

AMENDED IN SENATE APRIL 16, 2008

**SENATE BILL**

**No. 1449**

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**Introduced by Senator Calderon**

February 21, 2008

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~~An act to amend Section 7108.5 of the Business and Professions Code, to amend Sections 3098 and 3252 of the Civil Code, and to amend Sections 10262 and 10262.5 of the Public Contract Code, relating to~~  
*An act to add Section 3110.2 to the Civil Code, relating to works of improvement.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1449, as amended, Calderon. Works of improvement: *liens*.

*Existing law provides that all persons and laborers of every class performing labor upon, bestowing skill or other necessary services on, furnishing materials or leasing equipment to be used or consumed in, or furnishing appliances, teams, or power contributing to, a work of improvement shall have a lien upon the property for the value of the labor, materials, or use.*

*This bill would require each person entitled to a lien as described above in an amount greater than \$400 to prepare a list of other persons with whom that person contracts who are entitled to liens. It would require that the list be provided, within 14 days of commencing work on the work of improvement, to the prime contractor for that work of improvement, or, if there is no prime contractor, to the owner of the property. The bill would also require that, if any additional contract is entered into with a person entitled to a lien, the person required to provide the list, within 14 days after entering into that contract, deliver an addendum to the list to the prime contractor or owner.*

~~(1) Existing law, the Contractors' State License Law, requires a prime contractor or subcontractor to pay to any subcontractor, not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. A similar provision applies under the State Contract Act with respect to payments made by a contractor, prime contractor, or subcontractor to a subcontractor. Any contractor or his or her agent or employee who permits the violation of any contract awarded pursuant to the State Contract Act to the injury of the state, and any subcontractor or agent or employee of any contractor or subcontractor who has knowledge of any work being done in violation of any contract under the State Contract Act and does not report it, as specified, is guilty of a felony punishable by imprisonment in the state prison.~~

~~This bill would instead require, under both the Contractors' State License Law, as applicable to public works of improvement only, and the State Contract Act, a contractor, prime contractor, or subcontractor, as applicable, to pay those amounts to the subcontractor not later than 7, rather than 10, days of receipt of each progress payment. By expanding the scope of a crime, the bill would impose a state-mandated local program.~~

~~(2) Under existing law, if labor, service, equipment, or materials have been furnished to a jobsite by a claimant who did not give a 20-day public work preliminary bond notice, then that claimant is not precluded from giving a preliminary notice at any time thereafter. However, existing law then only allows that claimant to assert a claim against a payment bond and to file a stop notice for labor, service, equipment, or material furnished within 20 days prior to the service of that preliminary notice, and at any time thereafter.~~

~~This bill would delete the provision that related to asserting a claim against a payment bond.~~

~~(3) Existing law requires that a 20-day public work preliminary bond notice be given under specified circumstances. If the notice is not given, a claimant may enforce a claim by giving written notice to the surety and the bond principal within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement.~~

~~This bill would delete the provisions authorizing a claimant to enforce a claim by giving written notice to the surety and the bond principal within 15 days after recordation of a notice of completion and extending the time for giving written notice to the surety and bond principal to 75 days after completion of the work of improvement if a notice of completion has not been recorded.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no. State-mandated local program: yes-no.~~

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3110.2 is added to the Civil Code, to read:  
2     3110.2. (a) Each person entitled to a lien pursuant to Section  
3     3110 in an amount greater than four hundred dollars (\$400) shall  
4     prepare a list of other persons with whom that person contracts  
5     who are entitled to liens. The list shall include the name, address,  
6     and telephone number of the contact person for each person on  
7     the list. The list shall be delivered, within 14 days of commencing  
8     work on the work of improvement, to the prime contractor for that  
9     work of improvement, or, if there is no prime contractor, to the  
10    owner of the property.

11    (b) If any additional contract is entered into with a person  
12    entitled to a lien pursuant to Section 3110, the person required to  
13    provide the list specified in subdivision (a) shall, within 14 days  
14    after entering into that contract, deliver to the prime contractor  
15    or owner, as appropriate, an addendum to the list containing the  
16    name, address, and telephone number of the contact person for  
17    each person added to the list.

