

AMENDED IN SENATE DECEMBER 15, 2009

SENATE BILL

No. 189

Introduced by Senator Lowenthal

February 18, 2009

An act to amend Sections 7034, 7071.5, 7071.10, 7159, 7159.1, 7159.5, 7159.14, 7164, 8513, and 17577.5 of the Business and Professions Code, to amend Sections 1917.166, 1917.615, 3059, 3060, 3319, 3320, and 3321 of, to add Title 1.4C (commencing with Section 1749.70) to Part 4 of Division 3 of, to add Part 6 (commencing with Section 8000) to Division 4 of, to repeal Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3 of, to repeal Title 15 (commencing with Section 3082) of Part 4 of Division 3 of, and to repeal Part 8 (commencing with Section 7100) of Division 4 of, the Civil Code, to amend Sections 86, 410.42, 708.760, 1203.61, 1281.5, and 1800 of the Code of Civil Procedure, to amend Sections 17307.5 and 81133.5 of the Education Code, to amend Sections 7480, 14975, 15820.105, 27287, 66499.2, and 66499.7 of, and to repeal Section 27361.9 of, the Government Code, to amend Sections 5463, 16017.5, 19825, and 34218 of the Health and Safety Code, to amend Section 11751.82 of the Insurance Code, to amend Section 218.5 of the Labor Code, to amend Sections 4107.7, 7103, 10222, 10822, 20104, 20134, 20461, 20496, 20682.5, 20688.4, 20813, 20815.3, 20991, 21061, 21071, 21081, 21091, 21101, 21111, 21121, 21131, 21141, 21151, 21161, 21171, 21181, 21196, 21212, 21231, 21241, 21251, 21261, 21271, 21311, 21321, 21331, 21341, 21351, 21361, 21371, 21381, 21391, 21401, 21411, 21421, 21431, 21441, 21451, 21461, 21491, 21501, 21511, 21521, 21531, 21541, 21572, 21581, 21591, 21601, 21622, and 21631 of, ~~and to add Part 6 (commencing with Section 41010) to Division 2 of,~~ the Public Contract Code, and to amend Section 136.5 of the Streets and Highways Code, relating to mechanics liens.

LEGISLATIVE COUNSEL'S DIGEST

SB 189, as amended, Lowenthal. Mechanics liens.

The California Constitution provides that mechanics, persons furnishing materials, artisans, and laborers of every class have a lien upon the property upon which they have bestowed labor or furnished material for the value of the labor done and material furnished. The California Constitution also requires the Legislature to provide, by law, for the speedy and efficient enforcement of those liens.

Existing statutory law governs works of improvement, including design professionals' liens and mechanics liens. These provisions govern the conditions required to enforce a lien and for a mechanic's lien to be deemed valid, and define the use of the terms "materialman" and "original contractor" for purposes of the mechanics' lien law.

This bill would revise and recast those statutory provisions and make both substantive and technical changes. The bill would also replace the terms "original contractor" and "materialman" with the terms "direct contractor" and "material supplier," respectively. The bill would specifically authorize the submission of notices by means of electronic communication with respect to mechanics liens. The bill would also set forth additional requirements governing the form of security for bonds and would set forth the security required for large projects with a contract price of greater than \$1,000,000 for the owner of a less than fee interest in property or \$5,000,000 for the owner of the fee interest in the property.

The bill would enact separate provisions governing private works of improvement and public works of improvement. The bill would revise and recast provisions governing design professionals' liens, mechanics liens, notices of cessation, payment bonds, and retention payments. The bill would make related and conforming changes. Because the bill would expand the class of persons who are required to submit affidavits, the bill would expand the scope of the crime of perjury, thereby imposing a state-mandated local program. The bill would also provide that any other act enacted during the ~~2009~~ 2010 calendar year that takes effect on or before January 1, ~~2010~~ 2011, and that amends, adds, or repeals any section that is amended, added, or repealed by this act, as specified, shall prevail over this act.

The bill would become operative on January 1, ~~2011~~ 2012.

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.
State-mandated local program: yes.

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

1 SECTION 1. Section 7034 of the Business and Professions
2 Code is amended to read:

3 7034. (a) No contractor that is required to be licensed under
4 this chapter shall insert in any contract, or be a party, with a
5 subcontractor that is licensed under this chapter to any contract
6 which contains, a provision, clause, covenant, or agreement which
7 is void or unenforceable under Section 2782 of the Civil Code.

8 (b) No contractor that is required to be licensed under this
9 chapter shall require a waiver of lien rights from any subcontractor,
10 employee, or supplier in violation of Section 8160 of the Civil
11 Code or Section 42310 of the Public Contract Code. *or 9250 of*
12 *the Civil Code.*

13 SEC. 2. Section 7071.5 of the Business and Professions Code
14 is amended to read:

15 7071.5. The contractor's bond required by this article shall be
16 executed by an admitted surety in favor of the State of California,
17 in a form acceptable to the registrar and filed with the registrar by
18 the licensee or applicant. The contractor's bond shall be for the
19 benefit of the following:

20 (a) A homeowner contracting for home improvement upon the
21 homeowner's personal family residence damaged as a result of a
22 violation of this chapter by the licensee.

23 (b) A property owner contracting for the construction of a
24 single-family dwelling who is damaged as a result of a violation
25 of this chapter by the licensee. That property owner shall only
26 recover under this subdivision if the single-family dwelling is not
27 intended for sale or offered for sale at the time the damages were
28 incurred.

1 (c) A person damaged as a result of a willful and deliberate
2 violation of this chapter by the licensee, or by the fraud of the
3 licensee in the execution or performance of a construction contract.

4 (d) An employee of the licensee damaged by the licensee's
5 failure to pay wages.

6 (e) A person or entity, including a laborer described in
7 subdivision (b) of Section 8020 ~~of the Civil Code or subdivision~~
8 ~~(b) of Section 41070 of the Public Contract Code, or subdivision~~
9 *(b) of Section 9012 of the Civil Code*, to which a portion of the
10 compensation of an employee of a licensee is paid by agreement
11 with that employee or the collective bargaining agent of that
12 employee, damaged as the result of the licensee's failure to pay
13 fringe benefits for its employees, including, but not limited to,
14 employer payments described in Section 1773.1 of the Labor Code
15 and regulations thereunder (without regard to whether the work
16 was performed on a private or public work). Damage to a person
17 or entity under this subdivision is limited to actual employer
18 payments required to be made on behalf of employees of the
19 licensee, as part of the overall compensation of those employees,
20 which the licensee fails to pay.

21 SEC. 3. Section 7071.10 of the Business and Professions Code
22 is amended to read:

23 7071.10. The qualifying individual's bond required by this
24 article shall be executed by an admitted surety insurer in favor of
25 the State of California, in a form acceptable to the registrar and
26 filed with the registrar by the qualifying individual. The qualifying
27 individual's bond shall not be required in addition to the
28 contractor's bond when, as set forth under paragraph (1) of
29 subdivision (b) of Section 7068, the individual proprietor has
30 qualified for the license by his or her personal appearance, or the
31 qualifier is a general partner as set forth under paragraph (2) of
32 subdivision (b) of Section 7068. The qualifying individual's bond
33 shall be for the benefit of the following persons:

34 (a) A homeowner contracting for home improvement upon the
35 homeowner's personal family residence damaged as a result of a
36 violation of this chapter by the licensee.

37 (b) A property owner contracting for the construction of a
38 single-family dwelling who is damaged as a result of a violation
39 of this chapter by the licensee. That property owner shall only
40 recover under this subdivision if the single-family dwelling is not

1 intended for sale or offered for sale at the time the damages were
2 incurred.

3 (c) A person damaged as a result of a willful and deliberate
4 violation of this chapter by the licensee, or by the fraud of the
5 licensee in the execution or performance of a construction contract.

6 (d) An employee of the licensee damaged by the licensee's
7 failure to pay wages.

8 (e) A person or entity, including a laborer described in
9 subdivision (b) of Section 8020 of the Civil Code or subdivision
10 ~~(b) of Section 41070 of the Public Contract Code, or subdivision~~
11 *(b) of Section 9012 of the Civil Code*, to which a portion of the
12 compensation of an employee of a licensee is paid by agreement
13 with that employee or the collective bargaining agent of that
14 employee, that is damaged as the result of the licensee's failure to
15 pay fringe benefits for its employees including, but not limited to,
16 employer payments described in Section 1773.1 of the Labor Code
17 and regulations adopted thereunder (without regard to whether the
18 work was performed on a public or private work). Damage to a
19 person or entity under this subdivision is limited to employer
20 payments required to be made on behalf of employees of the
21 licensee, as part of the overall compensation of those employees,
22 which the licensee fails to pay.

23 SEC. 4. Section 7159 of the Business and Professions Code is
24 amended to read:

25 7159. (a) (1) This section identifies the projects for which a
26 home improvement contract is required, outlines the contract
27 requirements, and lists the items that shall be included in the
28 contract, or may be provided as an attachment.

29 (2) This section does not apply to service and repair contracts
30 that are subject to Section 7159.10, if the contract for the applicable
31 services complies with Sections 7159.10 to 7159.14, inclusive.

32 (3) This section does not apply to the sale, installation, and
33 servicing of a fire alarm sold in conjunction with an alarm system,
34 as defined in subdivision (n) of Section 7590.1, if all costs
35 attributable to making the fire alarm system operable, including
36 sale and installation costs, do not exceed five hundred dollars
37 (\$500), and the licensee complies with the requirements set forth
38 in Section 7159.9.

39 (4) This section does not apply to any costs associated with
40 monitoring a burglar or fire alarm system.

1 (5) Failure by the licensee, his or her agent or salesperson, or
2 by a person subject to be licensed under this chapter, to provide
3 the specified information, notices, and disclosures in the contract,
4 or to otherwise fail to comply with any provision of this section,
5 is cause for discipline.

6 (b) For purposes of this section, “home improvement contract”
7 means an agreement, whether oral or written, or contained in one
8 or more documents, between a contractor and an owner or between
9 a contractor and a tenant, regardless of the number of residence
10 or dwelling units contained in the building in which the tenant
11 resides, if the work is to be performed in, to, or upon the residence
12 or dwelling unit of the tenant, for the performance of a home
13 improvement, as defined in Section 7151, and includes all labor,
14 services, and materials to be furnished and performed thereunder,
15 if the aggregate contract price specified in one or more
16 improvement contracts, including all labor, services, and materials
17 to be furnished by the contractor, exceeds five hundred dollars
18 (\$500). “Home improvement contract” also means an agreement,
19 whether oral or written, or contained in one or more documents,
20 between a salesperson, whether or not he or she is a home
21 improvement salesperson, and an owner or a tenant, regardless of
22 the number of residence or dwelling units contained in the building
23 in which the tenant resides, which provides for the sale, installation,
24 or furnishing of home improvement goods or services.

25 (c) In addition to the specific requirements listed under this
26 section, every home improvement contract and any person subject
27 to licensure under this chapter or his or her agent or salesperson
28 shall comply with all of the following:

29 (1) The writing shall be legible.

30 (2) Any printed form shall be readable. Unless a larger typeface
31 is specified in this article, text in any printed form shall be in at
32 least 10-point typeface and the headings shall be in at least 10-point
33 boldface type.

34 (3) (A) Before any work is started, the contractor shall give the
35 buyer a copy of the contract signed and dated by both the contractor
36 and the buyer. The buyer’s receipt of the copy of the contract
37 initiates the buyer’s rights to cancel the contract pursuant to
38 Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

1 (B) The contract shall contain on the first page, in a typeface
2 no smaller than that generally used in the body of the document,
3 both of the following:

4 (i) The date the buyer signed the contract.

5 (ii) The name and address of the contractor to which the
6 applicable “Notice of Cancellation” is to be mailed, immediately
7 preceded by a statement advising the buyer that the “Notice of
8 Cancellation” may be sent to the contractor at the address noted
9 on the contract.

10 (4) A statement that, upon satisfactory payment being made for
11 any portion of the work performed, the contractor, prior to any
12 further payment being made, shall furnish to the person contracting
13 for the home improvement or swimming pool work a full and
14 unconditional release from any claim or mechanic’s lien pursuant
15 to Section 8410 of the Civil Code for that portion of the work for
16 which payment has been made.

17 (5) A change-order form for changes or extra work shall be
18 incorporated into the contract and shall become part of the contract
19 only if it is in writing and signed by the parties prior to the
20 commencement of any work covered by a change order.

21 (6) The contract shall contain, in close proximity to the
22 signatures of the owner and contractor, a notice stating that the
23 owner or tenant has the right to require the contractor to have a
24 performance and payment bond.

25 (7) If the contract provides for a contractor to furnish joint
26 control, the contractor shall not have any financial or other interest
27 in the joint control.

28 (8) The provisions of this section are not exclusive and do not
29 relieve the contractor from compliance with any other applicable
30 provision of law.

31 (d) A home improvement contract and any changes to the
32 contract shall be in writing and signed by the parties to the contract
33 prior to the commencement of work covered by the contract or an
34 applicable change order and, except as provided in paragraph (8)
35 of subdivision (a) of Section 7159.5, shall include or comply with
36 all of the following:

37 (1) The name, business address, and license number of the
38 contractor.

39 (2) If applicable, the name and registration number of the home
40 improvement salesperson that solicited or negotiated the contract.

1 (3) The following heading on the contract form that identifies
2 the type of contract in at least 10-point boldface type: “Home
3 Improvement.”

4 (4) The following statement in at least 12-point boldface type:
5 “You are entitled to a completely filled in copy of this agreement,
6 signed by both you and the contractor, before any work may be
7 started.”

8 (5) The heading: “Contract Price,” followed by the amount of
9 the contract in dollars and cents.

10 (6) If a finance charge will be charged, the heading: “Finance
11 Charge,” followed by the amount in dollars and cents. The finance
12 charge is to be set out separately from the contract amount.

13 (7) The heading: “Description of the Project and Description
14 of the Significant Materials to be Used and Equipment to be
15 Installed,” followed by a description of the project and a description
16 of the significant materials to be used and equipment to be installed.
17 For swimming pools, the project description required under this
18 paragraph also shall include a plan and scale drawing showing the
19 shape, size, dimensions, and the construction and equipment
20 specifications.

21 (8) If a downpayment will be charged, the details of the
22 downpayment shall be expressed in substantially the following
23 form, and shall include the text of the notice as specified in
24 subparagraph (C):

25 (A) The heading: “Downpayment.”

26 (B) A space where the actual downpayment appears.

27 (C) The following statement in at least 12-point boldface type:
28 “THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10
29 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS
30 LESS.”

31 (9) If payments, other than the downpayment, are to be made
32 before the project is completed, the details of these payments,
33 known as progress payments, shall be expressed in substantially
34 the following form, and shall include the text of the statement as
35 specified in subparagraph (C):

36 (A) A schedule of progress payments shall be preceded by the
37 heading: “Schedule of Progress Payments.”

38 (B) Each progress payment shall be stated in dollars and cents
39 and specifically reference the amount of work or services to be
40 performed and materials and equipment to be supplied.

1 (C) The section of the contract reserved for the progress
2 payments shall include the following statement in at least 12-point
3 boldface type:

4 “The schedule of progress payments must specifically describe
5 each phase of work, including the type and amount of work or
6 services scheduled to be supplied in each phase, along with the
7 amount of each proposed progress payment. IT IS AGAINST THE
8 LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR
9 WORK NOT YET COMPLETED, OR FOR MATERIALS NOT
10 YET DELIVERED. HOWEVER, A CONTRACTOR MAY
11 REQUIRE A DOWNPAYMENT.”

12 (10) The contract shall address the commencement of work to
13 be performed in substantially the following form:

14 (A) A statement that describes what constitutes substantial
15 commencement of work under the contract.

16 (B) The heading: “Approximate Start Date.”

17 (C) The approximate date on which work will be commenced.

18 (11) The estimated completion date of the work shall be
19 referenced in the contract in substantially the following form:

20 (A) The heading: “Approximate Completion Date.”

21 (B) The approximate date of completion.

22 (12) If applicable, the heading: “List of Documents to be
23 Incorporated into the Contract,” followed by the list of documents
24 incorporated into the contract.

25 (13) The heading: “Note about Extra Work and Change Orders,”
26 followed by the following statement:

27 “Extra Work and Change Orders become part of the contract
28 once the order is prepared in writing and signed by the parties prior
29 to the commencement of work covered by the new change order.
30 The order must describe the scope of the extra work or change,
31 the cost to be added or subtracted from the contract, and the effect
32 the order will have on the schedule of progress payments.”

33 (e) Except as provided in paragraph (8) of subdivision (a) of
34 Section 7159.5, all of the following notices shall be provided to
35 the owner as part of the contract form as specified or, if otherwise
36 authorized under this subdivision, may be provided as an
37 attachment to the contract:

38 (1) A notice concerning commercial general liability insurance.
39 This notice may be provided as an attachment to the contract if
40 the contract includes the following statement: “A notice concerning

1 commercial general liability insurance is attached to this contract.”
2 The notice shall include the heading “Commercial General Liability
3 Insurance (CGL),” followed by whichever of the following
4 statements is both relevant and correct:

5 (A) “(The name on the license or ‘This contractor’) does not
6 carry commercial general liability insurance.”

7 (B) “(The name on the license or ‘This contractor’) carries
8 commercial general liability insurance written by (the insurance
9 company). You may call (the insurance company) at _____
10 to check the contractor’s insurance coverage.”

11 (C) “(The name on the license or ‘This contractor’) is
12 self-insured.”

13 (2) A notice concerning workers’ compensation insurance. This
14 notice may be provided as an attachment to the contract if the
15 contract includes the statement: “A notice concerning workers’
16 compensation insurance is attached to this contract.” The notice
17 shall include the heading “Workers’ Compensation Insurance”
18 followed by whichever of the following statements is correct:

19 (A) “(The name on the license or ‘This contractor’) has no
20 employees and is exempt from workers’ compensation
21 requirements.”

22 (B) “(The name on the license or ‘This contractor’) carries
23 workers’ compensation insurance for all employees.”

24 (3) A notice that provides the buyer with the following
25 information about the performance of extra or change-order work:

26 (A) A statement that the buyer may not require a contractor to
27 perform extra or change-order work without providing written
28 authorization prior to the commencement of work covered by the
29 new change order.

30 (B) A statement informing the buyer that extra work or a change
31 order is not enforceable against a buyer unless the change order
32 also identifies all of the following in writing prior to the
33 commencement of work covered by the new change order:

34 (i) The scope of work encompassed by the order.

35 (ii) The amount to be added or subtracted from the contract.

36 (iii) The effect the order will make in the progress payments or
37 the completion date.

38 (C) A statement informing the buyer that the contractor’s failure
39 to comply with the requirements of this paragraph does not
40 preclude the recovery of compensation for work performed based

1 upon legal or equitable remedies designed to prevent unjust
2 enrichment.

3 (4) A notice with the heading “Mechanics Lien Warning” written
4 as follows:

5 “MECHANICS LIEN WARNING:

6 Anyone who helps improve your property, but who is not paid,
7 may record what is called a mechanics lien on your property. A
8 mechanics lien is a claim, like a mortgage or home equity loan,
9 made against your property and recorded with the county recorder.

10 Even if you pay your contractor in full, unpaid subcontractors,
11 suppliers, and laborers who helped to improve your property may
12 record mechanics liens and sue you in court to foreclose the lien.
13 If a court finds the lien is valid, you could be forced to pay twice
14 or have a court officer sell your home to pay the lien. Liens can
15 also affect your credit.

16 To preserve their right to record a lien, each subcontractor and
17 material supplier must provide you with a document called a
18 ‘Preliminary Notice.’ This notice is not a lien. The purpose of the
19 notice is to let you know that the person who sends you the notice
20 has the right to record a lien on your property if he or she is not
21 paid.

22 BE CAREFUL. The Preliminary Notice can be sent up to 20
23 days after the subcontractor starts work or the supplier provides
24 material. This can be a big problem if you pay your contractor
25 before you have received the Preliminary Notices.

26 You will not get Preliminary Notices from your prime contractor
27 or from laborers who work on your project. The law assumes that
28 you already know they are improving your property.

29 PROTECT YOURSELF FROM LIENS. You can protect
30 yourself from liens by getting a list from your contractor of all the
31 subcontractors and material suppliers that work on your project.
32 Find out from your contractor when these subcontractors started
33 work and when these suppliers delivered goods or materials. Then
34 wait 20 days, paying attention to the Preliminary Notices you
35 receive.

36 PAY WITH JOINT CHECKS. One way to protect yourself is
37 to pay with a joint check. When your contractor tells you it is time
38 to pay for the work of a subcontractor or supplier who has provided
39 you with a Preliminary Notice, write a joint check payable to both
40 the contractor and the subcontractor or material supplier.

1 For other ways to prevent liens, visit CSLB’s Internet Web site
 2 at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

3 REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING
 4 A LIEN PLACED ON YOUR HOME. This can mean that you
 5 may have to pay twice, or face the forced sale of your home to pay
 6 what you owe.”

7 (5) The following notice shall be provided in at least 12-point
 8 typeface:

9 “Information about the Contractors’ State License Board (CSLB):
 10 CSLB is the state consumer protection agency that licenses and
 11 regulates construction contractors.

12 Contact CSLB for information about the licensed contractor you
 13 are considering, including information about disclosable
 14 complaints, disciplinary actions, and civil judgments that are
 15 reported to CSLB.

16 Use only licensed contractors. If you file a complaint against a
 17 licensed contractor within the legal deadline (usually four years),
 18 CSLB has authority to investigate the complaint. If you use an
 19 unlicensed contractor, CSLB may not be able to help you resolve
 20 your complaint. Your only remedy may be in civil court, and you
 21 may be liable for damages arising out of any injuries to the
 22 unlicensed contractor or the unlicensed contractor’s employees.

23 For more information:
 24 Visit CSLB’s Internet Web site at www.cslb.ca.gov
 25 Call CSLB at 800-321-CSLB (2752)
 26 Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

27 (6) (A) The notice set forth in subparagraph (B) and entitled
 28 “Three-Day Right to Cancel,” shall be provided to the buyer unless
 29 the contract is:

- 30 (i) Negotiated at the contractor’s place of business.
- 31 (ii) Subject to the “Seven-Day Right to Cancel,” as set forth in
 32 paragraph (7).
- 33 (iii) Subject to licensure under the Alarm Company Act (Chapter
 34 11.6 (commencing with Section 7590)), provided the alarm
 35 company licensee complies with Sections 1689.5, 1689.6, and
 36 1689.7 of the Civil Code, as applicable.

37 (B) “Three-Day Right to Cancel
 38 You, the buyer, have the right to cancel this contract within three
 39 business days. You may cancel by e-mailing, mailing, faxing, or
 40 delivering a written notice to the contractor at the contractor’s

1 place of business by midnight of the third business day after you
2 received a signed and dated copy of the contract that includes this
3 notice. Include your name, your address, and the date you received
4 the signed copy of the contract and this notice.

5 If you cancel, the contractor must return to you anything you
6 paid within 10 days of receiving the notice of cancellation. For
7 your part, you must make available to the contractor at your
8 residence, in substantially as good condition as you received them,
9 goods delivered to you under this contract or sale. Or, you may,
10 if you wish, comply with the contractor’s instructions on how to
11 return the goods at the contractor’s expense and risk. If you do
12 make the goods available to the contractor and the contractor does
13 not pick them up within 20 days of the date of your notice of
14 cancellation, you may keep them without any further obligation.
15 If you fail to make the goods available to the contractor, or if you
16 agree to return the goods to the contractor and fail to do so, then
17 you remain liable for performance of all obligations under the
18 contract.”

19 (C) The “Three-Day Right to Cancel” notice required by this
20 paragraph shall comply with all of the following:

- 21 (i) The text of the notice is at least 12-point boldface type.
- 22 (ii) The notice is in immediate proximity to a space reserved
23 for the owner’s signature.
- 24 (iii) The owner acknowledges receipt of the notice by signing
25 and dating the notice form in the signature space.
- 26 (iv) The notice is written in the same language, e.g., Spanish,
27 as that principally used in any oral sales presentation.
- 28 (v) The notice may be attached to the contract if the contract
29 includes, in at least 12-point boldface type, a checkbox with the
30 following statement: “The law requires that the contractor give
31 you a notice explaining your right to cancel. Initial the checkbox
32 if the contractor has given you a ‘Notice of the Three-Day Right
33 to Cancel.’ ”
- 34 (vi) The notice shall be accompanied by a completed form in
35 duplicate, captioned “Notice of Cancellation,” which also shall be
36 attached to the agreement or offer to purchase and be easily
37 detachable, and which shall contain the following statement written
38 in the same language, e.g., Spanish, as used in the contract:

39
40

“Notice of Cancellation”

1 /enter date of transaction/
 2 _____
 3 (Date)

4
 5 “You may cancel this transaction, without any penalty or
 6 obligation, within three business days from the above date.

7 If you cancel, any property traded in, any payments made by
 8 you under the contract or sale, and any negotiable instrument
 9 executed by you will be returned within 10 days following receipt
 10 by the seller of your cancellation notice, and any security interest
 11 arising out of the transaction will be canceled.

12 If you cancel, you must make available to the seller at your
 13 residence, in substantially as good condition as when received,
 14 any goods delivered to you under this contract or sale, or you may,
 15 if you wish, comply with the instructions of the seller regarding
 16 the return shipment of the goods at the seller’s expense and risk.

17 If you do make the goods available to the seller and the seller
 18 does not pick them up within 20 days of the date of your notice of
 19 cancellation, you may retain or dispose of the goods without any
 20 further obligation. If you fail to make the goods available to the
 21 seller, or if you agree to return the goods to the seller and fail to
 22 do so, then you remain liable for performance of all obligations
 23 under the contract.”

24
 25 To cancel this transaction, mail or deliver a signed and dated copy of this
 26 cancellation notice, or any other written notice, or send a telegram
 27 to _____,
 28 /name of seller/
 29 at _____
 30 /address of seller’s place of business/
 31 not later than midnight of _____.

32 (Date)
 33 I hereby cancel this transaction. _____
 34 (Date)
 35 _____
 36 (Buyer’s signature)

37
 38 (7) (A) The following notice entitled “Seven-Day Right to
 39 Cancel” shall be provided to the buyer for any contract that is
 40 written for the repair or restoration of residential premises damaged

1 by any sudden or catastrophic event for which a state of emergency
2 has been declared by the President of the United States or the
3 Governor, or for which a local emergency has been declared by
4 the executive officer or governing body of any city, county, or city
5 and county:

6 “Seven-Day Right to Cancel

7 You, the buyer, have the right to cancel this contract within seven
8 business days. You may cancel by e-mailing, mailing, faxing, or
9 delivering a written notice to the contractor at the contractor’s
10 place of business by midnight of the seventh business day after
11 you received a signed and dated copy of the contract that includes
12 this notice. Include your name, your address, and the date you
13 received the signed copy of the contract and this notice.

14 If you cancel, the contractor must return to you anything you
15 paid within 10 days of receiving the notice of cancellation. For
16 your part, you must make available to the contractor at your
17 residence, in substantially as good condition as you received them,
18 goods delivered to you under this contract or sale. Or, you may,
19 if you wish, comply with the contractor’s instructions on how to
20 return the goods at the contractor’s expense and risk. If you do
21 make the goods available to the contractor and the contractor does
22 not pick them up within 20 days of the date of your notice of
23 cancellation, you may keep them without any further obligation.
24 If you fail to make the goods available to the contractor, or if you
25 agree to return the goods to the contractor and fail to do so, then
26 you remain liable for performance of all obligations under the
27 contract.”

28 (B) The “Seven-Day Right to Cancel” notice required by this
29 subdivision shall comply with all of the following:

- 30 (i) The text of the notice is at least 12-point boldface type.
- 31 (ii) The notice is in immediate proximity to a space reserved
32 for the owner’s signature.
- 33 (iii) The owner acknowledges receipt of the notice by signing
34 and dating the notice form in the signature space.
- 35 (iv) The notice is written in the same language, e.g., Spanish,
36 as that principally used in any oral sales presentation.
- 37 (v) The notice may be attached to the contract if the contract
38 includes, in at least 12-point boldface type, a checkbox with the
39 following statement: “The law requires that the contractor give
40 you a notice explaining your right to cancel. Initial the checkbox

1 if the contractor has given you a 'Notice of the Seven-Day Right
2 to Cancel.' ”

3 (vi) The notice shall be accompanied by a completed form in
4 duplicate, captioned “Notice of Cancellation,” which shall also be
5 attached to the agreement or offer to purchase and be easily
6 detachable, and which shall contain the following statement written
7 in the same language, e.g., Spanish, as used in the contract:

8
9 “Notice of Cancellation”

10 /enter date of transaction/
11 _____

12 (Date)

13
14 “You may cancel this transaction, without any penalty or
15 obligation, within seven business days from the above date.

16 If you cancel, any property traded in, any payments made by
17 you under the contract or sale, and any negotiable instrument
18 executed by you will be returned within 10 days following receipt
19 by the seller of your cancellation notice, and any security interest
20 arising out of the transaction will be canceled.

21 If you cancel, you must make available to the seller at your
22 residence, in substantially as good condition as when received,
23 any goods delivered to you under this contract or sale, or you may,
24 if you wish, comply with the instructions of the seller regarding
25 the return shipment of the goods at the seller’s expense and risk.

26 If you do make the goods available to the seller and the seller
27 does not pick them up within 20 days of the date of your notice of
28 cancellation, you may retain or dispose of the goods without any
29 further obligation. If you fail to make the goods available to the
30 seller, or if you agree to return the goods to the seller and fail to
31 do so, then you remain liable for performance of all obligations
32 under the contract.”

33
34 To cancel this transaction, mail or deliver a signed and dated copy of this
35 cancellation notice, or any other written notice, or send a telegram

36 to _____,

37 /name of seller/

38 at _____

39 /address of seller’s place of business/

40 not later than midnight of _____.

1 (Date)
 2 I hereby cancel this transaction. _____
 3 (Date)
 4 _____
 5 (Buyer’s signature)
 6

7 SEC. 5. Section 7159.1 of the Business and Professions Code
 8 is amended to read:

9 7159.1. (a) In any contract for the sale of home improvement
 10 goods or services offered by door-to-door sale that contains or is
 11 secured by a lien on real property, the contract shall be
 12 accompanied by the following notice in 18-point boldfaced type:

13 “WARNING TO BUYER: IF YOU SIGN THE CONTRACT
 14 WHICH ACCOMPANIES THIS NOTICE, YOU WILL BE
 15 PUTTING UP YOUR HOME AS SECURITY. THIS MEANS
 16 THAT YOUR HOME COULD BE SOLD WITHOUT YOUR
 17 PERMISSION AND WITHOUT ANY COURT ACTION IF YOU
 18 MISS ANY PAYMENT REQUIRED BY THIS CONTRACT.”

19 This notice shall be written in the same language as the rest of
 20 the contract. It shall be on a separate piece of paper from the rest
 21 of the contract and shall be signed and dated by the buyer. The
 22 home improvement contractor or home improvement salesperson
 23 shall deliver to the buyer at the time of the buyer’s signing and
 24 dating of the notice a legible copy of the signed and dated notice.
 25 A security interest created in any contract described in this section
 26 that does not provide the notice as required by this section shall
 27 be void and unenforceable.

- 28 (b) This section shall not apply to any of the following:
 29 (1) Any contract that is subject to Chapter 1 (commencing with
 30 Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.
 31 (2) A mechanics lien established pursuant to Chapter 4
 32 (commencing with Section 8400) of Part 6 of Division 4 of the
 33 Civil Code.
 34 (3) Any contract that is subject to subdivision (a) of Section
 35 7159.2.

36 SEC. 6. Section 7159.5 of the Business and Professions Code
 37 is amended to read:

38 7159.5. This section applies to all home improvement contracts,
 39 as defined in Section 7151.2, between an owner or tenant and a
 40 contractor, whether a general contractor or a specialty contractor,

1 that is licensed or subject to be licensed pursuant to this chapter
2 with regard to the transaction.

3 (a) Failure by the licensee or a person subject to be licensed
4 under this chapter, or by his or her agent or salesperson, to comply
5 with the following provisions is cause for discipline:

6 (1) The contract shall be in writing and shall include the agreed
7 contract amount in dollars and cents. The contract amount shall
8 include the entire cost of the contract, including profit, labor, and
9 materials, but excluding finance charges.

10 (2) If there is a separate finance charge between the contractor
11 and the person contracting for home improvement, the finance
12 charge shall be set out separately from the contract amount.

13 (3) If a downpayment will be charged, the downpayment may
14 not exceed one thousand dollars (\$1,000) or 10 percent of the
15 contract amount, whichever is less.

16 (4) If, in addition to a downpayment, the contract provides for
17 payments to be made prior to completion of the work, the contract
18 shall include a schedule of payments in dollars and cents
19 specifically referencing the amount of work or services to be
20 performed and any materials and equipment to be supplied.

21 (5) Except for a downpayment, the contractor may neither
22 request nor accept payment that exceeds the value of the work
23 performed or material delivered.

24 (6) Upon any payment by the person contracting for home
25 improvement, and prior to any further payment being made, the
26 contractor shall, if requested, obtain and furnish to the person a
27 full and unconditional release from any potential lien claimant
28 claim or mechanics lien pursuant to Section 8410 of the Civil Code
29 for any portion of the work for which payment has been made.
30 The person contracting for home improvement may withhold all
31 further payments until these releases are furnished.

32 (7) If the contract provides for a payment of a salesperson's
33 commission out of the contract price, that payment shall be made
34 on a pro rata basis in proportion to the schedule of payments made
35 to the contractor by the disbursing party in accordance with
36 paragraph (4).

37 (8) A contractor furnishing a performance and payment bond,
38 lien and completion bond, or a bond equivalent or joint control
39 approved by the registrar covering full performance and payment
40 is exempt from paragraphs (3), (4), and (5), and need not include,

1 as part of the contract, the statement regarding the downpayment
2 specified in subparagraph (C) of paragraph (8) of subdivision (d)
3 of Section 7159, the details and statement regarding progress
4 payments specified in paragraph (9) of subdivision (d) of Section
5 7159, or the Mechanics Lien Warning specified in paragraph (4)
6 of subdivision (e) of Section 7159. A contractor furnishing these
7 bonds, bond equivalents, or a joint control approved by the registrar
8 may accept payment prior to completion. If the contract provides
9 for a contractor to furnish joint control, the contractor shall not
10 have any financial or other interest in the joint control.

11 (b) A violation of paragraph (1), (3), or (5) of subdivision (a)
12 by a licensee or a person subject to be licensed under this chapter,
13 or by his or her agent or salesperson, is a misdemeanor punishable
14 by a fine of not less than one hundred dollars (\$100) nor more than
15 five thousand dollars (\$5,000), or by imprisonment in a county
16 jail not exceeding one year, or by both that fine and imprisonment.

17 (1) An indictment or information against a person who is not
18 licensed but who is required to be licensed under this chapter shall
19 be brought, or a criminal complaint filed, for a violation of this
20 section, in accordance with paragraph (4) of subdivision (d) of
21 Section 802 of the Penal Code, within four years from the date of
22 the contract or, if the contract is not reduced to writing, from the
23 date the buyer makes the first payment to the contractor.

24 (2) An indictment or information against a person who is
25 licensed under this chapter shall be brought, or a criminal complaint
26 filed, for a violation of this section, in accordance with paragraph
27 (2) of subdivision (d) of Section 802 of the Penal Code, within
28 two years from the date of the contract or, if the contract is not
29 reduced to writing, from the date the buyer makes the first payment
30 to the contractor.

31 (3) The limitations on actions in this subdivision shall not apply
32 to any administrative action filed against a licensed contractor.

33 (c) Any person who violates this section as part of a plan or
34 scheme to defraud an owner or tenant of a residential or
35 nonresidential structure, including a mobilehome or manufactured
36 home, in connection with the offer or performance of repairs to
37 the structure for damage caused by a natural disaster, shall be
38 ordered by the court to make full restitution to the victim based
39 on the person's ability to pay, as defined in subdivision (e) of
40 Section 1203.1b of the Penal Code. In addition to full restitution,

1 and imprisonment authorized by this section, the court may impose
2 a fine of not less than five hundred dollars (\$500) nor more than
3 twenty-five thousand dollars (\$25,000), based upon the defendant's
4 ability to pay. This subdivision applies to natural disasters for
5 which a state of emergency is proclaimed by the Governor pursuant
6 to Section 8625 of the Government Code, or for which an
7 emergency or major disaster is declared by the President of the
8 United States.

9 SEC. 7. Section 7159.14 of the Business and Professions Code
10 is amended to read:

11 7159.14. (a) This section applies to a service and repair
12 contract as defined in Section 7159.10. A violation of this section
13 by a licensee or a person subject to be licensed under this chapter,
14 or by his or her agent or salesperson, is cause for discipline.

15 (1) The contract may not exceed seven hundred fifty dollars
16 (\$750).

17 (2) The contract shall be in writing and shall state the agreed
18 contract amount, which may be stated as either a fixed contract
19 amount in dollars and cents or, if a time and materials formula is
20 used, as an estimated contract amount in dollars and cents.

21 (3) The contract amount shall include the entire cost of the
22 contract including profit, labor, and materials, but excluding
23 finance charges.

24 (4) The actual contract amount of a time and materials contract
25 may not exceed the estimated contract amount without written
26 authorization from the buyer.

27 (5) The prospective buyer must have initiated contact with the
28 contractor to request work.

29 (6) The contractor may not sell the buyer goods or services
30 beyond those reasonably necessary to take care of the particular
31 problem that caused the buyer to contact the contractor.

32 (7) No payment may be due before the project is completed.

33 (8) A service and repair contractor may charge only one service
34 charge. For purposes of this chapter, a service charge includes
35 such charges as a service or trip charge, or an inspection fee.

36 (9) A service and repair contractor charging a service charge
37 must disclose in all advertisements that there is a service charge
38 and, when the customer initiates the call for service, must disclose
39 the amount of the service charge.

1 (10) The service and repair contractor must offer to the customer
2 any parts that were replaced.

3 (11) Upon any payment by the buyer, the contractor shall, if
4 requested, obtain and furnish to the buyer a full and unconditional
5 release from any potential lien claimant claim or mechanics lien
6 pursuant to Section 8410 of the Civil Code for any portion of the
7 work for which payment has been made.

8 (b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of
9 subdivision (a) by a licensee or a person subject to be licensed
10 under this chapter, or by his or her agent or salesperson, is a
11 misdemeanor punishable by a fine of not less than one hundred
12 dollars (\$100) nor more than five thousand dollars (\$5,000), or by
13 imprisonment in a county jail not exceeding one year, or by both
14 that fine and imprisonment.

15 (1) An indictment or information against a person who is not
16 licensed but who is required to be licensed under this chapter shall
17 be brought, or a criminal complaint filed, for a violation of this
18 section, in accordance with paragraph (4) of subdivision (d) of
19 Section 802 of the Penal Code, within four years from the date of
20 the contract or, if the contract is not reduced to writing, from the
21 date the buyer makes the first payment to the contractor.

22 (2) An indictment or information against a person who is
23 licensed under this chapter shall be brought, or a criminal complaint
24 filed, for a violation of this section, in accordance with paragraph
25 (2) of subdivision (d) of Section 802 of the Penal Code, within
26 two years from the date of the contract or, if the contract is not
27 reduced to writing, from the date the buyer makes the first payment
28 to the contractor.

29 (3) The limitations on actions in this subdivision shall not apply
30 to any administrative action filed against a licensed contractor.

31 (c) Any person who violates this section as part of a plan or
32 scheme to defraud an owner or tenant of a residential or
33 nonresidential structure, including a mobilehome or manufactured
34 home, in connection with the offer or performance of repairs to
35 the structure for damage caused by a natural disaster, shall be
36 ordered by the court to make full restitution to the victim based
37 on the person's ability to pay, as defined in subdivision (e) of
38 Section 1203.1b of the Penal Code. In addition to full restitution,
39 and imprisonment authorized by this section, the court may impose
40 a fine of not less than five hundred dollars (\$500) nor more than

1 twenty-five thousand dollars (\$25,000), based upon the defendant's
2 ability to pay. This subdivision applies to natural disasters for
3 which a state of emergency is proclaimed by the Governor pursuant
4 to Section 8625 of the Government Code, or for which an
5 emergency or major disaster is declared by the President of the
6 United States.

7 SEC. 8. Section 7164 of the Business and Professions Code is
8 amended to read:

9 7164. (a) Notwithstanding Section 7044, every contract and
10 any changes in a contract, between an owner and a contractor, for
11 the construction of a single-family dwelling to be retained by the
12 owner for at least one year shall be evidenced in writing signed
13 by both parties.

14 (b) The writing shall contain the following:

15 (1) The name, address, and license number of the contractor.

16 (2) The approximate dates when the work will begin and be
17 substantially completed.

18 (3) A legal description of the location where the work will be
19 done.

20 (4) A statement with the heading "Mechanics Lien Warning"
21 as follows:

22 "MECHANICS LIEN WARNING:

23 Anyone who helps improve your property, but who is not paid,
24 may record what is called a mechanics lien on your property. A
25 mechanics lien is a claim, like a mortgage or home equity loan,
26 made against your property and recorded with the county recorder.

27 Even if you pay your contractor in full, unpaid subcontractors,
28 suppliers, and laborers who helped to improve your property may
29 record mechanics liens and sue you in court to foreclose the lien.
30 If a court finds the lien is valid, you could be forced to pay twice
31 or have a court officer sell your home to pay the lien. Liens can
32 also affect your credit.

33 To preserve their right to record a lien, each subcontractor and
34 material supplier must provide you with a document called a
35 'Preliminary Notice.' This notice is not a lien. The purpose of the
36 notice is to let you know that the person who sends you the notice
37 has the right to record a lien on your property if he or she is not
38 paid.

39 BE CAREFUL. The Preliminary Notice can be sent up to 20
40 days after the subcontractor starts work or the supplier provides

1 material. This can be a big problem if you pay your contractor
2 before you have received the Preliminary Notices.

3 You will not get Preliminary Notices from your prime contractor
4 or other persons you contract with directly or from laborers who
5 work on your project. The law assumes that you already know
6 they are improving your property.

7 **PROTECT YOURSELF FROM LIENS.** You can protect
8 yourself from liens by getting a list from your contractor of all the
9 subcontractors and material suppliers that work on your project.
10 Find out from your contractor when these subcontractors started
11 work and when these suppliers delivered goods or materials. Then
12 wait 20 days, paying attention to the Preliminary Notices you
13 receive.

14 **PAY WITH JOINT CHECKS.** One way to protect yourself is
15 to pay with a joint check. When your contractor tells you it is time
16 to pay for the work of a subcontractor or supplier who has provided
17 you with a Preliminary Notice, write a joint check payable to both
18 the contractor and the subcontractor or material supplier.

19 For other ways to prevent liens, visit CSLB's Web site at
20 www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

21 **REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING**
22 **A LIEN PLACED ON YOUR HOME.** This can mean that you
23 may have to pay twice, or face the forced sale of your home to pay
24 what you owe.”

25 (5) (A) A statement prepared by the board through regulation
26 that emphasizes the value of commercial general liability insurance
27 and encourages the owner to verify the contractor's insurance
28 coverage and status.

29 (B) A check box indicating whether or not the contractor carries
30 commercial general liability insurance, and if that is the case, the
31 name and the telephone number of the insurer.

32 (c) The writing may also contain other matters agreed to by the
33 parties to the contract. The writing shall be legible and shall clearly
34 describe any other document which is to be incorporated into the
35 contract. Prior to commencement of any work, the owner shall be
36 furnished a copy of the written agreement, signed by the contractor.
37 The provisions of this section are not exclusive and do not relieve
38 the contractor from compliance with all other applicable provisions
39 of law.

1 (d) Every contract subject to the provisions of this section shall
2 contain, in close proximity to the signatures of the owner and
3 contractor, a notice in at least 10-point bold type or in all capital
4 letters, stating that the owner has the right to require the contractor
5 to have a performance and payment bond and that the expense of
6 the bond may be borne by the owner.

7 (e) The requirements in paragraph (5) of subdivision (b) shall
8 become operative three months after the board adopts the
9 regulations referenced in subparagraph (A) of paragraph (5) of
10 subdivision (b).

11 (f) This section shall become operative on January 1, 2006.

12 SEC. 9. Section 8513 of the Business and Professions Code is
13 amended to read:

14 8513. (a) The board shall prescribe a form entitled “Notice to
15 Owner” that shall describe, in nontechnical language and in a clear
16 and coherent manner using words with common and everyday
17 meaning, the pertinent provisions of this state’s mechanics’ lien
18 laws and the rights and responsibilities of an owner of property
19 and a registered pest control company thereunder. Each company
20 registered under this chapter, prior to entering into a contract with
21 an owner for work for which a company registration is required,
22 shall give a copy of this “Notice to Owner” to the owner, his or
23 her agent, or the payer.

24 (b) No company that is required to be registered under this
25 chapter shall require or request a waiver of lien rights from any
26 subcontractor, employee, or supplier.

27 (c) Each company registered under this chapter that acts as a
28 subcontractor for another company registered under this chapter
29 shall, within 20 days of commencement of any work for which a
30 company registration is required, give the preliminary notice in
31 accordance with Chapter 2 (commencing with Section 8200) of
32 Part 6 of Division 4 of the Civil Code, to the owner, his or her
33 agent, or the payer.

34 (d) Each company registered under this chapter that acts as a
35 prime contractor for work for which a company registration is
36 required shall, prior to accepting payment for the work, furnish to
37 the owner, his or her agent, or the payer a full and unconditional
38 release from any claim of mechanics lien by any subcontractor
39 entitled to enforce a mechanics’ lien pursuant to Section 8172 of
40 the Civil Code.

1 (e) Each company registered under this chapter that subcontracts
2 to another company registered under this chapter work for which
3 a company registration is required shall furnish to the subcontractor
4 the name of the owner, his or her agent, or the payer.

5 (f) The provisions of this section shall be applicable only to
6 those registered companies, as defined in Section 8506.1, operating
7 pursuant to a Branch 1 or Branch 3 registration.

8 (g) A violation of the provisions of this section is a ground for
9 disciplinary action.

10 SEC. 10. Section 17577.5 of the Business and Professions
11 Code is amended to read:

12 17577.5. (a) No contract or offer for the sale, lease, or rental
13 of a home water treatment device and no purchase money loan, as
14 defined in subdivision (b), shall provide for a lien on real property.
15 Any lien taken in violation of this section is void and
16 unenforceable.

17 (b) For the purpose of this section, “purchase money loan”
18 means a loan or an advance under an open-end credit account if
19 both of the following occur:

20 (1) The primary purpose of the loan or the primary purpose of
21 establishing the open-end credit account is to finance all or a
22 portion of the purchase price or any of the lease or rental payments
23 for a water treatment device.

24 (2) The creditor knows the primary purpose of the loan or the
25 primary purpose of establishing the open-end credit account when
26 the loan is initially made or the open-end credit account is
27 established.

28 (c) The creditor shall be deemed to know that the primary
29 purpose of the loan or the primary purpose of establishing the
30 open-end credit account is the primary purpose described in
31 paragraph (1) of subdivision (b) if any of the following occur:

32 (1) The consumer’s application for credit or any other document
33 in the creditor’s possession before the loan is made or the open-end
34 account is established indicates the primary purpose of the loan
35 or the open-end credit account.

36 (2) The seller, lessor, or renter arranges or guarantees the loan
37 or open-end account, or participates in the preparation of the
38 consumer’s application for credit or other loan documents, or
39 receives from the creditor a loan commission, brokerage, or referral
40 fee.

1 (d) For the purpose of this section, “open-end credit” has the
2 same meaning as used in Section 226.2 of Title 12 of the Code of
3 Federal Regulations.

4 (e) This section does not apply to mechanics liens established
5 pursuant to Chapter 4 (commencing with Section 8400) of Part 6
6 of Division 4 of the Civil Code.

7 SEC. 11. Title 1.4C (commencing with Section 1749.70) is
8 added to Part 4 of Division 3 of the Civil Code, to read:

9

10 TITLE 1.4C. AUTOMATIC CHECKOUT SYSTEM

11

12 ~~1749.70~~

13 *1749.70.* This title shall be known and may be cited as the
14 Rosenthal-Roberti Item Pricing Act.

15 1749.71. (a) Every retail grocery store or grocery department
16 within a general retail merchandise store which uses a point-of-sale
17 system shall cause to have a clearly readable price indicated on
18 85 percent of the total number of packaged consumer commodities
19 offered for sale which are not exempt pursuant to subdivision (b).

20 The management of any such retail grocery store or grocery
21 department shall determine the number of consumer commodities
22 normally offered for sale on a daily basis, shall determine the
23 consumer commodities to be exempted pursuant to this subdivision,
24 and shall maintain a list of those consumer commodities exempt
25 pursuant to this subdivision. The list shall be made available to a
26 designated representative of the appropriate local union, the
27 members of which are responsible for item pricing, in those stores
28 or departments that have collective bargaining agreements, seven
29 days prior to an item or items being exempted pursuant to this
30 subdivision. In addition, the list shall be available and posted in a
31 prominent place in the store seven days prior to an item or items
32 being exempted pursuant to this subdivision.

33 (b) The provisions of this section shall not apply to any of the
34 following:

35 (1) Any consumer commodity which was not generally
36 item-priced on January 1, 1977, as determined by the Department
37 of Food and Agriculture pursuant to subdivision (c) of Section
38 12604.5 of the Business and Professions Code, as in effect July 8,
39 1977.

- 1 (2) Any unpackaged fresh food produce, or to consumer
2 commodities which are under three cubic inches in size, weigh
3 less than three ounces, and are priced under forty cents (\$0.40).
- 4 (3) Any consumer commodity offered as a sale item or as a
5 special.
- 6 (4) Any business which has as its only regular employees the
7 owner thereof, or the parent, spouse, or child of the owner, or, in
8 addition thereto, not more than two other regular employees.
- 9 (5) Identical items within a multi-item package.
- 10 (6) Items sold through a vending machine.
- 11 (c) For the purposes of this section:
- 12 (1) “Consumer commodity” includes all of the following:
- 13 (A) Food, including all material whether solid, liquid, or mixed,
14 and whether simple or compound, which is used or intended for
15 consumption by human beings or domestic animals normally kept
16 as household pets, and all substances or ingredients added to any
17 material for any purpose. This definition shall not apply to
18 individual packages of cigarettes or individual cigars.
- 19 (B) Napkins, facial tissues, toilet tissues, foil wrapping, plastic
20 wrapping, paper toweling, and disposable plates and cups.
- 21 (C) Detergents, soaps, and other cleaning agents.
- 22 (D) Pharmaceuticals, including nonprescription drugs, bandages,
23 female hygiene products, and toiletries.
- 24 (2) “Grocery department” means an area within a general retail
25 merchandise store which is engaged primarily in the retail sale of
26 packaged food, rather than food prepared for immediate
27 consumption on or off the premises.
- 28 (3) “Grocery store” means a store engaged primarily in the retail
29 sale of packaged food, rather than food prepared for consumption
30 on the premises.
- 31 (4) “Point-of-sale system” means any computer or electronic
32 system used by a retail establishment such as, but not limited to,
33 Universal Product Code scanners, price lookup codes, or an
34 electronic price lookup system as a means for determining the
35 price of the item being purchased by a consumer.
- 36 (5) “Sale item” or “special” means any consumer commodity
37 offered in good faith for a period of 14 days or less, on sale at a
38 price below the normal price that item is usually sold for in that
39 store. The Department of Food and Agriculture shall determine
40 the normal length of a sale held for consumer commodities

1 generally item priced on January 1, 1977, in stores regulated
2 pursuant to this chapter, and that period shall be used for the
3 purposes of this subdivision. The department's determination as
4 to the normal length of a sale shall be binding for the purposes of
5 this section, but each such determination shall not exceed seven
6 days.

7 1749.72. (a) The intentional violation of Section 1749.71 is
8 punishable by a civil penalty of not less than twenty-five dollars
9 (\$25) nor more than five hundred dollars (\$500).

10 (b) Failure to have a clearly readable price indicated on 12 units
11 of the same item required to be item-priced of the same commodity
12 shall constitute a presumption of intent to violate Section 1749.71.

13 (c) Every additional 12 units of the same item required to be
14 item-priced that fail to have a price indicated on them shall
15 constitute a presumption of intent to violate Section 1749.71.

16 (d) Each day that a violation continues shall also constitute a
17 separate violation after notification thereof to the manager or
18 assistant manager of the retail grocery store or the grocery
19 department of the general retail merchandise store and shall
20 constitute a presumption of intent to violate Section 1749.71.

21 (e) Notwithstanding any other provision of law, any person may
22 bring an action to enjoin a violation of Section 1749.71.

23 1749.73. Any person, firm, corporation, or association who
24 violates Sections 1749.71 and 1749.72 shall be liable to any person
25 injured for any losses and expenses thereby incurred, and for the
26 sum of fifty dollars (\$50) in addition thereto. The remedy set forth
27 herein is applicable only to actions brought in the name of, and on
28 behalf of, a single plaintiff and shall not be applicable in multiple
29 plaintiff or class actions.

30 1749.74. Improper pricing on the shelf or on the item due to
31 unintentional error shall not constitute a violation of this title.

32 1749.75. The remedies set forth in Sections 1749.72 and
33 1749.73 are the exclusive remedies available to any person, state
34 or local agency, or law enforcement official.

35 1749.76. It is the intention of the Legislature that this title shall
36 occupy the field with regard to item pricing and shall preempt all
37 local ordinances, rules, or regulations concerning item pricing.

38 SEC. 12. Section 1917.166 of the Civil Code is amended to
39 read:

1 1917.166. The lien of a shared appreciation loan, including the
2 principal amount and all interest, whether accrued or to be accrued,
3 and all amounts of contingent deferred interest, shall attach from
4 the time of the recordation of the deed of trust securing the loan,
5 and the lien, including the lien of the interest accrued or to be
6 accrued and of the contingent deferred interest, shall have priority
7 over any other lien or encumbrance affecting the property secured
8 by the shared appreciation instrument, recorded after the time of
9 recordation of the shared appreciation instrument. However,
10 nothing in this section or Section 1917.165 shall preclude a junior
11 lien or encumbrance subordinate to the obligation of the shared
12 appreciation loan. In no case may a junior lien achieve priority
13 over the lien securing the obligation of the shared appreciation
14 loan, provided that nothing in this section shall be construed to
15 supersede Section 8450.

