

Second Supplement to Memorandum 2008-9

Mechanics Lien Law: Discussion of Issues

This supplement presents a current draft of the proposed legislation for inclusion in a final recommendation in this study.

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

For ease of reference, the draft also incorporates revisions recommended by the staff in Memorandum 2008-9 and its First Supplement that have not yet been approved by the Commission.

After considering the issues raised in CLRC Memorandum 2008-9 and in any supplement to CLRC Memorandum 2008-9, the Commission will need to decide whether to approve the staff draft for inclusion in a final recommendation, with or without changes.

Respectfully submitted,

Steve Cohen
Staff Counsel

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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 Code §§ 3081.1-3081.10 (repealed).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3 Division 3 of the Civil Code is repealed.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 Code §§ 3082-3267 (repealed).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11 the Civil Code is repealed.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 Code §§ 7100-7106 (repealed).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21 Code is repealed.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 rental equipment, material or supplies that are
19 thereafter used, 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 that provides for all or part of a work of
3 improvement. The term includes a contract change.

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

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

10 An agreement between an owner and a direct contractor that provides for all or part of a work
11 of improvement is a “direct contract.” See Section 8013.

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

13 **§ 8010. Contract price**

14 8010. “Contract price” means the price agreed to in a direct contract for a work
15 of improvement, including a contract change. If the parties have not agreed to a
16 price for the work of improvement, the contract price is the reasonable value of the
17 work provided 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 8013 (“direct 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 Section 8050 (“work of improvement”).

34 **§ 8013. Direct contract**

35 8013. “Direct contract” means a contract between an owner and a direct
36 contractor that provides for all or part of a work of improvement. The term
37 includes a contract change.

38 **Comment.** Section 8013 continues the substance of former Section 3088, but adds a reference
39 to a contract change. The term “contract change” replaces “written modification of the contract”
40 as used in former Section 3123. This codifies the effect of *Basic Modular Facilities, Inc. v.*
41 *Ehsanipour*, 70 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

42 See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8028 (“owner”), 7050 (“work
43 of improvement”).

1 **§ 8014. Direct contractor**

2 8014. “Direct contractor” means a contractor that has a direct contractual
3 relationship with an owner.

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

10 See also Section 8028 (“owner”).

11 **§ 8016. Know or knowledge**

12 8016. A person “knows” or “has knowledge” of information if the person knows
13 or should have known that information.

14 **Comment.** Section 8016 is new.

15 See also Section 8032 (“person”).

16 **§ 8018. Labor, service, equipment, or material**

17 8018. “Labor, service, equipment, or material” includes but is not limited to
18 labor, skills, services, material, supplies, equipment, appliances, power, and
19 surveying, provided for a work of improvement.

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

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

26 **§ 8020. Laborer**

27 8020. (a) “Laborer” means a person that, acting as an employee, performs labor,
28 or bestows skill or other necessary services, on a work of improvement.

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

34 (c) A person or entity described in subdivision (b) that has standing under
35 applicable law to maintain a direct legal action, in its own name or as an assignee,
36 to collect any portion of compensation owed for a laborer for a work of
37 improvement, shall have standing to enforce any rights or claims of the laborer
38 under this part, to the extent of the compensation agreed to be paid to the person or
39 entity for labor on that improvement. This subdivision is intended to give effect to
40 the long-standing public policy of this state to protect the entire compensation of a
41 laborer on a work of improvement, regardless of the form in which that
42 compensation is to be paid.

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

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

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

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

8 **§ 8022. Lending institution**

9 8022. “Lending institution” includes a commercial bank, savings and loan
10 institution, credit union, or other organization or person engaged in the business of
11 financing loans.

12 **Comment.** Section 8022 continues the second paragraph of former Section 3237.

13 See also Section 8032 (“person”).

14 **§ 8024. Lien**

15 8024. “Lien” means a lien under this part and includes a lien of a design
16 professional under Section 8302, a lien for a work of improvement under Section
17 8400, and a lien for a site improvement under Section 8402.

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

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

24 **§ 8026. Material supplier**

25 8026. (a) “Material supplier” means a person that provides material or supplies
26 to be used or consumed in a work of improvement.

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

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

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

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

36 **§ 8028. Owner**

37 8028. “Owner” means:

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

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

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

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

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

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

8 **§ 8030. Payment bond**

9 8030. “Payment bond” means a bond given under Chapter 6 (commencing with
10 8600).

11 **Comment.** Section 8030 supersedes former Section 3096. See also Section 8600 (payment
12 bond). There are instances in this part where the term is not used in its defined sense. See, e.g.,
13 Sections 8452 (payment bond obtained by holder of mortgage or deed of trust), 8604 (payment
14 bond required by lending institution), 8720-8722 (payment bond as security for large project).
15 See also Section 8000 (application of definitions).

16 **§ 8032. Person**

17 8032. “Person” means an individual, corporation, public entity, business trust,
18 estate, trust, partnership, limited liability company, association, or other entity.

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

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

22 **§ 8034. Preliminary notice**

23 8034. “Preliminary notice” means the notice provided for in Chapter 2
24 (commencing with 8200).

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

27 **§ 8036. Public entity**

28 8036. “Public entity” means the state, Regents of the University of California, a
29 county, city, district, public authority, public agency, and any other political
30 subdivision or public corporation in the state.

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

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

36 **§ 8038. Reputed owner, direct contractor, or construction lender**

37 8038. (a) “Reputed owner” means a person that a claimant reasonably and in
38 good faith believes is an owner.

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

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

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

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

7 **§ 8040. Site**

8 8040. “Site” means the property on which a work of improvement is situated or
9 planned.

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

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

13 **§ 8042. Site improvement**

14 8042. “Site improvement” means any of the following work on property:

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

16 (b) Drilling test holes.

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

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

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

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

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

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

28 **§ 8044. Stop payment notice**

29 8044. (a) “Stop payment notice” means the notice given under Chapter 5
30 (commencing with Section 8500). A reference in another statute to a “stop notice”
31 in connection with the remedies provided in this part means a stop payment notice.

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

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

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

1 (d) A provision of this part, insofar as it is substantially the same as a previously
2 existing provision relating to the same subject matter, shall be construed as a
3 restatement and continuation thereof and not as a new enactment.

4 **Comment.** Section 8051 is new. Although this part applies generally to all contracts for a work
5 of improvement, it does not govern notices given or actions taken on a work of improvement
6 prior to January 1, 2010, which are governed by former law.

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

8 **§ 8052. Application of part**

9 8052. This part applies only to a work of improvement that is not governed by
10 Part 6 (commencing with Section 41010) of Division 2 of the Public Contract
11 Code.

12 **Comment.** Section 8052 is new. It subsumes various provisions of former law, including
13 former Sections 3097 (preliminary notice of private work), 3109 (application of mechanics lien
14 provisions), 3156 (stop notice provisions), 3260 (retention payment provisions), 3260.1 (progress
15 payment provisions), 3260.2 (stop work notice provisions).

16 Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code applies to a
17 work of improvement performed pursuant to a public works contract awarded by a public entity.
18 See Public Contract Code Section 42010.

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

20 **§ 8054. Rules of practice**

21 8054. Except as otherwise provided in this part, Part 2 (commencing with
22 Section 307) of the Code of Civil Procedure provides the rules of practice in
23 proceedings under this part.

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

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

32 **§ 8056. Calculation of time**

33 8056. For purposes of this part, the term “day” means a calendar day.

34 **Comment.** Section 8056 is new. A reference to the term “day” in a statute typically means
35 calendar day, unless otherwise specifically indicated. *Iverson v. Superior Court*, 167 Cal. App. 3d
36 544, 548, 213 Cal. Rptr. 399 (1985).

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

38 **§ 8058. Filing and recordation of papers**

39 8058. (a) If this part provides for filing a contract, plan, or other paper with the
40 county recorder, the provision is satisfied by filing the paper in the office of the
41 county recorder of the county in which the work of improvement or part of it is
42 situated.

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

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

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

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

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

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

22 § 8060. Effect of act by owner

23 8060. No act of an owner in good faith and in compliance with a provision of
24 this part shall be construed to prevent a direct contractor’s performance of the
25 contract, or exonerate a surety on a performance or payment bond.

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

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

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

29 § 8062. Co-owners

30 8062. An owner may give a notice or execute or file a document under this part
31 on behalf of a co-owner if the owner acts on the co-owner’s behalf and includes in
32 the notice or document the name and address of the co-owner on whose behalf the
33 owner acts.

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

37 See also Section 8028 (“owner”).

38 § 8064. Agency

39 8064. An act that may be done by or to a person under this part may be done by
40 or to the person’s agent to the extent the act is within the scope of the agent’s
41 authority.

1 effectiveness of the notice is not affected by the fact that the street address is
2 erroneous or is omitted.

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

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

6 (A) A general statement of the work provided.

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

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

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

14 **Comment.** Section 8102 is new. It generalizes and standardizes provisions found throughout
15 former law. See, e.g., former Sections 3092 (notice of cessation), 3093 (notice of completion),
16 3097 (preliminary notice), 3103 (stop notice), 3252 (notice to principal and surety).

17 **§ 8104. Notice of overdue laborer compensation**

18 8104. (a) A direct contractor or subcontractor that employs a laborer and fails to
19 pay the full compensation due the laborer, including any employer payments
20 described in Section 1773.1 of the Labor Code and implementing regulations,
21 shall not later than the date the compensation became delinquent, give the laborer,
22 the laborer's bargaining representative, if any, the construction lender or reputed
23 construction lender, if any, and the owner, notice that includes all of the following
24 information, in addition to the information required by Section 8102:

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

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

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

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

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

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

39 The information required in this notice is in addition to the information required by Section
40 8102 (contents of notice).

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

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

1 **§ 8106. Manner of giving notice**

2 8106. Except as otherwise provided by statute, notice under this part shall be
3 given by any of the following means:

4 (a) Personal delivery.

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

6 (c) Leaving the notice and mailing a copy in the manner provided in Section
7 415.20 of the Code of Civil Procedure for service of summons and complaint in a
8 civil action.

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

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

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

19 **§ 8108. Address at which notice is given**

20 8108. Except as otherwise provided by this part, notice under this part shall be
21 given to the person to be notified at the person's residence, the person's place of
22 business, or at any of the following addresses:

23 (a) If the person to be notified is an owner, at the owner's address shown on the
24 direct contract, the building permit, or a construction trust deed.

25 (b) If the person to be notified is a construction lender, at the construction
26 lender's address shown on the construction loan agreement or construction trust
27 deed.

28 (c) If the person to be notified is a direct contractor or a subcontractor, at the
29 contractor's address shown on the building permit, on the contractor's contract, or
30 on the records of the Contractors' State License Board.

31 (d) If the person to be notified is a claimant, at the claimant's address shown on
32 the claimant's contract, preliminary notice, claim of lien, stop payment notice, or
33 claim against a payment bond, or on the records of the Contractors' State License
34 Board.

35 (e) If the person to be notified is a surety on a bond, at the surety's address
36 shown on the bond for service of notices, papers, and other documents, or on the
37 records of the Department of Insurance.

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

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

1 **§ 8110. Mailed notice**

2 8110. Except as otherwise provided by this part, notice by mail under this part
3 shall be given by registered or certified mail, express mail, or overnight delivery
4 by an express service carrier.

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

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

9 **§ 8112. Notice by electronic communication**

10 8112. (a) As used in this section, “electronic record” has the meaning provided
11 in Section 1633.2.

12 (b) A notice under this part may be given to a person in the form of an electronic
13 record if the person has agreed in writing to receive the notice in the form of an
14 electronic record.

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

20 **Comment.** Section 8112 is new. It combines the agreement requirement of the California
21 Uniform Electronic Transactions Act (UETA) (Sections 1633.1-1633.17) with the consumer
22 protections of the federal Electronic Signatures in Global and National Commerce Act (E-Sign)
23 (15 U.S.C. § 7001 *et seq.*).

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

28 See also Section 8032 (“person”).

29 **§ 8114. Posting of notice**

30 8114. A notice required by this part to be posted shall be displayed in a
31 conspicuous location at the site and at the main office of the site, if one exists.

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

34 **§ 8116. When notice complete**

35 8116. Notice under this part is complete and deemed to have been given at the
36 following times:

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

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

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

- 1 (d) If given by posting, when displayed.
- 2 (e) If given by recording, when recorded in the office of the county recorder.
- 3 (f) If given in the form of an electronic record, when the electronic record is
- 4 transmitted.

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

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

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

16 **§ 8118. Proof of notice**

17 8118. (a) Proof that notice was given to a person in the manner required by this
18 part shall be made by a proof of notice declaration that states all of the following:

- 19 (1) The type or description of the notice given.
- 20 (2) The date, place, and manner of notice, and facts showing that notice was
- 21 given in the manner required by statute.
- 22 (3) The name and address of the person to which notice was given, and, if
- 23 appropriate, the title or capacity in which the person was given notice.

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

26 (1) Documentation provided by the United States Postal Service showing that
27 payment was made to mail the notice using registered or certified mail.

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

30 (3) A return receipt, delivery confirmation, signature confirmation, or other
31 proof of delivery or attempted delivery provided by the United States Postal
32 Service, or a photocopy of the record of delivery and receipt maintained by the
33 United States Postal Service, showing the date of delivery and to whom delivered,
34 or in the event of nondelivery, by the returned envelope itself.

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

37 (c) If notice is given in the form of an electronic record, the declaration shall
38 also state that the document was served electronically and that no notice of
39 nontransmission was received, and shall be accompanied by the recipient's written
40 agreement to receive the notice in the form of an electronic record.

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

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Article 4. Construction Documents

§ 8130. Contract forms

8130. (a) A written direct contract shall provide a space for the owner to enter the following information:

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

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

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

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

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

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

§ 8132. Designation of construction lender on building permit

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

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

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

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

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

§ 8134. Construction trust deed

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

- 1 (1) The name and address of the construction lender.
2 (2) The name and address of the owner of the property described in the
3 instrument.
4 (3) A legal description of the property that secures the loan and, if known, the
5 street address of the property.
6 (b) Failure to comply with subdivision (a) does not affect the validity of the
7 mortgage, deed of trust, or other instrument.
8 (c) Failure to comply with subdivision (a) does not relieve a person required to
9 give preliminary notice from that duty.
10 (d) The county recorder of the county in which the instrument is recorded shall
11 indicate in the general index of the official records of the county that the
12 instrument secures a construction loan.
13 **Comment.** Section 8134 continues former Section 3097(j) without substantive change.
14 See also Sections 8006 (“construction lender”), 8028 (“owner”), 8032 (“person”), 8034
15 (“preliminary notice”), 8050 (“work of improvement”).

16 Article 5. Bonds

17 **§ 8140. Application of Bond and Undertaking Law**

18 8140. The Bond and Undertaking Law, Chapter 2 (commencing with Section
19 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a bond
20 given under this part, except to the extent this part prescribes a different rule or is
21 inconsistent.

22 **Comment.** Section 8140 is new. It is a specific application of Code of Civil Procedure Section
23 995.020 (application of Bond and Undertaking Law).

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

26 **§ 8142. No release of surety from liability**

27 8142. None of the following releases a surety from liability on a bond given
28 under this part:

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

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

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

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

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

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

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

3 **§ 8144. Construction of bond**

4 8144. (a) A bond given under this part shall be construed most strongly against
5 the surety and in favor of the beneficiary.

6 (b) A surety is not released from liability to the beneficiary by reason of a
7 breach of the direct contract or on the part of any obligee named in the bond.

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

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

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

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

17 **Article 6. Completion**

18 **§ 8150. Completion**

19 8150. (a) For the purpose of this part, completion of a work of improvement
20 occurs at the earliest of the following times:

21 (1) Substantial completion of the work of improvement.

22 (2) Occupation or use by the owner accompanied by cessation of labor.

23 (3) Cessation of labor for a continuous period of 60 days.

24 (4) Recordation of a notice of cessation after cessation of labor for a continuous
25 period of 30 days.

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

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

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

35 “Acceptance by the owner” is not continued as a form of completion.

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

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

41 See also Sections 8036 (“public entity”), 8050 (“work of improvement”).

1 **§ 8152. Notice of completion**

2 8152. (a) An owner may record a notice of completion on or within 15 days after
3 completion of a work of improvement.

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

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

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

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

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

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

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

19 **Comment.** Section 8152 continues former Section 3093. For the date of completion of a work
20 of improvement, see Section 8150. For the effect of a notice of completion, see Sections 8412-
21 8414 (time for claim of lien), 8460 (time for commencement of enforcement action). See also
22 Sections 8100-8118 (notice).

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

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

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

32 A notice of completion is recorded in the office of the county recorder of the county in which
33 the work of improvement or part of it is situated. Section 8058(a) (filing and recordation of
34 papers). A notice of completion is recorded when it is filed for record. Section 8058(b) (filing and
35 recordation of papers).

36 As used in this section, the owner is the person that causes a building, improvement, or
37 structure, to be constructed, altered, or repaired (or the owner's successor in interest on the date a
38 notice of completion is recorded) whether the interest or estate of the owner is in fee, as vendee
39 under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a
40 cotenant. A notice of completion may be signed and verified by the owner's agent. See Sections
41 8028 ("owner"), 8062 (co-owners).

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

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

1 **§ 8154. Notice of completion of contract for portion of work of improvement**

2 8154. If a work of improvement is made pursuant to two or more direct
3 contracts, each covering a portion of the work of improvement:

4 (a) The owner may record a notice of completion of a direct contract for a
5 portion of the work of improvement. On recordation of the notice of completion,
6 for the purpose of Sections 8412 and 8414 a direct contractor is deemed to have
7 completed the contract for which the notice of completion is recorded and a
8 claimant other than a direct contractor is deemed to have ceased providing work.

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

11 **Comment.** Section 8154 continues the substance of former Section 3117, but eliminates the
12 10-day period for recording a notice of completion. A claim of lien must be filed within 60 days
13 after recording a notice of completion (depending on the nature of the claimant), subject to a
14 maximum of 90 days after actual completion. See Sections 8412 and 8414 (time for claim of
15 lien). However, an owner that records a notice of completion that states an incorrect date of
16 completion may be estopped from asserting the running of the filing period. See *Doherty v.*
17 *Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58 (1959).

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

23 See also Sections 8002 (“claimant”), 8013 (“direct contract”), 8014 (“direct contractor”), 8028
24 (“owner”), 8048 (“work”), 8050 (“work of improvement”).

25 **§ 8155. Notice of cessation**

26 8155. (a) An owner may record a notice of cessation if there has been a
27 continuous cessation of labor on a work of improvement for at least 30 days prior
28 to the recordation that continues through the date of the recordation.

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

30 (c) The notice shall comply with the requirements of Article 4 (commencing
31 with Section 8100), and shall also include all of the following information:

32 (1) The date on or about which labor ceased.

33 (2) A statement that the cessation has continued until the recordation of the
34 notice.

35 **Comment.** Section 8155 continues former Section 3092. For the effect of recordation of a
36 notice of cessation, see Sections 8412 and 8414 (time for recording lien claim) and 7508(b) (time
37 for giving stop payment notice).

38 The notice of cessation may be recorded by an agent of the owner to the extent the act is within
39 the scope of the agent’s authority. See Section 8064 (agency).

40 A notice of cessation is recorded in the office of the county recorder of the county in which the
41 work of improvement or part of it is performed. Section 8058(a) (filing and recordation of
42 papers). The notice is recorded when it is filed for record. Section 8058(b) (filing and recordation
43 of papers).

44 As used in this section, the owner is the person that causes a building, improvement, or
45 structure, to be constructed, altered, or repaired (or the owner’s successor in interest at the date of
46 a notice of cessation is recorded) whether the interest or estate of the owner is in fee, as vendee

1 under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a
2 cotenant. See Sections 8028 (“owner” defined), 8062 (co-owners).

3 See also Section 8048 (“work” defined).

4 **§ 8156. Notice of recordation by owner**

5 8156. (a) An owner that records a notice of completion or cessation shall, within
6 10 days of the date the notice of completion or cessation is filed for record, give a
7 copy of the notice to all of the following persons:

8 (1) A direct contractor.

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

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

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

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

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

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

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

23 **Comment.** Section 8156 restates former Section 3259.5, replacing the notice of recordation
24 with a copy of the notice that the owner files for recordation, and expanding the manner of notice.
25 See Section 8106 (manner of giving notice). This provision is limited to a private work. See
26 Section 8052 (application of part).

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

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

36 Subdivision (b) is phrased in terms of the ineffectiveness of the notice of completion or
37 cessation, in place of the former references to extension of time.

38 See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8032
39 (“person”), 8034 (“preliminary notice”), 8152 (notice of completion), 8155 (notice of cessation).

40 **Article 7. Waiver and Release**

41 **§ 8160. Terms of contract**

42 8160. An owner, direct contractor, or subcontractor may not, by contract or
43 otherwise, waive, affect, or impair any other claimant’s rights under this part,

1 whether with or without notice, and any term of a contract that purports to do so is
2 void and unenforceable unless and until the claimant executes and delivers a
3 waiver and release under this article.

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

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

7 **§ 8162. Waiver and release**

8 8162. A claimant’s waiver and release does not release the owner, construction
9 lender, or surety on a payment bond from a lien or claim unless both of the
10 following conditions are satisfied:

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

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

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

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

23 **§ 8164. Statement of claimant**

24 8164. An oral or written statement purporting to waive, release, impair or
25 otherwise adversely affect a lien or claim is void and unenforceable and does not
26 create an estoppel or impairment of the lien or claim unless either of the following
27 conditions is satisfied:

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

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

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

31 See also Section 8002 (“claimant”).

32 **§ 8166. Reduction or release of stop payment notice**

33 8166. (a) A claimant may reduce the amount of, or release in its entirety, a stop
34 payment notice. The reduction or release shall be in writing and may be given in a
35 form other than a waiver and release form provided in this article.

36 (b) The writing shall identify whether it is a reduction of the amount of the stop
37 payment notice, or a release of the notice in its entirety. If the writing is a
38 reduction, it shall state the amount of the reduction, and the amount to remain
39 withheld after the reduction.

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

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

3 (2) The reduction or release releases the person given the notice from the
4 obligation to withhold funds pursuant to the notice to the extent of the reduction or
5 release.

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

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

11 **Comment.** Subdivisions (a) and (c) of Section 8166 generalize the second, third, and fourth
12 sentences of subdivision (b) of former Section 3262, so as to apply to a stop payment notice given
13 to a construction lender as well as to a stop payment notice given to an owner.

14 Subdivision (b) of Section 8166 is new.

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

16 **§ 8168. Accord and satisfaction or settlement agreement not affected**

17 8168. This article does not affect the enforceability of either an accord and
18 satisfaction concerning a good faith dispute or an agreement made in settlement of
19 an action pending in court if the accord and satisfaction or agreement and
20 settlement make specific reference to the lien or claim.

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

22 See also Section 8024 (“lien”).

23 **§ 8170. Conditional waiver and release on progress payment**

24 8170. If a claimant is required to execute a waiver and release in exchange for,
25 or in order to induce the payment of, a progress payment and the claimant is not,
26 in fact, paid in exchange for the waiver and release or a single payee check or joint
27 payee check is given in exchange for the waiver and release, the waiver and
28 release shall be in substantially the following form:

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

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

33 **Identifying Information**

34 Name of Claimant: _____

35 Name of Customer: _____

36 Job Location: _____

37 Owner: _____

38 Through Date: _____

1 **Conditional Waiver and Release**

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

5 This document is effective only on the claimant's receipt of payment from the
6 financial institution on which the following check is drawn:

7 Maker of Check: _____

8 Amount of Check: \$ _____

9 Check Payable to: _____

10 **Exceptions**

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

12 (1) Retentions.

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

14 (3) The following progress payments for which the claimant has previously given
15 a conditional waiver and release but has not received payment:

16 Date(s) of waiver and release: _____

17 Amount(s) of unpaid progress payment(s): \$ _____

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

21 **Signature**

22 Claimant's Signature: _____

23 Claimant's Title: _____

24 Date of Signature: _____

25
26 **Comment.** Section 8170 restates former Section 3262(d)(1), with the addition of language
27 relating to progress payments covered by previous releases that have not been paid. The statutory
28 form is recast for clarity.

29 See also Section 8002 ("claimant").

30 **§ 8172. Unconditional waiver and release on progress payment**

31 8172. If the claimant is required to execute a waiver and release in exchange for,
32 or in order to induce payment of, a progress payment and the claimant asserts in
33 the waiver it has, in fact, been paid the progress payment, the waiver and release
34 shall be in substantially the following form, with the text of the "Notice to
35 Claimant" in at least as large a type as the largest type otherwise in the form:

36 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

37 NOTICE TO CLAIMANT: This document waives and releases rights
38 unconditionally and states that you have been paid for giving up those rights. This

1 document is enforceable against you if you sign it, even if you have not been paid.
2 If you have not been paid, use a conditional waiver and release form.

3 **Identifying Information**

4 Name of Claimant: _____

5 Name of Customer: _____

6 Job Location: _____

7 Owner: _____

8 Through Date: _____

9 **Unconditional Waiver and Release**

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

13 The claimant has received the following progress payment:

14 \$ _____

15 **Exceptions**

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

17 (1) Retentions.

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

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

22 **Signature**

23 Claimant's Signature: _____

24 Claimant's Title: _____

25 Date of Signature: _____

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

29 See also Section 8002 ("claimant").

30 **§ 8174. Conditional waiver and release on final payment**

31 8174. If the claimant is required to execute a waiver and release in exchange for,
32 or in order to induce the payment of, a final payment and the claimant is not, in
33 fact, paid in exchange for the waiver and release or a single payee check or joint
34 payee check is given in exchange for the waiver and release, the waiver and
35 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 which 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) Compliance with this section is a necessary prerequisite to the validity of a
5 lien claim or stop payment notice under this part.

6 (d) Compliance with this section or with Section 8612 is a necessary prerequisite
7 to the validity of a claim against a payment bond under this part.

8 (e) Notwithstanding the foregoing subdivisions:

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

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

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) The preliminary notice shall comply with the requirements of Section
25 8102, and shall also include:

26 (1) A general description of the work to be provided.

27 (2) An estimate of the total price of the work provided and to be provided.

28 (3) The following statement in boldface type:

29 **NOTICE TO PROPERTY OWNER**

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

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

1 **If you record a notice of cessation or completion of your**
2 **construction project, you must within 15 days after recording send a**
3 **copy of the notice of completion to your contractor and the person or**
4 **firm that has given you this notice. The notice must be sent by**
5 **registered or certified mail. Failure to send the notice will extend the**
6 **deadline to record a claim of lien. You are not required to send the**
7 **notice if you are a residential homeowner of a dwelling containing four**
8 **or fewer units.**

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

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

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

22 The information required in this notice is in addition to the information required by Section
23 8102 (contents of notice).

