a private or public work). Damage to an express trust fund under this subdivision is limited to actual employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

1       **Comment.** Section 7071.5 is amended to delete an obsolete reference to former Civil Code  
2 Section 3111. The substance of former Civil Code Section 3111 is continued in Civil Code  
3 Section 8020 and Public Contract Code Section 41070.

4       **Bus. & Prof. Code § 7071.10 (amended). Qualifying individual’s bond**

5       SEC. \_\_\_\_\_. Section 7071.10 of the Business and Professions Code is amended  
6 to read:

7       7071.10. (a) The qualifying individual’s bond required by this article shall be  
8 executed by an admitted surety insurer in favor of the State of California, in a form  
9 acceptable to the registrar and filed with the registrar by the qualifying individual.  
10 The qualifying individual’s bond shall be for the benefit of the following persons:

11       (1) Any homeowner contracting for home improvement upon the homeowner’s  
12 personal family residence damaged as a result of a violation of this chapter by the  
13 licensee.

14       (2) Any person damaged as a result of a willful and deliberate violation of this  
15 chapter by the licensee, or by the fraud of the licensee in the execution or  
16 performance of a construction contract.

17       (3) Any employee of the licensee damaged by the licensee’s failure to pay  
18 wages.

19       (4) Any person or entity, ~~including an express trust fund described in Section~~  
20 ~~3111 of the Civil Code,~~ to whom a portion of the compensation of an employee of  
21 a licensee is paid by agreement with that employee or the collective bargaining  
22 agent of that employee, that is damaged as the result of the licensee’s failure to  
23 pay fringe benefits for its employees including, but not limited to, employer  
24 payments described in Section 1773.1 of the Labor Code and regulations adopted  
25 thereunder (without regard to whether the work was performed on a public or  
26 private work). Damage to an express trust fund under this paragraph is limited to  
27 employer payments required to be made on behalf of employees of the licensee, as  
28 part of the overall compensation of those employees, which the licensee fails to  
29 pay.

30       (b) The qualifying individual’s bond shall not be required in addition to the  
31 contractor’s bond when the qualifying individual is himself or herself the  
32 proprietor under subdivision (a) or a general partner under subdivision (b) of  
33 Section 7068.

34       **Comment.** Section 7071.10 is amended to delete an obsolete reference to former Civil Code  
35 Section 3111. The substance of former Civil Code Section 3111 is continued in Civil Code  
36 Section 8020 and Public Contract Code Section 41070.

37       **Bus. & Prof. Code § 7159 (amended). Home improvement contract**

38       SEC. \_\_\_\_\_. Section 7159 of the Business and Professions Code is amended to  
39 read:

40       7159. (a)(1) This section identifies the projects for which a home improvement  
41 contract is required, outlines the contract requirements, and lists the items that  
42 shall be included in the contract, or may be provided as an attachment.

1 (2) This section does not apply to service and repair contracts that are subject to  
2 Section 7159.10, provided the contract for the applicable services complies with  
3 Sections 7159.10 to 7159.14, inclusive.

4 (3) This section does not apply to the sale, installation, and servicing of a fire  
5 alarm sold in conjunction with an alarm system, as defined in subdivision (n) of  
6 Section 7590.1, provided all costs attributable to making the fire alarm system  
7 operable, including sale and installation costs, do not exceed five hundred dollars  
8 (\$500), and the licensee complies with the requirements set forth in Section  
9 7159.9.

10 (4) This section does not apply to any costs associated with monitoring a burglar  
11 or fire alarm system.

12 (5) Failure by the licensee, his or her agent or salesperson, or by a person subject  
13 to be licensed under this chapter, to provide the specified information, notices, and  
14 disclosures in the contract, or to otherwise fail to comply with any provision of  
15 this section, is cause for discipline.

16 (b) For purposes of this section, “home improvement contract” means an  
17 agreement, whether oral or written, or contained in one or more documents,  
18 between a contractor and an owner or between a contractor and a tenant,  
19 regardless of the number of residence or dwelling units contained in the building  
20 in which the tenant resides, if the work is to be performed in, to, or upon the  
21 residence or dwelling unit of the tenant, for the performance of a home  
22 improvement, as defined in Section 7151, and includes all labor, services, and  
23 materials to be furnished and performed thereunder, if the aggregate contract price  
24 specified in one or more improvement contracts, including all labor, services, and  
25 materials to be furnished by the contractor, exceeds five hundred dollars (\$500).  
26 “Home improvement contract” also means an agreement, whether oral or written,  
27 or contained in one or more documents, between a salesperson, whether or not he  
28 or she is a home improvement salesperson, and an owner or a tenant, regardless of  
29 the number of residence or dwelling units contained in the building in which the  
30 tenant resides, which provides for the sale, installation, or furnishing of home  
31 improvement goods or services.

32 (c) In addition to the specific requirements listed under this section, every home  
33 improvement contract and any person subject to licensure under this chapter or his  
34 or her agent or salesperson shall comply with all of the following:

35 (1) The writing shall be legible.

36 (2) Any printed form shall be readable. Unless a larger typeface is specified in  
37 this article, text in any printed form shall be in at least 10-point typeface and the  
38 headings shall be in at least 10-point boldface type.

39 (3)(A) Before any work is started, the contractor shall give the buyer a copy of  
40 the contract signed and dated by both the contractor and the buyer. The buyer’s  
41 receipt of the copy of the contract initiates the buyer’s rights to cancel the contract  
42 pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

1 (B) The contract shall contain on the first page, in a typeface no smaller than  
2 that generally used in the body of the document, both of the following:

3 (i) The date the buyer signed the contract.

4 (ii) The name and address of the contractor to which the applicable “Notice of  
5 Cancellation” is to be mailed, immediately preceded by a statement advising the  
6 buyer that the “Notice of Cancellation” may be sent to the contractor at the address  
7 noted on the contract.

8 (4) A statement that, upon satisfactory payment being made for any portion of  
9 the work performed, the contractor shall, prior to any further payment being made,  
10 furnish to the person contracting for the home improvement or swimming pool  
11 work a full and unconditional release from any claim or mechanic’s lien pursuant  
12 to Section ~~3114~~ 8410 of the Civil Code for that portion of the work for which  
13 payment has been made.

14 (5) A change-order form for changes or extra work shall be incorporated into the  
15 contract and shall become part of the contract only if it is in writing and signed by  
16 the parties prior to the commencement of any work covered by a change order.

17 (6) The contract shall contain, in close proximity to the signatures of the owner  
18 and contractor, a notice stating that the owner or tenant has the right to require the  
19 contractor to have a performance and payment bond.

20 (7) If the contract provides for a contractor to furnish joint control, the  
21 contractor shall not have any financial or other interest in the joint control.

22 (8) The provisions of this section are not exclusive and do not relieve the  
23 contractor from compliance with any other applicable provision of law.

24 (d) A home improvement contract and any changes to the contract shall be in  
25 writing and signed by the parties to the contract prior to the commencement of any  
26 work covered by the contract or applicable change order and, except as provided  
27 in paragraph (8) of subdivision (a) of Section 7159.5, shall include or comply with  
28 all of the following:

29 (1) The name, business address, and license number of the contractor.

30 (2) If applicable, the name and registration number of the home improvement  
31 salesperson that solicited or negotiated the contract.

32 (3) The following heading on the contract form that identifies the type of  
33 contract in at least 10-point boldface type: “Home Improvement.”

34 (4) The following statement in at least 12-point boldface type: “You are entitled  
35 to a completely filled in copy of this agreement, signed by both you and the  
36 contractor, before any work may be started.”

37 (5) The heading: “Contract Price,” followed by the amount of the contract in  
38 dollars and cents.

39 (6) If a finance charge will be charged, the heading: “Finance Charge,” followed  
40 by the amount in dollars and cents. The finance charge is to be set out separately  
41 from the contract amount.

42 (7) The heading: “Description of the Project and Description of the Significant  
43 Materials to be Used and Equipment to be Installed,” followed by a description of

1 the project and a description of the significant materials to be used and equipment  
2 to be installed. For swimming pools, the project description required under this  
3 paragraph also shall include a plan and scale drawing showing the shape, size,  
4 dimensions, and the construction and equipment specifications.

5 (8) If a downpayment will be charged, the details of the downpayment shall be  
6 expressed in substantially the following form, and shall include the text of the  
7 notice as specified in subparagraph (C):

8 (A) The heading: “Down Payment.”

9 (B) A space where the actual downpayment appears.

10 (C) The following statement in at least 12-point boldface type:

11 **“THE DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF**  
12 **THE CONTRACT PRICE, WHICHEVER IS LESS.”**

13 (9) If any payments, other than the downpayment, are to be made before the  
14 project is completed, the details of these payments, known as progress payments,  
15 shall be expressed in substantially the following form, and shall include the text of  
16 the statement as specified in subparagraph (C):

17 (A) A schedule of progress payments shall be preceded by the heading:  
18 “Schedule of Progress Payments.”

19 (B) Each progress payment shall be stated in dollars and cents and specifically  
20 reference the amount of work or services to be performed and any materials and  
21 equipment to be supplied.

22 (C) The section of the contract reserved for the progress payments shall include  
23 the following statement in at least 12-point boldface type:

24 **“The schedule of progress payments must specifically describe each phase of**  
25 **work, including the type and amount of work or services scheduled to be supplied**  
26 **in each phase, along with the amount of each proposed progress payment. IT IS**  
27 **AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR**  
28 **WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET**  
29 **DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A**  
30 **DOWNPAYMENT.”**

31 (10) The contract shall address the commencement of work to be performed in  
32 substantially the following form:

33 (A) A statement that describes what constitutes substantial commencement of  
34 work under the contract.

35 (B) The heading: “Approximate Start Date.”

36 (C) The approximate date on which work will be commenced.

37 (11) The estimated completion date of the work shall be referenced in the  
38 contract in substantially the following form:

39 (A) The heading: “Approximate Completion Date.”

40 (B) The approximate date of completion.

41 (12) If applicable, the heading: “List of Documents to be Incorporated into the  
42 Contract,” followed by the list of documents incorporated into the contract.

1 (13) The heading: “Note about Extra Work and Change Orders,” followed by  
2 the following statement:

3 “Extra Work and Change Orders become part of the contract once the order is  
4 prepared in writing and signed by the parties prior to the commencement of any  
5 work covered by the new change order. The order must describe the scope of the  
6 extra work or change, the cost to be added or subtracted from the contract, and the  
7 effect the order will have on the schedule of progress payments.”

8 (e) Except as provided in paragraph (8) of subdivision (a) of Section 7159.5, all  
9 of the following notices shall be provided to the owner as part of the contract form  
10 as specified or, if otherwise authorized under this subdivision, may be provided as  
11 an attachment to the contract:

12 (1) A notice concerning commercial general liability insurance. This notice may  
13 be provided as an attachment to the contract if the contract includes the following  
14 statement: “A notice concerning commercial general liability insurance is attached  
15 to this contract.” The notice shall include the heading “Commercial General  
16 Liability Insurance (CGL),” followed by whichever of the following statements is  
17 both relevant and correct:

18 (A) “(The name on the license or ‘This contractor’) does not carry commercial  
19 general liability insurance.”

20 (B) “(The name on the license or ‘This contractor’) carries commercial general  
21 liability insurance written by (the insurance company). You may call the  
22 (insurance company) at \_\_\_\_\_ to check the contractor’s insurance  
23 coverage.”

24 (C) “(The name on the license or ‘This contractor’) is self-insured.”

25 (2) A notice concerning workers’ compensation insurance. This notice may be  
26 provided as an attachment to the contract if the contract includes the statement: “A  
27 notice concerning workers’ compensation insurance is attached to this contract.”  
28 The notice shall include the heading “Workers’ Compensation Insurance”  
29 followed by whichever of the following statements is correct:

30 (A) “(The name on the license or ‘This contractor’) has no employees and is  
31 exempt from workers’ compensation requirements.”

32 (B) “(The name on the license or ‘This contractor’) carries workers’  
33 compensation insurance for all employees.”

34 (3) A notice that provides the buyer with the following information about the  
35 performance of extra or change-order work:

36 (A) A statement that the buyer may not require a contractor to perform extra or  
37 change-order work without providing written authorization prior to the  
38 commencement of any work covered by the new change order.

39 (B) A statement informing the buyer that extra work or a change order is not  
40 enforceable against a buyer unless the change order also identifies all of the  
41 following in writing prior to the commencement of any work covered by the new  
42 change order:

43 (i) The scope of work encompassed by the order.

- 1 (ii) The amount to be added or subtracted from the contract.
- 2 (iii) The effect the order will make in the progress payments or the completion
- 3 date.

4 (C) A statement informing the buyer that the contractor's failure to comply with  
5 the requirements of this paragraph does not preclude the recovery of compensation  
6 for work performed based upon legal or equitable remedies designed to prevent  
7 unjust enrichment.

8 (4) A notice with the heading "Mechanics' Lien Warning" written as follows:

9 "MECHANICS LIEN WARNING:

10 Anyone who helps improve your property, but who is not paid, may record what  
11 is called a mechanics' lien on your property. A mechanics' lien is a claim, like a  
12 mortgage or home equity loan, made against your property and recorded with the  
13 county recorder.

14 Even if you pay your contractor in full, unpaid subcontractors, suppliers, and  
15 laborers who helped to improve your property may record mechanics' liens and  
16 sue you in court to foreclose the lien. If a court finds the lien is valid, you could be  
17 forced to pay twice or have a court officer sell your home to pay the lien. Liens  
18 can also affect your credit.

19 To preserve their right to record a lien, each subcontractor and material supplier  
20 must provide you with a document called a '~~20-day~~ Preliminary Notice.' This  
21 notice is not a lien. The purpose of the notice is to let you know that the person  
22 who sends you the notice has the right to record a lien on your property if he or  
23 she is not paid.

24 BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the  
25 subcontractor starts work or the supplier provides material. This can be a big  
26 problem if you pay your contractor before you have received the Preliminary  
27 Notices.

28 You will not get Preliminary Notices from your prime contractor or from  
29 laborers who work on your project. The law assumes that you already know they  
30 are improving your property.

31 PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by  
32 getting a list from your contractor of all the subcontractors and material suppliers  
33 that work on your project. Find out from your contractor when these  
34 subcontractors started work and when these suppliers delivered goods or materials.  
35 Then wait 20 days, paying attention to the Preliminary Notices you receive.

36 PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint  
37 check. When your contractor tells you it is time to pay for the work of a  
38 subcontractor or supplier who has provided you with a Preliminary Notice, write a  
39 joint check payable to both the contractor and the subcontractor or material  
40 supplier.

41 For other ways to prevent liens, visit CSLB's Web site at [www.cslb.ca.gov](http://www.cslb.ca.gov) or  
42 call CSLB at 800-321-CSLB (2752).



1 REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN  
2 PLACED ON YOUR HOME. This can mean that you may have to pay twice, or  
3 face the forced sale of your home to pay what you owe.”

4 (5) The following notice shall be provided in at least 12-point typeface:  
5 “Information about the Contractors’ State License Board (CSLB): CSLB is the  
6 state consumer protection agency that licenses and regulates construction  
7 contractors.

8 Contact CSLB for information about the licensed contractor you are  
9 considering, including information about disclosable complaints, disciplinary  
10 actions and civil judgments that are reported to CSLB.

11 Use only licensed contractors. If you file a complaint against a licensed  
12 contractor within the legal deadline (usually four years), CSLB has authority to  
13 investigate the complaint. If you use an unlicensed contractor, CSLB may not be  
14 able to help you resolve your complaint. Your only remedy may be in civil court,  
15 and you may be liable for damages arising out of any injuries to the unlicensed  
16 contractor or the unlicensed contractor’s employees.

17 For more information:

18 Visit CSLB’s Web site at [www.cslb.ca.gov](http://www.cslb.ca.gov)

19 Call CSLB at 800-321-CSLB (2752)

20 Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

21 (6)(A) The notice set forth in subparagraph (B) and entitled “Three-Day Right to  
22 Cancel,” shall be provided to the buyer unless the contract is:

23 (i) Negotiated at the contractor’s place of business.

24 (ii) Subject to the “Seven-Day Right to Cancel,” as set forth in paragraph (8).

25 (iii) Subject to licensure under the Alarm Company Act (Chapter 11.6  
26 commencing with Section 7590)), provided the alarm company licensee complies  
27 with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

28 (B) “Three-Day Right to Cancel

29 “You, the buyer, have the right to cancel this contract within three business  
30 days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice  
31 to the contractor at the contractor’s place of business by midnight of the third  
32 business day after you received a signed and dated copy of the contract that  
33 includes this notice. Include your name, your address, and the date you received  
34 the signed copy of the contract and this notice.

35 If you cancel, the contractor must return to you anything you paid within 10  
36 days of receiving the notice of cancellation. For your part, you must make  
37 available to the contractor at your residence, in substantially as good condition as  
38 you received it, any goods delivered to you under this contract or sale. Or, you  
39 may, if you wish, comply with the contractor’s instructions on how to return the  
40 goods at the contractor’s expense and risk. If you do make the goods available to  
41 the contractor and the contractor does not pick them up within 20 days of the date  
42 of your notice of cancellation, you may keep them without any further obligation.  
43 If you fail to make the goods available to the contractor, or if you agree to return

1 the goods to the contractor and fail to do so, then you remain liable for  
2 performance of all obligations under the contract.”

3 (C) The “Three-Day Right to Cancel” notice required by this paragraph shall  
4 comply with all of the following:

5 (i) The text of the notice is at least 12-point boldface type.

6 (ii) The notice is in immediate proximity to a space reserved for the owner’s  
7 signature.

8 (iii) The owner acknowledges receipt of the notice by signing and dating the  
9 notice form in the signature space.

10 (iv) The notice is written in the same language, e.g., Spanish, as that principally  
11 used in any oral sales presentation.

12 (v) The notice may be attached to the contract if the contract includes, in at least  
13 12-point boldface type, a checkbox with the following statement: “The law  
14 requires that the contractor give you a notice explaining your right to cancel.  
15 Initial the checkbox if the contractor has given you a ‘Notice of the Three-Day  
16 Right to Cancel.’”

17 (vi) The notice shall be accompanied by a completed form in duplicate,  
18 captioned “Notice of Cancellation,” which shall also be attached to the agreement  
19 or offer to purchase and be easily detachable, and which shall contain the  
20 following statement written in the same language, e.g., Spanish, as used in the  
21 contract:

22 “Notice of Cancellation”

23 /enter date of transaction/  
24 \_\_\_\_\_

25 (Date)

26 “You may cancel this transaction, without any penalty or obligation, within  
27 three business days from the above date.

28 If you cancel, any property traded in, any payments made by you under the  
29 contract or sale, and any negotiable instrument executed by you will be returned  
30 within 10 days following receipt by the seller of your cancellation notice, and any  
31 security interest arising out of the transaction will be canceled.

32 If you cancel, you must make available to the seller at your residence, in  
33 substantially as good condition as when received, any goods delivered to you  
34 under this contract or sale, or you may, if you wish, comply with the instructions  
35 of the seller regarding the return shipment of the goods at the seller’s expense and  
36 risk.

37 If you do make the goods available to the seller and the seller does not pick them  
38 up within 20 days of the date of your notice of cancellation, you may retain or  
39 dispose of the goods without any further obligation. If you fail to make the goods  
40 available to the seller, or if you agree to return the goods to the seller and fail to do  
41 so, then you remain liable for performance of all obligations under the contract.”

42 To cancel this transaction, mail or deliver a signed and dated copy of this

1 cancellation notice, or any other written notice, or send a telegram  
2 to \_\_\_\_\_,  
3 /name of seller/  
4 at \_\_\_\_\_  
5 /address of seller's place of business/  
6 not later than midnight of \_\_\_\_\_.

7 (Date)

8 I hereby cancel this transaction. \_\_\_\_\_

9 (Date)

10 \_\_\_\_\_  
11 (Buyer's signature)

12 (7)(A) The following notice entitled "Seven-Day Right to Cancel" shall be  
13 provided to the buyer for any contract that is written for the repair or restoration of  
14 residential premises damaged by any sudden or catastrophic event for which a  
15 state of emergency has been declared by the President of the United States or the  
16 Governor, or for which a local emergency has been declared by the executive  
17 officer or governing body of any city, county, or city and county:

18 "Seven-Day Right to Cancel

19 You, the buyer, have the right to cancel this contract within seven business days.  
20 You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the  
21 contractor at the contractor's place of business by midnight of the seventh business  
22 day after you received a signed and dated copy of the contract that includes this  
23 notice. Include your name, your address, and the date you received the signed  
24 copy of the contract and this notice.

25 If you cancel, the contractor must return to you anything you paid within 10  
26 days of receiving the notice of cancellation. For your part, you must make  
27 available to the contractor at your residence, in substantially as good condition as  
28 you received it, any goods delivered to you under this contract or sale. Or, you  
29 may, if you wish, comply with the contractor's instructions on how to return the  
30 goods at the contractor's expense and risk. If you do make the goods available to  
31 the contractor and the contractor does not pick them up within 20 days of the date  
32 of your notice of cancellation, you may keep them without any further obligation.  
33 If you fail to make the goods available to the contractor, or if you agree to return  
34 the goods to the contractor and fail to do so, then you remain liable for  
35 performance of all obligations under the contract."

36 (B) The "Seven-Day Right to Cancel" notice required by this subdivision shall  
37 comply with all of the following:

38 (i) The text of the notice is at least 12-point boldface type.

39 (ii) The notice is in immediate proximity to a space reserved for the owner's  
40 signature.

41 (iii) The owner acknowledges receipt of the notice by signing and dating the  
42 notice form in the signature space.

1 (iv) The notice is written in the same language, e.g., Spanish, as that principally  
2 used in any oral sales presentation.

3 (v) The notice may be attached to the contract if the contract includes, in at least  
4 12-point boldface type, a checkbox with the following statement: “The law  
5 requires that the contractor give you a notice explaining your right to cancel.  
6 Initial the checkbox if the contractor has given you a ‘Notice of the Seven-Day  
7 Right to Cancel.’” ‘

8 (vi) The notice shall be accompanied by a completed form in duplicate,  
9 captioned “Notice of Cancellation,” which shall also be attached to the agreement  
10 or offer to purchase and be easily detachable, and which shall contain the  
11 following statement written in the same language, e.g., Spanish, as used in the  
12 contract:

13 “Notice of Cancellation”

14 /enter date of transaction/  
15 \_\_\_\_\_

16 (Date)

17 “You may cancel this transaction, without any penalty or obligation, within  
18 seven business days from the above date.

19 If you cancel, any property traded in, any payments made by you under the  
20 contract or sale, and any negotiable instrument executed by you will be returned  
21 within 10 days following receipt by the seller of your cancellation notice, and any  
22 security interest arising out of the transaction will be canceled.

23 If you cancel, you must make available to the seller at your residence, in  
24 substantially as good condition as when received, any goods delivered to you  
25 under this contract or sale, or you may, if you wish, comply with the instructions  
26 of the seller regarding the return shipment of the goods at the seller’s expense and  
27 risk.

28 If you do make the goods available to the seller and the seller does not pick them  
29 up within 20 days of the date of your notice of cancellation, you may retain or  
30 dispose of the goods without any further obligation. If you fail to make the goods  
31 available to the seller, or if you agree to return the goods to the seller and fail to do  
32 so, then you remain liable for performance of all obligations under the contract.”  
33 To cancel this transaction, mail or deliver a signed and dated copy of this  
34 cancellation notice, or any other written notice, or send a telegram  
35 to \_\_\_\_\_,

36 /name of seller/

37 at \_\_\_\_\_

38 /address of seller’s place of business/

39 not later than midnight of \_\_\_\_\_.

40 (Date)

41 I hereby cancel this transaction.

42 \_\_\_\_\_

43 (Date)

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(Buyer's signature)

**Comment.** Paragraph (4) of subdivision (c) of Section 7159 is amended to correct a cross-reference.

Paragraph (4) of subdivision (e) is amended to add a non-substantive clarification. See Civ. Code § 8034 ("preliminary notice").

**Bus. & Prof. Code § 7159.1 (amended). Notice to buyer**

SEC. \_\_\_\_\_. Section 7159.1 of the Business and Professions Code is amended to read:

7159.1. (a) In any contract for the sale of home improvement goods or services offered by door-to-door sale that contains or is secured by a lien on real property, the contract shall be accompanied by the following notice in 18-point boldfaced type:

"WARNING TO BUYER: IF YOU SIGN THE CONTRACT WHICH ACCOMPANIES THIS NOTICE, YOU WILL BE PUTTING UP YOUR HOME AS SECURITY. THIS MEANS THAT YOUR HOME COULD BE SOLD WITHOUT YOUR PERMISSION AND WITHOUT ANY COURT ACTION IF YOU MISS ANY PAYMENT REQUIRED BY THIS CONTRACT."

This notice shall be written in the same language as the rest of the contract. It shall be on a separate piece of paper from the rest of the contract and shall be signed and dated by the buyer. The home improvement contractor or home improvement salesperson shall deliver to the buyer at the time of the buyer's signing and dating of the notice a legible copy of the signed and dated notice. A security interest created in any contract described in this section that does not provide the notice as required by this section shall be void and unenforceable.

(b) This section shall not apply to any of the following:

(a) (1) Any contract that is subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

(b) (2) A mechanic's lien established pursuant to ~~Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section 8400) of Part 6 of Division 4 of the Civil Code.

(c) (3) Any contract that is subject to subdivision (a) of Section 7159.2.

**Comment.** Section 7159.1 is amended to correct a cross-reference, and make a stylistic revision.

**Bus. & Prof. Code § 7159.5 (amended). Home improvement contract violation**

SEC. \_\_\_\_\_. Section 7159.5 of the Business and Professions Code is amended to read:

7159.5. This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

1 (a) Failure by the licensee or a person subject to be licensed under this chapter,  
2 or by his or her agent or salesperson, to comply with the following provisions is  
3 cause for discipline:

4 (1) The contract shall be in writing and shall include the agreed contract amount  
5 in dollars and cents. The contract amount shall include the entire cost of the  
6 contract, including profit, labor, and materials, but excluding finance charges.

7 (2) If there is a separate finance charge between the contractor and the person  
8 contracting for home improvement, the finance charge shall be set out separately  
9 from the contract amount.

10 (3) If a downpayment will be charged, the downpayment may not exceed one  
11 thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

12 (4) If, in addition to a downpayment, the contract provides for payments to be  
13 made prior to completion of the work, the contract shall include a schedule of  
14 payments in dollars and cents specifically referencing the amount of work or  
15 services to be performed and any materials and equipment to be supplied.

16 (5) Except for a downpayment, the contractor may neither request nor accept  
17 payment that exceeds the value of the work performed or material delivered.

18 (6) Upon any payment by the person contracting for home improvement, and  
19 prior to any further payment being made, the contractor shall, if requested, obtain  
20 and furnish to the person a full and unconditional release from any potential lien  
21 claimant claim or mechanic's lien pursuant to Section ~~3114~~ 8410 of the Civil Code  
22 for any portion of the work for which payment has been made. The person  
23 contracting for home improvement may withhold all further payments until these  
24 releases are furnished.

25 (7) If the contract provides for a payment of a salesperson's commission out of  
26 the contract price, that payment shall be made on a pro rata basis in proportion to  
27 the schedule of payments made to the contractor by the disbursing party in  
28 accordance with paragraph (4).

29 (8) A contractor furnishing a performance and payment bond, lien and  
30 completion bond, or a bond equivalent or joint control approved by the registrar  
31 covering full performance and payment is exempt from paragraphs (3), (4), and  
32 (5), and need not include, as part of the contract, the statement regarding the  
33 downpayment specified in subparagraph (C) of paragraph (8) of subdivision (d) of  
34 Section 7159, the details and statement regarding progress payments specified in  
35 paragraph (9) of subdivision (d) of Section 7159, or the Mechanics' Lien Warning  
36 specified in paragraph (4) of subdivision (e) of Section 7159. A contractor  
37 furnishing these bonds, bond equivalents, or a joint control approved by the  
38 registrar may accept payment prior to completion. If the contract provides for a  
39 contractor to furnish joint control, the contractor shall not have any financial or  
40 other interest in the joint control.

41 (b) A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a  
42 person subject to be licensed under this chapter, or by his or her agent or  
43 salesperson, is a misdemeanor punishable by a fine of not less than one hundred

1 dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in  
2 a county jail not exceeding one year, or by both that fine and imprisonment.

3 (1) An indictment or information against a person who is not licensed but who is  
4 required to be licensed under this chapter shall be brought, or a criminal complaint  
5 filed, for a violation of this section, in accordance with paragraph (4) of  
6 subdivision (d) of Section 802 of the Penal Code, within four years from the date  
7 of the contract or, if the contract is not reduced to writing, from the date the buyer  
8 makes the first payment to the contractor.

9 (2) An indictment or information against a person who is licensed under this  
10 chapter shall be brought, or a criminal complaint filed, for a violation of this  
11 section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the  
12 Penal Code, within two years from the date of the contract or, if the contract is not  
13 reduced to writing, from the date the buyer makes the first payment to the  
14 contractor.

15 (3) The limitations on actions in this subdivision shall not apply to any  
16 administrative action filed against a licensed contractor.

17 (c) Any person who violates this section as part of a plan or scheme to defraud  
18 an owner or tenant of a residential or nonresidential structure, including a  
19 mobilehome or manufactured home, in connection with the offer or performance  
20 of repairs to the structure for damage caused by a natural disaster, shall be ordered  
21 by the court to make full restitution to the victim based on the person's ability to  
22 pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In  
23 addition to full restitution, and imprisonment authorized by this section, the court  
24 may impose a fine of not less than five hundred dollars (\$500) nor more than  
25 twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay.  
26 This subdivision applies to natural disasters for which a state of emergency is  
27 proclaimed by the Governor pursuant to Section 8625 of the Government Code, or  
28 for which an emergency or major disaster is declared by the President of the  
29 United States.

30 **Comment.** Paragraph (6) of subdivision (a) of Section 7159.5 is amended to correct a cross-  
31 reference.

32 **Bus. & Prof. Code § 7159.14 (amended). Service and repair contract**

33 SEC. \_\_\_\_\_. Section 7159.14 of the Business and Professions Code is amended  
34 to read:

35 7159.14. (a) This section applies to a service and repair contract as defined in  
36 Section 7159.10. A violation of this section by a licensee or a person subject to be  
37 licensed under this chapter, or by his or her agent or salesperson, is cause for  
38 discipline.

39 (1) The contract may not exceed seven hundred fifty dollars (\$750).

40 (2) The contract shall be in writing and shall state the agreed contract amount,  
41 which may be stated as either a fixed contract amount in dollars and cents or, if a

1 time and materials formula is used, as an estimated contract amount in dollars and  
2 cents.

3 (3) The contract amount shall include the entire cost of the contract including  
4 profit, labor, and materials, but excluding finance charges.

5 (4) The actual contract amount of a time and materials contract may not exceed  
6 the estimated contract amount without written authorization from the buyer.

7 (5) The prospective buyer must have initiated contact with the contractor to  
8 request work.

9 (6) The contractor may not sell the buyer goods or services beyond those  
10 reasonably necessary to take care of the particular problem that caused the buyer  
11 to contact the contractor.

12 (7) No payment may be due before the project is completed.

13 (8) A service and repair contractor may charge only one service charge. For  
14 purposes of this chapter, a service charge includes such charges as a service or trip  
15 charge, or an inspection fee.