18    SECTION 1. ~~Section 7108.5 of the Business and Professions~~  
19    Code is amended to read:

20    ~~7108.5. (a) On all private works of improvement, a prime~~  
21    ~~contractor or subcontractor shall pay to any subcontractor, not later~~  
22    ~~than 10 days of receipt of each progress payment, unless otherwise~~  
23    ~~agreed to in writing, the respective amounts allowed the contractor~~

1 on account of the work performed by the subcontractors, to the  
2 extent of each subcontractor's interest therein.

3 (b) On all public works of improvement, a prime contractor or  
4 subcontractor shall pay to any subcontractor, not later than seven  
5 days of receipt of each progress payment, the respective amounts  
6 allowed the contractor on account of the work performed by the  
7 subcontractors, to the extent of each subcontractor's interest  
8 therein.

9 (c) In the event that there is a good faith dispute over all or any  
10 portion of the amount due on a progress payment from the prime  
11 contractor or subcontractor to a subcontractor, then the prime  
12 contractor or subcontractor may withhold no more than 150 percent  
13 of the disputed amount.

14 (d) Any violation of this section shall constitute a cause for  
15 disciplinary action and shall subject the licensee to a penalty,  
16 payable to the subcontractor, of 2 percent of the amount due per  
17 month for every month that payment is not made. In any action  
18 for the collection of funds wrongfully withheld, the prevailing  
19 party shall be entitled to his or her attorney's fees and costs.

20 (e) The sanctions authorized under this section shall be separate  
21 from, and in addition to, all other remedies either civil,  
22 administrative, or criminal.

23 (f) This section applies to all private works of improvement and  
24 to all public works of improvement, except where Section 10262  
25 of the Public Contract Code applies.

26 SEC. 2.— Section 3098 of the Civil Code is amended to read:

27 3098. "Preliminary 20-day notice (public work)" means a  
28 written notice from a claimant that was given prior to the assertion  
29 of a claim against a payment bond, or the filing of a stop notice  
30 on public work, and is required to be given under the following  
31 circumstances:

32 (a) In any case in which the law of this state affords a right to  
33 a person furnishing labor or materials for a public work who has  
34 not been paid therefor to assert a claim against a payment bond,  
35 or to file a stop notice with the public agency concerned, and  
36 thereby cause the withholding of payment from the contractor for  
37 the public work, any person that has no direct contractual  
38 relationship with the contractor, other than a person who performed  
39 actual labor for wages or an express trust fund described in Section  
40 3111, may file the preliminary notice, but no payment shall be

1 withheld from the contractor pursuant to that notice unless the  
2 person has caused written notice to be given to the contractor, and  
3 the public agency concerned, not later than 20 days after the  
4 claimant has first furnished labor, services, equipment, or materials  
5 to the jobsite, stating with substantial accuracy a general description  
6 of labor, service, equipment, or materials furnished or to be  
7 furnished, and the name of the party to whom the same was  
8 furnished. This notice shall be served by mailing the same by  
9 first-class mail, registered mail, or certified mail, postage prepaid,  
10 in an envelope addressed to the contractor at any place the  
11 contractor maintains an office or conducts business, or his or her  
12 residence, or by personal service. In case of any public works  
13 constructed by the Department of Public Works or the Department  
14 of General Services of the state, such notice shall be served by  
15 mailing in the same manner as above, addressed to the office of  
16 the disbursing officer of the department constructing the work, or  
17 by personal service upon the officer. When service is by registered  
18 or certified mail, service is complete at the time of the deposit of  
19 the registered or certified mail.

20 (b) If the contract price to be paid to any subcontractor on a  
21 particular work of improvement exceeds four hundred dollars  
22 (\$400), the failure of that contractor, licensed under Chapter 9  
23 (commencing with Section 7000) of Division 3 of the Business  
24 and Professions Code, to give the notice provided for in this  
25 section, constitutes grounds for disciplinary action by the Registrar  
26 of Contractors.

27 (c) The notice requirements of this section shall not apply to a  
28 laborer described in Section 3089 or to an express trust fund  
29 described in Section 3111.

30 (d) If labor, service, equipment, or materials have been furnished  
31 to a jobsite by a claimant who did not give a preliminary notice  
32 pursuant to subdivision (a), that claimant shall not be precluded  
33 from giving a preliminary notice at any time thereafter. The  
34 claimant shall, however, be entitled to file a stop notice only for  
35 labor, service, equipment, or material furnished within 20 days  
36 prior to the service of the preliminary notice, and at any time  
37 thereafter.