24 See also Sections 8032 (“person”), 8046 (“subcontractor”).

25 **§ 8204. Effect of preliminary notice**

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

29 (b) Notwithstanding subdivision (a), certificated architect, registered engineer,
30 or licensed land surveyor that has furnished services for the design of the work of
31 improvement may record a claim of lien, give a stop payment notice, or assert a
32 claim against a payment bond for design professional services provided for the
33 design of the work of improvement, if the architect, engineer, or land surveyor
34 gives preliminary notice not later than 20 days after the work of improvement has
35 commenced.

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

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

39 See also Sections 8002 (“claimant”), 8024 (“lien”), 8048 (“work”), 8050 (“work of
40 improvement”).

1 **§ 8206. Coverage of preliminary notice**

2 8206. (a) Except as provided in subdivision (b), a claimant need give only one
3 preliminary notice to each person to which notice must be given under this chapter
4 with respect to all work provided by the claimant for a work of improvement.

5 (b) If a claimant provides work pursuant to contracts with more than one
6 subcontractor, the claimant shall give a separate preliminary notice with respect to
7 work provided pursuant to each contract.

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

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

13 See also Sections 8002 (“claimant”), 8032 (“person”), 8046 (“subcontractor”), 8048 (“work”),
14 8050 (“work of improvement”).

15 **§ 8208. Direct contractor’s duty to provide information**

16 8208. A direct contractor shall make available to any person seeking to give
17 preliminary notice the following information:

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

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

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

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

25 **§ 8210. Owner’s duty to give notice of construction loan**

26 8210. If a construction loan is obtained after commencement of a work of
27 improvement, the owner shall give notice of the name and address of the
28 construction lender to each person that has given the owner preliminary notice.

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

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

33 **§ 8212. Waiver void**

34 8212. An agreement made or entered into by an owner whereby the owner
35 agrees to waive the rights conferred on the owner by this chapter is void and
36 unenforceable.

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

38 See also Section 8028 (“owner”).

39 **§ 8214. Notices filed with county recorder**

40 8214. The county recorder may cause to be destroyed all documents filed under
41 subdivision (o) of former Section 3097.

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

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

6 (1) The name of the design professional.

7 (2) The amount of the claim.

8 (3) The current owner of record of the site.

9 (4) A legal description of the site.

10 (5) Identification of the building permit or other governmental approval for the
11 work of improvement.

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

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

17 See also Sections 8012 (“design professional”), 8024 (“lien”), 8028 (“owner”), 8040 (“site”),
18 8050 (“work of improvement”).

19 **§ 8306. Creation, expiration, and release of lien**

20 8306. (a) On recordation of the claim of lien, a lien is created in favor of the
21 named design professional.

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

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

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

28 (c) If the owner partially or fully satisfies the lien, the design professional shall
29 execute and record a document that evidences a partial or full satisfaction and
30 release of the lien, as applicable.

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

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

36 **§ 8308. Application of part**

37 8308. (a) Except as provided in subdivision (b), no provision of this part applies
38 to a lien created under this chapter.

39 (b) The following provisions of this part apply to a lien created under this
40 chapter:

41 (1) This chapter.

42 (2) Article 1 (commencing with Section 8000) of Chapter 1.

43 (3) Section 8428.

1 (4) Article 7 (commencing with Section 8480) of Chapter 4.

2 (5) Article 8 (commencing with Section 8490) of Chapter 4.

3 **Comment.** Section 8308 continues the substance of former Section 3081.5, and provides for
4 the application of the definitional provisions of this part.

5 See also Section 8024 (“lien”).

6 **§ 8310. Mechanics lien right not affected**

7 8310. This chapter does not affect the ability of a design professional to obtain a
8 lien for a work of improvement under Section 8400.

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

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

11 **§ 8312. Time for claim of lien**

12 8312. A design professional shall record a claim of lien under this chapter no
13 later than 90 days after the design professional knows or has reason to know that
14 the work of improvement will not be commenced.

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

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

18 **§ 8314. Right to pursue other remedies**

19 8314. The creation of a lien under this chapter does not affect the ability of the
20 design professional to pursue other remedies.

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

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

23 **§ 8316. Priorities**

24 8316. (a) No lien created under this chapter affects or takes priority over the
25 interest of record of a purchaser, lessee, or encumbrancer, if the interest of the
26 purchaser, lessee, or encumbrancer in the property was duly recorded before
27 recordation of the claim of lien.

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

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

32 See also Sections 8006 (“construction lender”), 8012 (“design professional”), 8024 (“lien”),
33 8028 (“owner”), 8050 (“work of improvement”).

34 **§ 8318. Exemption**

35 8318. A design professional may not obtain a lien under this chapter for services
36 provided for a work of improvement relating to a single-family owner occupied
37 residence for which the expected construction cost is less than one hundred
38 thousand dollars (\$100,000).

1 **§ 8412. Time for claim of lien by direct contractor**

2 8412. A direct contractor may not enforce a lien unless the contractor records a
3 claim of lien after the contractor completes the direct contract, and before the
4 earlier of the following times:

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

6 (b) Sixty days after the owner records a notice of completion or cessation.

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

11 For “completion” of a work of improvement, see Section 8150. For recordation of a notice of
12 completion, see Section 8152 (notice of completion). For recordation of a notice of cessation, see
13 Section 8155 (notice of cessation).

14 See also Sections 8013 (“direct contract”), 8014 (“direct contractor”), 8024 (“lien”), 8028
15 (“owner”), 8050 (“work of improvement”).

16 **§ 8414. Time for claim of lien by claimant other than direct contractor**

17 8414. A claimant other than a direct contractor may not enforce a lien unless the
18 claimant records a claim of lien within the following times:

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

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

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

22 (2) Thirty days after the owner records a notice of completion or cessation.

23 **Comment.** Section 8414 continues former Section 3116. For “completion” of a work of
24 improvement, see Section 8150. For recordation of a notice of completion, see Section 8152
25 (notice of completion). For recordation of a notice of cessation, see Section 8155 (notice of
26 cessation).

27 See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”),
28 8048 (“work”), 8050 (“work of improvement”).

29 **§ 8416. Contents of claim of lien**

30 8416. A claim of lien shall be in writing, signed and verified by the claimant,
31 and shall include all of the following information:

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

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

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

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

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

38 (f) The claimant’s address.

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

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

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

3 See also Sections 8002 ("claimant"), 8024 ("lien"), 8028 ("owner"), 8032 ("person"), 8040
4 ("site"), 8048 ("work").

5 **§ 8418. Notice of intended recording of claim of lien**

6 8418. (a) Before recording a claim of lien, the claimant shall give notice of the
7 intended recording to the owner or reputed owner of property subject to the claim
8 of lien, if known. The notice shall comply with the requirements of Article 3
9 (commencing with Section 8100) of Chapter 1.

10 (b) Notice of the intended recording of a claim of lien shall include a copy of the
11 claim of lien.

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

14 See also Sections 8100-8118 (notice).

15 **§ 8420. Notice prerequisite to recording claim of lien**

16 8420. The county recorder shall not record a claim of lien that is filed for record
17 unless accompanied by a declaration under penalty of perjury attesting to service
18 of a true and accurate copy of the lien claim on the owner or reputed owner.

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

21 **§ 8422. Forfeiture of lien for false claim**

22 8422. (a) Except as provided in subdivision (b), erroneous information contained
23 in a claim of lien relating to the claimant's demand, credits and offsets deducted,
24 the work provided, or the description of the site, does not invalidate the claim of
25 lien.

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

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

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

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

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

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

39 **§ 8424. Release bond**

40 8424. (a) An owner of property subject to a recorded claim of lien or a direct
41 contractor or subcontractor affected by the claim of lien that disputes the

1 correctness or validity of the claim may obtain release of the property from the
2 claim of lien by recording a lien release bond. The principal on the bond may be
3 the owner of the property, the direct contractor, or the subcontractor.

4 (b) The bond shall be conditioned on payment of any judgment and costs the
5 claimant recovers on the lien. The bond shall be in an amount equal to 150 percent
6 of the amount of the claim of lien or 150 percent of the amount allocated in the
7 claim of lien to the property to be released. The bond shall be executed by an
8 admitted surety insurer.

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

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

19 **Comment.** Subdivisions (a)-(c) of Section 8424 continue former Section 3143 without
20 substantive change. The language of the section is harmonized with the Bond and Undertaking
21 Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil
22 Procedure.

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

24 The owner of an interest in property may obtain a release bond. See Section 8028 (“owner”).
25 The reference to recordation of the bond in the county in which the claim of lien is recorded is
26 omitted as unnecessary. Both the claim of lien and the bond are recorded in the office of the
27 county recorder of the county in which the work of improvement or part of it is situated. Section
28 8058 (filing and recording of papers).

29 If an action to enforce a lien has been timely commenced before a release bond is recorded, the
30 claimant may name the surety as a defendant and seek recovery against the bond in the
31 enforcement action; the claimant is not required to commence a new action on the bond. See
32 *Hutnick v. United States Fidelity & Guaranty Co.*, 47 Cal. 3d 456, 763 P.2d 1326, 253 Cal. Rptr.
33 236 (1988).

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

36 Article 3. Amount of Lien

37 § 8430. Amount of lien

38 8430. (a) The lien is a direct lien for the lesser of the following amounts:

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

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

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

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

5 **Comment.** Section 8430 restates subdivisions (a) and (b) of former Section 3123 and a portion
6 of former Section 3110. See also Section 8602 (payment bond). As used in this section, the
7 reasonable value of work includes the reasonable use value of appliances, equipment, teams, and
8 power.

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

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

12 See also Sections 8002 (“claimant”), 8008 (“contract”), 8024 (“lien”), 8032 (“person”), 8048
13 (“work”), 8416 (contents of claim of lien).

14 **§ 8432. Lien limited to work included in contract or modification**

15 8432. (a) A lien does not extend to work, whether or not the work is authorized
16 by a direct contractor or subcontractor, if the work is not included in a direct
17 contract, and the claimant had actual knowledge or constructive notice of the
18 provisions of that contract before providing the work.

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

22 **Comment.** Section 8432 restates former Section 3124 without substantive change. “Direct
23 contractor” is substituted for the undefined “contractor” in subdivision (a). The concept of
24 “authorized” is substituted for “employed” in subdivision (a). See Section 8404 (who may
25 authorize work). The reference to a modification of the contract is omitted in reliance of the
26 definition of “direct contract,” which includes a contract change. See Section 8013 (“direct
27 contract”).

28 See also Sections 8002 (“claimant”), 8008 (“contract”), 8014 (“direct contractor”), 8024
29 (“lien”), 8028 (“owner”), 8032 (“person”), 8046 (“subcontractor”), 8048 (“work”).

30 **§ 8434. Amount of recovery**

31 8434. A direct contractor or a subcontractor may enforce a lien only for the
32 amount due pursuant to that contractor’s contract after deducting all lien claims of
33 other claimants for work provided and embraced within that contract.

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

35 See also Sections 8002 (“claimant”), 8008 (“contract”), 8024 (“lien”), 8014 (“direct
36 contractor”), 8046 (“subcontractor”), 8048 (“work”).

37 Article 4. Property Subject to Lien

38 **§ 8440. Property subject to lien**

39 8440. Subject to Section 8442, a lien attaches to the work of improvement and to
40 the property on which the work of improvement is situated, including as much
41 space about the work of improvement as is required for the convenient use and
42 occupation of the work of improvement.

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

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

5 **§ 8442. Interest subject to lien**

6 8442. The following interests in property to which a lien attaches are subject to
7 the lien:

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

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

13 **Comment.** Section 8442 restates former Section 3129 and the last portion of former Section
14 3128. A reference to “work” is substituted for the former reference to “commencement of the
15 work or of the furnishing of the materials.” Cf. Section 8048 (“work”).

16 It should be noted that under this section, the interest of a person that contracts for a work of
17 improvement indirectly, for example through a provision in a lease that requires a tenant to make
18 the work of improvement, may be subject to the lien. Likewise, the interest of a person that did
19 not contract for a work of improvement might in some circumstances be subject to the lien if the
20 person is a “participating owner.” See, e.g., *Los Banos Gravel Co. v. Freeman*, 58 Cal. App. 3d
21 785, 130 Cal. Rptr. 180 (1976).

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

23 **§ 8444. Notice of nonresponsibility**

24 8444. (a) An owner of property on which a work of improvement is situated that
25 did not contract for the work of improvement may give notice of
26 nonresponsibility.

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

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

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

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

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

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

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

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

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

1 **§ 8446. Multiple works of improvement**

2 8446. A claimant may record one claim of lien on two or more works of
3 improvement, subject to the following conditions:

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

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

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

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

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

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

28 See also Sections 8002 (“claimant”), 8008 (“contract”), 8024 (“lien”), 8028 (“owner”), 8032
29 (“person”), 8048 (“work”), 8050 (“work of improvement”).

30 **§ 8448. Claim against separate residential units**

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

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

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

41 (2) Material provided for the work of improvement is deemed to be provided for
42 use or consumption in each separate residential unit in which the material is
43 actually used or consumed; but if the claimant is unable to segregate the amounts

1 used or consumed in separate residential units, the claimant has the right to all the
2 benefits of Section 8446.

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

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

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

12 See also Section 8416 (claim of lien).

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

14 Article 5. Priorities

15 § 8450. Priority of lien

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

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

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

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

28 § 8452. Payment bond obtained by holder of mortgage or deed of trust

29 8452. A mortgage or deed of trust, otherwise subordinate to a lien under Section
30 8450, has priority over a lien for work provided after recordation of a payment
31 bond that satisfies all of the following requirements:

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

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

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

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

38 § 8454. Separate contract for site improvement

39 8454. If a site improvement is provided for in a direct contract separate from the
40 direct contract for the remainder of the work of improvement, the site
41 improvement is deemed a separate work of improvement and commencement of

1 the site improvement is not commencement of the remainder of the work of
2 improvement.

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

4 See also Sections 8013 (“direct contract”), 8042 (“site improvement”), 8050 (“work of
5 improvement”).

6 **§ 8456. Priority of advances by lender**

7 8456. (a) This section applies to a construction loan secured by a mortgage or
8 deed of trust that has priority over a lien under this chapter.

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

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

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

15 **§ 8458. Priority of site improvement lien**

16 8458. (a) Except as provided in subdivision (b), a lien provided for in Section
17 8402 has priority over:

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

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

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

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

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

37 Subdivision (b) continues former Section 3139 without substantive change. See also Section
38 8058 (filing and recording of papers).

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

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Article 6. Enforcement of Lien

§ 8460. Time for commencement of enforcement action

8460. (a) The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien and record a notice of the pendency of the action under Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure within 110 days after recordation of the claim of lien. If the claimant does not commence an action and record notice of the pendency of the action within the time provided in this subdivision, the claim of lien expires and is unenforceable.

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

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

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

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

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

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

§ 8462. Dismissal for lack of prosecution

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

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

See also Section 8024 (“lien”).

1 **§ 8464. Costs**

2 8464. In addition to any other costs allowed by law, the court in an action to
3 enforce a lien shall allow as costs to each claimant whose lien is established the
4 amount paid to verify and record the claim of lien, whether the claimant is a
5 plaintiff or defendant.

6 **Comment.** Section 8464 continues former Section 3150 without substantive change.
7 See also Sections 8002 (“claimant”), 8024 (“lien”).

8 **§ 8466. Deficiency**

9 8466. If there is a deficiency of proceeds from the sale of property on a
10 judgment for enforcement of a lien, a deficiency judgment may be entered against
11 a party personally liable for the deficiency in the same manner and with the same
12 effect as in an action to foreclose a mortgage.

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

15 **§ 8468. Other remedies**

16 8468. (a) This chapter does not affect any of the following rights of a claimant:

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

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

22 (3) The right to enforce a judgment.

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

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

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

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

32 **§ 8470. Defense of lien enforcement action by contractor**

33 8470. In an action to enforce a lien for work provided to a contractor:

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

37 (b) If the judgment in the action is against the owner or the owner’s property, the
38 owner may deduct the amount of the judgment and costs from any amount owed to
39 the direct contractor. If the amount of the judgment and costs exceeds the amount
40 owed to the direct contractor, or if the owner has settled with the direct contractor
41 in full, the owner may recover from the direct contractor, or the sureties on a bond

1 given by the direct contractor for faithful performance of the direct contract, the
2 amount of the judgment and costs that exceed the contract price and for which the
3 direct contractor was originally liable.

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

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

8 Article 7. Release Order

9 § 8480. Petition for release order

10 8480. (a) The owner of property subject to a claim of lien may petition the court
11 for an order to release the property from the claim of lien for any of the following
12 causes:

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

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

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

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

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

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

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

30 (d) Notwithstanding Section 8054, Chapter 2.5 (commencing with Section
31 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure does not apply to a
32 proceeding under this article.

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

37 Subdivision (a)(2) includes payment in full to an assignee of the claimant.

38 Subdivision (b) continues former Section 3154(h) without substantive change. In *Solit v. Tokai*
39 *Bank, Ltd. New York Branch*, 68 Cal. App. 4th 1435, 81 Cal. Rptr. 2d 243 (1999), the court held
40 that an order releasing a lien because it had not been timely enforced may not bar the recording of
41 a new claim for the same work, if the time for recording a new claim of lien had not yet expired.

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

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

5 See also Sections 8002 (“claimant”), 8024 (“lien”), 8048 (“work”).

6 **§ 8482. Demand prerequisite to petition**

7 8482. An owner of property may not petition the court for a release order under
8 this article unless at least 10 days before filing the petition the owner gives the
9 claimant notice demanding that the claimant execute and record a release of the
10 claim of lien. The notice shall comply with the requirements of Article 3
11 (commencing with Section 8100) of Chapter 1, and shall state the grounds for the
12 demand.

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

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

16 **§ 8484. Contents of petition**

17 8484. A petition for a release order shall be verified and shall allege all of the
18 following:

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

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

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

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

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

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

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

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

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

38 The information included in the petition is intended to facilitate the court’s order under Section
39 8488 (hearing and order). The reference to series number is added to cover a county in which the
40 recorder uses a sequence number for record location.

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

1 **§ 8486. Time of hearing**

2 8486. (a) On the filing of a petition for a release order, the clerk shall set a
3 hearing date. The date shall be not more than 30 days after the filing of the
4 petition. The court may continue the hearing only on a showing of good cause, but
5 in any event the court shall rule and make any necessary orders on the petition not
6 later than 60 days after the filing of the petition.

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

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

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

17 The specific mailing requirements in subdivision (b) of Section 8486 supersedes the general
18 mailing requirements in Section 8110.

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

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

21 **§ 8488. Hearing and order**

22 8488. (a) At the hearing both (i) the petition and (ii) the issue of compliance
23 with the service and date for hearing requirements of this article are deemed
24 controverted by the claimant. The petitioner has the initial burden of producing
25 evidence on those matters. The petitioner has the burden of proof as to the issue of
26 compliance with the service and date for hearing requirements of this article. The
27 claimant has the burden of proof as to the validity of the lien.

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

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

31 **Comment.** Subdivision (a) of Section 8488 continues the last sentence of former Section
32 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change,
33 except that language is added to clarify the burden of production and the burden of proof.

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

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

1 Article 8. Removal of Claim of Lien from Record

2 **§ 8490. Court order**

3 8490. (a) A court order dismissing a cause of action to enforce a lien or releasing
4 property from a claim of lien, or a judgment that no lien exists, shall include all of
5 the following information:

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

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

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

10 (4) The legal description of the property.

11 (b) A court order or judgment under this section is equivalent to cancellation of
12 the claim of lien and its removal from the record.

13 (c) A court order or judgment under this section is a recordable instrument. On
14 recordation of a certified copy of the court order or judgment, the property
15 described in the order or judgment is released from the claim of lien.

16 (d) A court order or judgment under this section is not effective, and may not be
17 recorded, until 20 days after service by the court or any party of notice of the entry
18 of the order or judgment.

19 (e) This section does not apply to a court order dismissing an action to enforce a
20 lien that is expressly stated to be without prejudice.

21 **Comment.** Subdivision (a) of Section 8490 generalizes a portion of former Section 3154(f).
22 The reference to sequence number is added to cover a county in which the recorder uses a series
23 number for record location. The reference to the city where the claim of lien is recorded is
24 omitted as superfluous.

25 Subdivisions (b) and (e) generalize former Section 3148.

26 Subdivision (c) generalizes the second sentence of former Section 3154(f)(4).

27 Subdivision (d) is new. It is intended to allow a losing claimant time to seek appellate review
28 and a stay of the court order or judgment. See California Rules of Court 8.112, 8.116 (request for
29 stay). This provision does not affect the time period for seeking appellate review of the order or
30 judgment.

31 See also 8058 (filing and recordation of papers).

32 See also Section 8024 (“lien”).

33 **§ 8494. Effect of expiration or recordation of court order**

34 8494. If a claim of lien expires and is unenforceable under Section 8460, or if a
35 court order or judgment is recorded under Section 8490, the claim of lien does not
36 constitute actual or constructive notice of any of the matters contained, claimed,
37 alleged, or contended in the claim of lien, or create a duty of inquiry in any person
38 thereafter dealing with the affected property.

39 **Comment.** Section 8494 is drawn from Code of Civil Procedure Section 405.60 (lis pendens).

40 See also Section 8024 (“lien”).

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CHAPTER 5. STOP PAYMENT NOTICE

Article 1. General Provisions

§ 8500. Stop payment notice exclusive remedy to reach construction funds

8500. The rights of all persons furnishing work for any work of improvement, 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 a written contract between such person and the person holding the fund, except pursuant to the provisions of this chapter.

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

The reference to a “direct” written contract has been revised to avoid confusion with the term “direct contract.” See Section 8013. The revision is non-substantive.

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

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

§ 8502. Contents of stop payment notice

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

(b) The notice shall include a general description of work to be provided, and an estimate of the total amount in value of the work to be provided.

(c) The claimant’s amount claimed in the notice may include only the amount due the claimant for work provided through the date of the notice.

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

Comment. Subdivisions (a) through (c) of Section 8502 supersede subdivisions (a) through (d) of former Section 3103. See also Sections 8100-8118 (notice). A stop payment notice may be executed by the claimant’s agent. See Section 8064 (agency).

Subdivision (c) provides a special rule that supplements the requirement of Section 8102(a)(6)(iii) (demand of claimant).

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

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

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8008 (“contract”), 8032 (“person”), 8044 (“stop payment notice”), 8048 (“work”).

1 **§ 8504. False stop payment notice**

2 8504. A claimant that willfully gives a false stop payment notice or that willfully
3 includes in the notice a demand to withhold for work that has not been provided
4 forfeits all right to participate in the distribution of the funds withheld and all right
5 to a lien under Chapter 4 (commencing with Section 8400).

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

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

9 **§ 8506. Manner of giving stop payment notice**

10 8506. (a) A stop payment notice to an owner shall be given to the owner or to
11 the owner’s architect, if any.

12 (b) A stop payment notice to a construction lender holding construction funds
13 shall not be effective unless given to the manager or other responsible officer or
14 person at the office or branch of the lender administering or holding the
15 construction funds.

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

18 **Comment.** Subdivisions (a) and (b) of Section 8506 continue a portion of the last two
19 sentences of former Section 3083 and the second paragraph of former Section 3103 without
20 substantive change.

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

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

25 **§ 8508. Requirements for valid stop payment notice**

26 8508. A stop payment notice is not valid unless both of the following conditions
27 are satisfied:

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

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

33 **Comment.** Section 8508 restates former Section 3160 and a portion of the first sentence of
34 former Section 3159 without substantive change. For the time within which a claim of lien must
35 be recorded, see Sections 8412 and 8414 (time for claim of lien); see also Section 8154 (notice of
36 completion of contract for portion of work of improvement). For the person to which the notice
37 must be given, see Section 8506.

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

40 **§ 8510. Release bond**

41 8510. (a) A person may obtain release of funds withheld pursuant to a stop
42 payment notice by giving the person withholding the funds a release bond.

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

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

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

12 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”),
13 8028 (“owner”), 8032 (“person”), 8044 (“stop payment notice”), 8046 (“subcontractor”).

14 Article 2. Stop Payment Notice to Owner

15 § 8520. Stop payment notice to owner

16 8520. (a) A person that has a lien right under Chapter 4 (commencing with
17 Section 8400), other than a direct contractor, may give the owner a stop payment
18 notice.

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

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

27 See also Sections 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”), 8032 (“person”),
28 8044 (“stop payment notice”).

29 § 8522. Duty of owner

30 8522. (a) Except as provided in subdivision (b), on receipt of a stop payment
31 notice an owner shall withhold from the direct contractor or from any person
32 acting under authority of a direct contractor a sufficient amount due or to become
33 due to the direct contractor to pay the claim stated in the notice.

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

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

41 See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”),
42 8030 (“payment bond”), 8032 (“person”), 8044 (“stop payment notice”).

1 Article 3. Stop Payment Notice to Construction Lender

2 **§ 8530. Stop payment notice to construction lender**

3 8530. A person that has a lien right under Chapter 4 (commencing with Section
4 8400) may give a construction lender a stop payment notice.

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

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

11 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”),
12 8024 (“lien”), 8032 (“person”), 8048 (“work”).

13 **§ 8532. Bonded stop payment notice**

14 8532. A claimant may give a construction lender a stop payment notice
15 accompanied by a bond in an amount equal to 125 percent of the amount of the
16 claim. The bond shall be conditioned that if the defendant recovers judgment in an
17 action to enforce payment of the claim stated in the stop payment notice or to
18 enforce a claim of lien recorded by the claimant, the claimant will pay all costs
19 that are awarded the owner, direct contractor, or construction lender, and all
20 damages to the owner, direct contractor, or construction lender that result from the
21 stop payment notice or recordation of the claim of lien, not exceeding the amount
22 of the bond.

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

28 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”),
29 8024 (“lien”), 8028 (“owner”), 8044 (“stop payment notice”).

30 **§ 8534. Objection to bond**

31 8534. (a) A construction lender that objects to the sufficiency of sureties on the
32 bond given with a bonded stop payment notice shall give notice to the claimant of
33 the objection, within 20 days after the bonded stop payment notice is given. The
34 notice shall comply with the requirements of Article 3 (commencing with Section
35 8100) of Chapter 1.

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

41 **Comment.** Section 8534 restates former Section 3163 without substantive change. *Cf.* Section
42 8100 (written notice); Code Civ. Proc. § 995.120 (“admitted surety insurer”).

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

3 **§ 8536. Duty of construction lender**

4 8536. (a) Except as provided in subdivision (b), on receipt of a stop payment
5 notice a construction lender shall withhold from the borrower or other person to
6 which the lender or the owner is obligated to make payments or advancement out
7 of the construction fund sufficient funds to pay the claim stated in the notice.

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

10 (1) The stop payment notice is unbonded.