16 (9) A service and repair contractor charging a service charge must disclose in all  
17 advertisements that there is a service charge and, when the customer initiates the  
18 call for service, must disclose the amount of the service charge.

19 (10) The service and repair contractor must offer to the customer any parts that  
20 were replaced.

21 (11) Upon any payment by the buyer, the contractor shall, if requested, obtain  
22 and furnish to the buyer a full and unconditional release from any potential lien  
23 claimant claim or mechanic's lien pursuant to Section ~~3114~~ 8410 of the Civil Code  
24 for any portion of the work for which payment has been made.

25 (b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of subdivision (a) by  
26 a licensee or a person subject to be licensed under this chapter, or by his or her  
27 agent or salesperson, is a misdemeanor punishable by a fine of not less than one  
28 hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by  
29 imprisonment in a county jail not exceeding one year, or by both that fine and  
30 imprisonment.

31 (1) An indictment or information against a person who is not licensed but who is  
32 required to be licensed under this chapter shall be brought, or a criminal complaint  
33 filed, for a violation of this section, in accordance with paragraph (4) of  
34 subdivision (d) of Section 802 of the Penal Code, within four years from the date  
35 of the contract or, if the contract is not reduced to writing, from the date the buyer  
36 makes the first payment to the contractor.

37 (2) An indictment or information against a person who is licensed under this  
38 chapter shall be brought, or a criminal complaint filed, for a violation of this  
39 section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the  
40 Penal Code, within two years from the date of the contract or, if the contract is not  
41 reduced to writing, from the date the buyer makes the first payment to the  
42 contractor.



1 (3) The limitations on actions in this subdivision shall not apply to any  
2 administrative action filed against a licensed contractor.

3 (c) Any person who violates this section as part of a plan or scheme to defraud  
4 an owner or tenant of a residential or nonresidential structure, including a  
5 mobilehome or manufactured home, in connection with the offer or performance  
6 of repairs to the structure for damage caused by a natural disaster, shall be ordered  
7 by the court to make full restitution to the victim based on the person's ability to  
8 pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In  
9 addition to full restitution, and imprisonment authorized by this section, the court  
10 may impose a fine of not less than five hundred dollars (\$500) nor more than  
11 twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay.  
12 This subdivision applies to natural disasters for which a state of emergency is  
13 proclaimed by the Governor pursuant to Section 8625 of the Government Code, or  
14 for which an emergency or major disaster is declared by the President of the  
15 United States.

16 **Comment.** Section 7159.14 is amended to correct a cross-reference.

17 **Bus. & Prof. Code § 7164 (amended). Contract for construction of single-family dwelling**

18 SEC. \_\_\_\_\_. Section 7164 of the Business and Professions Code is amended to  
19 read:

20 7164. (a) Notwithstanding Section 7044, every contract and any changes in a  
21 contract, between an owner and a contractor, for the construction of a single-  
22 family dwelling to be retained by the owner for at least one year shall be  
23 evidenced in writing signed by both parties.

24 (b) The writing shall contain the following:

25 (1) The name, address, and license number of the contractor.

26 (2) The approximate dates when the work will begin and be substantially  
27 completed.

28 (3) A legal description of the location where the work will be done.

29 (4) A statement with the heading "Mechanics' Lien Warning" as follows:

30 "MECHANICS LIEN WARNING:

31 Anyone who helps improve your property, but who is not paid, may record what  
32 is called a mechanics' lien on your property. A mechanics' lien is a claim, like a  
33 mortgage or home equity loan, made against your property and recorded with the  
34 county recorder.

35 Even if you pay your contractor in full, unpaid subcontractors, suppliers, and  
36 laborers who helped to improve your property may record mechanics' liens and  
37 sue you in court to foreclose the lien. If a court finds the lien is valid, you could be  
38 forced to pay twice or have a court officer sell your home to pay the lien. Liens  
39 can also affect your credit.

40 To preserve their right to record a lien, each subcontractor and material supplier  
41 must provide you with a document called a '~~20-day~~ Preliminary Notice.' This  
42 notice is not a lien. The purpose of the notice is to let you know that the person

1 who sends you the notice has the right to record a lien on your property if he or  
2 she is not paid.

3 BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the  
4 subcontractor starts work or the supplier provides material. This can be a big  
5 problem if you pay your contractor before you have received the Preliminary  
6 Notices.

7 You will not get Preliminary Notices from your prime contractor or other  
8 persons you contract with directly or from laborers who work on your project. The  
9 law assumes that you already know they are improving your property.

10 PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by  
11 getting a list from your contractor of all the subcontractors and material suppliers  
12 that work on your project. Find out from your contractor when these  
13 subcontractors started work and when these suppliers delivered goods or materials.  
14 Then wait 20 days, paying attention to the Preliminary Notices you receive.

15 PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint  
16 check. When your contractor tells you it is time to pay for the work of a  
17 subcontractor or supplier who has provided you with a Preliminary Notice, write a  
18 joint check payable to both the contractor and the subcontractor or material  
19 supplier.

20 For other ways to prevent liens, visit CSLB's Web site at [www.cslb.ca.gov](http://www.cslb.ca.gov) or  
21 call CSLB at 800-321-CSLB (2752).

22 REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN  
23 PLACED ON YOUR HOME. This can mean that you may have to pay twice, or  
24 face the forced sale of your home to pay what you owe.”

25 (5) (A) A statement prepared by the board through regulation that emphasizes  
26 the value of commercial general liability insurance and encourages the owner to  
27 verify the contractor's insurance coverage and status.

28 (B) A check box indicating whether or not the contractor carries commercial  
29 general liability insurance, and if that is the case, the name and the telephone  
30 number of the insurer.

31 (c) The writing may also contain other matters agreed to by the parties to the  
32 contract. The writing shall be legible and shall clearly describe any other  
33 document which is to be incorporated into the contract. Prior to commencement of  
34 any work, the owner shall be furnished a copy of the written agreement, signed by  
35 the contractor. The provisions of this section are not exclusive and do not relieve  
36 the contractor from compliance with all other applicable provisions of law.

37 (d) Every contract subject to the provisions of this section shall contain, in close  
38 proximity to the signatures of the owner and contractor, a notice in at least 10-  
39 point bold type or in all capital letters, stating that the owner has the right to  
40 require the contractor to have a performance and payment bond and that the  
41 expense of the bond may be borne by the owner.

1 (e) The requirements in paragraph (5) of subdivision (b) shall become operative  
2 three months after the board adopts the regulations referenced in subparagraph (A)  
3 of paragraph (5) of subdivision (b).

4 (f) This section shall become operative on January 1, 2006.

5 **Comment.** Paragraph (4) of subdivision (a) of Section 7164 is amended to correct terminology  
6 and to add a non-substantive clarification. See Civ. Code § 8034 (“preliminary notice”).

7 **Bus. & Prof. Code § 8513 (amended). Notice to owner by pest control company**

8 SEC. \_\_\_\_\_. Section 8513 of the Business and Professions Code is amended to  
9 read:

10 8513. (a) The board shall prescribe a form entitled “Notice to Owner” that shall  
11 describe, in nontechnical language and in a clear and coherent manner using words  
12 with common and everyday meaning, the pertinent provisions of this state’s  
13 mechanics’ lien laws and the rights and responsibilities of an owner of property  
14 and a registered pest control company thereunder. Each company registered under  
15 this chapter, prior to entering into a contract with an owner for work for which a  
16 company registration is required, shall give a copy of this “Notice to Owner” to  
17 the owner, his or her agent, or the payer.

18 (b) No company that is required to be registered under this chapter shall require  
19 or request a waiver of lien rights from any subcontractor, employee, or supplier.

20 (c) Each company registered under this chapter that acts as a subcontractor for  
21 another company registered under this chapter shall, within 20 days of  
22 commencement of any work for which a company registration is required, give the  
23 preliminary ~~20 day notice (private work) in accordance with the provisions of~~  
24 ~~Section 3097~~ notice in accordance with Chapter 2 (commencing with Section  
25 8200) of Part 6 of Division 4 of the Civil Code, to the owner, his or her agent, or  
26 the payer.

27 (d) Each company registered under this chapter that acts as a prime contractor  
28 for work for which a company registration is required shall, prior to accepting  
29 payment for the work, furnish to the owner, his or her agent, or the payer a full and  
30 unconditional release from any claim of mechanics’ lien by any subcontractor  
31 entitled to enforce a mechanics’ lien pursuant to Section ~~3114~~ 8172 of the Civil  
32 Code.

33 (e) Each company registered under this chapter that subcontracts to another  
34 company registered under this chapter work for which a company registration is  
35 required shall furnish to the subcontractor the name of the owner, his or her agent,  
36 or the payer.

37 (f) The provisions of this section shall be applicable only to those registered  
38 companies, as defined in Section 8506.1, operating pursuant to a Branch 1 or  
39 Branch 3 registration.

40 (g) A violation of the provisions of this section is a ground for disciplinary  
41 action.

42 **Comment.** Section 8513 is amended to correct cross-references and terminology.

1 **Bus. & Prof. Code § 17577.5 (amended). Contract for home water treatment device**

2 SEC. \_\_\_\_\_. Section 17577.5 of the Business and Professions Code is amended  
3 to read:

4 17577.5. (a) No contract or offer for the sale, lease, or rental of a home water  
5 treatment device and no purchase money loan, as defined in subdivision (b), shall  
6 provide for a lien on real property. Any lien taken in violation of this section is  
7 void and unenforceable.

8 (b) For the purpose of this section, “purchase money loan” means a loan or an  
9 advance under an open-end credit account if both of the following occur:

10 (1) The primary purpose of the loan or the primary purpose of establishing the  
11 open-end credit account is to finance all or a portion of the purchase price or any  
12 of the lease or rental payments for a water treatment device.

13 (2) The creditor knows the primary purpose of the loan or the primary purpose  
14 of establishing the open-end credit account when the loan is initially made or the  
15 open-end credit account is established.

16 (c) The creditor shall be deemed to know that the primary purpose of the loan or  
17 the primary purpose of establishing the open-end credit account is the primary  
18 purpose described in paragraph (1) of subdivision (b) if any of the following  
19 occur:

20 (1) The consumer’s application for credit or any other document in the creditor’s  
21 possession before the loan is made or the open-end account is established indicates  
22 the primary purpose of the loan or the open-end credit account.

23 (2) The seller, lessor, or renter arranges or guarantees the loan or open-end  
24 account, or participates in the preparation of the consumer’s application for credit  
25 or other loan documents, or receives from the creditor a loan commission,  
26 brokerage, or referral fee.

27 (d) For the purpose of this section, “open-end credit” has the same meaning as  
28 used in Section 226.2 of Title 12 of the Code of Federal Regulations.

29 (e) This section does not apply to mechanics’ liens established pursuant to  
30 ~~Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3~~  
31 Chapter 4 (commencing with Section 8400) of Part 6 of Division 4 of the Civil  
32 Code.

33 **Comment.** Section 17577.5 is amended to correct a cross-reference.

34 CIVIL CODE

35 **Civ. Code § 1917.166 (amended). Priority of lien**

36 SEC. \_\_\_\_\_. Section 1917.166 of the Civil Code is amended to read:

37 1917.166. The lien of a shared appreciation loan, including the principal amount  
38 and all interest, whether accrued or to be accrued, and all amounts of contingent  
39 deferred interest, shall attach from the time of the recordation of the deed of trust  
40 securing the loan, and the lien, including the lien of the interest accrued or to be  
41 accrued and of the contingent deferred interest, shall have priority over any other

1 lien or encumbrance affecting the property secured by the shared appreciation  
2 instrument, recorded after the time of recordation of the shared appreciation  
3 instrument. However, nothing in this section or Section 1917.165 shall preclude a  
4 junior lien or encumbrance subordinate to the obligation of the shared appreciation  
5 loan. In no case may a junior lien achieve priority over the lien securing the  
6 obligation of the shared appreciation loan, provided that nothing in this section  
7 shall be construed to supersede Section ~~3134 of the Civil Code~~ 8450.

8 **Comment.** Section 1917.166 is amended to correct a cross-reference.

9 **Civ. Code § 1917.615 (amended). Priority of lien**

10 SEC. \_\_\_\_\_. Section 1917.615 of the Civil Code is amended to read:

11 1917.615. The lien of a shared appreciation loan for seniors, including the total  
12 loan obligation, shall attach from the time of the recordation of the deed of trust  
13 securing the loan, and the lien, including the lien of the total loan obligation  
14 accrued or to be accrued, shall have priority over any other lien or encumbrance  
15 affecting the property secured by the shared appreciation instrument and recorded  
16 after the time of recordation of the shared appreciation instrument. However,  
17 nothing in this section or Section 1917.614 shall preclude a junior lien or  
18 encumbrance subordinate to the total loan obligation of the shared appreciation  
19 loan for seniors. In no case may a junior lien achieve priority over the lien  
20 securing the total loan obligation of the shared appreciation loan, provided that  
21 nothing in this section shall be construed to supersede Section ~~3134~~ 8450.

22 **Comment.** Section 1917.615 is amended to correct a cross-reference.

23 **Civ. Code § 3059 (amended). Mechanics lien**

24 SEC. \_\_\_\_\_. Section 3059 of the Civil Code is amended to read:

25 3059. The liens of mechanics, for materials and services upon real property, are  
26 regulated by ~~Chapter 2 (commencing with Section 3109) of Title 15 of this part~~  
27 Chapter 4 (commencing with Section 8400) of Part 6 of Division 4.

28 **Comment.** Section 3059 is amended to correct a cross-reference.

29 **Civ. Code § 3060 (amended). Lien on mine**

30 SEC. \_\_\_\_\_. Section 3060 of the Civil Code is amended to read:

31 3060. (a) As used in this section, “mine” means a mining claim or real property  
32 worked as a mine.

33 (b) Any person who performs labor in ~~any mining claim or claims, or in or upon~~  
34 ~~any real property worked as a mine, either in the development thereof its~~  
35 ~~development or in working thereon~~ on it by the subtractive process, or furnishes  
36 materials to be used or consumed ~~therein~~ in it, has a lien upon the ~~same~~ mine and  
37 the works owned and used by the owners for milling or reducing the ores from the  
38 ~~same~~ mine, for the value of the work or labor done or materials furnished by each  
39 ~~respectively,~~ whether done or furnished at the instance of the owner of ~~such~~  
40 ~~mining claim or claims or real property worked as a~~ the mine, or ~~his~~ the owner’s

1 agent, and every contractor, subcontractor, superintendent, or other person having  
2 charge of any mining or work or labor performed in and about ~~such mining claim~~  
3 ~~or claims or real property worked as a~~ the mine, either as lessee or under a  
4 working bond or contract thereon shall be held to be the agent of the owner for the  
5 purposes of this section. The liens provided for by this section shall be enforced in  
6 the same manner as those provided for by ~~Title 15 (commencing with Section~~  
7 ~~3082), Part 4, Division 3~~ Part 6 (commencing with Section 8000) of Division 4.

8 **Comment.** Section 3060 is amended to correct a cross-reference. The other changes are  
9 technical.

10 **Civ. Code § 3319 (amended). Design professional private work contract**

11 SEC. \_\_\_\_\_. Section 3319 of the Civil Code is amended to read:

12 3319. (a) In each written contract for private works of improvement entered into  
13 on or after January 1, 1996, the contracting party and the design professional may  
14 agree to contractual provisions that include a late payment penalty, in lieu of any  
15 interest otherwise due. The terms of the late payment penalty shall be specifically  
16 set forth in the written contract.

17 (b) The penalty authorized pursuant to subdivision (a) shall be separate from,  
18 and in addition to, the design ~~professionals'~~ professionals liens provided by  
19 ~~Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3~~  
20 Chapter 3 (commencing with Section 8300) of Part 6 of Division 4, mechanics'  
21 mechanics liens provided by ~~Chapter 2 (commencing with Section 3109) of Title~~  
22 ~~15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section 8400) of Part 6 of  
23 Division 4, and stop notices for private works provided in Chapter 3 (commencing  
24 with Section 3156) of Title 15 of Part 4 of Division 3 stop payment notices  
25 provided by Chapter 5 (commencing with Section 8500) of Part 6 of Division 4.

26 (c) None of the rights or obligations created or permitted by this section between  
27 design professionals and contracting parties shall apply to construction loan funds  
28 held by a lender pursuant to a construction loan agreement.

29 (d) For purposes of this section, the following definitions apply:

30 (1) "Contracting party" means any person or entity entering into a written  
31 contract with a design professional for professional design services for a private  
32 work of improvement.

33 (2) "Design professional" means a person licensed as an architect pursuant to  
34 Chapter 3 (commencing with Section 5500) of Division 3 of the Business and  
35 Professions Code, registered as a professional engineer pursuant to Chapter 7  
36 (commencing with Section 6700) of Division 3 of the Business and Professions  
37 Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with  
38 Section 8700) of Division 3 of the Business and Professions Code.

39 **Comment.** Section 3319 is amended to correct cross-references and make stylistic revisions.

40 **Civ. Code § 3320 (amended). Payment to design professional on public work contract**

41 SEC. \_\_\_\_\_. Section 3320 of the Civil Code is amended to read:

1 3320. (a) In each contract for public works of improvement, entered into on or  
2 after January 1, 1996, the public agency shall pay to the prime design professional  
3 any progress payment within 30 days of receipt of a written demand for payment  
4 in accordance with the contract, and the final retention payment within 45 days of  
5 receipt of a written demand for payment in accordance with the contract. If the  
6 public agency disputes in good faith any portion of the amount due, it may  
7 withhold from the payment an amount not to exceed 150 percent of the disputed  
8 amount. The disputed amount withheld is not subject to any penalty authorized by  
9 this section.

10 (b) If any amount is wrongfully withheld or is not timely paid in violation of this  
11 section, the prime design professional shall be entitled to a penalty of 11/2 percent  
12 for the improperly withheld amount, in lieu of any interest otherwise due, per  
13 month for every month that payment is not made. In any action for the collection  
14 of amounts withheld in violation of this section, the prevailing party is entitled to  
15 his or her reasonable attorney's fees and costs.

16 (c) The penalty described in subdivision (b) is separate from, and in addition to,  
17 the design professionals' ~~liens provided by Chapter 8 (commencing with Section~~  
18 ~~3081.1) of Title 14 of Part 4 of Division 3, mechanics' liens provided by Chapter 2~~  
19 ~~(commencing with Section 3109) of Title 15 of Part 4 of Division 3, and stop~~  
20 ~~notices for public works provided in Chapter 3 (commencing with Section 3156)~~  
21 ~~of Title 15 of Part 4 of Division 3 remedies for a public works contract provided in~~  
22 Part 6 (commencing with Section 41010) of Division 2 of the Public Contract  
23 Code.

24 (d) This section does not apply to state agency contracts subject to Section 927.6  
25 of the Government Code.

26 (e) None of the rights or obligations created by this section between prime  
27 design professionals and public agencies apply to construction loan funds held by  
28 a lender pursuant to a construction loan agreement.

29 (f) For purposes of this section:

30 (1) "Public agency" means the state, any county, any city, any city and county,  
31 any district, any public authority, any public agency, any municipal corporation or  
32 other political subdivision or political corporation of the state.

33 (2) "Design professional" means a person licensed as an architect pursuant to  
34 Chapter 3 (commencing with Section 5500) of Division 3 of the Business and  
35 Professions Code, registered as a professional engineer pursuant to Chapter 7  
36 (commencing with Section 6700) of Division 3 of the Business and Professions  
37 Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with  
38 Section 8700) of Division 3 of the Business and Professions Code.

39 (3) "Prime design professional" means a design professional with a written  
40 contract directly with the public agency.

41 **Comment.** Section 3320 is amended to correct a cross-reference. The references to liens are  
42 not continued; the lien remedy is unavailable on a public works contract.

1 **Civ. Code § 3321 (amended). Payment by design professional on public work contract**

2 SEC. \_\_\_\_\_. Section 3321 of the Civil Code is amended to read:

3 3321. (a) In each contract for public works of improvement, a prime design  
4 professional shall pay to each subconsultant design professional the amount due  
5 him or her from the payment received, not later than 15 days after receipt of each  
6 progress payment or final retention payment. If the prime design professional  
7 disputes in good faith any portion of the amount due, he or she may withhold from  
8 the payment an amount not to exceed 150 percent of the disputed amount. The  
9 disputed amount withheld shall not be subject to any penalty authorized by this  
10 section.

11 (b) If any amount is wrongfully withheld or is not timely paid in violation of this  
12 section, the subconsultant design professional shall be entitled to a penalty of 11/2  
13 percent of the improperly withheld amount, in lieu of any interest otherwise due,  
14 per month, for each month that payment is not made. In any action for the  
15 collection of amounts withheld in violation of this section, the prevailing party  
16 shall be entitled to his or her reasonable attorney's fees and costs.

17 (c) The penalty described in subdivision (b) shall be separate from, and in  
18 addition to, the design professionals' ~~liens provided by Chapter 8 (commencing~~  
19 ~~with Section 3081.1) of Title 14 of Part 4 of Division 3, mechanics' liens provided~~  
20 ~~by Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3,~~  
21 ~~and stop notices for public works provided in Chapter 3 (commencing with~~  
22 ~~Section 3156) of Title 15 of Part 4 of Division 3 remedies for a public works~~  
23 ~~contract provided in Part 6 (commencing with Section 41010) of Division 2 of the~~  
24 Public Contract Code.

25 (d) None of the rights or obligations created by this section between prime  
26 design professionals and subconsultant design professionals shall apply to  
27 construction loan funds held by a lender pursuant to a construction loan  
28 agreement.

29 (e) For purposes of this section:

30 (1) "Public agency" means the state, any county, any city, any city and county,  
31 any district, any public authority, any public agency, any municipal corporation or  
32 other political subdivision or political corporation of the state.

33 (2) "Design professional" means a person licensed as an architect pursuant to  
34 Chapter 3 (commencing with Section 5500) of Division 3 of the Business and  
35 Professions Code, registered as a professional engineer pursuant to Chapter 7  
36 (commencing with Section 6700) of Division 3 of the Business and Professions  
37 Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with  
38 Section 8700) of Division 3 of the Business and Professions Code.

39 (3) "Prime design professional" means a design professional having a written  
40 contract directly with the public agency.

41 (4) "Subconsultant design professional" means a design professional having a  
42 written contract with a prime design professional.



1 **Comment.** Section 3321 is amended to correct a cross-reference. The references to liens are  
2 not continued; the lien remedy is unavailable on a public works contract.

3 CODE OF CIVIL PROCEDURE

4 **Code Civ. Proc. § 86 (amended). Classification of limited civil cases**

5 SEC. \_\_\_\_\_. Section 86 of the Code of Civil Procedure is amended to read:

6 86. (a) The following civil cases and proceedings are limited civil cases:

7 (1) ~~Cases~~ A case at law in which the demand, exclusive of interest, or the value  
8 of the property in controversy amounts to twenty-five thousand dollars (\$25,000)  
9 or less. This paragraph does not apply to ~~eases a case that involve~~ involves the  
10 legality of any tax, impost, assessment, toll, or municipal fine, except ~~actions an~~  
11 action to enforce payment of delinquent unsecured personal property taxes if the  
12 legality of the tax is not contested by the defendant.

13 (2) ~~Actions~~ An action for dissolution of partnership where the total assets of the  
14 partnership do not exceed twenty-five thousand dollars (\$25,000); ~~actions an~~  
15 action of interpleader where the amount of money or the value of the property  
16 involved does not exceed twenty-five thousand dollars (\$25,000).

17 (3) ~~Actions~~ An action to cancel or rescind a contract when the relief is sought in  
18 connection with an action to recover money not exceeding twenty-five thousand  
19 dollars (\$25,000) or property of a value not exceeding twenty-five thousand  
20 dollars (\$25,000), paid or delivered under, or in consideration of, the contract;  
21 ~~actions an action~~ to revise a contract where the relief is sought in an action upon  
22 the contract if the action otherwise is a limited civil case.

23 (4) ~~Proceedings~~ A proceeding in forcible entry or forcible or unlawful detainer  
24 where the whole amount of damages claimed is twenty-five thousand dollars  
25 (\$25,000) or less.

26 (5) ~~Actions~~ An action to enforce and foreclose ~~liens a lien~~ on personal property  
27 where the amount of the ~~liens~~ lien is twenty-five thousand dollars (\$25,000) or  
28 less.

29 (6) ~~Actions~~ An action to enforce and foreclose, or ~~petitions a petition~~ to release,  
30 ~~liens of mechanics, materialmen, artisans, laborers, and of all other persons to~~  
31 ~~whom liens are given~~ a lien arising under the provisions of ~~Chapter 2~~  
32 ~~(commencing with Section 3109) of Title 15 of Part 4 of Division 3~~ Chapter 4  
33 (commencing with Section 8400) of Part 6 of Division 4 of the Civil Code, or to  
34 enforce and foreclose an assessment lien on a common interest development as  
35 defined in Section 1351 of the Civil Code, where the amount of the liens is  
36 twenty-five thousand dollars (\$25,000) or less. However, where an action to  
37 enforce the lien affects property that is also affected by a similar pending action  
38 that is not a limited civil case, or where the total amount of ~~the~~ liens sought to be  
39 foreclosed against the same property aggregates an amount in excess of twenty-  
40 five thousand dollars (\$25,000), the action is not a limited civil case.

1 (7) ~~Actions~~ An action for declaratory relief when brought pursuant to either of  
2 the following:

3 (A) By way of cross-complaint as to a right of indemnity with respect to the  
4 relief demanded in the complaint or a cross-complaint in an action or proceeding  
5 that is otherwise a limited civil case.

6 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and  
7 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of  
8 Division 3 of the Business and Professions Code, where the amount in controversy  
9 is twenty-five thousand dollars (\$25,000) or less.

10 (8) ~~Actions~~ An action to issue a temporary restraining ~~orders and preliminary~~  
11 ~~injunctions, and order or preliminary injunction;~~ to take ~~accounts an account,~~  
12 where necessary to preserve the property or rights of any party to a limited civil  
13 case; to make any order or perform any act, pursuant to Title 9 (commencing with  
14 Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to  
15 appoint a receiver pursuant to Section 564 in a limited civil case; to determine title  
16 to personal property seized in a limited civil case.

17 (9) ~~Actions~~ An action under Article 3 (commencing with Section 708.210) of  
18 Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in  
19 personal property or to enforce the liability of the debtor of a judgment debtor  
20 where the interest claimed adversely is of a value not exceeding twenty-five  
21 thousand dollars (\$25,000) or the debt denied does not exceed twenty-five  
22 thousand dollars (\$25,000).

23 (10) ~~Arbitration-related petitions~~ An arbitration-related petition filed pursuant to  
24 either of the following:

25 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,  
26 except for uninsured motorist arbitration proceedings in accordance with Section  
27 11580.2 of the Insurance Code, if the petition is filed before the arbitration award  
28 becomes final and the matter to be resolved by arbitration is a limited civil case  
29 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed  
30 after the arbitration award becomes final and the amount of the award and all other  
31 rulings, pronouncements, and decisions made in the award are within paragraphs  
32 (1) to (9), inclusive, of subdivision (a).

33 (B) To confirm, correct, or vacate a fee arbitration award between an attorney  
34 and client that is binding or has become binding, pursuant to Article 13  
35 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and  
36 Professions Code, where the arbitration award is twenty-five thousand dollars  
37 (\$25,000) or less.

38 (b) The following cases in equity are limited civil cases:

39 (1) ~~Cases~~ A case to try title to personal property when the amount involved is  
40 not more than twenty-five thousand dollars (\$25,000).

41 (2) ~~Cases~~ A case when equity is pleaded as a defensive matter in any case that is  
42 otherwise a limited civil case.

1 (3) ~~Cases~~ A case to vacate a judgment or order of the court obtained in a limited  
2 civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

3 **Comment.** Paragraph (6) of subdivision (a) of Section 86 is amended to correct a cross-  
4 reference and eliminate obsolete terminology.

5 The section is also amended to make stylistic revisions.

6 **Code Civ. Proc. § 410.42 (amended). Dispute resolution provisions in construction contract**

7 SEC. \_\_\_\_\_. Section 410.42 of the Code of Civil Procedure is amended to read:

8 410.42. (a) The following provisions of a contract between the contractor and a  
9 subcontractor with principal offices in this state, for the construction of a public or  
10 private work of improvement in this state, shall be void and unenforceable:

11 ~~(a)~~ (1) A provision which purports to require any dispute between the parties to  
12 be litigated, arbitrated, or otherwise determined outside this state.

13 ~~(b)~~ (2) A provision which purports to preclude a party from commencing such a  
14 proceeding or obtaining a judgment or other resolution in this state or the courts of  
15 this state.

16 (b) For purposes of this section, “construction” means any work or services  
17 performed on, or materials provided for, a work of improvement, as defined in  
18 Section ~~3106~~ 8050 of the Civil Code, and for which a lien may be claimed  
19 pursuant to Section ~~3110~~ 8400 of the Civil Code (whether or not a lien is in fact  
20 claimed) or for which such a lien could be claimed but for Section ~~3109~~ 8052 of  
21 the Civil Code.

22 **Comment.** Section 410.42 is amended to correct cross-references and technical stylistic  
23 revisions.

24 **Code Civ. Proc. § 708.760 (amended). Judgment debtor a public work contractor**

25 SEC. \_\_\_\_\_. Section 708.760 of the Code of Civil Procedure is amended to read:

26 708.760. (a) If the judgment debtor named in the abstract or certified copy of the  
27 judgment filed pursuant to this article is a contractor upon a public work, the cost  
28 of which is to be paid out of public moneys voted, appropriated, or otherwise set  
29 apart for such purpose, only so much of the contract price shall be deemed owing  
30 and unpaid within the meaning of Section 708.740 or 708.750 as may remain  
31 payable under the terms of the contractor’s contract, upon the completion thereof,  
32 after deducting sums due and to become due to persons described in ~~Section 3181~~  
33 ~~of the Civil Code~~ Section 42030 of the Public Contract Code. In ascertaining the  
34 sums due or to become due to such persons, only claims which are filed against  
35 the moneys due or to become due to the judgment debtor in accordance with ~~the~~  
36 ~~provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of~~  
37 ~~Division 3 of the Civil Code~~ Chapter 4 (commencing with Section 44110) of Part  
38 6 of Division 2 of the Public Contract Code shall be considered.

39 (b) The Controller, auditor, or other public disbursing officer whose duty it is to  
40 make payments under the provisions of the contract may not deposit an amount  
41 with the court pursuant to this article until the contract is completed, but may

1 deposit an amount with the court to satisfy the claim of the judgment debtor before  
2 the payments specified in subdivision (a) are made so long as a sufficient amount  
3 is retained for the satisfaction of the claims of persons described in ~~Section 3181~~  
4 ~~of the Civil Code~~ Section 42030 of the Public Contract Code.

5 **Comment.** Section 708.760 is amended to correct cross-references.

