

Memorandum 2010-15

2010 Legislative Program: Status of SB 189 (Lowenthal)

This memorandum reports on the status of Senate Bill 189 (Lowenthal), which would implement the Commission's recommendation on *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007).

STATUS OF BILL

SB 189 was approved by the Senate by a unanimous vote on January 25, 2010. The bill is presently pending in the Assembly, and is expected to be heard by the Assembly Judiciary Committee in June, 2010.

The bill has been amended twice this year.

On January 14, 2010, the Senate Judiciary Committee made a technical amendment to the bill, involving the location of an unrelated statutory part of the Civil Code. The amendment had no effect on the statutory mechanics lien law.

On February 4, 2010, the bill was amended to conform to a mechanics lien bill enacted last year, Assembly Bill 457 (Monning). 2009 Cal. Stat. ch. 109. That change was approved by the Commission at a prior meeting. See Memorandum 2009-45, pp. 15-16; Minutes (October 2009), p. 5.

Working Group Process

While the bill was being considered in the Senate, some stakeholder groups expressed concern that the bill might have unintended adverse effects. To address those concerns, Senator Lowenthal committed to working with stakeholders to address any specific issues they might have about the bill, while the bill is pending in the Assembly.

This would be an extension of the working group process that has already been in progress for over a year, with stakeholders invited to identify specific

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The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

concerns about the bill, which are then analyzed and discussed in meetings with all interested groups.

That working group process has been successful so far in identifying specific stakeholder concerns and figuring out how to address them. In some cases, an explanation of the bill is all that was required to address a concern. In other instances, a revision to the Commission's official Comment, to explain the intended meaning of a provision may be sufficient to address the concern. In other cases, an amendment of the bill itself might be required (usually to reverse a proposed substantive change, thereby reverting to existing law on the contested point).

A working group meeting has been scheduled for April 30, 2010. In preparation for that meeting, the staff has been analyzing comments submitted by various stakeholder groups.

The staff will keep the Commission informed on the results of the working group meeting process as things develop.

Bill Conflict Coordination

Aside from whatever proposed amendments might result from the working group process, it is almost certain that SB 189 will need to be amended to avoid conflicts with other bills.

Assembly Bill 2216 (Fuentes) presents such a potential conflict. It would amend a provision (Civil Code Section 3252) that would be repealed by SB 189. It is likely that SB 189 will eventually need to be amended so as to preserve the effect of AB 2216, if in fact AB 2216 is enacted. The staff will monitor the progress of AB 2216 and will work with Senator Lowenthal's staff to ensure that any potential conflict is avoided.

In addition, it will probably be necessary to amend SB 189 to better coordinate with SB 1330 (Committee on Judiciary). SB 1330 is the Legislature's annual Maintenance of the Codes bill, which is prepared by the Office of the Legislative Counsel to make technical, nonsubstantive corrections to existing legislation.

Because the Maintenance of the Codes bill affects a large number of sections, the risk of conflicts with other statutes is high. For that reason, the Maintenance of the Codes Bill typically includes a "subordination clause," providing that the Maintenance of the Codes bill will yield in the event of a conflict with any other bill. SB 1330 contains a subordination clause.

SB 189 also contains a subordination clause, for similar reasons.

If SB 189 and SB 1330 were to affect the same provision, the effect of the “dueling” subordination clauses could be confusing. In order to avoid that result, **the staff recommends that SB 189 be amended to specifically exclude SB 1330 from its subordination clause.** In effect, SB 189 would yield to every bill *except* SB 1330. We have followed that approach in the past, when a Commission-recommended bill included a subordination clause.

Technical Corrections

The Office of the Legislative Counsel and the staff have noted a handful of minor technical problems in the bill that need to be corrected. Those corrections can be made when the bill is next amended.

Respectfully submitted,

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