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

14 **Comment.** Section 8536 restates paragraphs (1) and (2) of subdivision (a) of former Section
15 3159, and subdivision (a)(1)-(2) of former Section 3162. The requirement in former Section
16 3162(a) that the lender withhold sufficient funds to pay “any claim of lien that may be recorded
17 therefor” is omitted; any amount paid pursuant to a stop payment notice reduces the claim of lien.
18 The reference to recordation of a payment bond “in the office of the county recorder where the
19 site is located” is omitted from subdivision (b)(2) as unnecessary. See Section 8058 (filing and
20 recording of papers).

21 If a bonded stop payment notice is given by a direct contractor, the construction lender must
22 withhold funds regardless of whether a payment bond has previously been recorded under Section
23 8602.

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

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

29 **§ 8538. Notice of election**

30 8538. (a) The claimant may make a written request for notice of an election by
31 the construction lender under Section 8536 not to withhold funds. The request
32 shall be made at the time the claimant gives the construction lender the stop
33 payment notice and shall be accompanied by a preaddressed, stamped envelope.

34 (b) If the construction lender elects not to withhold funds under Section 8536,
35 the lender shall, within 30 days after making the election, give notice of that fact
36 to a claimant that has requested notice of the election under subdivision (a). The
37 notice shall comply with the requirements of Article 3 (commencing with Section
38 8100) of Chapter 1. If the basis of the election is the recordation of a payment
39 bond under Section 8602, the construction lender shall include a copy of the bond
40 with the notice.

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

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

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

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

3 **Comment.** Section 8538 restates paragraph (3) of subdivision (a) of former Sections 3159 and
4 3162 without substantive change. The last sentence of former Section 3159(a)(3) is continued in
5 Section 8530(b) (notice to construction lender to withhold funds).

6 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8030 (“payment bond”),
7 8044 (“stop payment notice”).

8 Article 4. Priorities

9 § 8540. Distribution of funds withheld pursuant to stop payment notice

10 8540. (a) Funds withheld pursuant to a stop payment notice shall be distributed
11 in the following order of priority:

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

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

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

23 **Comment.** Section 8540 restates former Section 3167 without substantive change. Only valid
24 claims, as determined in an enforcement action, are entitled to participate in the distribution. *Cf.*
25 *Idaho Lumber Co. v. Northwestern S. & L. Ass’n*, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422
26 (1968). The amount of the claim of a contractor is governed by Section 8542.

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

28 § 8542. Amount withheld

29 8542. Notwithstanding Section 8540:

30 (a) If funds are withheld pursuant to a stop payment notice given to a
31 construction lender by a direct contractor or subcontractor, the direct contractor or
32 subcontractor may recover only the net amount due the direct contractor or
33 subcontractor after deducting any funds that are withheld by the construction
34 lender pursuant to the claims of subcontractors and material suppliers that have
35 given a stop payment notice for work done on behalf of the direct contractor or
36 subcontractor.

37 (b) In no event is the construction lender required to withhold, pursuant to a stop
38 payment notice, more than the net amount provided in subdivision (a).
39 Notwithstanding any other provision of this chapter, a construction lender is not
40 liable for failure to withhold more than that net amount on receipt of a stop
41 payment notice.

1 **Comment.** Section 8542 restates subdivisions (b) and (c) of former Sections 3159 and 3162,
2 except that the rules governing a bonded notice are generalized and also apply to funds that a
3 construction lender actually withholds pursuant to an unbonded notice.

4 See also Sections 8006 (“construction lender”), 8014 (“direct contractor”), 8026 (“material
5 supplier), 8044 (“stop payment notice”), 8046 (“subcontractor”).

6 **§ 8544. Effect of stop payment notice on assignment of funds**

7 8544. The rights of a claimant that gives a construction lender a stop payment
8 notice are not affected by an assignment of construction loan funds made by the
9 owner or direct contractor, and the stop payment notice has priority over the
10 assignment, whether the assignment is made before or after the stop payment
11 notice is given.

12 **Comment.** Section 8544 restates former Section 3166 without substantive change.

13 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”),
14 8028 (“owner”), 8044 (“stop payment notice”).

15 Article 5. Enforcement of Claim Stated in Stop Payment Notice

16 **§ 8550. Time for enforcement of claim stated in stop payment notice**

17 8550. (a) A claimant shall commence an action to enforce payment of the claim
18 stated in a stop payment notice not earlier than 10 days after the date the claimant
19 gives the notice and not later than 90 days after expiration of the time within
20 which a stop payment notice must be given. The action may not be brought to trial
21 or judgment entered before expiration of the time prescribed in this subdivision.

22 (b) If a claimant does not commence an action to enforce payment of the claim
23 stated in a stop payment notice within the time prescribed in subdivision (a), the
24 notice ceases to be effective and the person withholding funds pursuant to the
25 notice shall release them.

26 (c) Within five days after commencement of an action to enforce payment of the
27 claim stated in a stop payment notice, the claimant shall give notice of
28 commencement of the action to the persons to which the stop payment notice was
29 given. The notice shall comply with the requirements of Article 3 (commencing
30 with Section 8100) of Chapter 1.

31 **Comment.** Section 8550 restates former Section 3172 without substantive change. A stop
32 payment notice must be given before expiration of the time within which a claim of lien must be
33 recorded under Chapter 4 (commencing with Section 8400). See Section 8508 (requirements for
34 valid stop payment notice).

35 For the manner in which notice of commencement of an enforcement action is to be given, see
36 Section 8506 (manner of giving stop payment notice).

37 Funds released for failure to timely commence an enforcement action must be paid or delivered
38 to the person to which they are due.

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

40 **§ 8552. Joinder, consolidation, and interpleader**

41 8552. If more than one claimant has given a stop payment notice:

42 (a) Any number of claimants may join in the same enforcement action.

1 (b) If claimants commence separate actions, the court first acquiring jurisdiction
2 may order the actions consolidated.

3 (c) On motion of the owner or construction lender the court shall require all
4 claimants to be impleaded in one action, to the end that the rights of all parties
5 may be adjudicated in the action.

6 **Comment.** Section 8552 restates former Section 3175 without substantive change. Subdivision
7 (a) is a specific application of the general rule stated in Section 8054 (rules of practice).

8 See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8028 (“owner”), 8044
9 (“stop payment notice”).

10 **§ 8554. Dismissal of enforcement action for lack of prosecution**

11 8554. Notwithstanding Section 583.420 of the Code of Civil Procedure, the
12 court may dismiss an action to enforce payment of the claim stated in a stop
13 payment notice that is not brought to trial within two years after commencement
14 of the action.

15 **Comment.** Section 8554 restates former Section 3173 without substantive change. The cross-
16 reference to the Code of Civil Procedure is added to make clear that this section modifies the
17 general three-year period for discretionary dismissal. *Cf.* Section 8054 (rules of practice).

18 See also Section 8044 (“stop payment notice”).

19 **§ 8556. Dismissal of action or judgment against claimant**

20 8556. A stop payment notice ceases to be effective, and a person withholding
21 funds pursuant to the notice shall release them, in either of the following
22 circumstances:

23 (a) An action to enforce payment of the claim stated in the stop payment notice
24 is dismissed, unless expressly stated to be without prejudice.

25 (b) Judgment in an action to enforce payment of the claim stated in the stop
26 payment notice is against the claimant.

27 **Comment.** Section 8556 restates former Section 3174 without substantive change. Funds
28 released as a result of dismissal of the action or judgment against the claimant must be paid or
29 delivered to the person to which they are due.

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

31 **§ 8558. Attorney’s fee in action to enforce payment of claim stated in bonded stop payment**
32 **notice**

33 8558. (a) In an action to enforce payment of the claim stated in a bonded stop
34 payment notice, the prevailing party is entitled to a reasonable attorney’s fee in
35 addition to costs and damages.

36 (b) The court, on notice and motion by a party, shall determine which is the
37 prevailing party or that there is no prevailing party for the purpose of this section,
38 regardless of whether the action proceeds to final judgment. The prevailing party
39 is the party that recovers greater relief in the action, subject to the following
40 limitations:

41 (1) If the action is voluntarily dismissed or dismissed pursuant to a settlement,
42 there is no prevailing party.

1 (2) If the defendant tenders to the claimant the full amount to which the
2 defendant is entitled, and deposits in court for the claimant the amount so
3 tendered, and alleges those facts in the answer and the allegation is determined to
4 be true, the defendant is deemed to be the prevailing party.

5 **Comment.** Section 8558 restates former Section 3176 without substantive change.
6 See also Sections 8002 (“claimant”), 8044 (“stop payment notice”).

7 **§ 8560. Interest in action to enforce payment of claim stated in bonded stop payment notice**

8 8560. If the claimant is the prevailing party in an action to enforce payment of
9 the claim stated in a bonded stop payment notice, any amount awarded on the
10 claim shall include interest at the legal rate calculated from the date the stop
11 payment notice is given.

12 **Comment.** Section 8560 restates former Section 3176.5 without substantive change.
13 See also Sections 8002 (“claimant”), 8044 (“stop payment notice”).

14 **CHAPTER 6. PAYMENT BOND**

15 **§ 8600. Public policy of payment bond**

16 8600. An owner may require a performance bond, payment bond, or other
17 security as protection against a direct contractor’s failure to perform the direct
18 contract or to make full payment for all work provided pursuant to the contract.

19 **Comment.** Section 8600 restates the second sentence of former Section 3236 without
20 substantive change.

21 See also Sections 8013 (“direct contract”), 8014 (“direct contractor”), 8028 (“owner”), 8030
22 (“payment bond”), 8048 (“work”).

23 **§ 8602. Limitation of owner’s liability**

24 8602. (a) This section applies if, before the commencement of work, the owner
25 in good faith files a direct contract with the county recorder, and records a
26 payment bond of the direct contractor in an amount not less than 50 percent of the
27 price stated in the direct contract.

28 (b) If the conditions of subdivision (a) are satisfied, the court shall, where
29 equitable to do so, restrict lien enforcement under this part to the aggregate
30 amount due from the owner to the direct contractor and shall enter judgment
31 against the direct contractor and surety on the bond for any deficiency that remains
32 between the amount due to the direct contractor and the whole amount due to
33 claimants.

34 **Comment.** Subdivision (a) of Section 8602 restates the first part of former Section 3235 and
35 the first sentence of former Section 3236 without substantive change. It makes clear that the
36 bond, as well as the contract, must be recorded before the commencement of work. See also
37 Section 8058 (filing and recording of papers).

38 Subdivision (b) restates the last part of former Section 3235.

39 See also Sections 8002 (“claimant”), 8004 (“commencement”), 8010 (“contract price”), 8013
40 (“direct contract”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”), 8030 (“payment
41 bond”), 8048 (“work”).

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”), 8032 (“person”), 8050 (“work of
13 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 direct contract.

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 See also Section 8010 (“contract price”).

27 **§ 8702. Single-family residence and low income housing excluded**

28 8702. This chapter does not apply to any of the following works of
29 improvement:

30 (a) A single-family residence, including a single-family residence located within
31 a subdivision, and any associated fixed work that requires the services of a general
32 engineering contractor as defined in Section 7056 of the Business and Professions
33 Code. As used in this subdivision, “single-family residence” means a real property
34 improvement used or intended to be used as a dwelling unit for one family.

35 (b) A housing development eligible for a density bonus under Section 65915 of
36 the Government Code.

37 **Comment.** Section 8702 restates former Section 3110.5(e) without substantive change,
38 omitting reference to a public work. This part does not apply to a public work. See Section 8052
39 (application of part).

40 **§ 8704. Qualified publicly traded company and qualified private company excluded**

41 8704. This chapter does not apply to any of the following owners:

42 (a) A qualified publicly traded company or a wholly owned subsidiary of a
43 qualified publicly traded company, if the obligations of the subsidiary pursuant to
44 the contract for the work of improvement are guaranteed by the parent. As used in

1 this subdivision, “qualified publicly traded company” means a company having a
2 class of equity securities listed for trading on the New York Stock Exchange, the
3 American Stock Exchange, or the NASDAQ stock market, and the
4 nonsubordinated debt securities of which are rated as “investment grade” by either
5 Fitch ICBA, Inc., Moody’s Investor Services, Inc., Standard & Poor’s Ratings
6 Services, or a similar statistical rating organization that is nationally recognized
7 for rating the creditworthiness of a publicly traded company. If at any time before
8 final payment of all amounts due pursuant to the contract the nonsubordinated debt
9 securities of the qualified publicly traded company are downgraded to below
10 “investment grade” by any of those rating organizations, the owner is no longer
11 exempt from this chapter.

12 (b) A qualified private company or a wholly owned subsidiary of a qualified
13 private company, if the obligations of the subsidiary pursuant to the contract for
14 the work of improvement are guaranteed by the parent. As used in this
15 subdivision, “qualified private company” means a company that has no equity
16 securities listed for trading on the New York Stock Exchange, the American Stock
17 Exchange, or the NASDAQ stock market, and that has a net worth determined in
18 accordance with generally accepted accounting principles in excess of fifty million
19 dollars (\$50,000,000). If at any time before final payment of all amounts due
20 pursuant to the contract the net worth of the qualified private company is reduced
21 below that level, the owner is no longer exempt from this chapter.

22 **Comment.** Section 8704 restates former Section 3110.5(f) without substantive change.
23 See also Sections 8008 (“contract”), 8028 (“owner”), 8050 (“work of improvement”).

24 Article 2. Security Requirement

25 § 8710. Security for owner’s payment obligation

26 8710. An owner shall provide the direct contractor all of the following:

27 (a) Security for the owner’s payment obligation pursuant to the contract. The
28 security shall be used only if the owner defaults on the payment obligation to the
29 direct contractor. This subdivision does not apply to an owner that is the majority
30 owner of the direct contractor.

31 (b) A copy, certified by the county recorder, of any recorded mortgage or deed
32 of trust that secures the construction loan of a lending institution for the work of
33 improvement, disclosing the amount of the loan.

34 **Comment.** Section 8710 restates the first parts of subdivisions (a) and (b) of former Section
35 3110.5 without substantive change. As used in this section, “owner” includes the owner of the fee
36 simple absolute interest or any lesser interest in the property. See Section 8028 (“owner”). The
37 reference to a “work of improvement” includes construction, alteration, addition to, or repair
38 upon, the property. See Section 8050 (“work of improvement”).

39 See also Sections 8100-8118 (notice), 8134 (construction trust deed).

40 See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8022 (“lending institution”).

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 **§ 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 2 percent of the disputed amount due per month for every month that
15 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 as to
2 a retention payment due, the owner may withhold from final payment an amount
3 not in excess of 150 percent of 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 2 percent per month on the amount wrongfully withheld, in
3 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 reasonable attorney's fees.

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 to waive the provisions of this article by
11 contract.

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 the stop work notice or the direct
3 contractor’s cancellation of the stop work notice, the contractor shall post, and
4 give subcontractors with which the contractor has a direct contractual relationship
5 on the work of improvement, notice of the resolution or cancellation. The notice
6 shall comply with the requirements of Article 3 (commencing with Section 8100)
7 of 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 in the superior court in the county in which
21 the private work of improvement is located, seek a judicial determination of
22 liability for the amount due.

23 (b) The expedited proceeding shall be set for hearing or trial at the earliest
24 possible date in order that it shall be quickly heard and determined, and shall take
25 precedence over all other cases except older matter of the same character and other
26 matters to which special precedence has been given.

27 **Comment.** Subdivision (a) of Section 8844 restates former Section 3260.2(d), and additionally
28 allows an owner to seek a judicial determination of liability for the amount due in an expedited
29 proceeding.

30 Subdivision (b) is comparable to Code of Civil Procedure Sections 1062.3 and 1260.010.

31 See also Section 8014 (“direct contractor”).

32 **§ 8846. Waiver against public policy**

33 8846. It is against public policy to waive the provisions of this article by
34 contract.

35 **Comment.** Section 8846 restates former Section 3260.2(e) without substantive change.

36 **§ 8848. Application of article**

37 8848. (a) This article applies to a contract entered into on or after January 1,
38 1999.

39 (b) This article does not apply to a retention withheld by a lender pursuant to a
40 construction loan agreement.

1 The definition generalizes provisions of former Civil Code Section 3187 relating to payment of
2 the assignee of a direct contractor. See also Section 44340 (effect of assignment or garnishment).
3 See also Section 41110 (“public entity”).

4 **§ 41050. Funds**

5 41050. “Funds” means warrant, check, money, or bonds (if bonds are to be
6 issued in payment of the public works contract).

7 **Comment.** Section 41050 is a new definition. It is included for drafting convenience. It
8 generalizes provisions of former Civil Code Sections 3186, 3187, and 3196.

9 See also Section 41120 (“public works contract”).

10 **§ 41060. Labor, service, equipment, or material**

11 41060. “Labor, service, equipment, or material” includes but is not limited to
12 labor, skills, services, material, supplies, equipment, appliances, power, and
13 surveying, provided pursuant to a public works contract.

14 **Comment.** Section 41060 is a new definition. It is included for drafting convenience. The
15 phrase is intended to encompass all things of value provided pursuant to a public works contract,
16 and replaces various phrases used throughout the former law, including “labor or material,”
17 “labor, services, equipment, or materials,” “appliances, teams, or power,” “provisions, provender,
18 or other supplies,” and the like. The definition applies to variant grammatical forms of the phrase
19 used in this part, such as “labor, service, equipment, *and* material.”

20 See also Section 41120 (“public works contract”).

21 **§ 41070. Laborer**

22 41070. (a) “Laborer” means a person that, acting as an employee, performs
23 labor, or bestows skill or other necessary services, pursuant to a public works
24 contract.

25 (b) “Laborer” includes a person or entity to which a portion of a laborer’s
26 compensation for a public works contract, including, but not limited to, employer
27 payments described in Section 1773.1 of the Labor Code and implementing
28 regulations, is paid by agreement with that laborer or the collective bargaining
29 agent of that laborer.

30 (c) A person or entity described in subdivision (b) that has standing under
31 applicable law to maintain a direct legal action, in its own name or as an assignee,
32 to collect any portion of compensation owed for a laborer for work pursuant to a
33 public works contract, shall have standing to enforce any rights or claims of the
34 laborer under this part, to the extent of the compensation agreed to be paid to the
35 person or entity for that work. This subdivision is intended to give effect to the
36 long-standing public policy of this state to protect the entire compensation of a
37 laborer, regardless of the form in which that compensation is to be paid.

38 **Comment.** Subdivision (a) of Section 41070 continues former Civil Code Section 3089(a)
39 without substantive change.

40 Subdivision (b) continues the first sentence of former Civil Code Section 3089(b) and a part of
41 former Civil Code Section 3111, without substantive change.

42 Subdivision (c) continues the second and third sentences of former Civil Code Section 3089(b),
43 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 41150 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

§ 42005. Application of former law

42005. (a) This part is operative on January 1, 2010.

(b) Except as otherwise provided in this section, this part applies to a public works contract executed before, on, or after the operative date.

(c) The effectiveness of a notice given or other action taken on a public works contract before the operative date is governed by the applicable law in effect before the operative date and not by this part.

(d) A provision of this part, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment.

Comment. Section 42005 is new. Although this part applies generally to all public works contracts, it does not govern notices given or actions taken on a public works contract prior to January 1, 2010, which are governed by former law.

See also Section 8008 (“public works contract”).

§ 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.

1 **Comment.** Subdivision (a) of Section 42020 is new. It clarifies the interrelation between this
2 part and the Subdivision Map Act. For relevant provisions of that act, see Gov't Code §§ 66499-
3 66499.10 (improvement security).

4 Subdivision (b) is new. It is a specific application of Code of Civil Procedure Section 995.020
5 (application of Bond and Undertaking Law).

6 **§ 42030. Who may use remedies**

7 42030. (a) Except as provided in subdivision (b), any of the following persons
8 that has not been paid in full may give a stop payment notice to the public entity or
9 assert a claim against a payment bond:

10 (1) A person that provides work for a public works contract, if the work is
11 authorized by a direct contractor, subcontractor, architect, project manager, or
12 other person having charge of all or part of the public works contract.

13 (2) A laborer.

14 (3) A person described in Section 4107.7.

15 (b) A direct contractor may not give a stop payment notice or assert a claim
16 against a payment bond under this part.

17 **Comment.** Section 42030 restates former Civil Code Section 3181, and parts of former
18 Sections 3110, 3111, and 3112. The former references to site improvement work and to
19 provisions, provender, or other supplies are included within the meaning of subdivision (a). See
20 Sections 41060 (“labor, service, equipment, or material”), 41160 (“work”).

21 The reference to an “express trust fund” is replaced by a reference to a generalized category of
22 persons or entities included within the definition of “laborer.” See Section 41070 (“laborer”).

23 See also Sections 41040 (“direct contractor”), 41060 (“labor, service, equipment, or material”),
24 41070 (“laborer”), 41080 (“payment bond”), 41090 (“person”), 41110 (“public entity”), 41120
25 (“public works contract”), 41140 (“stop payment notice”), 41160 (“work”).

26 **§ 42040. Rules of practice**

27 42040. Except as otherwise provided in this part, Part 2 (commencing with
28 Section 307) of the Code of Civil Procedure provides the rules of practice in
29 proceedings under this part.

30 **Comment.** Section 42040 continues the first sentence of former Civil Code Section 3259
31 without substantive change. The second sentence of former Civil Code Section 3259 is not
32 continued; this part does not include special provisions relating to new trials or appeals.

33 **§ 42050. Calculation of time**

34 42050. For purposes of this part, the term “day” means a calendar day.

35 **Comment.** Section 42050 is new. A reference to the term “day” in a statute typically means a
36 calendar day, unless otherwise specifically indicated. *Iverson v. Superior Court*, 167 Cal. App. 3d
37 544, 548, 213 Cal. Rptr. 399 (1985).

38 See also Civil Code Sections 10 (computing time), 11 (holidays).

39 **§ 42060. Agency**

40 42060. An act that may be done by or to a person under this part may be done by
41 or to the person’s agent to the extent the act is within the scope of the agent’s
42 authority.

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

3 (5) If the person giving the notice is a claimant:

4 (A) A general statement of the labor, service, equipment or material provided or
5 to be provided by the claimant.

6 (B) The name of the person that contracted for the labor, service, equipment or
7 material provided or to be provided.

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

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

14 **Comment.** Section 42120 is new. It generalizes and standardizes provisions found throughout
15 former law. See, e.g., former Civ. Code §§ 3092 (notice of cessation), 3093 (notice of
16 completion), 3098 (preliminary notice), 3103 (stop notice), 3252 (notice to principal and surety).

17 **§ 42130. Notice of overdue laborer compensation**

18 42130. (a) A direct contractor or subcontractor that employs a laborer and fails
19 to pay the full compensation due the laborer, including any employer payments
20 described in Section 1773.1 of the Labor Code and implementing regulations,
21 shall not later than the date the compensation became delinquent, give the laborer,
22 the laborer's bargaining representative, if any, and the public entity, notice that
23 includes all of the following information, in addition to the information specified
24 in Section 42120:

25 (1) The name and address of the laborer, and of any person or entity described in
26 subdivision (b) of Section 41070 to which employer payments are due.

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

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

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

34 **Comment.** Section 42130 continues former Civil Code Section 3097(k), with the additional
35 requirement that the information provided be given to the public entity, and include the name and
36 address of the unpaid laborer.

37 Former Civil Code Section 3098(b), providing for disciplinary action if a subcontractor fails to
38 give preliminary notice on a work of improvement exceeding \$400, is not continued.

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

41 Compliance with this section does not excuse compliance with Section 43010, if applicable.

42 Nothing in this section affects any requirement to provide similar information for other
43 purposes. See, e.g., Lab. Code § 1776 (payroll records).

1 See also Sections 41040 (“direct contractor”), 41070 (“laborer”), 41110 (“public entity”),
2 41150 (“subcontractor”), 42010 (application of part).

3 **§ 42140. Manner of giving notice**

4 42140. Except as otherwise provided by statute, notice under this part shall be
5 given by any of the following means:

6 (a) Personal delivery.

7 (b) Mail in the manner provided in Section 42160.

8 (c) Leaving the notice and mailing a copy in the manner provided in Section
9 415.20 of the Code of Civil Procedure for service of summons and complaint in a
10 civil action.

11 **Comment.** Section 42140 is new. It generalizes and standardizes provisions found throughout
12 former law. See, e.g., former Civ. Code §§ 3098 (preliminary notice), 3103 (stop notice), 3185
13 (notice of expiration of time to give stop notice), 3199 (notice of release of funds), 3227 (notice
14 to principal and surety).

15 Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure
16 Section 415.20 for service of summons and complaint, the notice is complete five days after
17 mailing the notice. See Section 42180 (when notice complete). The 10 day delay provided in the
18 Code of Civil Procedure for completion of service under that code is inapplicable.

19 **§ 42150. Address at which notice is given**

20 42150. Except as otherwise provided by this part, notice under this part shall be
21 given to the person to be notified at the following addresses:

22 (a) If the person to be notified is the public entity, at the office of the public
23 entity or at another address specified by the public entity in the contract or
24 elsewhere for service of notices, papers, and other documents.

25 (b) If the person to be notified is a direct contractor or a subcontractor, at the
26 contractor’s residence or place of business, or at the contractor’s address shown on
27 the building permit, on the contractor’s contract, or on the records of the
28 Contractors’ State License Board.

29 (c) If the person to be notified is a claimant, at the claimant’s residence or place
30 of business, or at the claimant’s address shown on the claimant’s contract,
31 preliminary notice, stop payment notice, or claim against a payment bond, or on
32 the records of the Contractors’ State License Board.

33 (d) If the person to be notified is the surety on a bond, at the surety’s residence
34 or place of business, or at the surety’s address shown on the bond for service of
35 notices, papers, and other documents, or on the records of the Department of
36 Insurance.

37 **Comment.** Section 42150 is new. It generalizes and standardizes provisions found throughout
38 former law.

39 For examples of two more particularized notice provisions, see Sections 43040 (giving
40 preliminary notice), 44130 (giving of stop payment notice).

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

1 **§ 42160. Mailed notice**

2 42160. Notice given by mail under this part shall be given by registered or
3 certified mail, express mail, or overnight delivery by an express service carrier.

4 **Comment.** Section 42160 is a new provision included for drafting convenience. It generalizes
5 a number of provisions of former law, and expands the methods of giving notice to include
6 delivery by express service carrier.

7 **§ 42170. Notice by electronic communication**

8 42170. (a) As used in this section, “electronic record” has the meaning provided
9 in Section 1633.2 of the Civil Code.

10 (b) A notice under this part may be given to a person in the form of an electronic
11 record if the person has agreed in writing to receive the notice in the form of an
12 electronic record.

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

18 **Comment.** Section 42170 is new. It makes the California Uniform Electronic Transactions Act
19 (UETA) (Civil Code Sections 1633.1-1633.17) expressly applicable to notices under this part.

