

Third Supplement to Memorandum 2008-9

Mechanics Lien Law: Discussion of Issues

This supplement continues to address remaining outstanding issues relating to the proposed law.

The issues presented in this supplement are presumed to be noncontroversial “consent” issues. The staff does not intend to discuss any issue in this supplement at the upcoming meeting, unless a Commission member or member of the public expresses a question or concern about the issue.

APPLICATION OF PROVISIONS

The Commission has approved the relocation of the public work provisions of the existing mechanics lien statute from the Civil Code to the Public Contract Code.

To implement the separation of the provisions, the private and public work parts of the proposed law each contain an “application of part” provision, and a “relation to other statutes” provision. Two of these provisions may require technical correction.

Application of Public Work Provisions

Proposed Public Contract Code Section 42010 provides:

§ 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.

Paragraph (1) of subdivision (b) is a new provision, not continued from existing law. Upon further examination, this provision may be overbroad. A public works contract could be “governed by” any number of federal statutes

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

(e.g., the ADA, nondiscrimination laws, etc.) that would not exempt the contract from the provisions of state mechanics lien law.

The paragraph is also largely superfluous. As stated in subdivision (a), the public work part of the proposed law applies only to a public works contract awarded by a “public entity.” “Public entity” is a defined term under the proposed law, and as reasonably interpreted includes only state and local public entities. See proposed Pub. Cont. Code § 41110, Pub. Cont. Code § 1100.

Deletion of the paragraph from the proposed law would more accurately preserve existing law. In the absence of any new provision in the proposed law relating to federal law, the extent to which federal law governs a work of improvement would remain unchanged under the proposed law.

The staff recommends that **proposed Public Contract Code Section 42010(b)(1) be deleted.**

Application of Private Work Provisions

Proposed Civil Code Section 8066 provides:

§ 8066. Relation to other statutes

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

(b) 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.

This provision inadvertently fails to continue another provision of existing law that exempts certain work from application of the mechanics lien law.

Civil Code Section 3266(b) provides that the existing mechanics lien statute, in its entirety, does not apply to work governed by former code sections continued by Public Contract Code Sections 20457 through 20464:

(b) This title does not supersede Chapter 12 (commencing with Section 5290), Part 3, Division 7, of the Streets and Highways Code, and the provisions of that chapter shall govern those transactions to which it applies rather than the provisions of this title.

This exemption is continued in the public work part of the proposed law (see proposed Pub. Cont. Code § 42010(b)(2), above), but has not been continued in the private work part.

The staff recommends that **proposed Civil Code Section 8066 be revised as follows:**

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

(b) 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.

(c) This part does not apply to a transaction governed by Public Contract Code Sections 20457 to 20464, inclusive.

Respectfully submitted,

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