16 SEC. 13. Section 1917.615 of the Civil Code is amended to
17 read:

18 1917.615. The lien of a shared appreciation loan for seniors,
19 including the total loan obligation, shall attach from the time of
20 the recordation of the deed of trust securing the loan, and the lien,
21 including the lien of the total loan obligation accrued or to be
22 accrued, shall have priority over any other lien or encumbrance
23 affecting the property secured by the shared appreciation instrument
24 and recorded after the time of recordation of the shared appreciation
25 instrument. However, nothing in this section or Section 1917.614
26 shall preclude a junior lien or encumbrance subordinate to the total
27 loan obligation of the shared appreciation loan for seniors. In no
28 case may a junior lien achieve priority over the lien securing the
29 total loan obligation of the shared appreciation loan, provided that
30 nothing in this section shall be construed to supersede Section
31 8450.

32 SEC. 14. Section 3059 of the Civil Code is amended to read:

33 3059. The liens of mechanics, for materials and services upon
34 real property, are regulated by Chapter 4 (commencing with Section
35 8400) of Part 6 of Division 4.

36 SEC. 15. Section 3060 of the Civil Code is amended to read:

37 3060. (a) As used in this section, “mine” means a mining claim
38 or real property worked on as a mine.

39 (b) Any person who performs labor in a mine, either in its
40 development or in working on it by the subtractive process, or

1 furnishes materials to be used or consumed in it, has a lien upon
2 the mine and the works owned and used by the owners for milling
3 or reducing the ores from the mine, for the value of the work or
4 labor done or materials furnished by each, whether done or
5 furnished at the instance of the owner of the mine, or the owner's
6 agent, and every contractor, subcontractor, superintendent, or other
7 person having charge of any mining or work or labor performed
8 in and about the mine, either as lessee or under a working bond or
9 contract thereon shall be held to be the agent of the owner for the
10 purposes of this section. The liens provided for by this section
11 shall be enforced in the same manner as those provided for by Part
12 6 (commencing with Section 8000) of Division 4.

13 SEC. 16. Chapter 8 (commencing with Section 3081.1) of Title
14 14 of Part 4 of Division 3 of the Civil Code is repealed.

15 SEC. 17. Title 15 (commencing with Section 3082) of Part 4
16 of Division 3 of the Civil Code is repealed.

17 SEC. 18. Section 3319 of the Civil Code is amended to read:

18 3319. (a) In each written contract for private works of
19 improvement entered into on or after January 1, 1996, the
20 contracting party and the design professional may agree to
21 contractual provisions that include a late payment penalty, in lieu
22 of any interest otherwise due. The terms of the late payment penalty
23 shall be specifically set forth in the written contract.

24 (b) The penalty authorized pursuant to subdivision (a) shall be
25 separate from, and in addition to, the design professionals liens
26 provided by Chapter 3 (commencing with Section 8300) of Part
27 6 of Division 4, mechanics liens provided by Chapter 4
28 (commencing with Section 8400) of Part 6 of Division 4, and stop
29 payment notices provided by Chapter 5 (commencing with Section
30 8500) of Part 6 of Division 4.

31 (c) None of the rights or obligations created or permitted by this
32 section between design professionals and contracting parties shall
33 apply to construction loan funds held by a lender pursuant to a
34 construction loan agreement.

35 (d) For purposes of this section, the following definitions apply:

36 (1) "Contracting party" means any person or entity entering into
37 a written contract with a design professional for professional design
38 services for a private work of improvement.

39 (2) "Design professional" means a person licensed as an
40 architect pursuant to Chapter 3 (commencing with Section 5500)

1 of Division 3 of the Business and Professions Code, registered as
2 a professional engineer pursuant to Chapter 7 (commencing with
3 Section 6700) of Division 3 of the Business and Professions Code,
4 or licensed as a land surveyor pursuant to Chapter 15 (commencing
5 with Section 8700) of Division 3 of the Business and Professions
6 Code.

7 SEC. 19. Section 3320 of the Civil Code is amended to read:

8 3320. (a) In each contract for public works of improvement,
9 entered into on or after January 1, 1996, the public agency shall
10 pay to the prime design professional any progress payment within
11 30 days of receipt of a written demand for payment in accordance
12 with the contract, and the final retention payment within 45 days
13 of receipt of a written demand for payment in accordance with the
14 contract. If the public agency disputes in good faith any portion
15 of the amount due, it may withhold from the payment an amount
16 not to exceed 150 percent of the disputed amount. The disputed
17 amount withheld is not subject to any penalty authorized by this
18 section.

19 (b) If any amount is wrongfully withheld or is not timely paid
20 in violation of this section, the prime design professional shall be
21 entitled to a penalty of 1 ½ percent for the improperly withheld
22 amount, in lieu of any interest otherwise due, per month for every
23 month that payment is not made. In any action for the collection
24 of amounts withheld in violation of this section, the prevailing
25 party is entitled to his or her reasonable attorney's fees and costs.

26 (c) The penalty described in subdivision (b) is separate from,
27 and in addition to, the design professionals' remedies for a public
28 works contract provided in ~~Part 6 (commencing with Section~~
29 ~~41010) of Division 2 of the Public Contract Code. Title 2~~
30 ~~(commencing with Section 9000) of Part 6 of Division 4.~~

31 (d) This section does not apply to state agency contracts subject
32 to Section 927.6 of the Government Code.

33 (e) None of the rights or obligations created by this section
34 between prime design professionals and public agencies apply to
35 construction loan funds held by a lender pursuant to a construction
36 loan agreement.

37 (f) For purposes of this section:

38 (1) "Public agency" means the state, any county, any city, any
39 city and county, any district, any public authority, any public

1 agency, any municipal corporation, or other political subdivision
2 or political corporation of the state.

3 (2) “Design professional” means a person licensed as an
4 architect pursuant to Chapter 3 (commencing with Section 5500)
5 of Division 3 of the Business and Professions Code, registered as
6 a professional engineer pursuant to Chapter 7 (commencing with
7 Section 6700) of Division 3 of the Business and Professions Code,
8 or licensed as a land surveyor pursuant to Chapter 15 (commencing
9 with Section 8700) of Division 3 of the Business and Professions
10 Code.

11 (3) “Prime design professional” means a design professional
12 with a written contract directly with the public agency.

13 SEC. 20. Section 3321 of the Civil Code is amended to read:

14 3321. (a) In each contract for public works of improvement,
15 a prime design professional shall pay to each subconsultant design
16 professional the amount due him or her from the payment received,
17 not later than 15 days after receipt of each progress payment or
18 final retention payment. If the prime design professional disputes
19 in good faith any portion of the amount due, he or she may
20 withhold from the payment an amount not to exceed 150 percent
21 of the disputed amount. The disputed amount withheld shall not
22 be subject to any penalty authorized by this section.

23 (b) If any amount is wrongfully withheld or is not timely paid
24 in violation of this section, the subconsultant design professional
25 shall be entitled to a penalty of 1½ percent of the improperly
26 withheld amount, in lieu of any interest otherwise due, per month,
27 for each month that payment is not made. In any action for the
28 collection of amounts withheld in violation of this section, the
29 prevailing party shall be entitled to his or her reasonable attorney’s
30 fees and costs.

31 (c) The penalty described in subdivision (b) shall be separate
32 from, and in addition to, the design professionals’ remedies for a
33 public works contract provided in ~~Part 6 (commencing with Section~~
34 ~~41010) of Division 2 of the Public Contract Code. Title 2~~
35 *(commencing with Section 9000) of Part 6 of Division 4.*

36 (d) None of the rights or obligations created by this section
37 between prime design professionals and subconsultant design
38 professionals shall apply to construction loan funds held by a lender
39 pursuant to a construction loan agreement.

40 (e) For purposes of this section:

1 (1) “Public agency” means the state, any county, any city, any
2 city and county, any district, any public authority, any public
3 agency, any municipal corporation, or other political subdivision
4 or political corporation of the state.

5 (2) “Design professional” means a person licensed as an
6 architect pursuant to Chapter 3 (commencing with Section 5500)
7 of Division 3 of the Business and Professions Code, registered as
8 a professional engineer pursuant to Chapter 7 (commencing with
9 Section 6700) of Division 3 of the Business and Professions Code,
10 or licensed as a land surveyor pursuant to Chapter 15 (commencing
11 with Section 8700) of Division 3 of the Business and Professions
12 Code.

13 (3) “Prime design professional” means a design professional
14 having a written contract directly with the public agency.

15 (4) “Subconsultant design professional” means a design
16 professional having a written contract with a prime design
17 professional.

18 SEC. 21. Part 8 (commencing with Section 7100) of Division
19 4 of the Civil Code is repealed.

20 SEC. 22. Part 6 (commencing with Section 8000) is added to
21 Division 4 of the Civil Code, to read:

22
23 PART 6. ~~PRIVATE WORK~~ WORKS OF IMPROVEMENT

24
25 *TITLE 1. PRIVATE WORK OF IMPROVEMENT*

26
27 CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

28
29 Article 1. Definitions

30
31 8000. Unless the provision or context otherwise requires, the
32 definitions in this article govern the construction of this ~~part~~ *title*.

33 8002. “Claimant” means a person that has a right under this
34 ~~part~~ *title* to record a claim of lien, give a stop payment notice, or
35 assert a claim against a payment bond.

36 ~~8004. A work of improvement “commences” on either of the~~
37 ~~following events:~~

38 (a) ~~Delivery to the site of rental equipment, material, or supplies~~
39 ~~that are thereafter used, consumed, or incorporated in the work of~~
40 ~~improvement.~~

1 ~~(b) Visible work of a permanent nature on the site.~~

2 8006. “Construction lender” means either of the following:

3 (a) A mortgagee or beneficiary under a deed of trust lending
4 funds for payment of construction costs for all or part of a work
5 of improvement, or the assignee or successor in interest of the
6 mortgagee or beneficiary.

7 (b) An escrow holder or other person holding funds provided
8 by an owner, lender, or another person as a fund for payment of
9 construction costs for all or part of a work of improvement.

10 8008. “Contract” means an agreement that provides for all or
11 part of a work of improvement. The term includes a contract
12 change.

13 8010. “Contract price” means the price agreed to in a direct
14 contract for a work of improvement, including a contract change.
15 If the parties have not agreed to a price for the work of
16 improvement, the contract price is the reasonable value of the work
17 provided for the work of improvement.

18 8011. “Contractor” includes a direct contractor, subcontractor,
19 or both.

20 8012. “Design professional” means a person licensed as an
21 architect pursuant to Chapter 3 (commencing with Section 5500)
22 of Division 3 of the Business and Professions Code, *licensed as a*
23 *landscape architect pursuant to Chapter 3.5 (commencing with*
24 *Section 5615) of Division 3 of the Business and Professions Code,*
25 registered as a professional engineer pursuant to Chapter 7
26 (commencing with Section 6700) of Division 3 of the Business
27 and Professions Code, or licensed as a land surveyor pursuant to
28 Chapter 15 (commencing with Section 8700) of Division 3 of the
29 Business and Professions Code who provides services pursuant to
30 a written contract with a landowner for the design, engineering,
31 or planning of a work of improvement.

32 8013. “Direct contract” means a contract between an owner
33 and a direct contractor that provides for all or part of a work of
34 improvement. The term includes a contract change.

35 8014. “Direct contractor” means a contractor that has a direct
36 contractual relationship with an owner. A reference in another
37 statute to a “prime contractor” in connection with the provisions
38 in this ~~part~~ *title* means a “direct contractor.”

39 8016. A person “knows” or “has knowledge” of information
40 if the person knows or should have known that information.

1 8018. “Labor, service, equipment, or material” includes, but
2 is not limited to, labor, skills, services, material, supplies,
3 equipment, appliances, power, and surveying provided for a work
4 of improvement.

5 8020. (a) “Laborer” means a person who, acting as an
6 employee, performs labor, or bestows skill or other necessary
7 services, on a work of improvement.

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

14 (c) A person or entity described in subdivision (b) that has
15 standing under applicable law to maintain a direct legal action, in
16 its own name or as an assignee, to collect any portion of
17 compensation owed for a laborer for a work of improvement, shall
18 have standing to enforce any rights or claims of the laborer under
19 this ~~part~~ *title*, to the extent of the compensation agreed to be paid
20 to the person or entity for labor on that improvement. This
21 subdivision is intended to give effect to the longstanding public
22 policy of this state to protect the entire compensation of a laborer
23 on a work of improvement, regardless of the form in which that
24 compensation is to be paid.

25 8022. “Lending institution” includes a commercial bank,
26 savings and loan institution, credit union, or other organization or
27 person engaged in the business of financing loans.

28 8024. “Lien” means a lien under this ~~part~~ *title* and includes a
29 lien of a design professional under Section 8302, a lien for a work
30 of improvement under Section 8400, and a lien for a site
31 improvement under Section 8402.

32 8026. ~~(a) “Material supplier” means a person that provides~~
33 ~~material or supplies to be used or consumed in a work of~~
34 ~~improvement.~~

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

39 8028. “Owner” means:

- 1 (a) With respect to a work of improvement, a person that
2 contracts for the work of improvement.
- 3 (b) With respect to property on which a work of improvement
4 is situated or planned, a person that owns the fee or a lesser interest
5 in the property, including, but not limited to, an interest as lessee
6 or as vendee under a contract of purchase.
- 7 (c) A successor in interest of a person described in subdivision
8 (a) or (b).
- 9 8030. “Payment bond” means a bond given under Chapter 6
10 (commencing with 8600).
- 11 8032. “Person” means an individual, corporation, public entity,
12 business trust, estate, trust, partnership, limited liability company,
13 association, or other entity.
- 14 8034. “Preliminary notice” means the notice provided for in
15 Chapter 2 (commencing with Section 8200).
- 16 8036. “Public entity” means the state, Regents of the University
17 of California, a county, city, district, public authority, public
18 agency, and any other political subdivision or public corporation
19 in the state.
- 20 8038. (a) “Reputed construction lender” means a person that
21 a claimant reasonably and in good faith believes is a construction
22 lender.
- 23 (b) “Reputed direct contractor” means a person that a claimant
24 reasonably and in good faith believes is a direct contractor.
- 25 (c) “Reputed owner” means a person that a claimant reasonably
26 and in good faith believes is an owner.
- 27 8040. “Site” means the property on which a work of
28 improvement is situated or planned.
- 29 8042. “Site improvement” means any of the following work
30 on property:
- 31 (a) Demolition or removal of improvements, trees, or other
32 vegetation.
- 33 (b) Drilling test holes.
- 34 (c) Grading, filling, or otherwise improving the property or a
35 street, highway, or sidewalk in front of or adjoining the property.
- 36 (d) Construction or installation of sewers or other public utilities.
- 37 (e) Construction of areas, vaults, cellars, or rooms under
38 sidewalks.
- 39 (f) Any other work or improvements in preparation of the site
40 for a work of improvement.

1 8044. (a) “Stop payment notice” means the notice given under
2 Chapter 5 (commencing with Section 8500). A reference in another
3 statute to a “stop notice” in connection with the remedies provided
4 in this ~~part title~~ means a stop payment notice.

5 (b) A stop payment notice may be bonded or unbonded. A
6 “bonded stop payment notice” is a notice given with a bond under
7 Section 8532. An “unbonded stop payment notice” is a notice not
8 given with a bond under Section 8532.

9 (c) Except to the extent this ~~part title~~ distinguishes between a
10 bonded and an unbonded stop payment notice, a reference in this
11 ~~part title~~ to a stop payment notice includes both a bonded and an
12 unbonded notice.

13 8046. “Subcontractor” means a contractor that does not have
14 a direct contractual relationship with an owner. The term includes
15 a contractor that has a contractual relationship with a direct
16 contractor or with another subcontractor.

17 8048. “Work” means labor, service, equipment, or material
18 provided to a work of improvement.

19 8050. (a) “Work of improvement” includes, but is not limited
20 to:

21 (1) Construction, alteration, repair, demolition, or removal, in
22 whole or in part, of, or addition to, a building, wharf, bridge, ditch,
23 flume, aqueduct, well, tunnel, fence, machinery, railroad, or road.

24 (2) Seeding, sodding, or planting of property for landscaping
25 purposes.

26 (3) Filling, leveling, or grading of property.

27 (b) Except as otherwise provided in this ~~part title~~, “work of
28 improvement” means the entire structure or scheme of
29 improvement as a whole, and includes site improvement.

30

31

Article 2. Miscellaneous Provisions

32

33 8051. (a) This ~~part title~~ is operative on January 1, ~~2011~~ 2012.

34 (b) Except as otherwise provided in this section, this ~~part title~~
35 applies to a contract for a work of improvement executed before,
36 on, or after the operative date.

37 (c) The effectiveness of a notice given or other action taken on
38 a work of improvement before the operative date is governed by
39 the applicable law in effect before the operative date and not by
40 this ~~part title~~.

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

5 8052. This ~~part title~~ applies only to a work of improvement
6 that is not governed by ~~Part 6 (commencing with Section 41010)~~
7 ~~of Division 2 of the Public Contract Code Title 2 (commencing~~
8 ~~with Section 9000) of this part.~~

9 8054. Except as otherwise provided in this ~~part title~~, Part 2
10 (commencing with Section 307) of the Code of Civil Procedure
11 provides the rules of practice in proceedings under this ~~part title~~.

12 8056. For purposes of this ~~part title~~, “day” means a calendar
13 day.

14 8058. (a) If this ~~part title~~ provides for filing a contract, plan,
15 or other paper with the county recorder, the provision is satisfied
16 by filing the paper in the office of the county recorder of the county
17 in which the work of improvement or part of it is situated.

18 (b) If this ~~part title~~ provides for recording a notice, claim of lien,
19 release of lien, payment bond, or other paper, the provision is
20 satisfied by filing the paper for record in the office of the county
21 recorder of the county in which the work of improvement or part
22 of it is situated. ~~A paper in otherwise proper form, verified and~~
23 ~~containing the information required by this part, shall be accepted~~
24 ~~by the recorder for recording and is deemed duly recorded without~~
25 ~~acknowledgment.~~

26 (c) The county recorder shall number, index, and preserve a
27 contract, plan, or other paper presented for filing under this ~~part~~
28 ~~title~~, and shall number, index, and transcribe into the official
29 records, in the same manner as a conveyance of real property, a
30 notice, claim of lien, payment bond, or other paper recorded under
31 this ~~part title~~.

32 (d) The county recorder shall charge and collect the fees
33 provided in Article 5 (commencing with Section 27360) of Chapter
34 6 of Part 3 of Division 2 of Title 3 of the Government Code for
35 performing duties under this section.

36 8060. No act of an owner in good faith and in compliance with
37 a provision of this ~~part title~~ shall be construed to prevent a direct
38 contractor’s performance of the contract, or exonerate a surety on
39 a performance or payment bond.

1 8062. An owner may give a notice or execute or file a document
2 under this ~~part~~ *title* on behalf of a co-owner if the owner acts on
3 the co-owner's behalf and includes in the notice or document the
4 name and address of the co-owner on whose behalf the owner acts.

5 8064. An act that may be done by or to a person under this ~~part~~
6 *title* may be done by or to the person's agent to the extent the act
7 is within the scope of the agent's authority.

8 8066. (a) This ~~part~~ *title* does not apply to a transaction
9 governed by the Oil and Gas Lien Act, Chapter 2.5 (commencing
10 with Section 1203.50) of Title 4 of Part 3 of the Code of Civil
11 Procedure.

12 (b) This ~~part~~ *title* does not apply to or change improvement
13 security under the Subdivision Map Act, Division 2 (commencing
14 with Section 66410) of Title 7 of the Government Code.

15 (c) This ~~part~~ *title* does not apply to a transaction governed by
16 Sections 20457 to 20464, inclusive, of the Public Contract Code.

17
18 Article 3. Notice

19
20 8100. (a) Notice under this ~~part~~ *title* shall be in writing.

21 (b) Written notice under this ~~part~~ *title* may be given by electronic
22 communication to the extent authorized under Section 8112.

23 8102. (a) Notice under this ~~part~~ *title* shall, in addition to any
24 other information required by statute for that type of notice, include
25 all of the following information to the extent known to the person
26 giving the notice:

27 (1) The name and address of the owner or reputed owner.

28 (2) The name and address of the direct contractor.

29 (3) The name and address of the construction lender, if any.

30 (4) A description of the site sufficient for identification,
31 including the street address of the site, if any. If a sufficient legal
32 description of the site is given, the effectiveness of the notice is
33 not affected by the fact that the street address is erroneous or is
34 omitted.

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

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

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

39 (B) The name of the person to or for whom the work is provided.

1 (C) A statement or estimate of the claimant’s demand, if any,
2 after deducting all just credits and offsets.

3 (b) Notice is not invalid by reason of any variance from the
4 requirements of this section if the notice is sufficient to
5 substantially inform the person given notice of the information
6 required by this section and other information required in the
7 notice.

8 8104. (a) A direct contractor or subcontractor that employs a
9 laborer and fails to pay the full compensation due the laborer,
10 including any employer payments described in Section 1773.1 of
11 the Labor Code and implementing regulations, shall not later than
12 the date the compensation became delinquent, give the laborer,
13 the laborer’s bargaining representative, if any, the construction
14 lender or reputed construction lender, if any, and the owner or
15 reputed owner, notice that includes all of the following information,
16 in addition to the information required by Section 8102:

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

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

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

23 (b) Failure to give the notice required by subdivision (a)
24 constitutes grounds for disciplinary action under the Contractors’
25 State License Law, Chapter 9 (commencing with Section 7000)
26 of Division 3 of the Business and Professions Code.

27 8106. Except as otherwise provided by statute, notice under
28 this ~~part~~ *title* shall be given by any of the following means:

29 (a) Personal delivery.

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

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

34 8108. Except as otherwise provided by this part, notice under
35 this ~~part~~ *title* shall be given to the person to be notified at the
36 person’s residence, the person’s place of business, or at any of the
37 following addresses:

38 (a) If the person to be notified is an owner, the owner’s address
39 shown on the direct contract, the building permit, or a construction
40 trust deed.

1 (b) If the person to be notified is a construction lender, the
2 construction lender’s address shown on the construction loan
3 agreement or construction trust deed.

4 (c) If the person to be notified is a direct contractor or a
5 subcontractor, the contractor’s address shown on the building
6 permit, on the contractor’s contract, or on the records of the
7 Contractors’ State License Board.

8 (d) If the person to be notified is a claimant, the claimant’s
9 address shown on the claimant’s contract, preliminary notice, claim
10 of lien, stop payment notice, or claim against a payment bond, or
11 on the records of the Contractors’ State License Board.

12 (e) If the person to be notified is a surety on a bond, the surety’s
13 address shown on the bond for service of notices, papers, and other
14 documents, or on the records of the Department of Insurance.

15 8110. Except as otherwise provided by this ~~part~~ *title*, notice
16 by mail under this ~~part~~ *title* shall be given by registered or certified
17 mail, express mail, or overnight delivery by an express service
18 carrier.

19 8112. (a) As used in this section, “electronic record” has the
20 meaning provided in Section 1633.2.

21 (b) A notice under this ~~part~~ *title* may be given to a person in the
22 form of an electronic record if the person has agreed in writing to
23 receive the notice in the form of an electronic record.

24 (c) If a person that has agreed to receive a notice in the form of
25 an electronic record is a consumer within the meaning of Section
26 7006 of Title 15 of the United States Code, the person’s agreement
27 shall satisfy the requirements of Section 7001 of Title 15 of the
28 United States Code relating to consumer consent to an electronic
29 record.

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

33 8116. Notice under this ~~part~~ *title* is complete and deemed to
34 have been given at the following times:

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

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

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

4 (d) If given by posting, when displayed.

5 (e) If given by recording, when recorded in the office of the
6 county recorder.

7 (f) If given in the form of an electronic record, when the
8 electronic record is transmitted.

9 8118. (a) Proof that notice was given to a person in the manner
10 required by this ~~part~~ *title* shall be made by a proof of notice
11 declaration that states all of the following:

12 (1) The type or description of the notice given.

13 (2) The date, place, and manner of notice, and facts showing
14 that notice was given in the manner required by statute.

15 (3) The name and address of the person to which notice was
16 given, and, if appropriate, the title or capacity in which the person
17 was given notice.

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

20 (1) Documentation provided by the United States Postal Service
21 showing that payment was made to mail the notice using registered
22 or certified mail, or express mail.

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

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

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

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

Article 4. Construction Documents

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

(1) The owner’s name, 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.

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.

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) The name and address of the construction lender.

(2) The name and address of the owner of the property described in the instrument.

(3) A legal description of the property that secures the loan and, if known, the street address of the property.

(b) Failure to comply with subdivision (a) does not affect the validity of the mortgage, deed of trust, or other instrument.

(c) Failure to comply with subdivision (a) does not relieve a person required to give preliminary notice from that duty.

1 (d) The county recorder of the county in which the instrument
2 is recorded shall indicate in the general index of the official records
3 of the county that the instrument secures a construction loan.

4
5 Article 5. Bonds
6

7 8140. The Bond and Undertaking Law, Chapter 2 (commencing
8 with Section 995.010) of Title 14 of Part 2 of the Code of Civil
9 Procedure, applies to a bond given under this ~~part~~ *title*, except to
10 the extent this ~~part~~ *title* prescribes a different rule or is inconsistent.

11 8142. None of the following releases a surety from liability on
12 a bond given under this ~~part~~ *title*:

13 (a) A change to a contract, plan, specification, or agreement for
14 a work of improvement or for work provided for a work of
15 improvement.

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

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

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

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

26 8144. (a) A bond given under this ~~part~~ *title* shall be construed
27 most strongly against the surety and in favor of the beneficiary.

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

31 (c) Except as otherwise provided by statute, the sole conditions
32 of recovery on the bond are that the ~~beneficiary~~ *claimant* is a person
33 described in Article 1 (commencing with Section 8400) of Chapter
34 ~~4 and the beneficiary 4, and~~ has not been paid the full amount of
35 the claim.

36
37 Article 6. Completion
38

39 8150. (a) For the purpose of this ~~part~~ *title*, completion of a
40 work of improvement occurs at the earliest of the following times:

1 (1) ~~Substantial~~ *Actual* completion of the work of improvement.

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

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

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

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

10 8152. (a) An owner may record a notice of completion on or
11 within 15 days after the date of completion of a work of
12 improvement.

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

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

17 (1) If the notice is given only of completion of a contract for a
18 particular portion of the work of improvement as provided in
19 Section 8154, the name of the direct contractor under that contract
20 and a general statement of the work provided pursuant to the
21 contract.

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

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

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

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

31 *8153. A notice of completion in otherwise proper form, verified*
32 *and containing the information required by this title, shall be*
33 *accepted by the recorder for recording and is deemed duly*
34 *recorded without acknowledgment.*

35 8154. If a work of improvement is made pursuant to two or
36 more direct contracts, each covering a portion of the work of
37 improvement:

38 (a) The owner may record a notice of completion of a direct
39 contract for a portion of the work of improvement. On recordation
40 of the notice of completion, for the purpose of Sections 8412 and

1 8414, a direct contractor is deemed to have completed the contract
 2 for which the notice of completion is recorded and a claimant other
 3 than a direct contractor is deemed to have ceased providing work.

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

7 8155. (a) An owner may record a notice of cessation if there
 8 has been a continuous cessation of labor on a work of improvement
 9 for at least 30 days prior to the recordation that continues through
 10 the date of the recordation.

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

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

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

16 (2) A statement that the cessation has continued until the
 17 recordation of the notice.

18 8156. (a) An owner that records a notice of completion or
 19 cessation shall, within 10 days of the date the notice of completion
 20 or cessation is filed for record, give a copy of the notice to all of
 21 the following persons:

22 (1) A direct contractor.

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

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

26 (c) If the owner fails to give notice to a person as required by
 27 subdivision (a), the notice is ineffective to shorten the time within
 28 which that person may record a claim of lien under Sections 8412
 29 and 8414. The ineffectiveness of the notice is the sole liability of
 30 the owner for failure to give notice to a person under subdivision
 31 (a).

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

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

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

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

Article 7. Waiver and Release

1
2
3 8160. An owner, direct contractor, or subcontractor may not,
4 by contract or otherwise, waive, affect, or impair any other
5 claimant's rights under this ~~part~~ *title*, whether with or without
6 notice, and any term of a contract that purports to do so is void
7 and unenforceable unless and until the claimant executes and
8 delivers a waiver and release under this article.

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

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

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

19 8164. An oral or written statement purporting to waive, release,
20 impair or otherwise adversely affect a lien or claim is void and
21 unenforceable and does not create an estoppel or impairment of
22 the lien or claim unless either of the following conditions is
23 satisfied:

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

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

28 8166. (a) A claimant may reduce the amount of, or release in
29 its entirety, a stop payment notice. The reduction or release shall
30 be in writing and may be given in a form other than a waiver and
31 release form provided in this article.

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

37 (c) A claimant's reduction or release of a stop payment notice
38 has the following effect:

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

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

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

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

12 8168. This article does not affect the enforceability of either
13 an accord and satisfaction concerning a good faith dispute or an
14 agreement made in settlement of an action pending in court if the
15 accord and satisfaction or agreement and settlement make specific
16 reference to the lien or claim.

17 8170. If a claimant is required to execute a waiver and release
18 in exchange for, or in order to induce payment of, a progress
19 payment and the claimant is not, in fact, paid in exchange for the
20 waiver and release or a single payee check or joint payee check is
21 given in exchange for the waiver and release, the waiver and release
22 shall be in substantially the following form:

23
24 Conditional Waiver and Release on Progress Payment

25
26 NOTICE: This document waives the claimant’s lien and certain other rights
27 effective on receipt of payment. A person should not rely on this document
28 unless satisfied that the claimant has received payment.

29
30 Identifying Information

31 Name of Claimant: _____

32 Name of Customer: _____

33 Job Location: _____

34 Owner: _____

35 Through Date: _____

36
37 Conditional Waiver and Release

38 This document waives and releases lien, stop payment notice, and payment
39 bond rights the claimant has for labor and service provided, and equipment
40 and material delivered, to the customer on this job through the Through Date

1 of this document. This document is effective only on the claimant’s receipt of
 2 payment from the financial institution on which the following check is drawn:
 3 Maker of Check: _____
 4 Amount of Check: \$ _____
 5 Check Payable to: _____
 6

7 Exceptions
 8 This document does not ~~apply to a lien right based on~~ *affect* any of the
 9 following:

- 10 (1) Retentions.
 11 (2) Extras for which the claimant has not received payment.
 12 (3) The following progress payments for which the claimant has previously
 13 given a conditional waiver and release but has not received payment:
 14 Date(s) of waiver and release: _____
 15 Amount(s) of unpaid progress payment(s): \$ _____

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

19 Signature
 20 Claimant’s Signature: _____
 21 Claimant’s Title: _____
 22 Date of Signature: _____
 23
 24

25 8172. If the claimant is required to execute a waiver and release
 26 in exchange for, or in order to induce payment of, a progress
 27 payment and the claimant asserts in the waiver it has, in fact, been
 28 paid the progress payment, the waiver and release shall be in
 29 substantially the following form, with the text of the “Notice to
 30 Claimant” in at least as large a type as the largest type otherwise
 31 in the form:

32
 33 Unconditional Waiver and Release on Progress Payment
 34

35 NOTICE TO CLAIMANT: This document waives and releases rights
 36 unconditionally and states that you have been paid for giving up those rights.
 37 This document is enforceable against you if you sign it, even if you have not
 38 been paid. If you have not been paid, use a conditional waiver and release
 39 form.
 40

1 Identifying Information

2 Name of Claimant: _____

3 Name of Customer: _____

4 Job Location: _____

5 Owner: _____

6 Through Date: _____

7

8 Unconditional Waiver and Release

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

13

14 The claimant has received the following progress payment:

15 \$ _____

16

17 Exceptions

18 This document does not ~~apply to a lien right based on~~ affect any of the
19 following:

20 (1) Retentions.

21 (2) Extras for which the claimant has not received payment. This document
22 does not affect contract rights, including (A) a right based on rescission,
23 abandonment, or breach of contract, and (B) the right to recover compensation
24 for work not compensated by the payment.

25

26 Signature

27 Claimant's Signature: _____

28 Claimant's Title: _____

29 Date of Signature: _____

30

31 8174. If the claimant is required to execute a waiver and release
32 in exchange for, or in order to induce payment of, a final payment
33 and the claimant is not, in fact, paid in exchange for the waiver
34 and release or a single payee check or joint payee check is given
35 in exchange for the waiver and release, the waiver and release shall
36 be in substantially the following form:

37

38 Conditional Waiver and Release on Final Payment

39

1 NOTICE: This document waives the claimant’s lien and certain other rights
2 effective on receipt of payment. A person should not rely on this document
3 unless satisfied that the claimant has received payment.

4

5 Identifying Information

6 Name of Claimant: _____

7 Name of Customer: _____

8 Job Location: _____

9 Owner: _____

10

11 Conditional Waiver and Release

12 This document waives and releases lien, stop payment notice, and payment
13 bond rights the claimant has for labor and service provided, and equipment
14 and material delivered to the customer on this job. This document is effective
15 only on the claimant’s receipt of payment from the financial institution on
16 which the following check is drawn:

17 Maker of Check: _____

18 Amount of Check: \$ _____

19 Check Payable to: _____

20

21 Exceptions

22 This document does not affect any of the following:

23 (1) Disputed claims for extras in the amount of: \$ _____

24 (2) The following progress payments for which the claimant has previously
25 given a conditional waiver and release but has not received payment:

26 Date(s) of waiver and release: _____

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

28

29 Signature

30 Claimant’s Signature: _____

31 Claimant’s Title: _____

32 Date of Signature: _____

33

34 8176. If the claimant is required to execute a waiver and release
35 in exchange for, or in order to induce payment of, a final payment
36 and the claimant asserts in the waiver it has, in fact, been paid the
37 final payment, the waiver and release shall be in substantially the
38 following form, with the text of the “Notice to Claimant” in at
39 least as large a type as the largest type otherwise in the form:

1 Unconditional Waiver and Release on Final Payment

2
3 NOTICE TO CLAIMANT: This document waives and releases rights
4 unconditionally and states that you have been paid for giving up those rights.
5 This document is enforceable against you if you sign it, even if you have not
6 been paid. If you have not been paid, use a conditional waiver and release
7 form.

8
9 Identifying Information

10 Name of Claimant: _____
11 Name of Customer: _____
12 Job Location: _____
13 Owner: _____

14
15 Unconditional Waiver and Release

16 This document waives and releases lien, stop payment notice, and payment
17 bond rights the claimant has for all labor and service provided, and equipment
18 and material delivered, to the customer on this job. The claimant has been paid
19 in full.

20
21 Exception

22 This document does not affect the following:
23 Disputed claims for extras in the amount of: \$ _____

24
25 Signature

26 Claimant's Signature: _____
27 Claimant's Title: _____
28 Date of Signature: _____

29
30 CHAPTER 2. PRELIMINARY NOTICE

31
32 8200. (a) Except as otherwise provided by statute, before
33 recording a lien claim, giving a stop payment notice, or asserting
34 a claim against a payment bond, a claimant shall give preliminary
35 notice to the following persons:

- 36 (1) The owner or reputed owner.
37 (2) The direct contractor or reputed direct contractor to which
38 the claimant provides work, either directly or through one or more
39 subcontractors.

1 (3) The construction lender or reputed construction lender, if
2 any.

3 (b) The notice shall comply with the requirements of Article 3
4 (commencing with Section 8100) of Chapter 1.

5 (c) Compliance with this section is a necessary prerequisite to
6 the validity of a lien claim or stop payment notice under this ~~part~~
7 *title*.

8 (d) Compliance with this section or with Section 8612 is a
9 necessary prerequisite to the validity of a claim against a payment
10 bond under this ~~part~~ *title*.

11 (e) Notwithstanding the foregoing subdivisions:

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

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

16 8202. (a) The preliminary notice shall comply with the
17 requirements of Section 8102, and shall also include:

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

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

21 (3) The following statement in boldface type:

22

23 NOTICE TO PROPERTY OWNER

24

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

33 This notice is required by law to be served by the undersigned as a statement
34 of your legal rights. This notice is not intended to reflect upon the financial
35 condition of the contractor or the person employed by you on the construction
36 project.

37 If you record a notice of cessation or completion of your construction project,
38 you must within 10 days after recording, send a copy of the notice of
39 completion to your contractor and the person or firm that has given you this
40 notice. The notice must be sent by registered or certified mail. Failure to send

1 the notice will extend the deadline to record a claim of lien. You are not
2 required to send the notice if you are a residential homeowner of a dwelling
3 containing four or fewer units.

4
5 (b) If preliminary notice is given by a subcontractor that has
6 not paid all compensation due to a laborer, the notice shall include
7 the name and address of the laborer and any person or entity
8 described in subdivision (b) of Section 8020 to which payments
9 are due.

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

15 ~~8204. (a) A claimant may record a claim of lien, give a stop
16 payment notice, or assert a claim against a payment bond only for
17 work provided within 20 days before giving preliminary notice or
18 at any time thereafter.~~

19 ~~(b) Notwithstanding subdivision (a), a certificated architect,
20 registered engineer, or licensed land surveyor that has furnished
21 services for the design of the work of improvement may record a
22 claim of lien, give a stop payment notice, or assert a claim against
23 a payment bond for design professional services provided for the
24 design of the work of improvement if the architect, engineer, or
25 land surveyor gives preliminary notice not later than 20 days after
26 the work of improvement has commenced.~~

27 *8204. (a) A preliminary notice shall be given not later than
28 20 days after the claimant has first furnished work on the work of
29 improvement. If work has been provided by a claimant who did
30 not give a preliminary notice, that claimant shall not be precluded
31 from giving a preliminary notice at any time thereafter. The
32 claimant shall, however, be entitled to record a lien, give a stop
33 payment notice, and assert a claim against a payment bond only
34 for work performed within 20 days prior to the service of the
35 preliminary notice, and at any time thereafter.*

36 *(b) A licensed architect, licensed landscape architect, registered
37 engineer, or licensed land surveyor who has furnished services
38 for the design of the work of improvement and who gives a
39 preliminary notice not later than 20 days after the work of
40 improvement has commenced shall be deemed to have complied*

1 *with Section 8200 with respect to the design services furnished,*
2 *or to be furnished.*

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

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

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

16 8208. A direct contractor shall make available to any person
17 seeking to give 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 8210. If a construction loan is obtained after commencement
21 of a work of improvement, the owner shall give notice of the name
22 and address of the construction lender to each person that has given
23 the owner preliminary notice.

24 8212. An agreement made or entered into by an owner whereby
25 the owner agrees to waive the rights conferred on the owner by
26 this chapter is void and unenforceable.

27 8214. The county recorder may cause to be destroyed all
28 documents filed under subdivision (o) of former Section 3097 as
29 that section read on January 1, 2008.

30 8216. If the contract of any subcontractor on a particular work
31 of improvement provides for payment to the subcontractor of more
32 than four hundred dollars (\$400), the failure of that subcontractor,
33 licensed under the Contractors' State License Law (Chapter 9
34 (commencing with Section 7000) of Division 3 of the Business
35 and Professions Code), to give the notice provided for in this
36 chapter, constitutes grounds for disciplinary action under the
37 Contractors' State License Law.

CHAPTER 3. DESIGN-PROFESSIONALS² PROFESSIONALS LIEN

8300. Notwithstanding Section 8028, for purposes of this chapter “owner” means a fee owner of a site.

8302. (a) A design professional has, from the date of recordation of a claim of lien under this chapter, a lien on the site notwithstanding the absence of commencement of the planned work of improvement, if the owner who contracted for the design professional’s services is also the owner of the site at the time of recordation of the claim of lien.

(b) The lien of the design professional is for the amount of the design professional’s fee for services provided under the contract or the reasonable value of those services, whichever is less. The amount of the lien is reduced by the amount of any deposit or prior payment under the contract.

(c) A design professional may not record a claim of lien, and a lien may not be created, under this chapter unless a building permit or other governmental approval in furtherance of the work of improvement has been obtained in connection with or utilizing the services provided by the design professional.

8304. A design professional is not entitled to a lien under this chapter unless all of the following conditions are satisfied:

(a) The work of improvement for which the design professional provided services has not commenced.

(b) The owner defaults in a payment required under the contract or refuses to pay the demand of the design professional made under the contract.

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

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

- (1) The name of the design professional.
- (2) The amount of the claim.
- (3) The current owner of record of the site.
- (4) A legal description of the site.
- (5) Identification of the building permit or other governmental approval for the work of improvement.

1 8306. (a) On recordation of the claim of lien, a lien is created
2 in favor of the named design professional.

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

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

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

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

14 8308. (a) Except as provided in subdivision (b), no provision
15 of this ~~part~~ *title* applies to a lien created under this chapter.

16 (b) The following provisions of this ~~part~~ *title* apply to a lien
17 created under this chapter:

18 (1) This chapter.

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

20 (3) Section ~~8428~~ 8424.

21 (4) *Article 6 (commencing with Section 8460) of Chapter 4.*

22 ~~(4)~~

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

24 ~~(5)~~

25 (6) Article 8 (commencing with Section 8490) of Chapter 4.

26 8310. This chapter does not affect the ability of a design
27 professional to obtain a lien for a work of improvement under
28 Section 8400.

29 8312. A design professional shall record a claim of lien under
30 this chapter no later than 90 days after the design professional
31 knows or has reason to know that the work of improvement will
32 not be commenced.

33 8314. The creation of a lien under this chapter does not affect
34 the ability of the design professional to pursue other remedies.

35 8316. (a) No lien created under this chapter affects or takes
36 priority over the interest of record of a purchaser, lessee, or
37 encumbrancer, if the interest of the purchaser, lessee, or
38 encumbrancer in the property was duly recorded before recordation
39 of the claim of lien.

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

5 8318. A design professional may not obtain a lien under this
6 chapter for services provided for a work of improvement relating
7 to a single-family, owner-occupied residence for which the
8 expected construction cost is less than one hundred thousand
9 dollars (\$100,000).

10

11 CHAPTER 4. MECHANICS LIEN

12

13 Article 1. Who is Entitled to Lien

14

15 8400. A person that provides work authorized for a work of
16 improvement, including, but not limited to, the following persons,
17 has a lien right under this chapter:

18

(a) Direct contractor.

19

(b) Subcontractor.

20

(c) Material supplier.

21

(d) Equipment lessor.

22

(e) Laborer.

23

(f) Design professional.

24

25 8402. A person that provides work authorized for a site
improvement has a lien right under this chapter.

26

27 8404. Work is authorized for a work of improvement or for a
site improvement in any of the following circumstances:

28

(a) It is provided at the request of or agreed to by the owner.

29

30 (b) It is provided or authorized by a direct contractor,
subcontractor, architect, project manager, or other person having
31 charge of all or part of the work of improvement or site
32 improvement.

33

34 Article 2. Conditions to Enforcing a Lien

35

36 8410. A claimant may enforce a lien only if the claimant has
37 given preliminary notice to the extent required by Chapter 2
38 (commencing with Section 8200) and made proof of notice.

1 8412. A direct contractor may not enforce a lien unless the
2 contractor records a claim of lien after the contractor completes
3 the direct contract, and before the earlier of the following times:

- 4 (a) Ninety days after completion of the work of improvement.
- 5 (b) Sixty days after the owner records a notice of completion
6 or cessation.

7 8414. A claimant other than a direct contractor may not enforce
8 a lien unless the claimant records a claim of lien within the
9 following times:

- 10 (a) After the claimant ceases to provide work.
- 11 (b) Before the earlier of the following times:
 - 12 (1) Ninety days after completion of the work of improvement.
 - 13 (2) Thirty days after the owner records a notice of completion
14 or cessation.

15 ~~8416. A claim of lien shall be in writing, signed and verified
16 by the claimant, and shall include all of the following information:~~

- ~~17 (a) An itemization of the claimant's demand after deducting all
18 just credits and offsets.~~
- ~~19 (b) The name of the owner or reputed owner, if known.~~
- ~~20 (c) A general statement of the kind of work provided by the
21 claimant.~~
- ~~22 (d) The name of the person that contracted with the claimant
23 for the work.~~
- ~~24 (e) A description of the site sufficient for identification.~~
- ~~25 (f) The claimant's address.~~

26 ~~8418. (a) Before recording a claim of lien, the claimant shall
27 give notice of the intended recording to the owner or reputed owner
28 of the property subject to the claim of lien, if known. The notice
29 shall comply with the requirements of Article 3 (commencing with
30 Section 8100) of Chapter 1.~~

31 ~~(b) Notice of the intended recording of a claim of lien shall
32 include a copy of the claim of lien.~~

33 ~~8420. The county recorder shall not record a claim of lien that
34 is filed for record unless accompanied by a declaration under
35 penalty of perjury attesting to service of a true and accurate copy
36 of the lien claim on the owner or reputed owner.~~

37 *8416. (a) A claim of lien shall be in writing, signed and verified
38 by the claimant, containing all of the following:*

- 39 *(1) A statement of the claimant's demand after deducting all
40 just credits and offsets.*

- 1 (2) *The name of the owner or reputed owner, if known.*
- 2 (3) *A general statement of the kind of work provided by the*
- 3 *claimant.*
- 4 (4) *The name of the person by whom the claimant was employed*
- 5 *or to whom the claimant furnished work.*
- 6 (5) *A description of the site sufficient for identification.*
- 7 (6) *The claimant’s address.*
- 8 (7) *A proof of service affidavit completed and signed by the*
- 9 *person serving the claim of lien pursuant to Section 8418. The*
- 10 *affidavit shall show the date, place, and manner of service, and*
- 11 *facts showing that the service was made in compliance with Section*
- 12 *8418. The affidavit shall show the name and address of the person*
- 13 *or persons upon whom the claim of lien was served, and, if*
- 14 *appropriate, the title or capacity in which he or she was served.*
- 15 (8) *The following statement, printed in at least 10-point boldface*
- 16 *type. The letters of the last sentence shall be printed in uppercase*
- 17 *type, excepting the Internet Web site address of the Contractors’*
- 18 *State License Board, which shall be printed in lowercase type:*

19
20 “NOTICE OF MECHANICS LIEN
21 ATTENTION!
22

23 *Upon the recording of the enclosed claim of lien with the county recorder’s*
 24 *office of the county where the property is located, your property is subject to*
 25 *the filing of a legal action seeking a court-ordered foreclosure sale of the real*
 26 *property on which the lien has been recorded. That legal action must be filed*
 27 *with the court no later than 90 days after the date the claim of lien is recorded.*

28 *The party identified in the claim of lien may have provided labor or materials*
 29 *for improvements to your property and may not have been paid for these items.*
 30 *You are receiving this notice because it is a required step in filing a mechanics*
 31 *lien foreclosure action against your property. The foreclosure action will seek*
 32 *a sale of your property in order to pay for unpaid labor, materials, or*
 33 *improvements provided to your property. This may affect your ability to borrow*
 34 *against, refinance, or sell the property until the mechanics lien is released.*

35 *BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO*
 36 *SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN*
 37 *ATTORNEY, OR FOR MORE INFORMATION ON MECHANICS LIENS GO*
 38 *TO THE CONTRACTORS’ STATE LICENSE BOARD WEB SITE AT*
 39 *www.cslb.ca.gov.”*
 40

1 ***(b) A claim of lien in otherwise proper form, verified and***
2 ***containing the information required in subdivision (a), shall be***
3 ***accepted by the recorder for recording and shall be deemed duly***
4 ***recorded without acknowledgment.***

5 8418. ***(a) The claim of lien described in Section 8416 shall be***
6 ***served on the owner or reputed owner. Service shall be made as***
7 ***follows:***

8 ***(1) For an owner or reputed owner to be notified who resides***
9 ***in or outside this state, by registered mail, certified mail, or***
10 ***first-class mail, evidenced by a certificate of mailing, postage***
11 ***prepaid, addressed to the owner or reputed owner at the owner's***
12 ***or reputed owner's residence or place of business address or at***
13 ***the address shown by the building permit on file with the authority***
14 ***issuing a building permit for the work, or as otherwise provided***
15 ***in Section 8134.***

16 ***(2) If the owner or reputed owner cannot be served by this***
17 ***method, then the notice may be given by registered mail, certified***
18 ***mail, or first-class mail, evidenced by a certificate of mailing,***
19 ***postage prepaid, addressed to the construction lender or to the***
20 ***original contractor.***

21 ***(b) Service by registered mail, certified mail, or first-class mail,***
22 ***evidenced by a certificate of mailing, postage prepaid, is complete***
23 ***at the time of the deposit of that first-class, certified, or registered***
24 ***mail.***

25 ***(c) Failure to serve the claim of lien as prescribed by this section***
26 ***shall cause the claim of lien to be unenforceable as a matter of***
27 ***law.***

28 8422. ***(a) Except as provided in subdivision (b), erroneous***
29 ***information contained in a claim of lien relating to the claimant's***
30 ***demand, credits and offsets deducted, the work provided, or the***
31 ***description of the site, does not invalidate the claim of lien.***

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

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

38 ***(2) An innocent third party, without notice, actual or***
39 ***constructive, became the bona fide owner of the property after***
40 ***recordation of the claim of lien, and the claim of lien was so***

1 deficient that it did not put the party on further inquiry in any
2 manner.

3 8424. (a) An owner of property subject to a recorded claim of
4 lien or a direct contractor or subcontractor affected by the claim
5 of lien that disputes the correctness or validity of the claim may
6 obtain release of the property from the claim of lien by recording
7 a lien release bond. The principal on the bond may be the owner
8 of the property, the direct contractor, or the subcontractor.

9 (b) The bond shall be conditioned on payment of any judgment
10 and costs the claimant recovers on the lien. The bond shall be in
11 an amount equal to 150 percent of the amount of the claim of lien
12 or 150 percent of the amount allocated in the claim of lien to the
13 property to be released. The bond shall be executed by an admitted
14 surety insurer.

15 (c) The bond may be recorded either before or after
16 commencement of an action to enforce the lien. On recordation of
17 the bond, the property is released from the claim of lien and from
18 any action to enforce the lien.

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

27

28 Article 3. Amount of Lien

29

30 8430. (a) The lien is a direct lien for the lesser of the following
31 amounts:

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

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

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

37 (c) This section does not preclude the claimant from including
38 in a claim of lien work performed as a result of rescission,
39 abandonment, or breach of the contract. If there is a rescission,
40 abandonment, or breach of the contract, the amount of the lien

1 may not exceed the reasonable value of the work provided by the
2 claimant.

3 8432. (a) A lien does not extend to work, whether or not the
4 work is authorized by a direct contractor or subcontractor, if the
5 work is not included in a direct contract, and the claimant had
6 actual knowledge or constructive notice of the provisions of that
7 contract before providing the work.

8 (b) The filing of a contract with the county recorder, before the
9 commencement of a work of improvement, is constructive notice
10 of the provisions of the contract to a person providing work on
11 that work of improvement.

12 8434. A direct contractor or a subcontractor may enforce a lien
13 only for the amount due pursuant to that contractor's contract after
14 deducting all lien claims of other claimants for work provided and
15 embraced within that contract.

16

17 Article 4. Property Subject to Lien

18

19 8440. Subject to Section 8442, a lien attaches to the work of
20 improvement and to the property on which the work of
21 improvement is situated, including as much space about the work
22 of improvement as is required for the convenient use and
23 occupation of the work of improvement.

24 8442. The following interests in property to which a lien
25 attaches are subject to the lien:

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

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

33 8444. (a) An owner of property on which a work of
34 improvement is situated that did not contract for the work of
35 improvement may give notice of nonresponsibility.

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

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

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

- 1 (1) The nature of the owner’s title or interest.
- 2 (2) The name of a purchaser under contract, if any, or lessee, if
- 3 known.
- 4 (3) A statement that the person giving the notice is not
- 5 responsible for claims arising from the work of improvement.
- 6 (e) A notice of nonresponsibility is not effective unless, within
- 7 10 days after the person giving notice has knowledge of the work
- 8 of improvement, the person both posts and records the notice.
- 9 8446. A claimant may record one claim of lien on two or more
- 10 works of improvement, subject to the following conditions:
- 11 (a) The works of improvement have or are reputed to have the
- 12 same owner, or the work was contracted for by the same person
- 13 for the works of improvement whether or not they have the same
- 14 owner.
- 15 (b) The claimant in the claim of lien designates the amount due
- 16 for each work of improvement. If the claimant contracted for a
- 17 lump sum payment for work provided for the works of
- 18 improvement and the contract does not segregate the amount due
- 19 for each work of improvement separately, the claimant may
- 20 estimate an equitable distribution of the amount due for each work
- 21 of improvement based on the proportionate amount of work
- 22 provided for each. If the claimant does not designate the amount
- 23 due for each work of improvement, the lien is subordinate to other
- 24 liens.
- 25 (c) If there is a single structure on property of different owners,
- 26 the claimant need not segregate the proportion of work provided
- 27 for the portion of the structure situated on property of each owner.
- 28 In the lien enforcement action the court may, if it determines it
- 29 equitable to do so, designate an equitable distribution of the lien
- 30 among the property of the owners.
- 31 (d) The lien does not extend beyond the amount designated as
- 32 against other creditors having liens, by judgment, mortgage, or
- 33 otherwise, on either the works of improvement or the property on
- 34 which the works of improvement are situated.
- 35 8448. (a) As used in this section, “separate residential unit”
- 36 means one residential structure, including a residential structure
- 37 containing multiple condominium units, together with any common
- 38 area, garage, or other appurtenant improvements.
- 39 (b) If a work of improvement consists of the construction of
- 40 two or more separate residential units:

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

5 (2) Material provided for the work of improvement is deemed
6 to be provided for use or consumption in each separate residential
7 unit in which the material is actually used or consumed; but if the
8 claimant is unable to segregate the amounts used or consumed in
9 separate residential units, the claimant has the right to all the
10 benefits of Section 8446.

11
12 Article 5. Priorities
13

14 8450. (a) A lien under this chapter, other than a lien provided
15 for in Section 8402, has priority over a lien, mortgage, deed of
16 trust, or other encumbrance on the work of improvement or the
17 property on which the work of improvement is situated, that (1)
18 attaches after commencement of the work of improvement or (2)
19 was unrecorded at the commencement of the work of improvement
20 and of which the claimant had no notice.

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

23 8452. A mortgage or deed of trust, otherwise subordinate to a
24 lien under Section 8450, has priority over a lien for work provided
25 after recordation of a payment bond that satisfies all of the
26 following requirements:

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

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

30 8454. If a site improvement is provided for in a direct contract
31 separate from the direct contract for the remainder of the work of
32 improvement, the site improvement is deemed a separate work of
33 improvement and commencement of the site improvement is not
34 commencement of the remainder of the work of improvement.

35 8456. (a) This section applies to a construction loan secured
36 by a mortgage or deed of trust that has priority over a lien under
37 this chapter.