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

24 **§ 42180. When notice complete**

25 42180. Notice under this part is complete and deemed to have been given at the
26 following times:

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

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

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

33 (d) If given in the form of an electronic record, when the electronic record is
34 transmitted.

35 **Comment.** Section 42180 is new. It generalizes and standardizes provisions found in former
36 law.

37 Under subdivision (b), when notice is given in the manner provided in Code of Civil Procedure
38 Section 1013, the notice is complete when deposited in the mail or with an express service carrier.
39 The delays provided in the Code of Civil Procedure for completion of service under that code are
40 inapplicable.

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

1 **§ 42220. Notice of cessation**

2 42220. (a) A public entity may record a notice of cessation if there has been a
3 continuous cessation of labor for at least 30 days prior to the recordation that
4 continues through the date of the recordation.

5 (b) The notice shall be signed and verified by the public entity or its agent.

6 (c) The notice shall comply with the requirements of Article 2 (commencing
7 with Section 42110), and shall also include all of the following information:

8 (1) The date on or about which the labor ceased.

9 (2) A statement that the cessation has continued until the recordation of the
10 notice.

11 **Comment.** Section 42220 continues former Civil Code Section 3092 (notice of cessation), to
12 the extent it applied to a public works contract. For the effect of recordation of a notice of
13 cessation, see Sections 44140 (time for giving stop payment notice) and 45050 (time for
14 enforcing payment bond).

15 A notice of cessation is recorded in the office of the county recorder of the county in which the
16 public works contract or part of it is performed. Section 42250 (recordation of notice). A notice of
17 cessation is recorded when it is filed for record. Section 42250 (recordation of notice).

18 See also Section 41110 (“public entity”).

19 **§ 42230. Notice of completion**

20 42230. (a) A public entity may record a notice of completion on or within 15
21 days after completion of a work of improvement.

22 (b) The notice shall be signed and verified by the public entity or its agent.

23 (c) The notice shall comply with the requirements of Article 2 (commencing
24 with Section 42110), and shall also include (commencing with Section 42110),
25 and shall also include all the following information:

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

29 (2) If the notice is given only of completion of a contract with the public entity
30 for a portion of the work of improvement as provided in Section 42240, the name
31 of the direct contractor under that contract and a general statement of the work
32 provided pursuant to the contract.

33 **Comment.** Section 42230 continues former Civil Code Section 3093 (notice of completion), to
34 the extent it applied to a public works contract, and extends the 10-day period for recording a
35 notice of completion under former law to 15 days. For the effect of recordation of a notice of
36 completion, see Sections 44140 (time for giving stop payment notice) and 45070 (notice to
37 principal and surety on payment bond).

38 For the date of completion of a work of improvement, see Section 42210.

39 Subdivision (c)(2) is new. It is adopted from former Civil Code Section 3117. See Section
40 42240.

41 A notice of completion is recorded in the office of the county recorder of the county in which
42 the public works contract or part of it is performed. Section 42250 (recordation of notice). A
43 notice of completion is recorded when it is filed for record. Section 42250 (recordation of notice).

44 See also Sections 41040 (“direct contractor”), 41110 (“public entity”), 41120 (“public works
45 contract”), 41130 (“site”).

1 **§ 42320. Waiver and release**

2 42320. A claimant’s waiver and release does not release the public entity or
3 surety on a payment bond from a claim unless both of the following conditions are
4 satisfied:

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

7 (b) If the release is a conditional release, there is evidence of payment to the
8 claimant. Evidence of payment may be either of the following:

9 (1) The claimant’s endorsement on a single or joint payee check that has been
10 paid by the financial institution on which it was drawn.

11 (2) Written acknowledgment of payment by the claimant.

12 **Comment.** Section 42320 continues the third and fourth sentences of former Civil Code
13 Section 3262(a) without substantive change, to the extent they related to a public works contract.
14 The waiver and release may be signed by the claimant’s agent. See Section 42060 (agency).

15 See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41110 (“public entity”).

16 **§ 42330. Statement of claimant**

17 42330. An oral or written statement purporting to waive, release, impair or
18 otherwise adversely affect a claim is void and unenforceable and does not create
19 an estoppel or impairment of the claim unless either of the following conditions is
20 satisfied:

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

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

23 **Comment.** Section 42330 continues former Civil Code Section 3262(b) without substantive
24 change, to the extent it related to a public works contract.

25 See also Section 41020 (“claimant”).

26 **§ 42340. Reduction or release of stop payment notice**

27 42340. (a) A claimant may reduce the amount of, or release in its entirety, a stop
28 payment notice. The reduction or release shall comply with Article 2
29 (commencing with Section 42100). The reduction or release may be given in a
30 form other than a waiver and release form provided in this article.

31 (b) The writing shall identify whether it is a reduction of the amount of the stop
32 payment notice, or a release of the notice in its entirety. If the writing is a
33 reduction, it shall state the amount of the reduction, and the amount to remain
34 withheld after the reduction.

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

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

39 (2) The reduction or release releases the public entity from the obligation to
40 withhold funds pursuant to the notice to the extent of the reduction or release.

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

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

4 **Comment.** Subdivisions (a) and (c) of Section 42340 restate the second, third, and fourth
5 sentences of subdivision (b) of former Civil Code Section 3262, to the extent they related to a
6 public works contract.

7 Subdivision (b) of Section 42340 is new.

8 See also Sections 41020 (“claimant”), 41090 (“person”), 41110 (“public entity”), 41140 (“stop
9 payment notice”).

10 **§ 42350. Accord and satisfaction or settlement agreement not affected**

11 42350. This article does not affect the enforceability of either an accord and
12 satisfaction concerning a good faith dispute or an agreement made in settlement of
13 an action pending in court if the accord and satisfaction or agreement and
14 settlement make specific reference to the claim.

15 **Comment.** Section 42350 continues former Civil Code Section 3262(c) without substantive
16 change, to the extent it related to a public works contract.

17 **§ 42360. Conditional waiver and release on progress payment**

18 42360. If a claimant is required to execute a waiver and release in exchange for,
19 or in order to induce the payment of, a progress payment and the claimant is not,
20 in fact, paid in exchange for the waiver and release or a single payee check or joint
21 payee check is given in exchange for the waiver and release, the waiver and
22 release shall be in substantially the following form:

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

24 **NOTICE.** This document waives certain rights of the claimant effective on receipt
25 of payment. A person should not rely on this document unless satisfied that the
26 claimant has received payment.

27 **Identifying Information**

28 Name of Claimant: _____

29 Name of Customer: _____

30 Job Location: _____

31 Public Entity: _____

32 Through Date: _____

33 **Conditional Waiver and Release**

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

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

1 Maker of Check: _____
2 Amount of Check: \$ _____
3 Check Payable to: _____

4 **Exceptions**

5 This document does not affect any of the following:

- 6 (1) Retentions.
- 7 (2) Extras for which the claimant has not received payment.
- 8 (3) The following progress payments for which the claimant has previously given
9 a conditional waiver and release but has not received payment:

10 Date(s) of waiver and release: _____

11 Amounts of unpaid progress payments: _____

- 12 (4) Contract rights, including (i) a right based on rescission, abandonment, or
13 breach of contract, and (ii) the right to recover compensation for work not
14 compensated by the payment.

15 **Signature**

16 Claimant's Signature: _____

17 Claimant's Title: _____

18 Date of Signature: _____

19
20 **Comment.** Section 42360 restates former Civil Code Section 3262(d)(1), to the extent it
21 related to a public works contract, with the addition of language relating to progress payments
22 covered by previous releases that have not been paid. The statutory form is recast for clarity.

23 See also Section 41020 ("claimant").

24 **§ 42370. Unconditional waiver and release on progress payment**

25 42370. If the claimant is required to execute a waiver and release in exchange
26 for, or in order to induce payment of, a progress payment and the claimant asserts
27 in the waiver it has, in fact, been paid the progress payment, the waiver and release
28 shall be in substantially the following form:

29 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

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

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

34 **Identifying Information**

35 Name of Claimant: _____

36 Name of Customer: _____

37 Job Location: _____

38 Public Entity: _____

1 Through Date: _____

2 **Unconditional Waiver and Release**

3 This document waives and releases stop payment notice and payment
4 bond rights the claimant has for labor and service provided, and equipment and
5 material delivered, to the customer on this job through the Through Date of this
6 document.

7 The claimant has received the following progress payment:

8 \$ _____

9 **Exceptions**

10 This document does not affect any of the following:

11 (1) Retentions.

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

13 (3) Contract rights, including (i) a right based on rescission, abandonment, or
14 breach of contract, and (ii) the right to recover compensation for work not
15 compensated by the payment.

16 **Signature**

17 Claimant's Signature: _____

18 Claimant's Title: _____

19 Date of Signature: _____

20 **Comment.** Section 42370 continues former Civil Code Section 3262(d)(2) without substantive
21 change, to the extent it related to a public works contract. The statutory form is recast for clarity.

22 See also Section 41020 ("claimant").

23 **§ 42380. Conditional waiver and release on final payment**

24 42380. If the claimant is required to execute a waiver and release in exchange
25 for, or in order to induce the payment of, a final payment and the claimant is not,
26 in fact, paid in exchange for the waiver and release or a single payee check or joint
27 payee check is given in exchange for the waiver and release, the waiver and
28 release shall be in substantially the following form:

29 **CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

30 **NOTICE.** This document waives certain rights of the claimant effective on receipt
31 of payment. A person should not rely on this document unless satisfied that the
32 claimant has received payment.

33 **Identifying Information**

34 Name of Claimant: _____

35 Name of Customer: _____

36 Job Location: _____

37 Public Entity: _____

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Conditional Waiver and Release

This document waives and releases stop payment notice and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____
Amount of Check: \$ _____
Check Payable to: _____

Exceptions

This document does not affect any of the following:

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

Date(s) of waiver and release: _____
Amount(s) of unpaid progress payment(s): _____

Signature

Claimant’s Signature: _____
Claimant’s Title: _____
Date of Signature: _____

Comment. Section 42380 continues former Civil Code Section 3262(d)(3), to the extent it related to a public works contract, with the addition of language relating to progress payments covered by previous releases that have not been paid, and the addition of a line for identification of the waivant’s customer. The statutory form is recast for clarity.

See also Section 41020 (“claimant”).

§ 42390. Unconditional waiver and release on final payment

42390. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver that the claimant has, in fact, been paid the final payment, the waiver and release shall be in substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

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

Identifying Information

Name of Claimant: _____

1 Name of Customer: _____
2 Job Location: _____
3 Public Entity: _____

4 **Unconditional Waiver and Release**

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

8 **Exceptions**

9 This document does not affect any of the following:

10 (1) Disputed claims for extras in the amount of \$ _____

11 **Signature**

12 Claimant's Signature: _____

13 Claimant's Title: _____

14 Date of Signature: _____

15

16 **Comment.** Section 42390 continues former Civil Code Section 3262(d)(4) without substantive
17 change, to the extent it related to a public works contract. The statutory form is recast for clarity.

18 See also Section 41020 ("claimant").

19

CHAPTER 3. PRELIMINARY NOTICE

20 **§ 43010. Preliminary notice prerequisite to remedies**

21 43010. (a) Except as otherwise provided by statute, before giving a stop
22 payment notice or asserting a claim against a payment bond, a claimant shall give
23 preliminary notice to the following persons:

24 (1) The public entity.

25 (2) The direct contractor to which the claimant provides work.

26 (b) Notwithstanding subdivision (a):

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

28 (2) A claimant that has a direct contractual relationship with a direct contractor
29 is not required to give preliminary notice.

30 (c) Compliance with this section is a necessary prerequisite to the validity of a
31 stop payment notice under this part.

32 (d) Compliance with this section or with Section 45070 is a necessary
33 prerequisite to the validity of a claim against a payment bond under this part.

34 **Comment.** Section 43010 restates part of the introductory clause and subdivisions (a) and (c)
35 of former Civil Code Section 3098. Repetitive detail is omitted, in reliance on defined terms and
36 other substantive provisions. For a statutory exception to the preliminary notice requirement, see
37 Section 45070 (notice of claim against payment bond).

38 The transitional provision of former Civil Code Section 3098(e) is not continued due to lapse
39 of time.

1 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41090
2 (“payment bond” defined), 41110 (“preliminary notice” defined), 41120 (“public entity” defined),
3 41150 (“stop payment notice” defined)), 41160 (“subcontractor” defined).

4 **§ 43040. Giving preliminary notice**

5 43040. (a) Except as provided in subdivision (b), preliminary notice shall be
6 given in compliance with the requirements of Article 2 (commencing with Section
7 42110) of Chapter 2.

8 (b) If the public works contract is for work constructed by the Department of
9 Transportation or the Department of General Services of the state, preliminary
10 notice to the public entity shall be given to the disbursing officer of the department
11 constructing the work.

12 **Comment.** Section 43040 restates the second and fourth sentences of former Civil Code
13 Section 3098(a).

14 The reference in former Civil Code Section 3098(a) to the Department of Public Works is
15 obsolete, and is revised pursuant to Government Code Section 14001.

16 See also Sections 41100 (“preliminary notice”), 41110 (“public entity”), 41120 (“public works
17 contract”).

18 **§ 43050. Effect of preliminary notice**

19 43050. A claimant may give a stop payment notice or assert a claim against a
20 payment bond only for work provided within 20 days before giving preliminary
21 notice and at any time thereafter.

22 **Comment.** Section 43050 restates parts of subdivisions (a) and (d) of former Civil Code
23 Section 3098.

24 See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41100 (“preliminary notice”),
25 41140 (“stop payment notice”), 41160 (“work”).

26 **CHAPTER 4. STOP PAYMENT NOTICE**

27 **Article 1. General Provisions**

28 **§ 44110. Stop payment notice exclusive remedy to reach construction funds**

29 44110. The rights of all persons furnishing work pursuant to a public works
30 contract, with respect to any fund for payment of construction costs, are governed
31 exclusively by this chapter, and no person may assert any legal or equitable right
32 with respect to such fund, other than a right created by direct written contract
33 between such person and the person holding the fund, except pursuant to the
34 provisions of this chapter.

35 **Comment.** Section 44110 restates former Civil Code Section 3264 to the extent it applied to a
36 public works contract. See Section 42010 (application of part). For a comparable provision
37 applicable to a private work, see Civ. Code § 8500.

38 There may be specific statutory provisions that authorize payment by a public entity from a
39 fund designated for a public work, notwithstanding the provisions of Section 44110. See, e.g.,
40 Code Civ. Proc. § 708.760 (satisfaction of judgment against direct contractor on public work),
41 Labor Code § 1727 (public entity to withhold amounts needed to satisfy prevailing wage

1 violations from funds due direct contractor on public work). This section is not intended to
2 change existing law with respect to such provisions.

3 See also Sections 41050 (“funds”), 41090 (“person”), 41160 (“work”).

4 **§ 44120. Contents of stop payment notice**

5 44120. (a) A stop payment notice shall comply with the requirements of Section
6 42120, and shall be signed and verified by the claimant.

7 (b) The notice shall include a general description of work to be provided, and an
8 estimate of the total amount in value of the work to be provided.

9 (c) The claimant’s amount claimed in the notice may include only the amount
10 due the claimant for work provided through the date of the notice.

11 (d) The claimant may include in a stop payment notice an amount due for work
12 performed as a result of rescission, abandonment, or breach of the contract. If
13 there is a rescission, abandonment, or breach of the contract, the amount of the
14 stop payment notice may not exceed the reasonable value of the work provided by
15 the claimant.

16 **Comment.** Subdivisions (a) through (c) of Section 44120 supersede subdivisions (a) through
17 (d) of former Section 3103. See also Sections 42110-42190 (notice). A stop payment notice may
18 be executed by the claimant’s agent. See Section 42090 (agency).

19 Subdivision (c) provides a special rule that supplements the requirement of Section
20 42120(a)(5)(iii) (demand of claimant).

21 Subdivision (d) is similar to former Civil Code Section 3123(b).

22 See also Sections 41020 (“claimant”), 41160 (“work”).

23 **§ 44130. Giving of stop payment notice**

24 44130. (a) Except as provided in subdivision (b), a stop payment notice shall be
25 given in compliance with the requirements of Article 2 (commencing with Section
26 42110) of Chapter 2.

27 (b) A stop payment notice shall be given to the public entity by giving the notice
28 to the following person:

29 (1) In the case of a public works contract of the state, the director of the
30 department that awarded the contract.

31 (2) In the case of a public works contract of a public entity other than the state,
32 the office of the controller, auditor, or other public disbursing officer whose duty it
33 is to make payment pursuant to the contract, or the commissioners, managers,
34 trustees, officers, board of supervisors, board of trustees, common council, or
35 other body by which the contract was awarded.

36 **Comment.** Section 44130 restates the first unnumbered paragraph of former Civil Code
37 Section 3103.

38 A claimant wishing to receive return notice of the time within which payment of the claim
39 stated in a stop payment notice must be enforced must pay the public entity ten dollars (\$10) at
40 the time of giving the stop payment notice. See Section 44170.

41 See also Sections 41110 (“public entity”), 41120 (“public works contract”), 41140 (“stop
42 payment notice”).

1 **§ 44140. Time for giving notice**

2 44140. A stop payment notice is not effective unless given before the earlier of
3 the following times:

4 (a) Ninety days after cessation or completion.

5 (b) Thirty days after recordation of a notice of cessation or completion.

6 **Comment.** Section 44140 continues former Civil Code Section 3184 without substantive
7 change. See Sections 42210 (completion), 42220 (notice of cessation), and 42230 (notice of
8 completion).

9 See also Section 41140 (“stop payment notice”).

10 **§ 44150. Duty to withhold funds**

11 44150. (a) The public entity shall, on receipt of a stop payment notice, withhold
12 from the direct contractor sufficient funds due or to become due to the direct
13 contractor to pay the claim stated in the stop payment notice and to provide for the
14 public entity’s reasonable cost of any litigation pursuant to the stop payment
15 notice.

16 (b) The public entity may satisfy its duty under this section by refusing to
17 release funds held in escrow under Section 10263 or 22300.

18 **Comment.** Section 44150 restates former Civil Code Section 3186. See also Section 42060
19 (agency).

20 See also Sections 41040 (“direct contractor”), 41050 (“funds”), 41110 (“public entity”), 41140
21 (“stop payment notice”).

22 **§ 44160. Payment notwithstanding stop payment notice**

23 44160. (a) This chapter does not prohibit payment of funds to a direct contractor
24 if a stop payment notice is not received before the disbursing officer actually
25 surrenders possession of the funds.

26 (b) This chapter does not prohibit payment of any amount due to a direct
27 contractor in excess of the amount necessary to pay the total amount of all claims
28 stated in stop payment notices received by the public entity at the time of payment
29 plus any interest and court costs that might reasonably be anticipated in connection
30 with the claims.

31 **Comment.** Section 44160 restates former Civil Code Section 3187. Authority in this section
32 for payment of a direct contractor includes payment of the direct contractor’s assignee. See
33 Section 41040 (“direct contractor”).

34 See also Sections 41050 (“funds”), 41140 (“stop payment notice”).

35 **§ 44170. Notice to claimant**

36 44170. (a) Not later than 10 days after each of the following events, the public
37 entity shall give notice to a claimant that has given a stop payment notice of the
38 time within which an action to enforce payment of the claim stated in the stop
39 payment notice must be commenced:

40 (1) Completion of a public works contract, whether by acceptance or cessation.

41 (2) Recordation of a notice of cessation or completion.

1 (b) The notice shall comply with the requirements of Article 2 (commencing
2 with Section 42110) of Chapter 2.

3 (c) A public entity need not give notice under this section unless the claimant
4 has paid the public entity ten dollars (\$10) at the time of giving the stop payment
5 notice.

6 **Comment.** Section 44170 restates former Civil Code Section 3185. See also Sections 42210
7 (completion), 42220 (notice of cessation), 42230 (notice of completion), 44420 (time for
8 enforcement of payment of claim stated in stop payment notice). The \$2 fee is increased to \$10 in
9 recognition of the change in the value of the dollar since the fee's enactment.

10 See also Sections 41020 ("claimant"), 41110 ("public entity"), 41120 ("public works
11 contract"), 41140 ("stop payment notice").

12 § 44180. Release bond

13 44180. (a) A public entity may, in its discretion, permit the direct contractor to
14 give the public entity a release bond. The bond shall be executed by an admitted
15 surety insurer, in an amount equal to 125 percent of the claim stated in the stop
16 payment notice, conditioned for the payment of any amount the claimant recovers
17 in an action on the claim, together with court costs if the claimant prevails.

18 (b) On receipt of a release bond, the public entity shall not withhold funds from
19 the direct contractor pursuant to the stop payment notice.

20 (c) The surety on a release bond is jointly and severally liable to the claimant
21 with the sureties on any payment bond given under Chapter 5 (commencing with
22 Section 45010).

23 **Comment.** Section 44180 restates former Civil Code Section 3196.

24 See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41050 ("funds"), 41080
25 ("payment bond"), 41110 ("public entity"), 41140 ("stop payment notice").

26 Article 2. Summary Proceeding for Release of Funds

27 § 44210. Grounds for summary proceeding

28 44210. A direct contractor may obtain release of funds withheld pursuant to a
29 stop payment notice under the summary proceeding provided in this article on any
30 of the following grounds:

31 (a) The claim on which the notice is based is not a type for which a stop
32 payment notice is authorized under this chapter.

33 (b) The claimant is not a person authorized under Section 42030 to give a stop
34 payment notice.

35 (c) The amount of the claim stated in the stop payment notice is excessive.

36 (d) There is no basis for the claim stated in the stop payment notice.

37 **Comment.** Section 44210 restates former Civil Code Section 3197.

38 See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41050 ("funds"), 41090
39 ("person"), 41140 ("stop payment notice").

1 **§ 44220. Contractor’s affidavit and demand for release**

2 44220. The direct contractor shall serve on the public entity an affidavit,
3 together with a copy of the affidavit, in compliance with the requirements of
4 Article 2 (commencing with Section 42110), that includes all of the following
5 information:

6 (a) An allegation of the grounds for release of the funds and a statement of the
7 facts supporting the allegation.

8 (b) A demand for the release of all or the portion of the funds that are alleged to
9 be withheld improperly or in an excessive amount.

10 (c) A statement of the address of the contractor within the state for the purpose
11 of permitting service by mail on the contractor of any notice or document.

12 **Comment.** Section 44220 restates former Civil Code Section 3198. The grounds for release are
13 provided in Section 44210.

14 See also Sections 41040 (“direct contractor”), 41050 (“funds”), 41110 (“public entity”).

15 **§ 44230. Notice to claimant**

16 44230. The public entity shall serve on the claimant a copy of the direct
17 contractor’s affidavit, together with a notice stating that the public entity will
18 release the funds withheld, or the portion of the funds demanded, unless the
19 claimant serves on the public entity a counteraffidavit on or before the time stated
20 in the notice. The time stated in the notice shall be not less than 10 days nor more
21 than 20 days after service on the claimant of the copy of the affidavit. The notice
22 shall comply with the requirements of Article 2 (commencing with Section
23 42110).

24 **Comment.** Section 44230 restates former Civil Code Section 3199. See also Section 42060
25 (written notice).

26 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41110
27 (“public entity”).

28 **§ 44240. Claimant’s counteraffidavit**

29 44240. (a) A claimant that contests the direct contractor’s affidavit shall serve
30 on the public entity a counteraffidavit alleging the details of the claim and
31 describing the specific basis on which the claimant contests or rebuts the
32 allegations of the contractor’s affidavit. The counteraffidavit shall be served
33 within the time stated in the public entity’s notice, together with proof of service
34 of a copy of the counteraffidavit on the direct contractor. The service of the
35 counteraffidavit on the public entity and the copy of the affidavit on the direct
36 contractor shall comply with the requirements of Article 2 (commencing with
37 Section 42110).

38 (b) If no counteraffidavit with proof of service is served on the public entity
39 within the time stated in the public entity’s notice, the public entity shall
40 immediately release the funds, or the portion of the funds demanded by the
41 affidavit, without further notice to the claimant, and the public entity is not liable
42 in any manner for their release.

1 (c) The public entity is not responsible for the validity of an affidavit or
2 counteraffidavit under this article.

3 **Comment.** Section 44240 restates former Civil Code Section 3200.

4 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41110
5 (“public entity”).

6 **§ 44250. Commencement of action**

7 44250. (a) If a counteraffidavit, together with proof of service, is served under
8 Section 44240, either the direct contractor or the claimant may commence an
9 action for a declaration of the rights of the parties.

10 (b) After commencement of the action, either the direct contractor or the
11 claimant may move the court for a determination of rights under the affidavit and
12 counteraffidavit. The party making the motion shall give not less than five days’
13 notice of the hearing to the public entity and to the other party.

14 (c) The notice of hearing shall comply with the requirements of Article 2
15 (commencing with Section 42110). Notwithstanding Section 42180, when notice
16 of the hearing is made by mail, the notice is complete on the fifth day following
17 deposit of the notice in the mail.

18 (d) The court shall hear the motion within 15 days after the date of the motion,
19 unless the court continues the hearing for good cause.

20 **Comment.** Section 44250 restates former Civil Code Section 3201. See also Sections 42040
21 (rules of practice), 42060 (written notice).

22 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41110 (“public entity”).

23 **§ 44260. Pleadings and burden of proof**

24 44260. (a) The affidavit and counteraffidavit shall be filed with the court by the
25 public entity and shall constitute the pleadings, subject to the power of the court to
26 permit an amendment in the interest of justice. The affidavit of the direct
27 contractor shall be deemed controverted by the counteraffidavit of the claimant,
28 and both shall be received in evidence.

29 (b) At the hearing, the direct contractor has the burden of proof.

30 **Comment.** Section 44260 restates former Civil Code Section 3202.

31 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41110 (“public entity”).

32 **§ 44270. Court determination**

33 44270. (a) No findings are required in a summary proceeding under this article.

34 (b) If at the hearing no evidence other than the affidavit and counteraffidavit is
35 offered, the court may, if satisfied that sufficient facts are shown, make a
36 determination on the basis of the affidavit and counteraffidavit. If the court is not
37 satisfied that sufficient facts are shown, the court shall order the hearing continued
38 for production of other evidence, oral or documentary, or the filing of other
39 affidavits and counteraffidavits.

1 (c) At the conclusion of the hearing, the court shall make an order determining
2 whether the demand for release is allowed. The court's order is determinative of
3 the right of the claimant to have funds further withheld by the public entity.

4 (d) The direct contractor shall serve a copy of the court's order on the public
5 entity in compliance with the requirements of Article 2 (commencing with Section
6 42110).

7 **Comment.** Section 44270 restates former Civil Code Section 3203. Former Civil Code Section
8 3204 relating to jury trial is not continued; proceedings under this article are tried to the judge,
9 not to a jury.