6 **Code Civ. Proc. § 1203.61 (amended). Oil and gas lien**

7 SEC. \_\_\_\_\_. Section 1203.61 of the Code of Civil Procedure is amended to read:

8 1203.61. (a) Any lien provided for by this chapter shall be enforced in the same  
9 manner as provided in ~~Title 15 (commencing with Section 3082), Part 4, Division~~  
10 ~~3, Chapter 4 (commencing with Section 8400) of Part 6 of Division 4~~ of the Civil  
11 Code. ~~Such~~ The action shall be filed within 180 days from the time of the  
12 recording of the lien ~~provided for herein~~. If a credit ~~be is~~ given and notice of the  
13 fact and terms of ~~such credit be~~ the credit are filed in the office of the county  
14 recorder subsequent to the filing of ~~such~~ the lien and prior to the expiration of ~~said~~  
15 the 180-day period, then ~~such~~ the lien continues in force until 180 days after the  
16 expiration of ~~such~~ the credit, but no lien continues in force by reason of any  
17 agreement to give credit for a longer time than one year from the time the work is  
18 completed. If the proceedings to enforce the lien ~~be are~~ not prosecuted to trial  
19 within two years after ~~the commencement thereof~~, the court may in its discretion  
20 dismiss the ~~same~~ action for want of prosecution, and in all cases the dismissal of  
21 ~~such~~ the action (unless it ~~be is~~ expressly stated that ~~the same~~ it is without  
22 prejudice) or a judgment ~~rendered therein in the action~~ that no lien exists ~~shall be~~  
23 is equivalent to the cancellation and removal from the record of ~~such~~ the lien.

24 (b) As against any purchaser or encumbrancer for value and in good faith whose  
25 rights are acquired subsequent to the expiration of the 180-day period following  
26 the filing of ~~such~~ the lien, no giving of credit or extension of the lien or time to  
27 enforce the ~~same~~ lien shall be effective unless evidenced by a notice or agreement  
28 filed for record in the office of the county recorder prior to the acquisition of the  
29 rights of ~~such~~ the purchaser or encumbrancer.

30 **Comment.** Section 1203.61 is amended to correct a cross-reference and make stylistic  
31 revisions.

32 **Code Civ. Proc. § 1281.5 (amended). Arbitration**

33 SEC. \_\_\_\_\_. Section 1281.5 of the Code of Civil Procedure is amended to read:

34 1281.5. (a) Any person who proceeds to record and enforce a claim of lien by  
35 commencement of an action pursuant to ~~Title 15 (commencing with Section 3082)~~  
36 ~~of Part 4 of Division 3 Chapter 4 (commencing with Section 8400) of Part 6 of~~  
37 Division 4 of the Civil Code, does not thereby waive any right of arbitration the  
38 person may have pursuant to a written agreement to arbitrate, if, in filing an action  
39 to enforce the claim of lien, the claimant does either of the following:

40 (1) Includes an allegation in the complaint that the claimant does not intend to  
41 waive any right of arbitration, and intends to move the court, within 30 days after

1 service of the summons and complaint, for an order to stay further proceedings in  
2 the action.

3 (2) At the same time that the complaint is filed, the claimant files an application  
4 that the action be stayed pending the arbitration of any issue, question, or dispute  
5 that is claimed to be arbitrable under the agreement and that is relevant to the  
6 action to enforce the claim of lien.

7 (b) Within 30 days after service of the summons and complaint, the claimant  
8 shall file and serve a motion and notice of motion pursuant to Section 1281.4 to  
9 stay the action pending the arbitration of any issue, question, or dispute that is  
10 claimed to be arbitrable under the agreement and that is relevant to the action to  
11 enforce the claim of lien. The failure of a claimant to comply with this subdivision  
12 is a waiver of the claimant's right to compel arbitration.

13 (c) The failure of a defendant to file a petition pursuant to Section 1281.2 at or  
14 before the time the defendant answers the complaint filed pursuant to subdivision  
15 (a) is a waiver of the defendant's right to compel arbitration.

16 **Comment.** Section 1281.5 is amended to correct a cross-reference.

17 **Code Civ. Proc. § 1800 (amended). Assignment for benefit of creditors**

18 SEC. \_\_\_\_\_. Section 1800 of the Code of Civil Procedure is amended to read:

19 1800. (a) In this section:

20 (1) The term "insolvent" means:

21 (A) With reference to a person other than a partnership, a financial condition  
22 such that the sum of the person's debts is greater than all of the person's property,  
23 at a fair valuation, exclusive of both of the following:

24 (i) Property transferred, concealed, or removed with intent to hinder, delay, or  
25 defraud the person's creditors.

26 (ii) Property that is exempt from property of the estate pursuant to the election of  
27 the person made pursuant to Section 1801.

28 (B) With reference to a partnership, financial condition such that the sum of the  
29 partnership's debts are greater than the aggregate of, at a fair valuation, both of the  
30 following:

31 (i) All of the partnership's property, exclusive of property of the kind specified  
32 in clause (i) subparagraph (A).

33 (ii) The sum of the excess of the value of each general partner's separate  
34 property, exclusive of property of the kind specified in clause (ii) of subparagraph  
35 (A), over the partner's separate debts.

36 (2) The term "inventory" means personal property leased or furnished, held for  
37 sale or lease, or to be furnished under a contract for service, raw materials, work in  
38 process, or materials used or consumed in a business, including farm products  
39 such as crops or livestock, held for sale or lease.

40 (3) The term "insider" means:

41 (A) If the assignor is an individual, any of the following:

42 (i) A relative of the assignor or of a general partner of the assignor.

- 1 (ii) A partnership in which the assignor is a general partner.  
2 (iii) A general partner of the assignor.  
3 (iv) A corporation of which the assignor is a director, officer, or person in  
4 control.  
5 (B) If the assignor is a corporation, any of the following:  
6 (i) A director of the assignor.  
7 (ii) An officer of the assignor.  
8 (iii) A person in control of the assignor.  
9 (iv) A partnership in which the assignor is a general partner.  
10 (v) A general partner of the assignor.  
11 (vi) A relative of a general partner, director, officer, or person in control of the  
12 assignor.  
13 (C) If the assignor is a partnership, any of the following:  
14 (i) A general partner in the assignor.  
15 (ii) A relative of a general partner in, general partner of, or person in control of  
16 the assignor.  
17 (iii) A partnership in which the assignor is a general partner.  
18 (iv) A general partner of the assignor.  
19 (v) A person in control of the assignor.  
20 (D) An affiliate of the assignor or an insider of an affiliate as if the affiliate were  
21 the assignor.  
22 (E) A managing agent of the assignor.  
23 As used in this paragraph, “relative” means an individual related by affinity or  
24 consanguinity with the third degree as determined by the common law, or an  
25 individual in a step or adoptive relationship within the third degree; and an  
26 “affiliate” means a person that directly or indirectly owns, controls or holds with  
27 power to vote 20 percent or more of the outstanding voting securities of the  
28 assignor or 20 percent or more of whose outstanding voting securities are directly  
29 or indirectly owned, controlled or held with power to vote by the assignor  
30 (excluding securities held in a fiduciary or agency capacity without sole  
31 discretionary power to vote, or held solely to secure a debt if the holder has not in  
32 fact exercised the power to vote), or a person who operates the business of the  
33 assignor under a lease or operating agreement or whose business is operated by the  
34 assignor under a lease or operating agreement.  
35 (4) The term “judicial lien” means a lien obtained by judgment, levy,  
36 sequestration, or other legal or equitable process or proceeding.  
37 (5) The term “new value” means money or money’s worth in goods, services, or  
38 new credit, or release by a transferee of property previously transferred to the  
39 transferee in a transaction that is neither void nor voidable by the assignor or the  
40 assignee under any applicable law, but does not include an obligation substituted  
41 for an existing obligation.  
42 (6) The term “receivable” means a right to payment, whether or not the right has  
43 been earned by performance.

1 (7) The term “security agreement” means an agreement that creates or provides  
2 for a security interest.

3 (8) The term “security interest” means a lien created by an agreement.

4 (9) The term “statutory lien” means a lien arising solely by force of a statute on  
5 specified circumstances or conditions, or lien of distress for rent, whether or not  
6 statutory, but does not include security interest or judicial lien, whether or not the  
7 interest or lien is provided by or is dependent on a statute and whether or not the  
8 interest or lien is made fully effective by statute.

9 (10) The term “transfer” means every mode, direct or indirect, absolute or  
10 conditional, voluntary or involuntary, or disposing of or parting with property or  
11 with an interest in property, including retention of title as a security interest.

12 (b) Except as provided in subdivision (c), the assignee of any general  
13 assignment for the benefit of creditors (as defined in Section 493.010) may  
14 recover any transfer of property of the assignor:

15 (1) To or for the benefit of a creditor;

16 (2) For or on account of an antecedent debt owed by the assignor before the  
17 transfer was made;

18 (3) Made while the assignor was insolvent;

19 (4) Made on or within 90 days before the date of the making of the assignment  
20 or made between 90 days and one year before the date of making the assignment if  
21 the creditor, at the time of the transfer, was an insider and had reasonable cause to  
22 believe the debtor was insolvent at the time of the transfer; and

23 (5) That enables the creditor to receive more than another creditor of the same  
24 class.

25 (c) The assignee may not recover under this section a transfer:

26 (1) To the extent that the transfer was:

27 (A) Intended by the assignor and the creditor to or for whose benefit the transfer  
28 was made to be a contemporaneous exchange for new value given to the assignor;  
29 and

30 (B) In fact a substantially contemporaneous exchange;

31 (2) To the extent that the transfer was:

32 (A) In payment of a debt incurred in the ordinary course of business or financial  
33 affairs of the assignor and the transferee;

34 (B) Made in the ordinary course of business or financial affairs of the assignor  
35 and the transferee; and

36 (C) Made according to ordinary business terms;

37 (3) Of a security interest in property acquired by the assignor:

38 (A) To the extent the security interest secures new value that was:

39 (i) Given at or after the signing of a security agreement that contains a  
40 description of the property as collateral;

41 (ii) Given by or on behalf of the secured party under the agreement;

42 (iii) Given to enable the assignor to acquire the property; and

43 (iv) In fact used by the assignor to acquire the property; and

- 1 (B) That is perfected within 20 days after the security interest attaches;
- 2 (4) To or for the benefit of a creditor, to the extent that, after the transfer, the
- 3 creditor gave new value to or for the benefit of the assignor:
- 4 (A) Not secured by an otherwise unavoidable security interest; and
- 5 (B) On account of which new value the assignor did not make an otherwise
- 6 unavoidable transfer to or for the benefit of the creditor;
- 7 (5) Of a perfected security interest in inventory or a receivable or the proceeds
- 8 of either, except to the extent that the aggregate of all the transfers to the transferee
- 9 caused a reduction, as of the date of the making of the assignment and to the
- 10 prejudice of other creditors holding unsecured claims, of any amount by which the
- 11 debt secured by the security interest exceeded the value of all security interest for
- 12 the debt on the later of:
- 13 (A) Ninety days before the date of the making of the assignment.
- 14 (B) The date on which new value was first given under the security agreement
- 15 creating the security interest; or
- 16 (6) That is the fixing of a statutory lien.
- 17 (7) That is payment to a claimant, as defined in Section ~~3085~~ 8002 of the Civil
- 18 Code or Section 41020 of the Public Contract Code, in exchange for the claimant's
- 19 waiver or release of any potential or asserted claim of lien, stop payment notice, or
- 20 right to recover on a payment bond, or any combination thereof.
- 21 (8) To the extent that the transfer was a bona fide payment of a debt to a spouse,
- 22 former spouse, or child of the debtor, for alimony to, maintenance for, or support
- 23 of, the spouse or child, in connection with a separation agreement, divorce decree,
- 24 or other order of a court of record, or a determination made in accordance with
- 25 state or territorial law by a governmental unit, or property settlement agreement;
- 26 but not to the extent that either of the following occurs:
- 27 (A) The debt is assigned to another entity voluntarily, by operation of law or
- 28 otherwise, in which case, the assignee may not recover that portion of the transfer
- 29 that is assigned to the state or any political subdivision of the state pursuant to Part
- 30 D of Title IV of the Social Security Act (42 U.S.C. Sec. 601, et. seq.) and passed
- 31 on to the spouse, former spouse, or child of the debtor.
- 32 (B) The debt includes a liability designated as alimony, maintenance, or support,
- 33 unless the liability is actually in the nature of alimony, maintenance, or support.
- 34 (d) An assignee of any general assignment for the benefit of creditors (as
- 35 defined in Section 493.010), may avoid a transfer of property of the assignor
- 36 transferred to secure reimbursement of a surety that furnished a bond or other
- 37 obligation to dissolve a judicial lien that would have been avoidable by the
- 38 assignee under subdivision (b) of this section. The liability of the surety under the
- 39 bond or obligation shall be discharged to the extent of the value of the property
- 40 recovered by the assignee or the amount paid to the assignee.
- 41 (e) (1) For the purposes of this section:
- 42 (A) A transfer of real property other than fixtures, but including the interest of a
- 43 seller or purchaser under a contract for the sale of real property, is perfected when



1 a bona fide purchaser of the property from the debtor against whom applicable law  
2 permits the transfer to be perfected cannot acquire an interest that is superior to the  
3 interest of the transferee.

4 (B) A transfer of a fixture or property other than real property is perfected when  
5 a creditor on a simple contract cannot acquire a judicial lien that is superior to the  
6 interest of the transferee.

7 (2) For the purposes of this section, except as provided in paragraph (3), a  
8 transfer is made at any of the following times:

9 (A) At the time the transfer takes effect between the transferor and the  
10 transferee, if the transfer is perfected at, or within 10 days after, the time, except as  
11 provided in subparagraph (B) of paragraph (3) of subdivision (c).

12 (B) At the time the transfer is perfected, if the transfer is perfected after the 10  
13 days.

14 (C) Immediately before the date of the making of the assignment if the transfer  
15 is not perfected at the later of:

16 (i) The making of the assignment.

17 (ii) Ten days after the transfer takes effect between the transferor and the  
18 transferee.

19 (3) For the purposes of this section, a transfer is not made until the assignor has  
20 acquired rights in the property transferred.

21 (f) For the purposes of this section, the assignor is presumed to have been  
22 insolvent on and during the 90 days immediately preceding the date of the making  
23 of the assignment.

24 (g) An action by an assignee under this section must be commenced within one  
25 year after the making of the assignment.

26 **Comment.** Section 1800 is amended to correct a cross-reference and terminology.

27 EDUCATION CODE

28 **Educ. Code § 17307.5 (amended). Stop work order on public school construction**

29 SEC. \_\_\_\_\_. Section 17307.5 of the Education Code is amended to read:

30 17307.5. (a) Notwithstanding any provision of law to the contrary, including,  
31 but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4 of the Civil~~  
32 ~~Code~~ Part 6 (commencing with Section 41010) of Division 2 of the Public  
33 Contract Code, the Department of General Services may issue a stop work order  
34 when construction work on a public school is not being performed in accordance  
35 with existing law and would compromise the structural integrity of the building,  
36 thereby endangering the public safety. The Department of General Services shall  
37 allow construction of incidental and minor nonstructural additions or nonstructural  
38 alterations without invoking its stop work authority.

39 (b) A school district, county superintendent of schools, county board of  
40 education, or other public board, body, or officer whose construction work on a  
41 public school is subject to a stop work order issued pursuant to subdivision (a)

1 shall not be held liable in any action filed against the public board, body, or officer  
2 for stopping work as required by the stop work order, or for any delays caused by  
3 compliance with the stop work order, except to the extent that an error or omission  
4 by the public board, body, or officer is the basis for the issuance of the stop work  
5 order.

6 **Comment.** Section 17307.5 is amended to correct a cross-reference.

7 **Educ. Code § 81133.5 (amended). Stop work order on community college construction**

8 SEC. \_\_\_\_\_. Section 81133.5 of the Education Code is amended to read:

9 81133.5. (a) Notwithstanding any provision of law to the contrary, including,  
10 but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4 of the Civil~~  
11 ~~Code Part 6 (commencing with Section 41010) of Division 2 of the Public~~  
12 Contract Code, the Department of General Services may issue a stop work order  
13 when construction work on a community college is not being performed in  
14 accordance with existing law and would compromise the structural integrity of the  
15 building, thereby endangering the public safety. The Department of General  
16 Services shall allow construction of incidental and minor nonstructural additions  
17 or nonstructural alterations without invoking its stop work authority.

18 (b) A community college district or other public board, body, or officer whose  
19 construction work on a community college is subject to a stop work order issued  
20 pursuant to subdivision (a) shall not be held liable in any action filed against the  
21 public board, body, or officer for stopping work as required by the stop work  
22 order, or for any delays caused by compliance with the stop work order, except to  
23 the extent that an error or omission by the public board, body, or officer is that  
24 basis for the issuance of the stop work order.

25 **Comment.** Section 81133.5 is amended to correct a cross-reference.

26 GOVERNMENT CODE

27 **Gov't Code § 7480 (amended). Disclosure of financial records**

28 SEC. \_\_\_\_\_. Section 7480 of the Government Code is amended to read:

29 7480. Nothing in this chapter prohibits any of the following:

30 (a) The dissemination of any financial information that is not identified with, or  
31 identifiable as being derived from, the financial records of a particular customer.

32 (b) When any police or sheriff's department or district attorney in this state  
33 certifies to a bank, credit union, or savings association in writing that a crime  
34 report has been filed that involves the alleged fraudulent use of drafts, checks, or  
35 other orders drawn upon any bank, credit union, or savings association in this  
36 state, the police or sheriff's department or district attorney may request a bank,  
37 credit union, or savings association to furnish, and a bank, credit union, or savings  
38 association shall furnish, a statement setting forth the following information with  
39 respect to a customer account specified by the police or sheriff's department or

1 district attorney for a period 30 days prior to, and up to 30 days following, the date  
2 of occurrence of the alleged illegal act involving the account:

3 (1) The number of items dishonored.

4 (2) The number of items paid that created overdrafts.

5 (3) The dollar volume of the dishonored items and items paid which created  
6 overdrafts and a statement explaining any credit arrangement between the bank,  
7 credit union, or savings association and customer to pay overdrafts.

8 (4) The dates and amounts of deposits and debits and the account balance on  
9 these dates.

10 (5) A copy of the signature card, including the signature and any addresses  
11 appearing on a customer's signature card.

12 (6) The date the account opened and, if applicable, the date the account closed.

13 (7) A bank, credit union, or savings association that provides the requesting  
14 party with copies of one or more complete account statements prepared in the  
15 regular course of business shall be deemed to be in compliance with paragraphs  
16 (1), (2), (3), and (4).

17 (c) When any police or sheriff's department or district attorney in this state  
18 certifies to a bank, credit union, or savings association in writing that a crime  
19 report has been filed that involves the alleged fraudulent use of drafts, checks, or  
20 other orders drawn upon any bank, credit union, or savings association doing  
21 business in this state, the police or sheriff's department or district attorney may  
22 request, with the consent of the accountholder, the bank, credit union, or savings  
23 association to furnish, and the bank, credit union, or savings association shall  
24 furnish, a statement setting forth the following information with respect to a  
25 customer account specified by the police or sheriff's department or district  
26 attorney for a period 30 days prior to, and up to 30 days following, the date of  
27 occurrence of the alleged illegal act involving the account:

28 (1) The number of items dishonored.

29 (2) The number of items paid that created overdrafts.

30 (3) The dollar volume of the dishonored items and items paid which created  
31 overdrafts and a statement explaining any credit arrangement between the bank,  
32 credit union, or savings association and customer to pay overdrafts.

33 (4) The dates and amounts of deposits and debits and the account balance on  
34 these dates.

35 (5) A copy of the signature card, including the signature and any addresses  
36 appearing on a customer's signature card.

37 (6) The date the account opened and, if applicable, the date the account closed.

38 (7) A bank, credit union, or savings association doing business in this state that  
39 provides the requesting party with copies of one or more complete account  
40 statements prepared in the regular course of business shall be deemed to be in  
41 compliance with paragraphs (1), (2), (3), and (4).

42 (d) For purposes of subdivision (c), consent of the accountholder shall be  
43 satisfied if an accountholder provides to the financial institution and the person or

1 entity seeking disclosure, a signed and dated statement containing all of the  
2 following:

3 (1) Authorization of the disclosure for the period specified in subdivision (c).

4 (2) The name of the agency or department to which disclosure is authorized and,  
5 if applicable, the statutory purpose for which the information is to be obtained.

6 (3) A description of the financial records that are authorized to be disclosed.

7 (e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board,  
8 the State Board of Equalization, the Employment Development Department, the  
9 Controller or an inheritance tax referee when administering the Prohibition of Gift  
10 and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the  
11 Revenue and Taxation Code), a police or sheriff's department or district attorney,  
12 a county welfare department when investigating welfare fraud, a county auditor-  
13 controller or director of finance when investigating fraud against the county, or the  
14 Department of Corporations when conducting investigations in connection with  
15 the enforcement of laws administered by the Commissioner of Corporations, from  
16 requesting of an office or branch of a financial institution, and the office or branch  
17 from responding to a request, as to whether a person has an account or accounts at  
18 that office or branch and, if so, any identifying numbers of the account or  
19 accounts.

20 (2) No additional information beyond that specified in this section shall be  
21 released to a county welfare department without either the accountholder's written  
22 consent or a judicial writ, search warrant, subpoena, or other judicial order.

23 (3) A county auditor-controller or director of finance who unlawfully discloses  
24 information he or she is authorized to request under this subdivision is guilty of  
25 the unlawful disclosure of confidential data, a misdemeanor, which shall be  
26 punishable as set forth in Section 7485.

27 (f) The examination by, or disclosure to, any supervisory agency of financial  
28 records that relate solely to the exercise of its supervisory function. The scope of  
29 an agency's supervisory function shall be determined by reference to statutes that  
30 grant authority to examine, audit, or require reports of financial records or  
31 financial institutions as follows:

32 (1) With respect to the Commissioner of Financial Institutions by reference to  
33 Division 1 (commencing with Section 99), Division 1.5 (commencing with  
34 Section 4800), Division 2 (commencing with Section 5000), Division 5  
35 (commencing with Section 14000), Division 7 (commencing with Section 18000),  
36 Division 15 (commencing with Section 31000), and Division 16 (commencing  
37 with Section 33000) of the Financial Code.

38 (2) With respect to the Controller by reference to Title 10 (commencing with  
39 Section 1300) of Part 3 of the Code of Civil Procedure.

40 (3) With respect to the Administrator of Local Agency Security by reference to  
41 Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of  
42 Title 5 of the Government Code.

1 (g) The disclosure to the Franchise Tax Board of (1) the amount of any security  
2 interest that a financial institution has in a specified asset of a customer or (2)  
3 financial records in connection with the filing or audit of a tax return or tax  
4 information return that are required to be filed by the financial institution pursuant  
5 to Part 10 (commencing with Section 17001), Part 11 (commencing with Section  
6 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation  
7 Code.

8 (h) The disclosure to the State Board of Equalization of any of the following:

9 (1) The information required by Sections 6702, 6703, 8954, 8957, 30313,  
10 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443,  
11 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205,  
12 60404, and 60407 of the Revenue and Taxation Code.

13 (2) The financial records in connection with the filing or audit of a tax return  
14 required to be filed by the financial institution pursuant to Part 1 (commencing  
15 with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing  
16 with Section 8601), Part 13 (commencing with Section 30001), Part 14  
17 (commencing with Section 32001), and Part 17 (commencing with Section 37001)  
18 of Division 2 of the Revenue and Taxation Code.

19 (3) The amount of any security interest a financial institution has in a specified  
20 asset of a customer, if the inquiry is directed to the branch or office where the  
21 interest is held.

22 (i) The disclosure to the Controller of the information required by Section 7853  
23 of the Revenue and Taxation Code.

24 (j) The disclosure to the Employment Development Department of the amount  
25 of any security interest a financial institution has in a specified asset of a customer,  
26 if the inquiry is directed to the branch or office where the interest is held.

27 (k) The disclosure by a construction lender, as defined in Section ~~3087~~ 8006  
28 of the Civil Code, to the Registrar of Contractors, of information concerning the  
29 making of progress payments to a prime contractor requested by the registrar in  
30 connection with an investigation under Section 7108.5 of the Business and  
31 Professions Code.

32 (l) Upon receipt of a written request from a local child support agency referring  
33 to a support order pursuant to Section 17400 of the Family Code, a financial  
34 institution shall disclose the following information concerning the account or the  
35 person named in the request, whom the local child support agency shall identify,  
36 whenever possible, by social security number:

37 (1) If the request states the identifying number of an account at a financial  
38 institution, the name of each owner of the account.

39 (2) Each account maintained by the person at the branch to which the request is  
40 delivered, and, if the branch is able to make a computerized search, each account  
41 maintained by the person at any other branch of the financial institution located in  
42 this state.

1 (3) For each account disclosed pursuant to paragraphs (1) and (2), the account  
2 number, current balance, street address of the branch where the account is  
3 maintained, and, to the extent available through the branch's computerized search,  
4 the name and address of any other person listed as an owner.

5 (4) Whenever the request prohibits the disclosure, a financial institution shall not  
6 disclose either the request or its response, to an owner of the account or to any  
7 other person, except the officers and employees of the financial institution who are  
8 involved in responding to the request and to attorneys, employees of the local  
9 child support agencies, auditors, and regulatory authorities who have a need to  
10 know in order to perform their duties, and except as disclosure may be required by  
11 legal process.

12 (5) No financial institution, or any officer, employee, or agent thereof, shall be  
13 liable to any person for (A) disclosing information in response to a request  
14 pursuant to this subdivision, (B) failing to notify the owner of an account, or  
15 complying with a request under this paragraph not to disclose to the owner, the  
16 request or disclosure under this subdivision, or (C) failing to discover any account  
17 owned by the person named in the request pursuant to a computerized search of  
18 the records of the financial institution.

19 (6) The local child support agency may request information pursuant to this  
20 subdivision only when the local child support agency has received at least one of  
21 the following types of physical evidence:

22 (A) Any of the following, dated within the last three years:

23 (i) Form 599.

24 (ii) Form 1099.

25 (iii) A bank statement.

26 (iv) A check.

27 (v) A bank passbook.

28 (vi) A deposit slip.

29 (vii) A copy of a federal or state income tax return.

30 (viii) A debit or credit advice.

31 (ix) Correspondence that identifies the child support obligor by name, the bank,  
32 and the account number.

33 (x) Correspondence that identifies the child support obligor by name, the bank,  
34 and the banking services related to the account of the obligor.

35 (xi) An asset identification report from a federal agency.

36 (B) A sworn declaration of the custodial parent during the 12 months  
37 immediately preceding the request that the person named in the request has had or  
38 may have had an account at an office or branch of the financial institution to  
39 which the request is made.

40 (7) Information obtained by a local child support agency pursuant to this  
41 subdivision shall be used only for purposes that are directly connected with the  
42 administration of the duties of the local child support agency pursuant to Section  
43 17400 of the Family Code.

1 (m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title  
2 42 of the United States Code, upon receipt of an administrative subpoena on the  
3 current federally approved interstate child support enforcement form, as approved  
4 by the federal Office of Management and Budget, a financial institution shall  
5 provide the information or documents requested by the administrative subpoena.

6 (2) The administrative subpoena shall refer to the current federal Office of  
7 Management and Budget control number and be signed by a person who states  
8 that he or she is an authorized agent of a state or county agency responsible for  
9 implementing the child support enforcement program set forth in Part D  
10 (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the  
11 United States Code. A financial institution may rely on the statements made in the  
12 subpoena and has no duty to inquire into the truth of any statement in the  
13 subpoena.

14 (3) If the person who signs the administrative subpoena directs a financial  
15 institution in writing not to disclose either the subpoena or its response to any  
16 owner of an account covered by the subpoena, the financial institution shall not  
17 disclose the subpoena or its response to the owner.

18 (4) No financial institution, or any officer, employee, or agent thereof, shall be  
19 liable to any person for (A) disclosing information or providing documents in  
20 response to a subpoena pursuant to this subdivision, (B) failing to notify any  
21 owner of an account covered by the subpoena or complying with a request not to  
22 disclose to the owner, the subpoena or disclosure under this subdivision, or (C)  
23 failing to discover any account owned by the person named in the subpoena  
24 pursuant to a computerized search of the records of the financial institution.

25 (n) The dissemination of financial information and records pursuant to any of  
26 the following:

27 (1) Compliance by a financial institution with the requirements of Section 2892  
28 of the Probate Code.

29 (2) Compliance by a financial institution with the requirements of Section 2893  
30 of the Probate Code.

31 (3) An order by a judge upon a written ex parte application by a peace officer  
32 showing specific and articulable facts that there are reasonable grounds to believe  
33 that the records or information sought are relevant and material to an ongoing  
34 investigation of a felony violation of Section 186.10 or of any felony subject to the  
35 enhancement set forth in Section 186.11.

36 (A) The ex parte application shall specify with particularity the records to be  
37 produced, which shall be only those of the individual or individuals who are the  
38 subject of the criminal investigation.

39 (B) The ex parte application and any subsequent judicial order shall be open to  
40 the public as a judicial record unless ordered sealed by the court, for a period of 60  
41 days. The sealing of these records may be extended for 60-day periods upon a  
42 showing to the court that it is necessary for the continuance of the investigation.

1 Sixty-day extensions may continue for up to one year or until termination of the  
2 investigation of the individual or individuals, whichever is sooner.

3 (C) The records ordered to be produced shall be returned to the peace officer  
4 applicant or his or her designee within a reasonable time period after service of the  
5 order upon the financial institution.

6 (D) Nothing in this subdivision shall preclude the financial institution from  
7 notifying a customer of the receipt of the order for production of records unless a  
8 court orders the financial institution to withhold notification to the customer upon  
9 a finding that the notice would impede the investigation.

10 (E) Where a court has made an order pursuant to this paragraph to withhold  
11 notification to the customer under this paragraph, the peace officer or law  
12 enforcement agency who obtained the financial information shall notify the  
13 customer by delivering a copy of the ex parte order to the customer within 10 days  
14 of the termination of the investigation.

15 (4) No financial institution, or any officer, employee, or agent thereof, shall be  
16 liable to any person for any of the following:

17 (A) Disclosing information to a probate court pursuant to Sections 2892 and  
18 2893.

19 (B) Disclosing information in response to a court order pursuant to paragraph  
20 (3).

21 (C) Complying with a court order under this subdivision not to disclose to the  
22 customer, the order, or the dissemination of information pursuant to the court  
23 order.

24 (o) Disclosure by a financial institution to a peace officer, as defined in Section  
25 830.1 of the Penal Code, pursuant to the following:

26 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code,  
27 provided that the financial institution has first complied with the requirements of  
28 paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the  
29 Civil Code.

30 (2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code,  
31 provided that the financial institution has first complied with the requirements of  
32 paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the  
33 Financial Code.

34 (3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code,  
35 provided that any financial institution that is a finance lender has first complied  
36 with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of  
37 Section 22470 of the Financial Code.

38 (p) When the governing board of the Public Employees' Retirement System or  
39 the State Teachers' Retirement System certifies in writing to a financial institution  
40 that a benefit recipient has died and that transfers to the benefit recipient's account  
41 at the financial institution from the retirement system occurred after the benefit  
42 recipient's date of death, the financial institution shall furnish the retirement  
43 system the name and address of any coowner, cosigner, or any other person who



1 had access to the funds in the account following the date of the benefit recipient's  
2 death, or if the account has been closed, the name and address of the person who  
3 closed the account.

4 (q) When the retirement board of a retirement system established under the  
5 County Employees Retirement Law of 1937 certifies in writing to a financial  
6 institution that a retired member or the beneficiary of a retired member has died  
7 and that transfers to the account of the retired member or beneficiary of a retired  
8 member at the financial institution from the retirement system occurred after the  
9 date of death of the retired member or beneficiary of a retired member, the  
10 financial institution shall furnish the retirement system the name and address of  
11 any coowner, cosigner, or any other person who had access to the funds in the  
12 account following the date of death of the retired member or beneficiary of a  
13 retired member, or if the account has been closed, the name and address of the  
14 person who closed the account.