38 (b) An optional advance of funds by the construction lender that
39 is used for construction costs has the same priority as a mandatory
40 advance of funds by the construction lender, provided that the total

1 of all advances does not exceed the amount of the original
2 construction loan.

3 8458. (a) Except as provided in subdivision (b), a lien provided
4 for in Section 8402 has priority over:

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

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

10 (3) A mortgage, deed of trust, or other encumbrance that was
11 recorded before commencement of the site improvement, if given
12 for the sole or primary purpose of financing the site improvement.
13 This subdivision does not apply if the loan proceeds are, in good
14 faith, placed in the control of the lender pursuant to a binding
15 agreement with the borrower to the effect that (A) the proceeds
16 are to be applied to the payment of claimants and (B) no portion
17 of the proceeds will be paid to the borrower in the absence of
18 satisfactory evidence that all claims have been paid or that the time
19 for recording a claim of lien has expired and no claim of lien has
20 been recorded.

21 (b) A mortgage or deed of trust, otherwise subordinate under
22 subdivision (a), has priority over a lien provided for in Section
23 8402 if a payment bond in an amount not less than 50 percent of
24 the principal amount of the mortgage or deed of trust is recorded
25 before completion of the work of improvement.

26
27
28

Article 6. Enforcement of Lien

29 ~~8460. (a) The claimant shall commence an action to enforce
30 a lien within 90 days after recordation of the claim of lien and
31 record a notice of the pendency of the action under Title 4.5
32 (commencing with Section 405) of Part 2 of the Code of Civil
33 Procedure within 110 days after recordation of the claim of lien.
34 If the claimant does not commence an action and record notice of
35 the pendency of the action within the times provided in this
36 subdivision, the claim of lien expires and is unenforceable.~~

37 ~~(b) Subdivision (a) does not apply if the claimant and owner
38 agree to extend credit, and notice of the fact and terms of the
39 extension of credit is recorded (1) within 90 days after recordation
40 of the claim of lien or (2) more than 90 days after recordation of~~

1 the claim of lien but before a purchaser or encumbrancer for value
2 and in good faith acquires rights in the property. In that event the
3 claimant shall commence an action to enforce the lien and record
4 a notice of the pendency of the action within 90 days after the
5 expiration of the credit, but in no case later than one year after
6 completion of the work of improvement. If the claimant does not
7 commence an action and record notice of the pendency of the
8 action within the times provided in this subdivision, the claim of
9 lien expires and is unenforceable.

10 8460. (a) *The claimant shall commence an action to enforce*
11 *a lien within 90 days after recordation of the claim of lien. If the*
12 *claimant does not commence an action to enforce the lien within*
13 *that time, the claim of lien expires and is unenforceable.*

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

25 8461. *After commencement of an action to enforce a lien, the*
26 *plaintiff shall record in the office of the county recorder of the*
27 *county, or of the several counties in which the property is situated,*
28 *a notice of the pendency of the action, as provided in Title 4.5*
29 *(commencing with Section 405) of Part 2 of the Code of Civil*
30 *Procedure, on or before 20 days after the commencement of the*
31 *action. Only from the time of recording that notice shall a*
32 *purchaser or encumbrancer of the property affected thereby be*
33 *deemed to have constructive notice of the pendency of the action,*
34 *and in that event only of its pendency against parties designated*
35 *by their real names.*

36 8462. *Notwithstanding Section 583.420 of the Code of Civil*
37 *Procedure, the court may dismiss an action to enforce a lien that*
38 *is not brought to trial within two years after commencement of the*
39 *action.*

1 8464. In addition to any other costs allowed by law, the court
2 in an action to enforce a lien shall allow as costs to each claimant
3 whose lien is established the amount paid to verify and record the
4 claim of lien, whether the claimant is a plaintiff or defendant.

5 8466. If there is a deficiency of proceeds from the sale of
6 property on a judgment for enforcement of a lien, a deficiency
7 judgment may be entered against a party personally liable for the
8 deficiency in the same manner and with the same effect as in an
9 action to foreclose a mortgage.

10 8468. (a) This chapter does not affect any of the following
11 rights of a claimant:

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

15 (2) The right to a writ of attachment. In an application for a writ
16 of attachment, the claimant shall refer to this section. The
17 claimant's recording of a claim of lien does not affect the right to
18 a writ of attachment.

19 (3) The right to enforce a judgment.

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

24 8470. In an action to enforce a lien for work provided to a
25 contractor:

26 (a) The contractor shall defend the action at the contractor's
27 own expense. During the pendency of the action the owner may
28 withhold from the direct contractor the amount of the lien claim.

29 (b) If the judgment in the action is against the owner or the
30 owner's property, the owner may deduct the amount of the
31 judgment and costs from any amount owed to the direct contractor.
32 If the amount of the judgment and costs exceeds the amount owed
33 to the direct contractor, or if the owner has settled with the direct
34 contractor in full, the owner may recover from the direct contractor,
35 or the sureties on a bond given by the direct contractor for faithful
36 performance of the direct contract, the amount of the judgment
37 and costs that exceed the contract price and for which the direct
38 contractor was originally liable.

Article 7. Release Order

1
2
3 8480. (a) The owner of property subject to a claim of lien may
4 petition the court for an order to release the property from the claim
5 of lien for any of the following causes:

6 ~~(1) The *if the* claimant has not commenced an action to enforce~~
7 ~~the lien within the time provided in Section 8460.~~

8 ~~(2) The claimant's demand stated in the claim of lien has been~~
9 ~~paid to the claimant in full.~~

10 ~~(3) None of the work stated in the claim of lien has been~~
11 ~~provided.~~

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

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

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

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

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

30 8482. An owner of property may not petition the court for a
31 release order under this article unless at least 10 days before filing
32 the petition the owner gives the claimant notice demanding that
33 the claimant execute and record a release of the claim of lien. The
34 notice shall comply with the requirements of Article 3
35 (commencing with Section 8100) of Chapter 1, and shall state the
36 grounds for the demand.

37 8484. A petition for a release order shall be verified and shall
38 allege all of the following:

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

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

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

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

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

11 (f) That the owner has given the claimant notice under Section
12 8482 demanding that the claimant execute and record a release of
13 the lien and that the claimant is unable or unwilling to do so or
14 cannot with reasonable diligence be found.

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

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

19 8486. (a) On the filing of a petition for a release order, the
20 clerk shall set a hearing date. The date shall be not more than 30
21 days after the filing of the petition. The court may continue the
22 hearing only on a showing of good cause, but in any event the
23 court shall rule and make any necessary orders on the petition not
24 later than 60 days after the filing of the petition.

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

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

33 8488. (a) At the hearing both (1) the petition and (2) the issue
34 of compliance with the service and date for hearing requirements
35 of this article are deemed controverted by the claimant. The
36 petitioner has the initial burden of producing evidence on those
37 matters. The petitioner has the burden of proof as to the issue of
38 compliance with the service and date for hearing requirements of
39 this article. The claimant has the burden of proof as to the validity
40 of the lien.

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

3 (c) The prevailing party is entitled to reasonable attorney’s fees.
4

5 Article 8. Removal of Claim of Lien from Record
6

7 8490. (a) A court order dismissing a cause of action to enforce
8 a lien or releasing property from a claim of lien, or a judgment
9 that no lien exists, shall include all of the following information:

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

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

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

14 (4) The legal description of the property.

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

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

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

24 ~~(e)~~

25 (d) This section does not apply to a court order dismissing an
26 action to enforce a lien that is expressly stated to be without
27 prejudice.

28 8494. If a claim of lien expires and is unenforceable under
29 Section 8460, or if a court order or judgment is recorded under
30 Section 8490, the claim of lien does not constitute actual or
31 constructive notice of any of the matters contained, claimed,
32 alleged, or contended in the claim of lien, or create a duty of
33 inquiry in any person thereafter dealing with the affected property.
34

35 CHAPTER 5. STOP PAYMENT NOTICE
36

37 Article 1. General Provisions
38

39 8500. The rights of all persons furnishing work for any work
40 of improvement, with respect to any fund for payment of

1 construction costs, are governed exclusively by this chapter, and
2 no person may assert any legal or equitable right with respect to
3 the fund, other than a right created by a written contract between
4 that person and the person holding the fund, except pursuant to
5 the provisions of this chapter.

6 8502. (a) A stop payment notice shall comply with the
7 requirements of Section 8102, and shall be signed and verified by
8 the claimant.

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

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

15 8504. A claimant that willfully gives a false stop payment
16 notice or that willfully includes in the notice a demand to withhold
17 for work that has not been provided forfeits all right to participate
18 in the distribution of the funds withheld and all right to a lien under
19 Chapter 4 (commencing with Section 8400).

20 8506. (a) A stop payment notice to an owner shall be given
21 to the owner or to the owner’s architect, if any.

22 (b) A stop payment notice to a construction lender holding
23 construction funds shall not be effective unless given to the
24 manager or other responsible officer or person at the office or
25 branch of the lender administering or holding the construction
26 funds.

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

29 8508. A stop payment notice is not valid unless both of the
30 following conditions are satisfied:

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

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

36 8510. (a) A person may obtain release of funds withheld
37 pursuant to a stop payment notice by giving the person withholding
38 the funds a release bond.

39 (b) A release bond shall be given by an admitted surety insurer
40 and shall be conditioned for payment of any amount not exceeding

1 the penal obligation of the bond that the claimant recovers on the
2 claim, together with costs of suit awarded in the action. The bond
3 shall be in an amount equal to 125 percent of the amount claimed
4 in the stop payment notice.

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

7
8
9

Article 2. Stop Payment Notice to Owner

10 8520. (a) A person that has a lien right under Chapter 4
11 (commencing with Section 8400), other than a direct contractor,
12 may give the owner a stop payment notice.

13 (b) The owner may give notice, in compliance with the
14 requirements of Article 3 (commencing with Section 8100) of
15 Chapter 1, demanding that a person that has a lien right under
16 Chapter 4 (commencing with Section 8400) give the owner a stop
17 payment notice. If the person fails to give the owner a bonded or
18 unbonded stop payment notice, the person forfeits the right to a
19 lien under Chapter 4 (commencing with Section 8400).

20 8522. (a) Except as provided in subdivision (b), on receipt of
21 a stop payment notice an owner shall withhold from the direct
22 contractor or from any person acting under authority of a direct
23 contractor a sufficient amount due or to become due to the direct
24 contractor to pay the claim stated in the notice.

25 (b) The owner may, but is not required to, withhold funds if the
26 owner has previously recorded a payment bond under Section
27 8602. If the owner does not withhold funds, the owner shall, within
28 30 days after receipt of the stop payment notice, give notice to the
29 claimant that a payment bond has been recorded and provide the
30 claimant a copy of the bond. The notice shall comply with the
31 requirements of Article 3 (commencing with Section 8100) of
32 Chapter 1.

33

Article 3. Stop Payment Notice to Construction Lender

34
35

36 8530. A person that has a lien right under Chapter 4
37 (commencing with Section 8400) may give a construction lender
38 a stop payment notice.

39 8532. A claimant may give a construction lender a stop
40 payment notice accompanied by a bond in an amount equal to 125

1 percent of the amount of the claim. The bond shall be conditioned
2 that if the defendant recovers judgment in an action to enforce
3 payment of the claim stated in the stop payment notice or to enforce
4 a claim of lien recorded by the claimant, the claimant will pay all
5 costs that are awarded the owner, direct contractor, or construction
6 lender, and all damages to the owner, direct contractor, or
7 construction lender that result from the stop payment notice or
8 recordation of the claim of lien, not exceeding the amount of the
9 bond.

10 8534. (a) A construction lender that objects to the sufficiency
11 of sureties on the bond given with a bonded stop payment notice
12 shall give notice to the claimant of the objection, within 20 days
13 after the bonded stop payment notice is given. The notice shall
14 comply with the requirements of Article 3 (commencing with
15 Section 8100) of Chapter 1.

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

22 8536. (a) Except as provided in subdivision (b), on receipt of
23 a stop payment notice a construction lender shall withhold from
24 the borrower or other person to whom the lender or the owner is
25 obligated to make payments or advancement out of the construction
26 fund sufficient funds to pay the claim stated in the notice.

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

29 (1) The stop payment notice is unbonded.

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

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

38 (b) If the construction lender elects not to withhold funds under
39 Section 8536, the lender shall, within 30 days after making the
40 election, give notice of that fact to a claimant who has requested

1 notice of the election under subdivision (a). The notice shall
2 comply with the requirements of Article 3 (commencing with
3 Section 8100) of Chapter 1. If the basis of the election is the
4 recordation of a payment bond under Section ~~8602~~ 8600, the
5 construction lender shall include a copy of the bond with the notice.

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

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

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

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

15

16

Article 4. Priorities

17

18 8540. (a) Funds withheld pursuant to a stop payment notice
19 shall be distributed in the following order of priority:

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

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

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

35 8542. Notwithstanding Section 8540:

36 (a) If funds are withheld pursuant to a stop payment notice given
37 to a construction lender by a direct contractor or subcontractor,
38 the direct contractor or subcontractor may recover only the net
39 amount due the direct contractor or subcontractor after deducting
40 any funds that are withheld by the construction lender pursuant to

1 the claims of subcontractors and material suppliers that have given
2 a stop payment notice for work done on behalf of the direct
3 contractor or subcontractor.

4 (b) In no event is the construction lender required to withhold,
5 pursuant to a stop payment notice, more than the net amount
6 provided in subdivision (a). Notwithstanding any other provision
7 of this chapter, a construction lender is not liable for failure to
8 withhold more than that net amount on receipt of a stop payment
9 notice.

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

16

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

18

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

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

31 (c) Within five days after commencement of an action to enforce
32 payment of the claim stated in a stop payment notice, the claimant
33 shall give notice of commencement of the action to the persons to
34 whom the stop payment notice was given. The notice shall comply
35 with the requirements of Article 3 (commencing with Section
36 8100) of Chapter 1.

37 8552. If more than one claimant has given a stop payment
38 notice:

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

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

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

6 8554. Notwithstanding Section 583.420 of the Code of Civil
7 Procedure, the court may dismiss an action to enforce payment of
8 the claim stated in a stop payment notice that is not brought to trial
9 within two years after commencement of the action.

10 8556. A stop payment notice ceases to be effective, and a
11 person withholding funds pursuant to the notice shall release them,
12 in either of the following circumstances:

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

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

18 8558. (a) In an action to enforce payment of the claim stated
19 in a bonded stop payment notice, the prevailing party is entitled
20 to a reasonable attorney's fee in addition to costs and damages.

21 (b) The court, on notice and motion by a party, shall determine
22 who is the prevailing party or that there is no prevailing party for
23 the purpose of this section, regardless of whether the action
24 proceeds to final judgment. The prevailing party is the party that
25 recovers greater relief in the action, subject to the following
26 limitations:

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

29 (2) If the defendant tenders to the claimant the full amount to
30 which the ~~defendant~~ *claimant* is entitled, and deposits in court for
31 the claimant the amount so tendered, and alleges those facts in the
32 answer and the allegation is determined to be true, the defendant
33 is deemed to be the prevailing party.

34 8560. If the claimant is the prevailing party in an action to
35 enforce payment of the claim stated in a bonded stop payment
36 notice, any amount awarded on the claim shall include interest at
37 the legal rate calculated from the date the stop payment notice is
38 given.

CHAPTER 6. PAYMENT BOND

1

2

3 ~~8600. An owner may require a performance bond, payment~~
4 ~~bond, or other security as protection against a direct contractor's~~
5 ~~failure to perform the direct contract or to make full payment for~~
6 ~~all work provided pursuant to the contract.~~

7 ~~8602.~~

8 8600. (a) This section applies if, before the commencement
9 of work, the owner in good faith files a direct contract with the
10 county recorder, and records a payment bond of the direct
11 contractor in an amount not less than 50 percent of the price stated
12 in the direct contract.

13 (b) If the conditions of subdivision (a) are satisfied, the court
14 shall, where equitable to do so, restrict lien enforcement under this
15 ~~part title~~ to the aggregate amount due from the owner to the direct
16 contractor and shall enter judgment against the direct contractor
17 and surety on the bond for any deficiency that remains between
18 the amount due to the direct contractor and the whole amount due
19 to claimants.

20 ~~8602. Section 8600 does not preclude an owner from requiring~~
21 ~~a performance bond, payment bond, or other security as protection~~
22 ~~against a direct contractor's failure to perform the direct contract~~
23 ~~or to make full payment for all work provided pursuant to the~~
24 ~~contract.~~

25 8604. If a lending institution requires that a payment bond be
26 given as a condition of lending money to finance a work of
27 improvement, and accepts in writing as sufficient a bond given in
28 fulfillment of the requirement, the lending institution may not
29 thereafter object to the borrower as to the validity of the bond or
30 refuse to make the loan based on an objection to the bond if the
31 bond is given by an admitted surety insurer.

32 8606. (a) A payment bond under this ~~part title~~ shall be
33 conditioned for the payment in full of the claims of all claimants
34 and shall by its terms inure to the benefit of all claimants so as to
35 give a claimant a right of action to enforce the liability on the bond.
36 The bond shall be given by an admitted surety insurer.

37 (b) An owner, direct contractor, or subcontractor may be the
38 principal on the bond.

39 (c) A claimant may enforce the liability on the bond in an action
40 to enforce a lien under this part or in a separate action on the bond.

1 8608. (a) This ~~part~~ *title* does not give a claimant a right to
2 recover on a direct contractor’s payment bond given under this
3 chapter unless the claimant provided work to the direct contractor
4 either directly or through one or more subcontractors, pursuant to
5 a direct contract.

6 (b) Nothing in this section affects the stop payment notice right
7 of, and relative priorities among, design professionals and holders
8 of secured interests in the property.

9 8609. Any provision in a payment bond attempting by contract
10 to shorten the period prescribed in Section 337 of the Code of Civil
11 Procedure for the commencement of an action on the bond shall
12 not be valid under either of the following circumstances:

13 (a) If the provision attempts to limit the time for commencement
14 of an action on the bond to a shorter period than six months from
15 the completion of any work of improvement.

16 (b) As applied to any action brought by a claimant, unless the
17 bond is recorded before the work of improvement is commenced.

18 8610. Notwithstanding Section 8609, if a payment bond under
19 this ~~part~~ *title* is recorded before completion of a work of
20 improvement, an action to enforce the liability on the bond may
21 not be commenced later than six months after completion of the
22 work of improvement.

23 8612. (a) In order to enforce a claim against a payment bond
24 under this ~~part~~ *title*, a claimant shall give the preliminary notice
25 provided in Chapter 2 (commencing with Section 8200).

26 (b) If preliminary notice was not given as provided in Chapter
27 2 (commencing with Section 8200), a claimant may enforce a
28 claim by giving written notice to the surety and the bond principal
29 within 15 days after recordation of a notice of completion. If no
30 notice of completion has been recorded, the time for giving written
31 notice to the surety and the bond principal is extended to 75 days
32 after completion of the work of improvement.

33
34 CHAPTER 7. SECURITY FOR LARGE PROJECT

35
36 Article 1. Application of Chapter

37
38 8700. (a) This chapter applies if any of the following
39 conditions is satisfied:

1 (1) The owner of the fee interest in property contracts for a work
2 of improvement on the property with a contract price greater than
3 five million dollars (\$5,000,000).

4 (2) The owner of a less than fee interest in property contracts
5 for a work of improvement on the property with a contract price
6 greater than one million dollars (\$1,000,000).

7 (b) For the purpose of this section:

8 (1) The owner of the fee interest in property is not deemed to
9 be the owner of a less than fee interest by reason of a mortgage,
10 deed of trust, ground lease, or other lien or encumbrance or right
11 of occupancy that encumbers the fee interest.

12 (2) A lessee of property is deemed to be the owner of a fee
13 interest in the property if all of the following conditions are
14 satisfied:

15 (A) The initial term of the lease is at least 35 years.

16 (B) The lease covers one or more lawful parcels under the
17 Subdivision Map Act, Division 2 (commencing with Section
18 66410) of Title 7 of the Government Code, and any applicable
19 local ordinance adopted under that act, in their entirety, including,
20 but not limited to, a parcel approved pursuant to a certificate of
21 compliance proceeding.

22 8702. This chapter does not apply to any of the following works
23 of improvement:

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

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

33 8704. This chapter does not apply to any of the following
34 owners:

35 (a) A qualified publicly traded company or a wholly owned
36 subsidiary of a qualified publicly traded company, if the obligations
37 of the subsidiary pursuant to the contract for the work of
38 improvement are guaranteed by the parent. As used in this
39 subdivision, “qualified publicly traded company” means a company
40 having a class of equity securities listed for trading on the New

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

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

24

25 Article 2. Security Requirement

26

27 8710. An owner shall provide the direct contractor all of the
28 following:

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

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

38 8712. If an owner fails to provide or maintain the security
39 required by this chapter, the direct contractor may give the owner
40 notice demanding security. The notice shall comply with the

1 requirements of Article 3 (commencing with Section 8100) of
2 Chapter 1. If the owner does not provide or maintain the security
3 within 10 days after notice demanding security is given, the direct
4 contractor may suspend work until the owner provides or maintains
5 the security.

6 8714. It is against public policy to waive the provisions of this
7 chapter by contract.

8 8716. This chapter does not affect any statute providing a
9 subcontractor the right to record a claim of lien, give a stop
10 payment notice, assert a claim against a payment bond, or receive
11 prompt payment, including the direct contractor’s payment
12 responsibilities under Section 7108.5 of the Business and
13 Professions Code.

14
15 Article 3. Form of Security

16
17 8720. An owner shall provide security by any of the following
18 means:

- 19 (a) A bond that satisfies Section 8722.
- 20 (b) An irrevocable letter of credit that satisfies Section 8724.
- 21 (c) An escrow account that satisfies Section 8726.

22 8722. A bond under this chapter shall satisfy all of the
23 following requirements:

- 24 (a) The bond shall be executed by an admitted surety insurer
25 that is either listed in the Department of the Treasury’s Listing of
26 Approved Sureties (Department Circular 570) or that has an A.M.
27 Best rating of A or better and has an underwriting limitation, under
28 Section 12090 of the Insurance Code, greater than the amount of
29 the bond.
- 30 (b) The bond shall be in an amount not less than 15 percent of
31 the contract price for the work of improvement or, if the work of
32 improvement is to be substantially completed within six months
33 after the commencement of work, not less than 25 percent of the
34 contract price.
- 35 (c) The bond shall be conditioned for payment on default by
36 the owner of any undisputed amount pursuant to the contract that
37 is due and payable for more than 30 days.

38 8724. An irrevocable letter of credit under this chapter shall
39 satisfy all of the following requirements:

1 (a) The letter of credit shall be issued by a financial institution,
2 as defined in Section 5107 of the Financial Code, inuring to the
3 benefit of the direct contractor.

4 (b) The letter of credit shall be in an amount not less than 15
5 percent of the contract price for the work of improvement or, if
6 the work of improvement is to be substantially completed within
7 six months after the commencement of work, not less than 25
8 percent of the contract price.

9 (c) The maturity date and other terms of the letter of credit shall
10 be determined by agreement between the owner, the direct
11 contractor, and the financial institution, except that the owner shall
12 maintain the letter of credit in effect until the owner has satisfied
13 its payment obligation to the direct contractor.

14 8726. An escrow account under this chapter shall satisfy all of
15 the following requirements:

16 (a) The account shall be designated as a “construction security
17 escrow account.”

18 (b) The account shall be located in this state and maintained
19 with an escrow agent licensed under the Escrow Law, Division 6
20 (commencing with Section 17000) of the Financial Code, or with
21 any person exempt from the Escrow Law under paragraph (1) or
22 (3) of subdivision (a) of Section 17006 of the Financial Code.

23 (c) The owner shall deposit funds in the account in the amount
24 provided in Section 8728. This chapter does not require a
25 construction lender to agree to deposit proceeds of a construction
26 loan in the account.

27 (d) The owner shall grant the direct contractor a perfected, first
28 priority security interest in the account and in all funds deposited
29 by the owner in the account and in their proceeds, established to
30 the reasonable satisfaction of the direct contractor, which may be
31 by a written opinion of legal counsel for the owner.

32 (e) The funds on deposit in the account shall be the sole property
33 of the owner, subject to the security interest of the direct contractor.
34 The owner and the direct contractor shall instruct the escrow holder
35 to hold the funds on deposit in the account for the purpose of
36 perfecting the direct contractor’s security interest in the account
37 and to disburse those funds only on joint authorization of the owner
38 and the direct contractor, or pursuant to a court order that is binding
39 on both of them.

1 8728. The following provisions govern a deposit to or
2 disbursement from a construction security escrow account under
3 this chapter:

4 (a) Before the commencement of work the owner shall make
5 an initial deposit to the account in an amount not less than 15
6 percent of the contract price for the work of improvement or, if
7 the work of improvement is to be substantially completed within
8 six months after the commencement of work, not less than 25
9 percent of the contract price.

10 (b) If the contract provides for a retention to be withheld from
11 a periodic payment to the direct contractor, the owner shall deposit
12 to the account the amount withheld as retention at the time the
13 owner makes the corresponding payment to the direct contractor
14 from which the retention is withheld.

15 (c) The amount required to be maintained on deposit shall not
16 exceed the total amount remaining to be paid to the direct
17 contractor pursuant to the contract or as adjusted by agreement
18 between the owner and the direct contractor. If the amount on
19 deposit equals or exceeds the total amount remaining to be paid
20 to the direct contractor, the owner and the direct contractor shall
21 authorize disbursement to the direct contractor for progress
22 payments then due the direct contractor, but a party is not obligated
23 to authorize disbursement that would cause the amount remaining
24 on deposit following the disbursement to be less than the total
25 amount remaining to be paid to the direct contractor.

26 (d) The owner and the direct contractor shall authorize the
27 disbursement to the owner of any funds remaining on deposit after
28 the direct contractor has been paid all amounts due pursuant to the
29 contract. The owner and the direct contractor shall authorize the
30 disbursement of funds on deposit pursuant to a court order that is
31 binding on both of them. The owner and the direct contractor may
32 agree in the contract to additional conditions for the disbursement
33 of funds on deposit, except that the conditions may not cause the
34 amount remaining on deposit to be less than the amount required
35 under this section.

36 8730. If the contract price for a work of improvement is not a
37 fixed price, the amount of security provided under this chapter
38 shall be the guaranteed maximum price or, if there is no guaranteed
39 maximum price, the owner's and direct contractor's good faith

1 estimate of the reasonable value of the work to be provided
2 pursuant to the contract.

3
4 CHAPTER 8. PROMPT PAYMENT

5
6 Article 1. Progress Payment

7
8 8800. (a) Except as otherwise agreed in writing by the owner
9 and direct contractor, the owner shall pay the direct contractor,
10 within 30 days after notice demanding payment pursuant to the
11 contract, any progress payment due as to which there is no good
12 faith dispute between them. The notice given shall comply with
13 the requirements of Article 3 (commencing with Section 8100) of
14 Chapter 1.

15 (b) If there is a good faith dispute between the owner and direct
16 contractor as to a progress payment due, the owner may withhold
17 from the progress payment an amount not in excess of 150 percent
18 of the disputed amount.

19 (c) An owner that violates this section is liable to the direct
20 contractor for a penalty of 2 percent per month on the amount
21 wrongfully withheld, in place of any interest otherwise due. In an
22 action for collection of the amount wrongfully withheld, the
23 prevailing party is entitled to costs and a reasonable attorney's fee.

24 (d) This section does not supersede any requirement of Article
25 2 (commencing with Section 8810) relating to the withholding of
26 a retention.

27 8802. (a) This section applies to a contract between a public
28 utility and a direct contractor for all or part of a work of
29 improvement.

30 (b) Unless the direct contractor and a subcontractor otherwise
31 agree in writing, within 21 days after receipt of a progress payment
32 from the public utility the direct contractor shall pay the
33 subcontractor the amount allowed the direct contractor on account
34 of the work performed by the subcontractor to the extent of the
35 subcontractor's interest in the work. If there is a good faith dispute
36 over all or part of the amount due on a progress payment from the
37 direct contractor to a subcontractor, the direct contractor may
38 withhold an amount not in excess of 150 percent of the disputed
39 amount.

1 (c) A direct contractor that violates this section is liable to the
 2 subcontractor for a penalty of 2 percent of the disputed amount
 3 due per month for every month that payment is not made. In an
 4 action for collection of the amount wrongfully withheld, the
 5 prevailing party is entitled to costs and a reasonable attorney’s fee.
 6 (d) This section does not limit or impair a contractual,
 7 administrative, or judicial remedy otherwise available to a
 8 contractor or subcontractor in a dispute involving late payment or
 9 nonpayment by the contractor or deficient performance or
 10 nonperformance by the subcontractor.

11
 12 Article 2. Retention Payment
 13

14 8810. This article governs a retention payment withheld by an
 15 owner from a direct contractor or by a direct contractor from a
 16 subcontractor.

17 8812. (a) If an owner withholds a retention from a direct
 18 contractor, the owner shall, within 45 days after completion of the
 19 work of improvement, pay the retention to the contractor.

20 (b) If part of a work of improvement ultimately will become
 21 the property of a public entity, the owner may condition payment
 22 of a retention allocable to that part on acceptance of the part by
 23 the public entity.

24 (c) If there is a good faith dispute between the owner and direct
 25 contractor as to a retention payment due, the owner may withhold
 26 from final payment an amount not in excess of 150 percent of the
 27 disputed amount.

28 8814. (a) If a direct contractor has withheld a retention from
 29 a subcontractor, the direct contractor shall, within 10 days after
 30 receiving all or part of a retention payment, pay the subcontractor
 31 its share of the payment.

32 (b) If a retention received by the direct contractor is specifically
 33 designated for a particular subcontractor, the direct contractor shall
 34 pay the retention payment to the designated subcontractor, if
 35 consistent with the terms of the subcontract.

36 (c) If a good faith dispute exists between the direct contractor
 37 and a subcontractor, the direct contractor may withhold from the
 38 retention to the subcontractor an amount not in excess of 150
 39 percent of the estimated value of the disputed amount.

1 8816. (a) If the direct contractor gives the owner, or a
2 subcontractor gives the direct contractor, notice that work in dispute
3 has been completed in accordance with the contract, the owner or
4 direct contractor shall within 10 days give notice advising the
5 notifying party of the acceptance or rejection of the disputed work.
6 Both notices shall comply with the requirements of Article 3
7 (commencing with Section 8100) of Chapter 1.

8 (b) Within 10 days after acceptance of disputed work, the owner
9 or direct contractor shall pay the portion of the retention relating
10 to the disputed work.

11 8818. If an owner or direct contractor does not make a retention
12 payment within the time required by this article:

13 (a) The owner or direct contractor is liable to the person to which
14 payment is owed for a penalty of 2 percent per month on the
15 amount wrongfully withheld, in place of any interest otherwise
16 due.

17 (b) In an action for collection of the amount wrongfully
18 withheld, the prevailing party is entitled to costs and reasonable
19 attorney's fees.

20 8820. It is against public policy to waive the provisions of this
21 article by contract.

22 8822. This article does not apply to a retention payment
23 withheld by a lender pursuant to a construction loan agreement.
24

25 Article 3. Stop Work Notice

26
27 8830. "Stop work notice" means notice given under this article
28 by a direct contractor to an owner that the contractor will stop
29 work if the amount owed the contractor is not paid within 10 days
30 after notice is given.

31 8832. If a direct contractor is not paid the amount due pursuant
32 to a written contract within 35 days after the date payment is due
33 under the contract, and there is no dispute as to the satisfactory
34 performance of the contractor, the contractor may give the owner
35 a stop work notice. The notice shall comply with the requirements
36 of Article 3 (commencing with Section 8100) of Chapter 1.

37 8834. A direct contractor that gives an owner a stop work notice
38 shall give the following additional notice:

39 (a) At least five days before giving the stop work notice, the
40 contractor shall post notice of intent to give a stop work notice.

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

3 (b) At the same time the contractor gives the stop work notice,
4 the contractor shall give a copy of the stop work notice to all
5 subcontractors with whom the contractor has a direct contractual
6 relationship on the work of improvement.

7 8836. Within five days after receipt of a stop work notice from
8 a direct contractor, the owner shall give a copy of the notice to the
9 construction lender, if any. The copy of the notice shall be given
10 in compliance with the requirements of Article 3 (commencing
11 with Section 8100) of Chapter 1.

12 8838. (a) The direct contractor or the direct contractor’s surety,
13 or a subcontractor or a subcontractor’s surety, is not liable for
14 delay or damage that the owner or a subcontractor may suffer as
15 a result of the direct contractor giving a stop work notice and
16 subsequently stopping work for nonpayment, if the notice and
17 posting requirements of this article are satisfied.

18 (b) A direct contractor’s or subcontractor’s liability to a
19 subcontractor or material supplier after the direct contractor stops
20 work under this article is limited to the amount the subcontractor
21 or material supplier could otherwise recover under this ~~part~~ *title*
22 for work provided up to the date the subcontractor or material
23 supplier ceases work, subject to the following exceptions:

24 (1) The direct contractor’s or subcontractor’s liability continues
25 for work provided up to and including the 10-day notice period
26 and not beyond.

27 (2) This subdivision does not limit liability for custom work,
28 including materials that have been fabricated, manufactured, or
29 ordered to specifications that are unique to the job.

30 8840. On resolution of the claim in the stop work notice or the
31 direct contractor’s cancellation of the stop work notice, the
32 contractor shall post, and give subcontractors with whom the
33 contractor has a direct contractual relationship on the work of
34 improvement, notice of the resolution or cancellation. The notice
35 shall comply with the requirements of Article 3 (commencing with
36 Section 8100) of Chapter 1.

37 8842. A direct contractor’s right to stop work under this article
38 is in addition to other rights the direct contractor may have under
39 the law.

1 8844. (a) If payment of the amount claimed is not made within
2 10 days after a stop work notice is given, the direct contractor, the
3 direct contractor's surety, or an owner may in an expedited
4 proceeding in the superior court in the county in which the private
5 work of improvement is located, seek a judicial determination of
6 liability for the amount due.

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

12 8846. It is against public policy to waive the provisions of this
13 article by contract.

14 8848. (a) This article applies to a contract entered into on or
15 after January 1, 1999.

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

18
19 *TITLE 2. PUBLIC WORK OF IMPROVEMENT*

20
21 *CHAPTER 1. DEFINITIONS*

22
23 9000. *Unless the provision or context otherwise requires, the*
24 *definitions in this chapter govern the construction of this title.*

25 9002. *“Claimant” means a person that has a right under this*
26 *title to give a stop payment notice or assert a claim against a*
27 *payment bond.*

28 9004. *“Design professional” means a person licensed as an*
29 *architect pursuant to Chapter 3 (commencing with Section 5500)*
30 *of Division 3 of the Business and Professions Code, licensed as a*
31 *landscape architect pursuant to Chapter 3.5 (commencing with*
32 *Section 5615) of Division 3 of the Business and Professions Code,*
33 *registered as a professional engineer pursuant to Chapter 7*
34 *(commencing with Section 6700) of Division 3 of the Business and*
35 *Professions Code, or licensed as a land surveyor pursuant to*
36 *Chapter 15 (commencing with Section 8700) of Division 3 of the*
37 *Business and Professions Code.*

38 9006. *“Direct contractor” means a contractor that has a direct*
39 *contractual relationship with a public entity. With respect to the*

1 amount due or to become due to a direct contractor, the term
2 includes the direct contractor's assignee.

3 9008. "Funds" means warrant, check, money, or bonds (if
4 bonds are to be issued in payment of the public works contract).

5 9010. "Labor, service, equipment, or material" includes, but
6 is not limited to, labor, skills, services, material, supplies,
7 equipment, appliances, power, and surveying, provided pursuant
8 to a public works contract.

9 9012. (a) "Laborer" means a person who, acting as an
10 employee, performs labor, or bestows skill or other necessary
11 services, pursuant to a public works contract.

12 (b) "Laborer" includes a person or entity to which a portion
13 of a laborer's compensation for a public works contract, including,
14 but not limited to, employer payments described in Section 1773.1
15 of the Labor Code and implementing regulations, is paid by
16 agreement with that laborer or the collective bargaining agent of
17 that laborer.

18 (c) A person or entity described in subdivision (b) that has
19 standing under applicable law to maintain a direct legal action,
20 in its own name or as an assignee, to collect any portion of
21 compensation owed for a laborer for work pursuant to a public
22 works contract, shall have standing to enforce any rights or claims
23 of the laborer under this title, to the extent of the compensation
24 agreed to be paid to the person or entity for that work. This
25 subdivision is intended to give effect to the longstanding public
26 policy of this state to protect the entire compensation of a laborer,
27 regardless of the form in which that compensation is to be paid.

28 9014. "Payment bond" means a payment bond required by
29 Section 9550.

30 9016. "Person" means an individual, corporation, public
31 entity, business trust, estate, trust, partnership, limited liability
32 company, association, or other entity.

33 9018. "Preliminary notice" means the notice provided for in
34 Chapter 3 (commencing with Section 9300).

35 9020. (a) "Public entity" has the meaning provided in Section
36 1100 of the Public Contract Code and includes all of the following:

37 (1) The Regents of the University of California.

38 (2) An officer authorized to act for a public entity.

39 (b) A reference in this title to a public entity means the public
40 entity that awarded the public works contract.

1 9022. “Public works contract” has the meaning provided in
2 Section 1101 of the Public Contract Code.

3 9024. “Site” means the property on which a public works
4 contract is performed or is to be performed.

5 9026. “Stop payment notice” means a notice given under
6 Chapter 4 (commencing with Section 9350). A reference in another
7 statute to a “stop notice” in connection with the remedies provided
8 in this title means a stop payment notice.

9 9028. “Subcontractor” means a contractor that does not have
10 a direct contractual relationship with a public entity. The term
11 includes a contractor who has a contractual relationship with a
12 direct contractor or with another subcontractor.

13 9030. “Work” means labor, service, equipment, or material
14 provided pursuant to a public works contract.

15 9032. (a) “Work of improvement” includes, but is not limited
16 to:

17 (1) Construction, alteration, repair, demolition, or removal, in
18 whole or in part, of, or addition to, a building, wharf, bridge, ditch,
19 flume, aqueduct, well, tunnel, fence, machinery, railroad, or road.

20 (2) Seeding, sodding, or planting of property for landscaping
21 purposes.

22 (3) Filling, leveling, or grading of property.

23 (b) Except as otherwise provided in this title, “work of
24 improvement” means the entire structure or scheme of
25 improvement as a whole, and includes site improvement.

26

27 CHAPTER 2. GENERAL PROVISIONS

28

29 Article 1. Miscellaneous Provisions

30

31 9050. (a) This title is operative on January 1, 2012.

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

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

39 (d) A provision of this title, insofar as it is substantially the same
40 as a previously existing provision relating to the same subject

1 *matter, shall be construed as a restatement and continuation*
2 *thereof and not as a new enactment.*

3 9052. (a) *This title applies to a public works contract awarded*
4 *by a public entity.*

5 (b) *This title does not apply to a transaction governed by*
6 *Sections 20457 to 20464, inclusive, of the Public Contract Code.*

7 9054. (a) *This title does not apply to or change improvement*
8 *security under the Subdivision Map Act, Division 2 (commencing*
9 *with Section 66410) of Title 7 of the Government Code.*

10 (b) *The Bond and Undertaking Law, Chapter 2 (commencing*
11 *with Section 995.010) of Title 14 of Part 2 of the Code of Civil*
12 *Procedure, applies to a bond given under this title, except to the*
13 *extent this title prescribes a different rule or is inconsistent.*

14 9056. (a) *Except as provided in subdivision (b), any of the*
15 *following persons that have not been paid in full may give a stop*
16 *payment notice to the public entity or assert a claim against a*
17 *payment bond:*

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

22 (2) *A laborer.*

23 (3) *A person described in Section 4107.7 of the Public Contract*
24 *Code.*

25 (b) *A direct contractor may not give a stop payment notice or*
26 *assert a claim against a payment bond under this title.*

27 9058. *Except as otherwise provided in this title, Part 2*
28 *(commencing with Section 307) of the Code of Civil Procedure*
29 *provides the rules of practice in proceedings under this title.*

30 9060. *For purposes of this title, the term “day” means a*
31 *calendar day.*

32 9062. *An act that may be done by or to a person under this*
33 *title may be done by or to the person’s agent to the extent the act*
34 *is within the scope of the agent’s authority.*

35 9064. *None of the following releases a surety from liability on*
36 *a bond given under this title:*

37 (a) *A change to a contract, plan, specification, or agreement*
38 *for a public works contract or for work provided for a public works*
39 *contract.*

1 **(b)** *A change to the terms of payment or an extension of the time*
2 *for payment for a public works contract.*

3 **(c)** *A rescission or attempted rescission of a contract, agreement,*
4 *or bond.*

5 **(d)** *A condition precedent or subsequent in the bond purporting*
6 *to limit the right of recovery of a claimant otherwise entitled to*
7 *recover pursuant to a contract, agreement, or bond.*

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

11
12 Article 2. Notice

13
14 9100. **(a)** *Notice under this title shall be in writing. Writing*
15 *includes printing and typewriting.*

16 **(b)** *Written notice under this title may be given by electronic*
17 *communication to the extent authorized under Section 9112.*

18 9102. **(a)** *Notice under this title shall, in addition to any other*
19 *information required by statute for that type of notice, include all*
20 *of the following information to the extent known to the person*
21 *giving the notice:*

22 **(1)** *The name and address of the public entity.*

23 **(2)** *The name and address of the direct contractor.*

24 **(3)** *A description of the site sufficient for identification, including*
25 *the street address of the site, if any. If a sufficient legal description*
26 *of the site is given, the effectiveness of the notice is not affected*
27 *by the fact that the street address is erroneous or is omitted.*

28 **(4)** *The name, address, and relationship to the parties of the*
29 *person giving the notice.*

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

31 **(A)** *A general statement of the labor, service, equipment, or*
32 *material provided or to be provided by the claimant.*

33 **(B)** *The name of the person that contracted for the labor, service,*
34 *equipment, or material provided or to be provided.*

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

37 **(b)** *Notice is not invalid by reason of any variance from the*
38 *requirements of this section if the notice is sufficient to substantially*
39 *inform the person given notice of the information required by this*
40 *section and other information required in the notice.*

1 9104. (a) A direct contractor or subcontractor that employs
2 a laborer and fails to pay the full compensation due the laborer,
3 including any employer payments described in Section 1773.1 of
4 the Labor Code and implementing regulations, shall not later than
5 the date the compensation became delinquent, give the laborer,
6 the laborer's bargaining representative, if any, and the public
7 entity, notice that includes all of the following information, in
8 addition to the information specified in Section 9102:

9 (1) The name and address of the laborer, and of any person or
10 entity described in subdivision (b) of Section 9012 to which
11 employer payments are due.

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

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

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

19 9106. Except as otherwise provided by statute, notice under
20 this title shall be given by any of the following means:

21 (a) Personal delivery.

22 (b) Mail in the manner provided in Section 9112.

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

26 9108. Except as otherwise provided under this title, notice
27 under this title shall be given to the person to be notified at the
28 following addresses:

29 (a) If the person to be notified is the public entity, at the office
30 of the public entity or at another address specified by the public
31 entity in the contract or elsewhere for service of notices, papers,
32 and other documents.

33 (b) If the person to be notified is a direct contractor or a
34 subcontractor, at the contractor's residence or place of business,
35 or at the contractor's address shown on the building permit, on
36 the contractor's contract, or on the records of the Contractors'
37 State License Board.

38 (c) If the person to be notified is a claimant, at the claimant's
39 residence or place of business, or at the claimant's address shown
40 on the claimant's contract, preliminary notice, stop payment notice,

1 or claim against a payment bond, or on the records of the
2 Contractors' State License Board.

3 (d) If the person to be notified is the surety on a bond, at the
4 surety's residence or place of business, or at the surety's address
5 shown on the bond for service of notices, papers, and other
6 documents, or on the records of the Department of Insurance.

7 9110. Notice given by mail under this title shall be given by
8 registered or certified mail, express mail, or overnight delivery by
9 an express service carrier.

10 9112. (a) As used in this section, "electronic record" has the
11 meaning provided in Section 1633.2 of the Civil Code.

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

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

21 9114. Notice under this title is complete and deemed to have
22 been given at the following times:

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

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

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

30 (d) If given in the form of an electronic record, when the
31 electronic record is transmitted.

32 9116. (a) Proof that notice was given to a person in the manner
33 required by this title shall be made by a proof of notice declaration
34 that states all of the following:

35 (1) The type or description of the notice given.

36 (2) The date, place, and manner of notice and facts showing
37 that notice was given in the manner required by statute.

38 (3) The name and address of the person to which notice was
39 given, and, if appropriate, the title or capacity in which the person
40 was given notice.

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

3 (1) Documentation provided by the United States Postal Service
 4 showing that payment was made to mail the notice using registered
 5 or certified mail, or express mail.

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

9 (3) A return receipt, delivery confirmation, signature
 10 confirmation, tracking record, or other proof of delivery or
 11 attempted delivery provided by the United States Postal Service,
 12 or a photocopy of the record of delivery and receipt maintained
 13 by the United States Postal Service, showing the date of delivery
 14 and to whom delivered, or in the event of nondelivery, by the
 15 returned envelope itself.

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

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

24
 25 Article 3. Completion

26
 27 9200. For the purpose of this title, completion of a work of
 28 improvement occurs at the earliest of the following times:

29 (a) Acceptance of the work of improvement by the public entity.

30 (b) Cessation of labor on the work of improvement for a
 31 continuous period of 60 days. This subdivision does not apply to
 32 a contract awarded under the State Contract Act, Part 2
 33 (commencing with Section 10100) of Division 2 of the Public
 34 Contract Code.

35 9202. (a) A public entity may record a notice of cessation if
 36 there has been a continuous cessation of labor for at least 30 days
 37 prior to the recordation that continues through the date of the
 38 recordation.

39 (b) The notice shall be signed and verified by the public entity
 40 or its agent.

1 (c) *The notice shall comply with the requirements of Article 2*
2 *(commencing with Section 9100), and shall also include all of the*
3 *following information:*

4 (1) *The date on or about which the labor ceased.*

5 (2) *A statement that the cessation has continued until the*
6 *recordation of the notice.*

7 9204. (a) *A public entity may record a notice of completion*
8 *on or within 15 days after the date of completion of a work of*
9 *improvement.*

10 (b) *The notice shall be signed and verified by the public entity*
11 *or its agent.*

12 (c) *The notice shall comply with the requirements of Article 2*
13 *(commencing with Section 9100), and shall also include the date*
14 *of completion. An erroneous statement of the date of completion*
15 *does not affect the effectiveness of the notice if the true date of*
16 *completion is 15 days or less before the date of recordation of the*
17 *notice.*

18 9208. (a) *A notice of cessation or completion is recorded when*
19 *filed for record in the office of the county recorder of the county*
20 *in which the public works contract or part of it is performed. A*
21 *notice of completion in otherwise proper form containing the*
22 *information required by Section 9204 shall be accepted by the*
23 *recorder for recording and is deemed duly recorded without*
24 *acknowledgment.*

25 (b) *The county recorder shall number, index, and preserve a*
26 *notice of cessation or completion presented for filing under this*
27 *title, and shall number, index, and transcribe into the official*
28 *records, in the same manner as a conveyance of real property, a*
29 *notice of completion or cessation recorded under this title.*

30 (c) *The county recorder shall charge and collect the fees*
31 *provided in Article 5 (commencing with Section 27360) of Chapter*
32 *6 of Part 3 of Division 2 of Title 3 of the Government Code for*
33 *performing duties under this section.*

34

35 *Article 4. Waiver and Release*

36

37 9250. (a) *A public entity or direct contractor may not, by*
38 *contract or otherwise, waive, affect, or impair a claimant's rights*
39 *under this title, whether with or without notice, except with the*

1 claimant's written consent, and any term of a contract that purports
2 to do so is void and unenforceable.

3 (b) A claimant's written consent is void and unenforceable
4 unless and until the claimant executes and delivers a waiver and
5 release under this article.

6 9252. A claimant's waiver and release does not release the
7 public entity or surety on a payment bond from a claim unless both
8 of the following conditions are satisfied:

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

11 (b) If the release is a conditional release, there is evidence of
12 payment to the claimant. Evidence of payment may be either of
13 the following:

14 (1) The claimant's endorsement on a single or joint payee check
15 that has been paid by the financial institution on which it was
16 drawn.

17 (2) Written acknowledgment of payment by the claimant.

18 9254. An oral or written statement purporting to waive, release,
19 impair, or otherwise adversely affect a claim is void and
20 unenforceable and does not create an estoppel or impairment of
21 the claim unless either of the following conditions is satisfied:

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

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

26 9256. (a) A claimant may reduce the amount of, or release in
27 its entirety, a stop payment notice. The reduction or release shall
28 be in writing and may be given in a form other than a waiver and
29 release form provided in this article.

30 (b) The writing shall identify whether it is a reduction of the
31 amount of the stop payment notice, or a release of the notice in its
32 entirety. If the writing is a reduction, it shall state the amount of
33 the reduction, and the amount to remain withheld after the
34 reduction.

35 (c) A claimant's reduction or release of a stop payment notice
36 has the following effect:

37 (1) The reduction or release releases the claimant's right to
38 enforce payment of the claim stated in the notice to the extent of
39 the reduction or release.

1 (2) *The reduction or release releases the public entity from the*
2 *obligation to withhold funds pursuant to the notice to the extent*
3 *of the reduction or release.*

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

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

10 9258. *This article does not affect the enforceability of either*
11 *an accord and satisfaction concerning a good faith dispute or an*
12 *agreement made in settlement of an action pending in court if the*
13 *accord and satisfaction or agreement and settlement make specific*
14 *reference to the claim.*

15 9260. *If a claimant is required to execute a waiver and release*
16 *in exchange for, or in order to induce payment of, a progress*
17 *payment and the claimant is not, in fact, paid in exchange for the*
18 *waiver and release or a single payee check or joint payee check*
19 *is given in exchange for the waiver and release, the waiver and*
20 *release shall be in substantially the following form:*

21

22 *Conditional Waiver and Release on Progress Payment*

23

24 *NOTICE: This document waives certain rights of the claimant effective on*
25 *receipt of payment. A person should not rely on this document unless satisfied*
26 *that the claimant has received payment.*

27

28 *Identifying Information*

29

30 *Name of Claimant:* _____

31 *Name of Customer:* _____

32 *Job Location:* _____

33 *Public Entity:* _____

34 *Through Date:* _____

35

36 *Conditional Waiver and Release*

37

38 *This document waives and releases stop payment notice and payment bond*
39 *rights the claimant has for labor and service provided, and equipment and*
40 *material delivered, to the customer on this job through the Through Date of*

1 *this document. This document is effective only on the claimant's receipt of*
2 *payment from the financial institution on which the following check is drawn:*

3 *Maker of Check:* _____

4 *Amount of Check:* \$ _____

5 *Check Payable to:* _____

6

7 *Exceptions*

8

9 *This document does not affect any of the following:*

10 *(1) Retentions.*

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

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

14 *Date(s) of waiver and release:* _____

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

16 *(4) Contract rights, including (A) a right based on rescission, abandonment,*
17 *or breach of contract, and (B) the right to recover compensation for work not*
18 *compensated by the payment.*

19

20 *Signature*

21

22 *Claimant's Signature:* _____

23 *Claimant's Title:* _____

24 *Date of Signature:* _____

25

26 *9262. If the claimant is required to execute a waiver and*
27 *release in exchange for, or in order to induce payment of, a*
28 *progress payment and the claimant asserts in the waiver it has, in*
29 *fact, been paid the progress payment, the waiver and release shall*
30 *be in substantially the following form, with the text of the "Notice*
31 *to Claimant" in at least as large a type as the largest type*
32 *otherwise in the form:*

33

34 *Unconditional Waiver and Release on Progress Payment*

35

36 *NOTICE TO CLAIMANT: This document waives and releases rights*
37 *unconditionally and states that you have been paid for giving up those rights.*
38 *This document is enforceable against you if you sign it, even if you have not*
39 *been paid. If you have not been paid, use a conditional waiver and release*
40 *form.*

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Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Public Entity: _____
Through Date: _____

Unconditional Waiver and Release

This document waives and releases stop payment notice and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. The claimant has received the following progress payment: \$ _____

Exceptions

This document does not affect any of the following:
(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

9264. 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 is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be in substantially the following form:

Conditional Waiver and Release on Final Payment

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NOTICE: This document waives certain rights of the claimant effective on receipt of payment. A person should not rely on this document unless satisfied that the claimant has received payment.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Public Entity: _____

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: _____

9266. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final

1 *payment and the claimant asserts in the waiver that he or she has,*
2 *in fact, been paid the final payment, the waiver and release shall*
3 *be in substantially the following form, with the text of the “Notice*
4 *to Claimant” in at least as large a type as the largest type*
5 *otherwise in the form:*

6
7 *Unconditional Waiver and Release on Final Payment*

8
9 *NOTICE TO CLAIMANT: This document waives and releases rights*
10 *unconditionally and states that you have been paid for giving up those rights.*
11 *This document is enforceable against you if you sign it, even if you have not*
12 *been paid. If you have not been paid, use a conditional waiver and release*
13 *form.*

14
15 *Identifying Information*

16
17 *Name of Claimant:* _____
18 *Name of Customer:* _____
19 *Job Location:* _____
20 *Public Entity:* _____

21
22 *Unconditional Waiver and Release*

23
24 *This document waives and releases stop payment notice and payment bond*
25 *rights the claimant has for all labor and service provided, and equipment and*
26 *material delivered, to the customer on this job. The claimant has been paid*
27 *in full.*

28
29 *Exception*

30
31 *This document does not affect the following:*
32 *Disputed claims for extras in the amount of: \$* _____

33
34 *Signature*

35
36 *Claimant’s Signature:* _____
37 *Claimant’s Title:* _____
38 *Date of Signature:* _____
39

CHAPTER 3. PRELIMINARY NOTICE

1

2

3 9300. (a) *Except as otherwise provided by statute, before*
4 *giving a stop payment notice or asserting a claim against a*
5 *payment bond, a claimant shall give preliminary notice to the*
6 *following persons:*

7 (1) *The public entity.*

8 (2) *The direct contractor to which the claimant provides work.*

9 (b) *Notwithstanding subdivision (a):*

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

11 (2) *A claimant that has a direct contractual relationship with*
12 *a direct contractor is not required to give preliminary notice.*

13 (c) *Compliance with this section is a necessary prerequisite to*
14 *the validity of a stop payment notice under this title.*

15 (d) *Compliance with this section or with Section 9562 is a*
16 *necessary prerequisite to the validity of a claim against a payment*
17 *bond under this title.*

18 9302. (a) *Except as provided in subdivision (b), preliminary*
19 *notice shall be given in compliance with the requirements of Article*
20 *2 (commencing with Section 9100) of Chapter 2.*

21 (b) *If the public works contract is for work constructed by the*
22 *Department of Public Works or the Department of General Services*
23 *of the state, preliminary notice to the public entity shall be given*
24 *to the disbursing officer of the department constructing the work.*

25 9304. *A claimant may give a stop payment notice or assert a*
26 *claim against a payment bond only for work provided within 20*
27 *days before giving preliminary notice and at any time thereafter.*

28 9306. *If the contract of any subcontractor on a particular work*
29 *of improvement provides for payment to the subcontractor of more*
30 *than four hundred dollars (\$400), the failure of that subcontractor,*
31 *licensed under the Contractors' State License Law (Chapter 9*
32 *(commencing with Section 7000) of Division 3 of the Business and*
33 *Professions Code), to give the notice provided for in this chapter,*
34 *constitutes grounds for disciplinary action under the Contractors'*
35 *State License Law.*

CHAPTER 4. STOP PAYMENT NOTICE

Article 1. General Provisions

9350. *The rights of all persons furnishing work pursuant to a public works contract, with respect to any fund for payment of construction costs, are governed exclusively by this chapter, and no person may assert any legal or equitable right with respect to that fund, other than a right created by direct written contract between the person and the person holding the fund, except pursuant to the provisions of this chapter.*

9352. (a) *A stop payment notice shall comply with the requirements of Section 9102, 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 amount claimed in the notice may include only the amount due the claimant for work provided through the date of the notice.*

9354. (a) *Except as provided in subdivision (b), a stop payment notice shall be given in compliance with the requirements of Article 2 (commencing with Section 9100) of Chapter 2.*

(b) *A stop payment notice shall be given to the public entity by giving the notice to the following person:*

(1) *In the case of a public works contract of the state, the director of the department that awarded the contract.*

(2) *In the case of a public works contract of a public entity other than the state, the office of the controller, auditor, or other public disbursing officer whose duty it is to make payment pursuant to the contract, or the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by which the contract was awarded.*

9356. *A stop payment notice is not effective unless given before the earlier of the following times:*

(a) *Ninety days after cessation or completion.*

(b) *Thirty days after recordation of a notice of cessation or completion.*

9358. (a) *The public entity shall, on receipt of a stop payment notice, withhold from the direct contractor sufficient funds due or*

1 to become due to the direct contractor to pay the claim stated in
2 the stop payment notice and to provide for the public entity's
3 reasonable cost of any litigation pursuant to the stop payment
4 notice.