10 See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41050 ("funds"), 41110
11 ("public entity").

12 § 44280. Summary determination not res judicata

13 44280. A determination in a summary proceeding under this article is not res
14 judicata with respect to a right of action by the claimant against either the principal
15 or surety on a payment bond or with respect to a right of action against a party
16 personally liable to the claimant.

17 **Comment.** Section 44280 restates former Civil Code Section 3205. The former reference to a
18 "labor or material bond" is replaced by a reference to a payment bond.

19 See also Sections 41020 ("claimant"), 41080 ("payment bond").

20 Article 3. Distribution of Funds Withheld

21 § 44310. Distribution of funds withheld pursuant to stop payment notice

22 44310. If funds withheld pursuant to a stop payment notice are insufficient to
23 pay in full the claims of all persons that have given a stop payment notice, the
24 funds shall be distributed among the claimants in the ratio that the claim of each
25 bears to the aggregate of all claims for which a stop payment notice is given,
26 without regard to the order in which the notices were given or enforcement actions
27 were commenced.

28 **Comment.** Section 44310 restates former Civil Code Section 3190. Only valid claims, as
29 determined in an enforcement action, are entitled to participate in the distribution. *Cf.* Idaho
30 Lumber Co. v. Northwestern S. & L. Ass'n, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422 (1968). The
31 amount of the claim for which payment is required is determined under Article 4 (commencing
32 with Section 40410) (enforcement of payment of claim stated in stop payment notice).

33 See also Sections 41020 ("claimant"), 41050 ("funds"), 41090 ("person"), 41140 ("stop
34 payment notice").

35 § 44320. Stop payment notice remedy not exclusive

36 44320. Nothing in this chapter impairs the right of a claimant to recover from
37 the direct contractor or the contractor's sureties in an action on a payment bond
38 under Chapter 5 (commencing with Section 45010) any deficit that remains unpaid
39 after the distribution under Section 44310.

40 **Comment.** Section 44320 restates former Civil Code Section 3191.

41 See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41080 ("payment bond").

1 **§ 44420. Time for enforcement of payment of claim stated in stop payment notice**

2 44420. (a) The claimant shall commence an action against the public entity and
3 the direct contractor to enforce payment of the claim stated in a stop payment
4 notice not earlier than 10 days after the date the claimant gives the stop payment
5 notice.

6 (b) The claimant shall commence an action against the public entity and the
7 direct contractor to enforce payment of the claim stated in a stop payment notice
8 not later than 90 days after expiration of the time within which a stop payment
9 notice must be given.

10 (c) An action under this section may not be brought to trial or judgment entered
11 before expiration of the time provided in subdivision (b).

12 (d) If a claimant does not commence an action to enforce payment of the claim
13 stated in a stop payment notice within the time provided in subdivision (b), the
14 notice ceases to be effective and the public entity shall release funds withheld
15 pursuant to the notice.

16 **Comment.** Section 44420 restates former Civil Code Section 3210. See also Section 44140
17 (time within which stop payment notice must be given).

18 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41110
19 (“public entity”), 41140 (“stop payment notice”).

20 **§ 44430. Notice of action**

21 44430. Within five days after commencement of an action to enforce payment of
22 the claim stated in a stop payment notice, the claimant shall give notice of
23 commencement of the action to the public entity in the same manner that a stop
24 payment notice is given.

25 **Comment.** Section 44430 restates former Civil Code Section 3211. See Section 44130 (giving
26 of stop payment notice).

27 See also Sections 41020 (“claimant”), 41110 (“public entity”), 41140 (“stop payment notice”).

28 **§ 44440. Joinder, consolidation, and interpleader**

29 44440. 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 that first acquires
32 jurisdiction may order the actions consolidated.

33 (c) On request of the public entity the court shall require that all claimants be
34 impleaded in one action and shall adjudicate the rights of all parties in the action.

35 **Comment.** Section 44440 restates former Civil Code Section 3214 without substantive change.
36 See also Section 42040 (rules of practice).

37 See also Sections 41020 (“claimant”), 41110 (“public entity”), 41140 (“stop payment notice”).

38 **§ 44450. Dismissal of enforcement action for lack of prosecution**

39 44450. Notwithstanding Section 583.420 of the Code of Civil Procedure, the
40 court may dismiss an action to enforce payment of the claim stated in a stop

1 payment notice that is not brought to trial within two years after commencement
2 of the action.

3 **Comment.** Section 44450 restates former Civil Code Section 3212. The cross-reference to the
4 Code of Civil Procedure is added to make clear that this section modifies the general three-year
5 period for discretionary dismissal. *Cf.* Section 42040 (rules of practice).

6 See also Section 41140 (“stop payment notice”).

7 **§ 44460. Dismissal of action or judgment against claimant**

8 44460. A stop payment notice ceases to be effective, and the public entity shall
9 release funds withheld, in either of the following circumstances:

10 (a) An action to enforce payment of the claim stated in the stop payment notice
11 is dismissed, unless expressly stated to be without prejudice.

12 (b) Judgment in an action to enforce payment of the claim stated in the stop
13 payment notice is against the claimant.

14 **Comment.** Section 44460 restates former Civil Code Section 3213.

15 See also Sections 41020 (“claimant”), 41050 (“funds”), 41110 (“public entity”), 41140 (“stop
16 payment notice”).

17 **CHAPTER 5. PAYMENT BOND**

18 **§ 45010. Payment bond requirement**

19 45010. (a) A direct contractor that is awarded a public works contract involving
20 an expenditure in excess of twenty-five thousand dollars (\$25,000) shall, before
21 commencement of work, give a payment bond to and approved by the public
22 entity.

23 (b) A public entity shall state in its call for bids that a payment bond is required
24 for a public works contract involving an expenditure in excess of twenty-five
25 thousand dollars (\$25,000).

26 (c) A payment bond given and approved under this section will permit
27 performance of and provide coverage for work pursuant to a public works contract
28 that supplements the contract for which the bond is given, if the requirement of a
29 new bond is waived by the public entity.

30 (d) For the purpose of this section, a design professional is not deemed a direct
31 contractor and is not required to give a payment bond.

32 (e) This section does not apply to a public works contract with a “state entity” as
33 defined in subdivision (d) of Section 7103.

34 **Comment.** Section 45010 restates former Civil Code Section 3247. The transitional provisions
35 of the former section are omitted due to lapse of time.

36 Subdivision (c) is an exception to the rule stated in *Electrical Electronic Control, Inc. v. Los*
37 *Angeles Unified*, 126 Cal. App. 4th 601, 24 Cal. Rptr. 3d 316 (2005), holding that a payment
38 bond under former Civil Code Section 3247, unless otherwise stated or agreed upon, provides
39 coverage only for work performed pursuant to the contract for which the bond was given.

40 See also Sections 41030 (“design professional”), 41040 (“direct contractor”), 41080 (“payment
41 bond”), 41110 (“public entity”), 41120 (“public works contract”).

1 **§ 45020. Consequences of failure to give bond**

2 45020. If a payment bond is not given and approved as required by Section
3 45010:

4 (a) The public entity awarding the public works contract shall not audit, allow,
5 or pay a claim of the direct contractor pursuant to the contract.

6 (b) A claimant shall receive payment of a claim pursuant to a stop payment
7 notice in the manner provided by Chapter 4 (commencing with Section 44110).

8 **Comment.** Section 45020 restates former Civil Code Section 3251. The former operative date
9 provision is deleted due to lapse of time.

10 See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41080 (“payment bond”),
11 41110 (“public entity”), 41140 (“stop payment notice”).

12 **§ 45030. Bond requirements**

13 45030. (a) A payment bond shall be in an amount not less than 100 percent of
14 the total amount payable pursuant to the public works contract. The bond shall be
15 in the form of a bond and not a deposit in lieu of a bond. The bond shall be
16 executed by an admitted surety insurer.

17 (b) The payment bond shall provide that if the direct contractor or a
18 subcontractor fails to pay any of the following, the surety will pay the obligation
19 and, if an action is brought to enforce the liability on the bond, a reasonable
20 attorney’s fee, to be fixed by the court:

21 (1) A person authorized under Section 42030 to assert a claim against a payment
22 bond.

23 (2) Amounts due under the Unemployment Insurance Code with respect to work
24 or labor performed pursuant to the public works contract.

25 (3) Amounts required to be deducted, withheld, and paid over to the
26 Employment Development Department from the wages of employees of the
27 contractor and subcontractors under Section 13020 of the Unemployment
28 Insurance Code with respect to the work and labor.

29 (c) The payment bond shall by its terms inure to the benefit of any person
30 authorized under Section 42030 to assert a claim against a payment bond so as to
31 give a right of action to that person or that person’s assigns in an action to enforce
32 the liability on the bond.

33 (d) The direct contractor may require that a subcontractor give a bond to
34 indemnify the direct contractor for any loss sustained by the direct contractor
35 because of any default of the subcontractor under this section.

36 **Comment.** Section 45030 restates former Civil Code Section 3248 and supersedes former
37 Civil Code Section 3096.

38 Subdivision (a) of Section 45030 also restates a part of Code of Civil Procedure Section
39 995.311(a), which provides that a payment bond required on a public works contract shall be
40 executed by an admitted surety insurer.

41 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 the beneficiary has not been paid the
10 full amount of the 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 on January 1, 2010.

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.

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CONFORMING REVISIONS

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~~ a laborer described in subdivision (b) of Section 3114 8020 of the Civil Code or subdivision (b) of Section 41070 of the Public Contract 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 a person or entity under this subdivision is limited to actual employer payments required to

1 be made on behalf of employees of the licensee, as part of the overall
2 compensation of those employees, which the licensee fails to pay.

3 **Comment.** Section 7071.5 is amended to delete an obsolete reference to former Civil Code
4 Section 3111. The substance of former Civil Code Section 3111 is continued in Civil Code
5 Section 8020 and Public Contract Code Section 41070.

6 **Bus. & Prof. Code § 7071.10 (amended). Qualifying individual's bond**

7 SEC. _____. Section 7071.10 of the Business and Professions Code is amended
8 to read:

9 7071.10. (a) The qualifying individual's bond required by this article shall be
10 executed by an admitted surety insurer in favor of the State of California, in a form
11 acceptable to the registrar and filed with the registrar by the qualifying individual.
12 The qualifying individual's bond shall be for the benefit of the following persons:

13 (1) Any homeowner contracting for home improvement upon the homeowner's
14 personal family residence damaged as a result of a violation of this chapter by the
15 licensee.

16 (2) Any person damaged as a result of a willful and deliberate violation of this
17 chapter by the licensee, or by the fraud of the licensee in the execution or
18 performance of a construction contract.

19 (3) Any employee of the licensee damaged by the licensee's failure to pay
20 wages.

21 (4) Any person or entity, including ~~an express trust fund~~ a laborer described in
22 subdivision (b) of Section 3111 8020 of the Civil Code or subdivision (b) of
23 Section 41070 of the Public Contract Code, to whom a portion of the
24 compensation of an employee of a licensee is paid by agreement with that
25 employee or the collective bargaining agent of that employee, that is damaged as
26 the result of the licensee's failure to pay fringe benefits for its employees
27 including, but not limited to, employer payments described in Section 1773.1 of
28 the Labor Code and regulations adopted thereunder (without regard to whether the
29 work was performed on a public or private work). ~~Damage to an express trust fund~~
30 a person or entity under this subdivision is limited to employer payments required
31 to be made on behalf of employees of the licensee, as part of the overall
32 compensation of those employees, which the licensee fails to pay.

33 (b) The qualifying individual's bond shall not be required in addition to the
34 contractor's bond when the qualifying individual is himself or herself the
35 proprietor under subdivision (a) or a general partner under subdivision (b) of
36 Section 7068.

37 **Comment.** Section 7071.10 is amended to delete an obsolete reference to former Civil Code
38 Section 3111. The substance of former Civil Code Section 3111 is continued in Civil Code
39 Section 8020 and Public Contract Code Section 41070.

40 **Bus. & Prof. Code § 7159 (amended). Home improvement contract**

41 SEC. _____. Section 7159 of the Business and Professions Code is amended to
42 read:

1 7159. (a)(1) This section identifies the projects for which a home improvement
2 contract is required, outlines the contract requirements, and lists the items that
3 shall be included in the contract, or may be provided as an attachment.

4 (2) This section does not apply to service and repair contracts that are subject to
5 Section 7159.10, provided the contract for the applicable services complies with
6 Sections 7159.10 to 7159.14, inclusive.

7 (3) This section does not apply to the sale, installation, and servicing of a fire
8 alarm sold in conjunction with an alarm system, as defined in subdivision (n) of
9 Section 7590.1, provided all costs attributable to making the fire alarm system
10 operable, including sale and installation costs, do not exceed five hundred dollars
11 (\$500), and the licensee complies with the requirements set forth in Section
12 7159.9.

13 (4) This section does not apply to any costs associated with monitoring a burglar
14 or fire alarm system.

15 (5) Failure by the licensee, his or her agent or salesperson, or by a person subject
16 to be licensed under this chapter, to provide the specified information, notices, and
17 disclosures in the contract, or to otherwise fail to comply with any provision of
18 this section, is cause for discipline.

19 (b) For purposes of this section, “home improvement contract” means an
20 agreement, whether oral or written, or contained in one or more documents,
21 between a contractor and an owner or between a contractor and a tenant,
22 regardless of the number of residence or dwelling units contained in the building
23 in which the tenant resides, if the work is to be performed in, to, or upon the
24 residence or dwelling unit of the tenant, for the performance of a home
25 improvement, as defined in Section 7151, and includes all labor, services, and
26 materials to be furnished and performed thereunder, if the aggregate contract price
27 specified in one or more improvement contracts, including all labor, services, and
28 materials to be furnished by the contractor, exceeds five hundred dollars (\$500).
29 “Home improvement contract” also means an agreement, whether oral or written,
30 or contained in one or more documents, between a salesperson, whether or not he
31 or she is a home improvement salesperson, and an owner or a tenant, regardless of
32 the number of residence or dwelling units contained in the building in which the
33 tenant resides, which provides for the sale, installation, or furnishing of home
34 improvement goods or services.

35 (c) In addition to the specific requirements listed under this section, every home
36 improvement contract and any person subject to licensure under this chapter or his
37 or her agent or salesperson shall comply with all of the following:

38 (1) The writing shall be legible.

39 (2) Any printed form shall be readable. Unless a larger typeface is specified in
40 this article, text in any printed form shall be in at least 10-point typeface and the
41 headings shall be in at least 10-point boldface type.

42 (3)(A) Before any work is started, the contractor shall give the buyer a copy of
43 the contract signed and dated by both the contractor and the buyer. The buyer’s

1 receipt of the copy of the contract initiates the buyer's rights to cancel the contract
2 pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

3 (B) The contract shall contain on the first page, in a typeface no smaller than
4 that generally used in the body of the document, both of the following:

5 (i) The date the buyer signed the contract.

6 (ii) The name and address of the contractor to which the applicable "Notice of
7 Cancellation" is to be mailed, immediately preceded by a statement advising the
8 buyer that the "Notice of Cancellation" may be sent to the contractor at the address
9 noted on the contract.

10 (4) A statement that, upon satisfactory payment being made for any portion of
11 the work performed, the contractor shall, prior to any further payment being made,
12 furnish to the person contracting for the home improvement or swimming pool
13 work a full and unconditional release from any claim or mechanic's lien pursuant
14 to Section ~~3114~~ 8410 of the Civil Code for that portion of the work for which
15 payment has been made.

16 (5) A change-order form for changes or extra work shall be incorporated into the
17 contract and shall become part of the contract only if it is in writing and signed by
18 the parties prior to the commencement of any work covered by a change order.

19 (6) The contract shall contain, in close proximity to the signatures of the owner
20 and contractor, a notice stating that the owner or tenant has the right to require the
21 contractor to have a performance and payment bond.

22 (7) If the contract provides for a contractor to furnish joint control, the
23 contractor shall not have any financial or other interest in the joint control.

24 (8) The provisions of this section are not exclusive and do not relieve the
25 contractor from compliance with any other applicable provision of law.

26 (d) A home improvement contract and any changes to the contract shall be in
27 writing and signed by the parties to the contract prior to the commencement of any
28 work covered by the contract or applicable change order and, except as provided
29 in paragraph (8) of subdivision (a) of Section 7159.5, shall include or comply with
30 all of the following:

31 (1) The name, business address, and license number of the contractor.

32 (2) If applicable, the name and registration number of the home improvement
33 salesperson that solicited or negotiated the contract.

34 (3) The following heading on the contract form that identifies the type of
35 contract in at least 10-point boldface type: "Home Improvement."

36 (4) The following statement in at least 12-point boldface type: "You are entitled
37 to a completely filled in copy of this agreement, signed by both you and the
38 contractor, before any work may be started."

39 (5) The heading: "Contract Price," followed by the amount of the contract in
40 dollars and cents.

41 (6) If a finance charge will be charged, the heading: "Finance Charge," followed
42 by the amount in dollars and cents. The finance charge is to be set out separately
43 from the contract amount.

1 (7) The heading: “Description of the Project and Description of the Significant
2 Materials to be Used and Equipment to be Installed,” followed by a description of
3 the project and a description of the significant materials to be used and equipment
4 to be installed. For swimming pools, the project description required under this
5 paragraph also shall include a plan and scale drawing showing the shape, size,
6 dimensions, and the construction and equipment specifications.

7 (8) If a downpayment will be charged, the details of the downpayment shall be
8 expressed in substantially the following form, and shall include the text of the
9 notice as specified in subparagraph (C):

10 (A) The heading: “Down Payment.”

11 (B) A space where the actual downpayment appears.

12 (C) The following statement in at least 12-point boldface type:

13 **“THE DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF**
14 **THE CONTRACT PRICE, WHICHEVER IS LESS.”**

15 (9) If any payments, other than the downpayment, are to be made before the
16 project is completed, the details of these payments, known as progress payments,
17 shall be expressed in substantially the following form, and shall include the text of
18 the statement as specified in subparagraph (C):

19 (A) A schedule of progress payments shall be preceded by the heading:
20 “Schedule of Progress Payments.”

21 (B) Each progress payment shall be stated in dollars and cents and specifically
22 reference the amount of work or services to be performed and any materials and
23 equipment to be supplied.

24 (C) The section of the contract reserved for the progress payments shall include
25 the following statement in at least 12-point boldface type:

26 **“The schedule of progress payments must specifically describe each phase of**
27 **work, including the type and amount of work or services scheduled to be supplied**
28 **in each phase, along with the amount of each proposed progress payment. IT IS**
29 **AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR**
30 **WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET**
31 **DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A**
32 **DOWNPAYMENT.”**

33 (10) The contract shall address the commencement of work to be performed in
34 substantially the following form:

35 (A) A statement that describes what constitutes substantial commencement of
36 work under the contract.

37 (B) The heading: “Approximate Start Date.”

38 (C) The approximate date on which work will be commenced.

39 (11) The estimated completion date of the work shall be referenced in the
40 contract in substantially the following form:

41 (A) The heading: “Approximate Completion Date.”

42 (B) The approximate date of completion.

1 (12) If applicable, the heading: “List of Documents to be Incorporated into the
2 Contract,” followed by the list of documents incorporated into the contract.

3 (13) The heading: “Note about Extra Work and Change Orders,” followed by
4 the following statement:

5 “Extra Work and Change Orders become part of the contract once the order is
6 prepared in writing and signed by the parties prior to the commencement of any
7 work covered by the new change order. The order must describe the scope of the
8 extra work or change, the cost to be added or subtracted from the contract, and the
9 effect the order will have on the schedule of progress payments.”

10 (e) Except as provided in paragraph (8) of subdivision (a) of Section 7159.5, all
11 of the following notices shall be provided to the owner as part of the contract form
12 as specified or, if otherwise authorized under this subdivision, may be provided as
13 an attachment to the contract:

14 (1) A notice concerning commercial general liability insurance. This notice may
15 be provided as an attachment to the contract if the contract includes the following
16 statement: “A notice concerning commercial general liability insurance is attached
17 to this contract.” The notice shall include the heading “Commercial General
18 Liability Insurance (CGL),” followed by whichever of the following statements is
19 both relevant and correct:

20 (A) “(The name on the license or ‘This contractor’) does not carry commercial
21 general liability insurance.”

22 (B) “(The name on the license or ‘This contractor’) carries commercial general
23 liability insurance written by (the insurance company). You may call the
24 (insurance company) at _____ to check the contractor’s insurance
25 coverage.”

26 (C) “(The name on the license or ‘This contractor’) is self-insured.”

27 (2) A notice concerning workers’ compensation insurance. This notice may be
28 provided as an attachment to the contract if the contract includes the statement: “A
29 notice concerning workers’ compensation insurance is attached to this contract.”
30 The notice shall include the heading “Workers’ Compensation Insurance”
31 followed by whichever of the following statements is correct:

32 (A) “(The name on the license or ‘This contractor’) has no employees and is
33 exempt from workers’ compensation requirements.”

34 (B) “(The name on the license or ‘This contractor’) carries workers’
35 compensation insurance for all employees.”

36 (3) A notice that provides the buyer with the following information about the
37 performance of extra or change-order work:

38 (A) A statement that the buyer may not require a contractor to perform extra or
39 change-order work without providing written authorization prior to the
40 commencement of any work covered by the new change order.

41 (B) A statement informing the buyer that extra work or a change order is not
42 enforceable against a buyer unless the change order also identifies all of the

1 following in writing prior to the commencement of any work covered by the new
2 change order:

3 (i) The scope of work encompassed by the order.

4 (ii) The amount to be added or subtracted from the contract.

5 (iii) The effect the order will make in the progress payments or the completion
6 date.

7 (C) A statement informing the buyer that the contractor's failure to comply with
8 the requirements of this paragraph does not preclude the recovery of compensation
9 for work performed based upon legal or equitable remedies designed to prevent
10 unjust enrichment.

11 (4) A notice with the heading "Mechanics' Lien Warning" written as follows:

12 "MECHANICS LIEN WARNING:

13 Anyone who helps improve your property, but who is not paid, may record what
14 is called a mechanics' lien on your property. A mechanics' lien is a claim, like a
15 mortgage or home equity loan, made against your property and recorded with the
16 county recorder.

17 Even if you pay your contractor in full, unpaid subcontractors, suppliers, and
18 laborers who helped to improve your property may record mechanics' liens and
19 sue you in court to foreclose the lien. If a court finds the lien is valid, you could be
20 forced to pay twice or have a court officer sell your home to pay the lien. Liens
21 can also affect your credit.

22 To preserve their right to record a lien, each subcontractor and material supplier
23 must provide you with a document called a '~~20-day~~ Preliminary Notice.' This
24 notice is not a lien. The purpose of the notice is to let you know that the person
25 who sends you the notice has the right to record a lien on your property if he or
26 she is not paid.

27 **BE CAREFUL.** The Preliminary Notice can be sent up to 20 days after the
28 subcontractor starts work or the supplier provides material. This can be a big
29 problem if you pay your contractor before you have received the Preliminary
30 Notices.

31 You will not get Preliminary Notices from your prime contractor or from
32 laborers who work on your project. The law assumes that you already know they
33 are improving your property.

34 **PROTECT YOURSELF FROM LIENS.** You can protect yourself from liens by
35 getting a list from your contractor of all the subcontractors and material suppliers
36 that work on your project. Find out from your contractor when these
37 subcontractors started work and when these suppliers delivered goods or materials.
38 Then wait 20 days, paying attention to the Preliminary Notices you receive.

39 **PAY WITH JOINT CHECKS.** One way to protect yourself is to pay with a joint
40 check. When your contractor tells you it is time to pay for the work of a
41 subcontractor or supplier who has provided you with a Preliminary Notice, write a

1 joint check payable to both the contractor and the subcontractor or material
2 supplier.

3 For other ways to prevent liens, visit CSLB's Web site at www.cslb.ca.gov or
4 call CSLB at 800-321-CSLB (2752).

5 REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN
6 PLACED ON YOUR HOME. This can mean that you may have to pay twice, or
7 face the forced sale of your home to pay what you owe."

8 (5) The following notice shall be provided in at least 12-point typeface:
9 "Information about the Contractors' State License Board (CSLB): CSLB is the
10 state consumer protection agency that licenses and regulates construction
11 contractors.

12 Contact CSLB for information about the licensed contractor you are
13 considering, including information about disclosable complaints, disciplinary
14 actions and civil judgments that are reported to CSLB.

15 Use only licensed contractors. If you file a complaint against a licensed
16 contractor within the legal deadline (usually four years), CSLB has authority to
17 investigate the complaint. If you use an unlicensed contractor, CSLB may not be
18 able to help you resolve your complaint. Your only remedy may be in civil court,
19 and you may be liable for damages arising out of any injuries to the unlicensed
20 contractor or the unlicensed contractor's employees.

21 For more information:

22 Visit CSLB's Web site at www.cslb.ca.gov

23 Call CSLB at 800-321-CSLB (2752)

24 Write CSLB at P.O. Box 26000, Sacramento, CA 95826."

25 (6)(A) The notice set forth in subparagraph (B) and entitled "Three-Day Right to
26 Cancel," shall be provided to the buyer unless the contract is:

27 (i) Negotiated at the contractor's place of business.

28 (ii) Subject to the "Seven-Day Right to Cancel," as set forth in paragraph (8).

29 (iii) Subject to licensure under the Alarm Company Act (Chapter 11.6
30 commencing with Section 7590)), provided the alarm company licensee complies
31 with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

32 (B) "Three-Day Right to Cancel

33 "You, the buyer, have the right to cancel this contract within three business
34 days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice
35 to the contractor at the contractor's place of business by midnight of the third
36 business day after you received a signed and dated copy of the contract that
37 includes this notice. Include your name, your address, and the date you received
38 the signed copy of the contract and this notice.

39 If you cancel, the contractor must return to you anything you paid within 10
40 days of receiving the notice of cancellation. For your part, you must make
41 available to the contractor at your residence, in substantially as good condition as
42 you received it, any goods delivered to you under this contract or sale. Or, you
43 may, if you wish, comply with the contractor's instructions on how to return the

1 goods at the contractor’s expense and risk. If you do make the goods available to
2 the contractor and the contractor does not pick them up within 20 days of the date
3 of your notice of cancellation, you may keep them without any further obligation.
4 If you fail to make the goods available to the contractor, or if you agree to return
5 the goods to the contractor and fail to do so, then you remain liable for
6 performance of all obligations under the contract.”

7 (C) The “Three-Day Right to Cancel” notice required by this paragraph shall
8 comply with all of the following:

9 (i) The text of the notice is at least 12-point boldface type.

10 (ii) The notice is in immediate proximity to a space reserved for the owner’s
11 signature.

12 (iii) The owner acknowledges receipt of the notice by signing and dating the
13 notice form in the signature space.

14 (iv) The notice is written in the same language, e.g., Spanish, as that principally
15 used in any oral sales presentation.