15 **Comment.** Section 7480 is amended to correct a cross-reference.

16 **Gov't Code § 14975 (amended). Payment bond**

17 SEC. \_\_\_\_\_. Section 14975 of the Government Code is amended to read:

18 14975. Notwithstanding the provisions of Section ~~3247 of the Civil Code~~ 45010  
19 of the Public Contract Code, the contractor under any contract made under this  
20 chapter need not provide a payment bond before the commencement of the work  
21 but must provide a payment bond as otherwise required by law prior to payment  
22 under the contract.

23 **Comment.** Section 14975 is amended to correct a cross-reference.

24 **Gov't Code § 15820.105 (amended). Other requirements**

25 SEC. \_\_\_\_\_. Section 15820.105 of the Government Code is amended to read:

26 15820.105. (a) All plans and specifications for the project shall comply with all  
27 applicable building codes.

28 (b) The project is hereby deemed a "public work" project for purposes of  
29 Sections ~~3082 to 3267~~ 41010 to 45090, inclusive, of the Civil Public Contract  
30 Code.

31 (c) The provisions of Chapter 1 (commencing with Section 1720) of Part 7 of  
32 Division 2 of the Labor Code shall apply to all public works contracts entered into  
33 for the project.

34 (d) Other than as provided in this section and Sections 15820.101, 15820.102,  
35 15820.103, and 15820.104, private sector methods may be used to deliver the  
36 project. Specifically, the procurement and contracting for the delivery of the  
37 project is not subject to the State Contract Act or any other provision of California  
38 law governing public procurement or public works projects.

39 **Comment.** Subdivision (b) of Section 15820.105 is amended to correct two cross-references.

1 **Gov't Code § 27287 (amended). Recordation of instrument**

2 SEC. \_\_\_\_\_. Section 27287 of the Government Code is amended to read:

3 27287. Unless it belongs to the class provided for in either Sections 27282 to  
4 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious  
5 mortgage or deed of trust as provided in Sections 2952, or 2963, of the Civil Code,  
6 or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or  
7 is a claim of lien, as provided in Section 3084 of the Civil Code, or a notice of  
8 completion, as provided in Section 3093 of the Civil Code an instrument provided  
9 for in Section 8058 of the Civil Code or Section 42250 of the Public Contract  
10 Code, before an instrument can be recorded its execution shall be acknowledged  
11 by the person executing it, or if executed by a corporation, by its president or  
12 secretary or other person executing it on behalf of the corporation, or, except for  
13 any quitclaim deed or grant deed other than a trustee's deed or a deed of  
14 reconveyance, mortgage, deed of trust, or security agreement, proved by  
15 subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code,  
16 and the acknowledgment or proof certified as prescribed by law.

17 **Comment.** Section 27287 is amended for conformity with the principles governing remedies  
18 for a private work of improvement or a public work. An instrument filed for record in conjunction  
19 with such remedies is deemed duly recorded without acknowledgment. See Civ. Code § 8058(b)  
20 (private work); Pub. Cont. Code § 42250(a) (public work).

21 **Gov't Code § 27361.9 (repealed). Filing fee for preliminary notice**

22 SEC. \_\_\_\_\_. Section 27361.9 of the Government Code is repealed.

23 ~~27361.9 The board of supervisors of any county may provide for an additional~~  
24 ~~fee for filing every preliminary 20 day notice pursuant to paragraph (1) of~~  
25 ~~subdivision (o) of Section 3097 of the Civil Code for the exclusive purpose of~~  
26 ~~defraying the cost of implementing and maintaining a system to facilitate~~  
27 ~~compliance with paragraph (2) of subdivision (o) of Section 3097 of the Civil~~  
28 ~~Code.~~

29 **Comment.** Section 27361.9 is not continued. Preliminary notice may no longer be filed with  
30 the county recorder. See Civ. Code § 8214.

31 **Gov't Code § 66499.2 (amended). Form of surety bond**

32 SEC. \_\_\_\_\_. Section 66499.2 of the Government Code is amended to read:

33 66499.2. A bond or bonds by one or more duly authorized corporate sureties for  
34 the security of laborers and ~~materialmen~~ material suppliers shall be in substantially  
35 the following form:

36 Whereas, The Board of Supervisors of the County of \_\_\_\_ (or City Council of  
37 the City of \_\_\_\_), State of California, and \_\_\_\_ (hereinafter designated as "the  
38 principal") have entered into an agreement whereby the principal agrees to install  
39 and complete certain designated public improvements, which agreement, dated  
40 \_\_\_\_, 20\_\_, and identified as project \_\_\_\_, is hereby referred to and made a part  
41 hereof; and

1 Whereas, Under the terms of the agreement, the principal is required before  
2 entering upon the performance of the work, to file a good and sufficient payment  
3 bond with the County of \_\_\_\_ (or the City of \_\_\_\_ ) to secure the claims to which  
4 reference is made in ~~Title 15 (commencing with Section 3082) of Part 4 of~~  
5 ~~Division 3 of the Civil Part 6 (commencing with Section 41010) of Division 2 of~~  
6 the Public Contract Code of the State of California.

7 Now, therefore, the principal and the undersigned as corporate surety, are held  
8 firmly bound unto the County of \_\_\_\_ (or the City of \_\_\_\_ ) and all contractors,  
9 subcontractors, laborers, ~~materialmen,~~ material suppliers and other persons  
10 employed in the performance of the agreement and referred to in ~~Title 15~~  
11 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Part 6~~  
12 (commencing with Section 41010) of Division 2 of the Public Contract Code in  
13 the sum of \_\_\_\_ dollars (\$\_\_\_\_), for materials furnished or labor thereon of any  
14 kind, or for amounts due under the Unemployment Insurance Act with respect to  
15 this work or labor, that the surety will pay the same in an amount not exceeding  
16 the amount hereinabove set forth, and also in case suit is brought upon this bond,  
17 will pay, in addition to the face amount thereof, costs and reasonable expenses and  
18 fees, including reasonable attorney's fees, incurred by county (or city) in  
19 successfully enforcing this obligation, to be awarded and fixed by the court, and to  
20 be taxed as costs and to be included in the judgment therein rendered.

21 It is hereby expressly stipulated and agreed that this bond shall inure to the  
22 benefit of any and all persons, companies, and corporations entitled to file claims  
23 under ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the~~  
24 ~~Civil Part 6 (commencing with Section 41010) of Division 2 of the Public~~  
25 Contract Code, so as to give a right of action to them or their assigns in any suit  
26 brought upon this bond.

27 Should the condition of this bond be fully performed, then this obligation shall  
28 become null and void, otherwise it shall be and remain in full force and effect.

29 The surety hereby stipulates and agrees that no change, extension of time,  
30 alteration, or addition to the terms of the agreement or the specifications  
31 accompanying the same shall in any manner affect its obligations on this bond,  
32 and it does hereby waive notice of any such change, extension, alteration, or  
33 addition.

34 In witness whereof, this instrument has been duly executed by the principal and  
35 surety above named, on \_\_\_\_, 20\_\_.

36 **Comment.** Section 66499.2 is amended to correct cross-references and obsolete terminology.

37 **Gov't Code § 66499.7 (amended). Release of improvement security**

38 SEC. \_\_\_\_ . Section 66499.7 of the Government Code is amended to read:

39 66499.7. The security furnished by the subdivider shall be released in whole or  
40 in part in the following manner:

41 (a) Security given for faithful performance of any act or agreement shall be  
42 released upon the performance of the act or final completion and acceptance of the

1 required work. The legislative body may provide for the partial release of the  
2 security upon the partial performance of the act or the acceptance of the work as it  
3 progresses, consistent with the provisions of this section. The security may be a  
4 surety bond, a cash deposit, a letter of credit, escrow account, or other form of  
5 performance guarantee required as security by the legislative body that meets the  
6 requirements as acceptable security pursuant to law. If the security furnished by  
7 the subdivider is a documentary evidence of security such as a surety bond or a  
8 letter of credit, the legislative body shall release the documentary evidence and  
9 return the original to the issuer upon performance of the act or final completion  
10 and acceptance of the required work. In the event that the legislative body is  
11 unable to return the original documentary evidence to the issuer, the security shall  
12 be released by written notice sent by certified mail to the subdivider and issuer of  
13 the documentary evidence within 30 days of the acceptance of the work. The  
14 written notice shall contain a statement that the work for which the security was  
15 furnished has been performed or completed and accepted by the legislative body, a  
16 description of the project subject to the documentary evidence and the notarized  
17 signature of the authorized representative of the legislative body.

18 (b) At such time that the subdivider believes that the obligation to perform the  
19 work for which security was required is complete, the subdivider may notify the  
20 public entity in writing of the completed work, including a list of work completed.  
21 Upon receipt of the written notice, the public entity shall have 45 days to review  
22 and comment or approve the completion of the required work. If the public entity  
23 does not agree that all work has been completed in accordance with the plans and  
24 specifications for the improvements, it shall supply a list of all remaining work to  
25 be completed.

26 (c) Within 45 days of receipt of the list of remaining work from the public  
27 entity, the subdivider may then provide cost estimates for all remaining work for  
28 review and approval by the public entity. Upon receipt of the cost estimates, the  
29 public entity shall then have 45 days to review, comment, and approve, modify, or  
30 disapprove those cost estimates. No public entity shall be required to engage in  
31 this process of partial release more than once between the start of work and  
32 completion and acceptance of all work; however, nothing in this section prohibits  
33 a public entity from allowing for a partial release as it otherwise deems  
34 appropriate.

35 (d) If the public entity approves the cost estimate, the public entity shall release  
36 all performance security except for security in an amount up to 200 percent of the  
37 cost estimate of the remaining work. The process allowing for a partial release of  
38 performance security shall occur when the cost estimate of the remaining work  
39 does not exceed 20 percent of the total original performance security unless the  
40 public entity allows for a release at an earlier time. Substitute bonds or other  
41 security may be used as a replacement for the performance security, subject to the  
42 approval of the public entity. If substitute bonds or other security is used as a  
43 replacement for the performance security released, the release shall not be

1 effective unless and until the public entity receives and approves that form of  
2 replacement security. A reduction in the performance security, authorized under  
3 this section, is not, and shall not be deemed to be, an acceptance by the public  
4 entity of the completed improvements, and the risk of loss or damage to the  
5 improvements and the obligation to maintain the improvements shall remain the  
6 sole responsibility of the subdivider until all required public improvements have  
7 been accepted by the public entity and all other required improvements have been  
8 fully completed in accordance with the plans and specifications for the  
9 improvements.

10 (e) The subdivider shall complete the works of improvement until all remaining  
11 items are accepted by the public entity.

12 (f) Upon the completion of the improvements, the subdivider, or his or her  
13 assigns, shall be notified in writing by the public entity within 45 days.

14 (g) Within 45 days of the issuance of the notification by the public entity, the  
15 release of any remaining performance security shall be placed upon the agenda of  
16 the legislative body of the public entity for approval of the release of any  
17 remaining performance security. If the public entity delegates authority for the  
18 release of performance security to a public official or other employee, any  
19 remaining performance security shall be released within 60 days of the issuance of  
20 the written statement of completion.

21 (h) Security securing the payment to the contractor, his or her subcontractors  
22 and to persons furnishing labor, materials or equipment shall, after passage of the  
23 time within which claims of lien are required to be recorded pursuant to ~~Article 3~~  
24 ~~(commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division 3~~  
25 Article 2 (commencing with Section 8410) of Chapter 4 of Part 6 of Division 4  
26 of the Civil Code and after acceptance of the work, be reduced to an amount equal to  
27 the total claimed by all claimants for whom claims of lien have been recorded and  
28 notice thereof given in writing to the legislative body, and if no claims have been  
29 recorded, the security shall be released in full.

30 (i) The release shall not apply to any required guarantee and warranty period  
31 required by Section 66499.9 for the guarantee or warranty nor to the amount of the  
32 security deemed necessary by the local agency for the guarantee and warranty  
33 period nor to costs and reasonable expenses and fees, including reasonable  
34 attorneys' fees.

35 (j) The legislative body may authorize any of its public officers or employees to  
36 authorize release or reduction of the security in accordance with the conditions  
37 hereinabove set forth and in accordance with any rules that it may prescribe.

38 (k) This section shall remain in effect only until January 1, 2011, and as of that  
39 date is repealed, unless a later enacted statute, that is enacted before January 1,  
40 2011, deletes or extends that date.

41 **Comment.** Section 66499.7 is amended to correct a cross-reference.

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HEALTH AND SAFETY CODE

**Health & Safety Code § 5463 (amended). Sewer system construction**

SEC. \_\_\_\_\_. Section 5463 of the Health and Safety Code is amended to read:

5463. Any health officer or governing board of any city, county, sanitary district, or other district having the power to operate and maintain a sewerage system, having served written notice upon the owner or reputed owner of land upon which there is a dwelling house, and such owner or reputed owner, after 30 days, having refused, neglected, or failed to connect such dwelling house, together with all toilets, sinks, and other plumbing therein, properly vented, and in a sanitary manner, with the adjoining street sewer, may construct the same at a reasonable cost, and the person doing said work at the request of such health officer or governing board has a lien upon said real estate for his work done and materials furnished, and such work done and materials furnished shall be held to have been done and furnished at the instance of such owner or reputed owner, or person claiming or having any interest therein. Such governing board may pay all or any part of the cost or price of such connection to the person or persons who furnished labor, materials, or equipment for the same, and, to the extent such governing board pays the cost or price of said connection, it shall succeed to and have all the rights, including the lien provided for above, of such person or persons against the real estate and against the owner or reputed owner thereof.

As an alternative power to the enforcement of the lien provided for in this section, the governing body of the public agency performing the work of connection to the public sewer may, by order entered upon its minutes, declare that the amount of the costs of such work and the administrative expenses incurred by the governing body incident to the proceedings, together with other charges uniformly applicable within the jurisdiction of the governing body for the connection of the premises to the public sewer, shall be transmitted to the assessor and tax collector of the public agency, whereupon it shall be the duty of those officers to add the amount of the assessment to the next regular bill for taxes levied against the lot or parcel of land.

The liens provided for by this section shall be enforced in the same manner as those provided for by ~~Title 15 (commencing with Section 3082), Part 4, Division 3,~~ Part 6 (commencing with Section 8000) of Division 4 of the Civil Code.

The governing board may also use the procedures in Section 5474 for levying the costs incurred for the construction of the improvements for the connection of the premises to the public sewer.

**Comment.** Section 5463 is amended to correct a cross-reference.

**Health & Safety Code § 16017.5 (amended). Stop work order**

SEC. \_\_\_\_\_. Section 16017.5 of the Health and Safety Code is amended to read:

16017.5. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4~~ Part 6

1 (commencing with Section 8000) of Division 4 of the Civil Code, the Department  
2 of General Services may issue a stop work order when construction work on an  
3 essential services facility is not being performed in accordance with existing law  
4 and would compromise the structural integrity of the building, thereby  
5 endangering the public safety. The Department of General Services shall allow  
6 construction of incidental and minor nonstructural additions or nonstructural  
7 alterations without invoking its stop work authority.

8 (b) A public board, body, or officer whose construction work on an essential  
9 services facility is subject to a stop work order issued pursuant to subdivision (a)  
10 shall not be held liable in any action filed against the public board, body, or officer  
11 for stopping work as required by the stop work order, or for any delays caused by  
12 compliance with the stop work order, except to the extent that an error or omission  
13 by the public board, body, or officer is the basis for the issuance of the stop work  
14 order.

15 **Comment.** Section 16017.5 is amended to correct a cross-reference.

16 **Health & Safety Code § 19825 (amended). Building permit**

17 SEC. \_\_\_\_\_. Section 19825 of the Health and Safety Code is amended to read:

18 19825. Every city or county that requires the issuance of a permit as a condition  
19 precedent to the construction, alteration, improvement, demolition, or repair of any  
20 building or structure shall, in addition to any other requirements, require the  
21 following declarations in substantially the following form upon the issuance of  
22 any building permit:

23 **BUILDING PROJECT IDENTIFICATION**

24 Applicant's Mailing Address

25 \_\_\_\_\_

26 \_\_\_\_\_

27 Address of Building

28 \_\_\_\_\_

29 \_\_\_\_\_

30 Owner's Name if Known

31 \_\_\_\_\_

32 Telephone No.

33 \_\_\_\_\_

34 Contractor's Name

35 \_\_\_\_\_

36 Contractor's Mailing Address

37 \_\_\_\_\_

38 \_\_\_\_\_

39 Lic. No. \_\_\_\_\_

40 Architect or Engineer

41 \_\_\_\_\_

42 Architect's or Engineer's Address

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 Lic. No. \_\_\_\_\_

4 In addition the city or county may require that there be included, in the building  
5 project identification portion of a building permit, the following:

6 Assessor’s Parcel Number\*  
7 \_\_\_\_\_

8 Permit Date  
9 \_\_\_\_\_

10 Permit Number  
11 \_\_\_\_\_

12 Description of Work  
13 \_\_\_\_\_

14 Building Permit Valuation  
15 \_\_\_\_\_

16 \*To be entered by issuing agency.

17  
18 LICENSED CONTRACTOR’S DECLARATION

19 I hereby affirm under penalty of perjury that I am licensed under provisions of  
20 Chapter 9 (commencing with Section 7000) of Division 3 of the Business and  
21 Professions Code, and my license is in full force and effect.

22 License Class \_\_\_\_\_ Lic. No. \_\_\_\_\_

23 Date \_\_\_\_\_ Contractor \_\_\_\_\_

24 OWNER-BUILDER DECLARATION

25 I hereby affirm under penalty of perjury that I am exempt from the Contractors’  
26 State License Law for the following reason (Sec. 7031.5, Business and Professions  
27 Code: Any city or county that requires a permit to construct, alter, improve,  
28 demolish, or repair any structure, prior to its issuance, also requires the applicant  
29 for the permit to file a signed statement that he or she is licensed pursuant to the  
30 provisions of the Contractors’ State License Law (Chapter 9 (commencing with  
31 Section 7000) of Division 3 of the Business and Professions Code) or that he or  
32 she is exempt therefrom and the basis for the alleged exemption. Any violation of  
33 Section 7031.5 by any applicant for a permit subjects the applicant to a civil  
34 penalty of not more than five hundred dollars (\$500).):

35 ( ) I, as owner of the property, or my employees with wages as their sole  
36 compensation, will do the work, and the structure is not intended or offered for  
37 sale (Sec. 7044, Business and Professions Code: The Contractors’ State License  
38 Law does not apply to an owner of property who builds or improves thereon, and  
39 who does the work himself or herself or through his or her own employees,  
40 provided that the improvements are not intended or offered for sale. If, however,  
41 the building or improvement is sold within one year of completion, the owner-  
42 builder will have the burden of proving that he or she did not build or improve for  
43 the purpose of sale.).



( ) I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant to the Contractors' State License Law.).

( ) I am exempt under Sec. \_\_\_\_\_, B.& P.C. for this reason

Date \_\_\_\_\_ Owner \_\_\_\_\_

**WORKERS' COMPENSATION DECLARATION**

I hereby affirm under penalty of perjury one of the following declarations: \_\_\_ I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. \_\_\_ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier \_\_\_\_\_

Policy Number \_\_\_\_\_

I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date: \_\_\_\_\_ Applicant: \_\_\_\_\_

**WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.**

**CONSTRUCTION LENDING AGENCY**

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097 8132, Civ. C.).

Lender's Name \_\_\_\_\_

Branch Designation \_\_\_\_\_

Lender's Address \_\_\_\_\_

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

1 Signature of Applicant or Agent Date

2 **Comment.** Section 19825 is amended to correct a cross-reference and conform the provision to  
3 Civil Code Section 8132 (designation of construction lender on building permit).

4 **Health & Safety Code § 34218 (amended). Comprehensive improvement assistance**  
5 **program housing projects**

6 SEC. \_\_\_\_\_. Section 34218 of the Health and Safety Code is amended to read:  
7 34218. ~~Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of~~  
8 ~~Division 3 of the Civil Code Chapter 5 (commencing with Section 45010) of Part~~  
9 6 of Division 2 of the Public Contract Code applies to any housing project  
10 constructed under this chapter. Notwithstanding the provisions of this section, a  
11 housing authority may require a 20 percent cash escrow or a 25 percent  
12 irrevocable letter of credit or the payment bond required by this section if the  
13 contract is for work undertaken pursuant to the Comprehensive Improvement  
14 Assistance Program established by Section 14 of the United States Housing Act of  
15 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l), or the Public Housing  
16 Modernization Act established by Section 5(c)(3)(C) of the United States Housing  
17 Act of 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l).

18 **Comment.** Section 34218 is amended to correct a cross-reference.

19 INSURANCE CODE

20 **Ins. Code § 11751.82 (amended). Wrap-up insurance policy**

21 SEC. \_\_\_\_\_. Section 11751.82 of the Insurance Code is amended to read:

22 11751.82. (a) An insurer under a wrap-up insurance policy shall report workers'  
23 compensation losses and payroll information for each contractor and subcontractor  
24 to its rating organization on a timely basis and in accordance with the uniform  
25 statistical plan. Within 10 days, upon request, the insurer shall provide to each  
26 contractor and subcontractor copies of the report covering workers' compensation  
27 losses and payroll information for that contractor or subcontractor.

28 (b) For the purposes of this section, a "wrap-up insurance policy" is an insurance  
29 policy, or series of policies, written to cover risks associated with a work of  
30 improvement, as defined in Section ~~3406~~ 8050 of the Civil Code, and covering  
31 two or more of the contractors or subcontractors that work on that work of  
32 improvement.

33 **Comment.** Section 11751.82 is amended to correct a cross-reference.

34 LABOR CODE

35 **Lab. Code § 218.5 (amended). Nonpayment action**

36 SEC. \_\_\_\_\_. Section 218.5 of the Labor Code is amended to read:

37 218.5. In any action brought for the nonpayment of wages, fringe benefits, or  
38 health and welfare or pension fund contributions, the court shall award reasonable

1 attorney's fees and costs to the prevailing party if any party to the action requests  
2 attorney's fees and costs upon the initiation of the action. This section shall not  
3 apply to an action brought by the Labor Commissioner. This section shall not  
4 apply to a surety issuing a bond pursuant to Chapter 9 (commencing with Section  
5 7000) of Division 3 of the Business and Professions Code or to an action to  
6 enforce a mechanics lien brought under ~~Chapter 2 (commencing with Section~~  
7 ~~3109) of Title 15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section  
8 8400) of Part 6 of Division 4 of the Civil Code.

9 This section does not apply to any action for which attorney's fees are  
10 recoverable under Section 1194.

11 **Comment.** Section 218.5 is amended to correct a cross-reference.

12 PUBLIC CONTRACT CODE

13 **Pub. Cont. Code § 4107.7 (amended). Hazardous waste contract**

14 SEC. \_\_\_\_\_. Section 4107.7 of the Public Contract Code is amended to read:

15 4107.7 If a contractor who enters into a contract with a public entity for  
16 investigation, removal or remedial action, or disposal relative to the release or  
17 presence of a hazardous material or hazardous waste fails to pay a subcontractor  
18 registered as a hazardous waste hauler pursuant to Section 25163 of the Health and  
19 Safety Code within 10 days after the investigation, removal or remedial action, or  
20 disposal is completed, the subcontractor may serve a stop payment notice upon the  
21 public entity in accordance with ~~Chapter 4 (commencing with Section 3179) of~~  
22 ~~Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 4 (commencing with  
23 Section 44110) of Part 6 of Division 2 of this code.

24 **Comment.** Section 4107.7 is amended to correct a cross-reference and terminology.

25 **Pub. Cont. Code § 7103 (amended). Payment bond on state contract**

26 SEC. \_\_\_\_\_. Section 7103 of the Public Contract Code is amended to read:

27 7103. (a) Every original contractor ~~to who~~ that is awarded a contract by a state  
28 entity, as defined in subdivision (d), involving an expenditure in excess of five  
29 thousand dollars (\$5,000) for any public work shall, before entering ~~up~~ upon the  
30 performance of the work, file a payment bond with and approved by the officer or  
31 state entity ~~by who that awarded~~ the contract was awarded. The bond shall be in a  
32 sum not less than one hundred percent of the total amount payable by the terms of  
33 the contract.

34 The state entity shall state in its call for bids for any contract that a payment  
35 bond is required in the case of such an expenditure.

36 (b) A payment bond filed and approved in accordance with this section shall be  
37 sufficient to enter upon the performance of work under a duly authorized contract  
38 which supplements the contract for which the payment bond was filed if the  
39 requirement of a new bond is waived by the state entity.

1 (c) For purposes of this section, providers of architectural, engineering and land  
2 surveying services pursuant to a contract with a state entity for a public work shall  
3 not be deemed an original contractor and shall not be required to post or file the  
4 payment bond required in subdivisions (a) and (b).

5 (d) For purposes of this section, “state entity” means every state office  
6 department, division, bureau, board, or commission, but does not include the  
7 Legislature, the courts, any agency in the judicial branch of government, or the  
8 University of California. All other public entities shall be governed by the  
9 provisions of ~~Section 3247 of the Civil Code~~ Section 45010.

10 (e) For purposes of this section, “public work” includes the erection,  
11 construction, alteration, repair or improvement of any state structure, building,  
12 road, or other state improvement of any kind.

13 **Comment.** Section 7103 is amended to correct a cross-reference and grammatical errors.

14 **Pub. Cont. Code § 10222 (amended). Amount of payment bond**

15 SEC. \_\_\_\_\_. Section 10222 of the Public Contract Code is amended to read:

16 10222. (a) Each bond shall equal at least one-half of the contract price, except as  
17 otherwise provided in ~~Section 3248 of the Civil Code~~ Section 45030, in the  
18 California Toll Bridge Authority Act (Chapter 1 (commencing with Section  
19 30000) of Division 7 of the Streets and Highways Code), or in subdivision (b).

20 (b) Notwithstanding subdivision (a), for projects with a contract price greater  
21 than two hundred fifty million dollars (\$250,000,000), the Department of  
22 Transportation shall have the discretion to specify that the payment bond shall  
23 equal not less than one-half of the contract price or five hundred million dollars  
24 (\$500,000,000), whichever is less.

25 **Comment.** Section 10222 is amended to correct a cross-reference.

26 **Pub. Cont. Code § 10822 (amended). Amount of bond**

27 SEC. \_\_\_\_\_. Section 10822 of the Public Contract Code is amended to read:

28 10822. Each bond shall be in a sum equal to at least one-half of the contract  
29 price, except as otherwise provided in ~~Section 3248 of the Civil Code~~ Section  
30 45030.

31 **Comment.** Section 10822 is amended to correct a cross-reference.

32 **Pub. Cont. Code § 20104 (amended). Resolution of construction claims**

33 SEC. \_\_\_\_\_. Section 20104 of the Public Contract Code is amended to read:

34 20104. (a) (1) This article applies to all public works claims of three hundred  
35 seventy-five thousand dollars (\$375,000) or less which arise between a contractor  
36 and a local agency.

37 (2) This article shall not apply to any claims resulting from a contract between a  
38 contractor and a public agency when the public agency has elected to resolve any  
39 disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of  
40 Part 2.

1 (b) (1) “Public work” ~~has the same meaning as in Sections 3100 and 3106 of the~~  
2 ~~Civil Code, except that “public work” means “public works contract” as defined in~~  
3 Section 1101 but does not include any work or improvement contracted for by the  
4 state or the Regents of the University of California.

5 (2) “Claim” means a separate demand by the contractor for (A) a time extension,  
6 (B) payment of money or damages arising from work done by, or on behalf of, the  
7 contractor pursuant to the contract for a public work and payment of which is not  
8 otherwise expressly provided for or the claimant is not otherwise entitled to, or (C)  
9 an amount the payment of which is disputed by the local agency.

10 (c) The provisions of this article or a summary thereof shall be set forth in the  
11 plans or specifications for any work which may give rise to a claim under this  
12 article.

13 (d) This article applies only to contracts entered into on or after January 1, 1991.

14 **Comment.** Section 20104 is amended to correct cross-references.

15 **Pub. Cont. Code § 20134 (amended). Emergency repairs**

16 SEC. \_\_\_\_\_. Section 20134 of the Public Contract Code is amended to read:

17 20134. (a) In cases of emergency, when repair or replacements are necessary to  
18 permit the continued conduct of county operations or services, the board of  
19 supervisors, by majority consent, may proceed at once to replace or repair any and  
20 all structures without adopting the plans, specifications, strain sheets, or working  
21 details or, subject to Chapter 2.5 (commencing with Section 22050), giving notice  
22 for bids to let contracts. If notice for bids to let contracts will not be given, the  
23 board shall comply with Chapter 2.5 (commencing with Section 22050). The work  
24 may be done by day labor under the direction of the board, by contract, or by a  
25 combination of the two. If the work is done wholly or in part by contract, the  
26 contractor shall be paid the actual cost of the use of machinery and tools and of  
27 material, and labor and of workers’ compensation insurance expended by him or  
28 her in doing the work, plus not more than 15 percent to cover all profits and  
29 administration. No more than the lowest current market prices shall be paid for  
30 materials whenever possible.

31 (b) In a county of the first, second, third, or fourth class, which is under court  
32 order to relieve jail overcrowding or in which the sheriff certifies that the inmate  
33 capacity of the county jail system is exceeded by more than 20 percent and that the  
34 overpopulation is likely to continue and poses a threat to public safety, health, and  
35 welfare, the board of supervisors may contract for the construction or expansion of  
36 jail facilities without the formality of obtaining bids, adopting plans and  
37 specifications, or complying with other requirements of this article, except as  
38 required by this subdivision. The person to whom the contract is awarded shall  
39 execute a bond for faithful performance in accordance with Section 20129. Any  
40 plans and specifications adopted by the board may only be altered or changed in  
41 accordance with Section 20135 and all contracts awarded pursuant to this  
42 subdivision may only be altered or changed in accordance with Sections 20136,

1 20137, and 20138. The award of the contract shall be made after a public hearing  
2 on the basis of a request for proposals advertised in accordance with Section 6062  
3 or 6062a of the Government Code. The contract may be awarded only to a  
4 contractor who has responded to the request for proposals and who is licensed to  
5 do the work in accordance with Chapter 9 (commencing with Section 7000) of  
6 Division 3 of the Business and Professions Code. The contract shall be upon terms  
7 which the board determines are necessary for the expeditious completion of the  
8 work. A contract shall not be entered into unless at least three proposals to do the  
9 work have been evaluated by a competitive process established by the board. If the  
10 board does not select the lowest bid, it shall make a finding stating the reasons that  
11 the lowest bid was not selected.

12 (c) In any county that has agreed to permit the transfer of prisoners or parole  
13 violators under Section 2910 or 2910.5 of the Penal Code or of wards under  
14 Section 1753.3 of the Welfare and Institutions Code, the board of supervisors may  
15 contract for the construction or expansion of the facilities to be used for that  
16 purpose without the formality of obtaining bids, adopting plans and specifications,  
17 or complying with other requirements of this article, except as required by this  
18 subdivision. The person to whom the contract is awarded shall execute a bond for  
19 faithful performance in accordance with Section 20129. Any plans and  
20 specifications adopted by the board may only be altered or changed in accordance  
21 with Section 20135 and all contracts awarded pursuant to this subdivision may  
22 only be altered or changed in accordance with Sections 20136, 20137, and 20138.  
23 The award of the contract shall be made after a public hearing on the basis of a  
24 request for proposals advertised in accordance with Section 6062 or 6062a of the  
25 Government Code. The contract may be awarded only to a contractor who has  
26 responded to the request for proposals and who is licensed to do the work in  
27 accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the  
28 Business and Professions Code. The contract shall be upon terms which the board  
29 determines are necessary for the expeditious completion of the work. A contract  
30 shall not be entered into unless at least three proposals to do the work have been  
31 evaluated by a competitive process established by the board and the lowest bid is  
32 selected.