38 (e) The failure to provide, pursuant to Chapter 974 of the  
39 Statutes of 1994, a written preliminary notice to a subcontractor

1 with whom the claimant has contracted shall not affect the validity  
2 of any preliminary notice provided pursuant to this section.

3 ~~SEC. 3. Section 3252 of the Civil Code is amended to read:~~

4 ~~3252. With regard to a contract entered into on or after January~~  
5 ~~1, 1995, in order to enforce a claim upon any payment bond given~~  
6 ~~in connection with a public work, a claimant shall give the 20-day~~  
7 ~~public works preliminary bond notice as provided in Section 3098.~~

8 ~~SEC. 4. Section 10262 of the Public Contract Code is amended~~  
9 ~~to read:~~

10 ~~10262. The contractor shall pay to his or her subcontractors,~~  
11 ~~within seven days of receipt of each progress payment, the~~  
12 ~~respective amounts allowed the contractor on account of the work~~  
13 ~~performed by his or her subcontractors, to the extent of each~~  
14 ~~subcontractor's interest therein. The payments to subcontractors~~  
15 ~~shall be based on estimates made pursuant to Section 10261. Any~~  
16 ~~diversion by the contractor of payments received for prosecution~~  
17 ~~of a contract, or failure to reasonably account for the application~~  
18 ~~or use of the payments constitutes ground for actions proscribed~~  
19 ~~in Section 10253, in addition to disciplinary action by the~~  
20 ~~Contractors' State License Board. The subcontractor shall notify,~~  
21 ~~in writing, the Contractors' State License Board and the department~~  
22 ~~of any payment less than the amount or percentage approved for~~  
23 ~~the class or item of work as set forth in Section 10261.~~

24 ~~SEC. 5. Section 10262.5 of the Public Contract Code is~~  
25 ~~amended to read:~~

26 ~~10262.5. (a) Notwithstanding any other provision of law, a~~  
27 ~~prime contractor or subcontractor shall pay to any subcontractor,~~  
28 ~~not later than seven days of receipt of each progress payment, the~~  
29 ~~respective amounts allowed the contractor on account of the work~~  
30 ~~performed by the subcontractors, to the extent of each~~  
31 ~~subcontractor's interest therein. In the event that there is a good~~  
32 ~~faith dispute over all or any portion of the amount due on a progress~~  
33 ~~payment from the prime contractor or subcontractor to a~~  
34 ~~subcontractor, then the prime contractor or subcontractor may~~  
35 ~~withhold no more than 150 percent of the disputed amount.~~

36 ~~Any contractor who violates this section shall pay to the~~  
37 ~~subcontractor a penalty of 2 percent of the amount due per month~~  
38 ~~for every month that payment is not made. In any action for the~~  
39 ~~collection of funds wrongfully withheld, the prevailing party shall~~  
40 ~~be entitled to his or her attorney's fees and costs.~~

1 ~~(b) This section shall not be construed to limit or impair any~~  
2 ~~contractual, administrative, or judicial remedies otherwise available~~  
3 ~~to a contractor or a subcontractor in the event of a dispute involving~~  
4 ~~late payment or nonpayment by a contractor or deficient~~  
5 ~~subcontract performance or nonperformance by a subcontractor.~~

6 ~~(e) On or before September 1 of each year, the head of each~~  
7 ~~state agency shall submit to the Legislature a report on the number~~  
8 ~~and dollar volume of written complaints received from~~  
9 ~~subcontractors and prime contractors on contracts in excess of~~  
10 ~~three hundred thousand dollars (\$300,000), relating to violations~~  
11 ~~of this section.~~

12 ~~SEC. 6. No reimbursement is required by this act pursuant to~~  
13 ~~Section 6 of Article XIII B of the California Constitution because~~  
14 ~~the only costs that may be incurred by a local agency or school~~  
15 ~~district will be incurred because this act creates a new crime or~~  
16 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
17 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
18 ~~the Government Code, or changes the definition of a crime within~~  
19 ~~the meaning of Section 6 of Article XIII B of the California~~  
20 ~~Constitution.~~