16 (v) The notice may be attached to the contract if the contract includes, in at least
17 12-point boldface type, a checkbox with the following statement: “The law
18 requires that the contractor give you a notice explaining your right to cancel.
19 Initial the checkbox if the contractor has given you a ‘Notice of the Three-Day
20 Right to Cancel.’”

21 (vi) The notice shall be accompanied by a completed form in duplicate,
22 captioned “Notice of Cancellation,” which shall also be attached to the agreement
23 or offer to purchase and be easily detachable, and which shall contain the
24 following statement written in the same language, e.g., Spanish, as used in the
25 contract:

26 “Notice of Cancellation”

27 /enter date of transaction/
28 _____

29 (Date)

30 “You may cancel this transaction, without any penalty or obligation, within
31 three business days from the above date.

32 If you cancel, any property traded in, any payments made by you under the
33 contract or sale, and any negotiable instrument executed by you will be returned
34 within 10 days following receipt by the seller of your cancellation notice, and any
35 security interest arising out of the transaction will be canceled.

36 If you cancel, you must make available to the seller at your residence, in
37 substantially as good condition as when received, any goods delivered to you
38 under this contract or sale, or you may, if you wish, comply with the instructions
39 of the seller regarding the return shipment of the goods at the seller’s expense and
40 risk.

41 If you do make the goods available to the seller and the seller does not pick them
42 up within 20 days of the date of your notice of cancellation, you may retain or
43 dispose of the goods without any further obligation. If you fail to make the goods

1 available to the seller, or if you agree to return the goods to the seller and fail to do
2 so, then you remain liable for performance of all obligations under the contract.”
3 To cancel this transaction, mail or deliver a signed and dated copy of this
4 cancellation notice, or any other written notice, or send a telegram
5 to _____,

6 /name of seller/

7 at _____

8 /address of seller’s place of business/

9 not later than midnight of _____.

10 (Date)

11 I hereby cancel this transaction. _____

12 (Date)

13 _____
14 (Buyer’s signature)

15 (7)(A) The following notice entitled “Seven-Day Right to Cancel” shall be
16 provided to the buyer for any contract that is written for the repair or restoration of
17 residential premises damaged by any sudden or catastrophic event for which a
18 state of emergency has been declared by the President of the United States or the
19 Governor, or for which a local emergency has been declared by the executive
20 officer or governing body of any city, county, or city and county:

21 “Seven-Day Right to Cancel

22 You, the buyer, have the right to cancel this contract within seven business days.
23 You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the
24 contractor at the contractor’s place of business by midnight of the seventh business
25 day after you received a signed and dated copy of the contract that includes this
26 notice. Include your name, your address, and the date you received the signed
27 copy of the contract and this notice.

28 If you cancel, the contractor must return to you anything you paid within 10
29 days of receiving the notice of cancellation. For your part, you must make
30 available to the contractor at your residence, in substantially as good condition as
31 you received it, any goods delivered to you under this contract or sale. Or, you
32 may, if you wish, comply with the contractor’s instructions on how to return the
33 goods at the contractor’s expense and risk. If you do make the goods available to
34 the contractor and the contractor does not pick them up within 20 days of the date
35 of your notice of cancellation, you may keep them without any further obligation.
36 If you fail to make the goods available to the contractor, or if you agree to return
37 the goods to the contractor and fail to do so, then you remain liable for
38 performance of all obligations under the contract.”

39 (B) The “Seven-Day Right to Cancel” notice required by this subdivision shall
40 comply with all of the following:

41 (i) The text of the notice is at least 12-point boldface type.

42 (ii) The notice is in immediate proximity to a space reserved for the owner’s
43 signature.

1 (iii) The owner acknowledges receipt of the notice by signing and dating the
2 notice form in the signature space.

3 (iv) The notice is written in the same language, e.g., Spanish, as that principally
4 used in any oral sales presentation.

5 (v) The notice may be attached to the contract if the contract includes, in at least
6 12-point boldface type, a checkbox with the following statement: “The law
7 requires that the contractor give you a notice explaining your right to cancel.
8 Initial the checkbox if the contractor has given you a ‘Notice of the Seven-Day
9 Right to Cancel.’”

10 (vi) The notice shall be accompanied by a completed form in duplicate,
11 captioned “Notice of Cancellation,” which shall also be attached to the agreement
12 or offer to purchase and be easily detachable, and which shall contain the
13 following statement written in the same language, e.g., Spanish, as used in the
14 contract:

15 “Notice of Cancellation”
16 /enter date of transaction/
17 _____

18 (Date)

19 “You may cancel this transaction, without any penalty or obligation, within
20 seven business days from the above date.

21 If you cancel, any property traded in, any payments made by you under the
22 contract or sale, and any negotiable instrument executed by you will be returned
23 within 10 days following receipt by the seller of your cancellation notice, and any
24 security interest arising out of the transaction will be canceled.

25 If you cancel, you must make available to the seller at your residence, in
26 substantially as good condition as when received, any goods delivered to you
27 under this contract or sale, or you may, if you wish, comply with the instructions
28 of the seller regarding the return shipment of the goods at the seller’s expense and
29 risk.

30 If you do make the goods available to the seller and the seller does not pick them
31 up within 20 days of the date of your notice of cancellation, you may retain or
32 dispose of the goods without any further obligation. If you fail to make the goods
33 available to the seller, or if you agree to return the goods to the seller and fail to do
34 so, then you remain liable for performance of all obligations under the contract.”

35 To cancel this transaction, mail or deliver a signed and dated copy of this
36 cancellation notice, or any other written notice, or send a telegram
37 to _____,

38 /name of seller/
39 at _____

40 /address of seller’s place of business/
41 not later than midnight of _____.

42 (Date)

43 I hereby cancel this transaction.

1

(Date)

2

3

(Buyer's signature)

4

5

Comment. Paragraph (4) of subdivision (c) of Section 7159 is amended to correct a cross-reference.

6

7

Paragraph (4) of subdivision (e) is amended to add a non-substantive clarification. See Civ. Code § 8034 ("preliminary notice").

8

9

Bus. & Prof. Code § 7159.1 (amended). Notice to buyer

10

SEC. _____. Section 7159.1 of the Business and Professions Code is amended to read:

11

12

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:

13

14

15

16

“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.”

17

18

19

20

21

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.

22

23

24

25

26

27

28

(b) This section shall not apply to any of the following:

29

30

(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.

31

32

33

(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.

34

35

(c) (3) Any contract that is subject to subdivision (a) of Section 7159.2.

36

Comment. Section 7159.1 is amended to correct a cross-reference, and make a stylistic revision.

37

Bus. & Prof. Code § 7159.5 (amended). Home improvement contract violation

38

SEC. _____. Section 7159.5 of the Business and Professions Code is amended to read:

39

40

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

41

1 contractor or a specialty contractor, who is licensed or subject to be licensed
2 pursuant to this chapter with regard to the transaction.

3 (a) Failure by the licensee or a person subject to be licensed under this chapter,
4 or by his or her agent or salesperson, to comply with the following provisions is
5 cause for discipline:

6 (1) The contract shall be in writing and shall include the agreed contract amount
7 in dollars and cents. The contract amount shall include the entire cost of the
8 contract, including profit, labor, and materials, but excluding finance charges.

9 (2) If there is a separate finance charge between the contractor and the person
10 contracting for home improvement, the finance charge shall be set out separately
11 from the contract amount.

12 (3) If a downpayment will be charged, the downpayment may not exceed one
13 thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

14 (4) If, in addition to a downpayment, the contract provides for payments to be
15 made prior to completion of the work, the contract shall include a schedule of
16 payments in dollars and cents specifically referencing the amount of work or
17 services to be performed and any materials and equipment to be supplied.

18 (5) Except for a downpayment, the contractor may neither request nor accept
19 payment that exceeds the value of the work performed or material delivered.

20 (6) Upon any payment by the person contracting for home improvement, and
21 prior to any further payment being made, the contractor shall, if requested, obtain
22 and furnish to the person 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. The person
25 contracting for home improvement may withhold all further payments until these
26 releases are furnished.

27 (7) If the contract provides for a payment of a salesperson's commission out of
28 the contract price, that payment shall be made on a pro rata basis in proportion to
29 the schedule of payments made to the contractor by the disbursing party in
30 accordance with paragraph (4).

31 (8) A contractor furnishing a performance and payment bond, lien and
32 completion bond, or a bond equivalent or joint control approved by the registrar
33 covering full performance and payment is exempt from paragraphs (3), (4), and
34 (5), and need not include, as part of the contract, the statement regarding the
35 downpayment specified in subparagraph (C) of paragraph (8) of subdivision (d) of
36 Section 7159, the details and statement regarding progress payments specified in
37 paragraph (9) of subdivision (d) of Section 7159, or the Mechanics' Lien Warning
38 specified in paragraph (4) of subdivision (e) of Section 7159. A contractor
39 furnishing these bonds, bond equivalents, or a joint control approved by the
40 registrar may accept payment prior to completion. If the contract provides for a
41 contractor to furnish joint control, the contractor shall not have any financial or
42 other interest in the joint control.

1 (b) A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a
2 person subject to be licensed under this chapter, or by his or her agent or
3 salesperson, is a misdemeanor punishable by a fine of not less than one hundred
4 dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in
5 a county jail not exceeding one year, or by both that fine and imprisonment.

6 (1) An indictment or information against a person who is not licensed but who is
7 required to be licensed under this chapter shall be brought, or a criminal complaint
8 filed, for a violation of this section, in accordance with paragraph (4) of
9 subdivision (d) of Section 802 of the Penal Code, within four years from the date
10 of the contract or, if the contract is not reduced to writing, from the date the buyer
11 makes the first payment to the contractor.

12 (2) An indictment or information against a person who is licensed under this
13 chapter shall be brought, or a criminal complaint filed, for a violation of this
14 section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the
15 Penal Code, within two years from the date of the contract or, if the contract is not
16 reduced to writing, from the date the buyer makes the first payment to the
17 contractor.

18 (3) The limitations on actions in this subdivision shall not apply to any
19 administrative action filed against a licensed contractor.

20 (c) Any person who violates this section as part of a plan or scheme to defraud
21 an owner or tenant of a residential or nonresidential structure, including a
22 mobilehome or manufactured home, in connection with the offer or performance
23 of repairs to the structure for damage caused by a natural disaster, shall be ordered
24 by the court to make full restitution to the victim based on the person's ability to
25 pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In
26 addition to full restitution, and imprisonment authorized by this section, the court
27 may impose a fine of not less than five hundred dollars (\$500) nor more than
28 twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay.
29 This subdivision applies to natural disasters for which a state of emergency is
30 proclaimed by the Governor pursuant to Section 8625 of the Government Code, or
31 for which an emergency or major disaster is declared by the President of the
32 United States.

33 **Comment.** Paragraph (6) of subdivision (a) of Section 7159.5 is amended to correct a cross-
34 reference.

35 **Bus. & Prof. Code § 7159.14 (amended). Service and repair contract**

36 SEC. _____. Section 7159.14 of the Business and Professions Code is amended
37 to read:

38 7159.14. (a) This section applies to a service and repair contract as defined in
39 Section 7159.10. A violation of this section by a licensee or a person subject to be
40 licensed under this chapter, or by his or her agent or salesperson, is cause for
41 discipline.

42 (1) The contract may not exceed seven hundred fifty dollars (\$750).

1 (2) The contract shall be in writing and shall state the agreed contract amount,
2 which may be stated as either a fixed contract amount in dollars and cents or, if a
3 time and materials formula is used, as an estimated contract amount in dollars and
4 cents.

5 (3) The contract amount shall include the entire cost of the contract including
6 profit, labor, and materials, but excluding finance charges.

7 (4) The actual contract amount of a time and materials contract may not exceed
8 the estimated contract amount without written authorization from the buyer.

9 (5) The prospective buyer must have initiated contact with the contractor to
10 request work.

11 (6) The contractor may not sell the buyer goods or services beyond those
12 reasonably necessary to take care of the particular problem that caused the buyer
13 to contact the contractor.

14 (7) No payment may be due before the project is completed.

15 (8) A service and repair contractor may charge only one service charge. For
16 purposes of this chapter, a service charge includes such charges as a service or trip
17 charge, or an inspection fee.

18 (9) A service and repair contractor charging a service charge must disclose in all
19 advertisements that there is a service charge and, when the customer initiates the
20 call for service, must disclose the amount of the service charge.

21 (10) The service and repair contractor must offer to the customer any parts that
22 were replaced.

23 (11) Upon any payment by the buyer, the contractor shall, if requested, obtain
24 and furnish to the buyer a full and unconditional release from any potential lien
25 claimant claim or mechanic's lien pursuant to Section ~~3114~~ 8410 of the Civil Code
26 for any portion of the work for which payment has been made.

27 (b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of subdivision (a) by
28 a licensee or a person subject to be licensed under this chapter, or by his or her
29 agent or salesperson, is a misdemeanor punishable by a fine of not less than one
30 hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by
31 imprisonment in a county jail not exceeding one year, or by both that fine and
32 imprisonment.

33 (1) An indictment or information against a person who is not licensed but who is
34 required to be licensed under this chapter shall be brought, or a criminal complaint
35 filed, for a violation of this section, in accordance with paragraph (4) of
36 subdivision (d) of Section 802 of the Penal Code, within four years from the date
37 of the contract or, if the contract is not reduced to writing, from the date the buyer
38 makes the first payment to the contractor.

39 (2) An indictment or information against a person who is licensed under this
40 chapter shall be brought, or a criminal complaint filed, for a violation of this
41 section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the
42 Penal Code, within two years from the date of the contract or, if the contract is not

1 reduced to writing, from the date the buyer makes the first payment to the
2 contractor.

3 (3) The limitations on actions in this subdivision shall not apply to any
4 administrative action filed against a licensed contractor.

5 (c) Any person who violates this section as part of a plan or scheme to defraud
6 an owner or tenant of a residential or nonresidential structure, including a
7 mobilehome or manufactured home, in connection with the offer or performance
8 of repairs to the structure for damage caused by a natural disaster, shall be ordered
9 by the court to make full restitution to the victim based on the person's ability to
10 pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In
11 addition to full restitution, and imprisonment authorized by this section, the court
12 may impose a fine of not less than five hundred dollars (\$500) nor more than
13 twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay.
14 This subdivision applies to natural disasters for which a state of emergency is
15 proclaimed by the Governor pursuant to Section 8625 of the Government Code, or
16 for which an emergency or major disaster is declared by the President of the
17 United States.

18 **Comment.** Section 7159.14 is amended to correct a cross-reference.

19 **Bus. & Prof. Code § 7164 (amended). Contract for construction of single-family dwelling**

20 SEC. _____. Section 7164 of the Business and Professions Code is amended to
21 read:

22 7164. (a) Notwithstanding Section 7044, every contract and any changes in a
23 contract, between an owner and a contractor, for the construction of a single-
24 family dwelling to be retained by the owner for at least one year shall be
25 evidenced in writing signed by both parties.

26 (b) The writing shall contain the following:

27 (1) The name, address, and license number of the contractor.

28 (2) The approximate dates when the work will begin and be substantially
29 completed.

30 (3) A legal description of the location where the work will be done.

31 (4) A statement with the heading "Mechanics' Lien Warning" as follows:

32 "MECHANICS LIEN WARNING:

33 Anyone who helps improve your property, but who is not paid, may record what
34 is called a mechanics' lien on your property. A mechanics' lien is a claim, like a
35 mortgage or home equity loan, made against your property and recorded with the
36 county recorder.

37 Even if you pay your contractor in full, unpaid subcontractors, suppliers, and
38 laborers who helped to improve your property may record mechanics' liens and
39 sue you in court to foreclose the lien. If a court finds the lien is valid, you could be
40 forced to pay twice or have a court officer sell your home to pay the lien. Liens
41 can also affect your credit.

1 To preserve their right to record a lien, each subcontractor and material supplier
2 must provide you with a document called a ‘~~20-day~~ Preliminary Notice.’ This
3 notice is not a lien. The purpose of the notice is to let you know that the person
4 who sends you the notice has the right to record a lien on your property if he or
5 she is not paid.

6 BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the
7 subcontractor starts work or the supplier provides material. This can be a big
8 problem if you pay your contractor before you have received the Preliminary
9 Notices.

10 You will not get Preliminary Notices from your prime contractor or other
11 persons you contract with directly or from laborers who work on your project. The
12 law assumes that you already know they are improving your property.

13 PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by
14 getting a list from your contractor of all the subcontractors and material suppliers
15 that work on your project. Find out from your contractor when these
16 subcontractors started work and when these suppliers delivered goods or materials.
17 Then wait 20 days, paying attention to the Preliminary Notices you receive.

18 PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint
19 check. When your contractor tells you it is time to pay for the work of a
20 subcontractor or supplier who has provided you with a Preliminary Notice, write a
21 joint check payable to both the contractor and the subcontractor or material
22 supplier.

23 For other ways to prevent liens, visit CSLB’s Web site at www.cslb.ca.gov or
24 call CSLB at 800-321-CSLB (2752).

25 REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN
26 PLACED ON YOUR HOME. This can mean that you may have to pay twice, or
27 face the forced sale of your home to pay what you owe.”

28 (5) (A) A statement prepared by the board through regulation that emphasizes
29 the value of commercial general liability insurance and encourages the owner to
30 verify the contractor’s insurance coverage and status.

31 (B) A check box indicating whether or not the contractor carries commercial
32 general liability insurance, and if that is the case, the name and the telephone
33 number of the insurer.

34 (c) The writing may also contain other matters agreed to by the parties to the
35 contract. The writing shall be legible and shall clearly describe any other
36 document which is to be incorporated into the contract. Prior to commencement of
37 any work, the owner shall be furnished a copy of the written agreement, signed by
38 the contractor. The provisions of this section are not exclusive and do not relieve
39 the contractor from compliance with all other applicable provisions of law.

40 (d) Every contract subject to the provisions of this section shall contain, in close
41 proximity to the signatures of the owner and contractor, a notice in at least 10-
42 point bold type or in all capital letters, stating that the owner has the right to

1 require the contractor to have a performance and payment bond and that the
2 expense of the bond may be borne by the owner.

3 (e) The requirements in paragraph (5) of subdivision (b) shall become operative
4 three months after the board adopts the regulations referenced in subparagraph (A)
5 of paragraph (5) of subdivision (b).

6 (f) This section shall become operative on January 1, 2006.

7 **Comment.** Paragraph (4) of subdivision (a) of Section 7164 is amended to correct terminology
8 and to add a non-substantive clarification. See Civ. Code § 8034 (“preliminary notice”).

9 **Bus. & Prof. Code § 8513 (amended). Notice to owner by pest control company**

10 SEC. _____. Section 8513 of the Business and Professions Code is amended to
11 read:

12 8513. (a) The board shall prescribe a form entitled “Notice to Owner” that shall
13 describe, in nontechnical language and in a clear and coherent manner using words
14 with common and everyday meaning, the pertinent provisions of this state’s
15 mechanics’ lien laws and the rights and responsibilities of an owner of property
16 and a registered pest control company thereunder. Each company registered under
17 this chapter, prior to entering into a contract with an owner for work for which a
18 company registration is required, shall give a copy of this “Notice to Owner” to
19 the owner, his or her agent, or the payer.

20 (b) No company that is required to be registered under this chapter shall require
21 or request a waiver of lien rights from any subcontractor, employee, or supplier.

22 (c) Each company registered under this chapter that acts as a subcontractor for
23 another company registered under this chapter shall, within 20 days of
24 commencement of any work for which a company registration is required, give the
25 preliminary ~~20 day notice (private work) in accordance with the provisions of~~
26 ~~Section 3097~~ notice in accordance with Chapter 2 (commencing with Section
27 8200) of Part 6 of Division 4 of the Civil Code, to the owner, his or her agent, or
28 the payer.

29 (d) Each company registered under this chapter that acts as a prime contractor
30 for work for which a company registration is required shall, prior to accepting
31 payment for the work, furnish to the owner, his or her agent, or the payer a full and
32 unconditional release from any claim of mechanics’ lien by any subcontractor
33 entitled to enforce a mechanics’ lien pursuant to Section ~~3114~~ 8172 of the Civil
34 Code.

35 (e) Each company registered under this chapter that subcontracts to another
36 company registered under this chapter work for which a company registration is
37 required shall furnish to the subcontractor the name of the owner, his or her agent,
38 or the payer.

39 (f) The provisions of this section shall be applicable only to those registered
40 companies, as defined in Section 8506.1, operating pursuant to a Branch 1 or
41 Branch 3 registration.

1 (g) A violation of the provisions of this section is a ground for disciplinary
2 action.

3 **Comment.** Section 8513 is amended to correct cross-references and terminology.

4 **Bus. & Prof. Code § 17577.5 (amended). Contract for home water treatment device**

5 SEC. _____. Section 17577.5 of the Business and Professions Code is amended
6 to read:

7 17577.5. (a) No contract or offer for the sale, lease, or rental of a home water
8 treatment device and no purchase money loan, as defined in subdivision (b), shall
9 provide for a lien on real property. Any lien taken in violation of this section is
10 void and unenforceable.

11 (b) For the purpose of this section, “purchase money loan” means a loan or an
12 advance under an open-end credit account if both of the following occur:

13 (1) The primary purpose of the loan or the primary purpose of establishing the
14 open-end credit account is to finance all or a portion of the purchase price or any
15 of the lease or rental payments for a water treatment device.

16 (2) The creditor knows the primary purpose of the loan or the primary purpose
17 of establishing the open-end credit account when the loan is initially made or the
18 open-end credit account is established.

19 (c) The creditor shall be deemed to know that the primary purpose of the loan or
20 the primary purpose of establishing the open-end credit account is the primary
21 purpose described in paragraph (1) of subdivision (b) if any of the following
22 occur:

23 (1) The consumer’s application for credit or any other document in the creditor’s
24 possession before the loan is made or the open-end account is established indicates
25 the primary purpose of the loan or the open-end credit account.

26 (2) The seller, lessor, or renter arranges or guarantees the loan or open-end
27 account, or participates in the preparation of the consumer’s application for credit
28 or other loan documents, or receives from the creditor a loan commission,
29 brokerage, or referral fee.

30 (d) For the purpose of this section, “open-end credit” has the same meaning as
31 used in Section 226.2 of Title 12 of the Code of Federal Regulations.

32 (e) This section does not apply to mechanics’ liens established pursuant to
33 ~~Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3~~
34 Chapter 4 (commencing with Section 8400) of Part 6 of Division 4 of the Civil
35 Code.

36 **Comment.** Section 17577.5 is amended to correct a cross-reference.

37 CIVIL CODE

38 **Civ. Code §§ 1749.70-1749.76 (added). Automatic checkout system**

39 SEC. _____. Title 1.4C (commencing with Section 1749.70) is added to Part 4 of
40 Division 3 of the Civil Code, to read:

1 Title 1.4C. Automatic Checkout System

2 **Civ. Code § 1749.70. Name of title**

3 1749.70. This title shall be known and may be cited as the Rosenthal-Roberti
4 Item Pricing Act.

5 **Comment.** Section 1749.70 continues former Section 7105 without substantive change.

6 **Civ. Code § 1749.71. Clearly readable price on commodities**

7 1749.71. (a) Every retail grocery store or grocery department within a general
8 retail merchandise store which uses a point-of-sale system shall cause to have a
9 clearly readable price indicated on 85 percent of the total number of packaged
10 consumer commodities offered for sale which are not exempt pursuant to
11 subdivision (b).

12 The management of any such retail grocery store or grocery department shall
13 determine the number of consumer commodities normally offered for sale on a
14 daily basis, shall determine the consumer commodities to be exempted pursuant to
15 this subdivision, and shall maintain a list of those consumer commodities exempt
16 pursuant to this subdivision. The list shall be made available to a designated
17 representative of the appropriate local union, the members of which are
18 responsible for item pricing, in those stores or departments that have collective
19 bargaining agreements, seven days prior to an item or items being exempted
20 pursuant to this subdivision. In addition, the list shall be available and posted in a
21 prominent place in the store seven days prior to an item or items being exempted
22 pursuant to this subdivision.

23 (b) The provisions of this section shall not apply to any of the following:

24 (1) Any consumer commodity which was not generally item-priced on January
25 1, 1977, as determined by the Department of Food and Agriculture pursuant to
26 subdivision (c) of Section 12604.5 of the Business and Professions Code, as in
27 effect July 8, 1977.

28 (2) Any unpackaged fresh food produce, or to consumer commodities which are
29 under three cubic inches in size, weigh less than three ounces, and are priced under
30 forty cents (\$0.40).

31 (3) Any consumer commodity offered as a sale item or as a special.

32 (4) Any business which has as its only regular employees the owner thereof, or
33 the parent, spouse, or child of such owner, or, in addition thereto, not more than
34 two other regular employees.

35 (5) Identical items within a multi-item package.

36 (6) Items sold through a vending machine.

37 (c) For the purposes of this section:

38 (1) "Point-of-sale system" means any computer or electronic system used by a
39 retail establishment such as, but not limited to, Universal Product Code scanners,
40 price lookup codes, or an electronic price lookup system as a means for
41 determining the price of the item being purchased by a consumer.

1 (2) “Consumer commodity” includes:

2 (A) Food, including all material whether solid, liquid, or mixed, and whether
3 simple or compound, which is used or intended for consumption by human beings
4 or domestic animals normally kept as household pets, and all substances or
5 ingredients added to any such material for any purpose. This definition shall not
6 apply to individual packages of cigarettes or individual cigars.

7 (B) Napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper
8 toweling, and disposable plates and cups.

9 (C) Detergents, soaps, and other cleaning agents.

10 (D) Pharmaceuticals, including nonprescription drugs, bandages, female hygiene
11 products, and toiletries.

12 (3) “Grocery department” means an area within a general retail merchandise
13 store which is engaged primarily in the retail sale of packaged food, rather than
14 food prepared for immediate consumption on or off the premises.

15 (4) “Grocery store” means a store engaged primarily in the retail sale of
16 packaged food, rather than food prepared for consumption on the premises.

17 (5) “Sale item or special” means any consumer commodity offered in good faith
18 for a period of 14 days or less, on sale at a price below the normal price that item
19 is usually sold for in that store. The Department of Food and Agriculture shall
20 determine the normal length of a sale held for consumer commodities generally
21 item priced on January 1, 1977, in stores regulated pursuant to this chapter, and
22 that period shall be used for the purposes of this subdivision. The department’s
23 determination as to the normal length of a sale shall be binding for the purposes of
24 this section, but each such determination shall not exceed seven days.

25 **Comment.** Section 1749.71 continues former Section 7100 without substantive change. The
26 former provision was ambiguous in its reference to “this chapter”; the new provision corrects the
27 reference to “this title.”

28 **Civ. Code § 1749.72. Violations and penalty**

29 1749.72. (a) The intentional violation of Section 1749.71 is punishable by a civil
30 penalty of not less than twenty-five dollars (\$25) nor more than five hundred
31 dollars (\$500).