5 (b) The public entity may satisfy its duty under this section by
6 refusing to release funds held in escrow under Section 10263 or
7 22300 of the Public Contract Code.

8 9360. (a) This chapter does not prohibit payment of funds to
9 a direct contractor if a stop payment notice is not received before
10 the disbursing officer actually surrenders possession of the funds.

11 (b) This chapter does not prohibit payment of any amount due
12 to a direct contractor in excess of the amount necessary to pay the
13 total amount of all claims stated in stop payment notices received
14 by the public entity at the time of payment plus any interest and
15 court costs that might reasonably be anticipated in connection
16 with the claims.

17 9362. (a) Not later than 10 days after each of the following
18 events, the public entity shall give notice to a claimant that has
19 given a stop payment notice of the time within which an action to
20 enforce payment of the claim stated in the stop payment notice
21 must be commenced:

22 (1) Completion of a public works contract, whether by
23 acceptance or cessation.

24 (2) Recordation of a notice of cessation or completion.

25 (b) The notice shall comply with the requirements of Article 2
26 (commencing with Section 9100) of Chapter 2.

27 (c) A public entity need not give notice under this section unless
28 the claimant has paid the public entity ten dollars (\$10) at the time
29 of giving the stop payment notice.

30 9364. (a) A public entity may, in its discretion, permit the
31 direct contractor to give the public entity a release bond. The bond
32 shall be executed by an admitted surety insurer, in an amount
33 equal to 125 percent of the claim stated in the stop payment notice,
34 conditioned for the payment of any amount the claimant recovers
35 in an action on the claim, together with court costs if the claimant
36 prevails.

37 (b) On receipt of a release bond, the public entity shall not
38 withhold funds from the direct contractor pursuant to the stop
39 payment notice.

1 (c) *The surety on a release bond is jointly and severally liable*
2 *to the claimant with the sureties on any payment bond given under*
3 *Chapter 5 (commencing with Section 9550).*

4
5 *Article 2. Summary Proceeding for Release of Funds*
6

7 *9400. A direct contractor may obtain release of funds withheld*
8 *pursuant to a stop payment notice under the summary proceeding*
9 *provided in this article on any of the following grounds:*

10 (a) *The claim on which the notice is based is not a type for which*
11 *a stop payment notice is authorized under this chapter.*

12 (b) *The claimant is not a person authorized under Section 9056*
13 *to give a stop payment notice.*

14 (c) *The amount of the claim stated in the stop payment notice*
15 *is excessive.*

16 (d) *There is no basis for the claim stated in the stop payment*
17 *notice.*

18 *9402. The direct contractor shall serve on the public entity an*
19 *affidavit, together with a copy of the affidavit, in compliance with*
20 *the requirements of Article 2 (commencing with Section 9100) of*
21 *Chapter 2, that includes all of the following information:*

22 (a) *An allegation of the grounds for release of the funds and a*
23 *statement of the facts supporting the allegation.*

24 (b) *A demand for the release of all or the portion of the funds*
25 *that are alleged to be withheld improperly or in an excessive*
26 *amount.*

27 (c) *A statement of the address of the contractor within the state*
28 *for the purpose of permitting service by mail on the contractor of*
29 *any notice or document.*

30 *9404. The public entity shall serve on the claimant a copy of*
31 *the direct contractor's affidavit, together with a notice stating that*
32 *the public entity will release the funds withheld, or the portion of*
33 *the funds demanded, unless the claimant serves on the public entity*
34 *a counteraffidavit on or before the time stated in the notice. The*
35 *time stated in the notice shall be not less than 10 days nor more*
36 *than 20 days after service on the claimant of the copy of the*
37 *affidavit. The notice shall comply with the requirements of Article*
38 *2 (commencing with Section 9100) of Chapter 2.*

39 *9406. (a) A claimant that contests the direct contractor's*
40 *affidavit shall serve on the public entity a counteraffidavit alleging*

1 *the details of the claim and describing the specific basis on which*
2 *the claimant contests or rebuts the allegations of the contractor's*
3 *affidavit. The counteraffidavit shall be served within the time stated*
4 *in the public entity's notice, together with proof of service of a*
5 *copy of the counteraffidavit on the direct contractor. The service*
6 *of the counteraffidavit on the public entity and the copy of the*
7 *affidavit on the direct contractor shall comply with the*
8 *requirements of Article 2 (commencing with Section 9100).*

9 (b) *If no counteraffidavit with proof of service is served on the*
10 *public entity within the time stated in the public entity's notice,*
11 *the public entity shall immediately release the funds, or the portion*
12 *of the funds demanded by the affidavit, without further notice to*
13 *the claimant, and the public entity is not liable in any manner for*
14 *their release.*

15 (c) *The public entity is not responsible for the validity of an*
16 *affidavit or counteraffidavit under this article.*

17 9408. (a) *If a counteraffidavit, together with proof of service,*
18 *is served under Section 9406, either the direct contractor or the*
19 *claimant may commence an action for a declaration of the rights*
20 *of the parties.*

21 (b) *After commencement of the action, either the direct*
22 *contractor or the claimant may move the court for a determination*
23 *of rights under the affidavit and counteraffidavit. The party making*
24 *the motion shall give not less than five days' notice of the hearing*
25 *to the public entity and to the other party.*

26 (c) *The notice of hearing shall comply with the requirements of*
27 *Article 2 (commencing with Section 9100). Notwithstanding Section*
28 *9114, when notice of the hearing is made by mail, the notice is*
29 *complete on the fifth day following deposit of the notice in the*
30 *mail.*

31 (d) *The court shall hear the motion within 15 days after the date*
32 *of the motion, unless the court continues the hearing for good*
33 *cause.*

34 9410. (a) *The affidavit and counteraffidavit shall be filed with*
35 *the court by the public entity and shall constitute the pleadings,*
36 *subject to the power of the court to permit an amendment in the*
37 *interest of justice. The affidavit of the direct contractor shall be*
38 *deemed controverted by the counteraffidavit of the claimant, and*
39 *both shall be received in evidence.*

40 (b) *At the hearing, the direct contractor has the burden of proof.*

1 9412. (a) *No findings are required in a summary proceeding*
2 *under this article.*

3 (b) *If at the hearing no evidence other than the affidavit and*
4 *counteraffidavit is offered, the court may, if satisfied that sufficient*
5 *facts are shown, make a determination on the basis of the affidavit*
6 *and counteraffidavit. If the court is not satisfied that sufficient*
7 *facts are shown, the court shall order the hearing continued for*
8 *production of other evidence, oral or documentary, or the filing*
9 *of other affidavits and counteraffidavits.*

10 (c) *At the conclusion of the hearing, the court shall make an*
11 *order determining whether the demand for release is allowed. The*
12 *court's order is determinative of the right of the claimant to have*
13 *funds further withheld by the public entity.*

14 (d) *The direct contractor shall serve a copy of the court's order*
15 *on the public entity in compliance with the requirements of Article*
16 *2 (commencing with Section 9100).*

17 9414. *A determination in a summary proceeding under this*
18 *article is not res judicata with respect to a right of action by the*
19 *claimant against either the principal or surety on a payment bond*
20 *or with respect to a right of action against a party personally liable*
21 *to the claimant.*

22

23 Article 3. *Distribution of Funds Withheld*

24

25 9450. *If funds withheld pursuant to a stop payment notice are*
26 *insufficient to pay in full the claims of all persons who have given*
27 *a stop payment notice, the funds shall be distributed among the*
28 *claimants in the ratio that the claim of each bears to the aggregate*
29 *of all claims for which a stop payment notice is given, without*
30 *regard to the order in which the notices were given or enforcement*
31 *actions were commenced.*

32 9452. *Nothing in this chapter impairs the right of a claimant*
33 *to recover from the direct contractor or the contractor's sureties*
34 *in an action on a payment bond under Chapter 5 (commencing*
35 *with Section 9550) any deficit that remains unpaid after the*
36 *distribution under Section 9450.*

37 9454. *A person that willfully gives a false stop payment notice*
38 *to the public entity or that willfully includes in the notice work not*
39 *provided for the public works contract for which the stop payment*

1 notice is given forfeits all right to participate in the distribution
2 under Section 9450.

3 9456. (a) A stop payment notice takes priority over an
4 assignment by a direct contractor of any amount due or to become
5 due pursuant to a public works contract, including contract
6 changes, whether made before or after the giving of a stop payment
7 notice, and the assignment has no effect on the rights of the
8 claimant.

9 (b) Any garnishment of an amount due or to become due
10 pursuant to a public works contract by a creditor of a direct
11 contractor under Article 8 (commencing with Section 708.710) of
12 Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil
13 Procedure and any statutory lien on that amount is subordinate
14 to the rights of a claimant.

15

16 Article 4. Enforcement of Payment of Claim Stated in Stop
17 Payment Notice

18

19 9500. (a) A claimant may not enforce payment of the claim
20 stated in a stop payment notice unless the claimant has complied
21 with all of the following conditions:

22 (1) The claimant has given preliminary notice to the extent
23 required by Chapter 3 (commencing with Section 9300).

24 (2) The claimant has given the stop payment notice within the
25 time provided in Section 9356.

26 (b) The claim filing procedures of Part 3 (commencing with
27 Section 900) of Division 3.6 of Title 1 of the Government Code do
28 not apply to an action under this article.

29 9502. (a) The claimant shall commence an action against the
30 public entity and the direct contractor to enforce payment of the
31 claim stated in a stop payment notice not earlier than 10 days after
32 the date the claimant gives the stop payment notice.

33 (b) The claimant shall commence an action against the public
34 entity and the direct contractor to enforce payment of the claim
35 stated in a stop payment notice not later than 90 days after
36 expiration of the time within which a stop payment notice must be
37 given.

38 (c) An action under this section may not be brought to trial or
39 judgment entered before expiration of the time provided in
40 subdivision (b).

1 (d) If a claimant does not commence an action to enforce
2 payment of the claim stated in a stop payment notice within the
3 time provided in subdivision (b), the notice ceases to be effective
4 and the public entity shall release funds withheld pursuant to the
5 notice.

6 9504. Within five days after commencement of an action to
7 enforce payment of the claim stated in a stop payment notice, the
8 claimant shall give notice of commencement of the action to the
9 public entity in the same manner that a stop payment notice is
10 given.

11 9506. If more than one claimant has given a stop payment
12 notice:

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

15 (b) If claimants commence separate actions, the court that first
16 acquires jurisdiction may order the actions consolidated.

17 (c) On request of the public entity, the court shall require that
18 all claimants be impleaded in one action and shall adjudicate the
19 rights of all parties in the action.

20 9508. Notwithstanding Section 583.420 of the Code of Civil
21 Procedure, the court may dismiss an action to enforce payment of
22 the claim stated in a stop payment notice that is not brought to
23 trial within two years after commencement of the action.

24 9510. A stop payment notice ceases to be effective, and the
25 public entity shall release funds withheld, in either of the following
26 circumstances:

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

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

32
33 CHAPTER 5. PAYMENT BOND
34

35 9550. (a) A direct contractor that is awarded a public works
36 contract involving an expenditure in excess of twenty-five thousand
37 dollars (\$25,000) shall, before commencement of work, give a
38 payment bond to and approved by the public entity.

1 (b) A public entity shall state in its call for bids that a payment
2 bond is required for a public works contract involving an
3 expenditure in excess of twenty-five thousand dollars (\$25,000).

4 (c) A payment bond given and approved under this section will
5 permit performance of and provide coverage for work pursuant
6 to a public works contract that supplements the contract for which
7 the bond is given, if the requirement of a new bond is waived by
8 the public entity.

9 (d) For the purpose of this section, a design professional is not
10 deemed a direct contractor and is not required to give a payment
11 bond.

12 (e) This section does not apply to a public works contract with
13 a “state entity” as defined in subdivision (d) of Section 7103 of
14 the Public Contract Code.

15 9552. If a payment bond is not given and approved as required
16 by Section 9550:

17 (a) The public entity awarding the public works contract shall
18 not audit, allow, or pay a claim of the direct contractor pursuant
19 to the contract.

20 (b) A claimant shall receive payment of a claim pursuant to a
21 stop payment notice in the manner provided by Chapter 4
22 (commencing with Section 9350).

23 9554. (a) A payment bond shall be in an amount not less than
24 100 percent of the total amount payable pursuant to the public
25 works contract. The bond shall be in the form of a bond and not
26 a deposit in lieu of a bond. The bond shall be executed by an
27 admitted surety insurer.

28 (b) The payment bond shall provide that if the direct contractor
29 or a subcontractor fails to pay any of the following, the surety will
30 pay the obligation and, if an action is brought to enforce the
31 liability on the bond, a reasonable attorney’s fee, to be fixed by
32 the court:

33 (1) A person authorized under Section 9056 to assert a claim
34 against a payment bond.

35 (2) Amounts due under the Unemployment Insurance Code with
36 respect to work or labor performed pursuant to the public works
37 contract.

38 (3) Amounts required to be deducted, withheld, and paid over
39 to the Employment Development Department from the wages of
40 employees of the contractor and subcontractors under Section

1 *13020 of the Unemployment Insurance Code with respect to the*
2 *work and labor.*

3 *(c) The payment bond shall by its terms inure to the benefit of*
4 *any person authorized under Section 9056 to assert a claim against*
5 *a payment bond so as to give a right of action to that person or*
6 *that person's assigns in an action to enforce the liability on the*
7 *bond.*

8 *(d) The direct contractor may require that a subcontractor give*
9 *a bond to indemnify the direct contractor for any loss sustained*
10 *by the direct contractor because of any default of the subcontractor*
11 *under this section.*

12 *9556. (a) A payment bond shall be construed most strongly*
13 *against the surety and in favor of the beneficiary.*

14 *(b) A surety is not released from liability to the beneficiary by*
15 *reason of a breach of the public works contract between the public*
16 *entity and the direct contractor or on the part of any obligee named*
17 *in the bond.*

18 *(c) Except as otherwise provided by statute, the sole conditions*
19 *of recovery on the bond are that the claimant is a person authorized*
20 *under Section 9056 to assert a claim against a payment bond, and*
21 *has not been paid the full amount of the claim.*

22 *9558. A claimant may commence an action to enforce the*
23 *liability on the bond at any time after the claimant ceases to*
24 *provide work, but not later than six months after the period in*
25 *which a stop payment notice may be given under Section 9356.*

26 *9560. (a) In order to enforce a claim against a payment bond,*
27 *a claimant shall give the preliminary notice provided in Chapter*
28 *3 (commencing with Section 9300).*

29 *(b) If preliminary notice was not given as provided in Chapter*
30 *3 (commencing with Section 9300), a claimant may enforce a claim*
31 *by giving written notice to the surety and the bond principal within*
32 *15 days after recordation of a notice of completion. If no notice*
33 *of completion has been recorded, the time for giving written notice*
34 *to the surety and the bond principal is extended to 75 days after*
35 *completion of the work of improvement.*

36 *9562. Notice to the principal and surety under Section 9560*
37 *shall comply with the requirements of Article 2 (commencing with*
38 *Section 9100) of Chapter 2.*

1 9564. (a) A claimant may maintain an action to enforce the
2 liability of a surety on a payment bond whether or not the claimant
3 has given the public entity a stop payment notice.

4 (b) A claimant may maintain an action to enforce the liability
5 on the bond separately from and without commencement of an
6 action against the public entity.

7 (c) In an action to enforce the liability on the bond, the court
8 shall award the prevailing party a reasonable attorney's fee.

9 9566. (a) A claimant does not have a right to recover on a
10 payment bond unless the claimant provided work to the direct
11 contractor either directly or through one or more subcontractors
12 pursuant to a public works contract.

13 (b) Nothing in this section affects the stop payment notice rights
14 of, and relative priorities among, design professionals.

15 SEC. 23. Section 86 of the Code of Civil Procedure is amended
16 to read:

17 86. (a) The following civil cases and proceedings are limited
18 civil cases:

19 (1) A case at law in which the demand, exclusive of interest, or
20 the value of the property in controversy amounts to twenty-five
21 thousand dollars (\$25,000) or less. This paragraph does not apply
22 to a case that involves the legality of any tax, impost, assessment,
23 toll, or municipal fine, except an action to enforce payment of
24 delinquent unsecured personal property taxes if the legality of the
25 tax is not contested by the defendant.

26 (2) An action for dissolution of partnership where the total assets
27 of the partnership do not exceed twenty-five thousand dollars
28 (\$25,000); an action of interpleader where the amount of money
29 or the value of the property involved does not exceed twenty-five
30 thousand dollars (\$25,000).

31 (3) An action to cancel or rescind a contract when the relief is
32 sought in connection with an action to recover money not
33 exceeding twenty-five thousand dollars (\$25,000) or property of
34 a value not exceeding twenty-five thousand dollars (\$25,000), paid
35 or delivered under, or in consideration of, the contract; an action
36 to revise a contract where the relief is sought in an action upon the
37 contract if the action otherwise is a limited civil case.

38 (4) A proceeding in forcible entry or forcible or unlawful
39 detainer where the whole amount of damages claimed is
40 twenty-five thousand dollars (\$25,000) or less.

1 (5) An action to enforce and foreclose a lien on personal
2 property where the amount of the lien is twenty-five thousand
3 dollars (\$25,000) or less.

4 (6) An action to enforce and foreclose, or a petition to release,
5 a lien arising under the provisions of Chapter 4 (commencing with
6 Section 8400) of Part 6 of Division 4 of the Civil Code, or to
7 enforce and foreclose an assessment lien on a common interest
8 development as defined in Section 1351 of the Civil Code, where
9 the amount of the liens is twenty-five thousand dollars (\$25,000)
10 or less. However, if an action to enforce the lien affects property
11 that is also affected by a similar pending action that is not a limited
12 civil case, or if the total amount of liens sought to be foreclosed
13 against the same property aggregates an amount in excess of
14 twenty-five thousand dollars (\$25,000), the action is not a limited
15 civil case.

16 (7) An action for declaratory relief when brought pursuant to
17 either of the following:

18 (A) By way of cross-complaint as to a right of indemnity with
19 respect to the relief demanded in the complaint or a cross-complaint
20 in an action or proceeding that is otherwise a limited civil case.

21 (B) To conduct a trial after a nonbinding fee arbitration between
22 an attorney and client, pursuant to Article 13 (commencing with
23 Section 6200) of Chapter 4 of Division 3 of the Business and
24 Professions Code, where the amount in controversy is twenty-five
25 thousand dollars (\$25,000) or less.

26 (8) An action to issue a temporary restraining order or
27 preliminary injunction; to take an account, where necessary to
28 preserve the property or rights of any party to a limited civil case;
29 to make any order or perform any act, pursuant to Title 9
30 (commencing with Section 680.010) of Part 2 (enforcement of
31 judgments) in a limited civil case; to appoint a receiver pursuant
32 to Section 564 in a limited civil case; to determine title to personal
33 property seized in a limited civil case.

34 (9) An action under Article 3 (commencing with Section
35 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the
36 recovery of an interest in personal property or to enforce the
37 liability of the debtor of a judgment debtor where the interest
38 claimed adversely is of a value not exceeding twenty-five thousand
39 dollars (\$25,000) or the debt denied does not exceed twenty-five
40 thousand dollars (\$25,000).

1 (10) An arbitration-related petition filed pursuant to either of
2 the following:

3 (A) Article 2 (commencing with Section 1292) of Chapter 5 of
4 Title 9 of Part 3, except for uninsured motorist arbitration
5 proceedings in accordance with Section 11580.2 of the Insurance
6 Code, if the petition is filed before the arbitration award becomes
7 final and the matter to be resolved by arbitration is a limited civil
8 case under paragraphs (1) to (9), inclusive, of subdivision (a) or
9 if the petition is filed after the arbitration award becomes final and
10 the amount of the award and all other rulings, pronouncements,
11 and decisions made in the award are within paragraphs (1) to (9),
12 inclusive, of subdivision (a).

13 (B) To confirm, correct, or vacate a fee arbitration award
14 between an attorney and client that is binding or has become
15 binding, pursuant to Article 13 (commencing with Section 6200)
16 of Chapter 4 of Division 3 of the Business and Professions Code,
17 where the arbitration award is twenty-five thousand dollars
18 (\$25,000) or less.

19 (b) The following cases in equity are limited civil cases:

20 (1) A case to try title to personal property when the amount
21 involved is not more than twenty-five thousand dollars (\$25,000).

22 (2) A case when equity is pleaded as a defensive matter in any
23 case that is otherwise a limited civil case.

24 (3) A case to vacate a judgment or order of the court obtained
25 in a limited civil case through extrinsic fraud, mistake,
26 inadvertence, or excusable neglect.

27 SEC. 24. Section 410.42 of the Code of Civil Procedure is
28 amended to read:

29 410.42. (a) The following provisions of a contract between
30 the contractor and a subcontractor with principal offices in this
31 state, for the construction of a public or private work of
32 improvement in this state, shall be void and unenforceable:

33 (1) A provision which purports to require any dispute between
34 the parties to be litigated, arbitrated, or otherwise determined
35 outside this state.

36 (2) A provision which purports to preclude a party from
37 commencing such a proceeding or obtaining a judgment or other
38 resolution in this state or the courts of this state.

39 (b) For purposes of this section, “construction” means any work
40 or services performed on, or materials provided for, a work of

1 improvement, as defined in Section 8050 of the Civil Code, and
2 for which a lien may be claimed pursuant to Section 8400 of the
3 Civil Code (whether or not a lien is in fact claimed) or for which
4 such a lien could be claimed but for Section 8052 of the Civil
5 Code.

6 SEC. 25. Section 708.760 of the Code of Civil Procedure is
7 amended to read:

8 708.760. (a) If the judgment debtor named in the abstract or
9 certified copy of the judgment filed pursuant to this article is a
10 contractor upon a public work, the cost of which is to be paid out
11 of public moneys voted, appropriated, or otherwise set apart for
12 such purpose, only so much of the contract price shall be deemed
13 owing and unpaid within the meaning of Section 708.740 or
14 708.750 as may remain payable under the terms of the contractor's
15 contract, upon the completion thereof, after deducting sums due
16 and to become due to persons described in Section ~~42030~~ 9056 of
17 the ~~Public Contract~~ Civil Code. In ascertaining the sums due or to
18 become due to such persons, only claims which are filed against
19 the moneys due or to become due to the judgment debtor in
20 accordance with Chapter 4 (commencing with ~~Section 44110~~) of
21 ~~Part 6 of Division 2 of the Public Contract~~ Section 9350) of Title
22 2 of Part 6 of Division 4 of the Civil Code shall be considered.

23 (b) The Controller, auditor, or other public disbursing officer
24 whose duty it is to make payments under the provisions of the
25 contract may not deposit an amount with the court pursuant to this
26 article until the contract is completed, but may deposit an amount
27 with the court to satisfy the claim of the judgment debtor before
28 the payments specified in subdivision (a) are made so long as a
29 sufficient amount is retained for the satisfaction of the claims of
30 persons described in Section ~~42030~~ of the ~~Public Contract~~ 9056
31 of the Civil Code.

32 SEC. 26. Section 1203.61 of the Code of Civil Procedure is
33 amended to read:

34 1203.61. (a) Any lien provided for by this chapter shall be
35 enforced in the same manner as provided in Chapter 4
36 (commencing with Section 8400) of Part 6 of Division 4 of the
37 Civil Code. The action shall be filed within 180 days from the time
38 of the recording of the lien. If a credit is given and notice of the
39 fact and terms of the credit is filed in the office of the county
40 recorder subsequent to the filing of the lien and prior to the

1 expiration of the 180-day period, then the lien continues in force
2 until 180 days after the expiration of the credit, but no lien
3 continues in force by reason of any agreement to give credit for a
4 longer time than one year from the time the work is completed. If
5 the proceedings to enforce the lien are not prosecuted to trial within
6 two years after commencement, the court may in its discretion
7 dismiss the action for want of prosecution, and in all cases the
8 dismissal of the action (unless it is expressly stated that it is without
9 prejudice) or a judgment in the action that no lien exists is
10 equivalent to the cancellation and removal from the record of the
11 lien.

12 (b) As against any purchaser or encumbrancer for value and in
13 good faith whose rights are acquired subsequent to the expiration
14 of the 180-day period following the filing of the lien, no giving of
15 credit or extension of the lien or time to enforce the lien shall be
16 effective unless evidenced by a notice or agreement filed for record
17 in the office of the county recorder prior to the acquisition of the
18 rights of the purchaser or encumbrancer.

19 SEC. 27. Section 1281.5 of the Code of Civil Procedure is
20 amended to read:

21 1281.5. (a) Any person who proceeds to record and enforce a
22 claim of lien by commencement of an action pursuant to Chapter
23 4 (commencing with Section 8400) of Part 6 Division 4 of the
24 Civil Code, does not thereby waive any right of arbitration the
25 person may have pursuant to a written agreement to arbitrate, if,
26 in filing an action to enforce the claim of lien, the claimant does
27 either of the following:

28 (1) Includes an allegation in the complaint that the claimant
29 does not intend to waive any right of arbitration, and intends to
30 move the court, within 30 days after service of the summons and
31 complaint, for an order to stay further proceedings in the action.

32 (2) At the same time that the complaint is filed, the claimant
33 files an application that the action be stayed pending the arbitration
34 of any issue, question, or dispute that is claimed to be arbitrable
35 under the agreement and that is relevant to the action to enforce
36 the claim of lien.

37 (b) Within 30 days after service of the summons and complaint,
38 the claimant shall file and serve a motion and notice of motion
39 pursuant to Section 1281.4 to stay the action pending the arbitration
40 of any issue, question, or dispute that is claimed to be arbitrable

1 under the agreement and that is relevant to the action to enforce
2 the claim of lien. The failure of a claimant to comply with this
3 subdivision is a waiver of the claimant’s right to compel arbitration.

4 (c) The failure of a defendant to file a petition pursuant to
5 Section 1281.2 at or before the time the defendant answers the
6 complaint filed pursuant to subdivision (a) is a waiver of the
7 defendant’s right to compel arbitration.

8 SEC. 28. Section 1800 of the Code of Civil Procedure is
9 amended to read:

10 1800. (a) As used in this section, the following terms have the
11 following meanings:

12 (1) “Insolvent” means:

13 (A) With reference to a person other than a partnership, a
14 financial condition such that the sum of the person’s debts is greater
15 than all of the person’s property, at a fair valuation, exclusive of
16 both of the following:

17 (i) Property transferred, concealed, or removed with intent to
18 hinder, delay, or defraud the person’s creditors.

19 (ii) Property that is exempt from property of the estate pursuant
20 to the election of the person made pursuant to Section 1801.

21 (B) With reference to a partnership, financial condition such
22 that the sum of the partnership’s debts are greater than the
23 aggregate of, at a fair valuation, both of the following:

24 (i) All of the partnership’s property, exclusive of property of
25 the kind specified in clause (i) of subparagraph (A).

26 (ii) The sum of the excess of the value of each general partner’s
27 separate property, exclusive of property of the kind specified in
28 clause (ii) of subparagraph (A), over the partner’s separate debts.

29 (2) “Inventory” means personal property leased or furnished,
30 held for sale or lease, or to be furnished under a contract for service,
31 raw materials, work in process, or materials used or consumed in
32 a business, including farm products such as crops or livestock,
33 held for sale or lease.

34 (3) “Insider” means:

35 (A) If the assignor is an individual, any of the following:

36 (i) A relative of the assignor or of a general partner of the
37 assignor.

38 (ii) A partnership in which the assignor is a general partner.

39 (iii) A general partner of the assignor.

- 1 (iv) A corporation of which the assignor is a director, officer,
- 2 or person in 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
- 10 in control of the 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
- 14 person in control of 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
- 19 the affiliate were the assignor.
- 20 (E) A managing agent of the assignor.
- 21 As used in this paragraph, the following terms have the following
- 22 meanings:
- 23 “Relative” means an individual related by affinity or
- 24 consanguinity within the third degree as determined by the common
- 25 law, or an individual in a step or adoptive relationship within the
- 26 third degree.
- 27 An “affiliate” means a person that directly or indirectly owns,
- 28 controls, or holds, with power to vote, 20 percent or more of the
- 29 outstanding voting securities of the assignor, or 20 percent or more
- 30 of whose outstanding voting securities are directly or indirectly
- 31 owned, controlled, or held with power to vote by the assignor,
- 32 excluding securities held in a fiduciary or agency capacity without
- 33 sole discretionary power to vote, or held solely to secure a debt if
- 34 the holder has not in fact exercised the power to vote, or a person
- 35 who operates the business of the assignor under a lease or operating
- 36 agreement or whose business is operated by the assignor under a
- 37 lease or operating agreement.
- 38 (4) “Judicial lien” means a lien obtained by judgment, levy,
- 39 sequestration, or other legal or equitable process or proceeding.

1 (5) “New value” means money or money’s worth in goods,
2 services, or new credit, or release by a transferee of property
3 previously transferred to the transferee in a transaction that is
4 neither void nor voidable by the assignor or the assignee under
5 any applicable law, but does not include an obligation substituted
6 for an existing obligation.

7 (6) “Receivable” means a right to payment, whether or not the
8 right has been earned by performance.

9 (7) “Security agreement” means an agreement that creates or
10 provides for a security interest.

11 (8) “Security interest” means a lien created by an agreement.

12 (9) “Statutory lien” means a lien arising solely by force of a
13 statute on specified circumstances or conditions, or lien of distress
14 for rent, whether or not statutory, but does not include a security
15 interest or judicial lien, whether or not the interest or lien is
16 provided by or is dependent on a statute and whether or not the
17 interest or lien is made fully effective by statute.

18 (10) “Transfer” means every mode, direct or indirect, absolute
19 or conditional, voluntary or involuntary, or disposing of or parting
20 with property or with an interest in property, including retention
21 of title as a security interest.

22 (b) Except as provided in subdivision (c), the assignee of any
23 general assignment for the benefit of creditors, as defined in
24 Section 493.010, may recover any transfer of property of the
25 assignor that is all of the following:

26 (1) To or for the benefit of a creditor.

27 (2) For or on account of an antecedent debt owed by the assignor
28 before the transfer was made.

29 (3) Made while the assignor was insolvent.

30 (4) Made on or within 90 days before the date of the making of
31 the assignment or made between 90 days and one year before the
32 date of making the assignment if the creditor, at the time of the
33 transfer, was an insider and had reasonable cause to believe the
34 debtor was insolvent at the time of the transfer.

35 (5) Enables the creditor to receive more than another creditor
36 of the same class.

37 (c) The assignee may not recover under this section a transfer
38 as follows:

39 (1) To the extent that the transfer was both of the following:

- 1 (A) Intended by the assignor and the creditor to or for whose
2 benefit the transfer was made to be a contemporaneous exchange
3 for new value given to the assignor.
- 4 (B) In fact a substantially contemporaneous exchange.
- 5 (2) To the extent that the transfer was all of the following:
- 6 (A) In payment of a debt incurred in the ordinary course of
7 business or financial affairs of the assignor and the transferee.
- 8 (B) Made in the ordinary course of business or financial affairs
9 of the assignor and the transferee.
- 10 (C) Made according to ordinary business terms.
- 11 (3) Of a security interest in property acquired by the assignor
12 that meets both of the following:
- 13 (A) To the extent the security interest secures new value that
14 was all of the following:
- 15 (i) Given at or after the signing of a security agreement that
16 contains a description of the property as collateral.
- 17 (ii) Given by or on behalf of the secured party under the
18 agreement.
- 19 (iii) Given to enable the assignor to acquire the property.
- 20 (iv) In fact used by the assignor to acquire the property.
- 21 (B) That is perfected within 20 days after the security interest
22 attaches.
- 23 (4) To or for the benefit of a creditor, to the extent that, after
24 the transfer, the creditor gave new value to or for the benefit of
25 the assignor that meets both of the following:
- 26 (A) Not secured by an otherwise unavoidable security interest.
- 27 (B) On account of which new value the assignor did not make
28 an otherwise unavoidable transfer to or for the benefit of the
29 creditor.
- 30 (5) Of a perfected security interest in inventory or a receivable
31 or the proceeds of either, except to the extent that the aggregate
32 of all the transfers to the transferee caused a reduction, as of the
33 date of the making of the assignment and to the prejudice of other
34 creditors holding unsecured claims, of any amount by which the
35 debt secured by the security interest exceeded the value of all
36 security interest for the debt on the later of the following:
- 37 (A) Ninety days before the date of the making of the assignment.
- 38 (B) The date on which new value was first given under the
39 security agreement creating the security interest.
- 40 (6) That is the fixing of a statutory lien.

1 (7) That is payment to a claimant, as defined in Section 8002
2 ~~of the Civil Code or Section 41020 of the Public Contract or~~
3 ~~Section 9002 of the Civil Code~~, in exchange for the claimant's
4 waiver or release of any potential or asserted claim of lien, stop
5 payment notice, or right to recover on a payment bond, or any
6 combination thereof.

7 (8) To the extent that the transfer was a bona fide payment of
8 a debt to a spouse, former spouse, or child of the debtor, for
9 alimony to, maintenance for, or support of, the spouse or child, in
10 connection with a separation agreement, divorce decree, or other
11 order of a court of record, or a determination made in accordance
12 with state or territorial law by a governmental unit, or property
13 settlement agreement; but not to the extent that either of the
14 following occurs:

15 (A) The debt is assigned to another entity voluntarily, by
16 operation of law or otherwise, in which case the assignee may not
17 recover that portion of the transfer that is assigned to the state or
18 any political subdivision of the state pursuant to Part D of Title
19 IV of the Social Security Act (42 U.S.C. Sec. 601 et seq.) and
20 passed on to the spouse, former spouse, or child of the debtor.

21 (B) The debt includes a liability designated as alimony,
22 maintenance, or support, unless the liability is actually in the nature
23 of alimony, maintenance, or support.

24 (d) An assignee of any general assignment for the benefit of
25 creditors, as defined in Section 493.010, may avoid a transfer of
26 property of the assignor transferred to secure reimbursement of a
27 surety that furnished a bond or other obligation to dissolve a
28 judicial lien that would have been avoidable by the assignee under
29 subdivision (b). The liability of the surety under the bond or
30 obligation shall be discharged to the extent of the value of the
31 property recovered by the assignee or the amount paid to the
32 assignee.

33 (e) (1) For the purposes of this section:

34 (A) A transfer of real property other than fixtures, but including
35 the interest of a seller or purchaser under a contract for the sale of
36 real property, is perfected when a bona fide purchaser of the
37 property from the debtor, against whom applicable law permits
38 the transfer to be perfected, cannot acquire an interest that is
39 superior to the interest of the transferee.

1 (B) A transfer of a fixture or property other than real property
2 is perfected when a creditor on a simple contract cannot acquire
3 a judicial lien that is superior to the interest of the transferee.

4 (2) For the purposes of this section, except as provided in
5 paragraph (3), a transfer is made at any of the following times:

6 (A) At the time the transfer takes effect between the transferor
7 and the transferee, if the transfer is perfected at, or within 10 days
8 after, the time, except as provided in subparagraph (B) of paragraph
9 (3) of subdivision (c).

10 (B) At the time the transfer is perfected, if the transfer is
11 perfected after the 10 days.

12 (C) Immediately before the date of making the assignment if
13 the transfer is not perfected at the later of:

14 (i) The making of the assignment.

15 (ii) Ten days after the transfer takes effect between the transferor
16 and the transferee.

17 (3) For the purposes of this section, a transfer is not made until
18 the assignor has acquired rights in the property transferred.

19 (f) For the purposes of this section, the assignor is presumed to
20 have been insolvent on and during the 90 days immediately
21 preceding the date of making the assignment.

22 (g) An action by an assignee under this section must be
23 commenced within one year after making the assignment.

24 SEC. 29. Section 17307.5 of the Education Code is amended
25 to read:

26 17307.5. (a) Notwithstanding any provision of law to the
27 contrary, including, but not limited to, ~~Part 6 (commencing with~~
28 ~~Section 41010) of Division 2 of the Public Contract Title 2~~
29 ~~(commencing with Section 9000) of Part 6 of Division 4 of the~~
30 *Civil Code*, the Department of General Services may issue a stop
31 work order when construction work on a public school is not being
32 performed in accordance with existing law and would compromise
33 the structural integrity of the building, thereby endangering the
34 public safety. The Department of General Services shall allow
35 construction of incidental and minor nonstructural additions or
36 nonstructural alterations without invoking its stop work authority.

37 (b) A school district, county superintendent of schools, county
38 board of education, or other public board, body, or officer whose
39 construction work on a public school is subject to a stop work
40 order issued pursuant to subdivision (a) shall not be held liable in

1 any action filed against the public board, body, or officer for
2 stopping work as required by the stop work order, or for any delays
3 caused by compliance with the stop work order, except to the extent
4 that an error or omission by the public board, body, or officer is
5 the basis for the issuance of the stop work order.

6 SEC. 30. Section 81133.5 of the Education Code is amended
7 to read:

8 81133.5. (a) Notwithstanding any provision of law to the
9 contrary, including, but not limited to, ~~Part 6 (commencing with~~
10 ~~Section 41010) of Division 2 of the Public Contract Title 2~~
11 ~~(commencing with Section 9000) of Part 6 of Division 4 of the~~
12 Civil Code, the Department of General Services may issue a stop
13 work order when construction work on a community college is
14 not being performed in accordance with existing law and would
15 compromise the structural integrity of the building, thereby
16 endangering the public safety. The Department of General Services
17 shall allow construction of incidental and minor nonstructural
18 additions or nonstructural alterations without invoking its stop
19 work authority.

20 (b) A community college district or other public board, body,
21 or officer whose construction work on a community college is
22 subject to a stop work order issued pursuant to subdivision (a)
23 shall not be held liable in any action filed against the public board,
24 body, or officer for stopping work as required by the stop work
25 order, or for any delays caused by compliance with the stop work
26 order, except to the extent that an error or omission by the public
27 board, body, or officer is that basis for the issuance of the stop
28 work order.

29 SEC. 31. Section 7480 of the Government Code, as amended
30 by Section 1 of Chapter 234 of the Statutes of 2008, is amended
31 to read:

32 7480. Nothing in this chapter shall prohibit any of the
33 following:

34 (a) The dissemination of any financial information that is not
35 identified with, or identifiable as being derived from, the financial
36 records of a particular customer.

37 (b) When any police or sheriff's department or district attorney
38 in this state certifies to a bank, credit union, or savings association
39 in writing that a crime report has been filed that involves the
40 alleged fraudulent use of drafts, checks, access cards, or other

1 orders drawn upon any bank, credit union, or savings association
2 in this state, the police or sheriff's department or district attorney,
3 a county adult protective services office when investigating the
4 financial abuse of an elder or dependent adult, or a long-term care
5 ombudsman when investigating the financial abuse of an elder or
6 dependent adult, may request a bank, credit union, or savings
7 association to furnish, and a bank, credit union, or savings
8 association shall furnish, a statement setting forth the following
9 information with respect to a customer account specified by the
10 requesting party for a period 30 days prior to, and up to 30 days
11 following, the date of occurrence of the alleged illegal act involving
12 the account:

13 (1) The number of items dishonored.

14 (2) The number of items paid that created overdrafts.

15 (3) The dollar volume of the dishonored items and items paid
16 which created overdrafts and a statement explaining any credit
17 arrangement between the bank, credit union, or savings association
18 and customer to pay overdrafts.

19 (4) The dates and amounts of deposits and debits and the account
20 balance on these dates.

21 (5) A copy of the signature card, including the signature and
22 any addresses appearing on a customer's signature card.

23 (6) The date the account opened and, if applicable, the date the
24 account closed.

25 (7) Surveillance photographs and video recordings of persons
26 accessing the crime victim's financial account via an automated
27 teller machine (ATM) or from within the financial institution for
28 dates on which illegal acts involving the account were alleged to
29 have occurred. Nothing in this paragraph does any of the following:

30 (A) Requires a financial institution to produce a photograph or
31 video recording if it does not possess the photograph or video
32 recording.

33 (B) Affects any existing civil immunities as provided in Section
34 47 of the Civil Code or any other provision of law.

35 (8) A bank, credit union, or savings association that provides
36 the requesting party with copies of one or more complete account
37 statements prepared in the regular course of business shall be
38 deemed to be in compliance with paragraphs (1), (2), (3), and (4).

39 (c) When any police or sheriff's department or district attorney
40 in this state certifies to a bank, credit union, or savings association

1 in writing that a crime report has been filed that involves the
2 alleged fraudulent use of drafts, checks, access cards, or other
3 orders drawn upon any bank, credit union, or savings association
4 doing business in this state, the police or sheriff's department or
5 district attorney, a county adult protective services office when
6 investigating the financial abuse of an elder or dependent adult,
7 or a long-term care ombudsman when investigating the financial
8 abuse of an elder or dependent adult, may request, with the consent
9 of the accountholder, the bank, credit union, or savings association
10 to furnish, and the bank, credit union, or savings association shall
11 furnish, a statement setting forth the following information with
12 respect to a customer account specified by the requesting party for
13 a period 30 days prior to, and up to 30 days following, the date of
14 occurrence of the alleged illegal act involving the account:

- 15 (1) The number of items dishonored.
- 16 (2) The number of items paid that created overdrafts.
- 17 (3) The dollar volume of the dishonored items and items paid
18 which created overdrafts and a statement explaining any credit
19 arrangement between the bank, credit union, or savings association
20 and customer to pay overdrafts.
- 21 (4) The dates and amounts of deposits and debits and the account
22 balance on these dates.
- 23 (5) A copy of the signature card, including the signature and
24 any addresses appearing on a customer's signature card.
- 25 (6) The date the account opened and, if applicable, the date the
26 account closed.
- 27 (7) Surveillance photographs and video recordings of persons
28 accessing the crime victim's financial account via an automated
29 teller machine (ATM) or from within the financial institution for
30 dates on which illegal acts involving this account were alleged to
31 have occurred. Nothing in this paragraph does any of the following:
 - 32 (A) Requires a financial institution to produce a photograph or
33 video recording if it does not possess the photograph or video
34 recording.
 - 35 (B) Affects any existing civil immunities as provided in Section
36 47 of the Civil Code or any other provision of law.
- 37 (8) A bank, credit union, or savings association doing business
38 in this state that provides the requesting party with copies of one
39 or more complete account statements prepared in the regular course

1 of business shall be deemed to be in compliance with paragraphs
2 (1), (2), (3), and (4).

3 (d) For purposes of subdivision (c), consent of the accountholder
4 shall be satisfied if an accountholder provides to the financial
5 institution and the person or entity seeking disclosure, a signed
6 and dated statement containing all of the following:

7 (1) Authorization of the disclosure for the period specified in
8 subdivision (c).

9 (2) The name of the agency or department to which disclosure
10 is authorized and, if applicable, the statutory purpose for which
11 the information is to be obtained.

12 (3) A description of the financial records that are authorized to
13 be disclosed.

14 (e) (1) The Attorney General, a supervisory agency, the
15 Franchise Tax Board, the State Board of Equalization, the
16 Employment Development Department, the Controller or an
17 inheritance tax referee when administering the Prohibition of Gift
18 and Death Taxes (Part 8 (commencing with Section 13301) of
19 Division 2 of the Revenue and Taxation Code), a police or sheriff’s
20 department or district attorney, a county adult protective services
21 office when investigating the financial abuse of an elder or
22 dependent adult, a long-term care ombudsman when investigating
23 the financial abuse of an elder or dependent adult, a county welfare
24 department when investigating welfare fraud, a county
25 auditor-controller or director of finance when investigating fraud
26 against the county, or the Department of Corporations when
27 conducting investigations in connection with the enforcement of
28 laws administered by the Commissioner of Corporations, from
29 requesting of an office or branch of a financial institution, and the
30 office or branch from responding to a request, as to whether a
31 person has an account or accounts at that office or branch and, if
32 so, any identifying numbers of the account or accounts.

33 (2) No additional information beyond that specified in this
34 section shall be released to a county welfare department without
35 either the accountholder’s written consent or a judicial writ, search
36 warrant, subpoena, or other judicial order.

37 (3) A county auditor-controller or director of finance who
38 unlawfully discloses information he or she is authorized to request
39 under this subdivision is guilty of the unlawful disclosure of

1 confidential data, a misdemeanor, which shall be punishable as
2 set forth in Section 7485.

3 (f) The examination by, or disclosure to, any supervisory agency
4 of financial records that relate solely to the exercise of its
5 supervisory function. The scope of an agency's supervisory
6 function shall be determined by reference to statutes that grant
7 authority to examine, audit, or require reports of financial records
8 or financial institutions as follows:

9 (1) With respect to the Commissioner of Financial Institutions
10 by reference to Division 1 (commencing with Section 99), Division
11 1.5 (commencing with Section 4800), Division 2 (commencing
12 with Section 5000), Division 5 (commencing with Section 14000),
13 Division 7 (commencing with Section 18000), Division 16
14 (commencing with Section 33000), and Division 16 (commencing
15 with Section 33000), of the Financial Code.

16 (2) With respect to the Controller by reference to Title 10
17 (commencing with Section 1300) of Part 3 of the Code of Civil
18 Procedure.

19 (3) With respect to the Administrator of Local Agency Security
20 by reference to Article 2 (commencing with Section 53630) of
21 Chapter 4 of Part 1 of Division 2 of Title 5 of the Government
22 Code.

23 (g) The disclosure to the Franchise Tax Board of (1) the amount
24 of any security interest that a financial institution has in a specified
25 asset of a customer or (2) financial records in connection with the
26 filing or audit of a tax return or tax information return that are
27 required to be filed by the financial institution pursuant to Part 10
28 (commencing with Section 17001), Part 11 (commencing with
29 Section 23001), or Part 18 (commencing with Section 38001), of
30 the Revenue and Taxation Code.

31 (h) The disclosure to the State Board of Equalization of any of
32 the following:

33 (1) The information required by Sections 6702, 6703, 8954,
34 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,
35 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,
36 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the
37 Revenue and Taxation Code.

38 (2) The financial records in connection with the filing or audit
39 of a tax return required to be filed by the financial institution
40 pursuant to Part 1 (commencing with Section 6001), Part 2

1 (commencing with Section 7301), Part 3 (commencing with Section
2 8601), Part 13 (commencing with Section 30001), Part 14
3 (commencing with Section 32001), and Part 17 (commencing with
4 Section 37001), of Division 2 of the Revenue and Taxation Code.

5 (3) The amount of any security interest a financial institution
6 has in a specified asset of a customer, if the inquiry is directed to
7 the branch or office where the interest is held.

8 (i) The disclosure to the Controller of the information required
9 by Section 7853 of the Revenue and Taxation Code.

10 (j) The disclosure to the Employment Development Department
11 of the amount of any security interest a financial institution has in
12 a specified asset of a customer, if the inquiry is directed to the
13 branch or office where the interest is held.

14 (k) The disclosure by a construction lender, as defined in Section
15 8006 of the Civil Code, to the Registrar of Contractors, of
16 information concerning the making of progress payments to a
17 prime contractor requested by the registrar in connection with an
18 investigation under Section 7108.5 of the Business and Professions
19 Code.

20 (l) Upon receipt of a written request from a local child support
21 agency referring to a support order pursuant to Section 17400 of
22 the Family Code, a financial institution shall disclose the following
23 information concerning the account or the person named in the
24 request, whom the local child support agency shall identify,
25 whenever possible, by social security number:

26 (1) If the request states the identifying number of an account at
27 a financial institution, the name of each owner of the account.

28 (2) Each account maintained by the person at the branch to
29 which the request is delivered, and, if the branch is able to make
30 a computerized search, each account maintained by the person at
31 any other branch of the financial institution located in this state.

32 (3) For each account disclosed pursuant to paragraphs (1) and
33 (2), the account number, current balance, street address of the
34 branch where the account is maintained, and, to the extent available
35 through the branch's computerized search, the name and address
36 of any other person listed as an owner.

37 (4) Whenever the request prohibits the disclosure, a financial
38 institution shall not disclose either the request or its response, to
39 an owner of the account or to any other person, except the officers
40 and employees of the financial institution who are involved in

1 responding to the request and to attorneys, employees of the local
2 child support agencies, auditors, and regulatory authorities who
3 have a need to know in order to perform their duties, and except
4 as disclosure may be required by legal process.

5 (5) No financial institution, or any officer, employee, or agent
6 thereof, shall be liable to any person for (A) disclosing information
7 in response to a request pursuant to this subdivision, (B) failing to
8 notify the owner of an account, or complying with a request under
9 this paragraph not to disclose to the owner, the request or disclosure
10 under this subdivision, or (C) failing to discover any account owned
11 by the person named in the request pursuant to a computerized
12 search of the records of the financial institution.

13 (6) The local child support agency may request information
14 pursuant to this subdivision only when the local child support
15 agency has received at least one of the following types of physical
16 evidence:

17 (A) Any of the following, dated within the last three years:

18 (i) Form 599.

19 (ii) Form 1099.

20 (iii) A bank statement.

21 (iv) A check.

22 (v) A bank passbook.

23 (vi) A deposit slip.

24 (vii) A copy of a federal or state income tax return.

25 (viii) A debit or credit advice.

26 (ix) Correspondence that identifies the child support obligor by
27 name, the bank, and the account number.

28 (x) Correspondence that identifies the child support obligor by
29 name, the bank, and the banking services related to the account of
30 the obligor.

31 (xi) An asset identification report from a federal agency.

32 (B) A sworn declaration of the custodial parent during the 12
33 months immediately preceding the request that the person named
34 in the request has had or may have had an account at an office or
35 branch of the financial institution to which the request is made.

36 (7) Information obtained by a local child support agency
37 pursuant to this subdivision shall be used only for purposes that
38 are directly connected with the administration of the duties of the
39 local child support agency pursuant to Section 17400 of the Family
40 Code.

1 (m) (1) As provided in paragraph (1) of subdivision (c) of
2 Section 666 of Title 42 of the United States Code, upon receipt of
3 an administrative subpoena on the current federally approved
4 interstate child support enforcement form, as approved by the
5 federal Office of Management and Budget, a financial institution
6 shall provide the information or documents requested by the
7 administrative subpoena.

8 (2) The administrative subpoena shall refer to the current federal
9 Office of Management and Budget control number and be signed
10 by a person who states that he or she is an authorized agent of a
11 state or county agency responsible for implementing the child
12 support enforcement program set forth in Part D (commencing
13 with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the
14 United States Code. A financial institution may rely on the
15 statements made in the subpoena and has no duty to inquire into
16 the truth of any statement in the subpoena.

17 (3) If the person who signs the administrative subpoena directs
18 a financial institution in writing not to disclose either the subpoena
19 or its response to any owner of an account covered by the subpoena,
20 the financial institution shall not disclose the subpoena or its
21 response to the owner.

22 (4) No financial institution, or any officer, employee, or agent
23 thereof, shall be liable to any person for (A) disclosing information
24 or providing documents in response to a subpoena pursuant to this
25 subdivision, (B) failing to notify any owner of an account covered
26 by the subpoena or complying with a request not to disclose to the
27 owner, the subpoena or disclosure under this subdivision, or (C)
28 failing to discover any account owned by the person named in the
29 subpoena pursuant to a computerized search of the records of the
30 financial institution.

31 (n) The dissemination of financial information and records
32 pursuant to any of the following:

33 (1) Compliance by a financial institution with the requirements
34 of Section 2892 of the Probate Code.

35 (2) Compliance by a financial institution with the requirements
36 of Section 2893 of the Probate Code.

37 (3) An order by a judge upon a written ex parte application by
38 a peace officer showing specific and articulable facts that there
39 are reasonable grounds to believe that the records or information
40 sought are relevant and material to an ongoing investigation of a

1 felony violation of Section 186.10 or of any felony subject to the
2 enhancement set forth in Section 186.11.

3 (A) The ex parte application shall specify with particularity the
4 records to be produced, which shall be only those of the individual
5 or individuals who are the subject of the criminal investigation.

6 (B) The ex parte application and any subsequent judicial order
7 shall be open to the public as a judicial record unless ordered sealed
8 by the court, for a period of 60 days. The sealing of these records
9 may be extended for 60-day periods upon a showing to the court
10 that it is necessary for the continuance of the investigation.
11 Sixty-day extensions may continue for up to one year or until
12 termination of the investigation of the individual or individuals,
13 whichever is sooner.

