

Senate Bill No. 189

CHAPTER 697

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 amend the heading of Part 8 (commencing with Section 7100) of Division 4 of, to amend and repeal Sections 3084 and 3252 of, to add Section 9560 to, 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, and to repeal Title 15 (commencing with Section 3082) of Part 4 of Division 3 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, 27361.9, 66499.2, and 66499.7 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, the Public Contract Code, and to amend Section 136.5 of the Streets and Highways Code, relating to mechanics liens.

[Approved by Governor September 30, 2010. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

SB 189, 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 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. The bill would also provide that any other act, except as specified, enacted during the 2010 calendar year that takes effect on or before January 1, 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 incorporate additional changes made by AB 2216 and AB 2419, contingent upon the enactment of those bills.

The provisions of the bill would become operative on July 1, 2012, except as specified.

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

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

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

(b) No contractor that is required to be licensed under this chapter shall require a waiver of lien rights from any subcontractor, employee, or supplier in violation of Section 8122 of the Civil Code.

SEC. 1.5. Section 7034 of the Business and Professions Code is amended to read:

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

(b) No contractor that is required to be licensed under this chapter shall require a waiver of lien rights from any subcontractor, employee, or supplier in violation of Section 8122 of the Civil Code.

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

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

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

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

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

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

(e) A person or entity, including a laborer described in subdivision (b) of Section 8024 of the Civil Code, to which a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, damaged as the result of the licensee's failure to pay fringe benefits for its employees, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder (without regard to whether the work was performed on a private or public work). Damage to a person or entity under this subdivision is limited to actual employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

SEC. 2.5. Section 7071.5 of the Business and Professions Code is amended to read:

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

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

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

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

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

(e) A person or entity, including a laborer described in subdivision (b) of Section 8024 of the Civil Code, to which a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, damaged as the result of

the licensee's failure to pay fringe benefits for its employees, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder (without regard to whether the work was performed on a private or public work). Damage to a person or entity under this subdivision is limited to actual employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

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

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

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

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

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

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

(e) A person or entity, including a laborer described in subdivision (b) of Section 8024 of the Civil Code, to which a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, that is damaged as the result of the licensee's failure to pay fringe benefits for its employees including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder (without regard to whether the work was performed on a public or private work). Damage to a person or entity under this subdivision is limited to employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

SEC. 3.5. Section 7071.10 of the Business and Professions Code is amended to read:

7071.10. The qualifying individual's bond required by this article shall be executed by an admitted surety insurer in favor of the State of California,

in a form acceptable to the registrar and filed with the registrar by the qualifying individual. The qualifying individual's bond shall not be required in addition to the contractor bond when, as set forth under paragraph (1) of subdivision (b) of Section 7068, the individual proprietor has qualified for the license by his or her personal appearance, or the qualifier is a general partner as set forth under paragraph (2) of subdivision (b) of Section 7068. The qualifying individual's bond shall be for the benefit of the following persons:

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

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

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

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

(e) A person or entity, including a laborer described in subdivision (b) of Section 8024 of the Civil Code, to which a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, that is damaged as the result of the licensee's failure to pay fringe benefits for its employees including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder (without regard to whether the work was performed on a public or private work). Damage to a person or entity under this subdivision is limited to employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

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

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

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

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

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

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

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

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

(1) The writing shall be legible.

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

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

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

(i) The date the buyer signed the contract.

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

(4) The contract shall include a statement that, upon satisfactory payment being made for any portion of the work performed, the contractor, prior to any further payment being made, shall furnish to the person contracting for the home improvement or swimming pool work a full and unconditional

release from any potential lien claimant claim or mechanic's lien authorized pursuant to Section 8410 of the Civil Code for that portion of the work for which payment has been made.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The heading: "Downpayment."

(B) A space where the actual downpayment appears.

(C) The following statement in at least 12-point boldface type:

“THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”

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

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

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

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

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

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

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

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

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

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

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

(B) The approximate date of completion.