32 (b) Failure to have a clearly readable price indicated on 12 units of the same
33 item required to be item-priced of the same commodity shall constitute a
34 presumption of intent to violate Section 1749.71.

35 (c) Every additional 12 units of the same item required to be item-priced that fail
36 to have a price indicated on them shall constitute a presumption of intent to violate
37 Section 1749.71.

38 (d) Each day that a violation continues shall also constitute a separate violation
39 after notification thereof to the manager or assistant manager of the retail grocery
40 store or the grocery department of the general retail merchandise store and shall
41 constitute a presumption of intent to violate Section 1749.71.

1 (e) Notwithstanding any other provision of law, any person may bring an action
2 to enjoin a violation of Section 1749.71.

3 **Comment.** Section 1749.72 continues former Section 7101 without substantive change.

4 **Civ. Code § 1749.73. Cause of action**

5 1749.73. Any person, firm, corporation, or association who violates Sections
6 1749.71 and 1749.72 shall be liable to any person injured for any losses and
7 expenses thereby incurred, and for the sum of fifty dollars (\$50) in addition
8 thereto. The remedy set forth herein is applicable only to actions brought in the
9 name of, and on behalf of, a single plaintiff and shall not be applicable in multiple
10 plaintiff or class actions.

11 **Comment.** Section 1749.73 continues former Section 7102 without substantive change.

12 **Civ. Code § 1749.74. Unintentional error**

13 1749.74. Improper pricing on the shelf or on the item due to unintentional error
14 shall not constitute a violation of this title.

15 **Comment.** Section 1749.74 continues former Section 7103 without substantive change. The
16 former provision was ambiguous in its reference to “this division”; the new provision corrects the
17 reference to “this title”.

18 **Civ. Code § 1749.75. Exclusive remedies**

19 1749.75. The remedies set forth in Sections 1749.72 and 1749.73 are the
20 exclusive remedies available to any person, state or local agency or law
21 enforcement official.

22 **Comment.** Section 1749.75 continues former Section 7104 without substantive change.

23 **Civ. Code § 1749.76. Preemption**

24 1749.76. It is the intention of the Legislature that this title shall occupy the field
25 with regard to item pricing and shall preempt all local ordinances, rules, or
26 regulations concerning item pricing.

27 **Comment.** Section 1749.76 continues former Section 7106 without substantive change.

28 **Civ. Code § 1917.166 (amended). Priority of lien**

29 SEC. _____. Section 1917.166 of the Civil Code is amended to read:

30 1917.166. The lien of a shared appreciation loan, including the principal amount
31 and all interest, whether accrued or to be accrued, and all amounts of contingent
32 deferred interest, shall attach from the time of the recordation of the deed of trust
33 securing the loan, and the lien, including the lien of the interest accrued or to be
34 accrued and of the contingent deferred interest, shall have priority over any other
35 lien or encumbrance affecting the property secured by the shared appreciation
36 instrument, recorded after the time of recordation of the shared appreciation
37 instrument. However, nothing in this section or Section 1917.165 shall preclude a
38 junior lien or encumbrance subordinate to the obligation of the shared appreciation

1 loan. In no case may a junior lien achieve priority over the lien securing the
2 obligation of the shared appreciation loan, provided that nothing in this section
3 shall be construed to supersede Section ~~3134 of the Civil Code~~ 8450.

4 **Comment.** Section 1917.166 is amended to correct a cross-reference.

5 **Civ. Code § 1917.615 (amended). Priority of lien**

6 SEC. _____. Section 1917.615 of the Civil Code is amended to read:

7 1917.615. The lien of a shared appreciation loan for seniors, including the total
8 loan obligation, shall attach from the time of the recordation of the deed of trust
9 securing the loan, and the lien, including the lien of the total loan obligation
10 accrued or to be accrued, shall have priority over any other lien or encumbrance
11 affecting the property secured by the shared appreciation instrument and recorded
12 after the time of recordation of the shared appreciation instrument. However,
13 nothing in this section or Section 1917.614 shall preclude a junior lien or
14 encumbrance subordinate to the total loan obligation of the shared appreciation
15 loan for seniors. In no case may a junior lien achieve priority over the lien
16 securing the total loan obligation of the shared appreciation loan, provided that
17 nothing in this section shall be construed to supersede Section ~~3134~~ 8450.

18 **Comment.** Section 1917.615 is amended to correct a cross-reference.

19 **Civ. Code § 3059 (amended). Mechanics lien**

20 SEC. _____. Section 3059 of the Civil Code is amended to read:

21 3059. The liens of mechanics, for materials and services upon real property, are
22 regulated by ~~Chapter 2 (commencing with Section 3109) of Title 15 of this part~~
23 Chapter 4 (commencing with Section 8400) of Part 6 of Division 4.

24 **Comment.** Section 3059 is amended to correct a cross-reference.

25 **Civ. Code § 3060 (amended). Lien on mine**

26 SEC. _____. Section 3060 of the Civil Code is amended to read:

27 3060. (a) As used in this section, "mine" means a mining claim or real property
28 worked as a mine.

29 (b) Any person who performs labor in any mining claim or claims, or in or upon
30 any real property worked as a mine, either in the development thereof its
31 development or in working thereon on it by the subtractive process, or furnishes
32 materials to be used or consumed therein in it, has a lien upon the same mine and
33 the works owned and used by the owners for milling or reducing the ores from the
34 same mine, for the value of the work or labor done or materials furnished by each
35 respectively, whether done or furnished at the instance of the owner of such
36 mining claim or claims or real property worked as a the mine, or his the owner's
37 agent, and every contractor, subcontractor, superintendent, or other person having
38 charge of any mining or work or labor performed in and about such mining claim
39 or claims or real property worked as a the mine, either as lessee or under a
40 working bond or contract thereon shall be held to be the agent of the owner for the

1 purposes of this section. The liens provided for by this section shall be enforced in
2 the same manner as those provided for by ~~Title 15 (commencing with Section~~
3 ~~3082), Part 4, Division 3~~ Part 6 (commencing with Section 8000) of Division 4.

4 **Comment.** Section 3060 is amended to correct a cross-reference. The other changes are
5 technical.

6 **Civ. Code § 3319 (amended). Design professional private work contract**

7 SEC. _____. Section 3319 of the Civil Code is amended to read:

8 3319. (a) In each written contract for private works of improvement entered into
9 on or after January 1, 1996, the contracting party and the design professional may
10 agree to contractual provisions that include a late payment penalty, in lieu of any
11 interest otherwise due. The terms of the late payment penalty shall be specifically
12 set forth in the written contract.

13 (b) The penalty authorized pursuant to subdivision (a) shall be separate from,
14 and in addition to, the design ~~professionals'~~ professionals liens provided by
15 ~~Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3~~
16 Chapter 3 (commencing with Section 8300) of Part 6 of Division 4, mechanics'
17 mechanics liens provided by ~~Chapter 2 (commencing with Section 3109) of Title~~
18 ~~15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section 8400) of Part 6 of
19 Division 4, and stop notices for private works provided in Chapter 3 (commencing
20 with Section 3156) of Title 15 of Part 4 of Division 3 stop payment notices
21 provided by Chapter 5 (commencing with Section 8500) of Part 6 of Division 4.

22 (c) None of the rights or obligations created or permitted by this section between
23 design professionals and contracting parties shall apply to construction loan funds
24 held by a lender pursuant to a construction loan agreement.

25 (d) For purposes of this section, the following definitions apply:

26 (1) "Contracting party" means any person or entity entering into a written
27 contract with a design professional for professional design services for a private
28 work of improvement.

29 (2) "Design professional" means a person licensed as an architect pursuant to
30 Chapter 3 (commencing with Section 5500) of Division 3 of the Business and
31 Professions Code, registered as a professional engineer pursuant to Chapter 7
32 (commencing with Section 6700) of Division 3 of the Business and Professions
33 Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with
34 Section 8700) of Division 3 of the Business and Professions Code.

35 **Comment.** Section 3319 is amended to correct cross-references and make stylistic revisions.

36 **Civ. Code § 3320 (amended). Payment to design professional on public work contract**

37 SEC. _____. Section 3320 of the Civil Code is amended to read:

38 3320. (a) In each contract for public works of improvement, entered into on or
39 after January 1, 1996, the public agency shall pay to the prime design professional
40 any progress payment within 30 days of receipt of a written demand for payment
41 in accordance with the contract, and the final retention payment within 45 days of

1 receipt of a written demand for payment in accordance with the contract. If the
2 public agency disputes in good faith any portion of the amount due, it may
3 withhold from the payment an amount not to exceed 150 percent of the disputed
4 amount. The disputed amount withheld is not subject to any penalty authorized by
5 this section.

6 (b) If any amount is wrongfully withheld or is not timely paid in violation of this
7 section, the prime design professional shall be entitled to a penalty of 11/2 percent
8 for the improperly withheld amount, in lieu of any interest otherwise due, per
9 month for every month that payment is not made. In any action for the collection
10 of amounts withheld in violation of this section, the prevailing party is entitled to
11 his or her reasonable attorney's fees and costs.

12 (c) The penalty described in subdivision (b) is separate from, and in addition to,
13 the design professionals' ~~liens provided by Chapter 8 (commencing with Section~~
14 ~~3081.1) of Title 14 of Part 4 of Division 3, mechanics' liens provided by Chapter 2~~
15 ~~(commencing with Section 3109) of Title 15 of Part 4 of Division 3, and stop~~
16 ~~notices for public works provided in Chapter 3 (commencing with Section 3156)~~
17 ~~of Title 15 of Part 4 of Division 3 remedies for a public works contract provided in~~
18 Part 6 (commencing with Section 41010) of Division 2 of the Public Contract
19 Code.

20 (d) This section does not apply to state agency contracts subject to Section 927.6
21 of the Government Code.

22 (e) None of the rights or obligations created by this section between prime
23 design professionals and public agencies apply to construction loan funds held by
24 a lender pursuant to a construction loan agreement.

25 (f) For purposes of this section:

26 (1) "Public agency" means the state, any county, any city, any city and county,
27 any district, any public authority, any public agency, any municipal corporation or
28 other political subdivision or political corporation of the state.

29 (2) "Design professional" means a person licensed as an architect pursuant to
30 Chapter 3 (commencing with Section 5500) of Division 3 of the Business and
31 Professions Code, registered as a professional engineer pursuant to Chapter 7
32 (commencing with Section 6700) of Division 3 of the Business and Professions
33 Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with
34 Section 8700) of Division 3 of the Business and Professions Code.

35 (3) "Prime design professional" means a design professional with a written
36 contract directly with the public agency.

37 **Comment.** Section 3320 is amended to correct a cross-reference. The references to liens are
38 not continued; the lien remedy is unavailable on a public works contract.

39 **Civ. Code § 3321 (amended). Payment by design professional on public work contract**

40 SEC. _____. Section 3321 of the Civil Code is amended to read:

41 3321. (a) In each contract for public works of improvement, a prime design
42 professional shall pay to each subconsultant design professional the amount due

1 him or her from the payment received, not later than 15 days after receipt of each
2 progress payment or final retention payment. If the prime design professional
3 disputes in good faith any portion of the amount due, he or she may withhold from
4 the payment an amount not to exceed 150 percent of the disputed amount. The
5 disputed amount withheld shall not be subject to any penalty authorized by this
6 section.

7 (b) If any amount is wrongfully withheld or is not timely paid in violation of this
8 section, the subconsultant design professional shall be entitled to a penalty of 11/2
9 percent of the improperly withheld amount, in lieu of any interest otherwise due,
10 per month, for each month that payment is not made. In any action for the
11 collection of amounts withheld in violation of this section, the prevailing party
12 shall be entitled to his or her reasonable attorney's fees and costs.

13 (c) The penalty described in subdivision (b) shall be separate from, and in
14 addition to, the design professionals' ~~liens provided by Chapter 8 (commencing~~
15 ~~with Section 3081.1) of Title 14 of Part 4 of Division 3, mechanics' liens provided~~
16 ~~by Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3,~~
17 ~~and stop notices for public works provided in Chapter 3 (commencing with~~
18 ~~Section 3156) of Title 15 of Part 4 of Division 3~~ remedies for a public works
19 contract provided in Part 6 (commencing with Section 41010) of Division 2 of the
20 Public Contract Code.

21 (d) None of the rights or obligations created by this section between prime
22 design professionals and subconsultant design professionals shall apply to
23 construction loan funds held by a lender pursuant to a construction loan
24 agreement.

25 (e) For purposes of this section:

26 (1) "Public agency" means the state, any county, any city, any city and county,
27 any district, any public authority, any public agency, any municipal corporation or
28 other political subdivision or political corporation of the state.

29 (2) "Design professional" means a person licensed as an architect pursuant to
30 Chapter 3 (commencing with Section 5500) of Division 3 of the Business and
31 Professions Code, registered as a professional engineer pursuant to Chapter 7
32 (commencing with Section 6700) of Division 3 of the Business and Professions
33 Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with
34 Section 8700) of Division 3 of the Business and Professions Code.

35 (3) "Prime design professional" means a design professional having a written
36 contract directly with the public agency.

37 (4) "Subconsultant design professional" means a design professional having a
38 written contract with a prime design professional.

39 **Comment.** Section 3321 is amended to correct a cross-reference. The references to liens are
40 not continued; the lien remedy is unavailable on a public works contract.

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CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 86 (amended). Classification of limited civil cases

SEC. _____. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) The following civil cases and proceedings are limited civil cases:

(1) ~~Cases~~ A case at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars (\$25,000) or less. This paragraph does not apply to ~~eases a case that involve~~ involves the legality of any tax, impost, assessment, toll, or municipal fine, except ~~actions an action~~ an action to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) ~~Actions~~ An action for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars (\$25,000); ~~actions an action~~ an action of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars (\$25,000).

(3) ~~Actions~~ An action to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or delivered under, or in consideration of, the contract; ~~actions an action~~ an action to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) ~~Proceedings~~ A proceeding in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or less.

(5) ~~Actions~~ An action to enforce and foreclose ~~liens~~ a lien on personal property where the amount of the ~~liens~~ lien is twenty-five thousand dollars (\$25,000) or less.

(6) ~~Actions~~ An action to enforce and foreclose, or ~~petitions a petition~~ a petition to release, ~~liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given~~ a lien arising under the provisions of ~~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, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or less. However, where an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or where the total amount of ~~the~~ liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a limited civil case.

(7) ~~Actions~~ An action for declaratory relief when brought pursuant to either of the following:

1 (A) By way of cross-complaint as to a right of indemnity with respect to the
2 relief demanded in the complaint or a cross-complaint in an action or proceeding
3 that is otherwise a limited civil case.

4 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
5 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
6 Division 3 of the Business and Professions Code, where the amount in controversy
7 is twenty-five thousand dollars (\$25,000) or less.

8 ~~(8) Actions~~ An action to issue a temporary restraining orders and preliminary
9 ~~injunctions, and order or preliminary injunction;~~ to take ~~accounts~~ an account,
10 where necessary to preserve the property or rights of any party to a limited civil
11 case; to make any order or perform any act, pursuant to Title 9 (commencing with
12 Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to
13 appoint a receiver pursuant to Section 564 in a limited civil case; to determine title
14 to personal property seized in a limited civil case.

15 ~~(9) Actions~~ An action under Article 3 (commencing with Section 708.210) of
16 Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in
17 personal property or to enforce the liability of the debtor of a judgment debtor
18 where the interest claimed adversely is of a value not exceeding twenty-five
19 thousand dollars (\$25,000) or the debt denied does not exceed twenty-five
20 thousand dollars (\$25,000).

21 ~~(10) Arbitration-related petitions~~ An arbitration-related petition filed pursuant to
22 either of the following:

23 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
24 except for uninsured motorist arbitration proceedings in accordance with Section
25 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
26 becomes final and the matter to be resolved by arbitration is a limited civil case
27 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
28 after the arbitration award becomes final and the amount of the award and all other
29 rulings, pronouncements, and decisions made in the award are within paragraphs
30 (1) to (9), inclusive, of subdivision (a).

31 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
32 and client that is binding or has become binding, pursuant to Article 13
33 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
34 Professions Code, where the arbitration award is twenty-five thousand dollars
35 (\$25,000) or less.

36 (b) The following cases in equity are limited civil cases:

37 (1) ~~Cases~~ A case to try title to personal property when the amount involved is
38 not more than twenty-five thousand dollars (\$25,000).

39 (2) ~~Cases~~ A case when equity is pleaded as a defensive matter in any case that is
40 otherwise a limited civil case.

41 (3) ~~Cases~~ A case to vacate a judgment or order of the court obtained in a limited
42 civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

1 **Comment.** Paragraph (6) of subdivision (a) of Section 86 is amended to correct a cross-
2 reference and eliminate obsolete terminology.

3 The section is also amended to make stylistic revisions.

4 **Code Civ. Proc. § 410.42 (amended). Dispute resolution provisions in construction contract**

5 SEC. _____. Section 410.42 of the Code of Civil Procedure is amended to read:

6 410.42. (a) The following provisions of a contract between the contractor and a
7 subcontractor with principal offices in this state, for the construction of a public or
8 private work of improvement in this state, shall be void and unenforceable:

9 ~~(a)~~ (1) A provision which purports to require any dispute between the parties to
10 be litigated, arbitrated, or otherwise determined outside this state.

11 ~~(b)~~ (2) A provision which purports to preclude a party from commencing such a
12 proceeding or obtaining a judgment or other resolution in this state or the courts of
13 this state.

14 (b) For purposes of this section, “construction” means any work or services
15 performed on, or materials provided for, a work of improvement, as defined in
16 Section ~~3106~~ 8050 of the Civil Code, and for which a lien may be claimed
17 pursuant to Section ~~3110~~ 8400 of the Civil Code (whether or not a lien is in fact
18 claimed) or for which such a lien could be claimed but for Section ~~3109~~ 8052 of
19 the Civil Code.

20 **Comment.** Section 410.42 is amended to correct cross-references and technical stylistic
21 revisions.

22 **Code Civ. Proc. § 708.760 (amended). Judgment debtor a public work contractor**

23 SEC. _____. Section 708.760 of the Code of Civil Procedure is amended to read:

24 708.760. (a) If the judgment debtor named in the abstract or certified copy of the
25 judgment filed pursuant to this article is a contractor upon a public work, the cost
26 of which is to be paid out of public moneys voted, appropriated, or otherwise set
27 apart for such purpose, only so much of the contract price shall be deemed owing
28 and unpaid within the meaning of Section 708.740 or 708.750 as may remain
29 payable under the terms of the contractor’s contract, upon the completion thereof,
30 after deducting sums due and to become due to persons described in ~~Section 3181~~
31 ~~of the Civil Code~~ Section 42030 of the Public Contract Code. In ascertaining the
32 sums due or to become due to such persons, only claims which are filed against
33 the moneys due or to become due to the judgment debtor in accordance with ~~the~~
34 ~~provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of~~
35 ~~Division 3 of the Civil Code~~ Chapter 4 (commencing with Section 44110) of Part
36 6 of Division 2 of the Public Contract Code shall be considered.

37 (b) The Controller, auditor, or other public disbursing officer whose duty it is to
38 make payments under the provisions of the contract may not deposit an amount
39 with the court pursuant to this article until the contract is completed, but may
40 deposit an amount with the court to satisfy the claim of the judgment debtor before
41 the payments specified in subdivision (a) are made so long as a sufficient amount

1 is retained for the satisfaction of the claims of persons described in ~~Section 3181~~
2 ~~of the Civil Code~~ Section 42030 of the Public Contract Code.

3 **Comment.** Section 708.760 is amended to correct cross-references.

4 **Code Civ. Proc. § 1203.61 (amended). Oil and gas lien**

5 SEC. _____. Section 1203.61 of the Code of Civil Procedure is amended to read:

6 1203.61. (a) Any lien provided for by this chapter shall be enforced in the same
7 manner as provided in ~~Title 15 (commencing with Section 3082), Part 4, Division~~
8 ~~3, Chapter 4 (commencing with Section 8400) of Part 6 of Division 4~~ of the Civil
9 Code. ~~Such~~ The action shall be filed within 180 days from the time of the
10 recording of the lien ~~provided for herein~~. If a credit ~~be~~ is given and notice of the
11 fact and terms of ~~such credit be~~ the credit are filed in the office of the county
12 recorder subsequent to the filing of ~~such the~~ the lien and prior to the expiration of ~~said~~
13 ~~the~~ the 180-day period, then ~~such the~~ the lien continues in force until 180 days after the
14 expiration of ~~such the~~ the credit, but no lien continues in force by reason of any
15 agreement to give credit for a longer time than one year from the time the work is
16 completed. If the proceedings to enforce the lien ~~be~~ are not prosecuted to trial
17 within two years after ~~the commencement thereof~~, the court may in its discretion
18 dismiss the ~~same~~ action for want of prosecution, and in all cases the dismissal of
19 ~~such the~~ the action (unless it ~~be~~ is expressly stated that ~~the same it~~ it is without
20 prejudice) or a judgment ~~rendered therein in the action~~ that no lien exists ~~shall be~~
21 is equivalent to the cancellation and removal from the record of ~~such the~~ the lien.

22 (b) As against any purchaser or encumbrancer for value and in good faith whose
23 rights are acquired subsequent to the expiration of the 180-day period following
24 the filing of ~~such the~~ the lien, no giving of credit or extension of the lien or time to
25 enforce the ~~same~~ lien shall be effective unless evidenced by a notice or agreement
26 filed for record in the office of the county recorder prior to the acquisition of the
27 rights of ~~such the~~ the purchaser or encumbrancer.

28 **Comment.** Section 1203.61 is amended to correct a cross-reference and make stylistic
29 revisions.

30 **Code Civ. Proc. § 1281.5 (amended). Arbitration**

31 SEC. _____. Section 1281.5 of the Code of Civil Procedure is amended to read:

32 1281.5. (a) Any person who proceeds to record and enforce a claim of lien by
33 commencement of an action pursuant to ~~Title 15 (commencing with Section 3082)~~
34 ~~of Part 4 of Division 3 Chapter 4 (commencing with Section 8400) of Part 6 of~~
35 Division 4 of the Civil Code, does not thereby waive any right of arbitration the
36 person may have pursuant to a written agreement to arbitrate, if, in filing an action
37 to enforce the claim of lien, the claimant does either of the following:

38 (1) Includes an allegation in the complaint that the claimant does not intend to
39 waive any right of arbitration, and intends to move the court, within 30 days after
40 service of the summons and complaint, for an order to stay further proceedings in
41 the action.

1 (2) At the same time that the complaint is filed, the claimant files an application
2 that the action be stayed pending the arbitration of any issue, question, or dispute
3 that is claimed to be arbitrable under the agreement and that is relevant to the
4 action to enforce the claim of lien.

5 (b) Within 30 days after service of the summons and complaint, the claimant
6 shall file and serve a motion and notice of motion pursuant to Section 1281.4 to
7 stay the action pending the arbitration of any issue, question, or dispute that is
8 claimed to be arbitrable under the agreement and that is relevant to the action to
9 enforce the claim of lien. The failure of a claimant to comply with this subdivision
10 is a waiver of the claimant's right to compel arbitration.

11 (c) The failure of a defendant to file a petition pursuant to Section 1281.2 at or
12 before the time the defendant answers the complaint filed pursuant to subdivision
13 (a) is a waiver of the defendant's right to compel arbitration.

14 **Comment.** Section 1281.5 is amended to correct a cross-reference.

15 **Code Civ. Proc. § 1800 (amended). Assignment for benefit of creditors**

16 SEC. _____. Section 1800 of the Code of Civil Procedure is amended to read:

17 1800. (a) In this section:

18 (1) The term "insolvent" means:

19 (A) With reference to a person other than a partnership, a financial condition
20 such that the sum of the person's debts is greater than all of the person's property,
21 at a fair valuation, exclusive of both of the following:

22 (i) Property transferred, concealed, or removed with intent to hinder, delay, or
23 defraud the person's creditors.

24 (ii) Property that is exempt from property of the estate pursuant to the election of
25 the person made pursuant to Section 1801.

26 (B) With reference to a partnership, financial condition such that the sum of the
27 partnership's debts are greater than the aggregate of, at a fair valuation, both of the
28 following:

29 (i) All of the partnership's property, exclusive of property of the kind specified
30 in clause (i) subparagraph (A).

31 (ii) The sum of the excess of the value of each general partner's separate
32 property, exclusive of property of the kind specified in clause (ii) of subparagraph
33 (A), over the partner's separate debts.

34 (2) The term "inventory" means personal property leased or furnished, held for
35 sale or lease, or to be furnished under a contract for service, raw materials, work in
36 process, or materials used or consumed in a business, including farm products
37 such as crops or livestock, held for sale or lease.

38 (3) The term "insider" means:

39 (A) If the assignor is an individual, any of the following:

40 (i) A relative of the assignor or of a general partner of the assignor.

41 (ii) A partnership in which the assignor is a general partner.

42 (iii) A general partner of the assignor.

1 (iv) A corporation of which the assignor is a director, officer, or person in
2 control.

3 (B) If the assignor is a corporation, any of the following:

4 (i) A director of the assignor.

5 (ii) An officer of the assignor.

6 (iii) A person in control of the assignor.

7 (iv) A partnership in which the assignor is a general partner.

8 (v) A general partner of the assignor.

9 (vi) A relative of a general partner, director, officer, or person in control of the
10 assignor.

11 (C) If the assignor is a partnership, any of the following:

12 (i) A general partner in the assignor.

13 (ii) A relative of a general partner in, general partner of, or person in control of
14 the assignor.

15 (iii) A partnership in which the assignor is a general partner.

16 (iv) A general partner of the assignor.

17 (v) A person in control of the assignor.

18 (D) An affiliate of the assignor or an insider of an affiliate as if the affiliate were
19 the assignor.

20 (E) A managing agent of the assignor.

21 As used in this paragraph, “relative” means an individual related by affinity or
22 consanguinity with the third degree as determined by the common law, or an
23 individual in a step or adoptive relationship within the third degree; and an
24 “affiliate” means a person that directly or indirectly owns, controls or holds with
25 power to vote 20 percent or more of the outstanding voting securities of the
26 assignor or 20 percent or more of whose outstanding voting securities are directly
27 or indirectly owned, controlled or held with power to vote by the assignor
28 (excluding securities held in a fiduciary or agency capacity without sole
29 discretionary power to vote, or held solely to secure a debt if the holder has not in
30 fact exercised the power to vote), or a person who operates the business of the
31 assignor under a lease or operating agreement or whose business is operated by the
32 assignor under a lease or operating agreement.

33 (4) The term “judicial lien” means a lien obtained by judgment, levy,
34 sequestration, or other legal or equitable process or proceeding.

35 (5) The term “new value” means money or money’s worth in goods, services, or
36 new credit, or release by a transferee of property previously transferred to the
37 transferee in a transaction that is neither void nor voidable by the assignor or the
38 assignee under any applicable law, but does not include an obligation substituted
39 for an existing obligation.