14 (C) The records ordered to be produced shall be returned to the
15 peace officer applicant or his or her designee within a reasonable
16 time period after service of the order upon the financial institution.

17 (D) Nothing in this subdivision shall preclude the financial
18 institution from notifying a customer of the receipt of the order
19 for production of records unless a court orders the financial
20 institution to withhold notification to the customer upon a finding
21 that the notice would impede the investigation.

22 (E) Where a court has made an order pursuant to this paragraph
23 to withhold notification to the customer under this paragraph, the
24 peace officer or law enforcement agency who obtained the financial
25 information shall notify the customer by delivering a copy of the
26 ex parte order to the customer within 10 days of the termination
27 of the investigation.

28 (4) No financial institution, or any officer, employee, or agent
29 thereof, shall be liable to any person for any of the following:

30 (A) Disclosing information to a probate court pursuant to
31 Sections 2892 and 2893.

32 (B) Disclosing information in response to a court order pursuant
33 to paragraph (3).

34 (C) Complying with a court order under this subdivision not to
35 disclose to the customer, the order, or the dissemination of
36 information pursuant to the court order.

37 (o) Disclosure by a financial institution to a peace officer, as
38 defined in Section 830.1 of the Penal Code, pursuant to the
39 following:

1 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the
2 Civil Code, provided that the financial institution has first complied
3 with the requirements of paragraph (2) of subdivision (a) and
4 subdivision (b) of Section 1748.95 of the Civil Code.

5 (2) Paragraph (1) of subdivision (a) of Section 4002 of the
6 Financial Code, provided that the financial institution has first
7 complied with the requirements of paragraph (2) of subdivision
8 (a) and subdivision (b) of Section 4002 of the Financial Code.

9 (3) Paragraph (1) of subdivision (a) of Section 22470 of the
10 Financial Code, provided that any financial institution that is a
11 finance lender has first complied with the requirements of
12 paragraph (2) of subdivision (a) and subdivision (b) of Section
13 22470 of the Financial Code.

14 (p) When the governing board of the Public Employees'
15 Retirement System or the State Teachers' Retirement System
16 certifies in writing to a financial institution that a benefit recipient
17 has died and that transfers to the benefit recipient's account at the
18 financial institution from the retirement system occurred after the
19 benefit recipient's date of death, the financial institution shall
20 furnish the retirement system with the name and address of any
21 coowner, cosigner, or any other person who had access to the funds
22 in the account following the date of the benefit recipient's death,
23 or if the account has been closed, the name and address of the
24 person who closed the account.

25 (q) When the retirement board of a retirement system established
26 under the County Employees Retirement Law of 1937 certifies in
27 writing to a financial institution that a retired member or the
28 beneficiary of a retired member has died and that transfers to the
29 account of the retired member or beneficiary of a retired member
30 at the financial institution from the retirement system occurred
31 after the date of death of the retired member or beneficiary of a
32 retired member, the financial institution shall furnish the retirement
33 system with the name and address of any coowner, cosigner, or
34 any other person who had access to the funds in the account
35 following the date of death of the retired member or beneficiary
36 of a retired member, or if the account has been closed, the name
37 and address of the person who closed the account.

38 (r) When the Franchise Tax Board certifies in writing to a
39 financial institution that (1) a taxpayer filed a tax return that
40 authorized a direct deposit refund with an incorrect financial

1 institution account or routing number that resulted in all or a
2 portion of the refund not being received, directly or indirectly, by
3 the taxpayer; (2) the direct deposit refund was not returned to the
4 Franchise Tax Board; and (3) the refund was deposited directly
5 on a specified date into the account of an accountholder of the
6 financial institution who was not entitled to receive the refund,
7 then the financial institution shall furnish to the Franchise Tax
8 Board the name and address of any coowner, cosigner, or any other
9 person who had access to the funds in the account following the
10 date of direct deposit refund, or if the account has been closed, the
11 name and address of the person who closed the account.

12 SEC. 32. Section 7480 of the Government Code, as amended
13 by Section 2 of Chapter 234 of the Statutes of 2008, is amended
14 to read:

15 7480. Nothing in this chapter shall prohibit any of the
16 following:

17 (a) The dissemination of any financial information that is not
18 identified with, or identifiable as being derived from, the financial
19 records of a particular customer.

20 (b) When any police or sheriff's department or district attorney
21 in this state certifies to a bank, credit union, or savings association
22 in writing that a crime report has been filed that involves the
23 alleged fraudulent use of drafts, checks, access cards, or other
24 orders drawn upon any bank, credit union, or savings association
25 in this state, the police or sheriff's department or district attorney,
26 a county adult protective services office when investigating the
27 financial abuse of an elder or dependent adult, or a long-term care
28 ombudsman when investigating the financial abuse of an elder or
29 dependent adult, may request a bank, credit union, or savings
30 association to furnish, and a bank, credit union, or savings
31 association shall furnish, a statement setting forth the following
32 information with respect to a customer account specified by the
33 requesting party for a period 30 days prior to, and up to 30 days
34 following, the date of occurrence of the alleged illegal act involving
35 the account:

36 (1) The number of items dishonored.

37 (2) The number of items paid that created overdrafts.

38 (3) The dollar volume of the dishonored items and items paid
39 which created overdrafts and a statement explaining any credit

1 arrangement between the bank, credit union, or savings association
2 and customer to pay overdrafts.

3 (4) The dates and amounts of deposits and debits and the account
4 balance on these dates.

5 (5) A copy of the signature card, including the signature and
6 any addresses appearing on a customer's signature card.

7 (6) The date the account opened and, if applicable, the date the
8 account closed.

9 (7) Surveillance photographs and video recordings of persons
10 accessing the crime victim's financial account via an automated
11 teller machine (ATM) or from within the financial institution for
12 dates on which illegal acts involving the account were alleged to
13 have occurred. Nothing in this paragraph does any of the following:

14 (A) Requires a financial institution to produce a photograph or
15 video recording if it does not possess the photograph or video
16 recording.

17 (B) Affects any existing civil immunities as provided in Section
18 47 of the Civil Code or any other provision of law.

19 (8) A bank, credit union, or savings association that provides
20 the requesting party with copies of one or more complete account
21 statements prepared in the regular course of business shall be
22 deemed to be in compliance with paragraphs (1), (2), (3), and (4).

23 (c) When any police or sheriff's department or district attorney
24 in this state certifies to a bank, credit union, or savings association
25 in writing that a crime report has been filed that involves the
26 alleged fraudulent use of drafts, checks, access cards, or other
27 orders drawn upon any bank, credit union, or savings association
28 doing business in this state, the police or sheriff's department or
29 district attorney, a county adult protective services office when
30 investigating the financial abuse of an elder or dependent adult,
31 or a long-term care ombudsman when investigating the financial
32 abuse of an elder or dependent adult, may request, with the consent
33 of the accountholder, the bank, credit union, or savings association
34 to furnish, and the bank, credit union, or savings association shall
35 furnish, a statement setting forth the following information with
36 respect to a customer account specified by the requesting party for
37 a period 30 days prior to, and up to 30 days following, the date of
38 occurrence of the alleged illegal act involving the account:

39 (1) The number of items dishonored.

40 (2) The number of items paid that created overdrafts.

1 (3) The dollar volume of the dishonored items and items paid
2 which created overdrafts and a statement explaining any credit
3 arrangement between the bank, credit union, or savings association
4 and customer to pay overdrafts.

5 (4) The dates and amounts of deposits and debits and the account
6 balance on these dates.

7 (5) A copy of the signature card, including the signature and
8 any addresses appearing on a customer's signature card.

9 (6) The date the account opened and, if applicable, the date the
10 account closed.

11 (7) Surveillance photographs and video recordings of persons
12 accessing the crime victim's financial account via an automated
13 teller machine (ATM) or from within the financial institution for
14 dates on which illegal acts involving this account were alleged to
15 have occurred. Nothing in this paragraph does any of the following:

16 (A) Requires a financial institution to produce a photograph or
17 video recording if it does not possess the photograph or video
18 recording.

19 (B) Affects any existing civil immunities as provided in Section
20 47 of the Civil Code or any other provision of law.

21 (8) A bank, credit union, or savings association doing business
22 in this state that provides the requesting party with copies of one
23 or more complete account statements prepared in the regular course
24 of business shall be deemed to be in compliance with paragraphs
25 (1), (2), (3), and (4).

26 (d) For purposes of subdivision (c), consent of the accountholder
27 shall be satisfied if an accountholder provides to the financial
28 institution and the person or entity seeking disclosure, a signed
29 and dated statement containing all of the following:

30 (1) Authorization of the disclosure for the period specified in
31 subdivision (c).

32 (2) The name of the agency or department to which disclosure
33 is authorized and, if applicable, the statutory purpose for which
34 the information is to be obtained.

35 (3) A description of the financial records that are authorized to
36 be disclosed.

37 (e) (1) The Attorney General, a supervisory agency, the
38 Franchise Tax Board, the State Board of Equalization, the
39 Employment Development Department, the Controller or an
40 inheritance tax referee when administering the Prohibition of Gift

1 and Death Taxes (Part 8 (commencing with Section 13301) of
 2 Division 2 of the Revenue and Taxation Code), a police or sheriff’s
 3 department or district attorney, a county adult protective services
 4 office when investigating the financial abuse of an elder or
 5 dependent adult, a long-term care ombudsman when investigating
 6 the financial abuse of an elder or dependent adult, a county welfare
 7 department when investigating welfare fraud, a county
 8 auditor-controller or director of finance when investigating fraud
 9 against the county, or the Department of Corporations when
 10 conducting investigations in connection with the enforcement of
 11 laws administered by the Commissioner of Corporations, from
 12 requesting of an office or branch of a financial institution, and the
 13 office or branch from responding to a request, as to whether a
 14 person has an account or accounts at that office or branch and, if
 15 so, any identifying numbers of the account or accounts.

16 (2) No additional information beyond that specified in this
 17 section shall be released to a county welfare department without
 18 either the accountholder’s written consent or a judicial writ, search
 19 warrant, subpoena, or other judicial order.

20 (3) A county auditor-controller or director of finance who
 21 unlawfully discloses information he or she is authorized to request
 22 under this subdivision is guilty of the unlawful disclosure of
 23 confidential data, a misdemeanor, which shall be punishable as
 24 set forth in Section 7485.

25 (f) The examination by, or disclosure to, any supervisory agency
 26 of financial records that relate solely to the exercise of its
 27 supervisory function. The scope of an agency’s supervisory
 28 function shall be determined by reference to statutes that grant
 29 authority to examine, audit, or require reports of financial records
 30 or financial institutions as follows:

31 (1) With respect to the Commissioner of Financial Institutions
 32 by reference to Division 1 (commencing with Section 99), Division
 33 1.5 (commencing with Section 4800), Division 2 (commencing
 34 with Section 5000), Division 5 (commencing with Section 14000),
 35 Division 7 (commencing with Section 18000), Division 15
 36 (commencing with Section 31000), and Division 16 (commencing
 37 with Section 33000), of the Financial Code.

38 (2) With respect to the Controller by reference to Title 10
 39 (commencing with Section 1300) of Part 3 of the Code of Civil
 40 Procedure.

1 (3) With respect to the Administrator of Local Agency Security
2 by reference to Article 2 (commencing with Section 53630) of
3 Chapter 4 of Part 1 of Division 2 of Title 5 of the Government
4 Code.

5 (g) The disclosure to the Franchise Tax Board of (1) the amount
6 of any security interest that a financial institution has in a specified
7 asset of a customer or (2) financial records in connection with the
8 filing or audit of a tax return or tax information return that are
9 required to be filed by the financial institution pursuant to Part 10
10 (commencing with Section 17001), Part 11 (commencing with
11 Section 23001), or Part 18 (commencing with Section 38001), of
12 the Revenue and Taxation Code.

13 (h) The disclosure to the State Board of Equalization of any of
14 the following:

15 (1) The information required by Sections 6702, 6703, 8954,
16 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,
17 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,
18 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the
19 Revenue and Taxation Code.

20 (2) The financial records in connection with the filing or audit
21 of a tax return required to be filed by the financial institution
22 pursuant to Part 1 (commencing with Section 6001), Part 2
23 (commencing with Section 7301), Part 3 (commencing with Section
24 8601), Part 13 (commencing with Section 30001), Part 14
25 (commencing with Section 32001), and Part 17 (commencing with
26 Section 37001), of Division 2 of the Revenue and Taxation Code.

27 (3) The amount of any security interest a financial institution
28 has in a specified asset of a customer, if the inquiry is directed to
29 the branch or office where the interest is held.

30 (i) The disclosure to the Controller of the information required
31 by Section 7853 of the Revenue and Taxation Code.

32 (j) The disclosure to the Employment Development Department
33 of the amount of any security interest a financial institution has in
34 a specified asset of a customer, if the inquiry is directed to the
35 branch or office where the interest is held.

36 (k) The disclosure by a construction lender, as defined in Section
37 8006 of the Civil Code, to the Registrar of Contractors, of
38 information concerning the making of progress payments to a
39 prime contractor requested by the registrar in connection with an

1 investigation under Section 7108.5 of the Business and Professions
2 Code.

3 (l) Upon receipt of a written request from a local child support
4 agency referring to a support order pursuant to Section 17400 of
5 the Family Code, a financial institution shall disclose the following
6 information concerning the account or the person named in the
7 request, whom the local child support agency shall identify,
8 whenever possible, by social security number:

9 (1) If the request states the identifying number of an account at
10 a financial institution, the name of each owner of the account.

11 (2) Each account maintained by the person at the branch to
12 which the request is delivered, and, if the branch is able to make
13 a computerized search, each account maintained by the person at
14 any other branch of the financial institution located in this state.

15 (3) For each account disclosed pursuant to paragraphs (1) and
16 (2), the account number, current balance, street address of the
17 branch where the account is maintained, and, to the extent available
18 through the branch's computerized search, the name and address
19 of any other person listed as an owner.

20 (4) Whenever the request prohibits the disclosure, a financial
21 institution shall not disclose either the request or its response, to
22 an owner of the account or to any other person, except the officers
23 and employees of the financial institution who are involved in
24 responding to the request and to attorneys, employees of the local
25 child support agencies, auditors, and regulatory authorities who
26 have a need to know in order to perform their duties, and except
27 as disclosure may be required by legal process.

28 (5) No financial institution, or any officer, employee, or agent
29 thereof, shall be liable to any person for (A) disclosing information
30 in response to a request pursuant to this subdivision, (B) failing to
31 notify the owner of an account, or complying with a request under
32 this paragraph not to disclose to the owner, the request or disclosure
33 under this subdivision, or (C) failing to discover any account owned
34 by the person named in the request pursuant to a computerized
35 search of the records of the financial institution.

36 (6) The local child support agency may request information
37 pursuant to this subdivision only when the local child support
38 agency has received at least one of the following types of physical
39 evidence:

40 (A) Any of the following, dated within the last three years:

- 1 (i) Form 599.
- 2 (ii) Form 1099.
- 3 (iii) A bank statement.
- 4 (iv) A check.
- 5 (v) A bank passbook.
- 6 (vi) A deposit slip.
- 7 (vii) A copy of a federal or state income tax return.
- 8 (viii) A debit or credit advice.
- 9 (ix) Correspondence that identifies the child support obligor by
- 10 name, the bank, and the account number.
- 11 (x) Correspondence that identifies the child support obligor by
- 12 name, the bank, and the banking services related to the account of
- 13 the obligor.
- 14 (xi) An asset identification report from a federal agency.
- 15 (B) A sworn declaration of the custodial parent during the 12
- 16 months immediately preceding the request that the person named
- 17 in the request has had or may have had an account at an office or
- 18 branch of the financial institution to which the request is made.
- 19 (7) Information obtained by a local child support agency
- 20 pursuant to this subdivision shall be used only for purposes that
- 21 are directly connected with the administration of the duties of the
- 22 local child support agency pursuant to Section 17400 of the Family
- 23 Code.
- 24 (m) (1) As provided in paragraph (1) of subdivision (c) of
- 25 Section 666 of Title 42 of the United States Code, upon receipt of
- 26 an administrative subpoena on the current federally approved
- 27 interstate child support enforcement form, as approved by the
- 28 federal Office of Management and Budget, a financial institution
- 29 shall provide the information or documents requested by the
- 30 administrative subpoena.
- 31 (2) The administrative subpoena shall refer to the current federal
- 32 Office of Management and Budget control number and be signed
- 33 by a person who states that he or she is an authorized agent of a
- 34 state or county agency responsible for implementing the child
- 35 support enforcement program set forth in Part D (commencing
- 36 with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the
- 37 United States Code. A financial institution may rely on the
- 38 statements made in the subpoena and has no duty to inquire into
- 39 the truth of any statement in the subpoena.

1 (3) If the person who signs the administrative subpoena directs
2 a financial institution in writing not to disclose either the subpoena
3 or its response to any owner of an account covered by the subpoena,
4 the financial institution shall not disclose the subpoena or its
5 response to the owner.

6 (4) No financial institution, or any officer, employee, or agent
7 thereof, shall be liable to any person for (A) disclosing information
8 or providing documents in response to a subpoena pursuant to this
9 subdivision, (B) failing to notify any owner of an account covered
10 by the subpoena or complying with a request not to disclose to the
11 owner, the subpoena or disclosure under this subdivision, or (C)
12 failing to discover any account owned by the person named in the
13 subpoena pursuant to a computerized search of the records of the
14 financial institution.

15 (n) The dissemination of financial information and records
16 pursuant to any of the following:

17 (1) Compliance by a financial institution with the requirements
18 of Section 2892 of the Probate Code.

19 (2) Compliance by a financial institution with the requirements
20 of Section 2893 of the Probate Code.

21 (3) An order by a judge upon a written ex parte application by
22 a peace officer showing specific and articulable facts that there
23 are reasonable grounds to believe that the records or information
24 sought are relevant and material to an ongoing investigation of a
25 felony violation of Section 186.10 or of any felony subject to the
26 enhancement set forth in Section 186.11.

27 (A) The ex parte application shall specify with particularity the
28 records to be produced, which shall be only those of the individual
29 or individuals who are the subject of the criminal investigation.

30 (B) The ex parte application and any subsequent judicial order
31 shall be open to the public as a judicial record unless ordered sealed
32 by the court, for a period of 60 days. The sealing of these records
33 may be extended for 60-day periods upon a showing to the court
34 that it is necessary for the continuance of the investigation.
35 Sixty-day extensions may continue for up to one year or until
36 termination of the investigation of the individual or individuals,
37 whichever is sooner.

38 (C) The records ordered to be produced shall be returned to the
39 peace officer applicant or his or her designee within a reasonable
40 time period after service of the order upon the financial institution.

1 (D) Nothing in this subdivision shall preclude the financial
2 institution from notifying a customer of the receipt of the order
3 for production of records unless a court orders the financial
4 institution to withhold notification to the customer upon a finding
5 that the notice would impede the investigation.

6 (E) Where a court has made an order pursuant to this paragraph
7 to withhold notification to the customer under this paragraph, the
8 peace officer or law enforcement agency who obtained the financial
9 information shall notify the customer by delivering a copy of the
10 ex parte order to the customer within 10 days of the termination
11 of the investigation.

12 (4) No financial institution, or any officer, employee, or agent
13 thereof, shall be liable to any person for any of the following:

14 (A) Disclosing information to a probate court pursuant to
15 Sections 2892 and 2893.

16 (B) Disclosing information in response to a court order pursuant
17 to paragraph (3).

18 (C) Complying with a court order under this subdivision not to
19 disclose to the customer, the order, or the dissemination of
20 information pursuant to the court order.

21 (o) Disclosure by a financial institution to a peace officer, as
22 defined in Section 830.1 of the Penal Code, pursuant to the
23 following:

24 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the
25 Civil Code, provided that the financial institution has first complied
26 with the requirements of paragraph (2) of subdivision (a) and
27 subdivision (b) of Section 1748.95 of the Civil Code.

28 (2) Paragraph (1) of subdivision (a) of Section 4002 of the
29 Financial Code, provided that the financial institution has first
30 complied with the requirements of paragraph (2) of subdivision
31 (a) and subdivision (b) of Section 4002 of the Financial Code.

32 (3) Paragraph (1) of subdivision (a) of Section 22470 of the
33 Financial Code, provided that any financial institution that is a
34 finance lender has first complied with the requirements of
35 paragraph (2) of subdivision (a) and subdivision (b) of Section
36 22470 of the Financial Code.

37 (p) When the governing board of the Public Employees'
38 Retirement System or the State Teachers' Retirement System
39 certifies in writing to a financial institution that a benefit recipient
40 has died and that transfers to the benefit recipient's account at the

1 financial institution from the retirement system occurred after the
2 benefit recipient's date of death, the financial institution shall
3 furnish the retirement system with the name and address of any
4 coowner, cosigner, or any other person who had access to the funds
5 in the account following the date of the benefit recipient's death,
6 or if the account has been closed, the name and address of the
7 person who closed the account.

8 (q) When the retirement board of a retirement system established
9 under the County Employees Retirement Law of 1937 certifies in
10 writing to a financial institution that a retired member or the
11 beneficiary of a retired member has died and that transfers to the
12 account of the retired member or beneficiary of a retired member
13 at the financial institution from the retirement system occurred
14 after the date of death of the retired member or beneficiary of a
15 retired member, the financial institution shall furnish the retirement
16 system with the name and address of any coowner, cosigner, or
17 any other person who had access to the funds in the account
18 following the date of death of the retired member or beneficiary
19 of a retired member, or if the account has been closed, the name
20 and address of the person who closed the account.

21 (r) When the Franchise Tax Board certifies in writing to a
22 financial institution that (1) a taxpayer filed a tax return that
23 authorized a direct deposit refund with an incorrect financial
24 institution account or routing number that resulted in all or a
25 portion of the refund not being received, directly or indirectly, by
26 the taxpayer; (2) the direct deposit refund was not returned to the
27 Franchise Tax Board; and (3) the refund was deposited directly
28 on a specified date into the account of an accountholder of the
29 financial institution who was not entitled to receive the refund,
30 then the financial institution shall furnish to the Franchise Tax
31 Board the name and address of any coowner, cosigner, or any other
32 person who had access to the funds in the account following the
33 date of direct deposit refund, or if the account has been closed, the
34 name and address of the person who closed the account.

35 SEC. 33. Section 14975 of the Government Code is amended
36 to read:

37 14975. Notwithstanding the provisions of Section ~~45010~~ of
38 ~~the Public Contract~~ *9550 of the Civil Code*, the contractor under
39 any contract made under this chapter need not provide a payment
40 bond before the commencement of the work but must provide a

1 payment bond as otherwise required by law prior to payment under
2 the contract.

3 SEC. 34. Section 15820.105 of the Government Code is
4 amended to read:

5 15820.105. (a) Plans and specifications for the project shall
6 comply with applicable building codes.

7 ~~(b) The project is hereby deemed a “public work” project for~~
8 ~~purposes of Sections 41010 to 45090, inclusive, of the Public~~
9 ~~Contract Code.~~

10 *(b) The project is hereby deemed to be governed by Title 2*
11 *(commencing with Section 9000) of Part 6 of Division 4 of the*
12 *Civil Code.*

13 (c) The provisions of Chapter 1 (commencing with Section
14 1720) of Part 7 of Division 2 of the Labor Code shall apply to all
15 public works contracts entered into for the project.

16 (d) Other than as provided in this section and Sections
17 15820.101 to 15820.104, inclusive, private sector methods may
18 be used to deliver the project. Specifically, the procurement and
19 contracting for the delivery of the project is not subject to the State
20 Contract Act (Part 2 (commencing with Section 10100) of Division
21 2 of the Public Contract Code) or any other provision of California
22 law governing public procurement or public works projects.

23 SEC. 35. Section 27287 of the Government Code is amended
24 to read:

25 27287. Unless it belongs to the class provided for in either
26 Sections 27282 to 27286, inclusive, or Section 1202 or 1203, of
27 the Civil Code, or is a fictitious mortgage or deed of trust as
28 provided in Section 2952 or 2963 of the Civil Code, or is a
29 fictitious oil and gas lease as provided in Section 1219 of the Civil
30 Code, or is ~~an instrument provided for in Section 8058 of the Civil~~
31 ~~Code or Section 42250 of the Public Contract~~ *a claim of lien under*
32 *Section 8416 of the Civil Code or a notice of completion under*
33 *Section 8152 or 9204 of the Civil Code*, before an instrument can
34 be recorded its execution shall be acknowledged by the person
35 executing it, or if executed by a corporation, by its president or
36 secretary or other person executing it on behalf of the corporation,
37 or, except for any quitclaim deed or grant deed other than a
38 trustee’s deed or a deed of reconveyance, mortgage, deed of trust,
39 or security agreement, proved by subscribing witness or as provided

1 in Sections 1198 and 1199 of the Civil Code, and the
 2 acknowledgment or proof certified as prescribed by law.

3 SEC. 36. Section 27361.9 of the Government Code is repealed.

4 SEC. 37. Section 66499.2 of the Government Code is amended
 5 to read:

6 66499.2. A bond or bonds by one or more duly authorized
 7 corporate sureties for the security of laborers and material suppliers
 8 shall be in substantially the following form:

9 ~~Whereas,~~ *Whereas, The* Board of Supervisors of the County of
 10 ____ (or City Council of the City of ____), State of California,
 11 and ____ (hereinafter designated as “the principal”) have entered
 12 into an agreement whereby the principal agrees to install and
 13 complete certain designated public improvements, which
 14 agreement, dated ____, 20__, and identified as project ____, is
 15 hereby referred to and made a part hereof; and

16 ~~Whereas,~~ *Whereas, Under* the terms of the agreement, the
 17 principal is required before entering upon the performance of the
 18 work, to file a good and sufficient payment bond with the County
 19 of ____ (or the City of ____) to secure the claims to which
 20 reference is made in ~~Part 6 (commencing with Section 41010) of~~
 21 ~~Division 2 of the Public Contract Code. in Title 2 (commencing~~
 22 ~~with Section 9000) of Part 6 of Division 4 of the Civil Code.~~

23 Now, therefore, the principal and the undersigned as corporate
 24 surety, are held firmly bound unto the County of ____ (or the City
 25 of ____) and all contractors, subcontractors, laborers, material
 26 suppliers, and other persons employed in the performance of the
 27 agreement and referred to in ~~Part 6 (commencing with Section~~
 28 ~~41010) of Division 2 of the Public Contract Title 2 (commencing~~
 29 ~~with Section 9000) of Part 6 of Division 4 of the Civil Code~~ in the
 30 sum of ____ dollars (\$____), for materials furnished or labor
 31 thereon of any kind, or for amounts due under the Unemployment
 32 Insurance Act with respect to this work or labor, that the surety
 33 will pay the same in an amount not exceeding the amount
 34 hereinabove set forth, and also in case suit is brought upon this
 35 bond, will pay, in addition to the face amount thereof, costs and
 36 reasonable expenses and fees, including reasonable attorney’s fees,
 37 incurred by county (or city) in successfully enforcing this
 38 obligation, to be awarded and fixed by the court, and to be taxed
 39 as costs and to be included in the judgment therein rendered.

1 It is hereby expressly stipulated and agreed that this bond shall
2 inure to the benefit of any and all persons, companies, and
3 corporations entitled to file claims under ~~Part 6 (commencing with~~
4 ~~Section 41010) of Division 2 of the Public Contract Title 2~~
5 *(commencing with Section 9000) of Part 6 of Division 4 of the*
6 *Civil Code*, so as to give a right of action to them or their assigns
7 in any suit brought upon this bond.

8 Should the condition of this bond be fully performed, then this
9 obligation shall become null and void, otherwise it shall be and
10 remain in full force and effect.

11 The surety hereby stipulates and agrees that no change, extension
12 of time, alteration, or addition to the terms of the agreement or the
13 specifications accompanying the same shall in any manner affect
14 its obligations on this bond, and it does hereby waive notice of
15 any such change, extension, alteration, or addition.

16 In witness whereof, this instrument has been duly executed by
17 the principal and surety above named, on _____, 20__.

18 SEC. 38. Section 66499.7 of the Government Code is amended
19 to read:

20 66499.7. The security furnished by the subdivider shall be
21 released in whole or in part in the following manner:

22 (a) Security given for faithful performance of any act or
23 agreement shall be released upon the performance of the act or
24 final completion and acceptance of the required work. The
25 legislative body may provide for the partial release of the security
26 upon the partial performance of the act or the acceptance of the
27 work as it progresses, consistent with the provisions of this section.
28 The security may be a surety bond, a cash deposit, a letter of credit,
29 escrow account, or other form of performance guarantee required
30 as security by the legislative body that meets the requirements as
31 acceptable security pursuant to law. If the security furnished by
32 the subdivider is a documentary evidence of security such as a
33 surety bond or a letter of credit, the legislative body shall release
34 the documentary evidence and return the original to the issuer upon
35 performance of the act or final completion and acceptance of the
36 required work. In the event that the legislative body is unable to
37 return the original documentary evidence to the issuer, the security
38 shall be released by written notice sent by certified mail to the
39 subdivider and issuer of the documentary evidence within 30 days
40 of the acceptance of the work. The written notice shall contain a

1 statement that the work for which the security was furnished has
2 been performed or completed and accepted by the legislative body,
3 a description of the project subject to the documentary evidence
4 and the notarized signature of the authorized representative of the
5 legislative body.

6 (b) At the time that the subdivider believes that the obligation
7 to perform the work for which security was required is complete,
8 the subdivider may notify the local agency in writing of the
9 completed work, including a list of work completed. Upon receipt
10 of the written notice, the local agency shall have 45 days to review
11 and comment or approve the completion of the required work. If
12 the local agency does not agree that all work has been completed
13 in accordance with the plans and specifications for the
14 improvements, it shall supply a list of all remaining work to be
15 completed.

16 (c) Within 45 days of receipt of the list of remaining work from
17 the local agency, the subdivider may then provide cost estimates
18 for all remaining work for review and approval by the local agency.
19 Upon receipt of the cost estimates, the local agency shall then have
20 45 days to review, comment, and approve, modify, or disapprove
21 those cost estimates. No local agency shall be required to engage
22 in this process of partial release more than once between the start
23 of work and completion and acceptance of all work; however,
24 nothing in this section prohibits a local agency from allowing for
25 a partial release as it otherwise deems appropriate.

26 (d) If the local agency approves the cost estimate, the local
27 agency shall release all performance security except for security
28 in an amount up to 200 percent of the cost estimate of the
29 remaining work. The process allowing for a partial release of
30 performance security shall occur when the cost estimate of the
31 remaining work does not exceed 20 percent of the total original
32 performance security unless the local agency allows for a release
33 at an earlier time. Substitute bonds or other security may be used
34 as a replacement for the performance security, subject to the
35 approval of the local agency. If substitute bonds or other security
36 is used as a replacement for the performance security released, the
37 release shall not be effective unless and until the local agency
38 receives and approves that form of replacement security. A
39 reduction in the performance security, authorized under this section,
40 is not, and shall not be deemed to be, an acceptance by the local

1 agency of the completed improvements, and the risk of loss or
2 damage to the improvements and the obligation to maintain the
3 improvements shall remain the sole responsibility of the subdivider
4 until all required public improvements have been accepted by the
5 local agency and all other required improvements have been fully
6 completed in accordance with the plans and specifications for the
7 improvements.

8 (e) The subdivider shall complete the works of improvement
9 until all remaining items are accepted by the local agency.

10 (f) Upon the completion of the improvements, the subdivider,
11 or his or her assigns, shall be notified in writing by the local agency
12 within 45 days.

13 (g) Within 45 days of the issuance of the notification by the
14 local agency, the release of any remaining performance security
15 shall be placed upon the agenda of the legislative body of the local
16 agency for approval of the release of any remaining performance
17 security. If the local agency delegates authority for the release of
18 performance security to a public official or other employee, any
19 remaining performance security shall be released within 60 days
20 of the issuance of the written statement of completion.

21 (h) Security securing the payment to the contractor, his or her
22 subcontractors and to persons furnishing labor, materials or
23 equipment shall, after passage of the time within which claims of
24 lien are required to be recorded pursuant to Article 2 (commencing
25 with Section 8410) of Chapter 4 of Part 6 of Division 4 of the Civil
26 Code and after acceptance of the work, be reduced to an amount
27 equal to the total claimed by all claimants for whom claims of lien
28 have been recorded and notice thereof given in writing to the
29 legislative body, and if no claims have been recorded, the security
30 shall be released in full.

31 (i) The release shall not apply to any required guarantee and
32 warranty period required by Section 66499.9 for the guarantee or
33 warranty nor to the amount of the security deemed necessary by
34 the local agency for the guarantee and warranty period nor to costs
35 and reasonable expenses and fees, including reasonable attorneys'
36 fees.

37 (j) The legislative body may authorize any of its public officers
38 or employees to authorize release or reduction of the security in
39 accordance with the conditions hereinabove set forth and in
40 accordance with any rules that it may prescribe.

1 (k) This section shall remain in effect only until January 1, 2011,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2011, deletes or extends that date.

4 SEC. 39. Section 5463 of the Health and Safety Code is
5 amended to read:

6 5463. Any health officer or governing board of any city, county,
7 sanitary district, or other district having the power to operate and
8 maintain a sewerage system, having served written notice upon
9 the owner or reputed owner of land upon which there is a dwelling
10 house, and the owner or reputed owner, after 30 days, having
11 refused, neglected, or failed to connect the dwelling house, together
12 with all toilets, sinks, and other plumbing therein, properly vented,
13 and in a sanitary manner, with the adjoining street sewer, may
14 construct the same at a reasonable cost, and the person doing that
15 work at the request of the health officer or governing board has a
16 lien upon that real estate for his or her work done and materials
17 furnished, and the work done and materials furnished shall be held
18 to have been done and furnished at the instance of the owner or
19 reputed owner, or person claiming or having any interest therein.
20 The governing board may pay all or any part of the cost or price
21 of such connection to the person or persons who furnished labor,
22 materials, or equipment for the same, and, to the extent the
23 governing board pays the cost or price of the connection, it shall
24 succeed to and have all the rights, including the lien provided for
25 above, of the person or persons against the real estate and against
26 the owner or reputed owner thereof.

27 As an alternative power to the enforcement of the lien provided
28 for in this section, the governing body of the public agency
29 performing the work of connection to the public sewer may, by
30 order entered upon its minutes, declare that the amount of the costs
31 of the work and the administrative expenses incurred by the
32 governing body incident to the proceedings, together with other
33 charges uniformly applicable within the jurisdiction of the
34 governing body for the connection of the premises to the public
35 sewer, shall be transmitted to the assessor and tax collector of the
36 public agency, whereupon it shall be the duty of those officers to
37 add the amount of the assessment to the next regular bill for taxes
38 levied against the lot or parcel of land.

1 The liens provided for by this section shall be enforced in the
2 same manner as those provided for by Part 6 (commencing with
3 Section 8000) of Division 4, of the Civil Code.

4 The governing board may also use the procedures in Section
5 5474 for levying the costs incurred for the construction of the
6 improvements for the connection of the premises to the public
7 sewer.

8 SEC. 40. Section 16017.5 of the Health and Safety Code is
9 amended to read:

10 16017.5. (a) Notwithstanding any provision of law to the
11 contrary, including, but not limited to, Part 6 (commencing with
12 Section 8000) of Division 4 of the Civil Code, the Department of
13 General Services may issue a stop work order when construction
14 work on an essential services facility is not being performed in
15 accordance with existing law and would compromise the structural
16 integrity of the building, thereby endangering the public safety.
17 The Department of General Services shall allow construction of
18 incidental and minor nonstructural additions or nonstructural
19 alterations without invoking its stop work authority.

20 (b) A public board, body, or officer whose construction work
21 on an essential services facility is subject to a stop work order
22 issued pursuant to subdivision (a) shall not be held liable in any
23 action filed against the public board, body, or officer for stopping
24 work as required by the stop work order, or for any delays caused
25 by compliance with the stop work order, except to the extent that
26 an error or omission by the public board, body, or officer is the
27 basis for the issuance of the stop work order.

28 SEC. 41. Section 19825 of the Health and Safety Code is
29 amended to read:

30 19825. (a) Every city, county, or city and county, whether
31 general law or chartered, that requires the issuance of a permit as
32 a condition precedent to the construction, alteration, improvement,
33 demolition, or repair of any building or structure, shall require the
34 execution of a permit application, in substantially the same form
35 set forth under this subdivision, and require any individual who
36 executes the Owner-Builder Declaration to present documentation
37 sufficient to identify the property owner and, as necessary, verify
38 the signature of the property owner. A city, county, or city and
39 county may require additional information on the permit
40 application.

PERMIT APPLICATION

BUILDING PROJECT IDENTIFICATION

1
2
3 Applicant's Mailing Address _____
4 _____
5 _____
6 Property Location or Address _____
7 _____
8 Property Owner's Name _____
9 Property Owner's Telephone No. _____
10 Licensed Design Professional (Architect or
11 Engineer) in charge of the project _____
12 Mailing Address of Licensed Design
13 Professional _____
14 _____
15 License No. _____
16

LICENSED CONTRACTOR'S DECLARATION

17
18 I hereby affirm under penalty of perjury that I am licensed under provisions
19 of Chapter 9 (commencing with Section 7000) of Division 3 of the Business
20 and Professions Code, and my license is in full force and effect.
21 License Class _____ License No. _____
22 Date _____ Contractor Signature _____
23

OWNER-BUILDER DECLARATION

24
25 I hereby affirm under penalty of perjury that I am exempt from the
26 Contractors' State License Law for the reason(s) indicated below by the
27 checkmark(s) I have placed next to the applicable item(s) (Section 7031.5,
28 Business and Professions Code: Any city or county that requires a permit to
29 construct, alter, improve, demolish, or repair any structure, prior to its issuance,
30 also requires the applicant for the permit to file a signed statement that he or
31 she is licensed pursuant to the provisions of the Contractors' State License
32 Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business
33 and Professions Code) or that he or she is exempt from licensure and the basis
34 for the alleged exemption. Any violation of Section 7031.5 by any applicant
35 for a permit subjects the applicant to a civil penalty of not more than five
36 hundred dollars (\$500.):
37 () I, as owner of the property, or my employees with wages as their sole
38 compensation, will do () all of or () portions of the work, and the structure
39 is not intended or offered for sale (Section 7044, Business and Professions
40 Code: The Contractors' State License Law does not apply to an owner of

1 property who, through employees' or personal effort, builds or improves the
 2 property, provided that the improvements are not intended or offered for sale.
 3 If, however, the building or improvement is sold within one year of completion,
 4 the Owner-Builder will have the burden of proving that it was not built or
 5 improved for the purpose of sale.).

6
 7 () I, as owner of the property, am exclusively contracting with licensed
 8 Contractors to construct the project (Section 7044, Business and Professions
 9 Code: The Contractors' State License Law does not apply to an owner of
 10 property who builds or improves thereon, and who contracts for the projects
 11 with a licensed Contractor pursuant to the Contractors' State License Law.).

12
 13 () I am exempt from licensure under the Contractors' State License Law for
 14 the following reason:

15 _____

16
 17 By my signature below I acknowledge that, except for my personal residence
 18 in which I must have resided for at least one year prior to completion of the
 19 improvements covered by this permit, I cannot legally sell a structure that I
 20 have built as an owner-builder if it has not been constructed in its entirety by
 21 licensed contractors. I understand that a copy of the applicable law, Section
 22 7044 of the Business and Professions Code, is available upon request when
 23 this application is submitted or at the following Web site:

24 <http://www.leginfo.ca.gov/calaw.html>.

25 Date _____

26
 27 Signature of Property Owner or Authorized Agent

28
 29 _____

30
 31 **WORKERS' COMPENSATION DECLARATION**

32 **WARNING: FAILURE TO SECURE WORKERS' COMPENSATION**
 33 **COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER**
 34 **TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED**
 35 **THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF**
 36 **COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706**
 37 **OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.**

38
 39 I hereby affirm under penalty of perjury one of the following declarations:

1 ____ I have and will maintain a certificate of consent to self-insure for workers'
2 compensation, issued by the Director of Industrial Relations as provided for
3 by Section 3700 of the Labor Code, for the performance of the work for which
4 this permit is issued.

5 Policy No. _____

7 ____ I have and will maintain workers' compensation insurance, as required
8 by Section 3700 of the Labor Code, for the performance of the work for which
9 this permit is issued. My workers' compensation insurance carrier and policy
10 number are:

12 Carrier _____ Policy Number _____ Expiration Date _____

13 Name of Agent _____ Phone # _____

15 ____ I certify that, in the performance of the work for which this permit is
16 issued, I shall not employ any person in any manner so as to become subject
17 to the workers' compensation laws of California, and agree that, if I should
18 become subject to the workers' compensation provisions of Section 3700 of
19 the Labor Code, I shall forthwith comply with those provisions.

21 _____ Date _____

Signature of Applicant

Date

23 DECLARATION REGARDING CONSTRUCTION LENDING AGENCY

25 I hereby affirm under penalty of perjury that there is a construction lending
26 agency for the performance of the work for which this permit is issued (Section
27 8132, Civil Code).

28 Lender's Name _____

30 Branch Designation _____

32 Lender's Address _____

34 By my signature below, I certify to each of the following:
35 I am the property owner or authorized to act on the property owner's behalf.
36 I have read this application and the information I have provided is correct.
37 I agree to comply with all applicable city and county ordinances and state laws
38 relating to building construction.

1 (c) When the Owner-Builder Declaration required under
 2 subdivision (a) is executed, a Notice to Property Owner also shall
 3 be executed by the property owner in substantially the same form
 4 set forth under this section. The Notice to Property Owner shall
 5 appear on the official letterhead of the issuer and shall be provided
 6 to the applicant by one of the following methods chosen by the
 7 permitting authority: regular mail, electronic format, or given
 8 directly to the applicant at the time the application for the permit
 9 is made. Except as otherwise provided, the Notice to Property
 10 Owner pursuant to this section shall be completed and signed by
 11 the property owner and returned prior to issuance of the permit.
 12 An agent of the owner shall not execute this notice unless the
 13 property owner obtains the prior approval of the permitting
 14 authority. A permit shall not be issued unless the property owner
 15 complies with this section.

16
 17 NOTICE TO PROPERTY OWNER

18 Dear Property Owner:

19 An application for a building permit has been submitted in your name listing
 20 yourself as the builder of the property improvements specified at

21 _____.

22 We are providing you with an Owner-Builder Acknowledgment and
 23 Information Verification Form to make you aware of your responsibilities and
 24 possible risk you may incur by having this permit issued in your name as the
 25 Owner-Builder.

26 We will not issue a building permit until you have read, initialed your
 27 understanding of each provision, signed, and returned this form to us at our
 28 official address indicated. An agent of the owner cannot execute this notice
 29 unless you, the property owner, obtain the prior approval of the permitting
 30 authority.

31
 32 OWNER’S ACKNOWLEDGMENT AND VERIFICATION OF
 33 INFORMATION

34
 35 DIRECTIONS: Read and initial each statement below to signify you understand
 36 or verify this information.

37
 38 ___ 1. I understand a frequent practice of unlicensed persons is to have the
 39 property owner obtain an “Owner-Builder” building permit that erroneously
 40 implies that the property owner is providing his or her own labor and material

1 personally. I, as an Owner-Builder, may be held liable and subject to serious
2 financial risk for any injuries sustained by an unlicensed person and his or her
3 employees while working on my property. My homeowner’s insurance may
4 not provide coverage for those injuries. I am willfully acting as an
5 Owner-Builder and am aware of the limits of my insurance coverage for injuries
6 to workers on my property.

7
8 ____2. I understand building permits are not required to be signed by property
9 owners unless they are *responsible* for the construction and are not hiring a
10 licensed Contractor to assume this responsibility.

11
12 ____3. I understand as an “Owner-Builder” I am the responsible party of record
13 on the permit. I understand that I may protect myself from potential financial
14 risk by hiring a licensed Contractor and having the permit filed in his or her
15 name instead of my own.

16
17 ____4. I understand Contractors are required by law to be licensed and bonded
18 in California and to list their license numbers on permits and contracts.

19
20 ____5. I understand if I employ or otherwise engage any persons, other than
21 California licensed Contractors, and the total value of my construction is at
22 least five hundred dollars (\$500), including labor and materials, I may be
23 considered an “employer” under state and federal law.

24
25 ____6. I understand if I am considered an “employer” under state and federal
26 law, I must register with the state and federal government, withhold payroll
27 taxes, provide workers’ compensation disability insurance, and contribute to
28 unemployment compensation for each “employee.” I also understand my failure
29 to abide by these laws may subject me to serious financial risk.

30
31 ____7. I understand under California Contractors’ State License Law, an
32 Owner-Builder who builds single-family residential structures cannot legally
33 build them with the intent to offer them for sale, unless *all* work is performed
34 by licensed subcontractors and the number of structures does not exceed four
35 within any calendar year, or all of the work is performed under contract with
36 a licensed general building Contractor.

37
38 ____8. I understand as an Owner-Builder if I sell the property for which this
39 permit is issued, I may be held liable for any financial or personal injuries

1 sustained by any subsequent owner(s) that result from any latent construction
2 defects in the workmanship or materials.

3
4 ____9. I understand I may obtain more information regarding my obligations
5 as an “employer” from the Internal Revenue Service, the United States Small
6 Business Administration, the California Department of Benefit Payments, and
7 the California Division of Industrial Accidents. I also understand I may contact
8 the California Contractors’ State License Board (CSLB) at 1-800-321-CSLB
9 (2752) or www.cslb.ca.gov for more information about licensed contractors.

10
11 ____10. I am aware of and consent to an Owner-Builder building permit applied
12 for in my name, and understand that I am the party legally and financially
13 responsible for proposed construction activity at the following address:
14 _____

15
16 ____11. I agree that, as the party legally and financially responsible for this
17 proposed construction activity, I will abide by all applicable laws and
18 requirements that govern Owner-Builders as well as employers.

19
20 ____12. I agree to notify the issuer of this form immediately of any additions,
21 deletions, or changes to any of the information I have provided on this form.

22
23 Licensed contractors are regulated by laws designed to protect the public. If
24 you contract with someone who does not have a license, the Contractors’ State
25 License Board may be unable to assist you with any financial loss you may
26 sustain as a result of a complaint. Your only remedy against unlicensed
27 Contractors may be in civil court. It is also important for you to understand
28 that if an unlicensed Contractor or employee of that individual or firm is injured
29 while working on your property, you may be held liable for damages. If you
30 obtain a permit as Owner-Builder and wish to hire Contractors, you will be
31 responsible for verifying whether or not those Contractors are properly licensed
32 and the status of their workers’ compensation insurance coverage.

33
34 Before a building permit can be issued, this form must be completed and signed
35 by the property owner and returned to the agency responsible for issuing the
36 permit.

37 Note: A copy of the property owner’s driver’s license, form notarization, or
38 other verification acceptable to the agency is required to be presented when
39 the permit is issued to verify the property owner’s signature.

40

1 Signature of Property Owner _____ Date: _____
2

3 SEC. 42. Section 34218 of the Health and Safety Code is
4 amended to read:

5 34218. Chapter 5 (commencing with Section ~~45010~~) of Part 6
6 ~~of Division 2 of the Public Contract 9550~~) of Title 2 of Part 6 of
7 *Division 4 of the Civil Code* applies to any housing project
8 constructed under this chapter. Notwithstanding the provisions of
9 this section, a housing authority may require a 20 percent cash
10 escrow or a 25 percent irrevocable letter of credit or the payment
11 bond required by this section if the contract is for work undertaken
12 pursuant to the Comprehensive Improvement Assistance Program
13 established by Section 14 of the United States Housing Act of
14 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l), or the
15 Public Housing Modernization Act established by Section
16 5(c)(3)(C) of the United States Housing Act of 1937, as amended
17 (42 U.S.C.A. Secs. 1437d and 1437l).

18 SEC. 43. Section 11751.82 of the Insurance Code is amended
19 to read:

20 11751.82. (a) An insurer under a wrap-up insurance policy
21 shall report workers' compensation losses and payroll information
22 for each contractor and subcontractor to its rating organization on
23 a timely basis and in accordance with the uniform statistical plan.
24 Within 10 days, upon request, the insurer shall provide to each
25 contractor and subcontractor copies of the report covering workers'
26 compensation losses and payroll information for that contractor
27 or subcontractor.

28 (b) For the purposes of this section, a "wrap-up insurance
29 policy" is an insurance policy, or series of policies, written to cover
30 risks associated with a work of improvement, as defined in Section
31 8050 of the Civil Code, and covering two or more of the contractors
32 or subcontractors that work on that work of improvement.

33 SEC. 44. Section 218.5 of the Labor Code is amended to read:

34 218.5. In any action brought for the nonpayment of wages,
35 fringe benefits, or health and welfare or pension fund contributions,
36 the court shall award reasonable attorney's fees and costs to the
37 prevailing party if any party to the action requests attorney's fees
38 and costs upon the initiation of the action. This section shall not
39 apply to an action brought by the Labor Commissioner. This
40 section shall not apply to a surety issuing a bond pursuant to

1 Chapter 9 (commencing with Section 7000) of Division 3 of the
2 Business and Professions Code or to an action to enforce a
3 mechanics lien brought under Chapter 4 (commencing with Section
4 8400) of Part 6 of Division 2 of the Civil Code.

5 This section does not apply to any action for which attorney’s
6 fees are recoverable under Section 1194.

7 SEC. 45. Section 4107.7 of the Public Contract Code is
8 amended to read:

9 4107.7. If a contractor who enters into a contract with a public
10 entity for investigation, removal or remedial action, or disposal
11 relative to the release or presence of a hazardous material or
12 hazardous waste fails to pay a subcontractor registered as a
13 hazardous waste hauler pursuant to Section 25163 of the Health
14 and Safety Code within 10 days after the investigation, removal
15 or remedial action, or disposal is completed, the subcontractor may
16 serve a stop notice upon the public entity in accordance with
17 Chapter 4 (commencing with Section ~~44110~~) of Part 6 of Division
18 ~~2~~. 9350) of Title 2 of Part 6 of Division 4 of the Civil Code.

19 SEC. 46. Section 7103 of the Public Contract Code is amended
20 to read:

21 7103. (a) (1) Every original contractor that is awarded a
22 contract by a state entity, as defined in subdivision (d), involving
23 an expenditure in excess of twenty-five thousand dollars (\$25,000)
24 for any public work shall, before entering upon the performance
25 of the work, file a payment bond with and approved by the officer
26 or state entity that awarded the contract. The bond shall be in a
27 sum not less than 100 percent of the total amount payable by the
28 terms of the contract.

29 (2) The state entity shall state in its call for bids for any contract
30 that a payment bond is required in the case of such an expenditure.

31 (b) A payment bond filed and approved in accordance with this
32 section shall be sufficient to enter upon the performance of work
33 under a duly authorized contract that supplements the contract for
34 which the payment bond was filed if the requirement of a new
35 bond is waived by the state entity.

36 (c) For purposes of this section, providers of architectural,
37 engineering, and land surveying services pursuant to a contract
38 with a state entity for a public work shall not be deemed an original
39 contractor and shall not be required to post or file the payment
40 bond required in subdivisions (a) and (b).

1 (d) For purposes of this section, “state entity” means every state
2 office department, division, bureau, board, or commission, but
3 does not include the Legislature, the courts, any agency in the
4 judicial branch of government, or the University of California. All
5 other public entities shall be governed by Section ~~45010~~ 9550 of
6 *the Civil Code*.

7 (e) For purposes of this section, “public work” includes the
8 erection, construction, alteration, repair, or improvement of any
9 state structure, building, road, or other state improvement of any
10 kind.

11 SEC. 47. Section 10222 of the Public Contract Code is amended
12 to read:

13 10222. (a) Each bond shall equal at least one-half of the
14 contract price, except as otherwise provided in Section ~~45030~~ 9554
15 *of the Civil Code*, in the California Toll Bridge Authority Act
16 (Chapter 1 (commencing with Section 30000) of Division 7 of the
17 Streets and Highways Code), or in subdivision (b).

18 (b) Notwithstanding subdivision (a), for projects with a contract
19 price greater than two hundred fifty million dollars (\$250,000,000),
20 the Department of Transportation shall have the discretion to
21 specify that the payment bond shall equal not less than one-half
22 of the contract price or five hundred million dollars (\$500,000,000),
23 whichever is less.

24 SEC. 48. Section 10822 of the Public Contract Code is amended
25 to read:

26 10822. Each bond shall be in a sum equal to at least one-half
27 of the contract price, except as otherwise provided in Section ~~45030~~
28 *9554 of the Civil Code*.

29 SEC. 49. Section 20104 of the Public Contract Code is amended
30 to read:

31 20104. (a) (1) This article applies to all public works claims
32 of three hundred seventy-five thousand dollars (\$375,000) or less
33 which arise between a contractor and a local agency.

34 (2) This article shall not apply to any claims resulting from a
35 contract between a contractor and a public agency when the public
36 agency has elected to resolve any disputes pursuant to Article 7.1
37 (commencing with Section 10240) of Chapter 1 of Part 2.

38 (b) (1) “Public work” means “public works contract” as defined
39 in Section 1101 but does not include any work or improvement

1 contracted for by the state or the Regents of the University of
2 California.

3 (2) “Claim” means a separate demand by the contractor for (A)
4 a time extension, (B) payment of money or damages arising from
5 work done by, or on behalf of, the contractor pursuant to the
6 contract for a public work and payment of which is not otherwise
7 expressly provided for or the claimant is not otherwise entitled to,
8 or (C) an amount the payment of which is disputed by the local
9 agency.

10 (c) The provisions of this article or a summary thereof shall be
11 set forth in the plans or specifications for any work which may
12 give rise to a claim under this article.

13 (d) This article applies only to contracts entered into on or after
14 January 1, 1991.

15 SEC. 50. Section 20134 of the Public Contract Code is amended
16 to read:

17 20134. (a) In cases of emergency, when repair or replacements
18 are necessary to permit the continued conduct of county operations
19 or services, the board of supervisors, by majority consent, may
20 proceed at once to replace or repair any and all structures without
21 adopting the plans, specifications, strain sheets, or working details
22 or, subject to Chapter 2.5 (commencing with Section 22050), giving
23 notice for bids to let contracts. If notice for bids to let contracts
24 will not be given, the board shall comply with Chapter 2.5
25 (commencing with Section 22050). The work may be done by day
26 labor under the direction of the board, by contract, or by a
27 combination of the two. If the work is done wholly or in part by
28 contract, the contractor shall be paid the actual cost of the use of
29 machinery and tools and of material, and labor and of workers’
30 compensation insurance expended by him or her in doing the work,
31 plus not more than 15 percent to cover all profits and
32 administration. No more than the lowest current market prices
33 shall be paid for materials whenever possible.