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

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

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

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

(1) A notice concerning commercial general liability insurance. This notice may be provided as an attachment to the contract if the contract includes the following statement: “A notice concerning commercial general liability insurance is attached to this contract.” The notice shall include the heading “Commercial General Liability Insurance (CGL),” followed by whichever of the following statements is both relevant and correct:

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

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

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

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

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

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

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

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

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

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

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

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

(C) A statement informing the buyer that the contractor’s failure to comply with the requirements of this paragraph does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

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

“MECHANICS’ LIEN WARNING:

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

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

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

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

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

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

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

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

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

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

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

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

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

For more information:

Visit CSLB's Internet Web site at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P.O. Box 26000, Sacramento, CA 95826."

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

(i) Negotiated at the contractor's place of business.

(ii) Subject to the "Seven-Day Right to Cancel," as set forth in paragraph (7).

(iii) Subject to licensure under the Alarm Company Act (Chapter 11.6 (commencing with Section 7590)), provided the alarm company licensee complies with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

(B) "Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

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

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

(i) The text of the notice is at least 12-point boldface type.

(ii) The notice is in immediate proximity to a space reserved for the owner’s signature.

(iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.

(iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Three-Day Right to Cancel.’”

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

“Notice of Cancellation”
 /enter date of transaction/

 (Date)

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

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

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

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

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____,
 /name of seller/

at _____
 /address of seller’s place of business/
 not later than midnight of _____.
 (Date)

I hereby cancel this transaction. _____
 (Date)

 (Buyer’s signature)

(7) (A) The following notice entitled “Seven-Day Right to Cancel” shall be provided to the buyer for any contract that is written for the repair or restoration of residential premises damaged by any sudden or catastrophic event for which a state of emergency has been declared by the President of the United States or the Governor, or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county:

“Seven-Day Right to Cancel

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

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

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

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

to cancel. Initial the checkbox if the contractor has given you a 'Notice of the Seven-Day Right to Cancel.'

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

"Notice of Cancellation"

/enter date of transaction/

(Date)

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

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

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

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

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

to _____,
/name of seller/

at _____
/address of seller's place of business/

not later than midnight of _____.
(Date)

I hereby cancel this transaction. _____
(Date)

(Buyer's signature)

SEC. 4.5. Section 7159 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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

(1) The writing shall be legible.

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

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

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

(i) The date the buyer signed the contract.

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

(4) The contract shall include a statement that, upon satisfactory payment being made for any portion of the work performed, the contractor, prior to any further payment being made, shall furnish to the person contracting for the home improvement or swimming pool work a full and unconditional release from any potential lien claimant claim or mechanic's lien authorized pursuant to Section 8410 of the Civil Code for that portion of the work for which payment has been made.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The heading: “Downpayment.”

(B) A space where the actual downpayment appears.

(C) The following statement in at least 12-point boldface type:

“THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”

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

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

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

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

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

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

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

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

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

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

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

(B) The approximate date of completion.

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

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

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

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

(1) A notice concerning commercial general liability insurance. This notice may be provided as an attachment to the contract if the contract includes the following statement: “A notice concerning commercial general liability insurance is attached to this contract.” The notice shall include the heading “Commercial General Liability Insurance (CGL),” followed by whichever of the following statements is both relevant and correct:

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

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

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

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

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

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

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

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

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

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

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

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

(C) A statement informing the buyer that the contractor's failure to comply with the requirements of this paragraph does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

(4) A notice with the heading "Mechanics' Lien Warning" written as follows:

"MECHANICS' LIEN WARNING:

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

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

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

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

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

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

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

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

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

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

"Information about the Contractors State License Board (CSLB): CSLB is the state consumer protection agency that licenses and regulates construction contractors.

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

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

For more information:

Visit CSLB's Internet Web site at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P.O. Box 26000, Sacramento, CA 95826."

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

(i) Negotiated at the contractor's place of business.

(ii) Subject to the "Seven-Day Right to Cancel," as set forth in paragraph (7).

(iii) Subject to licensure under the Alarm Company Act (Chapter 11.6 (commencing with Section 7590)), provided the alarm company licensee complies with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

(B) "Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

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

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

(i) The text of the notice is at least 12-point boldface type.

(ii) The notice is in immediate proximity to a space reserved for the owner’s signature.

(iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.

(iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Three-Day Right to Cancel.’”

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

“Notice of Cancellation”

/enter date of transaction/

(Date)

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

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

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to

you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk.