40 (6) The term “receivable” means a right to payment, whether or not the right has
41 been earned by performance.

42 (7) The term “security agreement” means an agreement that creates or provides
43 for a security interest.

1 (8) The term “security interest” means a lien created by an agreement.

2 (9) The term “statutory lien” means a lien arising solely by force of a statute on
3 specified circumstances or conditions, or lien of distress for rent, whether or not
4 statutory, but does not include security interest or judicial lien, whether or not the
5 interest or lien is provided by or is dependent on a statute and whether or not the
6 interest or lien is made fully effective by statute.

7 (10) The term “transfer” means every mode, direct or indirect, absolute or
8 conditional, voluntary or involuntary, or disposing of or parting with property or
9 with an interest in property, including retention of title as a security interest.

10 (b) Except as provided in subdivision (c), the assignee of any general
11 assignment for the benefit of creditors (as defined in Section 493.010) may
12 recover any transfer of property of the assignor:

13 (1) To or for the benefit of a creditor;

14 (2) For or on account of an antecedent debt owed by the assignor before the
15 transfer was made;

16 (3) Made while the assignor was insolvent;

17 (4) Made on or within 90 days before the date of the making of the assignment
18 or made between 90 days and one year before the date of making the assignment if
19 the creditor, at the time of the transfer, was an insider and had reasonable cause to
20 believe the debtor was insolvent at the time of the transfer; and

21 (5) That enables the creditor to receive more than another creditor of the same
22 class.

23 (c) The assignee may not recover under this section a transfer:

24 (1) To the extent that the transfer was:

25 (A) Intended by the assignor and the creditor to or for whose benefit the transfer
26 was made to be a contemporaneous exchange for new value given to the assignor;
27 and

28 (B) In fact a substantially contemporaneous exchange;

29 (2) To the extent that the transfer was:

30 (A) In payment of a debt incurred in the ordinary course of business or financial
31 affairs of the assignor and the transferee;

32 (B) Made in the ordinary course of business or financial affairs of the assignor
33 and the transferee; and

34 (C) Made according to ordinary business terms;

35 (3) Of a security interest in property acquired by the assignor:

36 (A) To the extent the security interest secures new value that was:

37 (i) Given at or after the signing of a security agreement that contains a
38 description of the property as collateral;

39 (ii) Given by or on behalf of the secured party under the agreement;

40 (iii) Given to enable the assignor to acquire the property; and

41 (iv) In fact used by the assignor to acquire the property; and

42 (B) That is perfected within 20 days after the security interest attaches;

1 (4) To or for the benefit of a creditor, to the extent that, after the transfer, the
2 creditor gave new value to or for the benefit of the assignor:

3 (A) Not secured by an otherwise unavoidable security interest; and

4 (B) On account of which new value the assignor did not make an otherwise
5 unavoidable transfer to or for the benefit of the creditor;

6 (5) Of a perfected security interest in inventory or a receivable or the proceeds
7 of either, except to the extent that the aggregate of all the transfers to the transferee
8 caused a reduction, as of the date of the making of the assignment and to the
9 prejudice of other creditors holding unsecured claims, of any amount by which the
10 debt secured by the security interest exceeded the value of all security interest for
11 the debt on the later of:

12 (A) Ninety days before the date of the making of the assignment.

13 (B) The date on which new value was first given under the security agreement
14 creating the security interest; or

15 (6) That is the fixing of a statutory lien.

16 (7) That is payment to a claimant, as defined in Section ~~3085~~ 8002 of the Civil
17 Code or Section 41020 of the Public Contract Code, in exchange for the claimant's
18 waiver or release of any potential or asserted claim of lien, stop payment notice, or
19 right to recover on a payment bond, or any combination thereof.

20 (8) To the extent that the transfer was a bona fide payment of a debt to a spouse,
21 former spouse, or child of the debtor, for alimony to, maintenance for, or support
22 of, the spouse or child, in connection with a separation agreement, divorce decree,
23 or other order of a court of record, or a determination made in accordance with
24 state or territorial law by a governmental unit, or property settlement agreement;
25 but not to the extent that either of the following occurs:

26 (A) The debt is assigned to another entity voluntarily, by operation of law or
27 otherwise, in which case, the assignee may not recover that portion of the transfer
28 that is assigned to the state or any political subdivision of the state pursuant to Part
29 D of Title IV of the Social Security Act (42 U.S.C. Sec. 601, et. seq.) and passed
30 on to the spouse, former spouse, or child of the debtor.

31 (B) The debt includes a liability designated as alimony, maintenance, or support,
32 unless the liability is actually in the nature of alimony, maintenance, or support.

33 (d) An assignee of any general assignment for the benefit of creditors (as
34 defined in Section 493.010), may avoid a transfer of property of the assignor
35 transferred to secure reimbursement of a surety that furnished a bond or other
36 obligation to dissolve a judicial lien that would have been avoidable by the
37 assignee under subdivision (b) of this section. The liability of the surety under the
38 bond or obligation shall be discharged to the extent of the value of the property
39 recovered by the assignee or the amount paid to the assignee.

40 (e) (1) For the purposes of this section:

41 (A) A transfer of real property other than fixtures, but including the interest of a
42 seller or purchaser under a contract for the sale of real property, is perfected when
43 a bona fide purchaser of the property from the debtor against whom applicable law

1 permits the transfer to be perfected cannot acquire an interest that is superior to the
2 interest of the transferee.

3 (B) A transfer of a fixture or property other than real property is perfected when
4 a creditor on a simple contract cannot acquire a judicial lien that is superior to the
5 interest of the transferee.

6 (2) For the purposes of this section, except as provided in paragraph (3), a
7 transfer is made at any of the following times:

8 (A) At the time the transfer takes effect between the transferor and the
9 transferee, if the transfer is perfected at, or within 10 days after, the time, except as
10 provided in subparagraph (B) of paragraph (3) of subdivision (c).

11 (B) At the time the transfer is perfected, if the transfer is perfected after the 10
12 days.

13 (C) Immediately before the date of the making of the assignment if the transfer
14 is not perfected at the later of:

15 (i) The making of the assignment.

16 (ii) Ten days after the transfer takes effect between the transferor and the
17 transferee.

18 (3) For the purposes of this section, a transfer is not made until the assignor has
19 acquired rights in the property transferred.

20 (f) For the purposes of this section, the assignor is presumed to have been
21 insolvent on and during the 90 days immediately preceding the date of the making
22 of the assignment.

23 (g) An action by an assignee under this section must be commenced within one
24 year after the making of the assignment.

25 **Comment.** Section 1800 is amended to correct a cross-reference and terminology.

26 EDUCATION CODE

27 **Educ. Code § 17307.5 (amended). Stop work order on public school construction**

28 SEC. _____. Section 17307.5 of the Education Code is amended to read:

29 17307.5. (a) Notwithstanding any provision of law to the contrary, including,
30 but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4 of the Civil~~
31 ~~Code Part 6 (commencing with Section 41010) of Division 2 of the Public~~
32 Contract Code, the Department of General Services may issue a stop work order
33 when construction work on a public school is not being performed in accordance
34 with existing law and would compromise the structural integrity of the building,
35 thereby endangering the public safety. The Department of General Services shall
36 allow construction of incidental and minor nonstructural additions or nonstructural
37 alterations without invoking its stop work authority.

38 (b) A school district, county superintendent of schools, county board of
39 education, or other public board, body, or officer whose construction work on a
40 public school is subject to a stop work order issued pursuant to subdivision (a)
41 shall not be held liable in any action filed against the public board, body, or officer

1 for stopping work as required by the stop work order, or for any delays caused by
2 compliance with the stop work order, except to the extent that an error or omission
3 by the public board, body, or officer is the basis for the issuance of the stop work
4 order.

5 **Comment.** Section 17307.5 is amended to correct a cross-reference.

6 **Educ. Code § 81133.5 (amended). Stop work order on community college construction**

7 SEC. _____. Section 81133.5 of the Education Code is amended to read:

8 81133.5. (a) Notwithstanding any provision of law to the contrary, including,
9 but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4 of the Civil~~
10 ~~Code Part 6 (commencing with Section 41010) of Division 2 of the Public~~
11 Contract Code, the Department of General Services may issue a stop work order
12 when construction work on a community college is not being performed in
13 accordance with existing law and would compromise the structural integrity of the
14 building, thereby endangering the public safety. The Department of General
15 Services shall allow construction of incidental and minor nonstructural additions
16 or nonstructural alterations without invoking its stop work authority.

17 (b) A community college district or other public board, body, or officer whose
18 construction work on a community college is subject to a stop work order issued
19 pursuant to subdivision (a) shall not be held liable in any action filed against the
20 public board, body, or officer for stopping work as required by the stop work
21 order, or for any delays caused by compliance with the stop work order, except to
22 the extent that an error or omission by the public board, body, or officer is that
23 basis for the issuance of the stop work order.

24 **Comment.** Section 81133.5 is amended to correct a cross-reference.

25 GOVERNMENT CODE

26 **Gov't Code § 7480 (amended). Disclosure of financial records**

27 SEC. _____. Section 7480 of the Government Code is amended to read:

28 7480. Nothing in this chapter prohibits any of the following:

29 (a) The dissemination of any financial information that is not identified with, or
30 identifiable as being derived from, the financial records of a particular customer.

31 (b) When any police or sheriff's department or district attorney in this state
32 certifies to a bank, credit union, or savings association in writing that a crime
33 report has been filed that involves the alleged fraudulent use of drafts, checks, or
34 other orders drawn upon any bank, credit union, or savings association in this
35 state, the police or sheriff's department or district attorney may request a bank,
36 credit union, or savings association to furnish, and a bank, credit union, or savings
37 association shall furnish, a statement setting forth the following information with
38 respect to a customer account specified by the police or sheriff's department or
39 district attorney for a period 30 days prior to, and up to 30 days following, the date
40 of occurrence of the alleged illegal act involving the account:

- 1 (1) The number of items dishonored.
- 2 (2) The number of items paid that created overdrafts.
- 3 (3) The dollar volume of the dishonored items and items paid which created
4 overdrafts and a statement explaining any credit arrangement between the bank,
5 credit union, or savings association and customer to pay overdrafts.
- 6 (4) The dates and amounts of deposits and debits and the account balance on
7 these dates.
- 8 (5) A copy of the signature card, including the signature and any addresses
9 appearing on a customer's signature card.
- 10 (6) The date the account opened and, if applicable, the date the account closed.
- 11 (7) A bank, credit union, or savings association that provides the requesting
12 party with copies of one or more complete account statements prepared in the
13 regular course of business shall be deemed to be in compliance with paragraphs
14 (1), (2), (3), and (4).
- 15 (c) When any police or sheriff's department or district attorney in this state
16 certifies to a bank, credit union, or savings association in writing that a crime
17 report has been filed that involves the alleged fraudulent use of drafts, checks, or
18 other orders drawn upon any bank, credit union, or savings association doing
19 business in this state, the police or sheriff's department or district attorney may
20 request, with the consent of the accountholder, the bank, credit union, or savings
21 association to furnish, and the bank, credit union, or savings association shall
22 furnish, a statement setting forth the following information with respect to a
23 customer account specified by the police or sheriff's department or district
24 attorney for a period 30 days prior to, and up to 30 days following, the date of
25 occurrence of the alleged illegal act involving the account:
 - 26 (1) The number of items dishonored.
 - 27 (2) The number of items paid that created overdrafts.
 - 28 (3) The dollar volume of the dishonored items and items paid which created
29 overdrafts and a statement explaining any credit arrangement between the bank,
30 credit union, or savings association and customer to pay overdrafts.
 - 31 (4) The dates and amounts of deposits and debits and the account balance on
32 these dates.
 - 33 (5) A copy of the signature card, including the signature and any addresses
34 appearing on a customer's signature card.
 - 35 (6) The date the account opened and, if applicable, the date the account closed.
 - 36 (7) A bank, credit union, or savings association doing business in this state that
37 provides the requesting party with copies of one or more complete account
38 statements prepared in the regular course of business shall be deemed to be in
39 compliance with paragraphs (1), (2), (3), and (4).
- 40 (d) For purposes of subdivision (c), consent of the accountholder shall be
41 satisfied if an accountholder provides to the financial institution and the person or
42 entity seeking disclosure, a signed and dated statement containing all of the
43 following:

1 (1) Authorization of the disclosure for the period specified in subdivision (c).

2 (2) The name of the agency or department to which disclosure is authorized and,
3 if applicable, the statutory purpose for which the information is to be obtained.

4 (3) A description of the financial records that are authorized to be disclosed.

5 (e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board,
6 the State Board of Equalization, the Employment Development Department, the
7 Controller or an inheritance tax referee when administering the Prohibition of Gift
8 and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the
9 Revenue and Taxation Code), a police or sheriff's department or district attorney,
10 a county welfare department when investigating welfare fraud, a county auditor-
11 controller or director of finance when investigating fraud against the county, or the
12 Department of Corporations when conducting investigations in connection with
13 the enforcement of laws administered by the Commissioner of Corporations, from
14 requesting of an office or branch of a financial institution, and the office or branch
15 from responding to a request, as to whether a person has an account or accounts at
16 that office or branch and, if so, any identifying numbers of the account or
17 accounts.

18 (2) No additional information beyond that specified in this section shall be
19 released to a county welfare department without either the accountholder's written
20 consent or a judicial writ, search warrant, subpoena, or other judicial order.

21 (3) A county auditor-controller or director of finance who unlawfully discloses
22 information he or she is authorized to request under this subdivision is guilty of
23 the unlawful disclosure of confidential data, a misdemeanor, which shall be
24 punishable as set forth in Section 7485.

25 (f) The examination by, or disclosure to, any supervisory agency of financial
26 records that relate solely to the exercise of its supervisory function. The scope of
27 an agency's supervisory function shall be determined by reference to statutes that
28 grant authority to examine, audit, or require reports of financial records or
29 financial institutions as follows:

30 (1) With respect to the Commissioner of Financial Institutions by reference to
31 Division 1 (commencing with Section 99), Division 1.5 (commencing with
32 Section 4800), Division 2 (commencing with Section 5000), Division 5
33 (commencing with Section 14000), Division 7 (commencing with Section 18000),
34 Division 15 (commencing with Section 31000), and Division 16 (commencing
35 with Section 33000) of the Financial Code.

36 (2) With respect to the Controller by reference to Title 10 (commencing with
37 Section 1300) of Part 3 of the Code of Civil Procedure.

38 (3) With respect to the Administrator of Local Agency Security by reference to
39 Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of
40 Title 5 of the Government Code.

41 (g) The disclosure to the Franchise Tax Board of (1) the amount of any security
42 interest that a financial institution has in a specified asset of a customer or (2)
43 financial records in connection with the filing or audit of a tax return or tax

1 information return that are required to be filed by the financial institution pursuant
2 to Part 10 (commencing with Section 17001), Part 11 (commencing with Section
3 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation
4 Code.

5 (h) The disclosure to the State Board of Equalization of any of the following:

6 (1) The information required by Sections 6702, 6703, 8954, 8957, 30313,
7 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443,
8 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205,
9 60404, and 60407 of the Revenue and Taxation Code.

10 (2) The financial records in connection with the filing or audit of a tax return
11 required to be filed by the financial institution pursuant to Part 1 (commencing
12 with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing
13 with Section 8601), Part 13 (commencing with Section 30001), Part 14
14 (commencing with Section 32001), and Part 17 (commencing with Section 37001)
15 of Division 2 of the Revenue and Taxation Code.

16 (3) The amount of any security interest a financial institution has in a specified
17 asset of a customer, if the inquiry is directed to the branch or office where the
18 interest is held.

19 (i) The disclosure to the Controller of the information required by Section 7853
20 of the Revenue and Taxation Code.

21 (j) The disclosure to the Employment Development Department of the amount
22 of any security interest a financial institution has in a specified asset of a customer,
23 if the inquiry is directed to the branch or office where the interest is held.

24 (k) The disclosure by a construction lender, as defined in Section ~~3087~~ 8006 of
25 the Civil Code, to the Registrar of Contractors, of information concerning the
26 making of progress payments to a prime contractor requested by the registrar in
27 connection with an investigation under Section 7108.5 of the Business and
28 Professions Code.

29 (l) Upon receipt of a written request from a local child support agency referring
30 to a support order pursuant to Section 17400 of the Family Code, a financial
31 institution shall disclose the following information concerning the account or the
32 person named in the request, whom the local child support agency shall identify,
33 whenever possible, by social security number:

34 (1) If the request states the identifying number of an account at a financial
35 institution, the name of each owner of the account.

36 (2) Each account maintained by the person at the branch to which the request is
37 delivered, and, if the branch is able to make a computerized search, each account
38 maintained by the person at any other branch of the financial institution located in
39 this state.

40 (3) For each account disclosed pursuant to paragraphs (1) and (2), the account
41 number, current balance, street address of the branch where the account is
42 maintained, and, to the extent available through the branch's computerized search,
43 the name and address of any other person listed as an owner.

1 (4) Whenever the request prohibits the disclosure, a financial institution shall not
2 disclose either the request or its response, to an owner of the account or to any
3 other person, except the officers and employees of the financial institution who are
4 involved in responding to the request and to attorneys, employees of the local
5 child support agencies, auditors, and regulatory authorities who have a need to
6 know in order to perform their duties, and except as disclosure may be required by
7 legal process.

8 (5) No financial institution, or any officer, employee, or agent thereof, shall be
9 liable to any person for (A) disclosing information in response to a request
10 pursuant to this subdivision, (B) failing to notify the owner of an account, or
11 complying with a request under this paragraph not to disclose to the owner, the
12 request or disclosure under this subdivision, or (C) failing to discover any account
13 owned by the person named in the request pursuant to a computerized search of
14 the records of the financial institution.

15 (6) The local child support agency may request information pursuant to this
16 subdivision only when the local child support agency has received at least one of
17 the following types of physical evidence:

18 (A) Any of the following, dated within the last three years:

19 (i) Form 599.

20 (ii) Form 1099.

21 (iii) A bank statement.

22 (iv) A check.

23 (v) A bank passbook.

24 (vi) A deposit slip.

25 (vii) A copy of a federal or state income tax return.

26 (viii) A debit or credit advice.

27 (ix) Correspondence that identifies the child support obligor by name, the bank,
28 and the account number.

29 (x) Correspondence that identifies the child support obligor by name, the bank,
30 and the banking services related to the account of the obligor.

31 (xi) An asset identification report from a federal agency.

32 (B) A sworn declaration of the custodial parent during the 12 months
33 immediately preceding the request that the person named in the request has had or
34 may have had an account at an office or branch of the financial institution to
35 which the request is made.

36 (7) Information obtained by a local child support agency pursuant to this
37 subdivision shall be used only for purposes that are directly connected with the
38 administration of the duties of the local child support agency pursuant to Section
39 17400 of the Family Code.

40 (m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title
41 42 of the United States Code, upon receipt of an administrative subpoena on the
42 current federally approved interstate child support enforcement form, as approved

1 by the federal Office of Management and Budget, a financial institution shall
2 provide the information or documents requested by the administrative subpoena.

3 (2) The administrative subpoena shall refer to the current federal Office of
4 Management and Budget control number and be signed by a person who states
5 that he or she is an authorized agent of a state or county agency responsible for
6 implementing the child support enforcement program set forth in Part D
7 (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the
8 United States Code. A financial institution may rely on the statements made in the
9 subpoena and has no duty to inquire into the truth of any statement in the
10 subpoena.

11 (3) If the person who signs the administrative subpoena directs a financial
12 institution in writing not to disclose either the subpoena or its response to any
13 owner of an account covered by the subpoena, the financial institution shall not
14 disclose the subpoena or its response to the owner.

15 (4) No financial institution, or any officer, employee, or agent thereof, shall be
16 liable to any person for (A) disclosing information or providing documents in
17 response to a subpoena pursuant to this subdivision, (B) failing to notify any
18 owner of an account covered by the subpoena or complying with a request not to
19 disclose to the owner, the subpoena or disclosure under this subdivision, or (C)
20 failing to discover any account owned by the person named in the subpoena
21 pursuant to a computerized search of the records of the financial institution.

22 (n) The dissemination of financial information and records pursuant to any of
23 the following:

24 (1) Compliance by a financial institution with the requirements of Section 2892
25 of the Probate Code.

26 (2) Compliance by a financial institution with the requirements of Section 2893
27 of the Probate Code.

28 (3) An order by a judge upon a written *ex parte* application by a peace officer
29 showing specific and articulable facts that there are reasonable grounds to believe
30 that the records or information sought are relevant and material to an ongoing
31 investigation of a felony violation of Section 186.10 or of any felony subject to the
32 enhancement set forth in Section 186.11.

33 (A) The *ex parte* application shall specify with particularity the records to be
34 produced, which shall be only those of the individual or individuals who are the
35 subject of the criminal investigation.

36 (B) The *ex parte* application and any subsequent judicial order shall be open to
37 the public as a judicial record unless ordered sealed by the court, for a period of 60
38 days. The sealing of these records may be extended for 60-day periods upon a
39 showing to the court that it is necessary for the continuance of the investigation.
40 Sixty-day extensions may continue for up to one year or until termination of the
41 investigation of the individual or individuals, whichever is sooner.

1 (C) The records ordered to be produced shall be returned to the peace officer
2 applicant or his or her designee within a reasonable time period after service of the
3 order upon the financial institution.

4 (D) Nothing in this subdivision shall preclude the financial institution from
5 notifying a customer of the receipt of the order for production of records unless a
6 court orders the financial institution to withhold notification to the customer upon
7 a finding that the notice would impede the investigation.

8 (E) Where a court has made an order pursuant to this paragraph to withhold
9 notification to the customer under this paragraph, the peace officer or law
10 enforcement agency who obtained the financial information shall notify the
11 customer by delivering a copy of the ex parte order to the customer within 10 days
12 of the termination of the investigation.

13 (4) No financial institution, or any officer, employee, or agent thereof, shall be
14 liable to any person for any of the following:

15 (A) Disclosing information to a probate court pursuant to Sections 2892 and
16 2893.

17 (B) Disclosing information in response to a court order pursuant to paragraph
18 (3).

19 (C) Complying with a court order under this subdivision not to disclose to the
20 customer, the order, or the dissemination of information pursuant to the court
21 order.

22 (o) Disclosure by a financial institution to a peace officer, as defined in Section
23 830.1 of the Penal Code, pursuant to the following:

24 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code,
25 provided that the financial institution has first complied with the requirements of
26 paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the
27 Civil Code.

28 (2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code,
29 provided that the financial institution has first complied with the requirements of
30 paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the
31 Financial Code.

32 (3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code,
33 provided that any financial institution that is a finance lender has first complied
34 with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of
35 Section 22470 of the Financial Code.

36 (p) When the governing board of the Public Employees' Retirement System or
37 the State Teachers' Retirement System certifies in writing to a financial institution
38 that a benefit recipient has died and that transfers to the benefit recipient's account
39 at the financial institution from the retirement system occurred after the benefit
40 recipient's date of death, the financial institution shall furnish the retirement
41 system the name and address of any coowner, cosigner, or any other person who
42 had access to the funds in the account following the date of the benefit recipient's

1 death, or if the account has been closed, the name and address of the person who
2 closed the account.

3 (q) When the retirement board of a retirement system established under the
4 County Employees Retirement Law of 1937 certifies in writing to a financial
5 institution that a retired member or the beneficiary of a retired member has died
6 and that transfers to the account of the retired member or beneficiary of a retired
7 member at the financial institution from the retirement system occurred after the
8 date of death of the retired member or beneficiary of a retired member, the
9 financial institution shall furnish the retirement system the name and address of
10 any coowner, cosigner, or any other person who had access to the funds in the
11 account following the date of death of the retired member or beneficiary of a
12 retired member, or if the account has been closed, the name and address of the
13 person who closed the account.

14 (r) This section shall become operative on January 1, 2013.

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.).

1 () I, as owner of the property, am exclusively contracting with licensed
2 contractors to construct the project (Sec. 7044, Business and Professions Code:
3 The Contractors' State License Law does not apply to an owner of property who
4 builds or improves thereon, and who contracts for the projects with a contractor(s)
5 licensed pursuant to the Contractors' State License Law.).

6 () I am exempt under Sec. _____, B.& P.C. for this reason

7 _____
8 Date _____ Owner _____

9 **WORKERS' COMPENSATION DECLARATION**

10 I hereby affirm under penalty of perjury one of the following declarations: ___ I
11 have and will maintain a certificate of consent to self-insure for workers'
12 compensation, as provided for by Section 3700 of the Labor Code, for the
13 performance of the work for which this permit is issued. ___ I have and will
14 maintain workers' compensation insurance, as required by Section 3700 of the
15 Labor Code, for the performance of the work for which this permit is issued. My
16 workers' compensation insurance carrier and policy number are:

17 Carrier _____

18 Policy Number _____

19 I certify that, in the performance of the work for which this permit is issued, I
20 shall not employ any person in any manner so as to become subject to the
21 workers' compensation laws of California, and agree that, if I should become
22 subject to the workers' compensation provisions of Section 3700 of the Labor
23 Code, I shall forthwith comply with those provisions.

24 Date: _____ Applicant: _____

25 **WARNING: FAILURE TO SECURE WORKERS' COMPENSATION**
26 **COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO**
27 **CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED**
28 **THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF**
29 **COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF**
30 **THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.**

31 **CONSTRUCTION LENDING AGENCY**

32 I hereby affirm under penalty of perjury that there is a construction lending
33 agency for the performance of the work for which this permit is issued (Sec. 3097
34 8132, Civ. C.).

35 Lender's Name _____

36 Branch Designation _____

37 Lender's Address _____

38 I certify that I have read this application and state that the above information is
39 correct. I agree to comply with all city and county ordinances and state laws
40 relating to building construction, and hereby authorize representatives of this
41 county to enter upon the above-mentioned property for inspection purposes.

42 _____

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 Gorgonio 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.

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.

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
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.....	8020, Pub. Cont. Code §§ 41070, 42030
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)

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
3145.....	8460	3201.....	Pub. Cont. Code § 44250
3146.....	8460	3202.....	Pub. Cont. Code § 44260
3147.....	8462	3203.....	Pub. Cont. Code § 44270
3148.....	8490	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		
3200.....	Pub. Cont. Code § 44240		

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
3262(d)(4).....	8176, Pub. Cont. Code § 42390	7100	1749.71
3262.5.....	8802	7101	1749.72
3263.....	8060	7102	1749.73
3264.....	8500, Pub. Cont. Code § 44110	7103	1749.74
3265.....	Pub. Cont. Code § 44410(b)	7104	1749.75
3266(a).....	8066(a)	7105	1749.70
3266(b).....	Pub. Cont. Code § 42010	7106	1749.76
3267.....	8608, 45090		