33 (d) Proposed construction or expansion of jail or return-to-custody facilities as  
34 authorized under subdivision (b) or (c) shall not commence in a county of the third  
35 class without the affirmative vote of a majority of the city council of the  
36 incorporated city within which the construction or expansion is proposed.

37 (e) The board of supervisors may waive the requirements of ~~Title 15~~  
38 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6  
39 (commencing with Section 41010) of Division 2 for work performed pursuant to  
40 subdivision (b) or (c).

41 (f) If any county that is under court order to relieve overcrowding in a county  
42 juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code  
43 or in which the chief probation officer certifies that the juvenile detention capacity

1 of the county juvenile facilities is exceeded by more than 20 percent and that the  
2 overpopulation is likely to continue and poses a threat to public safety, health, and  
3 welfare, the board of supervisors may contract for the construction or expansion of  
4 county juvenile facilities without the formality of obtaining bids, adopting plans  
5 and specifications, or complying with other requirements of this article, except as  
6 required by this subdivision. The person to whom the contract is awarded shall  
7 execute a bond for faithful performance in accordance with Section 20129. Any  
8 plans and specifications adopted by the board may only be altered or changed in  
9 accordance with Section 20135 and all contracts awarded pursuant to this  
10 subdivision may only be altered or changed in accordance with Sections 20136,  
11 20137, and 20138. The award of the contract shall be made after a public hearing  
12 on the basis of a request for proposals advertised in accordance with Section 6062  
13 or 6062a of the Government Code. The contract may be awarded only to a  
14 contractor who has responded to the request for proposals and who is licensed to  
15 do the work in accordance with Chapter 9 (commencing with Section 7000) of  
16 Division 3 of the Business and Professions Code. The contract shall be upon terms  
17 which the board determines are necessary for the expeditious completion of the  
18 work. A contract shall not be entered into unless at least three proposals to do the  
19 work have been evaluated by a competitive process established by the board. If the  
20 board does not select the lowest bidder, it shall make a finding stating the reasons  
21 that the lowest bidder was not selected.

22 (g) In a county of the third class in which there are no available courtrooms to  
23 accommodate all authorized judicial positions or in which the board of supervisors  
24 certifies that there is a significant need to expeditiously construct new court and  
25 court support facilities, the board of supervisors may contract for the construction  
26 or expansion of court and court support facilities without the formality of  
27 obtaining bids, adopting plans and specifications, or complying with other  
28 requirements of this article, except as required by this subdivision. The person to  
29 whom the contract is awarded shall execute a bond for faithful performance in  
30 accordance with Section 20129. Any plans and specifications adopted by the board  
31 may only be altered or changed in accordance with Section 20135 and all contracts  
32 awarded pursuant to this subdivision may only be altered or changed in  
33 accordance with Sections 20136, 20137, and 20138. The award of the contract  
34 shall be made after a public hearing on the basis of a request for proposals  
35 advertised in accordance with Section 6062 or 6062a of the Government Code.  
36 The contract may be awarded only to a contractor who has responded to the  
37 request for proposals and who is licensed to do the work in accordance with  
38 Chapter 9 (commencing with Section 7000) of Division 3 of the Business and  
39 Professions Code. The contract shall be upon terms which the board determines  
40 are necessary for the expeditious completion of the work. A contract shall not be  
41 entered into unless at least three proposals to do the work have been evaluated by  
42 a competitive process established by the board and the lowest bid is selected. This  
43 subdivision shall remain in effect until December 31, 1994.

1       **Comment.** Section 20134 is amended to correct a cross-reference.

2       **Pub. Cont. Code § 20461 (amended). Assignment by contractor**

3       SEC. \_\_\_\_\_. Section 20461 of the Public Contract Code is amended to read:

4       20461. No assignment by the contractor of the whole or any part of the money,  
5       assessment, partial assessment, any reassessment and any bonds which may be  
6       issued to represent any assessment or reassessment, due ~~him~~ or to be due ~~him~~  
7       under the contract, or for “extras” in connection therewith, whether made before or  
8       after a verified claim is filed pursuant to this chapter, shall take priority over ~~such~~  
9       the claims, and ~~such the~~ assignment shall have no binding force insofar as the  
10      rights of the claimants, or their assigns, are concerned. None of the provisions of  
11      ~~Title 15 (commencing with Section 3082), Part 4, Division 3, of the Civil Code,~~  
12      Part 6 (commencing with Section 41010) of Division 2 shall be applicable to any  
13      assessment, partial assessment, reassessment, bonds, moneys or funds payable to  
14      the contractor or ~~his~~ assignee under this division or to any matter contained in this  
15      chapter.

16      **Comment.** Section 20461 is amended to correct a cross-reference. The other changes are  
17      technical.

18      **Pub. Cont. Code § 20496 (amended). Municipal Improvement Act of 1913**

19      SEC. \_\_\_\_\_. Section 20496 of the Public Contract Code is amended to read:

20      20496. The provisions of ~~Title 15 (commencing with Section 3082), Part 4,~~  
21      ~~Division 3, of the Civil Code~~ Part 6 (commencing with Section 41010) of Division  
22      2 are hereby expressly made applicable to the construction of works and  
23      improvements under this article.

24      **Comment.** Section 20496 is amended to correct a cross-reference.

25      **Pub. Cont. Code § 20682.5 (amended). Bids for contract**

26      SEC. \_\_\_\_\_. Section 20682.5 of the Public Contract Code is amended to read:

27      20682.5. (a) A district may construct or complete any building, structure, or  
28      improvement with its own forces or by contract without bidding when the cost  
29      does not exceed twenty-five thousand dollars (\$25,000).

30      (b) All contracts for the construction or completion of any building, structure, or  
31      improvement, when the cost exceeds twenty-five thousand dollars (\$25,000), shall  
32      be contracted for and let to the lowest responsible bidder after notice. If two or  
33      more bids are the same and the lowest, the district board may accept the one it  
34      chooses.

35      (c) The district shall publish a notice inviting bids for any contract for which  
36      competitive bidding is required at least one time in a newspaper of general  
37      circulation in the district at least 10 days before the time specified for receiving  
38      bids. The notice inviting bids shall set a date for opening the bids and distinctly  
39      state the work to be done.



1 (d) If the general manager recommends and the board of directors determines  
2 that the publication of advertisements of the notice in trade journals and papers in  
3 lieu of publication pursuant to subdivision (c) will increase the number of business  
4 enterprises receiving that notice, the board of directors may by resolution declare  
5 that those notices shall be published in trade journals and papers at least 10 days  
6 prior to the time specified for receiving bids.

7 (e) If plans and specifications are prepared describing the work, all bidders shall  
8 be afforded an opportunity to examine the plans and specifications, and the plans  
9 and specifications shall be attached to and become part of the contract, if one is  
10 awarded.

11 (f) At its discretion, the board of directors may reject any bids presented and  
12 readvertise.

13 (g) In the case of an emergency, the board of directors may act pursuant to  
14 Chapter 2.5 (commencing with Section 22050).

15 (h) The board of directors may, subject to ~~Chapter 7 (commencing with Section~~  
16 ~~3247) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing  
17 with Section 45010) of Part 6 of Division 2, require the posting of those bonds it  
18 deems desirable as a condition to the filing of a bid or the letting of a contract.

19 (i) The district shall keep cost records of the work in the manner provided in  
20 Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the  
21 Government Code.

22 (j) As an alternate to the procedures required by this section, a district may rely  
23 on the Uniform Public Construction Cost Accounting Act, Chapter 2  
24 (commencing with Section 22000) of Part 3 of Division 2.

25 **Comment.** Section 20682.5 is amended to correct a cross-reference.

26 **Pub. Cont. Code § 20688.4 (amended). Redevelopment agencies**

27 SEC. \_\_\_\_\_. Section 20688.4 of the Public Contract Code is amended to read:

28 20688.4 An agency shall require each successful bidder to file with it good and  
29 sufficient bonds, to be approved by it. The bonds shall be conditioned upon the  
30 faithful performance of the contract and upon the payment of all claims for labor  
31 and material in connection with the contract. The bonds shall contain the terms  
32 and conditions set forth in ~~Chapter 7 (commencing with Section 3247) of Title 15~~  
33 ~~of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing with Section  
34 45010) of Part 6 of Division 2 and are subject to the provisions of that chapter.

35 **Comment.** Section 20688.4 is amended to correct a cross-reference.

36 **Pub. Cont. Code § 20813 (amended). Fire protection districts**

37 SEC. \_\_\_\_\_. Section 20813 of the Public Contract Code is amended to read:

38 20813. (a) All contracts for the construction or completion of any building,  
39 structure, or improvement, when the expenditure required for the work exceeds ten  
40 thousand dollars (\$10,000), shall be contracted for and let to the lowest

1 responsible bidder after notice. If two or more bids are the same and the lowest,  
2 the district board may accept the one it chooses.

3 (b) The notice inviting bids shall set a date for the opening of bids. The first  
4 publication or posting of the notice shall be at least 10 days before the date of  
5 opening the bids. Notice shall be published at least twice, not less than five days  
6 apart, in a newspaper of general circulation in the district, or if there is none, it  
7 shall be posted in at least three public places in the district. The notice shall  
8 distinctly state the work to be done.

9 (c) In its discretion, the district board may reject any bids presented and  
10 readvertise.

11 (d) In the case of an emergency, the district board may act pursuant to Chapter  
12 2.5 (commencing with Section 22050).

13 (e) The district board may, subject to the provisions of ~~Chapter 7 (commencing~~  
14 ~~with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 5  
15 (commencing with Section 41010) of Part 6 of Division 2, require the posting of  
16 those bonds it deems desirable as a condition to the filing of a bid or the letting of  
17 a contract.

18 (f) Cost records of the work shall be kept in the manner provided in Chapter 1  
19 (commencing with Section 4000) of Division 5 of Title 1 of the Government  
20 Code.

21 **Comment.** Section 20813 is amended to correct a cross-reference.

22 **Pub. Cont. Code § 20815.3 (amended). Recreation and park districts**

23 SEC. \_\_\_\_\_. Section 20815.3 of the Public Contract Code is amended to read:

24 20815.3. (a) A district shall publish notice inviting bids for any contract for  
25 which competitive bidding is required at least one time in a newspaper of general  
26 circulation in the district at least one week before the time specified for receiving  
27 bids. The notice shall distinctly state the work to be done.

28 (b) In its discretion, the board of directors may do any of the following:

29 (1) Reject all bids and readvertise.

30 (2) By a four-fifths vote, elect to purchase the materials or supplies in the open  
31 market.

32 (3) By a four-fifths vote, elect to construct the building, structure, or  
33 improvement by force account.

34 (c) In the case of an emergency, the board of directors may act pursuant to  
35 Chapter 2.5 (commencing with Section 22050).

36 (d) The board of directors may, subject to the provisions of ~~Chapter 7~~  
37 ~~(commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil~~  
38 ~~Code~~ Chapter 5 (commencing with Section 45010) of Part 6 of Division 2, require  
39 the posting of those bonds it deems as a condition to the filing of a bid or the  
40 letting of a contract.

1 (e) The district shall keep cost records of the work pursuant to Chapter 1  
2 (commencing with Section 4000) of Division 5 of Title 1 of the Government  
3 Code.

4 **Comment.** Section 20815.3 is amended to correct a cross-reference.

5 **Pub. Cont. Code § 20991 (amended). Los Angeles County Flood Control District**

6 SEC. \_\_\_\_\_. Section 20991 of the Public Contract Code is amended to read:

7 20991. All contracts for any improvement or unit of work, except as provided in  
8 this article, estimated to cost in excess of twenty-five thousand dollars (\$25,000),  
9 shall be let to the lowest responsible bidder in the manner provided in this article.  
10 The board of supervisors of the district shall advertise by five or more insertions in  
11 a daily newspaper of general circulation, or by two or more insertions in a weekly  
12 newspaper of general circulation, printed and published in the district, inviting  
13 sealed proposals for the construction of the improvement or work. The board shall  
14 require the successful bidder or bidders to file with the board good and sufficient  
15 bonds, to be approved by the board, conditioned upon the faithful performance of  
16 the contract and upon the payment of all claims for labor and material. The bonds  
17 shall contain the terms and conditions set forth in ~~Chapter 7 (commencing with~~  
18 ~~Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 5  
19 (commencing with Section 41010) of Part 6 of Division 2 and shall be subject to  
20 the provisions of that chapter. The board shall have the right to reject any bid not  
21 suitable to the best interests of the district. In the event all proposals are rejected or  
22 no proposals are received pursuant to advertisement, or the estimated cost of the  
23 work does not exceed ten thousand dollars (\$10,000), or the work consists of  
24 channel protection, dam protection, temporary work, maintenance work, or  
25 emergency work, the board of supervisors may, without advertising for bids, have  
26 the work done by force account. Emergency work may also be done by negotiated  
27 contract without advertising for bids. In case of an emergency, if notice for bids to  
28 let contracts will not be given, the board shall comply with Chapter 2.5  
29 (commencing with Section 22050).

30 **Comment.** Section 20991 is amended to correct a cross-reference.

31 **Pub. Cont. Code § 21061 (amended). San Bernardino County Flood Control District**

32 SEC. \_\_\_\_\_. Section 21061 of the Public Contract Code is amended to read:

33 21061. (a) All contracts for any improvement or unit of work, except as  
34 provided in this article, estimated to cost in excess of twenty-five thousand dollars  
35 (\$25,000), shall be let to the lowest responsible bidder in the manner provided in  
36 this article.

37 (b) The board of supervisors of the district shall advertise by five or more  
38 insertions in a daily newspaper of general circulation, or by two or more insertions  
39 in a weekly newspaper of general circulation, printed and published in the district,  
40 inviting sealed proposals for the construction of the improvement or work. The  
41 board shall require the successful bidder or bidders to file with the board good and

1 sufficient bonds, to be approved by the board, conditioned upon the faithful  
2 performance of the contract and upon the payment of all claims for labor and  
3 material, the bonds to contain the terms and conditions set forth in ~~Chapter 7~~  
4 ~~(commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil~~  
5 ~~Code Chapter 5 (commencing with Section 45010) of Part 6 of Division 2~~ and to  
6 be subject to that chapter.

7 (c) The board may also reject any bid not suitable to the best interests of the  
8 district. If all proposals are rejected or no proposals are received pursuant to  
9 advertisement therefor, or the work consists of channel protection, dam protection,  
10 temporary work, maintenance work, or of emergency work, the board of  
11 supervisors may, without advertising for bids, have the work done by force  
12 account. Emergency work may also be done by negotiated contract without  
13 advertising for bids or requiring bonds. In case of an emergency, if notice for bids  
14 to let contracts will not be given, the board shall comply with Chapter 2.5  
15 (commencing with Section 22050).

16 (d) The board of supervisors, acting as the board of the district, may, by  
17 ordinance, resolution, or board order, authorize the flood control engineer or other  
18 county officer to order changes or additions in work being performed under a  
19 construction contract. When so authorized, any change or addition in the work  
20 shall be ordered in writing by the flood control engineer, or other designated  
21 officer, and the extra cost for any change or addition to the work so ordered shall  
22 not exceed five thousand dollars (\$5,000) when the total amount of the original  
23 contract does not exceed fifty thousand dollars (\$50,000), nor 10 percent of the  
24 amount of any original contract that exceeds fifty thousand dollars (\$50,000), but  
25 does not exceed two hundred fifty thousand dollars (\$250,000). For contracts  
26 whose original cost exceeds two hundred fifty thousand dollars (\$250,000), the  
27 extra cost for any change or addition to the work so ordered shall not exceed  
28 twenty-five thousand dollars (\$25,000), plus 5 percent of the amount of the  
29 original contract costs in excess of two hundred fifty thousand dollars (\$250,000).  
30 In no event shall any such change or alteration exceed one hundred fifty thousand  
31 dollars (\$150,000).

32 **Comment.** Section 21061 is amended to correct a cross-reference.

33 **Pub. Cont. Code § 21071 (amended). Ventura County Watershed Protection District**

34 SEC. \_\_\_\_\_. Section 21071 of the Public Contract Code is amended to read:

35 21071. (a) All contracts for any improvement or unit of work except as  
36 hereinafter provided estimated to cost in excess of ten thousand dollars (\$10,000)  
37 shall be let to the lowest responsible bidder in the manner hereinafter provided.  
38 The board of supervisors of the district shall advertise by three insertions in a daily  
39 newspaper of general circulation or two insertions in a weekly newspaper of  
40 general circulation printed and published in the district inviting sealed proposals  
41 for the construction of, the improvement or work before any contract shall be  
42 made therefor, and may let by contract separately any part of the work or

1 improvement. The board shall require the successful bidder to file with the board  
2 good and sufficient bonds to be approved by the board conditioned upon the  
3 faithful performance of the contract and upon the payment of their claims for labor  
4 and material in connection therewith, such bonds to contain the terms and  
5 conditions set forth in ~~Chapter 7 (commencing with Section 3247) of Title 5 of~~  
6 ~~Part 4 of the Civil Code~~ Chapter 5 (commencing with Section 45010) of Part 6 of  
7 Division 2 and to be subject to the provisions of that chapter. The board shall also  
8 have the right to reject any and all bids. In the event all proposals are rejected or  
9 no proposals are received pursuant to advertisement therefor, or where the  
10 estimated cost of such work does not exceed the sum of ten thousand dollars  
11 (\$10,000), or the work consists of channel protection, or maintenance work, or  
12 emergency work when necessary in order to protect life and property from  
13 impending flood damage, the board of supervisors may, without advertising for  
14 bids therefor, have the work done by force account or negotiated contract.

15 (b) The district shall have the power to purchase in the open market without  
16 advertising for bids therefor, materials, supplies, equipment, and other personal  
17 property for use in any work therewith either under contract or by force account  
18 where the costs thereof do not exceed ten thousand dollars (\$10,000). It shall be  
19 the duty of the purchasing agent of Ventura County, as the ex officio purchasing  
20 agent of the Ventura County Watershed Protection District, unless otherwise  
21 ordered by the board of supervisors, to purchase for the district all materials,  
22 supplies, equipment, and other personal property necessary to carry out the  
23 purposes of this act, and to engage independent contractors to perform sundry  
24 services for the district, where the aggregate cost of such work, exclusive of  
25 materials to be furnished by the district, does not exceed ten thousand dollars  
26 (\$10,000).

27 (c) The purchasing agent shall make all such purchases and contracts upon  
28 proper requisition therefor, signed by the engineer-manager of the district, or his  
29 or her authorized representative.

30 (d) If the work consists of the maintenance or alteration of existing facilities,  
31 including electrical, painting, and roofing in connection therewith, and if the cost  
32 of labor and materials for such work according to the engineer's estimate will  
33 exceed five thousand dollars (\$5,000), and if the work is not of the type of work  
34 referred to in this section, such maintenance and alteration work shall be  
35 performed under a contract or contracts that shall be let to the lowest responsible  
36 bidder or bidders in the manner described in this section.

37 **Comment.** Section 21071 is amended to correct a cross-reference.

38 **Pub. Cont. Code § 21081 (amended). Humboldt County Flood Control District**

39 SEC. \_\_\_\_\_. Section 21081 of the Public Contract Code is amended to read:

40 21081. All contracts for any improvement or unit of work, when the cost,  
41 according to the estimate of the engineer, will exceed five thousand dollars  
42 (\$5,000), shall be let to the lowest responsible bidder or bidders in the manner

1 provided in this article. The board shall first determine whether the contract shall  
2 be let as a single unit for the whole of the work, or shall be divided into severable  
3 parts, or both, according to the best interests of the district. The board shall call for  
4 bids and advertise the call by three insertions in a daily newspaper of general  
5 circulation or by two insertions in a weekly newspaper of general circulation  
6 printed and published in the district inviting sealed proposals for the construction  
7 or performance of the improvement or work before any contract is made. The call  
8 for bids shall state whether the work is to be performed as a unit or divided into  
9 severable specific parts, or both, as stated in the call. The board may let the work  
10 by single contract for the whole or it may divide such work into severable parts by  
11 separate contracts, as stated in such call, according to the best interests of the  
12 district. The board shall require the successful bidder or bidders to file with the  
13 board good and sufficient bonds to be approved by the board conditioned upon the  
14 faithful performance of the contract and upon the payment of their claims for labor  
15 and material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
16 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6  
17 (commencing with Section 41010) of Division 2 and to be subject to the  
18 provisions of that ~~title~~ part. The board shall also have the right to reject any bid. In  
19 the event all proposals are rejected or no proposals are received pursuant to  
20 advertisement, or the estimated cost of such work does not exceed five thousand  
21 dollars (\$5,000), or the work consists of channel protection, maintenance work, or  
22 emergency work, the board of supervisors may, without advertising for bids, have  
23 the work done by force account. The district may purchase in the open market,  
24 without advertising for bids, materials and supplies for use in any work either  
25 under contract or by force account.

26 **Comment.** Section 21081 is amended to correct a cross-reference.

27 **Pub. Cont. Code § 21091 (amended). Riverside County Flood Control and Water**  
28 **Conservation District**

29 SEC. \_\_\_\_\_. Section 21091 of the Public Contract Code is amended to read:

30 21091. All contracts for any improvement or unit of work, except as otherwise  
31 provided in this act, estimated to cost in excess of fifteen thousand dollars  
32 (\$15,000) shall be let to the lowest responsible bidder in the manner provided in  
33 this article. The board of supervisors of the district shall advertise by three  
34 insertions in a daily newspaper of general circulation or two insertions in a weekly  
35 newspaper of general circulation printed and published in the district inviting  
36 sealed proposals for the construction of the improvement or work before any  
37 contract is made, and may let by contract separately any part of the work or  
38 improvement. The board shall require the successful bidder to file with the board  
39 good and sufficient bonds to be approved by the board conditioned upon the  
40 faithful performance of the contract and upon the payment of their claims for labor  
41 and material. The bonds shall contain the terms and conditions set forth in  
42 ~~Sections 10223 and 10224 of the Public Contract Code and Section 3248 of the~~

1 ~~Civil Code 10223, 10224, and 45030~~ and be subject to those sections. The board  
2 shall also have the right to reject any bid. If all proposals are rejected or no  
3 proposals are received pursuant to advertisement, or where the estimated cost of  
4 the work does not exceed fifteen thousand dollars (\$15,000), or the work consists  
5 of channel protection, maintenance work, or emergency work, the board of  
6 supervisors may, without advertising for bids, have the work done by force  
7 account. In case of an emergency, if notice for bids to let contracts will not be  
8 given, the board shall comply with Chapter 2.5 (commencing with Section 22050).  
9 The district may purchase in the open market, without advertising for bids,  
10 materials and supplies for use in any improvement or unit of work either under  
11 contract or by force account.

12 **Comment.** Section 21091 is amended to correct a cross-reference.

13 **Pub. Cont. Code § 21101 (amended). San Luis Obispo County Flood Control and Water**  
14 **Conservation District**

15 SEC. \_\_\_\_\_. Section 21101 of the Public Contract Code is amended to read:

16 21101. All contracts for any improvement or unit of work, when the cost,  
17 according to the estimate of the engineer, will exceed five thousand dollars  
18 (\$5,000), shall be let to the lowest responsible bidder or bidders in the manner  
19 provided in this article. The board shall first determine whether the contract shall  
20 be let as a single unit for the whole of the work, or shall be divided into parts, or  
21 both, according to the best interests of the district. The board shall call for bids and  
22 advertise the call by three insertions in a daily newspaper of general circulation or  
23 two insertions in a weekly newspaper of general circulation printed and published  
24 in the district inviting sealed proposals for the construction or performance of the  
25 improvement or work before any contract shall be made. The call for bids shall  
26 state whether the work is to be performed as a unit or is to be divided into  
27 severable specific parts, or both, as stated in the call. The board may let the work  
28 by single contract for the whole as a unit or it may divide the work into severable  
29 parts by separate contracts, as stated in the call, according to the best interests of  
30 the district. The board shall require the successful bidder or bidders to file with the  
31 board good and sufficient bonds to be approved by the board conditioned upon the  
32 faithful performance of the contract and upon the payment of their claims for labor  
33 and material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
34 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6  
35 (commencing with Section 41010) of Division 2 and to be subject to the  
36 provisions of that ~~title part~~. The board shall also have the right to reject any bid. In  
37 the event all proposals are rejected or no proposals are received pursuant to  
38 advertisement, or the estimated cost of the work does not exceed five thousand  
39 dollars (\$5,000), or the work consists of channel protection, maintenance work, or  
40 emergency work, the board of supervisors may, without advertising for bids, have  
41 the work done by force account. In case of an emergency, if notice for bids to let  
42 contracts will not be given, the board shall comply with Chapter 2.5 (commencing

1 with Section 22050). The district shall have the power to purchase in the open  
2 market without advertising for bids, materials and supplies for use in any work  
3 either under contract or by force account.

4 **Comment.** Section 21101 is amended to correct a cross-reference.

5 **Pub. Cont. Code § 21111 (amended). Santa Barbara County Water Agency**

6 SEC. \_\_\_\_\_. Section 21111 of the Public Contract Code is amended to read:

7 21111. (a) All contracts for the construction of any unit of work, except as  
8 provided in this article, estimated to cost in excess of ten thousand dollars  
9 (\$10,000) shall be let to the lowest responsible bidder in the manner provided in  
10 this article. The board of directors of the agency shall advertise by three insertions  
11 in a daily newspaper of general circulation or two insertions in a weekly  
12 newspaper of general circulation published in the agency's jurisdiction inviting  
13 sealed proposals for the construction of the work before any contract shall be  
14 made, and may let by contract separately any part of the work. The board shall  
15 require the successful bidder to file with the board good and sufficient bonds to be  
16 approved by the board conditioned upon the faithful performance of the contract  
17 and upon the payment of the claims for labor and material. The faithful  
18 performance bond shall contain terms and conditions as the board may specify,  
19 and the payment bond shall be subject to the provisions of, and shall contain the  
20 terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part~~  
21 ~~4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of  
22 Division 2, as applicable. The board shall also have the right to reject any bid, in  
23 which case the board may advertise for new bids. In the event no proposals are  
24 received pursuant to advertisement, or where the estimated cost of the work does  
25 not exceed ten thousand dollars (\$10,000), or the work consists of emergency  
26 work, the board of directors by unanimous vote of all members present may,  
27 without advertising for bids, have the work done by force account. In case of an  
28 emergency, if notice for bids to let contracts will not be given, the board shall  
29 comply with Chapter 2.5 (commencing with Section 22050). The agency may  
30 purchase in the open market, and may authorize the Purchasing Agent of the  
31 County of Santa Barbara to purchase, without advertisement for bids, materials  
32 and supplies for use in any work either under contract or by force account.

33 (b) If the work to be performed by or on behalf of the agency does not involve  
34 an expenditure of ten thousand dollars (\$10,000) or more, or if the work consists  
35 of emergency work, the agency may require a faithful performance bond. The  
36 agency may require a payment bond on work performed on behalf of the agency  
37 which does not involve an expenditure of more than ten thousand dollars  
38 (\$10,000).

39 **Comment.** Section 21111 is amended to correct a cross-reference.



1 **Pub. Cont. Code § 21121 (amended). Monterey County Flood Control and Water**  
2 **Conservation District**

3 SEC. \_\_\_\_\_. Section 21121 of the Public Contract Code is amended to read:

4 21121. (a) All contracts for any improvement or unit of work, if the cost  
5 according to the estimate of the engineer, exceeds five thousand dollars (\$5,000),  
6 shall be let to the lowest responsible bidder or bidders.

7 (b) The board shall first determine whether the contract shall be let as a single  
8 unit for the whole of the work, or shall be divided into severable parts, or both,  
9 according to the best interests of the agency.

10 (c) The board shall call for bids and advertise the call by three insertions in a  
11 daily newspaper of general circulation or by two insertions in a weekly newspaper  
12 of general circulation printed and published in the territory of the agency inviting  
13 sealed proposals for the construction or performance of the improvement or work  
14 before any contract is entered into. The call for bids shall state whether the work is  
15 to be performed as a unit or shall be divided into severable specific parts, or both,  
16 as stated in the call. The board may let the work by single contract or it may divide  
17 the work into severable parts by separate contracts, as stated in the call, according  
18 to the best interests of the agency.

19 (d) The board shall require the successful bidder or bidders to file with the board  
20 good and sufficient bonds to be approved by the board conditioned upon the  
21 faithful performance of the contract and upon the payment of their claims for labor  
22 and material in connection with the contract. The bonds shall contain the terms  
23 and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~  
24 ~~Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division  
25 2 and are subject to the provisions of that ~~title part~~.

26 (e) The board may reject any bid. The board of supervisors may, without  
27 advertising for bids, have the work done by force account if any of the following  
28 requirements are met:

29 (1) All the projects are rejected.

30 (2) No proposals are received in response to the advertisement.

31 (3) The estimated cost of the work does not exceed five thousand dollars  
32 (\$5,000).

33 (4) The work consists of channel protection, maintenance work, or emergency  
34 work. In case of an emergency, if notice for bids to let contracts will not be given,  
35 the board shall comply with Chapter 2.5 (commencing with Section 22050).

36 (f) The agency may purchase in the open market, without advertising for bids,  
37 materials and supplies for use in any work either under contract or by force  
38 account.

39 (g) The Monterey County Board of Supervisors may grant to the board of  
40 directors, appointed pursuant to Section 49 of the Monterey County Water  
41 Resources Agency Act (Chapter 1159 of the Statutes of 1990), any of the powers  
42 or duties granted to the Monterey County Board of Supervisors by this section.

43 **Comment.** Section 21121 is amended to correct a cross-reference.

1 **Pub. Cont. Code § 21131 (amended). Sonoma County Flood Control and Water**  
2 **Conservation District**

3 SEC. \_\_\_\_\_. Section 21131 of the Public Contract Code is amended to read:

4 21131. (a) All contracts for the construction of any unit of work, except as  
5 provided in this article, estimated to cost in excess of two thousand five hundred  
6 dollars (\$2,500) shall be let to the lowest responsible bidder in the manner  
7 provided in this article. The board shall advertise by three placements in a daily  
8 newspaper of general circulation or two insertions in a weekly newspaper of  
9 general circulation published in the district inviting sealed proposals for the  
10 construction of the work before any contract is made, and may let by contract  
11 separately any part of the work. The board shall require the successful bidder to  
12 file with the board good and sufficient bonds to be approved by the board  
13 conditioned upon the faithful performance of the contract and upon the payment of  
14 the claims for labor and material in connection therewith, the bonds to contain the  
15 terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part~~  
16 ~~4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of~~  
17 Division 2 and to be subject to the provisions of that ~~title part~~. The board may  
18 reject any bid, in which case the board may advertise for new bids.

19 (b) In the event no proposals are received pursuant to advertisement therefor, or  
20 where the work consists of emergency work, the board of directors, by unanimous  
21 vote of all members present, may, without advertising for bids, have the work  
22 done by force account. In case of an emergency, if notice for bids to let contracts  
23 will not be given, the board shall comply with Chapter 2.5 (commencing with  
24 Section 22050).