34 (b) In a county of the first, second, third, or fourth class, which
35 is under court order to relieve jail overcrowding or in which the
36 sheriff certifies that the inmate capacity of the county jail system
37 is exceeded by more than 20 percent and that the overpopulation
38 is likely to continue and poses a threat to public safety, health, and
39 welfare, the board of supervisors may contract for the construction
40 or expansion of jail facilities without the formality of obtaining

1 bids, adopting plans and specifications, or complying with other
2 requirements of this article, except as required by this subdivision.
3 The person to whom the contract is awarded shall execute a bond
4 for faithful performance in accordance with Section 20129. Any
5 plans and specifications adopted by the board may only be altered
6 or changed in accordance with Section 20135 and all contracts
7 awarded pursuant to this subdivision may only be altered or
8 changed in accordance with Sections 20136, 20137, and 20138.
9 The award of the contract shall be made after a public hearing on
10 the basis of a request for proposals advertised in accordance with
11 Section 6062 or 6062a of the Government Code. The contract may
12 be awarded only to a contractor who has responded to the request
13 for proposals and who is licensed to do the work in accordance
14 with Chapter 9 (commencing with Section 7000) of Division 3 of
15 the Business and Professions Code. The contract shall be upon
16 terms which the board determines are necessary for the expeditious
17 completion of the work. A contract shall not be entered into unless
18 at least three proposals to do the work have been evaluated by a
19 competitive process established by the board. If the board does
20 not select the lowest bid, it shall make a finding stating the reasons
21 that the lowest bid was not selected.

22 (c) In any county that has agreed to permit the transfer of
23 prisoners or parole violators under Section 2910 or 2910.5 of the
24 Penal Code or of wards under Section 1753.3 of the Welfare and
25 Institutions Code, the board of supervisors may contract for the
26 construction or expansion of the facilities to be used for that
27 purpose without the formality of obtaining bids, adopting plans
28 and specifications, or complying with other requirements of this
29 article, except as required by this subdivision. The person to whom
30 the contract is awarded shall execute a bond for faithful
31 performance in accordance with Section 20129. Any plans and
32 specifications adopted by the board may only be altered or changed
33 in accordance with Section 20135 and all contracts awarded
34 pursuant to this subdivision may only be altered or changed in
35 accordance with Sections 20136, 20137, and 20138. The award
36 of the contract shall be made after a public hearing on the basis of
37 a request for proposals advertised in accordance with Section 6062
38 or 6062a of the Government Code. The contract may be awarded
39 only to a contractor who has responded to the request for proposals
40 and who is licensed to do the work in accordance with Chapter 9

1 (commencing with Section 7000) of Division 3 of the Business
2 and Professions Code. The contract shall be upon terms which the
3 board determines are necessary for the expeditious completion of
4 the work. A contract shall not be entered into unless at least three
5 proposals to do the work have been evaluated by a competitive
6 process established by the board and the lowest bid is selected.

7 (d) Proposed construction or expansion of jail or
8 return-to-custody facilities as authorized under subdivision (b) or
9 (c) shall not commence in a county of the third class without the
10 affirmative vote of a majority of the city council of the incorporated
11 city within which the construction or expansion is proposed.

12 (e) The board of supervisors may waive the requirements of
13 ~~Part 6 (commencing with Section 41010) of Division 2 Title 2~~
14 *(commencing with Section 9000) of Part 6 of Division 4 of the*
15 *Civil Code* for work performed pursuant to subdivision (b) or (c).

16 (f) If any county that is under court order to relieve
17 overcrowding in a county juvenile facility, as defined by
18 subdivision (c) of Section 4481 of the Penal Code or in which the
19 chief probation officer certifies that the juvenile detention capacity
20 of the county juvenile facilities is exceeded by more than 20
21 percent and that the overpopulation is likely to continue and poses
22 a threat to public safety, health, and welfare, the board of
23 supervisors may contract for the construction or expansion of
24 county juvenile facilities without the formality of obtaining bids,
25 adopting plans and specifications, or complying with other
26 requirements of this article, except as required by this subdivision.
27 The person to whom the contract is awarded shall execute a bond
28 for faithful performance in accordance with Section 20129. Any
29 plans and specifications adopted by the board may only be altered
30 or changed in accordance with Section 20135 and all contracts
31 awarded pursuant to this subdivision may only be altered or
32 changed in accordance with Sections 20136, 20137, and 20138.
33 The award of the contract shall be made after a public hearing on
34 the basis of a request for proposals advertised in accordance with
35 Section 6062 or 6062a of the Government Code. The contract may
36 be awarded only to a contractor who has responded to the request
37 for proposals and who is licensed to do the work in accordance
38 with Chapter 9 (commencing with Section 7000) of Division 3 of
39 the Business and Professions Code. The contract shall be upon
40 terms which the board determines are necessary for the expeditious

1 completion of the work. A contract shall not be entered into unless
2 at least three proposals to do the work have been evaluated by a
3 competitive process established by the board. If the board does
4 not select the lowest bidder, it shall make a finding stating the
5 reasons that the lowest bidder was not selected.

6 (g) In a county of the third class in which there are no available
7 courtrooms to accommodate all authorized judicial positions or in
8 which the board of supervisors certifies that there is a significant
9 need to expeditiously construct new court and court support
10 facilities, the board of supervisors may contract for the construction
11 or expansion of court and court support facilities without the
12 formality of obtaining bids, adopting plans and specifications, or
13 complying with other requirements of this article, except as
14 required by this subdivision. The person to whom the contract is
15 awarded shall execute a bond for faithful performance in
16 accordance with Section 20129. Any plans and specifications
17 adopted by the board may only be altered or changed in accordance
18 with Section 20135 and all contracts awarded pursuant to this
19 subdivision may only be altered or changed in accordance with
20 Sections 20136, 20137, and 20138. The award of the contract shall
21 be made after a public hearing on the basis of a request for
22 proposals advertised in accordance with Section 6062 or 6062a of
23 the Government Code. The contract may be awarded only to a
24 contractor who has responded to the request for proposals and who
25 is licensed to do the work in accordance with Chapter 9
26 (commencing with Section 7000) of Division 3 of the Business
27 and Professions Code. The contract shall be upon terms which the
28 board determines are necessary for the expeditious completion of
29 the work. A contract shall not be entered into unless at least three
30 proposals to do the work have been evaluated by a competitive
31 process established by the board and the lowest bid is selected.
32 This subdivision shall remain in effect until December 31, 1994.

33 SEC. 51. Section 20461 of the Public Contract Code is amended
34 to read:

35 20461. No assignment by the contractor of the whole or any
36 part of the money, assessment, partial assessment, any reassessment
37 and any bonds which may be issued to represent any assessment
38 or reassessment, due or to be due under the contract, or for "extras"
39 in connection therewith, whether made before or after a verified
40 claim is filed pursuant to this chapter, shall take priority over the

1 claims, and the assignment shall have no binding force insofar as
2 the rights of the claimants, or their assigns, are concerned. None
3 of the provisions of ~~Part 6 (commencing with Section 41010) of~~
4 ~~Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
5 *Division 4 of the Civil Code* shall be applicable to any assessment,
6 partial assessment, reassessment, bonds, moneys or funds payable
7 to the contractor or assignee under this division or to any matter
8 contained in this chapter.

9 SEC. 52. Section 20496 of the Public Contract Code is amended
10 to read:

11 20496. The provisions of Part 6 (commencing with Section
12 41010) of Division 2 are hereby expressly made applicable to the
13 construction of works and improvements under this article.

14 SEC. 53. Section 20682.5 of the Public Contract Code is
15 amended to read:

16 20682.5. (a) A district may construct or complete any building,
17 structure, or improvement with its own forces or by contract
18 without bidding when the cost does not exceed twenty-five
19 thousand dollars (\$25,000).

20 (b) All contracts for the construction or completion of any
21 building, structure, or improvement, when the cost exceeds
22 twenty-five thousand dollars (\$25,000), shall be contracted for and
23 let to the lowest responsible bidder after notice. If two or more
24 bids are the same and the lowest, the district board may accept the
25 one it chooses.

26 (c) The district shall publish a notice inviting bids for any
27 contract for which competitive bidding is required at least one time
28 in a newspaper of general circulation in the district at least 10 days
29 before the time specified for receiving bids. The notice inviting
30 bids shall set a date for opening the bids and distinctly state the
31 work to be done.

32 (d) If the general manager recommends and the board of
33 directors determines that the publication of advertisements of the
34 notice in trade journals and papers in lieu of publication pursuant
35 to subdivision (c) will increase the number of business enterprises
36 receiving that notice, the board of directors may by resolution
37 declare that those notices shall be published in trade journals and
38 papers at least 10 days prior to the time specified for receiving
39 bids.

1 (e) If plans and specifications are prepared describing the work,
2 all bidders shall be afforded an opportunity to examine the plans
3 and specifications, and the plans and specifications shall be
4 attached to and become part of the contract, if one is awarded.

5 (f) At its discretion, the board of directors may reject any bids
6 presented and readvertise.

7 (g) In the case of an emergency, the board of directors may act
8 pursuant to Chapter 2.5 (commencing with Section 22050).

9 (h) The board of directors may, subject to Chapter 5
10 (commencing with Section ~~45010~~) of ~~Part 6 of Division 2 9550~~
11 *of Title 2 of Part 6 of Division 4 of the Civil Code*, require the
12 posting of those bonds it deems desirable as a condition to the
13 filing of a bid or the letting of a contract.

14 (i) The district shall keep cost records of the work in the manner
15 provided in Chapter 1 (commencing with Section 4000) of Division
16 5 of Title 1 of the Government Code.

17 (j) As an alternate to the procedures required by this section, a
18 district may rely on the Uniform Public Construction Cost
19 Accounting Act, Chapter 2 (commencing with Section 22000) of
20 Part 3 of Division 2.

21 SEC. 54. Section 20688.4 of the Public Contract Code is
22 amended to read:

23 20688.4. An agency shall require each successful bidder to file
24 with it good and sufficient bonds, to be approved by it. The bonds
25 shall be conditioned upon the faithful performance of the contract
26 and upon the payment of all claims for labor and material in
27 connection with the contract. The bonds shall contain the terms
28 and conditions set forth in Chapter 5 (commencing with Section
29 ~~45010~~) of ~~Part 6 of Division 2 9550~~) *of Title 2 of Part 6 of Division*
30 *4 of the Civil Code* and are subject to the provisions of that chapter.

31 SEC. 55. Section 20813 of the Public Contract Code is amended
32 to read:

33 20813. (a) All contracts for the construction or completion of
34 any building, structure, or improvement, when the expenditure
35 required for the work exceeds ten thousand dollars (\$10,000), shall
36 be contracted for and let to the lowest responsible bidder after
37 notice. If two or more bids are the same and the lowest, the district
38 board may accept the one it chooses.

39 (b) The notice inviting bids shall set a date for the opening of
40 bids. The first publication or posting of the notice shall be at least

1 10 days before the date of opening the bids. Notice shall be
2 published at least twice, not less than five days apart, in a
3 newspaper of general circulation in the district, or if there is none,
4 it shall be posted in at least three public places in the district. The
5 notice shall distinctly state the work to be done.

6 (c) In its discretion, the district board may reject any bids
7 presented and readvertise.

8 (d) In the case of an emergency, the district board may act
9 pursuant to Chapter 2.5 (commencing with Section 22050).

10 (e) The district board may, subject to the provisions of Chapter
11 ~~5 (commencing with Section 45010) of Part 6 of Division 2 5~~
12 *(commencing with Section 9550) of Title 2 of Part 6 of Division 4*
13 *of the Civil Code*, require the posting of those bonds it deems
14 desirable as a condition to the filing of a bid or the letting of a
15 contract.

16 (f) Cost records of the work shall be kept in the manner provided
17 in Chapter 1 (commencing with Section 4000) of Division 5 of
18 Title 1 of the Government Code.

19 SEC. 56. Section 20815.3 of the Public Contract Code is
20 amended to read:

21 20815.3. (a) A district shall publish notice inviting bids for
22 any contract for which competitive bidding is required at least one
23 time in a newspaper of general circulation in the district at least
24 one week before the time specified for receiving bids. The notice
25 shall distinctly state the work to be done.

26 (b) In its discretion, the board of directors may do any of the
27 following:

28 (1) Reject all bids and readvertise.

29 (2) By a four-fifths vote, elect to purchase the materials or
30 supplies in the open market.

31 (3) By a four-fifths vote, elect to construct the building,
32 structure, or improvement by force account.

33 (c) In the case of an emergency, the board of directors may act
34 pursuant to Chapter 2.5 (commencing with Section 22050).

35 (d) The board of directors may, subject to the provisions of
36 Chapter 5 (commencing with Section ~~45010) of Part 6 of Division~~
37 *2 9550) of Title 2 of Part 6 of Division 4 of the Civil Code*, require
38 the posting of those bonds it deems as a condition to the filing of
39 a bid or the letting of a contract.

1 (e) The district shall keep cost records of the work pursuant to
2 Chapter 1 (commencing with Section 4000) of Division 5 of Title
3 1 of the Government Code.

4 SEC. 57. Section 20991 of the Public Contract Code is amended
5 to read:

6 20991. All contracts for any improvement or unit of work,
7 except as provided in this article, estimated to cost in excess of
8 twenty-five thousand dollars (\$25,000), shall be let to the lowest
9 responsible bidder in the manner provided in this article. The board
10 of supervisors of the district shall advertise by five or more
11 insertions in a daily newspaper of general circulation, or by two
12 or more insertions in a weekly newspaper of general circulation,
13 printed and published in the district, inviting sealed proposals for
14 the construction of the improvement or work. The board shall
15 require the successful bidder or bidders to file with the board good
16 and sufficient bonds, to be approved by the board, conditioned
17 upon the faithful performance of the contract and upon the payment
18 of all claims for labor and material. The bonds shall contain the
19 terms and conditions set forth in Chapter 5 (commencing with
20 ~~Section 45010) of Part 6 of Division 2~~ 9550) of Title 2 of Part 6
21 of Division 4 of the Civil Code and shall be subject to the provisions
22 of that chapter. The board shall have the right to reject any bid not
23 suitable to the best interests of the district. In the event all proposals
24 are rejected or no proposals are received pursuant to advertisement,
25 or the estimated cost of the work does not exceed ten thousand
26 dollars (\$10,000), or the work consists of channel protection, dam
27 protection, temporary work, maintenance work, or emergency
28 work, the board of supervisors may, without advertising for bids,
29 have the work done by force account. Emergency work may also
30 be done by negotiated contract without advertising for bids. In
31 case of an emergency, if notice for bids to let contracts will not be
32 given, the board shall comply with Chapter 2.5 (commencing with
33 Section 22050).

34 SEC. 58. Section 21061 of the Public Contract Code is amended
35 to read:

36 21061. (a) All contracts for any improvement or unit of work,
37 except as provided in this article, estimated to cost in excess of
38 twenty-five thousand dollars (\$25,000), shall be let to the lowest
39 responsible bidder in the manner provided in this article.

1 (b) The board of supervisors of the district shall advertise by
2 five or more insertions in a daily newspaper of general circulation,
3 or by two or more insertions in a weekly newspaper of general
4 circulation, printed and published in the district, inviting sealed
5 proposals for the construction of the improvement or work. The
6 board shall require the successful bidder or bidders to file with the
7 board good and sufficient bonds, to be approved by the board,
8 conditioned upon the faithful performance of the contract and upon
9 the payment of all claims for labor and material, the bonds to
10 contain the terms and conditions set forth in Chapter 5
11 (commencing with Section ~~45010~~) of ~~Part 6 of Division 2~~ 9550
12 of Title 2 of Part 6 of Division 4 of the Civil Code and to be subject
13 to that chapter.

14 (c) The board may also reject any bid not suitable to the best
15 interests of the district. If all proposals are rejected or no proposals
16 are received pursuant to advertisement therefor, or the work
17 consists of channel protection, dam protection, temporary work,
18 maintenance work, or of emergency work, the board of supervisors
19 may, without advertising for bids, have the work done by force
20 account. Emergency work may also be done by negotiated contract
21 without advertising for bids or requiring bonds. In case of an
22 emergency, if notice for bids to let contracts will not be given, the
23 board shall comply with Chapter 2.5 (commencing with Section
24 22050).

25 (d) The board of supervisors, acting as the board of the district,
26 may, by ordinance, resolution, or board order, authorize the flood
27 control engineer or other county officer to order changes or
28 additions in work being performed under a construction contract.
29 When so authorized, any change or addition in the work shall be
30 ordered in writing by the flood control engineer, or other designated
31 officer, and the extra cost for any change or addition to the work
32 so ordered shall not exceed five thousand dollars (\$5,000) when
33 the total amount of the original contract does not exceed fifty
34 thousand dollars (\$50,000), nor 10 percent of the amount of any
35 original contract that exceeds fifty thousand dollars (\$50,000), but
36 does not exceed two hundred fifty thousand dollars (\$250,000).
37 For contracts whose original cost exceeds two hundred fifty
38 thousand dollars (\$250,000), the extra cost for any change or
39 addition to the work so ordered shall not exceed twenty-five
40 thousand dollars (\$25,000), plus 5 percent of the amount of the

1 original contract costs in excess of two hundred fifty thousand
2 dollars (\$250,000). In no event shall any such change or alteration
3 exceed one hundred fifty thousand dollars (\$150,000).

4 SEC. 59. Section 21071 of the Public Contract Code is amended
5 to read:

6 21071. (a) All contracts for any improvement or unit of work
7 except as provided in this article estimated to cost in excess of ten
8 thousand dollars (\$10,000) shall be let to the lowest responsible
9 bidder in the manner provided in this article. The board of
10 supervisors of the district shall advertise by three insertions in a
11 daily newspaper of general circulation or two insertions in a weekly
12 newspaper of general circulation printed and published in the
13 district inviting sealed proposals for the construction of, the
14 improvement or work before any contract shall be made for the
15 improvement or work, and may let by contract separately any part
16 of the work or improvement. The board shall require the successful
17 bidder to file with the board good and sufficient bonds to be
18 approved by the board conditioned upon the faithful performance
19 of the contract and upon the payment of their claims for labor and
20 material in connection with the contract. The bonds shall contain
21 the terms and conditions set forth in Chapter 5 (commencing with
22 ~~Section 45010) of Part 6 of Division 2~~ 9550) of Title 2 of Part 6
23 of Division 4 of the Civil Code and be subject to the provisions of
24 that chapter. The board shall also have the right to reject any and
25 all bids. If all proposals are rejected or no proposals are received
26 pursuant to the advertisement, the estimated cost of the work does
27 not exceed the sum of ten thousand dollars (\$10,000), or the work
28 consists of channel protection, maintenance work, or emergency
29 work when necessary in order to protect life and property from
30 impending flood damage, the board of supervisors may, without
31 advertising for bids, have the work done by force account or
32 negotiated contract.

33 (b) The district shall have the power to purchase in the open
34 market without advertising for bids, materials, supplies, equipment,
35 and other personal property for use in any work either under
36 contract or by force account if the costs do not exceed ten thousand
37 dollars (\$10,000). It shall be the duty of the purchasing agent of
38 Ventura County, as the ex officio purchasing agent of the Ventura
39 County Watershed Protection District, unless otherwise ordered
40 by the board of supervisors, to purchase for the district all

1 materials, supplies, equipment, and other personal property
2 necessary to carry out the purposes of this article, and to engage
3 independent contractors to perform sundry services for the district,
4 if the aggregate cost of such work, exclusive of materials to be
5 furnished by the district, does not exceed ten thousand dollars
6 (\$10,000).

7 (c) The purchasing agent shall make all purchases and contracts
8 upon proper requisition, signed by the engineer-manager of the
9 district, or his or her authorized representative.

10 (d) If the work consists of the maintenance or alteration of
11 existing facilities, including electrical, painting, and roofing if the
12 cost of labor and materials for the work according to the engineer's
13 estimate will exceed five thousand dollars (\$5,000), and if the
14 work is not of the type of work referred to in this section, the
15 maintenance and alteration work shall be performed under a
16 contract or contracts that shall be let to the lowest responsible
17 bidder or bidders in the manner described in this section.

18 SEC. 60. Section 21081 of the Public Contract Code is amended
19 to read:

20 21081. All contracts for any improvement or unit of work,
21 when the cost, according to the estimate of the engineer, will
22 exceed five thousand dollars (\$5,000), shall be let to the lowest
23 responsible bidder or bidders in the manner provided in this article.
24 The board shall first determine whether the contract shall be let as
25 a single unit for the whole of the work, or shall be divided into
26 severable parts, or both, according to the best interests of the
27 district. The board shall call for bids and advertise the call by three
28 insertions in a daily newspaper of general circulation or by two
29 insertions in a weekly newspaper of general circulation printed
30 and published in the district inviting sealed proposals for the
31 construction or performance of the improvement or work before
32 any contract is made. The call for bids shall state whether the work
33 is to be performed as a unit or divided into severable specific parts,
34 or both, as stated in the call. The board may let the work by single
35 contract for the whole or it may divide such work into severable
36 parts by separate contracts, as stated in such call, according to the
37 best interests of the district. The board shall require the successful
38 bidder or bidders to file with the board good and sufficient bonds
39 to be approved by the board conditioned upon the faithful
40 performance of the contract and upon the payment of their claims

1 for labor and material, the bonds to contain the terms and
2 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
3 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
4 *Division 4 of the Civil Code* and to be subject to the provisions of
5 that ~~part title~~. The board shall also have the right to reject any bid.
6 In the event all proposals are rejected or no proposals are received
7 pursuant to advertisement, or the estimated cost of such work does
8 not exceed five thousand dollars (\$5,000), or the work consists of
9 channel protection, maintenance work, or emergency work, the
10 board of supervisors may, without advertising for bids, have the
11 work done by force account. The district may purchase in the open
12 market, without advertising for bids, materials and supplies for
13 use in any work either under contract or by force account.

14 SEC. 61. Section 21091 of the Public Contract Code is amended
15 to read:

16 21091. All contracts for any improvement or unit of work,
17 except as otherwise provided in this act, estimated to cost in excess
18 of fifteen thousand dollars (\$15,000) shall be let to the lowest
19 responsible bidder in the manner provided in this article. The board
20 of supervisors of the district shall advertise by three insertions in
21 a daily newspaper of general circulation or two insertions in a
22 weekly newspaper of general circulation printed and published in
23 the district inviting sealed proposals for the construction of the
24 improvement or work before any contract is made, and may let by
25 contract separately any part of the work or improvement. The board
26 shall require the successful bidder to file with the board good and
27 sufficient bonds to be approved by the board conditioned upon the
28 faithful performance of the contract and upon the payment of their
29 claims for labor and material. The bonds shall contain the terms
30 and conditions set forth in Sections 10223, ~~10224, and 45030 and~~
31 *and 10224, and Section 9554 of the Civil Code* and be subject to
32 those sections. The board shall also have the right to reject any
33 bid. If all proposals are rejected or no proposals are received
34 pursuant to advertisement, or where the estimated cost of the work
35 does not exceed fifteen thousand dollars (\$15,000), or the work
36 consists of channel protection, maintenance work, or emergency
37 work, the board of supervisors may, without advertising for bids,
38 have the work done by force account. In case of an emergency, if
39 notice for bids to let contracts will not be given, the board shall
40 comply with Chapter 2.5 (commencing with Section 22050). The

1 district may purchase in the open market, without advertising for
2 bids, materials and supplies for use in any improvement or unit of
3 work either under contract or by force account.

4 SEC. 62. Section 21101 of the Public Contract Code is amended
5 to read:

6 21101. All contracts for any improvement or unit of work,
7 when the cost, according to the estimate of the engineer, will
8 exceed five thousand dollars (\$5,000), shall be let to the lowest
9 responsible bidder or bidders in the manner provided in this article.
10 The board shall first determine whether the contract shall be let as
11 a single unit for the whole of the work, or shall be divided into
12 parts, or both, according to the best interests of the district. The
13 board shall call for bids and advertise the call by three insertions
14 in a daily newspaper of general circulation or two insertions in a
15 weekly newspaper of general circulation printed and published in
16 the district inviting sealed proposals for the construction or
17 performance of the improvement or work before any contract shall
18 be made. The call for bids shall state whether the work is to be
19 performed as a unit or is to be divided into severable specific parts,
20 or both, as stated in the call. The board may let the work by single
21 contract for the whole as a unit or it may divide the work into
22 severable parts by separate contracts, as stated in the call, according
23 to the best interests of the district. The board shall require the
24 successful bidder or bidders to file with the board good and
25 sufficient bonds to be approved by the board conditioned upon the
26 faithful performance of the contract and upon the payment of their
27 claims for labor and material, the bonds to contain the terms and
28 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
29 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
30 ~~Division 4 of the Civil Code~~ and to be subject to the provisions of
31 that ~~part~~ title. The board shall also have the right to reject any bid.
32 In the event all proposals are rejected or no proposals are received
33 pursuant to advertisement, or the estimated cost of the work does
34 not exceed five thousand dollars (\$5,000), or the work consists of
35 channel protection, maintenance work, or emergency work, the
36 board of supervisors may, without advertising for bids, have the
37 work done by force account. In case of an emergency, if notice
38 for bids to let contracts will not be given, the board shall comply
39 with Chapter 2.5 (commencing with Section 22050). The district
40 shall have the power to purchase in the open market without

1 advertising for bids, materials and supplies for use in any work
2 either under contract or by force account.

3 SEC. 63. Section 21111 of the Public Contract Code is amended
4 to read:

5 21111. (a) All contracts for the construction of any unit of
6 work, except as provided in this article, estimated to cost in excess
7 of ten thousand dollars (\$10,000) shall be let to the lowest
8 responsible bidder in the manner provided in this article. The board
9 of directors of the agency shall advertise by three insertions in a
10 daily newspaper of general circulation or two insertions in a weekly
11 newspaper of general circulation published in the agency's
12 jurisdiction inviting sealed proposals for the construction of the
13 work before any contract shall be made, and may let by contract
14 separately any part of the work. The board shall require the
15 successful bidder to file with the board good and sufficient bonds
16 to be approved by the board conditioned upon the faithful
17 performance of the contract and upon the payment of the claims
18 for labor and material. The faithful performance bond shall contain
19 terms and conditions as the board may specify, and the payment
20 bond shall be subject to the provisions of, and shall contain the
21 terms and conditions set forth in ~~Part 6 (commencing with Section~~
22 ~~41010) of Division 2 Title 2 (commencing with Section 9000) of~~
23 ~~Part 6 of Division 4 of the Civil Code~~, as applicable. The board
24 shall also have the right to reject any bid, in which case the board
25 may advertise for new bids. In the event no proposals are received
26 pursuant to advertisement, or where the estimated cost of the work
27 does not exceed ten thousand dollars (\$10,000), or the work
28 consists of emergency work, the board of directors by unanimous
29 vote of all members present may, without advertising for bids,
30 have the work done by force account. In case of an emergency, if
31 notice for bids to let contracts will not be given, the board shall
32 comply with Chapter 2.5 (commencing with Section 22050). The
33 agency may purchase in the open market, and may authorize the
34 Purchasing Agent of the County of Santa Barbara to purchase,
35 without advertisement for bids, materials and supplies for use in
36 any work either under contract or by force account.

37 (b) If the work to be performed by or on behalf of the agency
38 does not involve an expenditure of ten thousand dollars (\$10,000)
39 or more, or if the work consists of emergency work, the agency
40 may require a faithful performance bond. The agency may require

1 a payment bond on work performed on behalf of the agency which
 2 does not involve an expenditure of more than ten thousand dollars
 3 (\$10,000).

4 SEC. 64. Section 21121 of the Public Contract Code is amended
 5 to read:

6 21121. (a) All contracts for any improvement or unit of work,
 7 if the cost according to the estimate of the engineer, exceeds five
 8 thousand dollars (\$5,000), shall be let to the lowest responsible
 9 bidder or bidders.

10 (b) The board shall first determine whether the contract shall
 11 be let as a single unit for the whole of the work, or shall be divided
 12 into severable parts, or both, according to the best interests of the
 13 agency.

14 (c) The board shall call for bids and advertise the call by three
 15 insertions in a daily newspaper of general circulation or by two
 16 insertions in a weekly newspaper of general circulation printed
 17 and published in the territory of the agency inviting sealed
 18 proposals for the construction or performance of the improvement
 19 or work before any contract is entered into. The call for bids shall
 20 state whether the work is to be performed as a unit or shall be
 21 divided into severable specific parts, or both, as stated in the call.
 22 The board may let the work by single contract or it may divide the
 23 work into severable parts by separate contracts, as stated in the
 24 call, according to the best interests of the agency.

25 (d) The board shall require the successful bidder or bidders to
 26 file with the board good and sufficient bonds to be approved by
 27 the board conditioned upon the faithful performance of the contract
 28 and upon the payment of their claims for labor and material in
 29 connection with the contract. The bonds shall contain the terms
 30 and conditions set forth in ~~Part 6 (commencing with Section 41010)~~
 31 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
 32 *Division 4 of the Civil Code* and are subject to the provisions of
 33 that ~~part~~ title.

34 (e) The board may reject any bid. The board of supervisors may,
 35 without advertising for bids, have the work done by force account
 36 if any of the following requirements are met:

- 37 (1) All the projects are rejected.
- 38 (2) No proposals are received in response to the advertisement.
- 39 (3) The estimated cost of the work does not exceed five thousand
 40 dollars (\$5,000).

1 (4) The work consists of channel protection, maintenance work,
2 or emergency work. In case of an emergency, if notice for bids to
3 let contracts will not be given, the board shall comply with Chapter
4 2.5 (commencing with Section 22050).

5 (f) The agency may purchase in the open market, without
6 advertising for bids, materials and supplies for use in any work
7 either under contract or by force account.

8 (g) The Monterey County Board of Supervisors may grant to
9 the board of directors, appointed pursuant to Section 49 of the
10 Monterey County Water Resources Agency Act (Chapter 1159 of
11 the Statutes of 1990), any of the powers or duties granted to the
12 Monterey County Board of Supervisors by this section.

13 SEC. 65. Section 21131 of the Public Contract Code is amended
14 to read:

15 21131. (a) All contracts for the construction of any unit of
16 work, except as provided in this article, estimated to cost in excess
17 of two thousand five hundred dollars (\$2,500) shall be let to the
18 lowest responsible bidder in the manner provided in this article.
19 The board shall advertise by three placements in a daily newspaper
20 of general circulation or two insertions in a weekly newspaper of
21 general circulation published in the district inviting sealed
22 proposals for the construction of the work before any contract is
23 made, and may let by contract separately any part of the work. The
24 board shall require the successful bidder to file with the board
25 good and sufficient bonds to be approved by the board conditioned
26 upon the faithful performance of the contract and upon the payment
27 of the claims for labor and material in connection therewith, the
28 bonds to contain the terms and conditions set forth in ~~Part 6~~
29 ~~(commencing with Section 41010) of Division 2 Title 2~~
30 ~~(commencing with Section 9000) of Part 6 of Division 4 of the~~
31 ~~Civil Code~~, and to be subject to the provisions of that ~~part~~ title.
32 The board may reject any bid, in which case the board may
33 advertise for new bids.

34 (b) In the event no proposals are received pursuant to
35 advertisement therefor, or where the work consists of emergency
36 work, the board of directors, by unanimous vote of all members
37 present, may, without advertising for bids, have the work done by
38 force account. In case of an emergency, if notice for bids to let
39 contracts will not be given, the board shall comply with Chapter
40 2.5 (commencing with Section 22050).

1 (c) The district may purchase in the open market without
2 advertisement for bids, materials and supplies for use in any work
3 either under contract or by force account; provided, however, that
4 materials and supplies for use in any new construction work or
5 improvement, except work authorized and required under
6 circumstances referred to in subdivision (b), may not be purchased
7 if the cost exceeds two thousand five hundred dollars (\$2,500),
8 without advertising for bids and awarding the contract to the lowest
9 responsible bidder.

10 (d) This section does not apply to a contract entered into with
11 the United States or the State of California or other governmental
12 agency under the authority of Section 3 of Chapter 2126 of the
13 Statutes of 1959, or to a contract authorized by a vote of the
14 electorate of the district.

15 (e) The district may rent or otherwise contract for equipment
16 with or without an operator and use it on works of the district, if
17 the contract is approved by the board.

18 SEC. 66. Section 21141 of the Public Contract Code is amended
19 to read:

20 21141. (a) All contracts for the construction of any unit of
21 work, except as provided in this article, estimated to cost in excess
22 of two thousand dollars (\$2,000) shall be let to the lowest
23 responsible bidder in the manner provided in this article. The board
24 shall advertise by three insertions in a daily newspaper of general
25 circulation or two insertions in a weekly newspaper of general
26 circulation published in the district inviting sealed proposals for
27 the construction of the work before any contract shall be made,
28 and may let by contract separately any part of the work. The board
29 shall require the successful bidder to file with the board good and
30 sufficient bonds to be approved by the board conditioned upon the
31 faithful performance of the contract and upon the payment of the
32 claims for labor and material, the bonds to contain the terms and
33 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
34 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
35 *Division 4 of the Civil Code*, and to be subject to the provisions
36 of that ~~part~~ *title*. The board shall also have the right to reject any
37 bid, in which case the board may advertise for new bids.

38 (b) In the event no proposals are received pursuant to
39 advertisement, where the estimated cost of the work does not
40 exceed the sum of two thousand dollars (\$2,000), or where the

1 work consists of emergency work, the board of directors, by
2 unanimous vote of all members present, may, without advertising
3 for bids, have the work done by force account. In case of an
4 emergency, if notice for bids to let contracts will not be given, the
5 board shall comply with Chapter 2.5 (commencing with Section
6 22050).

7 (c) The district may purchase in the open market, without
8 advertisement for bids, materials and supplies for use in any work
9 either under contract or by force account; provided, however, that
10 materials and supplies for use in any new construction work or
11 improvement, except work referred to in subdivision (b), may not
12 be purchased if the cost exceeds two thousand five hundred dollars
13 (\$2,500), without advertising for bids and awarding the contract
14 therefor to the lowest responsible bidder.

15 (d) The provisions of this section have no application to a
16 contract entered into with the United States under the authority of
17 Section 3, or to a contract authorized by a vote of the electorate
18 of the district.

19 SEC. 67. Section 21151 of the Public Contract Code is amended
20 to read:

21 21151. All contracts for any improvement or unit of work when
22 the cost according to the estimate of the engineer will exceed
23 twenty-five thousand dollars (\$25,000), with or without the
24 furnishing of materials or supplies, shall be let to the lowest
25 responsible bidder or bidders in the manner provided in this article.
26 Construction of improvements or works shall not be staged to
27 avoid the bidding process. The board shall first determine whether
28 the contract shall be let as a single unit for the whole of the work,
29 or shall be divided into severable parts, or both, according to the
30 best interests of the district. The board shall call for bids and
31 advertise the call by inviting sealed proposals for the construction
32 or performance of the improvement or work before any contract
33 is made. The board shall invite the bids by publishing a notice of
34 the call for bids pursuant to Section 6062 or 6066 of the
35 Government Code in a newspaper of general circulation in the
36 county. The call for bids shall state whether the work is to be
37 performed as a unit or shall be divided into severable specific parts,
38 or both, as stated in the call. The board may let the work by single
39 contract or it may divide the work into severable parts by separate
40 contracts, as stated in the call, according to the best interests of

1 the district. The board shall require the successful bidder or bidders
2 to file with the board good and sufficient bonds to be approved by
3 the board conditioned upon the faithful performance of the contract
4 and upon the payment of their claims for labor and material, the
5 bonds to contain the terms and conditions set forth in ~~Part 6~~
6 ~~(commencing with Section 41010) of Division 2 Title 2~~
7 *(commencing with Section 9000) of Part 6 of Division 4 of the*
8 *Civil Code* and to be subject to the provisions of that ~~part~~ title. The
9 board shall also have the right to reject any bid. In the event the
10 engineer's estimate is twenty-five thousand dollars (\$25,000) or
11 less, or in the event no proposals are received pursuant to
12 advertisement therefor, or in the event the work consists of channel
13 protection or maintenance work, or emergency work, the board of
14 supervisors may, without advertising for bids, have the work done
15 by day labor under the direction of the board, by contract, or by a
16 combination of the two. In case of an emergency, if notice for bids
17 to let contracts will not be given, the board shall comply with
18 Chapter 2.5 (commencing with Section 22050). The district may
19 acquire in the open market without advertising for bids, materials,
20 equipment, and supplies for use in any work or for any other
21 purpose.

22 SEC. 68. Section 21161 of the Public Contract Code is amended
23 to read:

24 21161. (a) Any improvement or unit of work not performed
25 by district personnel and estimated by the engineer to cost in excess
26 of twenty-five thousand dollars (\$25,000) shall be done by contract.
27 All contracts shall be let to the lowest responsible bidder or bidders
28 in the manner provided in this article. The board shall first
29 determine whether the contract shall be let as a single unit for the
30 whole of the work, or shall be divided into severable parts, or both,
31 according to the best interests of the district. The board shall call
32 for bids and advertise the call by three insertions in a daily
33 newspaper of general circulation or by two insertions in a weekly
34 newspaper of general circulation printed and published in the
35 district inviting sealed proposals for the construction or
36 performance of the improvement or work before any contract is
37 made. The call for bids shall state whether the work is to be
38 performed as a unit for the whole thereof or shall be divided into
39 severable specific parts, or both, as stated in the call. The board
40 may let the work by single contract or it may divide the work into

1 severable parts by separate contracts, as stated in the call, according
2 to the best interests of the district. The board shall require the
3 successful bidder or bidders to file with the board good and
4 sufficient bonds to be approved by the board conditioned upon the
5 faithful performance of the contract and upon the payment of their
6 claims for labor and material, the bonds to contain the terms and
7 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
8 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
9 *Division 4 of the Civil Code* and to be subject to the provisions of
10 that ~~part title~~. The board shall also have the right to reject any bid.
11 In the event all proposals are rejected or no proposals are received
12 pursuant to advertisement, or the estimated cost of the work does
13 not exceed five thousand dollars (\$5,000), or the work consists of
14 channel protection, maintenance work, or emergency work, the
15 board may, without advertising for bids, have the work done by
16 force account. In case of an emergency, if notice for bids to let
17 contracts will not be given, the board shall comply with Chapter
18 2.5 (commencing with Section 22050). The district may purchase
19 in the open market, without advertising for bids, materials and
20 supplies for use in any work either under contract or by force
21 account.

22 (b) The provisions of this section requiring competitive bidding
23 and the award of contracts to the lowest responsible bidder are
24 inapplicable to the extent the improvement or unit of work is to
25 be performed on its own facilities by a public utility subject to the
26 jurisdiction of the California Public Utilities Commission.

27 SEC. 69. Section 21171 of the Public Contract Code is amended
28 to read:

29 21171. (a) All contracts for any improvement or unit of work
30 when the cost, according to the estimate of the engineer, will
31 exceed two thousand dollars (\$2,000), shall be let to the lowest
32 responsible bidder or bidders in the manner provided in this article.
33 The board shall first determine whether the contract shall be let as
34 a single unit for the whole of the work, or shall be divided into
35 severable parts, or both, according to the best interests of the
36 district. The board shall call for bids and advertise the call by three
37 insertions in a daily newspaper of general circulation or by two
38 insertions in a weekly newspaper of general circulation printed
39 and published in the district inviting sealed proposals for the
40 construction or performance of the improvement or work before

1 any contract is made. The call for bids shall state whether the work
 2 is to be performed as a unit for the whole thereof or shall be divided
 3 into severable specific parts, or both, as stated in the call. The
 4 board may let the work by single contract as a unit or it may divide
 5 the work into severable parts by separate contracts, as stated in the
 6 call, according to the best interests of the district. The board shall
 7 require the successful bidder or bidders to file with the board good
 8 and sufficient bonds to be approved by the board conditioned upon
 9 the faithful performance of the contract and upon the payment of
 10 their claims for labor and material, the bonds to contain the terms
 11 and conditions set forth in ~~Part 6 (commencing with Section 41010)~~
 12 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
 13 *Division 4 of the Civil Code* and to be subject to the provisions of
 14 that ~~part~~ title. The board shall also have the right to reject any bid.

15 (b) In the event all proposals are rejected or no proposals are
 16 received pursuant to advertisement, or the estimated cost of the
 17 work does not exceed two thousand dollars (\$2,000), or the work
 18 consists of channel protection, maintenance work, or emergency
 19 work, the board of supervisors may, without advertising for bids,
 20 have the work done by force account. In case of an emergency, if
 21 notice for bids to let contracts will not be given, the board shall
 22 comply with Chapter 2.5 (commencing with Section 22050).

23 (c) The district may purchase in the open market, without
 24 advertising for bids, materials and supplies for use in any work
 25 either under contract or by force account; provided, however, that
 26 materials and supplies for use in any new construction work or
 27 improvements, except work referred to in subdivision (b), may not
 28 be purchased if the cost exceeds two thousand five hundred dollars
 29 (\$2,500), without advertising for bids and awarding the contract
 30 to the lowest responsible bidder.

31 SEC. 70. Section 21181 of the Public Contract Code is amended
 32 to read:

33 21181. (a) All contracts for any improvement or unit of work
 34 when the cost according to the estimate of the engineer, will exceed
 35 four thousand dollars (\$4,000), shall be let to the lowest responsible
 36 bidder or bidders in the manner provided in this article. The board
 37 shall first determine whether the contract shall be let as a single
 38 unit or shall be divided into severable parts, or both, according to
 39 the best interests of the district. The board shall call for bids and
 40 advertise the call in the district pursuant to Section 6066 of the

1 Government Code inviting sealed proposals for the construction
2 or performance of the improvement or before any contract is made.
3 The call for bids shall state whether the work is to be performed
4 as a unit or shall be divided into severable specific parts, or both,
5 as stated in the call. The board may let the work by single contract
6 or it may divide the work into severable parts by separate contracts,
7 as stated in the call, according to the best interests of the district.
8 The board shall require the successful bidder or bidders to file with
9 the board good and sufficient bonds to be approved by the board
10 conditioned upon the faithful performance of the contract and upon
11 the payment of their claims for labor and material, the bonds to
12 contain the terms and conditions set forth in ~~Part 6 (commencing~~
13 ~~with Section 41010) of Division 2 Title 2 (commencing with Section~~
14 ~~9000) of Part 6 of Division 4 of the Civil Code~~ and to be subject
15 to the provisions of that ~~part~~ title. The board shall also have the
16 right to reject any bid.

17 (b) In the event no proposals are received pursuant to
18 advertisement or the estimated cost of the work does not exceed
19 four thousand dollars (\$4,000), or the work consists of channel
20 protection, maintenance work, or emergency work, the board of
21 supervisors may, without advertising for bids, have the work done
22 by day labor, under the direction of the board, by contract, or by
23 the combination of the two. In case of an emergency, if notice for
24 bids to let contracts will not be given, the board shall comply with
25 Chapter 2.5 (commencing with Section 22050).

26 (c) The district may acquire in the open market, without
27 advertising for bids, materials, equipment, and supplies for use in
28 any work or for any other purpose; provided, however, that
29 materials and supplies for use in any new construction work or
30 improvement, except work referred to in subdivision (b), may not
31 be purchased if the cost exceeds two thousand five hundred dollars
32 (\$2,500), without advertising for bids and awarding the contract
33 to the lowest responsible bidder.

34 SEC. 71. Section 21196 of the Public Contract Code is amended
35 to read:

36 21196. (a) All contracts for the construction of any unit of
37 work, except as provided in this article, estimated to cost in excess
38 of two thousand five hundred dollars (\$2,500) shall be let to the
39 lowest responsible bidder in the manner provided in this article.
40 The board of directors of the district shall call for bids and advertise

1 the call by three insertions in a daily newspaper of general
 2 circulation or two insertions in a weekly newspaper of general
 3 circulation published in the district inviting sealed proposals for
 4 the construction of the work before any contract is made, and may
 5 let by contract separately any part of the work. The board shall
 6 require the successful bidder to file with the board good and
 7 sufficient bonds to be approved by the board conditioned upon the
 8 faithful performance of the contract and upon the payment of the
 9 claims for labor and material, the bonds to contain the terms and
 10 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
 11 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
 12 *Division 4 of the Civil Code* and to be subject to the provisions of
 13 ~~this part that title~~. The board shall also have the right to reject any
 14 bid, in which case the board may advertise for new bids.

15 (b) In the event no proposals are received pursuant to
 16 advertisement, or where the estimated cost of the work does not
 17 exceed two thousand five hundred dollars (\$2,500), or the work
 18 consists of emergency work, the board of directors by unanimous
 19 vote of all members present, may, without advertising for bids,
 20 have the work done by force account. In case of an emergency, if
 21 notice for bids to let contracts will not be given, the board shall
 22 comply with Chapter 2.5 (commencing with Section 22050). The
 23 district may purchase in the open market, without advertisement
 24 for bids, materials and supplies for use in any work either under
 25 contract or by force account.

26 (c) The provisions of this section have no application to a
 27 contract entered into with the United States under the authority of
 28 the Solano County Flood Control and Water Conservation District
 29 Act, or to a contract authorized by a vote of the electorate of the
 30 district.

31 SEC. 72. Section 21212 of the Public Contract Code is amended
 32 to read:

33 21212. (a) All contracts for the construction of any unit of
 34 work, except as provided in this article, estimated to cost in excess
 35 of three thousand dollars (\$3,000), shall be let to the lowest
 36 responsible bidder in the manner provided in this article. The board
 37 of directors of the agency shall advertise pursuant to Section 6066
 38 of the Government Code in a newspaper of general circulation
 39 published in the agency’s jurisdiction inviting sealed proposals
 40 for the construction of the work before any contract is made, and

1 may let by contract separately any part of the work. The board
2 shall require the successful bidder to file with the board good and
3 sufficient bonds to be approved by the board conditioned upon the
4 faithful performance of the contract and upon the payment of any
5 claims for labor and material and containing the terms and
6 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
7 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
8 *Division 4 of the Civil Code* and to be subject to the provisions of
9 that ~~part~~ title. The board shall also have the right to reject any bid,
10 in which case the board may advertise for new bids.

11 (b) In the event no proposals are received pursuant to
12 advertisement, or where the estimated cost of the work does not
13 exceed three thousand dollars (\$3,000), or the work consists of
14 emergency work, the board of directors, by unanimous vote of all
15 members present, may, without advertising for bids, have the work
16 done by force account. In case of an emergency, if notice for bids
17 to let contracts will not be given, the board shall comply with
18 Chapter 2.5 (commencing with Section 22050).

19 (c) The agency may purchase in the open market without
20 advertisement for bids, materials and supplies for use in any work
21 either under contract or by force account.

22 (d) The provisions of this section have no application to a
23 contract entered into with the United States under the authority of
24 Section 6 of Chapter 10 of the Statutes of the 1952 First
25 Extraordinary Session, or to a contract authorized by a vote of the
26 electorate of the agency.

27 SEC. 73. Section 21231 of the Public Contract Code is amended
28 to read:

29 21231. Any improvement or unit of work when the cost,
30 according to the estimate of the engineer, will exceed five thousand
31 dollars (\$5,000), shall be done by contract let to the lowest
32 responsible bidder or bidders in the manner provided in this article.
33 The board shall first determine whether the contract will be let as
34 a single unit, or will be divided into severable parts, or both,
35 according to the best interests of the district. The board shall call
36 for bids and advertise the call pursuant to Section 6066 of the
37 Government Code in the district, inviting sealed proposals for the
38 construction or performance of the improvement or before any
39 contract is made. The call for bids shall state whether the work is
40 to be performed as a unit or shall be divided into separate specific

1 parts, or both, as stated in the call. The board may let the work by
2 single contract or it may divide the work into severable parts by
3 separate contracts, as stated in the call, according to the best
4 interests of the district. The board shall require the successful
5 bidder or bidders to file with the board good and sufficient bonds
6 to be approved by the board conditioned upon the faithful
7 performance of the contract and upon the payment of their claims
8 for labor and material, the bonds to contain the terms and
9 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
10 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
11 *Division 4 of the Civil Code* and to be subject to the provisions of
12 that ~~part~~ title. The board shall also have the right to reject any bid.
13 In the event no proposals are received pursuant to advertisement,
14 or the estimated cost of the work does not exceed five thousand
15 dollars (\$5,000), or the work consists of channel protection,
16 maintenance work, or emergency work, the board of supervisors
17 may, without advertising for bids, have the work done by day
18 labor, under the direction of the board, by contract, or by a
19 combination of the two. In case of an emergency, if notice for bids
20 to let contracts will not be given, the board shall comply with
21 Chapter 2.5 (commencing with Section 22050). The district may
22 acquire in the open market without advertising for bids, materials,
23 equipment and supplies for use in any work or for any other
24 purpose; provided, however, that materials and supplies for use in
25 any new construction work or improvement, except work referred
26 to in the preceding sentence, may not be purchased if the cost
27 exceeds five thousand dollars (\$5,000), without advertising for
28 bids and awarding the contract to the lowest responsible bidder.

29 SEC. 74. Section 21241 of the Public Contract Code is amended
30 to read:

31 21241. All contracts for any improvement or unit of work when
32 the cost, according to the estimate of the engineer, will exceed two
33 thousand dollars (\$2,000), shall be let to the lowest responsible
34 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
36 unit or shall be divided into severable parts, or both, according to
37 the best interests of the zone. The board shall call for bids and
38 advertise the call pursuant to Section 6066 of the Government
39 Code in the district inviting sealed proposals for the construction
40 or performance of the improvement or work before any contract

1 is made. The call for bids shall state whether the work is to be
2 performed as a unit or shall be divided into severable specific parts,
3 or both, as stated in the call. The board may let the work by single
4 contract or it may divide the work into severable parts by separate
5 contracts, as stated in the call, according to the best interests of
6 the district. The board shall require the successful bidder or bidders
7 to file with the board good and sufficient bonds to be approved by
8 the board conditioned upon the faithful performance of the contract
9 and upon the payment of their claims for labor and material, the
10 bonds to contain the terms and conditions set forth in ~~Part 6~~
11 ~~(commencing with Section 41010) of Division 2 Title 2~~
12 ~~(commencing with Section 9000) of Part 6 of Division 4 of the~~
13 ~~Civil Code~~ and to be subject to the provisions of that ~~part~~ title. The
14 board shall also have the right to reject any bid. In the event no
15 proposals are received pursuant to advertisement, or the estimated
16 cost of the work does not exceed two thousand dollars (\$2,000),
17 or the work consists of emergency work, the board of supervisors
18 may, without advertising for bids, have the work done by day
19 labor, under the direction of the board, by contract, or by a
20 combination of the two. In case of an emergency, if notice for bids
21 to let contracts will not be given, the board shall comply with
22 Chapter 2.5 (commencing with Section 22050). The board may
23 acquire in the open market, without advertising for bids, materials,
24 equipment, and supplies for use in any work or for any other
25 purpose; provided, however, that materials and supplies for use in
26 any new construction work or improvement, except work referred
27 to in the preceding sentence, may not be purchased if the cost
28 exceeds two thousand five hundred dollars (\$2,500), without
29 advertising for bids and awarding the contract to the lowest
30 responsible bidder.

31 SEC. 75. Section 21251 of the Public Contract Code is amended
32 to read:

33 21251. (a) (1) All contracts for any improvement or unit of
34 work, if the cost according to the estimate of the engineer will
35 exceed thirty thousand dollars (\$30,000), shall be let to the lowest
36 responsible bidder or bidders as provided in this article. The board
37 shall first determine whether the contract shall be let as a single
38 unit or divided into severable parts, or both.

39 (2) All contracts for any improvement or unit of work, if the
40 cost according to the estimate of the engineer is thirty thousand

1 dollars (\$30,000) or less, may be let without advertising for bids
2 in accordance with procedures adopted by the board.

3 (b) The board shall call for bids and advertise the call pursuant
4 to Section 6063 of the Government Code in the district, inviting
5 sealed proposals for the construction or performance of the
6 improvement or work before any contract is made. The call for
7 bids shall state whether the work is to be performed as one unit or
8 divided into severable specific parts.

9 (c) The work may be let under a single contract or several
10 contracts, or both, as stated in the call. The board shall require the
11 successful bidder or bidders to file with the board good and
12 sufficient bonds to be approved by the board conditioned upon the
13 faithful performance of the contract and upon the payment of their
14 claims for labor and material. The bonds shall comply with ~~Part~~
15 ~~6 (commencing with Section 41010) of Division 2 Title 2~~
16 *(commencing with Section 9000) of Part 6 of Division 4 of the*
17 *Civil Code*. The board may reject any bid.

18 (d) If all proposals are rejected or no proposals are received, or
19 the estimated cost of the work does not exceed five thousand
20 dollars (\$5,000), or the work consists of channel protection,
21 maintenance work, or emergency work, the board may have the
22 work done by force account without advertising for bids. In case
23 of an emergency, if notice for bids to let contracts will not be given,
24 the board shall comply with Chapter 2.5 (commencing with Section
25 22050).

26 (e) The district may purchase in the open market, without
27 advertising for bids, materials and supplies for use in any work
28 either under contract or by force account.

29 SEC. 76. Section 21261 of the Public Contract Code is amended
30 to read:

31 21261. All contracts for any improvement or unit of work when
32 the cost, according to the estimate of the engineer, will exceed two
33 thousand dollars (\$2,000), shall be let to the lowest responsible
34 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
36 unit for the work, or shall be divided into severable parts, or both,
37 according to the best interests of the district. The board shall call
38 for bids and advertise the call pursuant to Section 6066 of the
39 Government Code in the district inviting sealed proposals for the
40 construction or performance of the improvement or work before

1 any contract is made. The call for bids shall state whether the work
2 is to be performed as a unit or shall be divided into severable
3 specific parts, or both, as stated in the call. The board may let the
4 work by single contract or it may divide the work into severable
5 parts by separate contracts, as stated in the call, according to the
6 best interests of the district. The board shall require the successful
7 bidder or bidders to file with the board good and sufficient bonds
8 to be approved by the board conditioned upon the faithful
9 performance of the contract and upon the payment of their claims
10 for labor and material, the bonds to contain the terms and
11 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
12 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
13 *Division 4 of the Civil Code* and to be subject to the provisions of
14 that ~~part~~ title. The board shall also have the right to reject any bid.
15 In the event all proposals are rejected or no proposals are received
16 pursuant to advertisement, or the estimated cost of the work does
17 not exceed two thousand dollars (\$2,000), or the work consists of
18 channel protection, maintenance work, or emergency work, the
19 board of supervisors may, without advertising for bids, have the
20 work done by force account. In case of an emergency, if notice
21 for bids to let contracts will not be given, the board shall comply
22 with Chapter 2.5 (commencing with Section 22050). The district
23 may purchase in the open market, without advertising for bids,
24 materials and supplies for use in any work either under contract
25 or by force account.

