

## First Supplement to Memorandum 2007-34

**Mechanics Lien Law: Public Work of Improvement  
(Analysis of Comments on Tentative Recommendation)**

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This supplement continues a discussion of comments on the public work portion of the Commission's tentative recommendation on *Mechanics Lien Law* (June 2006).

This supplement addresses a single issue relating to the exclusivity of the stop notice procedure, an issue that will require discussion at a Commission meeting.

 EXCLUSIVITY OF STOP PAYMENT NOTICE REMEDY

The California State Council of Laborers Legislative Department and the Construction Laborers Trust Funds for Southern California (collectively, the "Laborers Group") criticize proposed Public Contract Code Section 44110, which limits claims against a construction fund established for a public works project. CLRC Memorandum 2007-34, Exhibit p. 9. The group contends that the provision in existing law that Section 44110 continues (Civil Code Section 3264) is intended to apply, or at least *should* apply, only to a private work of improvement.

Section 44110 provides that a claim against a public work construction fund may only be made pursuant to either a stop payment notice, or a direct written contract with the holder of the fund:

**§ 44110. Stop payment notice exclusive remedy to reach construction funds**

44110. The rights of all persons furnishing work pursuant to a public works contract, with respect to any fund for payment of construction costs, are governed exclusively by this chapter, and no person may assert any legal or equitable right with respect to such fund, other than a right created by direct written contract between such person and the person holding the fund, except pursuant to the provisions of this chapter.

**Comment.** Section 44110 restates former Civil Code Section 3264 to the extent it applied to a public works contract. ....

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Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

Laborers Group points out that there are statutory provisions outside the mechanics lien law that provide for withholding of or payment from public funds on construction projects, without requiring either a stop payment notice or a written contract with the holder of the fund. See, e.g., Code Civ. Proc. § 708.760 (satisfaction of judgment against direct contractor on public work), Labor Code § 1727 (public entity to withhold amounts needed to satisfy prevailing wage violations from funds due direct contractor on public work).

Section 44110 would seem to conflict with these sections.

#### *Existing Law Relating to the Exclusivity of the Stop Payment Notice Remedy*

Section 44110 continues Civil Code Section 3264, which provides as follows:

3264. The rights of all persons furnishing labor, services, equipment, or materials for any work of improvement, with respect to any fund for payment of construction costs, are governed exclusively by Chapters 3 (commencing with Section 3156) and 4 (commencing with Section 3179) of this title, and no person may assert any legal or equitable right with respect to such fund, other than a right created by direct written contract between such person and the person holding the fund, except pursuant to the provisions of such chapters.

The Chapter 4 referenced in Section 3264 is a chapter in the existing mechanics lien statute that expressly applies *only* to public works. This reference is a strong indication that existing Section 3264 was intended to apply to both public and private work.

#### *Conflict Between Existing Law and Other Statutory Provisions*

Nevertheless, Laborers Group appears to be correct. There are statutes outside the mechanics lien law that allow claims against a public work construction fund by means other than a stop payment notice or direct contract claim. Existing Section 3264 conflicts with those provisions of law, and a continuation of Section 3264 in the proposed law would continue that conflict.

However, the staff does not believe that Section 3264 was intended to preclude other specific statutory claims of the type discussed above. Rather, as discussed in the First Supplement to CLRC Memorandum 2007-08, pp. 1-6, it instead appears the Legislature's primary intent in enacting Section 3264 was simply to compel claimants on a work of improvement who seek to assert a claim against a construction fund to follow established stop payment notice procedures. A secondary purpose would appear to have been to limit *equitable*

(i.e., non-statutory) claims against an established construction fund, by any person. The staff has discovered nothing in the legislative history of Section 3264 indicating an intent to supersede specific statutory claims against a construction fund expressly authorized by other provisions.

*Recommendation*

Section 3264 was intended to apply to a public work. That application serves an important purpose in limiting the exposure of a public construction fund. It should be continued in proposed Public Contract Code Section 44110.

However, continuing the provision verbatim, without recognizing conflicting statutory provisions, could cause confusion.

The staff recommends a **clarifying change**:

**§ 44110. Stop payment notice exclusive remedy to reach construction funds**

44110. (a) The rights of all persons furnishing work pursuant to a public works contract, with respect to any fund for payment of construction costs, are governed exclusively by this chapter, and no person may assert any legal or equitable right with respect to such fund, other than a right created by direct written contract between such person and the person holding the fund, except pursuant to the provisions of this chapter.

(b) Notwithstanding subdivision (a), this section does not affect a statutory provision that expressly authorizes a withholding from or claim against a fund for payment of construction costs.

**Comment.** Section 44110 restates former Civil Code Section 3264 to the extent it applied to a public works contract. See Section 42010 (application of part). For a comparable provision applicable to a private work, see Civ. Code § 7500.

Subdivision (b) makes clear that this section does not affect claims against a construction fund that are expressly authorized by other statutes. See, e.g., Code Civ. Proc. § 708.760 (satisfaction of judgment against direct contractor), Labor Code § 1727 (withholding from fund authorized to satisfy prevailing wage violation).

See also Sections 41060 (“funds” defined), 41100 (“person” defined), 41130 (“public works contract” defined), 41170 (“work” defined), 41180 (“work of improvement” defined).

Respectfully submitted,

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