25 (c) The district may purchase in the open market without advertisement for bids,  
26 materials and supplies for use in any work either under contract or by force  
27 account; provided, however, that materials and supplies for use in any new  
28 construction work or improvement, except work authorized and required under  
29 circumstances referred to in subdivision (b), may not be purchased if the cost  
30 exceeds two thousand five hundred dollars (\$2,500), without advertising for bids  
31 and awarding the contract to the lowest responsible bidder.

32 (d) This section does not apply to a contract entered into with the United States  
33 or the State of California or other governmental agency under the authority of  
34 Section 3 of Chapter 2126 of the Statutes of 1959, or to a contract authorized by a  
35 vote of the electorate of the district.

36 (e) The district may rent or otherwise contract for equipment with or without an  
37 operator and use it on works of the district, if the contract is approved by the  
38 board.

39 **Comment.** Section 21131 is amended to correct a cross-reference.

40 **Pub. Cont. Code § 21141 (amended). Mendocino County Flood Control and Water**  
41 **Conservation District**

42 SEC. \_\_\_\_\_. Section 21141 of the Public Contract Code is amended to read:

1 21141. (a) All contracts for the construction of any unit of work, except as  
2 provided in this article, estimated to cost in excess of two thousand dollars  
3 (\$2,000) shall be let to the lowest responsible bidder in the manner provided in  
4 this article. The board shall advertise by three insertions in a daily newspaper of  
5 general circulation or two insertions in a weekly newspaper of general circulation  
6 published in the district inviting sealed proposals for the construction of the work  
7 before any contract shall be made, and may let by contract separately any part of  
8 the work. The board shall require the successful bidder to file with the board good  
9 and sufficient bonds to be approved by the board conditioned upon the faithful  
10 performance of the contract and upon the payment of the claims for labor and  
11 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
12 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6~~  
13 (commencing with Section 41010) of Division 2 and to be subject to the  
14 provisions of that ~~title~~ part. The board shall also have the right to reject any bid, in  
15 which case the board may advertise for new bids.

16 (b) In the event no proposals are received pursuant to advertisement, where the  
17 estimated cost of the work does not exceed the sum of two thousand dollars  
18 (\$2,000), or where the work consists of emergency work, the board of directors,  
19 by unanimous vote of all members present, may, without advertising for bids, have  
20 the work done by force account. In case of an emergency, if notice for bids to let  
21 contracts will not be given, the board shall comply with Chapter 2.5 (commencing  
22 with Section 22050).

23 (c) The district may purchase in the open market, without advertisement for  
24 bids, materials and supplies for use in any work either under contract or by force  
25 account; provided, however, that materials and supplies for use in any new  
26 construction work or improvement, except work referred to in subdivision (b),  
27 may not be purchased if the cost exceeds two thousand five hundred dollars  
28 (\$2,500), without advertising for bids and awarding the contract therefor to the  
29 lowest responsible bidder.

30 (d) The provisions of this section have no application to a contract entered into  
31 with the United States under the authority of Section 3, or to a contract authorized  
32 by a vote of the electorate of the district.

33 **Comment.** Section 21141 is amended to correct a cross-reference.

34 **Pub. Cont. Code § 21151 (amended). Alameda County Flood Control and Water**  
35 **Conservation District**

36 SEC. \_\_\_\_\_. Section 21151 of the Public Contract Code is amended to read:

37 21151. All contracts for any improvement or unit of work when the cost  
38 according to the estimate of the engineer will exceed twenty-five thousand dollars  
39 (\$25,000), with or without the furnishing of materials or supplies, shall be let to  
40 the lowest responsible bidder or bidders in the manner provided in this article.

41 Construction of improvements or works shall not be staged to avoid the bidding  
42 process. The board shall first determine whether the contract shall be let as a

1 single unit for the whole of the work, or shall be divided into severable parts, or  
2 both, according to the best interests of the district. The board shall call for bids and  
3 advertise the call by inviting sealed proposals for the construction or performance  
4 of the improvement or work before any contract is made. The board shall invite  
5 the bids by publishing a notice of the call for bids pursuant to Section 6062 or  
6 6066 of the Government Code in a newspaper of general circulation in the county.  
7 The call for bids shall state whether the work is to be performed as a unit or shall  
8 be divided into severable specific parts, or both, as stated in the call. The board  
9 may let the work by single contract or it may divide the work into severable parts  
10 by separate contracts, as stated in the call, according to the best interests of the  
11 district. The board shall require the successful bidder or bidders to file with the  
12 board good and sufficient bonds to be approved by the board conditioned upon the  
13 faithful performance of the contract and upon the payment of their claims for labor  
14 and material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
15 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6  
16 (commencing with Section 41010) of Division 2 and to be subject to the  
17 provisions of that ~~title part~~. The board shall also have the right to reject any bid. In  
18 the event the engineer's estimate is twenty-five thousand dollars (\$25,000) or less,  
19 or in the event no proposals are received pursuant to advertisement therefor, or in  
20 the event the work consists of channel protection or maintenance work, or  
21 emergency work, the board of supervisors may, without advertising for bids, have  
22 the work done by day labor under the direction of the board, by contract, or by a  
23 combination of the two. In case of an emergency, if notice for bids to let contracts  
24 will not be given, the board shall comply with Chapter 2.5 (commencing with  
25 Section 22050). The district may acquire in the open market without advertising  
26 for bids, materials, equipment, and supplies for use in any work or for any other  
27 purpose.

28 **Comment.** Section 21151 is amended to correct a cross-reference.

29 **Pub. Cont. Code § 21161 (amended). Santa Clara Valley Water District**

30 SEC. \_\_\_\_\_. Section 21161 of the Public Contract Code is amended to read:

31 21161. (a) Any improvement or unit of work not performed by district personnel  
32 and estimated by the engineer to cost in excess of twenty-five thousand dollars  
33 (\$25,000) shall be done by contract. All contracts shall be let to the lowest  
34 responsible bidder or bidders in the manner provided in this article. The board  
35 shall first determine whether the contract shall be let as a single unit for the whole  
36 of the work, or shall be divided into severable parts, or both, according to the best  
37 interests of the district. The board shall call for bids and advertise the call by three  
38 insertions in a daily newspaper of general circulation or by two insertions in a  
39 weekly newspaper of general circulation printed and published in the district  
40 inviting sealed proposals for the construction or performance of the improvement  
41 or work before any contract is made. The call for bids shall state whether the work  
42 is to be performed as a unit for the whole thereof or shall be divided into severable

1 specific parts, or both, as stated in the call. The board may let the work by single  
2 contract or it may divide the work into severable parts by separate contracts, as  
3 stated in the call, according to the best interests of the district. The board shall  
4 require the successful bidder or bidders to file with the board good and sufficient  
5 bonds to be approved by the board conditioned upon the faithful performance of  
6 the contract and upon the payment of their claims for labor and material, the bonds  
7 to contain the terms and conditions set forth in ~~Title 15 (commencing with Section~~  
8 ~~3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section  
9 41010) of Division 2 and to be subject to the provisions of that ~~title part~~. The  
10 board shall also have the right to reject any bid. In the event all proposals are  
11 rejected or no proposals are received pursuant to advertisement, or the estimated  
12 cost of the work does not exceed five thousand dollars (\$5,000), or the work  
13 consists of channel protection, maintenance work, or emergency work, the board  
14 may, without advertising for bids, have the work done by force account. In case of  
15 an emergency, if notice for bids to let contracts will not be given, the board shall  
16 comply with Chapter 2.5 (commencing with Section 22050). The district may  
17 purchase in the open market, without advertising for bids, materials and supplies  
18 for use in any work either under contract or by force account.

19 (b) The provisions of this section requiring competitive bidding and the award of  
20 contracts to the lowest responsible bidder are inapplicable to the extent the  
21 improvement or unit of work is to be performed on its own facilities by a public  
22 utility subject to the jurisdiction of the California Public Utilities Commission.

23 **Comment.** Section 21161 is amended to correct a cross-reference.

24 **Pub. Cont. Code § 21171 (amended). Napa County Flood Control and Water Conservation**  
25 **District**

26 SEC. \_\_\_\_\_. Section 21171 of the Public Contract Code is amended to read:

27 21171. (a) All contracts for any improvement or unit of work when the cost,  
28 according to the estimate of the engineer, will exceed two thousand dollars  
29 (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner  
30 provided in this article. The board shall first determine whether the contract shall  
31 be let as a single unit for the whole of the work, or shall be divided into severable  
32 parts, or both, according to the best interests of the district. The board shall call for  
33 bids and advertise the call by three insertions in a daily newspaper of general  
34 circulation or by two insertions in a weekly newspaper of general circulation  
35 printed and published in the district inviting sealed proposals for the construction  
36 or performance of the improvement or work before any contract is made. The call  
37 for bids shall state whether the work is to be performed as a unit for the whole  
38 thereof or shall be divided into severable specific parts, or both, as stated in the  
39 call. The board may let the work by single contract as a unit or it may divide the  
40 work into severable parts by separate contracts, as stated in the call, according to  
41 the best interests of the district. The board shall require the successful bidder or  
42 bidders to file with the board good and sufficient bonds to be approved by the

1 board conditioned upon the faithful performance of the contract and upon the  
2 payment of their claims for labor and material, the bonds to contain the terms and  
3 conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~  
4 ~~Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division  
5 2 and to be subject to the provisions of that ~~title~~ part. The board shall also have the  
6 right to reject any bid.

7 (b) In the event all proposals are rejected or no proposals are received pursuant  
8 to advertisement, or the estimated cost of the work does not exceed two thousand  
9 dollars (\$2,000), or the work consists of channel protection, maintenance work, or  
10 emergency work, the board of supervisors may, without advertising for bids, have  
11 the work done by force account. In case of an emergency, if notice for bids to let  
12 contracts will not be given, the board shall comply with Chapter 2.5 (commencing  
13 with Section 22050).

14 (c) The district may purchase in the open market, without advertising for bids,  
15 materials and supplies for use in any work either under contract or by force  
16 account; provided, however, that materials and supplies for use in any new  
17 construction work or improvements, except work referred to in subdivision (b),  
18 may not be purchased if the cost exceeds two thousand five hundred dollars  
19 (\$2,500), without advertising for bids and awarding the contract to the lowest  
20 responsible bidder.

21 **Comment.** Section 21171 is amended to correct a cross-reference.

22 **Pub. Cont. Code § 21181 (amended). Lake County Flood Control and Water Conservation**  
23 **District**

24 SEC. \_\_\_\_\_. Section 21181 of the Public Contract Code is amended to read:

25 21181. All contracts for any improvement or unit of work when the cost  
26 according to the estimate of the engineer, will exceed four thousand dollars  
27 (\$4,000), shall be let to the lowest responsible bidder or bidders in the manner  
28 provided in this article. The board shall first determine whether the contract shall  
29 be let as a single unit or shall be divided into severable parts, or both, according to  
30 the best interests of the district. The board shall call for bids and advertise the call  
31 in the district pursuant to Section 6066 of the Government Code inviting sealed  
32 proposals for the construction or performance of the improvement or before any  
33 contract is made. The call for bids shall state whether the work is to be performed  
34 as a unit or shall be divided into severable specific parts, or both, as stated in the  
35 call. The board may let the work by single contract or it may divide the work into  
36 severable parts by separate contracts, as stated in the call, according to the best  
37 interests of the district. The board shall require the successful bidder or bidders to  
38 file with the board good and sufficient bonds to be approved by the board  
39 conditioned upon the faithful performance of the contract and upon the payment of  
40 their claims for labor and material, the bonds to contain the terms and conditions  
41 set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the~~  
42 ~~Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be

1 subject to the provisions of that ~~title~~ part. The board shall also have the right to  
2 reject any bid.

3 (b) In the event no proposals are received pursuant to advertisement or the  
4 estimated cost of the work does not exceed four thousand dollars (\$4,000), or the  
5 work consists of channel protection, maintenance work, or emergency work, the  
6 board of supervisors may, without advertising for bids, have the work done by day  
7 labor, under the direction of the board, by contract, or by the combination of the  
8 two. In case of an emergency, if notice for bids to let contracts will not be given,  
9 the board shall comply with Chapter 2.5 (commencing with Section 22050).

10 (c) The district may acquire in the open market, without advertising for bids,  
11 materials, equipment, and supplies for use in any work or for any other purpose;  
12 provided, however, that materials and supplies for use in any new construction  
13 work or improvement, except work referred to in subdivision (b), may not be  
14 purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without  
15 advertising for bids and awarding the contract to the lowest responsible bidder.

16 **Comment.** Section 21181 is amended to correct a cross-reference.

17 **Pub. Cont. Code § 21196 (amended). Solano County Water Agency**

18 SEC. \_\_\_\_\_. Section 21196 of the Public Contract Code is amended to read:

19 21196. (a) All contracts for the construction of any unit of work, except as  
20 provided in this article, estimated to cost in excess of two thousand five hundred  
21 dollars (\$2,500) shall be let to the lowest responsible bidder in the manner  
22 provided in this article. The board of directors of the district shall call for bids and  
23 advertise the call by three insertions in a daily newspaper of general circulation or  
24 two insertions in a weekly newspaper of general circulation published in the  
25 district inviting sealed proposals for the construction of the work before any  
26 contract is made, and may let by contract separately any part of the work. The  
27 board shall require the successful bidder to file with the board good and sufficient  
28 bonds to be approved by the board conditioned upon the faithful performance of  
29 the contract and upon the payment of the claims for labor and material, the bonds  
30 to contain the terms and conditions set forth in ~~Title 15 (commencing with Section~~  
31 ~~3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section  
32 41010) of Division 2 and to be subject to the provisions of ~~this title~~ that part. The  
33 board shall also have the right to reject any bid, in which case the board may  
34 advertise for new bids.

35 (b) In the event no proposals are received pursuant to advertisement, or where  
36 the estimated cost of the work does not exceed two thousand five hundred dollars  
37 (\$2,500), or the work consists of emergency work, the board of directors by  
38 unanimous vote of all members present, may, without advertising for bids, have  
39 the work done by force account. In case of an emergency, if notice for bids to let  
40 contracts will not be given, the board shall comply with Chapter 2.5 (commencing  
41 with Section 22050). The district may purchase in the open market, without

1 advertisement for bids, materials and supplies for use in any work either under  
2 contract or by force account.

3 (c) The provisions of this section have no application to a contract entered into  
4 with the United States under the authority of the Solano County Flood Control and  
5 Water Conservation District Act, or to a contract authorized by a vote of the  
6 electorate of the district.

7 **Comment.** Section 21196 is amended to correct a cross-reference.

8 **Pub. Cont. Code § 21212 (amended). Sacramento County Water Agency**

9 SEC. \_\_\_\_\_. Section 21212 of the Public Contract Code is amended to read:

10 21212. (a) All contracts for the construction of any unit of work, except as  
11 provided in this article, estimated to cost in excess of three thousand dollars  
12 (\$3,000), shall be let to the lowest responsible bidder in the manner provided in  
13 this article. The board of directors of the agency shall advertise pursuant to Section  
14 6066 of the Government Code in a newspaper of general circulation published in  
15 the agency's jurisdiction inviting sealed proposals for the construction of the work  
16 before any contract is made, and may let by contract separately any part of the  
17 work. The board shall require the successful bidder to file with the board good and  
18 sufficient bonds to be approved by the board conditioned upon the faithful  
19 performance of the contract and upon the payment of any claims for labor and  
20 material and containing the terms and conditions set forth in ~~Title 15 (commencing~~  
21 ~~with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing  
22 with Section 41010) of Division 2 and to be subject to the provisions of that ~~title~~  
23 part. The board shall also have the right to reject any bid, in which case the board  
24 may advertise for new bids.

25 (b) In the event no proposals are received pursuant to advertisement, or where  
26 the estimated cost of the work does not exceed three thousand dollars (\$3,000), or  
27 the work consists of emergency work, the board of directors, by unanimous vote  
28 of all members present, may, without advertising for bids, have the work done by  
29 force account. In case of an emergency, if notice for bids to let contracts will not  
30 be given, the board shall comply with Chapter 2.5 (commencing with Section  
31 22050).

32 (c) The agency may purchase in the open market without advertisement for bids,  
33 materials and supplies for use in any work either under contract or by force  
34 account.

35 (d) The provisions of this section have no application to a contract entered into  
36 with the United States under the authority of Section 6 of Chapter 10 of the  
37 Statutes of the 1952 First Extraordinary Session, or to a contract authorized by a  
38 vote of the electorate of the agency.

39 **Comment.** Section 21212 is amended to correct a cross-reference.



1 **Pub. Cont. Code § 21231 (amended). Marin County Flood Control and Water Conservation**  
2 **District**

3 SEC. \_\_\_\_\_. Section 21231 of the Public Contract Code is amended to read:

4 21231. Any improvement or unit of work when the cost, according to the  
5 estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be done  
6 by contract let to the lowest responsible bidder or bidders in the manner provided  
7 in this article. The board shall first determine whether the contract will be let as a  
8 single unit, or will be divided into severable parts, or both, according to the best  
9 interests of the district. The board shall call for bids and advertise the call pursuant  
10 to Section 6066 of the Government Code in the district, inviting sealed proposals  
11 for the construction or performance of the improvement or before any contract is  
12 made. The call for bids shall state whether the work is to be performed as a unit or  
13 shall be divided into separate specific parts, or both, as stated in the call. The  
14 board may let the work by single contract or it may divide the work into severable  
15 parts by separate contracts, as stated in the call, according to the best interests of  
16 the district. The board shall require the successful bidder or bidders to file with the  
17 board good and sufficient bonds to be approved by the board conditioned upon the  
18 faithful performance of the contract and upon the payment of their claims for labor  
19 and material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
20 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6  
21 (commencing with Section 41010) of Division 2 and to be subject to the  
22 provisions of that ~~title part~~. The board shall also have the right to reject any bid. In  
23 the event no proposals are received pursuant to advertisement, or the estimated  
24 cost of the work does not exceed five thousand dollars (\$5,000), or the work  
25 consists of channel protection, maintenance work, or emergency work, the board  
26 of supervisors may, without advertising for bids, have the work done by day labor,  
27 under the direction of the board, by contract, or by a combination of the two. In  
28 case of an emergency, if notice for bids to let contracts will not be given, the board  
29 shall comply with Chapter 2.5 (commencing with Section 22050). The district  
30 may acquire in the open market without advertising for bids, materials, equipment  
31 and supplies for use in any work or for any other purpose; provided, however, that  
32 materials and supplies for use in any new construction work or improvement,  
33 except work referred to in the preceding sentence, may not be purchased if the cost  
34 exceeds five thousand dollars (\$5,000), without advertising for bids and awarding  
35 the contract to the lowest responsible bidder.

36 **Comment.** Section 21231 is amended to correct a cross-reference.

37 **Pub. Cont. Code § 21241 (amended). Contra Costa County**

38 SEC. \_\_\_\_\_. Section 21241 of the Public Contract Code is amended to read:

39 21241. All contracts for any improvement or unit of work when the cost,  
40 according to the estimate of the engineer, will exceed two thousand dollars  
41 (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner  
42 provided in this article. The board shall first determine whether the contract shall

1 be let as a single unit or shall be divided into severable parts, or both, according to  
2 the best interests of the zone. The board shall call for bids and advertise the call  
3 pursuant to Section 6066 of the Government Code in the district inviting sealed  
4 proposals for the construction or performance of the improvement or work before  
5 any contract is made. The call for bids shall state whether the work is to be  
6 performed as a unit or shall be divided into severable specific parts, or both, as  
7 stated in the call. The board may let the work by single contract or it may divide  
8 the work into severable parts by separate contracts, as stated in the call, according  
9 to the best interests of the district. The board shall require the successful bidder or  
10 bidders to file with the board good and sufficient bonds to be approved by the  
11 board conditioned upon the faithful performance of the contract and upon the  
12 payment of their claims for labor and material, the bonds to contain the terms and  
13 conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~  
14 ~~Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division  
15 2 and to be subject to the provisions of that ~~title~~ part. The board shall also have the  
16 right to reject any bid. In the event no proposals are received pursuant to  
17 advertisement, or the estimated cost of the work does not exceed two thousand  
18 dollars (\$2,000), or the work consists of emergency work, the board of supervisors  
19 may, without advertising for bids, have the work done by day labor, under the  
20 direction of the board, by contract, or by a combination of the two. In case of an  
21 emergency, if notice for bids to let contracts will not be given, the board shall  
22 comply with Chapter 2.5 (commencing with Section 22050). The board may  
23 acquire in the open market, without advertising for bids, materials, equipment, and  
24 supplies for use in any work or for any other purpose; provided, however, that  
25 materials and supplies for use in any new construction work or improvement,  
26 except work referred to in the preceding sentence, may not be purchased if the cost  
27 exceeds two thousand five hundred dollars (\$2,500), without advertising for bids  
28 and awarding the contract to the lowest responsible bidder.

29 **Comment.** Section 21241 is amended to correct a cross-reference.

30 **Pub. Cont. Code § 21251 (amended). San Benito County Water Conservation and Flood**  
31 **Control District**

32 SEC. \_\_\_\_\_. Section 21251 of the Public Contract Code is amended to read:

33 21251. (a) (1) All contracts for any improvement or unit of work, if the cost  
34 according to the estimate of the engineer will exceed thirty thousand dollars  
35 (\$30,000), shall be let to the lowest responsible bidder or bidders as provided in  
36 this article. The board shall first determine whether the contract shall be let as a  
37 single unit or divided into severable parts, or both.

38 (2) All contracts for any improvement or unit of work, if the cost according to  
39 the estimate of the engineer is thirty thousand dollars (\$30,000) or less, may be let  
40 without advertising for bids in accordance with procedures adopted by the board.

41 (b) The board shall call for bids and advertise the call pursuant to Section 6063  
42 of the Government Code in the district, inviting sealed proposals for the

1 construction or performance of the improvement or work before any contract is  
2 made. The call for bids shall state whether the work is to be performed as one unit  
3 or divided into severable specific parts.

4 (c) The work may be let under a single contract or several contracts, or both, as  
5 stated in the call. The board shall require the successful bidder or bidders to file  
6 with the board good and sufficient bonds to be approved by the board conditioned  
7 upon the faithful performance of the contract and upon the payment of their claims  
8 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~  
9 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with  
10 Section 41010) of Division 2. The board may reject any bid.

11 (d) If all proposals are rejected or no proposals are received, or the estimated  
12 cost of the work does not exceed five thousand dollars (\$5,000), or the work  
13 consists of channel protection, maintenance work, or emergency work, the board  
14 may have the work done by force account without advertising for bids. In case of  
15 an emergency, if notice for bids to let contracts will not be given, the board shall  
16 comply with Chapter 2.5 (commencing with Section 22050).

17 (e) The district may purchase in the open market, without advertising for bids,  
18 materials and supplies for use in any work either under contract or by force  
19 account.

20 **Comment.** Section 21251 is amended to correct a cross-reference.

21 **Pub. Cont. Code § 21261 (amended). Del Norte County Flood Control District**

22 SEC. \_\_\_\_\_. Section 21261 of the Public Contract Code is amended to read:

23 21261. All contracts for any improvement or unit of work when the cost,  
24 according to the estimate of the engineer, will exceed two thousand dollars  
25 (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner  
26 provided in this article. The board shall first determine whether the contract shall  
27 be let as a single unit for the work, or shall be divided into severable parts, or both,  
28 according to the best interests of the district. The board shall call for bids and  
29 advertise the call pursuant to Section 6066 of the Government Code in the district  
30 inviting sealed proposals for the construction or performance of the improvement  
31 or work before any contract is made. The call for bids shall state whether the work  
32 is to be performed as a unit or shall be divided into severable specific parts, or  
33 both, as stated in the call. The board may let the work by single contract or it may  
34 divide the work into severable parts by separate contracts, as stated in the call,  
35 according to the best interests of the district. The board shall require the successful  
36 bidder or bidders to file with the board good and sufficient bonds to be approved  
37 by the board conditioned upon the faithful performance of the contract and upon  
38 the payment of their claims for labor and material, the bonds to contain the terms  
39 and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~  
40 ~~Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division  
41 2 and to be subject to the provisions of that ~~title~~ part. The board shall also have the  
42 right to reject any bid. In the event all proposals are rejected or no proposals are

1 received pursuant to advertisement, or the estimated cost of the work does not  
2 exceed two thousand dollars (\$2,000), or the work consists of channel protection,  
3 maintenance work, or emergency work, the board of supervisors may, without  
4 advertising for bids, have the work done by force account. In case of an  
5 emergency, if notice for bids to let contracts will not be given, the board shall  
6 comply with Chapter 2.5 (commencing with Section 22050). The district may  
7 purchase in the open market, without advertising for bids, materials and supplies  
8 for use in any work either under contract or by force account.

9 **Comment.** Section 21261 is amended to correct a cross-reference.

10 **Pub. Cont. Code § 21271 (amended). Santa Barbara County Flood Control and Water**  
11 **Conservation District**

12 SEC. \_\_\_\_\_. Section 21271 of the Public Contract Code is amended to read:

13 21271. All improvement and units of work to be performed by or for the district  
14 shall be performed in accordance with the following procedures and requirements:

15 (a) If the work consists of the protection or maintenance of channels, storm  
16 drains, dams or other flood control works, or emergency work, the board of  
17 directors may, without advertising for bids therefor, have the work done by day  
18 labor under the direction of the board, by contract, or by a combination of the two.  
19 In case of an emergency, if notice for bids to let contracts will not be given, the  
20 board shall comply with Chapter 2.5 (commencing with Section 22050).

21 (b) If the work consists of the construction of new flood control channels, storm  
22 drains, dams, or other unit or units of work, and if the cost of the work, according  
23 to the estimate of the engineer, will exceed ten thousand dollars (\$10,000), and if  
24 the work is not the type of work referred to in subdivision (a) or (c) of this section,  
25 the new construction shall be performed under a contract or contracts which shall  
26 be let to the lowest responsible bidder or bidders in the manner provided in  
27 subdivision (d) of this section.

28 (c) If the work consists of the maintenance or alteration of existing facilities,  
29 including electrical, painting, and roofing work, and if the cost of labor and  
30 materials for the work according to the engineer's estimate, will exceed three  
31 thousand five hundred dollars (\$3,500), and if the work is not the type of work  
32 referred to in subdivision (a) or (b) of this section, the maintenance and alteration  
33 work shall be performed under a contract or contracts which shall be let to the  
34 lowest responsible bidder or bidders in the manner provided in subdivision (d) of  
35 this section.

36 (d) The board shall first determine whether the work shall be let as a single unit  
37 or shall be divided into severable parts, or both, according to the best interests of  
38 the district. The board shall call for bids and advertise the call pursuant to Section  
39 6066 of the Government Code in the district inviting sealed proposals for the  
40 construction or performance of the work before any contract is made. The call for  
41 bids shall state whether the work is to be performed as a unit or shall be divided  
42 into severable, specific parts, or both, as stated in the call. The board may let the

1 work by single contract or it may divide the work into severable parts by separate  
2 contracts, as stated in the call, according to the best interests of the district. The  
3 board shall require the successful bidder or bidders to file with the board good and  
4 sufficient bond to be approved by the board conditioned upon the faithful  
5 performance of the contract and upon the payment of the claims for labor and  
6 material. The faithful performance bond shall contain the terms and conditions as  
7 the board may specify, and the payment bond shall contain the terms and  
8 conditions set forth in, and shall be subject to, the provisions of ~~Title 15~~  
9 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6  
10 (commencing with Section 41010) of Division 2. If the work to be performed on  
11 behalf of the district does not involve an expenditure of fifteen thousand dollars  
12 (\$15,000) or more, the district may require a faithful performance bond or a  
13 payment bond. The board shall also have the right to reject any bid.

14 (e) If no proposals are received pursuant to advertisement, or if the estimated  
15 cost of work of the type referred to in subdivision (b) of this section does not  
16 exceed ten thousand dollars (\$10,000), or if the estimated cost of work of the type  
17 referred to in subdivision (c) of this section does not exceed three thousand five  
18 hundred dollars (\$3,500), the board of directors may, without advertising for bids,  
19 have the work done by day labor, under the direction of the board, by contract, or  
20 by combination of the two. If any change or alteration in a contract awarded under  
21 the provisions of this section for work of the type referred to in subdivision (b) or  
22 (c) is deemed necessary and the cost does not exceed 10 percent of the original  
23 contract price, the board may authorize the contractor to proceed with the change  
24 or alteration without the formality of obtaining bids.

25 (f) Notwithstanding the foregoing provisions, the district shall have the power to  
26 acquire in the open market, and may authorize the Purchasing Agents of the  
27 County of Santa Barbara to acquire in the open market, without advertising for  
28 bids, materials, equipment and supplies for use in any work or for any other  
29 purpose; provided, however, that materials and supplies for use in any new  
30 construction work or improvement, except work referred to in subdivision (a) of  
31 this section, may not be purchased without advertising for bids and awarding the  
32 contract to the lowest responsible bidder if the cost exceeds two thousand five  
33 hundred dollars (\$2,500), unless the purchase is made by the county purchasing  
34 agent at the request of the district, in which case the cost shall not exceed six  
35 thousand five hundred dollars (\$6,500).

36 **Comment.** Section 21271 is amended to correct a cross-reference.

37 **Pub. Cont. Code § 21311 (amended). San Joaquin County Flood Control and Water**  
38 **Conservation District**

39 SEC. \_\_\_\_\_. Section 21311 of the Public Contract Code is amended to read:

40 21311. (a) All contracts for any improvement or unit of work when the cost,  
41 according to the estimate of the engineer, will exceed two thousand dollars  
42 (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner

1 provided in this article. The board shall first determine whether the contract shall  
2 be let as a single unit, or shall be divided into severable parts, or both, according to  
3 the best interests of the district. The board shall call for bids and advertise the call  
4 by three insertions in a daily newspaper of general circulation or by two insertions  
5 in a weekly newspaper of general circulation printed and published in the district  
6 inviting sealed proposals for the construction or performance of the improvement  
7 or work before any contract is made. The call for bids shall state whether the work  
8 is to be performed as a unit or shall be divided into severable specific parts, or  
9 both, as stated in the call. The board may let the work by single contract for the  
10 whole as a unit or it may divide the work into severable parts by separate  
11 contracts, as stated in the call, according to the best interests of the district. The  
12 board shall require the successful bidder or bidders to file with the board good and  
13 sufficient bonds to be approved by the board conditioned upon the faithful  
14 performance of the contract and upon the payment of their claims for labor and  
15 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
16 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6  
17 (commencing with Section 41010) of Division 2 and to be subject to the  
18 provisions of that ~~title~~ part. The board shall also have the right to reject any bid.

19 (b) In the event no proposals are received pursuant to advertisement, or the  
20 estimated cost of the work does not exceed two thousand dollars (\$2,000), or the  
21 work consists of channel protection, maintenance work, or emergency work, the  
22 board of supervisors may, without advertising for bids, have the work done by day  
23 labor, under the direction of the board, by contract, or by a combination of the  
24 two. In case of an emergency, if notice for bids to let contracts will not be given,  
25 the board shall comply with Chapter 2.5 (commencing with Section 22050).