26 SEC. 77. Section 21271 of the Public Contract Code is amended
27 to read:

28 21271. All improvement and units of work to be performed by
29 or for the district shall be performed in accordance with the
30 following procedures and requirements:

31 (a) If the work consists of the protection or maintenance of
32 channels, storm drains, dams or other flood control works, or
33 emergency work, the board of directors may, without advertising
34 for bids therefor, have the work done by day labor under the
35 direction of the board, by contract, or by a combination of the two.
36 In case of an emergency, if notice for bids to let contracts will not
37 be given, the board shall comply with Chapter 2.5 (commencing
38 with Section 22050).

39 (b) If the work consists of the construction of new flood control
40 channels, storm drains, dams, or other unit or units of work, and

1 if the cost of the work, according to the estimate of the engineer,
2 will exceed ten thousand dollars (\$10,000), and if the work is not
3 the type of work referred to in subdivision (a) or (c) of this section,
4 the new construction shall be performed under a contract or
5 contracts which shall be let to the lowest responsible bidder or
6 bidders in the manner provided in subdivision (d) of this section.

7 (c) If the work consists of the maintenance or alteration of
8 existing facilities, including electrical, painting, and roofing work,
9 and if the cost of labor and materials for the work according to the
10 engineer's estimate, will exceed three thousand five hundred dollars
11 (\$3,500), and if the work is not the type of work referred to in
12 subdivision (a) or (b) of this section, the maintenance and alteration
13 work shall be performed under a contract or contracts which shall
14 be let to the lowest responsible bidder or bidders in the manner
15 provided in subdivision (d) of this section.

16 (d) The board shall first determine whether the work shall be
17 let as a single unit or shall be divided into severable parts, or both,
18 according to the best interests of the district. The board shall call
19 for bids and advertise the call pursuant to Section 6066 of the
20 Government Code in the district inviting sealed proposals for the
21 construction or performance of the work before any contract is
22 made. The call for bids shall state whether the work is to be
23 performed as a unit or shall be divided into severable, specific
24 parts, or both, as stated in the call. The board may let the work by
25 single contract or it may divide the work into severable parts by
26 separate contracts, as stated in the call, according to the best
27 interests of the district. The board shall require the successful
28 bidder or bidders to file with the board good and sufficient bond
29 to be approved by the board conditioned upon the faithful
30 performance of the contract and upon the payment of the claims
31 for labor and material. The faithful performance bond shall contain
32 the terms and conditions as the board may specify, and the payment
33 bond shall contain the terms and conditions set forth in, and shall
34 be subject to, the provisions of ~~Part 6 (commencing with Section~~
35 ~~41010) of Division 2 Title 2 (commencing with Section 9000) of~~
36 *Part 6 of Division 4 of the Civil Code*. If the work to be performed
37 on behalf of the district does not involve an expenditure of fifteen
38 thousand dollars (\$15,000) or more, the district may require a
39 faithful performance bond or a payment bond. The board shall also
40 have the right to reject any bid.

1 (e) If no proposals are received pursuant to advertisement, or
2 if the estimated cost of work of the type referred to in subdivision
3 (b) of this section does not exceed ten thousand dollars (\$10,000),
4 or if the estimated cost of work of the type referred to in
5 subdivision (c) of this section does not exceed three thousand five
6 hundred dollars (\$3,500), the board of directors may, without
7 advertising for bids, have the work done by day labor, under the
8 direction of the board, by contract, or by combination of the two.
9 If any change or alteration in a contract awarded under the
10 provisions of this section for work of the type referred to in
11 subdivision (b) or (c) is deemed necessary and the cost does not
12 exceed 10 percent of the original contract price, the board may
13 authorize the contractor to proceed with the change or alteration
14 without the formality of obtaining bids.

15 (f) Notwithstanding the foregoing provisions, the district shall
16 have the power to acquire in the open market, and may authorize
17 the Purchasing Agents of the County of Santa Barbara to acquire
18 in the open market, without advertising for bids, materials,
19 equipment and supplies for use in any work or for any other
20 purpose; provided, however, that materials and supplies for use in
21 any new construction work or improvement, except work referred
22 to in subdivision (a) of this section, may not be purchased without
23 advertising for bids and awarding the contract to the lowest
24 responsible bidder if the cost exceeds two thousand five hundred
25 dollars (\$2,500), unless the purchase is made by the county
26 purchasing agent at the request of the district, in which case the
27 cost shall not exceed six thousand five hundred dollars (\$6,500).

28 SEC. 78. Section 21311 of the Public Contract Code is amended
29 to read:

30 21311. (a) All contracts for any improvement or unit of work
31 when the cost, according to the estimate of the engineer, will
32 exceed two thousand dollars (\$2,000), shall be let to the lowest
33 responsible bidder or bidders in the manner provided in this article.
34 The board shall first determine whether the contract shall be let as
35 a single unit, or shall be divided into severable parts, or both,
36 according to the best interests of the district. The board shall call
37 for bids and advertise the call by three insertions in a daily
38 newspaper of general circulation or by two insertions in a weekly
39 newspaper of general circulation printed and published in the
40 district inviting sealed proposals for the construction or

1 performance of the improvement or work before any contract is
 2 made. The call for bids shall state whether the work is to be
 3 performed as a unit or shall be divided into severable specific parts,
 4 or both, as stated in the call. The board may let the work by single
 5 contract for the whole as a unit or it may divide the work into
 6 severable parts by separate contracts, as stated in the call, according
 7 to the best interests of the district. The board shall require the
 8 successful bidder or bidders to file with the board good and
 9 sufficient bonds to be approved by the board conditioned upon the
 10 faithful performance of the contract and upon the payment of their
 11 claims for labor and material, the bonds to contain the terms and
 12 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
 13 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
 14 ~~Division 4 of the Civil Code~~ and to be subject to the provisions of
 15 that ~~part~~ title. The board shall also have the right to reject any bid.

16 (b) In the event no proposals are received pursuant to
 17 advertisement, or the estimated cost of the work does not exceed
 18 two thousand dollars (\$2,000), or the work consists of channel
 19 protection, maintenance work, or emergency work, the board of
 20 supervisors may, without advertising for bids, have the work done
 21 by day labor, under the direction of the board, by contract, or by
 22 a combination of the two. In case of an emergency, if notice for
 23 bids to let contracts will not be given, the board shall comply with
 24 Chapter 2.5 (commencing with Section 22050).

25 (c) The district may acquire in the open market, without
 26 advertising for bids, materials, equipment, and supplies for use in
 27 any work or for any other purpose; provided, however, that
 28 materials and supplies for use in any new construction work or
 29 improvement, except work referred to in subdivision (b), shall not
 30 be purchased if the cost exceeds two thousand five hundred dollars
 31 (\$2,500), without advertising for bids and awarding the contract
 32 to the lowest responsible bidder.

33 SEC. 79. Section 21321 of the Public Contract Code is amended
 34 to read:

35 21321. (a) All contracts for any improvement or unit of work,
 36 when the cost according to the estimate of the engineer will exceed
 37 thirty thousand dollars (\$30,000), shall be let to the lowest
 38 responsible bidder or bidders as provided in this article. The board
 39 shall first determine whether the contract shall be let as a single
 40 unit, or divided into severable parts. The board shall advertise for

1 bids by three insertions in a daily newspaper of general circulation
2 or by two insertions in a weekly newspaper of general circulation
3 printed and published in the agency’s jurisdiction, inviting sealed
4 proposals for the construction or performance of the improvement
5 or work. The call for bids shall state whether the work shall be
6 performed in one unit or divided into parts. The work may be let
7 under a single contract or several contracts, as stated in the call.

8 The board shall require the successful bidders to file with the
9 board good and sufficient bonds to be approved by the board
10 conditioned upon the faithful performance of the contract and upon
11 the payment of their claims for labor and material. The bonds shall
12 comply with ~~Part 6 (commencing with Section 41010) of Division~~
13 ~~2 Title 2 (commencing with Section 9000) of Part 6 of Division 4~~
14 *of the Civil Code.*

15 (b) The board may reject any bid. In the event all proposals are
16 rejected or no proposals are received, or the estimated cost of the
17 work does not exceed five thousand dollars (\$5,000), or the work
18 consists of channel protection, maintenance, or emergency work,
19 the board may have the work done by force account without
20 advertising for bids. In case of an emergency, if notice for bids to
21 let contracts will not be given, the board shall comply with Chapter
22 2.5 (commencing with Section 22050). In the event that no
23 proposals are received, or if only one responsive proposal is
24 received, the board may negotiate a contract for construction or
25 performance of the work or improvement or substantially similar
26 work or improvement. However, if only one responsive proposal
27 is received, the contract must be negotiated with the bidder.

28 (c) The agency may purchase in the open market without
29 advertising for bids, materials and supplies for use in any work,
30 either under contract or by force account.

31 (d) Sections 4300 to 4305, inclusive, of the Government Code
32 do not apply to the agency’s Middle Fork American River Project.

33 (e) This section applies to all proposals or contracts whether or
34 not received or entered into prior to the effective date of the
35 amendment of this provision made at the 1963 Regular Session of
36 the Legislature.

37 SEC. 80. Section 21331 of the Public Contract Code is amended
38 to read:

39 21331. (a) All contracts for the construction of any unit of
40 work, except as provided in this article, estimated to cost in excess

1 of three thousand five hundred dollars (\$3,500) shall be let to the
2 lowest responsible bidder in the manner provided in this article.
3 The board shall advertise by three insertions in a daily newspaper
4 of general circulation or two insertions in a weekly newspaper of
5 general circulation published in the district inviting sealed
6 proposals for the construction of the work before any contract shall
7 be made, and may let by contract separately any part of the work.
8 The board shall require the successful bidder to file with the board
9 good and sufficient bonds to be approved by the board conditioned
10 upon the faithful performance of the contract and upon the payment
11 of all claims for labor and material, the bonds to contain the terms
12 and conditions set forth in ~~Part 6 (commencing with Section 41010)~~
13 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
14 ~~Division 4 of the Civil Code~~, and to be subject to the provisions
15 of that ~~part~~ title. The board shall also have the right to reject any
16 bid, in which case the board may advertise for new bids.

17 (b) In the event no proposals are received pursuant to
18 advertisement, where the estimated cost of the work does not
19 exceed five thousand dollars (\$5,000), or where the work consists
20 of emergency work, the board of directors, by unanimous vote of
21 all members present, may, without advertising for bids, have the
22 work done by force account. In case of an emergency, if notice
23 for bids to let contracts will not be given, the board shall comply
24 with Chapter 2.5 (commencing with Section 22050).

25 (c) The district may purchase in the open market, without
26 advertisement for bids, materials and supplies for use in any work
27 either under contract or by force account; provided, however, that
28 materials and supplies for use in any new construction work or
29 improvement, except work referred to in subdivision (b), may not
30 be purchased if the cost exceeds five thousand dollars (\$5,000),
31 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
34 contract entered into with the United States under the authority of
35 Section 3 of Chapter 1280 of the Statutes of 1957, or to a contract
36 authorized by a vote of the electorate of the district.

37 SEC. 81. Section 21341 of the Public Contract Code is amended
38 to read:

39 21341. (a) All contracts for the construction of any unit of
40 work, except as provided in this article, estimated to cost in excess

1 of five thousand dollars (\$5,000) shall be let to the lowest
2 responsible bidder. The board shall advertise by three insertions
3 in a daily newspaper of general circulation or two insertions in a
4 weekly newspaper of general circulation published by the agency
5 inviting sealed proposals for the construction of the work before
6 any contract is made, and may let by contract separately any part
7 of the work. The board shall require the successful bidder to file
8 with the board good and sufficient bonds to be approved by the
9 board conditioned upon the faithful performance of the contract
10 and upon the payment of the claims for labor and material, the
11 bonds to contain the terms and conditions set forth in ~~Part 6~~
12 ~~(commencing with Section 41010) of Division 2 Title 2~~
13 ~~(commencing with Section 9000) of Part 6 of Division 4 of the~~
14 ~~Civil Code~~, and to be subject to the provisions of that ~~part~~ title.
15 The board shall also have the right to reject any bid, in which case
16 the board may advertise for new bids. In the event no proposals
17 are received pursuant to advertisement or where the estimated cost
18 of the work does not exceed five thousand dollars (\$5,000), or
19 where the work consists of emergency work, the board, by
20 unanimous vote of all members present, may, without advertising
21 for bids, have the work done by force account. In case of an
22 emergency, if notice for bids to let contracts will not be given, the
23 board shall comply with Chapter 2.5 (commencing with Section
24 22050). The agency may purchase in the open market, without
25 advertisement for bids, materials and supplies for use in any work
26 either under contract or by force account.

27 (b) The provisions of this section have no application to a
28 contract entered into with the United States under the authority of
29 Section 59 of Chapter 1512 of the Statutes of 1957, or to a contract
30 authorized by a vote of the electorate of the agency.

31 SEC. 82. Section 21351 of the Public Contract Code is amended
32 to read:

33 21351. All contracts for any improvement or unit of work,
34 when the cost according to the estimate of the engineer will exceed
35 five thousand dollars (\$5,000), shall be let to the lowest responsible
36 bidder or bidders as provided in this article. The board shall first
37 determine whether the contract shall be let as a single unit, or
38 divided into severable parts. The board shall advertise for bids by
39 three insertions in a daily newspaper of general circulation or by
40 two insertions in a weekly newspaper of general circulation printed

1 and published by the agency, inviting sealed proposals for the
2 construction or performance of the improvement or work. The call
3 for bids shall state whether the work shall be performed in one
4 unit or divided into parts. The work may be let under a single
5 contract or several contracts, as stated in the call. The board shall
6 require the successful bidders to file with the board good and
7 sufficient bonds to be approved by the board conditioned upon the
8 faithful performance of the contract and upon the payment of their
9 claims for labor and material. The bonds shall comply with ~~Part~~
10 ~~6 (commencing with Section 41010) of Division 2 Title 2~~
11 ~~(commencing with Section 9000) of Part 6 of Division 4 of the~~
12 ~~Civil Code~~. The board may reject any bid. In the event all proposals
13 are rejected or no proposals are received, or the estimated cost of
14 the work does not exceed five thousand dollars (\$5,000), or the
15 work consists of channel protection, maintenance work, or
16 emergency work, the board may have the work done by force
17 account without advertising for bids. In case of an emergency, if
18 notice for bids to let contracts will not be given, the board shall
19 comply with Chapter 2.5 (commencing with Section 22050). The
20 board may purchase in the open market without advertising for
21 bids, materials and supplies for use in any work, either under
22 contract or by force account. In awarding any contract or
23 authorizing any work, the board shall comply with the provisions
24 of Article 2 (commencing with Section 1770) of Chapter 1 of Part
25 7 of Division 2 of the Labor Code.

26 SEC. 83. Section 21361 of the Public Contract Code is amended
27 to read:

28 21361. All contracts for any improvement or unit of work,
29 when the cost according to the estimate of the engineer will exceed
30 five thousand dollars (\$5,000), shall be let to the lowest responsible
31 bidder or bidders as provided in this article. The board shall first
32 determine whether the contract shall be let as a single unit, or
33 divided into severable parts. The board shall advertise for bids by
34 three insertions in a daily newspaper of general circulation or by
35 two insertions in a weekly newspaper of general circulation printed
36 and published in the agency's jurisdiction, inviting sealed proposals
37 for the construction or performance of the improvement or work.
38 The call for bids shall state whether the work shall be performed
39 in one unit or divided into parts. The work may be let under a
40 single contract or several contracts, as stated in the call. The board

1 shall require the successful bidders to file with the board good and
2 sufficient bonds to be approved by the board conditioned upon the
3 faithful performance of the contract and upon the payment of their
4 claims for labor and material. The bonds shall comply with ~~Part~~
5 ~~6 (commencing with Section 41010) of Division 2 Title 2~~
6 *(commencing with Section 9000) of Part 6 of Division 4 of the*
7 *Civil Code*. The board may reject any bid. In the event all proposals
8 are rejected or no proposals are received, or the estimated cost of
9 the work does not exceed five thousand dollars (\$5,000), or the
10 work consists of channel protection, maintenance work, or
11 emergency work, the board of supervisors may have the work done
12 by force account without advertising for bids. In case of an
13 emergency, if notice for bids to let contracts will not be given, the
14 board shall comply with Chapter 2.5 (commencing with Section
15 22050). The district may purchase in the open market without
16 advertising for bids, materials and supplies for use in any work,
17 either under contract or by force account.

18 SEC. 84. Section 21371 of the Public Contract Code is amended
19 to read:

20 21371. All contracts for any improvement or unit of work,
21 when the cost according to the estimate of the engineer will exceed
22 five thousand dollars (\$5,000), shall be let to the lowest responsible
23 bidder or bidders as provided in this article. The board shall first
24 determine whether the contract shall be let as a single unit, or
25 divided into severable parts. The board shall advertise for bids by
26 three insertions in a daily newspaper of general circulation or by
27 two insertions in a weekly newspaper of general circulation printed
28 and published in the agency's jurisdiction, inviting sealed proposals
29 for the construction or performance of the improvement or work.
30 The call for bids shall state whether the work shall be performed
31 in one unit or divided into parts. The work may be let under a
32 single contract or several contracts, as stated in the call. The board
33 shall require the successful bidders to file with the board good and
34 sufficient bonds to be approved by the board conditioned upon the
35 faithful performance of the contract and upon the payment of their
36 claims for labor and material. The bonds shall comply with ~~Part~~
37 ~~6 (commencing with Section 41010) of Division 2 Title 2~~
38 *(commencing with Section 9000) of Part 6 of Division 4 of the*
39 *Civil Code*. The board may reject any bid. In the event all proposals
40 are rejected or no proposals are received, or the estimated cost of

1 the work does not exceed five thousand dollars (\$5,000), or the
2 work consists of emergency work, the board may have the work
3 done by force account without advertising for bids. In case of an
4 emergency, if notice for bids to let contracts will not be given, the
5 board shall comply with Chapter 2.5 (commencing with Section
6 22050). The district may purchase in the open market without
7 advertising for bids, materials and supplies for use in any work,
8 either under contract or by force account.

9 SEC. 85. Section 21381 of the Public Contract Code is amended
10 to read:

11 21381. All contracts for any improvement or unit of work,
12 except as provided in this article, estimated to cost in excess of
13 five thousand dollars (\$5,000) shall be let to the lowest responsible
14 bidder in the manner provided in this article. The board of
15 supervisors of the district shall advertise by three insertions in a
16 daily newspaper of general circulation or two insertions in a weekly
17 newspaper of general circulation printed and published in the
18 district inviting sealed proposals for the construction of the
19 improvement or work before any contract shall be made, and may
20 let by contract separately any part of said work or improvement.
21 The board shall require the successful bidder to file with the board
22 good and sufficient bonds to be approved by the board conditioned
23 upon the faithful performance of the contract and upon the payment
24 of their claims for labor and material, the bonds to contain the
25 terms and conditions set forth in ~~Part 6 (commencing with Section~~
26 ~~41010) of Division 2 Title 2 (commencing with Section 9000) of~~
27 ~~Part 6 of Division 4 of the Civil Code~~ and to be subject to the
28 provisions of that part. The board shall also have the right to reject
29 any bid. In the event all proposals are rejected or no proposals are
30 received pursuant to advertisement, or where the estimated cost
31 of the work does not exceed five thousand dollars (\$5,000), or the
32 work consists of channel protection, maintenance work, or
33 emergency work, the board of supervisors may, without advertising
34 for bids, have the work done by force account. In case of an
35 emergency, if notice for bids to let contracts will not be given, the
36 board shall comply with Chapter 2.5 (commencing with Section
37 22050). The district may purchase in the open market without
38 advertising for bids, materials and supplies for use in any work
39 either under contract or by force account.

1 SEC. 86. Section 21391 of the Public Contract Code is amended
2 to read:

3 21391. (a) All contracts for the construction of any unit of
4 work, except as provided in this article, estimated to cost in excess
5 of two thousand dollars (\$2,000) shall be let to the lowest
6 responsible bidder in the manner provided in this article. The board
7 shall advertise by three insertions in a daily newspaper of general
8 circulation or two insertions in a weekly newspaper of general
9 circulation published in the district, inviting sealed proposals for
10 the construction of the work before any contract shall be made,
11 and may let by contract separately any part of the work. The board
12 shall require the successful bidder to file with the board good and
13 sufficient bonds to be approved by the board conditioned upon the
14 faithful performance of the contract and upon the payment of all
15 claims for labor and material, the bonds to contain the terms and
16 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
17 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
18 *Division 4 of the Civil Code*, and to be subject to the provisions
19 of that ~~part~~ *title*. The board shall also have the right to reject any
20 and all bids, in which case the board may advertise for new bids.

21 (b) In the event no proposals are received pursuant to
22 advertisement therefor, where the estimated cost of the work does
23 not exceed two thousand dollars (\$2,000), or where the work
24 consists of emergency work necessary in order to protect life and
25 property, the board of directors, by unanimous vote of all members
26 present, may, without advertising for bids, have the work done by
27 force account. In case of an emergency, if notice for bids to let
28 contracts will not be given, the board shall comply with Chapter
29 2.5 (commencing with Section 22050).

30 (c) The district may purchase in the open market without
31 advertisement for bids, materials and supplies for use in any work
32 either under contract or by force account; provided, however, that
33 materials and supplies for use in any new construction work or
34 improvement, except work referred to in subdivision (b), may not
35 be purchased if the cost exceeds two thousand five hundred dollars
36 (\$2,500), without advertising for bids and awarding the contract
37 to the lowest responsible bidder.

38 (d) The provisions of this section have no application to a
39 contract entered into with the United States under the authority of

1 Section 3 of Chapter 2114 of the Statutes of 1959, or to a contract
2 authorized by a vote of the electorate of the district.

3 SEC. 87. Section 21401 of the Public Contract Code is amended
4 to read:

5 21401. (a) All contracts for the construction of any unit of
6 work, except as provided in this article, estimated to cost in excess
7 of two thousand dollars (\$2,000) shall be let to the lowest
8 responsible bidder in the manner provided in this article. The board
9 shall advertise by three insertions in a daily newspaper of general
10 circulation or two insertions in a weekly newspaper of general
11 circulation published in the district inviting sealed proposals for
12 the construction of the work before any contract shall be made,
13 and may let by contract separately any part of the work. The board
14 shall require the successful bidder to file with the board good and
15 sufficient bonds to be approved by the board conditioned upon the
16 faithful performance of the contract and upon the payment of all
17 claims for labor and material, the bonds to contain the terms and
18 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
19 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
20 ~~Division 4 of the Civil Code~~, and to be subject to the provisions
21 of that ~~part~~ title. The board shall also have the right to reject any
22 bids, in which case the board may advertise for new bids.

23 (b) In the event no proposals are received pursuant to
24 advertisement, where the estimated cost of the work does not
25 exceed two thousand dollars (\$2,000), or where work consists of
26 emergency work, the board of directors, by unanimous vote of all
27 members present, may, without advertising for bids, have the work
28 done by force account. In case of an emergency, if notice for bids
29 to let contracts will not be given, the board shall comply with
30 Chapter 2.5 (commencing with Section 22050).

31 (c) The district may purchase in the open market without
32 advertisement for bids, materials and supplies for use in any work
33 either under contract or by force account; provided, however, that
34 materials and supplies for use in any new construction work or
35 improvement, except work referred to in subdivision (b), may not
36 be purchased if the cost exceeds two thousand five hundred dollars
37 (\$2,500), without advertising for bids and awarding the contract
38 to the lowest responsible bidder.

39 (d) The provisions of this section have no application to a
40 contract entered into with the United States under the authority of

1 Section 3 of Chapter 2121 of the Statutes of 1959, or to a contract
2 authorized by a vote of the electorate of the district.

3 SEC. 88. Section 21411 of the Public Contract Code is amended
4 to read:

5 21411. All contracts for any improvement or unit of work,
6 when the cost according to the estimate of the engineer will exceed
7 five thousand dollars (\$5,000) shall be let to the lowest responsible
8 bidder or bidders as provided in this article. The board shall first
9 determine whether the contract shall be let as a single unit, or
10 divided into severable parts. The board shall advertise for bids by
11 three insertions in a daily newspaper of general circulation or by
12 two insertions in a weekly newspaper of general circulation printed
13 and published in the agency's jurisdiction, inviting sealed proposals
14 for the construction or performance of the improvement or work.
15 The call for bids shall state whether the work shall be performed
16 in one unit or divided into parts. The work may be let under a
17 single contract or several contracts, as stated in the call. The board
18 shall require the successful bidders to file with the board good and
19 sufficient bonds to be approved by the board conditioned upon the
20 faithful performance of the contract and upon the payment of their
21 claims for labor and material. The bonds shall comply with ~~Part~~
22 ~~6 (commencing with Section 41010) of Division 2 Title 2~~
23 ~~(commencing with Section 9000) of Part 6 of Division 4 of the~~
24 ~~Civil Code.~~ The board may reject any bid. In the event all proposals
25 are rejected or no proposals are received, or the estimated cost of
26 the work does not exceed five thousand dollars (\$5,000), or the
27 work consists of channel protection, maintenance work, or
28 emergency work, the board may have the work done by force
29 account without advertising for bids. In case of an emergency, if
30 notice for bids to let contracts will not be given, the board shall
31 comply with Chapter 2.5 (commencing with Section 22050). In
32 that event a majority vote of all board members shall be required.
33 The board may purchase in the open market, without advertising
34 for bids, materials and supplies for use in any work, either under
35 contract or by force account.

36 SEC. 89. Section 21421 of the Public Contract Code is amended
37 to read:

38 21421. (a) All contracts for the construction of any unit of
39 work, except as provided in this article, estimated to cost in excess
40 of two thousand dollars (\$2,000), shall be let to the lowest

1 responsible bidder in the manner provided in this article. The board
2 shall advertise by three insertions in a daily newspaper of general
3 circulation or two insertions in a weekly newspaper of general
4 circulation published in the district inviting sealed proposals for
5 the construction of the work before any contract shall be made,
6 and may let by contract separately any part of the work. The board
7 shall require the successful bidder to file with the board good and
8 sufficient bonds to be approved by the board conditioned upon the
9 faithful performance of the contract and upon the payment of all
10 claims for labor and material, the bonds to contain the terms and
11 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
12 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
13 *Division 4 of the Civil Code*, and to be subject to the provisions
14 of that ~~part~~ title. The board shall also have the right to reject any
15 bid, in which case the board may advertise for new bids.

16 (b) In the event no proposals are received pursuant to
17 advertisement, where the estimated cost of the work does not
18 exceed two thousand dollars (\$2,000), or where the work consists
19 of emergency work, the board of directors, by unanimous vote of
20 all members present, may, without advertising for bids, have the
21 work done by force account. In case of an emergency, if notice
22 for bids to let contracts will not be given, the board shall comply
23 with Chapter 2.5 (commencing with Section 22050).

24 (c) The district may purchase in the open market without
25 advertisement for bids, materials and supplies for use in any work
26 either under contract or by force account; provided, however, that
27 materials and supplies for use in any new construction work or
28 improvement, except work referred to in subdivision (b), may not
29 be purchased if the cost exceeds two thousand five hundred dollars
30 (\$2,500), without advertising for bids and awarding the contract
31 to the lowest responsible bidder.

32 (d) The provisions of this section have no application to a
33 contract entered into with the United States under the authority of
34 Section 3 of Chapter 2123 of the Statutes of 1959, or to a contract
35 authorized by a vote of the electorate of the district.

36 SEC. 90. Section 21431 of the Public Contract Code is amended
37 to read:

38 21431. (a) All contracts for the construction of any unit of
39 work, except as provided in this article, estimated to cost in excess
40 of two thousand dollars (\$2,000), shall be let to the lowest

1 responsible bidder in the manner provided in this article. The board
2 shall advertise by three insertions in a daily newspaper of general
3 circulation or two insertions in a weekly newspaper of general
4 circulation published in the district inviting sealed proposals for
5 the construction of the work before any contract shall be made,
6 and may let by contract separately any part of the work. The board
7 shall require the successful bidder to file with the board good and
8 sufficient bonds to be approved by the board conditioned upon the
9 faithful performance of the contract and upon the payment of all
10 claims for labor and material, the bonds to contain the terms and
11 conditions set forth in ~~Part 6 (commencing with Section 41010)~~
12 ~~of Division 2 Title 2 (commencing with Section 9000) of Part 6 of~~
13 *Division 4 of the Civil Code*, and to be subject to the provisions
14 of that ~~part~~ title. The board shall also have the right to reject any
15 bid, in which case the board may advertise for new bids.

16 (b) In the event no proposals are received pursuant to
17 advertisement, where the estimated cost of the work does not
18 exceed two thousand dollars (\$2,000), the board of directors, by
19 unanimous vote of all members present, may without advertising
20 for bids, have the work done by force account. In case of an
21 emergency, if notice for bids to let contracts will not be given, the
22 board shall comply with Chapter 2.5 (commencing with Section
23 22050).

24 (c) The district may purchase in the open market without
25 advertisement for bids, materials and supplies for use in any work
26 either under contract or by force account; provided, however, that
27 materials and supplies for use in any new construction work or
28 improvement, except work referred to in subdivision (b), may not
29 be purchased if the cost exceeds two thousand five hundred dollars
30 (\$2,500), without advertising for bids and awarding the contract
31 to the lowest responsible bidder.

32 (d) The provisions of this section have no application to a
33 contract entered into with the United States under the authority of
34 Section 3 of Chapter 2127 of the Statutes of 1959, or to a contract
35 authorized by a vote of the electorate of the district.

36 SEC. 91. Section 21441 of the Public Contract Code is amended
37 to read:

38 21441. (a) All contracts for any improvement or unit of work,
39 when the cost according to the estimate of the engineer will exceed
40 five thousand dollars (\$5,000) shall be let to the lowest responsible

1 bidder or bidders as provided in this article. The board shall first
2 determine whether the contract shall be let as a single unit, or
3 divided into severable parts. The board shall advertise for bids by
4 three insertions in a daily newspaper of general circulation or by
5 two insertions in a weekly newspaper of general circulation printed
6 and published in the authority, inviting sealed proposals for the
7 construction or performance of the improvement work. The call
8 for bids shall state whether the work shall be performed in one
9 unit or divided into parts. The work may be let under a single
10 contract or several contracts, as stated in the call. The board shall
11 require the successful bidders to file with the board good and
12 sufficient bonds to be approved by the board conditioned upon the
13 faithful performance of the contract and upon the payment of their
14 claims for labor and material. The bonds shall comply with ~~Part~~
15 ~~6 (commencing with Section 41010) of Division 2 Title 2~~
16 *(commencing with Section 9000) of Part 6 of Division 4 of the*
17 *Civil Code*. The board may reject any bid. In the event all proposals
18 are rejected or no proposals are received, or the estimated cost of
19 the work does not exceed five thousand dollars (\$5,000), or the
20 work consists of channel protection, maintenance work, or
21 emergency work, the board may have the work done by force
22 account without advertising for bids.

23 (b) 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
25 (commencing with Section 22050). The authority may purchase
26 in the open market without advertising for bids, materials, and
27 supplies for use in any work, either under contract or by force
28 account.

29 SEC. 92. Section 21451 of the Public Contract Code is amended
30 to read:

31 21451. All contracts for any improvement or unit of work,
32 when the cost according to the estimate of the engineer will exceed
33 twelve thousand five hundred dollars (\$12,500), shall be let to the
34 lowest responsible bidder or bidders as provided in this article.
35 The board shall first determine whether the contract shall be let as
36 a single unit or divided into severable parts. The board shall
37 advertise for bids by three insertions in a daily newspaper of
38 general circulation or by two insertions in a weekly newspaper of
39 general circulation printed and published in the agency, inviting
40 sealed proposals for the construction or performance of the

1 improvement or work. The call for bids shall state whether the
2 work shall be performed in one unit or divided into parts. The work
3 may be let under a single contract or several contracts, as stated
4 in the call. The board shall require the successful bidders to file
5 with the board good and sufficient bonds to be approved by the
6 board conditioned upon the faithful performance of the contract
7 and upon the payment of their claims for labor and material. The
8 payment bonds shall comply with Chapter 5 (commencing with
9 ~~Section 45010) of Part 6 of Division 2~~ 9550) of Title 2 of Part 6
10 of Division 4 of the Civil Code. The board may reject any bid. If
11 all proposals are rejected or no proposals are received, or the
12 estimated cost of the work does not exceed twelve thousand five
13 hundred dollars (\$12,500), or the work consists of channel
14 protection, maintenance work, or emergency work, the board may
15 have 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
17 be given, the board shall comply with Chapter 2.5 (commencing
18 with Section 22050). The agency may purchase in the open market
19 without advertising for bids, materials and supplies for use in any
20 work, either under contract or by force account.

21 SEC. 93. Section 21461 of the Public Contract Code is amended
22 to read:

23 21461. All contracts for any improvement or unit of work,
24 when the cost according to the estimate of the engineer will exceed
25 five thousand dollars (\$5,000), shall be let to the lowest responsible
26 bidder or bidders as provided in this article. The board shall first
27 determine whether the contract shall be let as a single unit, or
28 divided into severable parts. The board shall advertise for bids by
29 three insertions in a daily newspaper of general circulation or by
30 two insertions in a weekly newspaper of general circulation printed
31 and published in the agency, inviting sealed proposals for the
32 construction or performance of the improvement or work. The call
33 for bids shall state whether the work shall be performed in one
34 unit or divided into parts. The work may be let under a single
35 contract or several contracts, as stated in such call. The board shall
36 require the successful bidders to file with the board good and
37 sufficient bonds to be approved by the board conditioned upon the
38 faithful performance of the contract and upon payment of their
39 claims for labor and material. The bonds shall comply with ~~Part~~
40 ~~6 (commencing with Section 41010) of Division 2 Title 2~~

1 (*commencing with Section 9000*) of Part 6 of Division 4 of the
2 *Civil Code*. The board may reject any and all bids. In the event all
3 proposals are rejected or no proposals are received, or the estimated
4 cost of the work does not exceed five thousand dollars (\$5,000),
5 or the work consists of channel protection, maintenance work, or
6 emergency work, the board of supervisors may have the work done
7 by force account without advertising for bids. In case of an
8 emergency, if notice for bids to let contracts will not be given, the
9 board shall comply with Chapter 2.5 (*commencing with Section*
10 *22050*). The district may purchase in the open market without
11 advertising for bids, materials and supplies for use in any work,
12 either under contract or by force account.

13 SEC. 94. Section 21491 of the Public Contract Code is amended
14 to read:

15 21491. (a) All contracts for any improvement or unit of work,
16 when the cost according to the estimate of the engineer will exceed
17 ten thousand dollars (\$10,000), shall be let to the lowest responsible
18 bidder or bidders as provided in this article. The board shall first
19 determine whether the contract shall be let as a single unit, or
20 divided into severable parts. The board shall advertise for bids by
21 three insertions in a daily newspaper of general circulation or by
22 two insertions in a weekly newspaper of general circulation printed
23 and published in the agency, inviting sealed proposals for the
24 construction or performance of the improvement or work. The call
25 for bids shall state whether the work shall be performed in one
26 unit or divided into parts. The work may be let under a single
27 contract or several contracts, as stated in such call. The board shall
28 require the successful bidders to file with the board good and
29 sufficient bonds to be approved by the board conditioned upon the
30 faithful performance of the contract and upon the payment of their
31 claims for labor and material. The bonds shall comply with ~~Part~~
32 ~~6 (commencing with Section 41010) of Division 2 Title 2~~
33 (*commencing with Section 9000*) of Part 6 of Division 4 of the
34 *Civil Code*. The board may reject any bid.

35 (b) In the event all proposals are rejected or no proposals are
36 received, or the estimated cost of the work does not exceed ten
37 thousand dollars (\$10,000), or the work consists of channel
38 protection, maintenance work, or emergency work, the board may
39 have the work done by force account without advertising for bids.
40 In case of an emergency, if notice for bids to let contracts will not

1 be given, the board shall comply with Chapter 2.5 (commencing
2 with Section 22050).

3 (c) The agency may purchase in the open market without
4 advertising for bids, materials and supplies for use in any work,
5 either under contract or by force account; provided, however, that
6 materials and supplies for use in any new construction work or
7 improvement, except work referred to in subdivision (b), may not
8 be purchased if the cost exceeds ten thousand dollars (\$10,000),
9 without advertising for bids and awarding the contract to the lowest
10 responsible bidder.

11 SEC. 95. Section 21501 of the Public Contract Code is amended
12 to read:

13 21501. (a) All contracts for any improvement or unit of work,
14 when the cost according to the estimate of the engineer will exceed
15 fifteen thousand dollars (\$15,000), shall be let to the lowest
16 responsible bidder or bidders as provided in this article. The board
17 shall first determine whether the contract shall be let as a single
18 unit, or divided into severable parts. The board shall advertise for
19 bids by three insertions in a daily newspaper of general circulation
20 or by two insertions in a weekly newspaper of general circulation
21 printed and published in the agency, inviting sealed proposals for
22 the construction or performance of the improvement or work. The
23 call for bids shall state whether the work shall be performed in one
24 unit or divided into parts. The work may be let under a single
25 contract or several contracts, as stated in such call. The board shall
26 require the successful bidders to file with the board good and
27 sufficient bonds to be approved by the board conditioned upon the
28 faithful performance of the contract and upon the payment of their
29 claims for labor and material. The bonds shall comply with Chapter
30 5 (commencing with Section ~~45010~~) of Part 6 of Division 2 (9550)
31 of Title 2 of Part 6 of Division 4 of the Civil Code. The board may
32 reject any and all bids.

33 (b) The board may have work done by force account without
34 advertising for bids or by informal bidding procedures in any of
35 the following situations:

36 (1) All proposals are rejected.

37 (2) No proposals are received.

38 (3) The estimated cost of the work does not exceed fifteen
39 thousand dollars (\$15,000) until January 1, 1989. After January

1 1, 1989, the estimated cost of the work shall not exceed ten
2 thousand dollars (\$10,000).

3 (4) The work consists of channel protection.

4 (5) The work consists of maintenance work, except that informal
5 bidding procedures may be used only where the estimated cost
6 does not exceed twenty-five thousand dollars (\$25,000).

7 (6) The work consists of emergency work. In case of an
8 emergency, if notice for bids to let contracts will not be given, the
9 board shall comply with Chapter 2.5 (commencing with Section
10 22050).

11 (c) The agency may purchase in the open market without
12 advertising for bids, materials and supplies for use in any work,
13 either under contract or by force account, except that, materials
14 and supplies for use in any new construction work or improvement,
15 except work referred to in subdivision (b), may not be purchased,
16 if the cost exceeds fifteen thousand dollars (\$15,000), without
17 advertising for bids and awarding the contract to the lowest
18 responsible bidder.

19 (d) As used in this section, “informal bidding procedures” means
20 that the board shall, at a minimum, award a contract to the lowest
21 responsible bidder after publishing a notice which generally
22 describes the work to be performed and invites written bids in a
23 newspaper of general circulation in the agency once a week for
24 two successive weeks. The board shall obtain a minimum of three
25 written bids.

26 SEC. 96. Section 21511 of the Public Contract Code is amended
27 to read:

28 21511. (a) All contracts for any improvement or unit of work,
29 when the cost according to the estimate of the engineer will exceed
30 fifty thousand dollars (\$50,000), shall be let to the lowest
31 responsible bidder or bidders as provided in this article. The board
32 shall first determine whether the contract shall be let as a single
33 unit or divided into severable parts. The board shall advertise for
34 bids by three insertions in a daily newspaper of general circulation
35 or by two insertions in a weekly newspaper of general circulation
36 printed and published in the agency, inviting sealed proposals for
37 the construction or performance of the improvement or work. The
38 call for bids shall state whether the work shall be performed in one
39 unit or divided into parts. The work may be let under a single
40 contract or several contracts, as stated in the call. The board shall

1 require the successful bidders to file with the board good and
2 sufficient bonds to be approved by the board conditioned upon the
3 faithful performance of the contract and upon the payment of their
4 claims for labor and material. The bonds shall comply with ~~Part~~
5 ~~6 (commencing with Section 41010) of Division 2 Title 2~~
6 *(commencing with Section 9000) of Part 6 of Division 4 of the*
7 *Civil Code*. The board may reject any and all bids.

8 (b) In the event all proposals are rejected or no proposals are
9 received, or the estimated cost of the work does not exceed ten
10 thousand dollars (\$10,000), or the work consists of channel
11 protection, maintenance work, or emergency work, the board may
12 have the work done by force account without advertising for bids.
13 In case of an emergency, if notice for bids to let contracts will not
14 be given, the board shall comply with Chapter 2.5 (commencing
15 with Section 22050).

16 (c) The agency may purchase in the open market without
17 advertising for bids, materials and supplies for use in any work,
18 either under contract or by force account. However, materials and
19 supplies for use in any new construction work or improvement,
20 except work referred to in subdivision (b), may not be purchased,
21 if the cost exceeds fifty thousand dollars (\$50,000), without
22 advertising for bids and awarding the contract to the lowest
23 responsible bidder.

24 SEC. 97. Section 21521 of the Public Contract Code is amended
25 to read:

26 21521. All contracts for any improvement or unit of work,
27 when the cost according to the estimate of the engineer will exceed
28 five thousand dollars (\$5,000) shall be let to the lowest responsible
29 bidder or bidders as provided in this article. The board shall first
30 determine whether the contract shall be let as a single unit, or
31 divided into severable parts. The board shall advertise for bids by
32 three insertions in a daily newspaper of general circulation or by
33 two insertions in a weekly newspaper of general circulation printed
34 and published in the agency, inviting sealed proposals for the
35 construction or performance of the improvement or work. The call
36 for bids shall state whether the work shall be performed in one
37 unit or divided into parts. The work may be let under a single
38 contract or several contracts, as stated in the call. The board shall
39 require the successful bidders to file with the board good and
40 sufficient bonds to be approved by the board conditioned upon the

1 faithful performance of the contract and upon the payment of their
2 claims for labor and material. The bonds shall comply with ~~Part~~
3 ~~6 (commencing with Section 41010) of Division 2 Title 2~~
4 *(commencing with Section 9000) of Part 6 of Division 4 of the*
5 *Civil Code*. The board may reject any bid. In the event all proposals
6 are rejected or no proposals are received, or the estimated cost of
7 the work does not exceed five thousand dollars (\$5,000), or the
8 work consists of channel protection, maintenance work, or
9 emergency work, the board may have the work done by force
10 account without advertising for bids. In case of an emergency, if
11 notice for bids to let contracts will not be given, the board shall
12 comply with Chapter 2.5 (commencing with Section 22050). In
13 that event a majority vote of all board members shall be required.
14 The board may purchase in the open market without advertising
15 for bids, materials and supplies for use in any work, either under
16 contract or by force account.

17 SEC. 98. Section 21531 of the Public Contract Code is amended
18 to read:

19 21531. (a) The Castaic Lake Water Agency shall have power
20 to prescribe methods for the construction of works and for the
21 letting of contracts for the construction of works, structures, or
22 equipment, or the performance or furnishing of labor, materials,
23 or supplies, necessary or convenient for carrying out any of the
24 purposes of this act or for the acquisition or disposal of any real
25 or personal property; provided, that all contracts for any
26 improvement or unit of work, when the cost according to the
27 estimate of the engineer will exceed five thousand dollars (\$5,000),
28 shall be let to the lowest responsible bidder or bidders as provided
29 in this article. The board shall first determine whether the contract
30 shall be let as a single unit or divided into severable parts. The
31 board shall advertise for bids by three insertions in a daily
32 newspaper of general circulation published in the agency or by
33 two insertions in a nondaily newspaper of general circulation
34 published in the agency or, if no newspaper is published in the
35 agency, in any newspaper of general circulation distributed in the
36 agency, inviting sealed proposals for the construction or
37 performance of the improvement or work. The call for bids shall
38 state whether the work shall be performed in one unit or divided
39 into parts. The work may be let under a single contract or several
40 contracts, as stated in the call. The board shall require the

1 successful bidders to file with the board good and sufficient bonds
2 to be approved by the board conditioned upon the faithful
3 performance of the contract and upon the payment of their claims
4 for labor and material. The bonds shall comply with ~~Part 6~~
5 ~~(commencing with Section 41010) of Division 2 Title 2~~
6 ~~(commencing with Section 9000) of Part 6 of Division 4 of the~~
7 ~~Civil Code.~~ The board may reject any bid.

8 (b) In the event all proposals are rejected or no proposals are
9 received, or the estimated cost of the work does not exceed five
10 thousand dollars (\$5,000), or the work consists of channel
11 protection, maintenance work, or emergency work, the board may
12 have the work done by force account without advertising for bids.
13 In case of an emergency, if notice for bids to let contracts will not
14 be given, the board shall comply with Chapter 2.5 (commencing
15 with Section 22050).

16 (c) The agency may purchase in the open market without
17 advertising for bids, materials and supplies for use in any work,
18 either under contract or by force account; provided, however, that
19 materials and supplies for use in any new construction work or
20 improvement, except work referred to in subdivision (b), may not
21 be purchased if the cost exceeds five thousand dollars (\$5,000),
22 without advertising for bids and awarding the contract to the lowest
23 responsible bidder.

24 SEC. 99. Section 21541 of the Public Contract Code is amended
25 to read:

26 21541. (a) The Crestline-Lake Arrowhead Water Agency shall
27 have power to prescribe methods for the construction of works
28 and for the letting of contracts for the construction of works,
29 structures, or equipment, or the performance or furnishing of labor,
30 materials, or supplies, necessary or convenient for carrying out
31 any of the purposes of this act or for the acquisition or disposal of
32 any real or personal property. However, all contracts for the
33 construction of any improvement or unit of work, when the cost,
34 according to the estimate of the engineer, will exceed twenty-five
35 thousand dollars (\$25,000), shall be let to the lowest responsible
36 bidder or bidders as provided in this article. The board shall first
37 determine whether the contract shall be let as a single unit or
38 divided into severable parts. The board shall advertise for bids by
39 three insertions in a daily newspaper of general circulation or by
40 two insertions in a weekly newspaper of general circulation printed

1 and published in the agency, inviting sealed proposals for the
2 construction or performance of the improvement or work. The call
3 for bids shall state whether the work shall be performed in one
4 unit or divided into parts. The work may be let under a single
5 contract or several contracts, as stated in the call.

6 The board shall require the successful bidders to file with the
7 board good and sufficient bonds to be approved by the board
8 conditioned upon the faithful performance of the contract and upon
9 the payment of their claims for labor and material. The bonds shall
10 comply with ~~Part 6 (commencing with Section 41010) of Division~~
11 *2 Title 2 (commencing with Section 9000) of Part 6 of Division 4*
12 *of the Civil Code*. The board may reject any bid.

13 (b) In the event all proposals are rejected or no proposals are
14 received, or the estimated cost of the work does not exceed five
15 thousand dollars (\$5,000), or the work consists of channel
16 protection, maintenance work, or emergency work, the board may
17 have the work done by force account without advertising for bids.
18 In case of an emergency, if notice for bids to let contracts will not
19 be given, the board shall comply with Chapter 2.5 (commencing
20 with Section 22050).

21 (c) The agency may purchase in the open market without
22 advertising for bids, materials and supplies for use in any work,
23 either under contract or by force account. However, materials and
24 supplies for use in any new construction work or improvement,
25 except work referred to in subdivision (b), may not be purchased
26 if the cost exceeds twenty-five thousand dollars (\$25,000), without
27 advertising for bids and awarding the contract to the lowest
28 responsible bidder.

29 SEC. 100. Section 21572 of the Public Contract Code is
30 amended to read:

31 21572. Any improvement or unit of work, except as provided
32 in this article, estimated to cost in excess of five thousand dollars
33 (\$5,000), shall be done by contract and let to the lowest responsible
34 bidder in the manner provided in this article. The board of directors
35 of the agency shall advertise by three insertions in a daily
36 newspaper of general circulation or two insertions in a weekly
37 newspaper of general circulation published in the agency, inviting
38 sealed proposals for the construction of the work before any
39 contract shall be made, and may let by contract separately any part
40 of the work. The board shall require the successful bidder to file

1 with the board good and sufficient bonds to be approved by the
2 board, conditioned upon the faithful performance of the contract,
3 and upon the payment of the claims for labor and material, the
4 bonds to contain the terms and conditions set forth in ~~Part 6~~
5 ~~(commencing with Section 41010) of Division 2 Title 2~~
6 ~~(commencing with Section 9000) of Part 6 of Division 4 of the~~
7 ~~Civil Code, and to be subject to the provisions of that part title.~~
8 The board shall also have the right to reject any and all bids, and
9 readvertise for new bids, or by a two-thirds vote may elect to
10 undertake the work by force account. In the event no proposals
11 are received pursuant to advertisement, or where the estimated
12 cost of such work does not exceed five thousand dollars (\$5,000),
13 the board of directors by unanimous vote of all members present
14 may without advertising for bids have the work done by force
15 account. In case of an emergency, if notice for bids to let contracts
16 will not be given, the board shall comply with Chapter 2.5
17 (commencing with Section 22050). The agency may purchase in
18 the open market without advertisement for bids, materials and
19 supplies for use in any work either under contract or by force
20 account.

21 SEC. 101. Section 21581 of the Public Contract Code is
22 amended to read:

23 21581. (a) Any improvement or unit of work when the cost
24 according to the estimate of the engineer will exceed five thousand
25 dollars (\$5,000), shall be done by contract and shall be let to the
26 lowest responsible bidder or bidders in the manner provided in
27 this article. The board shall first determine whether the contract
28 shall be let as a single unit or shall be divided into severable parts,
29 or both, according to the best interests of the district. The board
30 shall call for bids and advertise the call by three insertions in a
31 daily newspaper of general circulation or by two insertions in a
32 weekly newspaper of general circulation printed in the district
33 inviting sealed proposals for the construction or performance of
34 the improvement or work before any contract is made. The call
35 for bids shall state whether the work is to be performed as a unit
36 or shall be divided into severable specific parts, or both, as stated
37 in the call. The board may let the work by single contract for the
38 whole or it may divide the work into severable parts by separate
39 contracts, as stated in the call, according to the best interests of
40 the district. The board shall require the successful bidder or bidders

1 to file with the board a good and sufficient bond to be approved
2 by the board conditioned upon the payment of their claims for
3 labor and material, the bond to contain the terms and conditions
4 set forth in ~~Part 6 (commencing with Section 41010) of Division~~
5 *2 Title 2 (commencing with Section 9000) of Part 6 of Division 4*
6 *of the Civil Code* and to be subject to the provisions of that ~~part~~
7 *title*. The board shall also have the right to reject any and all bids
8 and readvertise for new bids, or by a two-thirds vote may elect to
9 undertake the work by force account.

10 (b) In the event no proposals are received pursuant to
11 advertisement, or the estimated cost of the work does not exceed
12 five thousand dollars (\$5,000), or the work consists of channel
13 protection, maintenance work, or emergency work, the board of
14 supervisors may, without advertising for bids, have the work done
15 by employees of the district, by day labor, under the direction of
16 the board, by contract, or by any combination of those methods.
17 In case of an emergency, if notice for bids to let contracts will not
18 be given, the board shall comply with Chapter 2.5 (commencing
19 with Section 22050).

20 (c) The district may acquire in the open market without
21 advertising for bids, materials, equipment, and supplies for use in
22 any work or for any other purpose; provided, however, that
23 materials and supplies for use in any new construction work or
24 improvement, except work referred to in subdivision (b), may not
25 be purchased if the cost exceeds five thousand dollars (\$5,000),
26 without advertising for bids and awarding the contract to the lowest
27 responsible bidder.

28 SEC. 102. Section 21591 of the Public Contract Code is
29 amended to read:

30 21591. (a) Any improvement or unit of work, when the cost,
31 according to the estimate of the engineer, will exceed twenty-five
32 thousand dollars (\$25,000), shall be done by contract and shall be
33 let to the lowest responsible bidder or bidders as provided in this
34 article. The board shall first determine whether the contract shall
35 be let as a single unit or divided into severable parts. The board
36 shall advertise for bids by three insertions in a daily newspaper of
37 general circulation or by two insertions in a weekly newspaper of
38 general circulation printed and published in the agency, if there is
39 a newspaper printed and published in the agency, inviting sealed
40 proposals for the construction or performance of the improvement

1 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
3 under a single contract or several contracts, as stated in the call.
4 The board shall require the successful bidders to file with the board
5 good and sufficient bonds to be approved by the board conditioned
6 upon the faithful performance of the contract and upon the payment
7 of their claims for labor and material. The bonds shall comply with
8 ~~Part 6 (commencing with Section 41010) of Division 2 Title 2~~
9 *(commencing with Section 9000) of Part 6 of Division 4 of the*
10 *Civil Code*. The board may reject any and all bids and readvertise,
11 or by a two-thirds vote may elect to undertake work by force
12 account.

13 (b) If no proposals are received, or the estimated cost of the
14 work does not exceed twenty-five thousand dollars (\$25,000), or
15 the work consists of channel protection, maintenance work, or
16 emergency work, the board may have the work done by force
17 account without advertising for bids. In case of an emergency, if
18 notice for bids to let contracts will not be given, the board shall
19 comply with Chapter 2.5 (commencing with Section 22050).

20 (c) The agency may purchase in the open market without
21 advertising for bids, materials and supplies for use in any work,
22 either under contract or by force account; provided, however, that
23 materials and supplies for use in any new construction work or
24 improvement, except work referred to in subdivision (b), may not
25 be purchased if the cost exceeds twenty-five thousand dollars
26 (\$25,000), without advertising for bids and awarding the contract
27 to the lowest responsible bidder.