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

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____, /name of seller/ at _____ /address of seller’s place of business/ not later than midnight of _____. (Date)

I hereby cancel this transaction. _____ (Date) _____ (Buyer’s signature)

(7) (A) The following notice entitled “Seven-Day Right to Cancel” shall be provided to the buyer for any contract that is written for the repair or restoration of residential premises damaged by any sudden or catastrophic event for which a state of emergency has been declared by the President of the United States or the Governor, or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county:

“Seven-Day Right to Cancel

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

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received them, goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on how to return the goods at the contractor’s expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods

available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

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

- (i) The text of the notice is at least 12-point boldface type.
- (ii) The notice is in immediate proximity to a space reserved for the owner’s signature.
- (iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.
- (iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Seven-Day Right to Cancel.’ ”

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

“Notice of Cancellation”

/enter date of transaction/

(Date)

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

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

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

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

To cancel this transaction, mail or deliver a signed and dated copy of this
cancellation notice, or any other written notice, or send a telegram
to _____,
/name of seller/
at _____
/address of seller's place of business/
not later than midnight of _____.
(Date)
I hereby cancel this transaction. _____
(Date)

(Buyer's signature)

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

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

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

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

(b) This section shall not apply to any of the following:

- (1) Any contract that is subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.
- (2) A mechanics lien established pursuant to Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4 of the Civil Code.
- (3) Any contract that is subject to subdivision (a) of Section 7159.2.

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

7159.5. This section applies to all home improvement contracts, as
defined in Section 7151.2, between an owner or tenant and a contractor,
whether a general contractor or a specialty contractor, that is licensed or
subject to be licensed pursuant to this chapter with regard to the transaction.

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

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

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

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

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

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

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

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

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

(b) A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by his or her agent

or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

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

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

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

(c) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five

hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

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

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

(b) The writing shall contain the following:

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

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

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

(4) A statement with the heading "Mechanics Lien Warning" as follows:
"MECHANICS LIEN WARNING:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The seller, lessor, or renter arranges or guarantees the loan or open-end account, or participates in the preparation of the consumer's application for

credit or other loan documents, or receives from the creditor a loan commission, brokerage, or referral fee.

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

(e) This section does not apply to mechanics liens established pursuant to Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4 of the Civil Code.

SEC. 11. Section 1917.166 of the Civil Code is amended to read:

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

SEC. 12. Section 1917.615 of the Civil Code is amended to read:

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

SEC. 13. Section 3059 of the Civil Code is amended to read:

3059. The liens of mechanics, for materials and services upon real property, are regulated by Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4.

SEC. 14. Section 3060 of the Civil Code is amended to read:

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

(b) Any person who performs labor in a mine, either in its development or in working on it by the subtractive process, or furnishes materials to be used or consumed in it, has a lien upon the mine and the works owned and used by the owners for milling or reducing the ores from the mine, for the value of the work or labor done or materials furnished by each, whether

done or furnished at the instance of the owner of the mine, or the owner's agent, and every contractor, subcontractor, superintendent, or other person having charge of any mining or work or labor performed in and about the mine, either as lessee or under a working bond or contract thereon shall be held to be the agent of the owner for the purposes of this section. The liens provided for by this section shall be enforced in the same manner as those provided for by Part 6 (commencing with Section 8000) of Division 4.

SEC. 15. Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3 of the Civil Code is repealed.

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

SEC. 16.3. Section 3084 of the Civil Code, as amended by Section 1 of Chapter 109 of the Statutes of 2009, is amended to read:

3084. (a) "Claim of lien" or "mechanic's lien" means a written statement, signed and verified by the claimant or by the claimant's agent, containing all of the following:

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

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

(3) A general statement of the kind of labor, services, equipment, or materials furnished by the claimant.

(4) The name of the person by whom the claimant was employed or to whom the claimant furnished the labor, services, equipment, or materials.

(5) A description of the site sufficient for identification.

(6) A proof of service affidavit completed and signed by the person serving the Notice of Mechanic's Lien pursuant to subdivision (c). A "proof of service affidavit" is an affidavit of the person making the service, showing the date, place, and manner of service and facts showing that the service was made in accordance with this section. The affidavit shall show the name and address of the person or persons upon whom a copy of the mechanic's lien and the Notice of Mechanic's Lien was served, and, if appropriate, the title or capacity in which he or she was served.