26 (c) The district may acquire in the open market, without advertising for bids,  
27 materials, equipment, and supplies for use in any work or for any other purpose;  
28 provided, however, that materials and supplies for use in any new construction  
29 work or improvement, except work referred to in subdivision (b), shall not be  
30 purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without  
31 advertising for bids and awarding the contract to the lowest responsible bidder.

32 **Comment.** Section 21311 is amended to correct a cross-reference.

33 **Pub. Cont. Code § 21321 (amended). Placer County Water Agency**

34 SEC. \_\_\_\_\_. Section 21321 of the Public Contract Code is amended to read:

35 21321. (a) All contracts for any improvement or unit of work, when the cost  
36 according to the estimate of the engineer will exceed thirty thousand dollars  
37 (\$30,000), shall be let to the lowest responsible bidder or bidders as provided in  
38 this article. The board shall first determine whether the contract shall be let as a  
39 single unit, or divided into severable parts. The board shall advertise for bids by  
40 three insertions in a daily newspaper of general circulation or by two insertions in  
41 a weekly newspaper of general circulation printed and published in the agency's  
42 jurisdiction, inviting sealed proposals for the construction or performance of the

1 improvement or work. The call for bids shall state whether the work shall be  
2 performed in one unit or divided into parts. The work may be let under a single  
3 contract or several contracts, as stated in the call.

4 The board shall require the successful bidders to file with the board good and  
5 sufficient bonds to be approved by the board conditioned upon the faithful  
6 performance of the contract and upon the payment of their claims for labor and  
7 material. The bonds shall comply with ~~Title 15 (commencing with Section 3082)~~  
8 ~~of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010)  
9 of Division 2.

10 (b) The board may reject any bid. In the event all proposals are rejected or no  
11 proposals are received, or the estimated cost of the work does not exceed five  
12 thousand dollars (\$5,000), or the work consists of channel protection,  
13 maintenance, or emergency work, the board may have the work done by force  
14 account without advertising for bids. In case of an emergency, if notice for bids to  
15 let contracts will not be given, the board shall comply with Chapter 2.5  
16 (commencing with Section 22050). In the event that no proposals are received, or  
17 if only one responsive proposal is received, the board may negotiate a contract for  
18 construction or performance of the work or improvement or substantially similar  
19 work or improvement. However, if only one responsive proposal is received, the  
20 contract must be negotiated with the bidder.

21 (c) The agency may purchase in the open market without advertising for bids,  
22 materials and supplies for use in any work, either under contract or by force  
23 account.

24 (d) Sections 4300 to 4305, inclusive, of the Government Code do not apply to  
25 the agency's Middle Fork American River Project.

26 (e) This section applies to all proposals or contracts whether or not received or  
27 entered into prior to the effective date of the amendment of this provision made at  
28 the 1963 Regular Session of the Legislature.

29 **Comment.** Section 21321 is amended to correct a cross-reference.

30 **Pub. Cont. Code § 21331 (amended). Tehama County Flood Control and Water**  
31 **Conservation District**

32 SEC. \_\_\_\_\_. Section 21331 of the Public Contract Code is amended to read:

33 21331. (a) All contracts for the construction of any unit of work, except as  
34 provided in this article, estimated to cost in excess of three thousand five hundred  
35 dollars (\$3,500) shall be let to the lowest responsible bidder in the manner  
36 provided in this article. The board shall advertise by three insertions in a daily  
37 newspaper of general circulation or two insertions in a weekly newspaper of  
38 general circulation published in the district inviting sealed proposals for the  
39 construction of the work before any contract shall be made, and may let by  
40 contract separately any part of the work. The board shall require the successful  
41 bidder to file with the board good and sufficient bonds to be approved by the  
42 board conditioned upon the faithful performance of the contract and upon the

1 payment of all claims for labor and material, the bonds to contain the terms and  
2 conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~  
3 ~~Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division~~  
4 2 and to be subject to the provisions of that ~~title part~~. The board shall also have the  
5 right to reject any bid, in which case the board may advertise for new bids.

6 (b) In the event no proposals are received pursuant to advertisement, where the  
7 estimated cost of the work does not exceed five thousand dollars (\$5,000), or  
8 where the work consists of emergency work, the board of directors, by unanimous  
9 vote of all members present, may, without advertising for bids, have the work  
10 done by force account. In case of an emergency, if notice for bids to let contracts  
11 will not be given, the board shall comply with Chapter 2.5 (commencing with  
12 Section 22050).

13 (c) The district may purchase in the open market, without advertisement for  
14 bids, materials and supplies for use in any work either under contract or by force  
15 account; provided, however, that materials and supplies for use in any new  
16 construction work or improvement, except work referred to in subdivision (b),  
17 may not be purchased if the cost exceeds five thousand dollars (\$5,000), without  
18 advertising for bids and awarding the contract to the lowest responsible bidder.

19 (d) The provisions of this section have no application to a contract entered into  
20 with the United States under the authority of Section 3 of Chapter 1280 of the  
21 Statutes of 1957, or to a contract authorized by a vote of the electorate of the  
22 district.

23 **Comment.** Section 21331 is amended to correct a cross-reference.

24 **Pub. Cont. Code § 21341 (amended). Shasta County Water Agency**

25 SEC. \_\_\_\_\_. Section 21341 of the Public Contract Code is amended to read:

26 21341. (a) All contracts for the construction of any unit of work, except as  
27 provided in this article, estimated to cost in excess of five thousand dollars  
28 (\$5,000) shall be let to the lowest responsible bidder. The board shall advertise by  
29 three insertions in a daily newspaper of general circulation or two insertions in a  
30 weekly newspaper of general circulation published by the agency inviting sealed  
31 proposals for the construction of the work before any contract is made, and may  
32 let by contract separately any part of the work. The board shall require the  
33 successful bidder to file with the board good and sufficient bonds to be approved  
34 by the board conditioned upon the faithful performance of the contract and upon  
35 the payment of the claims for labor and material, the bonds to contain the terms  
36 and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~  
37 ~~Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division~~  
38 2 and to be subject to the provisions of that ~~title part~~. The board shall also have the  
39 right to reject any bid, in which case the board may advertise for new bids. In the  
40 event no proposals are received pursuant to advertisement or where the estimated  
41 cost of the work does not exceed five thousand dollars (\$5,000), or where the work  
42 consists of emergency work, the board, by unanimous vote of all members present,



1 may, without advertising for bids, have the work done by force account. In case of  
2 an emergency, if notice for bids to let contracts will not be given, the board shall  
3 comply with Chapter 2.5 (commencing with Section 22050). The agency may  
4 purchase in the open market, without advertisement for bids, materials and  
5 supplies for use in any work either under contract or by force account.

6 (b) The provisions of this section have no application to a contract entered into  
7 with the United States under the authority of Section 59 of Chapter 1512 of the  
8 Statutes of 1957, or to a contract authorized by a vote of the electorate of the  
9 agency.

10 **Comment.** Section 21341 is amended to correct a cross-reference.

11 **Pub. Cont. Code § 21351 (amended). Yuba County Water Agency**

12 SEC. \_\_\_\_\_. Section 21351 of the Public Contract Code is amended to read:

13 21351. All contracts for any improvement or unit of work, when the cost  
14 according to the estimate of the engineer will exceed five thousand dollars  
15 (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this  
16 article. The board shall first determine whether the contract shall be let as a single  
17 unit, or divided into severable parts. The board shall advertise for bids by three  
18 insertions in a daily newspaper of general circulation or by two insertions in a  
19 weekly newspaper of general circulation printed and published by the agency,  
20 inviting sealed proposals for the construction or performance of the improvement  
21 or work. The call for bids shall state whether the work shall be performed in one  
22 unit or divided into parts. The work may be let under a single contract or several  
23 contracts, as stated in the call. The board shall require the successful bidders to file  
24 with the board good and sufficient bonds to be approved by the board conditioned  
25 upon the faithful performance of the contract and upon the payment of their claims  
26 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~  
27 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with  
28 Section 41010) of Division 2. The board may reject any bid. In the event all  
29 proposals are rejected or no proposals are received, or the estimated cost of the  
30 work does not exceed five thousand dollars (\$5,000), or the work consists of  
31 channel protection, maintenance work, or emergency work, the board may have  
32 the work done by force account without advertising for bids.

33 In case of an emergency, if notice for bids to let contracts will not be given, the  
34 board shall comply with Chapter 2.5 (commencing with Section 22050). The  
35 board may purchase in the open market without advertising for bids, materials and  
36 supplies for use in any work, either under contract or by force account. In  
37 awarding any contract or authorizing any work, the board shall comply with the  
38 provisions of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of  
39 Division 2 of the Labor Code.

40 **Comment.** Section 21351 is amended to correct a cross-reference.

1 **Pub. Cont. Code § 21361 (amended). Mariposa County Water Agency**

2 SEC. \_\_\_\_\_. Section 21361 of the Public Contract Code is amended to read:

3 21361. All contracts for any improvement or unit of work, when the cost  
4 according to the estimate of the engineer will exceed five thousand dollars  
5 (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this  
6 article. The board shall first determine whether the contract shall be let as a single  
7 unit, or divided into severable parts. The board shall advertise for bids by three  
8 insertions in a daily newspaper of general circulation or by two insertions in a  
9 weekly newspaper of general circulation printed and published in the agency's  
10 jurisdiction, inviting sealed proposals for the construction or performance of the  
11 improvement or work. The call for bids shall state whether the work shall be  
12 performed in one unit or divided into parts. The work may be let under a single  
13 contract or several contracts, as stated in the call. The board shall require the  
14 successful bidders to file with the board good and sufficient bonds to be approved  
15 by the board conditioned upon the faithful performance of the contract and upon  
16 the payment of their claims for labor and material. The bonds shall comply with  
17 ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~  
18 Part 6 (commencing with Section 41010) of Division 2. The board may reject any  
19 bid. In the event all proposals are rejected or no proposals are received, or the  
20 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the  
21 work consists of channel protection, maintenance work, or emergency work, the  
22 board of supervisors may have the work done by force account without advertising  
23 for bids. In case of an emergency, if notice for bids to let contracts will not be  
24 given, the board shall comply with Chapter 2.5 (commencing with Section 22050).  
25 The district may purchase in the open market without advertising for bids,  
26 materials and supplies for use in any work, either under contract or by force  
27 account.

28 **Comment.** Section 21361 is amended to correct a cross-reference.

29 **Pub. Cont. Code § 21371 (amended). Sutter County Water Agency**

30 SEC. \_\_\_\_\_. Section 21371 of the Public Contract Code is amended to read:

31 21371. All contracts for any improvement or unit of work, when the cost  
32 according to the estimate of the engineer will exceed five thousand dollars  
33 (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this  
34 article. The board shall first determine whether the contract shall be let as a single  
35 unit, or divided into severable parts. The board shall advertise for bids by three  
36 insertions in a daily newspaper of general circulation or by two insertions in a  
37 weekly newspaper of general circulation printed and published in the agency's  
38 jurisdiction, inviting sealed proposals for the construction or performance of the  
39 improvement or work. The call for bids shall state whether the work shall be  
40 performed in one unit or divided into parts. The work may be let under a single  
41 contract or several contracts, as stated in the call. The board shall require the  
42 successful bidders to file with the board good and sufficient bonds to be approved

1 by the board conditioned upon the faithful performance of the contract and upon  
2 the payment of their claims for labor and material. The bonds shall comply with  
3 ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~  
4 Part 6 (commencing with Section 41010) of Division 2. The board may reject any  
5 bid. In the event all proposals are rejected or no proposals are received, or the  
6 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the  
7 work consists of emergency work, the board may have the work done by force  
8 account without advertising for bids. In case of an emergency, if notice for bids to  
9 let contracts will not be given, the board shall comply with Chapter 2.5  
10 (commencing with Section 22050). The district may purchase in the open market  
11 without advertising for bids, materials and supplies for use in any work, either  
12 under contract or by force account.

13 **Comment.** Section 21371 is amended to correct a cross-reference.

14 **Pub. Cont. Code § 21381 (amended). San Mateo County Flood Control District**

15 SEC. \_\_\_\_\_. Section 21381 of the Public Contract Code is amended to read:

16 21381. All contracts for any improvement or unit of work, except as provided in  
17 this article, estimated to cost in excess of five thousand dollars (\$5,000) shall be  
18 let to the lowest responsible bidder in the manner provided in this article. The  
19 board of supervisors of the district shall advertise by three insertions in a daily  
20 newspaper of general circulation or two insertions in a weekly newspaper of  
21 general circulation printed and published in the district inviting sealed proposals  
22 for the construction of the improvement or work before any contract shall be  
23 made, and may let by contract separately any part of said work or improvement.  
24 The board shall require the successful bidder to file with the board good and  
25 sufficient bonds to be approved by the board conditioned upon the faithful  
26 performance of the contract and upon the payment of their claims for labor and  
27 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
28 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6  
29 (commencing with Section 41010) of Division 2 and to be subject to the  
30 provisions of that ~~title part~~. The board shall also have the right to reject any bid. In  
31 the event all proposals are rejected or no proposals are received pursuant to  
32 advertisement, or where the estimated cost of the work does not exceed five  
33 thousand dollars (\$5,000), or the work consists of channel protection, maintenance  
34 work, or emergency work, the board of supervisors may, without advertising for  
35 bids, have the work done by force account. In case of an emergency, if notice for  
36 bids to let contracts will not be given, the board shall comply with Chapter 2.5  
37 (commencing with Section 22050). The district may purchase in the open market  
38 without advertising for bids, materials and supplies for use in any work either  
39 under contract or by force account.

40 **Comment.** Section 21381 is amended to correct a cross-reference.

1 **Pub. Cont. Code § 21391 (amended). Plumas County Flood Control and Water**  
2 **Conservation District**

3 SEC. \_\_\_\_\_. Section 21391 of the Public Contract Code is amended to read:

4 21391. (a) All contracts for the construction of any unit of work, except as  
5 provided in this article, estimated to cost in excess of two thousand dollars  
6 (\$2,000) shall be let to the lowest responsible bidder in the manner provided in  
7 this article. The board shall advertise by three insertions in a daily newspaper of  
8 general circulation or two insertions in a weekly newspaper of general circulation  
9 published in the district, inviting sealed proposals for the construction of the work  
10 before any contract shall be made, and may let by contract separately any part of  
11 the work. The board shall require the successful bidder to file with the board good  
12 and sufficient bonds to be approved by the board conditioned upon the faithful  
13 performance of the contract and upon the payment of all claims for labor and  
14 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
15 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6~~  
16 (commencing with Section 41010) of Division 2 and to be subject to the  
17 provisions of that ~~title part~~ part. The board shall also have the right to reject any and all  
18 bids, in which case the board may advertise for new bids.

19 (b) In the event no proposals are received pursuant to advertisement therefor,  
20 where the estimated cost of the work does not exceed two thousand dollars  
21 (\$2,000), or where the work consists of emergency work necessary in order to  
22 protect life and property, the board of directors, by unanimous vote of all members  
23 present, may, without advertising for bids, have the work done by force account.  
24 In case of an emergency, if notice for bids to let contracts will not be given, the  
25 board shall comply with Chapter 2.5 (commencing with Section 22050).

26 (c) The district may purchase in the open market without advertisement for bids,  
27 materials and supplies for use in any work either under contract or by force  
28 account; provided, however, that materials and supplies for use in any new  
29 construction work or improvement, except work referred to in subdivision (b),  
30 may not be purchased if the cost exceeds two thousand five hundred dollars  
31 (\$2,500), without advertising for bids and awarding the contract to the lowest  
32 responsible bidder.

33 (d) The provisions of this section have no application to a contract entered into  
34 with the United States under the authority of Section 3 of Chapter 2114 of the  
35 Statutes of 1959, or to a contract authorized by a vote of the electorate of the  
36 district.

37 **Comment.** Section 21391 is amended to correct a cross-reference.

38 **Pub. Cont. Code § 21401 (amended). Siskiyou County Flood Control and Water**  
39 **Conservation District**

40 SEC. \_\_\_\_\_. Section 21401 of the Public Contract Code is amended to read:

41 21401. (a) All contracts for the construction of any unit of work, except as  
42 provided in this article, estimated to cost in excess of two thousand dollars

1 (\$2,000) shall be let to the lowest responsible bidder in the manner provided in  
2 this article. The board shall advertise by three insertions in a daily newspaper of  
3 general circulation or two insertions in a weekly newspaper of general circulation  
4 published in the district inviting sealed proposals for the construction of the work  
5 before any contract shall be made, and may let by contract separately any part of  
6 the work. The board shall require the successful bidder to file with the board good  
7 and sufficient bonds to be approved by the board conditioned upon the faithful  
8 performance of the contract and upon the payment of all claims for labor and  
9 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
10 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6~~  
11 (commencing with Section 41010) of Division 2 and to be subject to the  
12 provisions of that ~~title part~~. The board shall also have the right to reject any bids,  
13 in which case the board may advertise for new bids.

14 (b) In the event no proposals are received pursuant to advertisement, where the  
15 estimated cost of the work does not exceed two thousand dollars (\$2,000), or  
16 where work consists of emergency work, the board of directors, by unanimous  
17 vote of all members present, may, without advertising for bids, have the work  
18 done by force account. In case of an emergency, if notice for bids to let contracts  
19 will not be given, the board shall comply with Chapter 2.5 (commencing with  
20 Section 22050).

21 (c) The district may purchase in the open market without advertisement for bids,  
22 materials and supplies for use in any work either under contract or by force  
23 account; provided, however, that materials and supplies for use in any new  
24 construction work or improvement, except work referred to in subdivision (b),  
25 may not be purchased if the cost exceeds two thousand five hundred dollars  
26 (\$2,500), without advertising for bids and awarding the contract to the lowest  
27 responsible bidder.

28 (d) The provisions of this section have no application to a contract entered into  
29 with the United States under the authority of Section 3 of Chapter 2121 of the  
30 Statutes of 1959, or to a contract authorized by a vote of the electorate of the  
31 district.

32 **Comment.** Section 21401 is amended to correct a cross-reference.

33 **Pub. Cont. Code § 21411 (amended). Nevada County Water Agency**

34 SEC. \_\_\_\_\_. Section 21411 of the Public Contract Code is amended to read:

35 21411. All contracts for any improvement or unit of work, when the cost  
36 according to the estimate of the engineer will exceed five thousand dollars  
37 (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this  
38 article. The board shall first determine whether the contract shall be let as a single  
39 unit, or divided into severable parts. The board shall advertise for bids by three  
40 insertions in a daily newspaper of general circulation or by two insertions in a  
41 weekly newspaper of general circulation printed and published in the agency's  
42 jurisdiction, inviting sealed proposals for the construction or performance of the

1 improvement or work. The call for bids shall state whether the work shall be  
2 performed in one unit or divided into parts. The work may be let under a single  
3 contract or several contracts, as stated in the call. The board shall require the  
4 successful bidders to file with the board good and sufficient bonds to be approved  
5 by the board conditioned upon the faithful performance of the contract and upon  
6 the payment of their claims for labor and material. The bonds shall comply with  
7 ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~  
8 Part 6 (commencing with Section 41010) of Division 2. The board may reject any  
9 bid. In the event all proposals are rejected or no proposals are received, or the  
10 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the  
11 work consists of channel protection, maintenance work, or emergency work, the  
12 board may have the work done by force account without advertising for bids. In  
13 case of an emergency, if notice for bids to let contracts will not be given, the board  
14 shall comply with Chapter 2.5 (commencing with Section 22050). In that event a  
15 majority vote of all board members shall be required. The board may purchase in  
16 the open market, without advertising for bids, materials and supplies for use in any  
17 work, either under contract or by force account.

18 **Comment.** Section 21411 is amended to correct a cross-reference.

19 **Pub. Cont. Code § 21421 (amended). Sierra County Flood Control and Water Conservation**  
20 **District**

21 SEC. \_\_\_\_\_. Section 21421 of the Public Contract Code is amended to read:

22 21421. (a) All contracts for the construction of any unit of work, except as  
23 provided in this article, estimated to cost in excess of two thousand dollars  
24 (\$2,000), shall be let to the lowest responsible bidder in the manner provided in  
25 this article. The board shall advertise by three insertions in a daily newspaper of  
26 general circulation or two insertions in a weekly newspaper of general circulation  
27 published in the district inviting sealed proposals for the construction of the work  
28 before any contract shall be made, and may let by contract separately any part of  
29 the work. The board shall require the successful bidder to file with the board good  
30 and sufficient bonds to be approved by the board conditioned upon the faithful  
31 performance of the contract and upon the payment of all claims for labor and  
32 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
33 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6~~  
34 (commencing with Section 41010) of Division 2 and to be subject to the  
35 provisions of that ~~title part~~. The board shall also have the right to reject any bid, in  
36 which case the board may advertise for new bids.

37 (b) In the event no proposals are received pursuant to advertisement, where the  
38 estimated cost of the work does not exceed two thousand dollars (\$2,000), or  
39 where the work consists of emergency work, the board of directors, by unanimous  
40 vote of all members present, may, without advertising for bids, have the work  
41 done by force account. In case of an emergency, if notice for bids to let contracts

1 will not be given, the board shall comply with Chapter 2.5 (commencing with  
2 Section 22050).

3 (c) The district may purchase in the open market without advertisement for bids,  
4 materials and supplies for use in any work either under contract or by force  
5 account; provided, however, that materials and supplies for use in any new  
6 construction work or improvement, except work referred to in subdivision (b),  
7 may not be purchased if the cost exceeds two thousand five hundred dollars  
8 (\$2,500), without advertising for bids and awarding the contract to the lowest  
9 responsible bidder.

10 (d) The provisions of this section have no application to a contract entered into  
11 with the United States under the authority of Section 3 of Chapter 2123 of the  
12 Statutes of 1959, or to a contract authorized by a vote of the electorate of the  
13 district.

14 **Comment.** Section 21421 is amended to correct a cross-reference.

15 **Pub. Cont. Code § 21431 (amended). Lassen-Modoc County Flood Control and Water**  
16 **Conservation District**

17 SEC. \_\_\_\_\_. Section 21431 of the Public Contract Code is amended to read:

18 21431. (a) All contracts for the construction of any unit of work, except as  
19 provided in this article, estimated to cost in excess of two thousand dollars  
20 (\$2,000), shall be let to the lowest responsible bidder in the manner provided in  
21 this article. The board shall advertise by three insertions in a daily newspaper of  
22 general circulation or two insertions in a weekly newspaper of general circulation  
23 published in the district inviting sealed proposals for the construction of the work  
24 before any contract shall be made, and may let by contract separately any part of  
25 the work. The board shall require the successful bidder to file with the board good  
26 and sufficient bonds to be approved by the board conditioned upon the faithful  
27 performance of the contract and upon the payment of all claims for labor and  
28 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~  
29 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6~~  
30 (commencing with Section 41010) of Division 2 and to be subject to the  
31 provisions of that ~~title part~~ part. The board shall also have the right to reject any bid, in  
32 which case the board may advertise for new bids.

33 (b) In the event no proposals are received pursuant to advertisement, where the  
34 estimated cost of the work does not exceed two thousand dollars (\$2,000), the  
35 board of directors, by unanimous vote of all members present, may without  
36 advertising for bids, have the work done by force account. In case of an  
37 emergency, if notice for bids to let contracts will not be given, the board shall  
38 comply with Chapter 2.5 (commencing with Section 22050).

39 (c) The district may purchase in the open market without advertisement for bids,  
40 materials and supplies for use in any work either under contract or by force  
41 account; provided, however, that materials and supplies for use in any new  
42 construction work or improvement, except work referred to in subdivision (b),

1 may not be purchased if the cost exceeds two thousand five hundred dollars  
2 (\$2,500), without advertising for bids and awarding the contract to the lowest  
3 responsible bidder.

4 (d) The provisions of this section have no application to a contract entered into  
5 with the United States under the authority of Section 3 of Chapter 2127 of the  
6 Statutes of 1959, or to a contract authorized by a vote of the electorate of the  
7 district.

8 **Comment.** Section 21431 is amended to correct a cross-reference.

9 **Pub. Cont. Code § 21441 (amended). Yuba-Bear River Basins Authority**

10 SEC. \_\_\_\_\_. Section 21441 of the Public Contract Code is amended to read:

11 21441. (a) All contracts for any improvement or unit of work, when the cost  
12 according to the estimate of the engineer will exceed five thousand dollars  
13 (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this  
14 article. The board shall first determine whether the contract shall be let as a single  
15 unit, or divided into severable parts. The board shall advertise for bids by three  
16 insertions in a daily newspaper of general circulation or by two insertions in a  
17 weekly newspaper of general circulation printed and published in the authority,  
18 inviting sealed proposals for the construction or performance of the improvement  
19 work. The call for bids shall state whether the work shall be performed in one unit  
20 or divided into parts. The work may be let under a single contract or several  
21 contracts, as stated in the call. The board shall require the successful bidders to file  
22 with the board good and sufficient bonds to be approved by the board conditioned  
23 upon the faithful performance of the contract and upon the payment of their claims  
24 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~  
25 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with  
26 Section 41010) of Division 2. The board may reject any bid. In the event all  
27 proposals are rejected or no proposals are received, or the estimated cost of the  
28 work does not exceed five thousand dollars (\$5,000), or the work consists of  
29 channel protection, maintenance work, or emergency work, the board may have  
30 the work done by force account without advertising for bids.

31 (b) In case of an emergency, if notice for bids to let contracts will not be given,  
32 the board shall comply with Chapter 2.5 (commencing with Section 22050). The  
33 authority may purchase in the open market without advertising for bids, materials  
34 and supplies for use in any work, either under contract or by force account.

35 **Comment.** Section 21441 is amended to correct a cross-reference. The other changes are  
36 technical.

37 **Pub. Cont. Code § 21451 (amended). Amador County Water Agency**

38 SEC. \_\_\_\_\_. Section 21451 of the Public Contract Code is amended to read:

39 21451. All contracts for any improvement or unit of work, when the cost  
40 according to the estimate of the engineer will exceed twelve thousand five hundred  
41 dollars (\$12,500), shall be let to the lowest responsible bidder or bidders as



1 provided in this article. The board shall first determine whether the contract shall  
2 be let as a single unit or divided into severable parts. The board shall advertise for  
3 bids by three insertions in a daily newspaper of general circulation or by two  
4 insertions in a weekly newspaper of general circulation printed and published in  
5 the agency, inviting sealed proposals for the construction or performance of the  
6 improvement or work. The call for bids shall state whether the work shall be  
7 performed in one unit or divided into parts. The work may be let under a single  
8 contract or several contracts, as stated in the call. The board shall require the  
9 successful bidders to file with the board good and sufficient bonds to be approved  
10 by the board conditioned upon the faithful performance of the contract and upon  
11 the payment of their claims for labor and material. The payment bonds shall  
12 comply with ~~Chapter 7 (commencing with Section 3247) of Division 3 of Title 15~~  
13 ~~of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6 of~~  
14 Division 2. The board may reject any bid. If all proposals are rejected or no  
15 proposals are received, or the estimated cost of the work does not exceed twelve  
16 thousand five hundred dollars (\$12,500), or the work consists of channel  
17 protection, maintenance work, or emergency work, the board may have the work  
18 done by force account without advertising for bids. In case of an emergency, if  
19 notice for bids to let contracts will not be given, the board shall comply with  
20 Chapter 2.5 (commencing with Section 22050). The agency may purchase in the  
21 open market without advertising for bids, materials and supplies for use in any  
22 work, either under contract or by force account.

23 **Comment.** Section 21451 is amended to correct a cross-reference.

24 **Pub. Cont. Code § 21461 (amended). El Dorado County Water Agency**

25 SEC. \_\_\_\_\_. Section 21461 of the Public Contract Code is amended to read:

26 21461. All contracts for any improvement or unit of work, when the cost  
27 according to the estimate of the engineer will exceed five thousand dollars  
28 (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this  
29 article. The board shall first determine whether the contract shall be let as a single  
30 unit, or divided into severable parts. The board shall advertise for bids by three  
31 insertions in a daily newspaper of general circulation or by two insertions in a  
32 weekly newspaper of general circulation printed and published in the agency,  
33 inviting sealed proposals for the construction or performance of the improvement  
34 or work. The call for bids shall state whether the work shall be performed in one  
35 unit or divided into parts. The work may be let under a single contract or several  
36 contracts, as stated in such call. The board shall require the successful bidders to  
37 file with the board good and sufficient bonds to be approved by the board  
38 conditioned upon the faithful performance of the contract and upon payment of  
39 their claims for labor and material. The bonds shall comply with ~~Title 15~~  
40 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6  
41 (commencing with Section 41010) of Division 2. The board may reject any and all  
42 bids. In the event all proposals are rejected or no proposals are received, or the

1 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the  
2 work consists of channel protection, maintenance work, or emergency work, the  
3 board of supervisors may have the work done by force account without advertising  
4 for bids. In case of an emergency, if notice for bids to let contracts will not be  
5 given, the board shall comply with Chapter 2.5 (commencing with Section 22050).  
6 The district may purchase in the open market without advertising for bids,  
7 materials and supplies for use in any work, either under contract or by force  
8 account.

9 **Comment.** Section 21461 is amended to correct a cross-reference.

10 **Pub. Cont. Code § 21491 (amended). Kern County Water Agency**

11 SEC. \_\_\_\_\_. Section 21491 of the Public Contract Code is amended to read:

12 21491. (a) All contracts for any improvement or unit of work, when the cost  
13 according to the estimate of the engineer will exceed ten thousand dollars  
14 (\$10,000), shall be let to the lowest responsible bidder or bidders as provided in  
15 this article. The board shall first determine whether the contract shall be let as a  
16 single unit, or divided into severable parts. The board shall advertise for bids by  
17 three insertions in a daily newspaper of general circulation or by two insertions in  
18 a weekly newspaper of general circulation printed and published in the agency,  
19 inviting sealed proposals for the construction or performance of the improvement  
20 or work. The call for bids shall state whether the work shall be performed in one  
21 unit or divided into parts. The work may be let under a single contract or several  
22 contracts, as stated in such call. The board shall require the successful bidders to  
23 file with the board good and sufficient bonds to be approved by the board  
24 conditioned upon the faithful performance of the contract and upon the payment of  
25 their claims for labor and material. The bonds shall comply with ~~Title 15~~  
26 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6  
27 (commencing with Section 41010) of Division 2. The board may reject any bid.

28 (b) In the event all proposals are rejected or no proposals are received, or the  
29 estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the  
30 work consists of channel protection, maintenance work, or emergency work, the  
31 board may have the work done by force account without advertising for bids. In  
32 case of an emergency, if notice for bids to let contracts will not be given, the board  
33 shall comply with Chapter 2.5 (commencing with Section 22050).

34 (c) The agency may purchase in the open market without advertising for bids,  
35 materials and supplies for use in any work, either under contract or by force  
36 account; provided, however, that materials and supplies for use in any new  
37 construction work or improvement, except work referred to in subdivision (b),  
38 may not be purchased if the cost exceeds ten thousand dollars (\$10,000), without  
39 advertising for bids and awarding the contract to the lowest responsible bidder.

40 **Comment.** Section 21491 is amended to correct a cross-reference.