28 SEC. 103. Section 21601 of the Public Contract Code is
29 amended to read:

30 21601. Any improvement or unit of work, when the cost,
31 according to the estimate of the engineer, will exceed five thousand
32 dollars (\$5,000), shall be done by contract and let to the lowest
33 responsible bidder or bidders as provided in this article. The board
34 shall first determine whether the contract shall be let as a single
35 unit or divided into severable parts. The board shall advertise for
36 bids by three insertions in a daily newspaper of general circulation,
37 or by two insertions in a weekly newspaper of general circulation,
38 printed and published in the agency, inviting sealed proposals for
39 the construction or performance of the improvement or work. The
40 call for bids shall state whether the work shall be performed in one

1 unit or divided into parts. The work may be let under a single
 2 contract or several contracts, as stated in the call. The board shall
 3 require the successful bidders to file with the board good and
 4 sufficient bonds to be approved by the board conditioned upon the
 5 faithful performance of the contract and upon payment of their
 6 claims for labor and material. The bonds shall comply with ~~Part~~
 7 ~~6 (commencing with Section 41010) of Division 2 Title 2~~
 8 *(commencing with Section 9000) of Part 6 of Division 4 of the*
 9 *Civil Code*. The board may reject any and all bids and readvertise,
 10 or, by a two-thirds vote, may elect to undertake the work by force
 11 account. If no proposals are received, the estimated cost of the
 12 work does not exceed five thousand dollars (\$5,000), or the work
 13 consists of channel protection, maintenance work, or emergency
 14 work, the board of supervisors may have the work done by force
 15 account without advertising for bids. In case of an emergency, if
 16 notice for bids to let contracts will not be given, the board shall
 17 comply with Chapter 2.5 (commencing with Section 22050). The
 18 district may purchase in the open market without advertising for
 19 bids, materials, and supplies for use in any work, either under
 20 contract or by force account.

21 SEC. 104. Section 21622 of the Public Contract Code is
 22 amended to read:

23 21622. The board shall require the successful bidder or bidders
 24 to file with the board, good and sufficient bonds, to be approved
 25 by the board conditioned upon the faithful performance of the
 26 contract and upon the payment of their claims for labor and
 27 material in connection therewith. Such contracts shall be subject
 28 to the provisions of ~~Part 6 (commencing with Section 41010) of~~
 29 *Division 2 Title 2 (commencing with Section 9000) of Part 6 of*
 30 *Division 4 of the Civil Code*.

31 SEC. 105. Section 21631 of the Public Contract Code is
 32 amended to read:

33 21631. (a) Any improvement or unit of work when the cost,
 34 according to the estimate of the engineer, will exceed six thousand
 35 five hundred dollars (\$6,500), shall be done by contract and shall
 36 be let to the lowest responsible bidder or bidders in the manner
 37 provided in this article. The board shall first determine whether
 38 the contract shall be let as a single unit, or shall be divided into
 39 severable parts, or both, according to the best interests of the
 40 district. The board shall call for bids and advertise the call by three

1 insertions in a daily newspaper of general circulation or by two
2 insertions in a weekly newspaper of general circulation printed in
3 the district inviting sealed proposals for the construction or
4 performance of the improvement or work before any contract is
5 made. The call for bids shall state whether the work is to be
6 performed as a unit or shall be divided into severable parts, or
7 both, as stated in the call. The board may let the work by single
8 contract or it may divide the work into severable parts by separate
9 contracts, as stated in the call, according to the best interests of
10 the district. The board shall require the successful bidder or bidders
11 to file with the board a good and sufficient bond, to be approved
12 by the board, conditioned upon the payment of their claims for
13 labor and material. The bond shall contain the terms and conditions
14 set forth in ~~Part 6 (commencing with Section 41010) of Division~~
15 ~~2 Title 2 (commencing with Section 9000) of Part 6 of Division 4~~
16 ~~of the Civil Code~~ and be subject to the provisions of that ~~part title~~.
17 The board may reject any and all bids and readvertise for new bids,
18 or by a two-thirds vote may elect to undertake the work by force
19 account.

20 (b) If no proposals are received pursuant to advertisement or
21 the estimated cost of the work does not exceed six thousand five
22 hundred dollars (\$6,500), or the work consists of channel
23 protection, maintenance work, or emergency work, the board of
24 supervisors may, without advertising for bids, have the work done
25 by employees of the district, by day labor, under the direction of
26 the board, by contract, or by a combination of those methods. In
27 case of an emergency, if notice for bids to let contracts will not be
28 given, the board shall comply with Chapter 2.5 (commencing with
29 Section 22050).

30 (c) The district may acquire in the open market, without
31 advertising for bids, materials, equipment, and supplies for use in
32 any work or for any other purpose; provided, however, that
33 materials and supplies for use in any new construction work or
34 improvement, except that work referred to in subdivision (b), may
35 not be purchased if the cost exceeds six thousand five hundred
36 dollars (\$6,500), without advertising for bids and awarding the
37 contract to the lowest responsible bidder.

38 ~~SEC. 106. Part 6 (commencing with Section 41010) is added~~
39 ~~to Division 2 of the Public Contract Code, to read:~~

1 PART 6. PUBLIC WORKS CONTRACT REMEDIES

2
3 CHAPTER 1. DEFINITIONS
4

5 41010. ~~Unless the provision or context otherwise requires, the~~
6 ~~definitions in this chapter govern the construction of this part.~~

7 41020. ~~“Claimant” means a person that has a right under this~~
8 ~~part to give a stop payment notice or assert a claim against a~~
9 ~~payment bond.~~

10 41030. ~~“Design professional” means a person licensed as an~~
11 ~~architect pursuant to Chapter 3 (commencing with Section 5500)~~
12 ~~of Division 3 of the Business and Professions Code, registered as~~
13 ~~a professional engineer pursuant to Chapter 7 (commencing with~~
14 ~~Section 6700) of Division 3 of the Business and Professions Code,~~
15 ~~or licensed as a land surveyor pursuant to Chapter 15 (commencing~~
16 ~~with Section 8700) of Division 3 of the Business and Professions~~
17 ~~Code.~~

18 41040. ~~“Direct contractor” means a contractor that has a direct~~
19 ~~contractual relationship with a public entity. With respect to the~~
20 ~~amount due or to become due to a direct contractor, the term~~
21 ~~includes the direct contractor’s assignee.~~

22 41050. ~~“Funds” means warrant, check, money, or bonds (if~~
23 ~~bonds are to be issued in payment of the public works contract).~~

24 41060. ~~“Labor, service, equipment, or material” includes, but~~
25 ~~is not limited to, labor, skills, services, material, supplies,~~
26 ~~equipment, appliances, power, and surveying, provided pursuant~~
27 ~~to a public works contract.~~

28 41070. ~~(a) “Laborer” means a person who, acting as an~~
29 ~~employee, performs labor, or bestows skill or other necessary~~
30 ~~services, pursuant to a public works contract.~~

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

37 ~~(c) A person or entity described in subdivision (b) that has~~
38 ~~standing under applicable law to maintain a direct legal action, in~~
39 ~~its own name or as an assignee, to collect any portion of~~
40 ~~compensation owed for a laborer for work pursuant to a public~~

1 works contract, shall have standing to enforce any rights or claims
2 of the laborer under this part, to the extent of the compensation
3 agreed to be paid to the person or entity for that work. This
4 subdivision is intended to give effect to the long-standing public
5 policy of this state to protect the entire compensation of a laborer,
6 regardless of the form in which that compensation is to be paid.

7 41080. ~~“Payment bond” means a payment bond required by~~
8 ~~Section 45010.~~

9 41090. ~~“Person” means an individual, corporation, public~~
10 ~~entity, business trust, estate, trust, partnership, limited liability~~
11 ~~company, association, or other entity.~~

12 41100. ~~“Preliminary notice” means the notice provided for in~~
13 ~~Chapter 3 (commencing with Section 43010).~~

14 41110. (a) ~~“Public entity” has the meaning provided in Section~~
15 ~~1100 and includes all of the following:~~

16 (1) ~~The Regents of the University of California.~~

17 (2) ~~An officer authorized to act for a public entity.~~

18 (b) ~~A reference in this part to a public entity means the public~~
19 ~~entity that awarded the public works contract.~~

20 41120. ~~“Public works contract” has the meaning provided in~~
21 ~~Section 1101.~~

22 41130. ~~“Site” means the property on which a public works~~
23 ~~contract is performed or is to be performed.~~

24 41140. ~~“Stop payment notice” means a notice given under~~
25 ~~Chapter 4 (commencing with Section 44110).~~

26 41150. ~~“Subcontractor” means a contractor that does not have~~
27 ~~a direct contractual relationship with a public entity. The term~~
28 ~~includes a contractor who has a contractual relationship with a~~
29 ~~direct contractor or with another subcontractor.~~

30 41160. ~~“Work” means labor, service, equipment, or material~~
31 ~~provided pursuant to a public works contract.~~

32 41170. (a) ~~“Work of improvement” includes, but is not limited~~
33 ~~to:~~

34 (1) ~~Construction, alteration, repair, demolition, or removal, in~~
35 ~~whole or in part, of, or addition to, a building, wharf, bridge, ditch,~~
36 ~~flume, aqueduct, well, tunnel, fence, machinery, railroad, or road.~~

37 (2) ~~Seeding, sodding, or planting of property for landscaping~~
38 ~~purposes.~~

39 (3) ~~Filling, leveling, or grading of property.~~

1 ~~(b) Except as otherwise provided in this part, “work of~~
2 ~~improvement” means the entire structure or scheme of~~
3 ~~improvement as a whole, and includes site improvement.~~

4
5 ~~CHAPTER 2. GENERAL PROVISIONS~~

6
7 ~~Article 1. Miscellaneous Provisions~~

8
9 ~~42005. (a) This part is operative on January 1, 2011.~~

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

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

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

21 ~~42010. (a) This part applies to a public works contract awarded~~
22 ~~by a public entity.~~

23 ~~(b) This part does not apply to a transaction governed by~~
24 ~~Sections 20457 to 20464, inclusive.~~

25 ~~42020. (a) This part does not apply to or change improvement~~
26 ~~security under the Subdivision Map Act, Division 2 (commencing~~
27 ~~with Section 66410) of Title 7 of the Government Code.~~

28 ~~(b) The Bond and Undertaking Law, Chapter 2 (commencing~~
29 ~~with Section 995.010) of Title 14 of Part 2 of the Code of Civil~~
30 ~~Procedure, applies to a bond given under this part, except to the~~
31 ~~extent this part prescribes a different rule or is inconsistent.~~

32 ~~42030. (a) Except as provided in subdivision (b), any of the~~
33 ~~following persons that have not been paid in full may give a stop~~
34 ~~payment notice to the public entity or assert a claim against a~~
35 ~~payment bond:~~

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

40 ~~(2) A laborer.~~

1 ~~(3) A person described in Section 4107.7.~~

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

4 ~~42040. Except as otherwise provided in this part, Part 2~~
5 ~~(commencing with Section 307) of the Code of Civil Procedure~~
6 ~~provides the rules of practice in proceedings under this part.~~

7 ~~42050. For purposes of this part, the term “day” means a~~
8 ~~calendar day.~~

9 ~~42060. An act that may be done by or to a person under this~~
10 ~~part may be done by or to the person’s agent to the extent the act~~
11 ~~is within the scope of the agent’s authority.~~

12 ~~42070. None of the following releases a surety from liability~~
13 ~~on a bond given under this part:~~

14 ~~(a) A change to a contract, plan, specification, or agreement for~~
15 ~~a public works contract or for work provided for a public works~~
16 ~~contract.~~

17 ~~(b) A change to the terms of payment or an extension of the~~
18 ~~time for payment for a public works contract.~~

19 ~~(c) A rescission or attempted rescission of a contract, agreement,~~
20 ~~or bond.~~

21 ~~(d) A condition precedent or subsequent in the bond purporting~~
22 ~~to limit the right of recovery of a claimant otherwise entitled to~~
23 ~~recover pursuant to a contract, agreement, or bond.~~

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

27
28 ~~Article 2. Notice~~
29

30 ~~42110. (a) Notice under this part shall be in writing. Writing~~
31 ~~includes printing and typewriting.~~

32 ~~(b) Written notice under this part may be given by electronic~~
33 ~~communication to the extent authorized under Section 42170.~~

34 ~~42120. (a) Notice under this part shall, in addition to any other~~
35 ~~information required by statute for that type of notice, include all~~
36 ~~of the following information to the extent known to the person~~
37 ~~giving the notice:~~

38 ~~(1) The name and address of the public entity.~~

39 ~~(2) The name and address of the direct contractor.~~

1 ~~(3) A description of the site sufficient for identification,~~
2 ~~including the street address of the site, if any. If a sufficient legal~~
3 ~~description of the site is given, the effectiveness of the notice is~~
4 ~~not affected by the fact that the street address is erroneous or is~~
5 ~~omitted.~~

6 ~~(4) The name, address, and relationship to the parties of the~~
7 ~~person giving the notice.~~

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

9 ~~(A) A general statement of the labor, service, equipment, or~~
10 ~~material provided or to be provided by the claimant.~~

11 ~~(B) The name of the person that contracted for the labor, service,~~
12 ~~equipment, or material provided or to be provided.~~

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

15 ~~(b) Notice is not invalid by reason of any variance from the~~
16 ~~requirements of this section if the notice is sufficient to~~
17 ~~substantially inform the person given notice of the information~~
18 ~~required by this section and other information required in the~~
19 ~~notice.~~

20 ~~42130. (a) A direct contractor or subcontractor that employs~~
21 ~~a laborer and fails to pay the full compensation due the laborer,~~
22 ~~including any employer payments described in Section 1773.1 of~~
23 ~~the Labor Code and implementing regulations, shall not later than~~
24 ~~the date the compensation became delinquent, give the laborer,~~
25 ~~the laborer's bargaining representative, if any, and the public entity,~~
26 ~~notice that includes all of the following information, in addition~~
27 ~~to the information specified in Section 42120:~~

28 ~~(1) The name and address of the laborer, and of any person or~~
29 ~~entity described in subdivision (b) of Section 41070 to which~~
30 ~~employer payments are due.~~

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

33 ~~(3) The amount then past due and owing.~~

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

38 ~~42140. Except as otherwise provided by statute, notice under~~
39 ~~this part shall be given by any of the following means:~~

40 ~~(a) Personal delivery.~~

1 ~~(b) Mail in the manner provided in Section 42160.~~

2 ~~(c) Leaving the notice and mailing a copy in the manner~~
3 ~~provided in Section 415.20 of the Code of Civil Procedure for~~
4 ~~service of summons and complaint in a civil action.~~

5 ~~42150. Except as otherwise provided under this part, notice~~
6 ~~under this part shall be given to the person to be notified at the~~
7 ~~following addresses:~~

8 ~~(a) If the person to be notified is the public entity, at the office~~
9 ~~of the public entity or at another address specified by the public~~
10 ~~entity in the contract or elsewhere for service of notices, papers,~~
11 ~~and other documents.~~

12 ~~(b) If the person to be notified is a direct contractor or a~~
13 ~~subcontractor, at the contractor's residence or place of business,~~
14 ~~or at the contractor's address shown on the building permit, on the~~
15 ~~contractor's contract, or on the records of the Contractors' State~~
16 ~~License Board.~~

17 ~~(c) If the person to be notified is a claimant, at the claimant's~~
18 ~~residence or place of business, or at the claimant's address shown~~
19 ~~on the claimant's contract, preliminary notice, stop payment notice,~~
20 ~~or claim against a payment bond, or on the records of the~~
21 ~~Contractors' State License Board.~~

22 ~~(d) If the person to be notified is the surety on a bond, at the~~
23 ~~surety's residence or place of business, or at the surety's address~~
24 ~~shown on the bond for service of notices, papers, and other~~
25 ~~documents, or on the records of the Department of Insurance.~~

26 ~~42160. Notice given by mail under this part shall be given by~~
27 ~~registered or certified mail, express mail, or overnight delivery by~~
28 ~~an express service carrier.~~

29 ~~42170. (a) As used in this section, "electronic record" has the~~
30 ~~meaning provided in Section 1633.2 of the Civil Code.~~

31 ~~(b) A notice under this part may be given to a person in the form~~
32 ~~of an electronic record if the person has agreed in writing to receive~~
33 ~~the notice in the form of an electronic record.~~

34 ~~(c) If a person that has agreed to receive a notice in the form of~~
35 ~~an electronic record is a consumer within the meaning of Section~~
36 ~~7006 of Title 15 of the United States Code, the person's agreement~~
37 ~~shall satisfy the requirements of Section 7001 of Title 15 of the~~
38 ~~United States Code relating to consumer consent to an electronic~~
39 ~~record.~~

1 ~~42180. Notice under this part is complete and deemed to have~~
2 ~~been given at the following times:~~

- 3 ~~(a) If given by personal delivery, when delivered.~~
4 ~~(b) If given by mail, when deposited in the mail or with an~~
5 ~~express service carrier in the manner provided in Section 1013 of~~
6 ~~the Code of Civil Procedure.~~
7 ~~(c) If given by leaving the notice and mailing a copy in the~~
8 ~~manner provided in Section 415.20 of the Code of Civil Procedure~~
9 ~~for service of summons in a civil action, five days after mailing.~~
10 ~~(d) If given in the form of an electronic record, when the~~
11 ~~electronic record is transmitted.~~

12 ~~42190. (a) Proof that notice was given to a person in the~~
13 ~~manner required by this part shall be made by a proof of notice~~
14 ~~declaration that states all of the following:~~

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

21 ~~(b) If the notice is given by mail, the declaration shall be~~
22 ~~accompanied by one of the following:~~

- 23 ~~(1) Documentation provided by the United States Postal Service~~
24 ~~showing that payment was made to mail the notice using registered~~
25 ~~or certified mail, or express mail.~~
26 ~~(2) Documentation provided by an express service carrier~~
27 ~~showing that payment was made to send the notice using an~~
28 ~~overnight delivery service.~~
29 ~~(3) A return receipt, delivery confirmation, signature~~
30 ~~confirmation, or other proof of delivery or attempted delivery~~
31 ~~provided by the United States Postal Service, or a photocopy of~~
32 ~~the record of delivery and receipt maintained by the United States~~
33 ~~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~~
36 ~~express service carrier showing delivery or attempted delivery of~~
37 ~~the notice.~~

38 ~~(e) If notice is given in the form of an electronic record, the~~
39 ~~declaration shall also state that the document was served~~
40 ~~electronically and that no notice of nontransmission was received,~~

1 and shall be accompanied by the recipient's written agreement to
2 receive the notice in the form of an electronic record.

3
4 Article 3. Completion

5
6 ~~42210. For the purpose of this part, completion of a work of~~
7 ~~improvement occurs at the earliest of the following times:~~

8 ~~(a) Acceptance of the work of improvement by the public entity.~~

9 ~~(b) Cessation of labor on the work of improvement for a~~
10 ~~continuous period of 60 days. This subdivision does not apply to~~
11 ~~a contract awarded under the State Contract Act, Part 2~~
12 ~~(commencing with Section 10100).~~

13 ~~42220. (a) A public entity may record a notice of cessation if~~
14 ~~there has been a continuous cessation of labor for at least 30 days~~
15 ~~prior to the recordation that continues through the date of the~~
16 ~~recordation.~~

17 ~~(b) The notice shall be signed and verified by the public entity~~
18 ~~or its agent.~~

19 ~~(c) The notice shall comply with the requirements of Article 2~~
20 ~~(commencing with Section 42110), and shall also include all of~~
21 ~~the following information:~~

22 ~~(1) The date on or about which the labor ceased.~~

23 ~~(2) A statement that the cessation has continued until the~~
24 ~~recordation of the notice.~~

25 ~~42230. (a) A public entity may record a notice of completion~~
26 ~~on or within 15 days after the date of completion of a work of~~
27 ~~improvement.~~

28 ~~(b) The notice shall be signed and verified by the public entity~~
29 ~~or its agent.~~

30 ~~(c) The notice shall comply with the requirements of Article 2~~
31 ~~(commencing with Section 42110), and shall also include all of~~
32 ~~the following information:~~

33 ~~(1) The date of completion. An erroneous statement of the date~~
34 ~~of completion does not affect the effectiveness of the notice if the~~
35 ~~true date of completion is 15 days or less before the date of~~
36 ~~recordation of the notice.~~

37 ~~(2) If the notice is given only of completion of a contract with~~
38 ~~the public entity for a portion of the work of improvement as~~
39 ~~provided in Section 42240, the name of the direct contractor under~~

1 that contract and a general statement of the work provided pursuant
2 to the contract.

3 42240. (a) If a work of improvement is made pursuant to two
4 or more contracts with a public entity, each covering a portion of
5 the work of improvement, the public entity may record a notice
6 of completion of a contract with the public entity for a portion of
7 the work of improvement.

8 (b) The recordation of a notice of completion of a contract under
9 this section governs only work provided pursuant to that contract.

10 42250. (a) A notice of cessation or completion is recorded
11 when filed for record in the office of the county recorder of the
12 county in which the public works contract or part of it is performed.
13 A notice in otherwise proper form containing the information
14 required by Section 42220 or 42230 shall be accepted by the
15 recorder for recording and is deemed duly recorded without
16 acknowledgment.

17 (b) The county recorder shall number, index, and preserve a
18 notice of cessation or completion presented for filing under this
19 part, and shall number, index, and transcribe into the official
20 records, in the same manner as a conveyance of real property, a
21 notice of completion or cessation recorded under this part.

22 (c) The county recorder shall charge and collect the fees
23 provided in Article 5 (commencing with Section 27460) of Chapter
24 6 of Part 3 of Division 2 of Title 3 of the Government Code for
25 performing duties under this section.

26
27 Article 4. Waiver and Release

28
29 42310. (a) A public entity or direct contractor may not, by
30 contract or otherwise, waive, affect, or impair a claimant's rights
31 under this part, whether with or without notice, except with the
32 claimant's written consent, and any term of a contract that purports
33 to do so is void and unenforceable.

34 (b) A claimant's written consent is void and unenforceable
35 unless and until the claimant executes and delivers a waiver and
36 release under this article.

37 42320. A claimant's waiver and release does not release the
38 public entity or surety on a payment bond from a claim unless both
39 of the following conditions are satisfied:

1 ~~(a) The waiver and release is in substantially the form provided~~
2 ~~in this article and is signed by the claimant.~~

3 ~~(b) If the release is a conditional release, there is evidence of~~
4 ~~payment to the claimant. Evidence of payment may be either of~~
5 ~~the following:~~

6 ~~(1) The claimant's endorsement on a single or joint payee check~~
7 ~~that has been paid by the financial institution on which it was~~
8 ~~drawn:~~

9 ~~(2) Written acknowledgment of payment by the claimant.~~

10 ~~42330. An oral or written statement purporting to waive,~~
11 ~~release, impair, or otherwise adversely affect a claim is void and~~
12 ~~unenforceable and does not create an estoppel or impairment of~~
13 ~~the claim unless either of the following conditions is satisfied:~~

14 ~~(a) The statement is pursuant to a waiver and release under this~~
15 ~~article.~~

16 ~~(b) The claimant has actually received payment in full for the~~
17 ~~claim.~~

18 ~~42340. (a) A claimant may reduce the amount of, or release~~
19 ~~in its entirety, a stop payment notice. The reduction or release shall~~
20 ~~comply with Article 2 (commencing with Section 42100). The~~
21 ~~reduction or release may be given in a form other than a waiver~~
22 ~~and release form provided in this article.~~

23 ~~(b) The writing shall identify whether it is a reduction of the~~
24 ~~amount of the stop payment notice, or a release of the notice in its~~
25 ~~entirety. If the writing is a reduction, it shall state the amount of~~
26 ~~the reduction, and the amount to remain withheld after the~~
27 ~~reduction.~~

28 ~~(c) A claimant's reduction or release of a stop payment notice~~
29 ~~has the following effect:~~

30 ~~(1) The reduction or release releases the claimant's right to~~
31 ~~enforce payment of the claim stated in the notice to the extent of~~
32 ~~the reduction or release.~~

33 ~~(2) The reduction or release releases the public entity from the~~
34 ~~obligation to withhold funds pursuant to the notice to the extent~~
35 ~~of the reduction or release.~~

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

38 ~~(4) The reduction or release does not release any right of the~~
39 ~~claimant other than the right to enforce payment of the claim stated~~
40 ~~in the stop payment notice to the extent of the reduction or release.~~

1 ~~42350. This article does not affect the enforceability of either~~
2 ~~an accord and satisfaction concerning a good faith dispute or an~~
3 ~~agreement made in settlement of an action pending in court if the~~
4 ~~accord and satisfaction or agreement and settlement make specific~~
5 ~~reference to the claim.~~

6 ~~42360. If a claimant is required to execute a waiver and release~~
7 ~~in exchange for, or in order to induce payment of, a progress~~
8 ~~payment and the claimant is not, in fact, paid in exchange for the~~
9 ~~waiver and release or a single payee check or joint payee check is~~
10 ~~given in exchange for the waiver and release, the waiver and release~~
11 ~~shall be in substantially the following form:~~

12
13 Conditional Waiver and Release on Progress Payment

14
15 NOTICE: This document waives certain rights of the claimant effective on
16 receipt of payment. A person should not rely on this document unless satisfied
17 that the claimant has received payment.

18
19 Identifying Information

20 Name of Claimant: _____

21 Name of Customer: _____

22 Job Location: _____

23 Public Entity: _____

24 Through Date: _____

25
26 Conditional Waiver and Release

27 This document waives and releases stop payment notice and payment bond
28 rights the claimant has for labor and service provided, and equipment and
29 material delivered, to the customer on this job through the Through Date of
30 this document. This document is effective only on the claimant's receipt of
31 payment from the financial institution on which the following check is drawn:

32 Maker of Check: _____

33 Amount of Check: \$ _____

34 Check Payable to: _____

35
36 Exceptions

37 This document does not affect any of the following:

38 (1) Retentions.

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

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

3 Date(s) of waiver and release: _____

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

5 (4) Contract rights, including (A) a right based on rescission, abandonment,
6 or breach of contract, and (B) the right to recover compensation for work not
7 compensated by the payment.

8

9 Signature

10 Claimant's Signature: _____

11 Claimant's Title: _____

12 Date of Signature: _____

13

14 42370. If the claimant is required to execute a waiver and
15 release in exchange for, or in order to induce payment of, a progress
16 payment and the claimant asserts in the waiver it has, in fact, been
17 paid the progress payment, the waiver and release shall be in
18 substantially the following form, with the text of the "Notice to
19 Claimant" in at least as large a type as the largest type otherwise
20 in the form:

21

22 Unconditional Waiver and Release on Progress Payment

23

24 NOTICE TO CLAIMANT: This document waives and releases rights
25 unconditionally and states that you have been paid for giving up those rights.
26 This document is enforceable against you if you sign it, even if you have not
27 been paid. If you have not been paid, use a conditional waiver and release
28 form.

29

30 Identifying Information

31 Name of Claimant: _____

32 Name of Customer: _____

33 Job Location: _____

34 Public Entity: _____

35 Through Date: _____

36

37 Unconditional Waiver and Release

38 This document waives and releases stop payment notice and payment bond
39 rights the claimant has for labor and service provided, and equipment and

1 material delivered, to the customer on this job through the Through Date of
2 this document:

3 The claimant has received the following progress payment:

4 \$ _____
5

6 **Exceptions**

7 This document does not affect any of the following:

8 (1) Retentions:

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

10 (3) Contract rights, including (A) a right based on rescission, abandonment,
11 or breach of contract, and (B) the right to recover compensation for work not
12 compensated by the payment.

13

14 **Signature**

15 Claimant's Signature: _____

16 Claimant's Title: _____

17 Date of Signature: _____
18

19 ~~42380. If the claimant is required to execute a waiver and~~
20 ~~release in exchange for, or in order to induce payment of, a final~~
21 ~~payment and the claimant is not, in fact, paid in exchange for the~~
22 ~~waiver and release or a single payee check or joint payee check is~~
23 ~~given in exchange for the waiver and release, the waiver and release~~
24 ~~shall be in substantially the following form:~~
25

26 **Conditional Waiver and Release on Final Payment**

27

28 ~~NOTICE: This document waives certain rights of the claimant effective on~~
29 ~~receipt of payment. A person should not rely on this document unless satisfied~~
30 ~~that the claimant has received payment.~~
31

32 **Identifying Information**

33 Name of Claimant: _____

34 Name of Customer: _____

35 Job Location: _____

36 Public Entity: _____
37

38 **Conditional Waiver and Release**

39 This document waives and releases stop payment notice and payment bond
40 rights the claimant has for all labor and service provided, and equipment and

1 material delivered, to the customer on this job. This document is effective only
2 on the claimant's receipt of payment from the financial institution on which
3 the following check is drawn:

4 Maker of Check: _____
5 Amount of Check: \$ _____
6 Check Payable to: _____

7
8 **Exceptions**

9 This document does not affect any of the following:

10 (1) Disputed claims for extras in the amount of: \$ _____

11 (2) The following progress payments for which the claimant has previously
12 given a conditional waiver and release but has not received payment:

13 Date(s) of waiver and release: _____

14 Amount(s) of unpaid progress payment(s): _____

15
16 **Signature**

17 Claimant's Signature: _____

18 Claimant's Title: _____

19 Date of Signature: _____

20
21 ~~42390. If the claimant is required to execute a waiver and~~
22 ~~release in exchange for, or in order to induce payment of, a final~~
23 ~~payment and the claimant asserts in the waiver that he or she has,~~
24 ~~in fact, been paid the final payment, the waiver and release shall~~
25 ~~be in substantially the following form, with the text of the "Notice~~
26 ~~to Claimant" in at least as large a type as the largest type otherwise~~
27 ~~in the form:~~

28
29 **Unconditional Waiver and Release on Final Payment**

30
31 **NOTICE TO CLAIMANT:** This document waives and releases rights
32 unconditionally and states that you have been paid for giving up those rights.
33 This document is enforceable against you if you sign it, even if you have not
34 been paid. If you have not been paid, use a conditional waiver and release
35 form.

36
37 **Identifying Information**

38 Name of Claimant: _____

39 Name of Customer: _____

40 Job Location: _____

1 Public Entity: _____

2

3 Unconditional Waiver and Release

4 This document waives and releases stop payment notice and payment bond
5 rights the claimant has for all labor and service provided, and equipment and
6 material delivered, to the customer on this job. The claimant has been paid in
7 full.

8

9 Exception

10 This document does not affect the following:

11 Disputed claims for extras in the amount of: \$ _____

12

13 Signature

14 Claimant's Signature: _____

15 Claimant's Title: _____

16 Date of Signature: _____

17

18 CHAPTER 3. PRELIMINARY NOTICE

19

20 ~~43010. (a) Except as otherwise provided by statute, before~~
21 ~~giving a stop payment notice or asserting a claim against a payment~~
22 ~~bond, a claimant shall give preliminary notice to the following~~
23 ~~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~~
29 ~~direct contractor is not required to give preliminary notice.~~

30 ~~(c) Compliance with this section is a necessary prerequisite to~~
31 ~~the validity of a stop payment notice under this part.~~

32 ~~(d) Compliance with this section or with Section 45070 is a~~
33 ~~necessary prerequisite to the validity of a claim against a payment~~
34 ~~bond under this part.~~

35 ~~43040. (a) Except as provided in subdivision (b), preliminary~~
36 ~~notice shall be given in compliance with the requirements of Article~~
37 ~~2 (commencing with Section 42110) of Chapter 2.~~

38 ~~(b) If the public works contract is for work constructed by the~~
39 ~~Department of Public Works or the Department of General Services~~

1 of the state, preliminary notice to the public entity shall be given
2 to the disbursing officer of the department constructing the work.

3 43050. A claimant may give a stop payment notice or assert a
4 claim against a payment bond only for work provided within 20
5 days before giving preliminary notice and at any time thereafter.

6 43060. If the contract of any subcontractor on a particular work
7 of improvement provides for payment to the subcontractor of more
8 than four hundred dollars (\$400), the failure of that subcontractor,
9 licensed under the Contractors' State License Law (Chapter 9
10 (commencing with Section 7000) of Division 3 of the Business
11 and Professions Code), to give the notice provided for in this
12 chapter, constitutes grounds for disciplinary action under the
13 Contractors' State License Law.

14
15 CHAPTER 4. STOP PAYMENT NOTICE

16
17 Article 1. General Provisions

18
19 44110. The rights of all persons furnishing work pursuant to
20 a public works contract, with respect to any fund for payment of
21 construction costs, are governed exclusively by this chapter, and
22 no person may assert any legal or equitable right with respect to
23 that fund, other than a right created by direct written contract
24 between the person and the person holding the fund, except
25 pursuant to the provisions of this chapter.

26 44120. (a) A stop payment notice shall comply with the
27 requirements of Section 42120, and shall be signed and verified
28 by the claimant.

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

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

35 44130. (a) Except as provided in subdivision (b), a stop
36 payment notice shall be given in compliance with the requirements
37 of Article 2 (commencing with Section 42110) of Chapter 2.

38 (b) A stop payment notice shall be given to the public entity by
39 giving the notice to the following person:

1 (1) ~~In the case of a public works contract of the state, the director~~
2 ~~of the department that awarded the contract.~~

3 (2) ~~In the case of a public works contract of a public entity other~~
4 ~~than the state, the office of the controller, auditor, or other public~~
5 ~~disbursing officer whose duty it is to make payment pursuant to~~
6 ~~the contract, or the commissioners, managers, trustees, officers,~~
7 ~~board of supervisors, board of trustees, common council, or other~~
8 ~~body by which the contract was awarded.~~

9 ~~44140. A stop payment notice is not effective unless given~~
10 ~~before the earlier of the following times:~~

11 ~~(a) Ninety days after cessation or completion.~~

12 ~~(b) Thirty days after recordation of a notice of cessation or~~
13 ~~completion.~~

14 ~~44150. (a) The public entity shall, on receipt of a stop payment~~
15 ~~notice, withhold from the direct contractor sufficient funds due or~~
16 ~~to become due to the direct contractor to pay the claim stated in~~
17 ~~the stop payment notice and to provide for the public entity's~~
18 ~~reasonable cost of any litigation pursuant to the stop payment~~
19 ~~notice.~~

20 ~~(b) The public entity may satisfy its duty under this section by~~
21 ~~refusing to release funds held in escrow under Section 10263 or~~
22 ~~22300.~~

23 ~~44160. (a) This chapter does not prohibit payment of funds to~~
24 ~~a direct contractor if a stop payment notice is not received before~~
25 ~~the disbursing officer actually surrenders possession of the funds.~~

26 ~~(b) This chapter does not prohibit payment of any amount due~~
27 ~~to a direct contractor in excess of the amount necessary to pay the~~
28 ~~total amount of all claims stated in stop payment notices received~~
29 ~~by the public entity at the time of payment plus any interest and~~
30 ~~court costs that might reasonably be anticipated in connection with~~
31 ~~the claims.~~

32 ~~44170. (a) Not later than 10 days after each of the following~~
33 ~~events, the public entity shall give notice to a claimant that has~~
34 ~~given a stop payment notice of the time within which an action to~~
35 ~~enforce payment of the claim stated in the stop payment notice~~
36 ~~must be commenced:~~

37 ~~(1) Completion of a public works contract, whether by~~
38 ~~acceptance or cessation.~~

39 ~~(2) Recordation of a notice of cessation or completion.~~

1 ~~(b) The notice shall comply with the requirements of Article 2~~
2 ~~(commencing with Section 42110) of Chapter 2.~~

3 ~~(c) A public entity need not give notice under this section unless~~
4 ~~the claimant has paid the public entity ten dollars (\$10) at the time~~
5 ~~of giving the stop payment notice.~~

6 ~~44180. (a) A public entity may, in its discretion, permit the~~
7 ~~direct contractor to give the public entity a release bond. The bond~~
8 ~~shall be executed by an admitted surety insurer, in an amount equal~~
9 ~~to 125 percent of the claim stated in the stop payment notice,~~
10 ~~conditioned for the payment of any amount the claimant recovers~~
11 ~~in an action on the claim, together with court costs if the claimant~~
12 ~~prevails.~~

13 ~~(b) On receipt of a release bond, the public entity shall not~~
14 ~~withhold funds from the direct contractor pursuant to the stop~~
15 ~~payment notice.~~

16 ~~(c) The surety on a release bond is jointly and severally liable~~
17 ~~to the claimant with the sureties on any payment bond given under~~
18 ~~Chapter 5 (commencing with Section 45010).~~

19
20 ~~Article 2. Summary Proceeding for Release of Funds~~
21

22 ~~44210. A direct contractor may obtain release of funds withheld~~
23 ~~pursuant to a stop payment notice under the summary proceeding~~
24 ~~provided in this article on any of the following grounds:~~

25 ~~(a) The claim on which the notice is based is not a type for~~
26 ~~which a stop payment notice is authorized under this chapter.~~

27 ~~(b) The claimant is not a person authorized under Section 42030~~
28 ~~to give a stop payment notice.~~

29 ~~(c) The amount of the claim stated in the stop payment notice~~
30 ~~is excessive.~~

31 ~~(d) There is no basis for the claim stated in the stop payment~~
32 ~~notice.~~

33 ~~44220. The direct contractor shall serve on the public entity~~
34 ~~an affidavit, together with a copy of the affidavit, in compliance~~
35 ~~with the requirements of Article 2 (commencing with Section~~
36 ~~42110) of Chapter 2, that includes all of the following information:~~

37 ~~(a) An allegation of the grounds for release of the funds and a~~
38 ~~statement of the facts supporting the allegation.~~

1 ~~(b) A demand for the release of all or the portion of the funds~~
2 ~~that are alleged to be withheld improperly or in an excessive~~
3 ~~amount.~~

4 ~~(c) A statement of the address of the contractor within the state~~
5 ~~for the purpose of permitting service by mail on the contractor of~~
6 ~~any notice or document.~~

7 ~~44230. The public entity shall serve on the claimant a copy of~~
8 ~~the direct contractor's affidavit, together with a notice stating that~~
9 ~~the public entity will release the funds withheld, or the portion of~~
10 ~~the funds demanded, unless the claimant serves on the public entity~~
11 ~~a counteraffidavit on or before the time stated in the notice. The~~
12 ~~time stated in the notice shall be not less than 10 days nor more~~
13 ~~than 20 days after service on the claimant of the copy of the~~
14 ~~affidavit. The notice shall comply with the requirements of Article~~
15 ~~2 (commencing with Section 42110) of Chapter 2.~~

16 ~~44240. (a) A claimant that contests the direct contractor's~~
17 ~~affidavit shall serve on the public entity a counteraffidavit alleging~~
18 ~~the details of the claim and describing the specific basis on which~~
19 ~~the claimant contests or rebuts the allegations of the contractor's~~
20 ~~affidavit. The counteraffidavit shall be served within the time stated~~
21 ~~in the public entity's notice, together with proof of service of a~~
22 ~~copy of the counteraffidavit on the direct contractor. The service~~
23 ~~of the counteraffidavit on the public entity and the copy of the~~
24 ~~affidavit on the direct contractor shall comply with the~~
25 ~~requirements of Article 2 (commencing with Section 42110).~~

26 ~~(b) If no counteraffidavit with proof of service is served on the~~
27 ~~public entity within the time stated in the public entity's notice,~~
28 ~~the public entity shall immediately release the funds, or the portion~~
29 ~~of the funds demanded by the affidavit, without further notice to~~
30 ~~the claimant, and the public entity is not liable in any manner for~~
31 ~~their release.~~

32 ~~(c) The public entity is not responsible for the validity of an~~
33 ~~affidavit or counteraffidavit under this article.~~

34 ~~44250. (a) If a counteraffidavit, together with proof of service,~~
35 ~~is served under Section 44240, either the direct contractor or the~~
36 ~~claimant may commence an action for a declaration of the rights~~
37 ~~of the parties.~~

38 ~~(b) After commencement of the action, either the direct~~
39 ~~contractor or the claimant may move the court for a determination~~
40 ~~of rights under the affidavit and counteraffidavit. The party making~~

1 the motion shall give not less than five days' notice of the hearing
2 to the public entity and to the other party.

3 (e) ~~The notice of hearing shall comply with the requirements~~
4 ~~of Article 2 (commencing with Section 42110). Notwithstanding~~
5 ~~Section 42180, when notice of the hearing is made by mail, the~~
6 ~~notice is complete on the fifth day following deposit of the notice~~
7 ~~in the mail.~~

8 (d) ~~The court shall hear the motion within 15 days after the date~~
9 ~~of the motion, unless the court continues the hearing for good~~
10 ~~cause.~~

11 ~~44260. (a) The affidavit and counteraffidavit shall be filed~~
12 ~~with the court by the public entity and shall constitute the~~
13 ~~pleadings, subject to the power of the court to permit an amendment~~
14 ~~in the interest of justice. The affidavit of the direct contractor shall~~
15 ~~be deemed controverted by the counteraffidavit of the claimant,~~
16 ~~and both shall be received in evidence.~~

17 (b) ~~At the hearing, the direct contractor has the burden of proof.~~

18 ~~44270. (a) No findings are required in a summary proceeding~~
19 ~~under this article.~~

20 (b) ~~If at the hearing no evidence other than the affidavit and~~
21 ~~counteraffidavit is offered, the court may, if satisfied that sufficient~~
22 ~~facts are shown, make a determination on the basis of the affidavit~~
23 ~~and counteraffidavit. If the court is not satisfied that sufficient~~
24 ~~facts are shown, the court shall order the hearing continued for~~
25 ~~production of other evidence, oral or documentary, or the filing~~
26 ~~of other affidavits and counteraffidavits.~~

27 (e) ~~At the conclusion of the hearing, the court shall make an~~
28 ~~order determining whether the demand for release is allowed. The~~
29 ~~court's order is determinative of the right of the claimant to have~~
30 ~~funds further withheld by the public entity.~~

31 (d) ~~The direct contractor shall serve a copy of the court's order~~
32 ~~on the public entity in compliance with the requirements of Article~~
33 ~~2 (commencing with Section 42110).~~

34 ~~44280. A determination in a summary proceeding under this~~
35 ~~article is not res judicata with respect to a right of action by the~~
36 ~~claimant against either the principal or surety on a payment bond~~
37 ~~or with respect to a right of action against a party personally liable~~
38 ~~to the claimant.~~

Article 3. ~~Distribution of Funds Withheld~~

1
2
3 44310. ~~If funds withheld pursuant to a stop payment notice are~~
4 ~~insufficient to pay in full the claims of all persons who have given~~
5 ~~a stop payment notice, the funds shall be distributed among the~~
6 ~~claimants in the ratio that the claim of each bears to the aggregate~~
7 ~~of all claims for which a stop payment notice is given, without~~
8 ~~regard to the order in which the notices were given or enforcement~~
9 ~~actions were commenced.~~

10 44320. ~~Nothing in this chapter impairs the right of a claimant~~
11 ~~to recover from the direct contractor or the contractor’s sureties~~
12 ~~in an action on a payment bond under Chapter 5 (commencing~~
13 ~~with Section 45010) any deficit that remains unpaid after the~~
14 ~~distribution under Section 44310.~~

15 44330. ~~A person that willfully gives a false stop payment notice~~
16 ~~to the public entity or that willfully includes in the notice work~~
17 ~~not provided for the public works contract for which the stop~~
18 ~~payment notice is given forfeits all right to participate in the~~
19 ~~distribution under Section 44310.~~

20 44340. ~~(a) A stop payment notice takes priority over an~~
21 ~~assignment by a direct contractor of any amount due or to become~~
22 ~~due pursuant to a public works contract, including contract changes,~~
23 ~~whether made before or after the giving of a stop payment notice,~~
24 ~~and the assignment has no effect on the rights of the claimant.~~

25 ~~(b) Any garnishment of an amount due or to become due~~
26 ~~pursuant to a public works contract by a creditor of a direct~~
27 ~~contractor under Article 8 (commencing with Section 708.710) of~~
28 ~~Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil~~
29 ~~Procedure and any statutory lien on that amount is subordinate to~~
30 ~~the rights of a claimant.~~

31
32 Article 4. ~~Enforcement of Payment of Claim Stated in Stop~~
33 ~~Payment Notice~~
34

35 44410. ~~(a) A claimant may not enforce payment of the claim~~
36 ~~stated in a stop payment notice unless the claimant has complied~~
37 ~~with all of the following conditions:~~

38 ~~(1) The claimant has given preliminary notice to the extent~~
39 ~~required by Chapter 3 (commencing with Section 43010).~~

1 ~~(2) The claimant has given the stop payment notice within the~~
2 ~~time provided in Section 44140.~~

3 ~~(b) The claim filing procedures of Part 3 (commencing with~~
4 ~~Section 900) of Division 3.6 of Title 1 of the Government Code~~
5 ~~do not apply to an action under this article.~~

6 ~~44420. (a) The claimant shall commence an action against the~~
7 ~~public entity and the direct contractor to enforce payment of the~~
8 ~~claim stated in a stop payment notice not earlier than 10 days after~~
9 ~~the date the claimant gives the stop payment notice.~~

10 ~~(b) The claimant shall commence an action against the public~~
11 ~~entity and the direct contractor to enforce payment of the claim~~
12 ~~stated in a stop payment notice not later than 90 days after~~
13 ~~expiration of the time within which a stop payment notice must~~
14 ~~be given.~~

15 ~~(c) An action under this section may not be brought to trial or~~
16 ~~judgment entered before expiration of the time provided in~~
17 ~~subdivision (b).~~

18 ~~(d) If a claimant does not commence an action to enforce~~
19 ~~payment of the claim stated in a stop payment notice within the~~
20 ~~time provided in subdivision (b), the notice ceases to be effective~~
21 ~~and the public entity shall release funds withheld pursuant to the~~
22 ~~notice.~~

23 ~~44430. Within five days after commencement of an action to~~
24 ~~enforce payment of the claim stated in a stop payment notice, the~~
25 ~~claimant shall give notice of commencement of the action to the~~
26 ~~public entity in the same manner that a stop payment notice is~~
27 ~~given.~~

28 ~~44440. If more than one claimant has given a stop payment~~
29 ~~notice:~~

30 ~~(a) Any number of claimants may join in the same enforcement~~
31 ~~action.~~

32 ~~(b) If claimants commence separate actions, the court that first~~
33 ~~acquires jurisdiction may order the actions consolidated.~~

34 ~~(c) On request of the public entity, the court shall require that~~
35 ~~all claimants be impleaded in one action and shall adjudicate the~~
36 ~~rights of all parties in the action.~~

37 ~~44450. Notwithstanding Section 583.420 of the Code of Civil~~
38 ~~Procedure, the court may dismiss an action to enforce payment of~~
39 ~~the claim stated in a stop payment notice that is not brought to trial~~
40 ~~within two years after commencement of the action.~~

1 44460. ~~A stop payment notice ceases to be effective, and the~~
2 ~~public entity shall release funds withheld, in either of the following~~
3 ~~circumstances:~~

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

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

9

10 CHAPTER 5. PAYMENT BOND

11

12 45010. (a) ~~A direct contractor that is awarded a public works~~
13 ~~contract involving an expenditure in excess of twenty-five thousand~~
14 ~~dollars (\$25,000) shall, before commencement of work, give a~~
15 ~~payment bond to and approved by the public entity.~~

16 (b) ~~A public entity shall state in its call for bids that a payment~~
17 ~~bond is required for a public works contract involving an~~
18 ~~expenditure in excess of twenty-five thousand dollars (\$25,000).~~

19 (c) ~~A payment bond given and approved under this section will~~
20 ~~permit performance of and provide coverage for work pursuant to~~
21 ~~a public works contract that supplements the contract for which~~
22 ~~the bond is given, if the requirement of a new bond is waived by~~
23 ~~the public entity.~~

24 (d) ~~For the purpose of this section, a design professional is not~~
25 ~~deemed a direct contractor and is not required to give a payment~~
26 ~~bond.~~

27 (e) ~~This section does not apply to a public works contract with~~
28 ~~a “state entity” as defined in subdivision (d) of Section 7103.~~

29 45020. ~~If a payment bond is not given and approved as required~~
30 ~~by Section 45010:~~

31 (a) ~~The public entity awarding the public works contract shall~~
32 ~~not audit, allow, or pay a claim of the direct contractor pursuant~~
33 ~~to the contract.~~

34 (b) ~~A claimant shall receive payment of a claim pursuant to a~~
35 ~~stop payment notice in the manner provided by Chapter 4~~
36 ~~(commencing with Section 44110).~~

37 45030. (a) ~~A payment bond shall be in an amount not less than~~
38 ~~100 percent of the total amount payable pursuant to the public~~
39 ~~works contract. The bond shall be in the form of a bond and not a~~

1 ~~deposit in lieu of a bond. The bond shall be executed by an~~
2 ~~admitted surety insurer.~~

3 ~~(b) The payment bond shall provide that if the direct contractor~~
4 ~~or a subcontractor fails to pay any of the following, the surety will~~
5 ~~pay the obligation and, if an action is brought to enforce the~~
6 ~~liability on the bond, a reasonable attorney's fee, to be fixed by~~
7 ~~the court:~~

8 ~~(1) A person authorized under Section 42030 to assert a claim~~
9 ~~against a payment bond:~~

10 ~~(2) Amounts due under the Unemployment Insurance Code with~~
11 ~~respect to work or labor performed pursuant to the public works~~
12 ~~contract.~~

13 ~~(3) Amounts required to be deducted, withheld, and paid over~~
14 ~~to the Employment Development Department from the wages of~~
15 ~~employees of the contractor and subcontractors under Section~~
16 ~~13020 of the Unemployment Insurance Code with respect to the~~
17 ~~work and labor.~~

18 ~~(e) The payment bond shall by its terms inure to the benefit of~~
19 ~~any person authorized under Section 42030 to assert a claim against~~
20 ~~a payment bond so as to give a right of action to that person or that~~
21 ~~person's assigns in an action to enforce the liability on the bond.~~

22 ~~(d) The direct contractor may require that a subcontractor give~~
23 ~~a bond to indemnify the direct contractor for any loss sustained~~
24 ~~by the direct contractor because of any default of the subcontractor~~
25 ~~under this section.~~

26 ~~45040. (a) A payment bond shall be construed most strongly~~
27 ~~against the surety and in favor of the beneficiary.~~

28 ~~(b) A surety is not released from liability to the beneficiary by~~
29 ~~reason of a breach of the public works contract between the public~~
30 ~~entity and the direct contractor or on the part of the beneficiary.~~

31 ~~(c) Except as otherwise provided by statute, the sole conditions~~
32 ~~of recovery on the bond are that the beneficiary is a person~~
33 ~~authorized under Section 42030 to assert a claim against a payment~~
34 ~~bond and the beneficiary has not been paid the full amount of the~~
35 ~~claim.~~

36 ~~45050. A claimant may commence an action to enforce the~~
37 ~~liability on the bond at any time after the claimant ceases to provide~~
38 ~~work, but not later than six months after the period in which a stop~~
39 ~~payment notice may be given under Section 44140.~~

1 45060. ~~(a) In order to enforce a claim against a payment bond,
2 a claimant shall give the preliminary notice provided in Chapter
3 3 (commencing with Section 43010):~~

4 ~~(b) If preliminary notice was not given as provided in Chapter
5 3 (commencing with Section 43010), a claimant may enforce a
6 claim by giving written notice to the surety and the bond principal
7 within 15 days after recordation of a notice of completion. If no
8 notice of completion has been recorded, the time for giving written
9 notice to the surety and the bond principal is extended to 75 days
10 after completion of the work of improvement.~~

11 45070. ~~Notice to the principal and surety under Section 45060
12 shall comply with the requirements of Article 2 (commencing with
13 Section 42110) of Chapter 2.~~

14 45080. ~~(a) A claimant may maintain an action to enforce the
15 liability of a surety on a payment bond whether or not the claimant
16 has given the public entity a stop payment notice.~~

17 ~~(b) A claimant may maintain an action to enforce the liability
18 on the bond separately from and without commencement of an
19 action against the public entity.~~

20 ~~(c) In an action to enforce the liability on the bond, the court
21 shall award the prevailing party a reasonable attorney’s fee.~~

22 45090. ~~(a) A claimant does not have a right to recover on a
23 payment bond unless the claimant provided work to the direct
24 contractor either directly or through one or more subcontractors
25 pursuant to a public works contract.~~

26 ~~(b) Nothing in this section affects the stop payment notice rights
27 of, and relative priorities among, design professionals.~~

28 ~~SEC. 107.~~

29 *SEC. 106.* Section 136.5 of the Streets and Highways Code is
30 amended to read:

31 136.5. (a) The contracts referred to in Sections 135, 136, and
32 136.1 are not subject to the State Contract Act (Part 2 (commencing
33 with Section 10100) of Division 2 of the Public Contract Code).

34 Except for emergency work of the type described in subdivision
35 (b), whenever the estimated amount of a contract exceeds two
36 thousand five hundred dollars (\$2,500), it shall be awarded to the
37 lowest responsible bidder, after competitive bidding on any
38 reasonable notice that the department may prescribe. Posting of
39 notice for five days in a public place in the district office within
40 which the work is to be done, or the equipment used, is sufficient.

1 Those contracts shall be subject to the applicable payment bond
2 provisions of Chapter 5 (commencing with Section ~~45010~~) of Part
3 ~~6 of Division 2 of the Public Contract 9550~~ of Title 2 of Part 6 of
4 *Division 4 of the Civil Code*. The department may require faithful
5 performance bonds when considered necessary. The advertisement
6 for each contract shall state whether or not a bond shall be required.

7 (b) In cases of emergency work necessitated by the imminence
8 or occurrence of a landslide, flood, storm damage, accident, or
9 other casualty, tools or equipment may be rented for a period of
10 not to exceed 60 days without competitive bidding, and the
11 department may waive the requirements of Chapter 5 (~~commencing~~
12 ~~with Section 45010~~) of Part 6 of Division 2 of the Public Contract
13 (*commencing with Section 9550*) of Title 2 of Part 6 of Division 2
14 of the Civil Code to the extent that a contractor may commence
15 performance of the work under the contract for the rental of tools
16 or equipment prior to filing a payment bond with the department.
17 In that case, no payment shall be made to the contractor until a
18 payment bond covering all work of the contract is filed with the
19 department.

20 ~~SEC. 108.~~

21 *SEC. 107.* (a) This act is operative on January 1, ~~2011~~ 2012.

22 (b) Except as otherwise provided in this section, this act applies
23 to a contract for a work of improvement executed before, on, or
24 after the operative date.

25 (c) The effectiveness of a notice given, or other action taken,
26 before the operative date is governed by the applicable law in effect
27 before the operative date and not by this act.

28 ~~SEC. 109.~~

29 *SEC. 108.* Any section of any act enacted by the Legislature
30 during the ~~2009~~ 2010 calendar year that takes effect on or before
31 January 1, ~~2010~~ 2011, and that amends, amends and renumbers,
32 amends and repeals, adds, repeals and adds, or repeals a section
33 that is amended, amended and renumbered, amended and repealed,
34 added, repealed and added, or repealed by this act, shall prevail
35 over this act, whether that act is chaptered before or after this act.

36 ~~SEC. 110.~~

37 *SEC. 109.* No reimbursement is required by this act pursuant
38 to Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

6

7

8 **CORRECTIONS:**

9 **Text—Pages 3, 35, 44, 90 and 100.**

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