1 **Pub. Cont. Code § 21501 (amended). Desert Water Agency**

2 SEC. \_\_\_\_\_. Section 21501 of the Public Contract Code is amended to read:

3 21501. (a) All contracts for any improvement or unit of work, when the cost  
4 according to the estimate of the engineer will exceed fifteen thousand dollars  
5 (\$15,000), shall be let to the lowest responsible bidder or bidders as provided in  
6 this article. The board shall first determine whether the contract shall be let as a  
7 single unit, or divided into severable parts. The board shall advertise for bids by  
8 three insertions in a daily newspaper of general circulation or by two insertions in  
9 a weekly newspaper of general circulation printed and published in the agency,  
10 inviting sealed proposals for the construction or performance of the improvement  
11 or work. The call for bids shall state whether the work shall be performed in one  
12 unit or divided into parts. The work may be let under a single contract or several  
13 contracts, as stated in such call. The board shall require the successful bidders to  
14 file with the board good and sufficient bonds to be approved by the board  
15 conditioned upon the faithful performance of the contract and upon the payment of  
16 their claims for labor and material. The bonds shall comply with ~~Chapter 7~~  
17 ~~(commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil~~  
18 ~~Code Chapter 5 (commencing with Section 45010) of Part 6 of Division 2.~~ The  
19 board may reject any and all bids.

20 (b) The board may have work done by force account without advertising for bids  
21 or by informal bidding procedures in any of the following situations:

22 (1) All proposals are rejected.

23 (2) No proposals are received.

24 (3) The estimated cost of the work does not exceed fifteen thousand dollars  
25 (\$15,000) until January 1, 1989. After January 1, 1989, the estimated cost of the  
26 work shall not exceed ten thousand dollars (\$10,000).

27 (4) The work consists of channel protection.

28 (5) The work consists of maintenance work, except that informal bidding  
29 procedures may be used only where the estimated cost does not exceed twenty-  
30 five thousand dollars (\$25,000).

31 (6) The work consists of emergency work. In case of an emergency, if notice for  
32 bids to let contracts will not be given, the board shall comply with Chapter 2.5  
33 (commencing with Section 22050).

34 (c) The agency may purchase in the open market without advertising for bids,  
35 materials and supplies for use in any work, either under contract or by force  
36 account, except that, materials and supplies for use in any new construction work  
37 or improvement, except work referred to in subdivision (b), may not be purchased,  
38 if the cost exceeds fifteen thousand dollars (\$15,000), without advertising for bids  
39 and awarding the contract to the lowest responsible bidder.

40 (d) As used in this section, "informal bidding procedures" means that the board  
41 shall, at a minimum, award a contract to the lowest responsible bidder after  
42 publishing a notice which generally describes the work to be performed and  
43 invites written bids in a newspaper of general circulation in the agency once a

1 week for two successive weeks. The board shall obtain a minimum of three written  
2 bids.

3 **Comment.** Section 21501 is amended to correct a cross-reference.

4 **Pub. Cont. Code § 21511 (amended). San Geronio Pass Water Agency**

5 SEC. \_\_\_\_\_. Section 21511 of the Public Contract Code is amended to read:

6 21511. (a) All contracts for any improvement or unit of work, when the cost  
7 according to the estimate of the engineer will exceed fifty thousand dollars  
8 (\$50,000), shall be let to the lowest responsible bidder or bidders as provided in  
9 this article. The board shall first determine whether the contract shall be let as a  
10 single unit or divided into severable parts. The board shall advertise for bids by  
11 three insertions in a daily newspaper of general circulation or by two insertions in  
12 a weekly newspaper of general circulation printed and published in the agency,  
13 inviting sealed proposals for the construction or performance of the improvement  
14 or work. The call for bids shall state whether the work shall be performed in one  
15 unit or divided into parts. The work may be let under a single contract or several  
16 contracts, as stated in the call. The board shall require the successful bidders to file  
17 with the board good and sufficient bonds to be approved by the board conditioned  
18 upon the faithful performance of the contract and upon the payment of their claims  
19 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~  
20 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with  
21 Section 41010) of Division 2. The board may reject any and all bids.

22 (b) In the event all proposals are rejected or no proposals are received, or the  
23 estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the  
24 work consists of channel protection, maintenance work, or emergency work, the  
25 board may have the work done by force account without advertising for bids. In  
26 case of an emergency, if notice for bids to let contracts will not be given, the board  
27 shall comply with Chapter 2.5 (commencing with Section 22050).

28 (c) The agency may purchase in the open market without advertising for bids,  
29 materials and supplies for use in any work, either under contract or by force  
30 account. However, materials and supplies for use in any new construction work or  
31 improvement, except work referred to in subdivision (b), may not be purchased, if  
32 the cost exceeds fifty thousand dollars (\$50,000), without advertising for bids and  
33 awarding the contract to the lowest responsible bidder.

34 **Comment.** Section 21511 is amended to correct a cross-reference.

35 **Pub. Cont. Code § 21521 (amended). Alpine County Water Agency**

36 SEC. \_\_\_\_\_. Section 21521 of the Public Contract Code is amended to read:

37 21521. All contracts for any improvement or unit of work, when the cost  
38 according to the estimate of the engineer will exceed five thousand dollars  
39 (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this  
40 article. The board shall first determine whether the contract shall be let as a single  
41 unit, or divided into severable parts. The board shall advertise for bids by three

1 insertions in a daily newspaper of general circulation or by two insertions in a  
2 weekly newspaper of general circulation printed and published in the agency,  
3 inviting sealed proposals for the construction or performance of the improvement  
4 or work. The call for bids shall state whether the work shall be performed in one  
5 unit or divided into parts. The work may be let under a single contract or several  
6 contracts, as stated in the call. The board shall require the successful bidders to file  
7 with the board good and sufficient bonds to be approved by the board conditioned  
8 upon the faithful performance of the contract and upon the payment of their claims  
9 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~  
10 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with  
11 Section 41010) of Division 2. The board may reject any bid. In the event all  
12 proposals are rejected or no proposals are received, or the estimated cost of the  
13 work does not exceed five thousand dollars (\$5,000), or the work consists of  
14 channel protection, maintenance work, or emergency work, the board may have  
15 the work done by force account without advertising for bids.

16 In case of an emergency, if notice for bids to let contracts will not be given, the  
17 board shall comply with Chapter 2.5 (commencing with Section 22050). In that  
18 event a majority vote of all board members shall be required. The board may  
19 purchase in the open market without advertising for bids, materials and supplies  
20 for use in any work, either under contract or by force account.

21 **Comment.** Section 21521 is amended to correct a cross-reference.

22 **Pub. Cont. Code § 21531 (amended). Castaic Lake Water Agency**

23 SEC. \_\_\_\_\_. Section 21531 of the Public Contract Code is amended to read:

24 21531. (a) The Castaic Lake Water Agency shall have power to prescribe  
25 methods for the construction of works and for the letting of contracts for the  
26 construction of works, structures, or equipment, or the performance or furnishing  
27 of labor, materials, or supplies, necessary or convenient for carrying out any of the  
28 purposes of this act or for the acquisition or disposal of any real or personal  
29 property; provided, that all contracts for any improvement or unit of work, when  
30 the cost according to the estimate of the engineer will exceed five thousand dollars  
31 (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this  
32 article. The board shall first determine whether the contract shall be let as a single  
33 unit or divided into severable parts. The board shall advertise for bids by three  
34 insertions in a daily newspaper of general circulation published in the agency or  
35 by two insertions in a nondaily newspaper of general circulation published in the  
36 agency or, if no newspaper is published in the agency, in any newspaper of general  
37 circulation distributed in the agency, inviting sealed proposals for the construction  
38 or performance of the improvement or work. The call for bids shall state whether  
39 the work shall be performed in one unit or divided into parts. The work may be let  
40 under a single contract or several contracts, as stated in the call. The board shall  
41 require the successful bidders to file with the board good and sufficient bonds to  
42 be approved by the board conditioned upon the faithful performance of the

1 contract and upon the payment of their claims for labor and material. The bonds  
2 shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division~~  
3 ~~3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The  
4 board may reject any bid.

5 (b) In the event all proposals are rejected or no proposals are received, or the  
6 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the  
7 work consists of channel protection, maintenance work, or emergency work, the  
8 board may have the work done by force account without advertising for bids. In  
9 case of an emergency, if notice for bids to let contracts will not be given. The  
10 board shall comply with Chapter 2.5 (commencing with Section 22050).

11 (c) The agency may purchase in the open market without advertising for bids,  
12 materials and supplies for use in any work, either under contract or by force  
13 account; provided, however, that materials and supplies for use in any new  
14 construction work or improvement, except work referred to in subdivision (b),  
15 may not be purchased if the cost exceeds five thousand dollars (\$5,000), without  
16 advertising for bids and awarding the contract to the lowest responsible bidder.

17 **Comment.** Section 21531 is amended to correct a cross-reference.

18 **Pub. Cont. Code § 21541 (amended). Crestline-Lake Arrowhead Water Agency**

19 SEC. \_\_\_\_\_. Section 21541 of the Public Contract Code is amended to read:

20 21541. (a) The Crestline-Lake Arrowhead Water Agency shall have power to  
21 prescribe methods for the construction of works and for the letting of contracts for  
22 the construction of works, structures, or equipment, or the performance or  
23 furnishing of labor, materials, or supplies, necessary or convenient for carrying out  
24 any of the purposes of this act or for the acquisition or disposal of any real or  
25 personal property. However, all contracts for the construction of any improvement  
26 or unit of work, when the cost, according to the estimate of the engineer, will  
27 exceed twenty-five thousand dollars (\$25,000), shall be let to the lowest  
28 responsible bidder or bidders as provided in this article. The board shall first  
29 determine whether the contract shall be let as a single unit or divided into  
30 severable parts. The board shall advertise for bids by three insertions in a daily  
31 newspaper of general circulation or by two insertions in a weekly newspaper of  
32 general circulation printed and published in the agency, inviting sealed proposals  
33 for the construction or performance of the improvement or work. The call for bids  
34 shall state whether the work shall be performed in one unit or divided into parts.  
35 The work may be let under a single contract or several contracts, as stated in the  
36 call.

37 The board shall require the successful bidders to file with the board good and  
38 sufficient bonds to be approved by the board conditioned upon the faithful  
39 performance of the contract and upon the payment of their claims for labor and  
40 material. The bonds shall comply with ~~Title 15 (commencing with Section 3082)~~  
41 ~~of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010)  
42 of Division 2. The board may reject any bid.

1 (b) In the event all proposals are rejected or no proposals are received, or the  
2 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the  
3 work consists of channel protection, maintenance work, or emergency work, the  
4 board may have the work done by force account without advertising for bids. In  
5 case of an emergency, if notice for bids to let contracts will not be given, the board  
6 shall comply with Chapter 2.5 (commencing with Section 22050).

7 (c) The agency may purchase in the open market without advertising for bids,  
8 materials and supplies for use in any work, either under contract or by force  
9 account. However, materials and supplies for use in any new construction work or  
10 improvement, except work referred to in subdivision (b), may not be purchased if  
11 the cost exceeds twenty-five thousand dollars (\$25,000), without advertising for  
12 bids and awarding the contract to the lowest responsible bidder.

13 **Comment.** Section 21541 is amended to correct a cross-reference.

14 **Pub. Cont. Code § 21572 (amended). Madera County Flood Control and Water**  
15 **Conservation Agency**

16 SEC. \_\_\_\_\_. Section 21572 of the Public Contract Code is amended to read:

17 21572. Any improvement or unit of work, except as provided in this article,  
18 estimated to cost in excess of five thousand dollars (\$5,000), shall be done by  
19 contract and let to the lowest responsible bidder in the manner provided in this  
20 article. The board of directors of the agency shall advertise by three insertions in a  
21 daily newspaper of general circulation or two insertions in a weekly newspaper of  
22 general circulation published in the agency, inviting sealed proposals for the  
23 construction of the work before any contract shall be made, and may let by  
24 contract separately any part of the work. The board shall require the successful  
25 bidder to file with the board good and sufficient bonds to be approved by the  
26 board, conditioned upon the faithful performance of the contract, and upon the  
27 payment of the claims for labor and material, the bonds to contain the terms and  
28 conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~  
29 ~~Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division~~  
30 2 and to be subject to the provisions of that ~~title part~~. The board shall also have the  
31 right to reject any and all bids, and readvertise for new bids, or by a two-thirds  
32 vote may elect to undertake the work by force account. In the event no proposals  
33 are received pursuant to advertisement, or where the estimated cost of such work  
34 does not exceed five thousand dollars (\$5,000), the board of directors by  
35 unanimous vote of all members present may without advertising for bids have the  
36 work done by force account. In case of an emergency, if notice for bids to let  
37 contracts will not be given, the board shall comply with Chapter 2.5 (commencing  
38 with Section 22050). The agency may purchase in the open market without  
39 advertisement for bids, materials and supplies for use in any work either under  
40 contract or by force account.

41 **Comment.** Section 21572 is amended to correct a cross-reference.

1 **Pub. Cont. Code § 21581 (amended). Tulare County Flood Control District**

2 SEC. \_\_\_\_\_. Section 21581 of the Public Contract Code is amended to read:

3 21581. (a) Any improvement or unit of work when the cost according to the  
4 estimate of the engineer will exceed five thousand dollars (\$5,000), shall be done  
5 by contract and shall be let to the lowest responsible bidder or bidders in the  
6 manner provided in this article. The board shall first determine whether the  
7 contract shall be let as a single unit or shall be divided into severable parts, or  
8 both, according to the best interests of the district. The board shall call for bids and  
9 advertise the call by three insertions in a daily newspaper of general circulation or  
10 by two insertions in a weekly newspaper of general circulation printed in the  
11 district inviting sealed proposals for the construction or performance of the  
12 improvement or work before any contract is made. The call for bids shall state  
13 whether the work is to be performed as a unit or shall be divided into severable  
14 specific parts, or both, as stated in the call. The board may let the work by single  
15 contract for the whole or it may divide the work into severable parts by separate  
16 contracts, as stated in the call, according to the best interests of the district. The  
17 board shall require the successful bidder or bidders to file with the board a good  
18 and sufficient bond to be approved by the board conditioned upon the payment of  
19 their claims for labor and material, the bond to contain the terms and conditions  
20 set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the~~  
21 ~~Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be  
22 subject to the provisions of that ~~title part~~. The board shall also have the right to  
23 reject any and all bids and readvertise for new bids, or by a two-thirds vote may  
24 elect to undertake the work by force account.

25 (b) In the event no proposals are received pursuant to advertisement, or the  
26 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the  
27 work consists of channel protection, maintenance work, or emergency work, the  
28 board of supervisors may, without advertising for bids, have the work done by  
29 employees of the district, by day labor, under the direction of the board, by  
30 contract, or by any combination of those methods. In case of an emergency, if  
31 notice for bids to let contracts will not be given, the board shall comply with  
32 Chapter 2.5 (commencing with Section 22050).

33 (c) The district may acquire in the open market without advertising for bids,  
34 materials, equipment, and supplies for use in any work or for any other purpose;  
35 provided, however, that materials and supplies for use in any new construction  
36 work or improvement, except work referred to in subdivision (b), may not be  
37 purchased if the cost exceeds five thousand dollars (\$5,000), without advertising  
38 for bids and awarding the contract to the lowest responsible bidder.

39 **Comment.** Section 21581 is amended to correct a cross-reference.

40 **Pub. Cont. Code § 21591 (amended). Bighorn Mountains Water Agency**

41 SEC. \_\_\_\_\_. Section 21591 of the Public Contract Code is amended to read:



1 21591. (a) Any improvement or unit of work, when the cost, according to the  
2 estimate of the engineer, will exceed twenty-five thousand dollars (\$25,000), shall  
3 be done by contract and shall be let to the lowest responsible bidder or bidders as  
4 provided in this article. The board shall first determine whether the contract shall  
5 be let as a single unit or divided into severable parts. The board shall advertise for  
6 bids by three insertions in a daily newspaper of general circulation or by two  
7 insertions in a weekly newspaper of general circulation printed and published in  
8 the agency, if there is a newspaper printed and published in the agency, inviting  
9 sealed proposals for the construction or performance of the improvement or work.  
10 The call for bids shall state whether the work shall be performed in one unit or  
11 divided into parts. The work may be let under a single contract or several  
12 contracts, as stated in the call. The board shall require the successful bidders to file  
13 with the board good and sufficient bonds to be approved by the board conditioned  
14 upon the faithful performance of the contract and upon the payment of their claims  
15 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~  
16 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with  
17 Section 41010) of Division 2. The board may reject any and all bids and  
18 readvertise, or by a two-thirds vote may elect to undertake work by force account.

19 (b) If no proposals are received, or the estimated cost of the work does not  
20 exceed twenty-five thousand dollars (\$25,000), or the work consists of channel  
21 protection, maintenance work, or emergency work, the board may have the work  
22 done by force account without advertising for bids. In case of an emergency, if  
23 notice for bids to let contracts will not be given, the board shall comply with  
24 Chapter 2.5 (commencing with Section 22050).

25 (c) The agency may purchase in the open market without advertising for bids,  
26 materials and supplies for use in any work, either under contract or by force  
27 account; provided, however, that materials and supplies for use in any new  
28 construction work or improvement, except work referred to in subdivision (b),  
29 may not be purchased if the cost exceeds twenty-five thousand dollars (\$25,000),  
30 without advertising for bids and awarding the contract to the lowest responsible  
31 bidder.

32 **Comment.** Section 21591 is amended to correct a cross-reference.

33 **Pub. Cont. Code § 21601 (amended). Tuolumne County Water Agency**

34 SEC. \_\_\_\_\_. Section 21601 of the Public Contract Code is amended to read:

35 21601. Any improvement or unit of work, when the cost, according to the  
36 estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be done  
37 by contract and let to the lowest responsible bidder or bidders as provided in this  
38 article. The board shall first determine whether the contract shall be let as a single  
39 unit, or divided into severable parts. The board shall advertise for bids by three  
40 insertions in a daily newspaper of general circulation or by two insertions in a  
41 weekly newspaper of general circulation printed and published in the agency,  
42 inviting sealed proposals for the construction or performance of the improvement

1 or work. The call for bids shall state whether the work shall be performed in one  
2 unit or divided into parts. The work may be let under a single contract or several  
3 contracts, as stated in the call. The board shall require the successful bidders to file  
4 with the board good and sufficient bonds to be approved by the board conditioned  
5 upon the faithful performance of the contract and upon payment of their claims for  
6 labor and material. The bonds shall comply with ~~Title 15 (commencing with~~  
7 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with  
8 Section 41010) of Division 2. The board may reject any and all bids and  
9 readvertise, or, by a two-thirds vote, may elect to undertake the work by force  
10 account. In the event no proposals are received, or the estimated cost of the work  
11 does not exceed five thousand dollars (\$5,000), or the work consists of channel  
12 protection, maintenance work, or emergency work, the board of supervisors may  
13 have the work done by force account without advertising for bids. In case an  
14 emergency, if notice for bids to let contracts will not be given, the board shall  
15 comply with Chapter 2.5 (commencing with Section 22050). The district may  
16 purchase in the open market without advertising for bids, materials, and supplies  
17 for use in any work, either under contract or by force account.

18 **Comment.** Section 21601 is amended to correct a cross-reference.

19 **Pub. Cont. Code § 21622 (amended). Monterey Peninsula Water Management District**

20 SEC. \_\_\_\_\_. Section 21622 of the Public Contract Code is amended to read:

21 21622. The board shall require the successful bidder or bidders to file with the  
22 board, good and sufficient bonds, to be approved by the board conditioned upon  
23 the faithful performance of the contract and upon the payment of their claims for  
24 labor and material in connection therewith. Such contracts shall be subject to the  
25 provisions of ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of~~  
26 ~~the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2.

27 **Comment.** Section 21622 is amended to correct a cross-reference.

28 **Pub. Cont. Code § 21631 (amended). Merced County Flood Control District**

29 SEC. \_\_\_\_\_. Section 21631 of the Public Contract Code is amended to read:

30 21631. (a) Any improvement or unit of work when the cost, according to the  
31 estimate of the engineer, will exceed six thousand five hundred dollars (\$6,500),  
32 shall be done by contract and shall be let to the lowest responsible bidder or  
33 bidders in the manner provided in this article. The board shall first determine  
34 whether the contract shall be let as a single unit, or shall be divided into severable  
35 parts, or both, according to the best interests of the district. The board shall call for  
36 bids and advertise the call by three insertions in a daily newspaper of general  
37 circulation or by two insertions in a weekly newspaper of general circulation  
38 printed in the district inviting sealed proposals for the construction or performance  
39 of the improvement or work before any contract is made. The call for bids shall  
40 state whether the work is to be performed as a unit or shall be divided into  
41 severable parts, or both, as stated in the call. The board may let the work by single

1 contract or it may divide the work into severable parts by separate contracts, as  
2 stated in the call, according to the best interests of the district. The board shall  
3 require the successful bidder or bidders to file with the board a good and sufficient  
4 bond, to be approved by the board, conditioned upon the payment of their claims  
5 for labor and material. The bond shall contain the terms and conditions set forth in  
6 ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~  
7 Part 6 (commencing with Section 41010) of Division 2 and be subject to the  
8 provisions of that ~~title part~~. The board may reject any and all bids and readvertise  
9 for new bids, or by a two-thirds vote may elect to undertake the work by force  
10 account.

11 (b) If no proposals are received pursuant to advertisement or the estimated cost  
12 of the work does not exceed six thousand five hundred dollars (\$6,500), or the  
13 work consists of channel protection, maintenance work, or emergency work, the  
14 board of supervisors may, without advertising for bids, have the work done by  
15 employees of the district, by day labor, under the direction of the board, by  
16 contract, or by a combination of those methods. In case of an emergency, if notice  
17 for bids to let contracts will not be given, the board shall comply with Chapter 2.5  
18 (commencing with Section 22050).

19 (c) The district may acquire in the open market, without advertising for bids,  
20 materials, equipment, and supplies for use in any work or for any other purpose;  
21 provided, however, that materials and supplies for use in any new construction  
22 work or improvement, except that work referred to in subdivision (b), may not be  
23 purchased if the cost exceeds six thousand five hundred dollars (\$6,500), without  
24 advertising for bids and awarding the contract to the lowest responsible bidder.

25 **Comment.** Section 21631 is amended to correct a cross-reference and make a technical  
26 change.

## 27 STREETS AND HIGHWAYS CODE

### 28 **Sts. & Hy. Code § 136.5 (amended). Competitive bidding and payment bonds**

29 SEC. \_\_\_\_\_. Section 136.5 of the Streets and Highways Code is amended to read:

30 136.5. (a) The contracts referred to in Sections 135, 136, and 136.1 are not  
31 subject to the State Contract Act (Part 2 (commencing with Section 10100) of  
32 Division 2 of the Public Contract Code). Except for emergency work of the type  
33 described in subdivision (b), whenever the estimated amount of a contract exceeds  
34 two thousand five hundred dollars (\$2,500), it shall be awarded to the lowest  
35 responsible bidder, after competitive bidding on any reasonable notice that the  
36 department may prescribe. Posting of notice for five days in a public place in the  
37 district office within which the work is to be done, or the equipment used, is  
38 sufficient. Those contracts shall be subject to the applicable payment bond  
39 provisions of ~~Chapter 7 (commencing with Section 3247) of Part 4 of Division 3~~  
40 ~~of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6 of~~  
41 Division 2 of the Public Contract Code. The department may require faithful

1 performance bonds when considered necessary. The advertisement for each  
2 contract shall state whether or not a bond shall be required.

3 (b) In cases of emergency work necessitated by the imminence or occurrence of  
4 a landslide, flood, storm damage, accident, or other casualty, tools or equipment  
5 may be rented for a period of not to exceed 60 days without competitive bidding,  
6 and the department may waive the requirements of ~~Chapter 7 (commencing with~~  
7 ~~Section 3247) of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing  
8 with Section 45010) of Part 6 of Division 2 of the Public Contract Code to the  
9 extent that a contractor may commence performance of the work under the  
10 contract for the rental of tools or equipment prior to filing a payment bond with  
11 the department. In that case, no payment shall be made to the contractor until a  
12 payment bond covering all work of the contract is filed with the department.

13 **Comment.** Section 136.5 is amended to correct cross-references.

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DISPOSITION OF FORMER LAW

The table below shows the relationship between the sections that would be repealed by the proposed law and any new section that would continue the repealed section. Except as otherwise indicated, all sections listed in the table are from the Civil Code.

<b>Existing Provision</b>	<b>Proposed Provision(s)</b>	<b>Existing Provision</b>	<b>Proposed Provision(s)</b>
3081.1.....	8012	3102.....	8042
3081.2.....	8302	3103.....	8502, 8506, Pub. Cont. Code §§ 41140, 42060, 44120, 44130(a)
3081.3.....	8304	3104.....	8046
3081.4.....	8306	3105.....	not continued
3081.5.....	8308	3106.....	8050
3081.6.....	8310	3109.....	not continued
3081.7.....	8312	3110.....	8400, 8404, 8430
3081.8.....	8314	3110.5(a).....	8710
3081.9.....	8316	3110.5(a)(1).....	8700(b)
3081.10.....	8318	3110.5(a)(2).....	8700(a)
3082.....	8000, Pub. Cont. Code § 41010	3110.5(b).....	8710, 8720
3083.....	8044(b), 8506, 8532	3110.5(b)(1).....	8722
3084.....	8416	3110.5(b)(2).....	8724
3085.....	8002, Pub. Cont. Code § 41020	3110.5(b)(3).....	8726, 8728
3086.....	8150, Pub. Cont. Code § 42210	3110.5(c).....	8712, 8730
3087.....	8006	3110.5(d).....	8716
3088.....	8008	3110.5(e).....	8702
3089(a).....	8020	3110.5(f).....	8704
3089(b).....	7020, 7070, Pub. Cont. Code § 41080	3110.5(g).....	8714
3090.....	8026	3111.....	7014, 7402, Pub. Cont. Code § 41050
3092.....	8152, Pub. Cont. Code § 42220	3112.....	8402, 8404
3093.....	8152, Pub. Cont. Code § 42230	3114.....	8410
3094.....	8444	3115.....	8412
3095.....	8014, Pub. Cont. Code § 41040	3116.....	8414
3096.....	8030, 8606, Pub. Cont. Code §§ 41080, 45030	3117.....	8154
3097.....	8034, 8200, 7202, 8202	3118.....	8422
3097(d).....	8204	3123.....	8010, 8430
3097(e).....	8212	3124.....	8432
3097(g).....	8206	3128.....	8440, 8442
3097(h).....	7216	3129.....	8442
3097(k).....	7072	3130.....	8446
3097(i).....	8132	3131.....	8448
3097(j).....	8134	3134.....	8450
3097(l)-(m).....	8130, 8208	3135.....	8454
3097(n).....	8210	3136.....	8456
3097(o).....	8214	3137.....	8458(a)
3098.....	Pub. Cont. Code §§ 41100, 43010 through 43060	3138.....	8452
3098(a).....	Pub. Cont. Code § 42070	3139.....	8458(b)
3098(b).....	Pub. Cont. Code § 43060	3140.....	8434
3099.....	8036, Pub. Cont. Code § 41110(a)	3143.....	8424
3100.....	Pub. Cont. Code §§ 41120, 42010(a)	3144.....	8460
3101.....	8040, Pub. Cont. Code § 41130	3144.5.....	8424(d)
		3145.....	8460

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
3146.....	8460	3202.....	Pub. Cont. Code § 44260
3147.....	8462	3203.....	Pub. Cont. Code § 44270
3148.....	8492	3204.....	not continued
3149.....	not continued	3205.....	Pub. Cont. Code § 44280
3150.....	8464	3210.....	Pub. Cont. Code § 44420
3151.....	8466	3211.....	Pub. Cont. Code § 44430
3152.....	8468	3212.....	Pub. Cont. Code § 44450
3153.....	8470	3213.....	Pub. Cont. Code § 44460
3154.....	8488	3214.....	Pub. Cont. Code § 44440
3154(a).....	8480(a)(1)	3225.....	8142, Pub. Cont. Code § 42070
3154(b).....	8484	3226.....	8144, Pub. Cont. Code § 45040
3154(c).....	8486	3227.....	Pub. Cont. Code § 45070(b)-(d)
3154(d).....	8486	3235.....	8602(a), 8602(b)
3154(e).....	8486	3236.....	8600, 8602(a)
3154(f).....	8490	3237.....	8022, 8604
3156.....	not continued	3239.....	8610
3158.....	8520	3240.....	8610
3159.....	8530(a)	3242.....	8612
3159(a).....	8536, 8538	3247.....	Pub. Cont. Code § 45010
3159(b).....	8542	3248.....	Pub. Cont. Code § 45030
3159(c).....	8542	3249.....	Pub. Cont. Code § 45050
3160.....	8508	3250.....	Pub. Cont. Code § 45080
3161.....	8522	3251.....	Pub. Cont. Code § 45020
3162(a).....	8536, 8538	3252.....	Pub. Cont. Code § 45070(a)
3162(b).....	8542	3252(a).....	Pub. Cont. Code § 45060
3162(c).....	8542	3258.....	8058(c), 8058(d)
3163.....	8534	3259.....	8054, Pub. Cont. Code § 42040
3166.....	8544	3259.5.....	8156
3167.....	8540	3260(a).....	not continued
3168.....	8504	3260(b).....	8810
3171.....	8510	3260(c).....	8812
3172.....	8550	3260(d).....	8814
3173.....	8554	3260(e).....	8814
3174.....	8556	3260(f).....	8816
3175.....	8552	3260(g).....	8818
3176.....	8558	3260(h).....	8820
3176.5.....	8560	3260(i).....	8822
3179.....	Pub. Cont. Code § 42010(a)	3260.1.....	8800
3181.....	Pub. Cont. Code § 42030	3260.2(a).....	8830, 8832, 8834, 8836, 8840
3183.....	Pub. Cont. Code § 44410(a)	3260.2(b).....	8842
3184.....	Pub. Cont. Code § 44140	3260.2(c).....	8838
3185.....	Pub. Cont. Code § 44170	3260.2(d).....	8844
3186.....	Pub. Cont. Code § 44150	3260.2(e).....	8846
3187.....	Pub. Cont. Code § 44160	3260.2(f).....	8848
3190.....	Pub. Cont. Code § 44310	3261.....	8422
3191.....	Pub. Cont. Code § 44320	3262(a).....	8160, 8162, ..... Pub. Cont. Code §§ 42310, 42320
3192.....	Pub. Cont. Code § 44330	3262(b).....	8164, 8166, ..... Pub. Cont. Code §§ 42330, 42340
3193.....	Pub. Cont. Code § 44340	3262(c).....	8168, Pub. Cont. Code § 42350
3196.....	Pub. Cont. Code § 44180	3262(d)(1).....	8170, Pub. Cont. Code § 42360
3197.....	Pub. Cont. Code § 44210	3262(d)(2).....	8172, Pub. Cont. Code § 42370
3198.....	Pub. Cont. Code § 44220	3262(d)(3).....	8174, Pub. Cont. Code § 42380
3199.....	Pub. Cont. Code § 44230	3262(d)(4).....	8176, Pub. Cont. Code § 42390
3200.....	Pub. Cont. Code § 44240		
3201.....	Pub. Cont. Code § 44250		

<b>Existing Provision</b>	<b>Proposed Provision(s)</b>	<b>Existing Provision</b>	<b>Proposed Provision(s)</b>
3262.5.....	8802	7100 .....	1749.70
3263.....	8060	7101 .....	1749.71
3264.....	8500, Pub. Cont. Code § 44110	7102 .....	1749.72
3265.....	Pub. Cont. Code § 44410(b)	7103 .....	1749.73
3266(a).....	8066(a)	7104 .....	1749.74
3266(b).....	Pub. Cont. Code § 42010	7105 .....	1749.75
3267.....	8608, 45090	7106 .....	1749.76

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