(7) The following statement, printed in at least 10-point boldface type. The letters of the last sentence shall be printed in uppercase type, excepting the Internet Web site address of the Contractors' State License Board, which shall be printed in lowercase type:

NOTICE OF MECHANIC'S LIEN
ATTENTION!

Upon the recording of the enclosed MECHANIC'S LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanic's lien is recorded.

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

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANIC'S LIENS GO TO THE CONTRACTORS STATE LICENSE BOARD INTERNET WEB SITE AT www.cslb.ca.gov.

(b) A mechanic's lien or claim of lien in otherwise proper form, verified and containing the information required by this section shall be accepted by the recorder for recording and shall be deemed duly recorded without acknowledgment.

(c) (1) The mechanic's lien and the Notice of Mechanic's Lien described in this section shall be served on the owner or reputed owner. Service shall be made as follows:

(A) For an owner or reputed owner to be notified who resides in or outside this state, by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the owner or reputed owner at the owner's or reputed owner's residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or as otherwise provided in subdivision (j) of Section 3097.

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

(2) Service by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, is complete at the time of the deposit of that first-class certified or registered mail.

(d) Failure to serve the mechanic's lien, including the Notice of Mechanic's Lien, as prescribed by this section, shall cause the mechanic's lien to be unenforceable as a matter of law.

(e) This section shall remain in effect only until July 1, 2012, and as of that date is repealed.

SEC. 16.5. Section 3252 of the Civil Code is amended to read:

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

(b) With regard to a project completed on or before December 31, 2010, if the 20-day public work preliminary bond notice was not given as provided

in Section 3098, a claimant may enforce a claim by giving written notice to the surety and the bond principal as provided in Section 3227 within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement.

(c) Commencing January 1, 2011, and except as provided in subdivision (b), if the 20-day public works preliminary bond notice was not given as provided in Section 3098, a claimant may enforce a claim by giving written notice to the surety and bond principal, as provided in Section 3227, prior to completion, as defined in Section 3086, of the project, or recordation of notice of completion, whichever is later. Prior to completion or recordation of a notice of completion, every public entity shall provide written notice of pending completion to each subcontractor that has provided a 20-day preliminary bond notice as provided in Section 3098.

(d) This section shall remain in effect only until July 1, 2012, and as of that date is repealed.

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

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

(b) The penalty authorized pursuant to subdivision (a) shall be separate from, and in addition to, the design professionals liens provided by Chapter 3 (commencing with Section 8300) of Title 2 of Part 6 of Division 4, mechanics liens provided by Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4, and stop payment notices provided by Chapter 5 (commencing with Section 8500) of Title 2 of Part 6 of Division 4.

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

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

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

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

SEC. 18. Section 3320 of the Civil Code is amended to read:

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

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

(c) The penalty described in subdivision (b) is separate from, and in addition to, the design professionals liens provided by Chapter 3 (commencing with Section 8300) of Title 2 of Part 6 of Division 4, mechanics liens provided by Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4, and stop payment notices on public works provided by Chapter 4 (commencing with Section 9350) of Title 3 of Part 6 of Division 4.

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

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

(f) For purposes of this section:

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

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

(3) "Prime design professional" means a design professional with a written contract directly with the public agency.

SEC. 19. Section 3321 of the Civil Code is amended to read:

3321. (a) In each contract for public works of improvement, a prime design professional shall pay to each subconsultant design professional the amount due him or her from the payment received, not later than 15 days after receipt of each progress payment or final retention payment. If the

prime design professional disputes in good faith any portion of the amount due, he or she may withhold from the payment an amount not to exceed 150 percent of the disputed amount. The disputed amount withheld shall not be subject to any penalty authorized by this section.

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

(c) The penalty described in subdivision (b) shall be separate from, and in addition to, the design professionals liens provided by Chapter 3 (commencing with Section 8300) of Title 2 of Part 6 of Division 4, mechanics liens provided by Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4, and stop payment notices on public works provided by Chapter 4 (commencing with Section 9350) of Title 3 of Part 6 of Division 4.

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

(e) For purposes of this section:

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

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

(3) "Prime design professional" means a design professional having a written contract directly with the public agency.

(4) "Subconsultant design professional" means a design professional having a written contract with a prime design professional.

SEC. 19.5. The heading of Part 8 (commencing with Section 7100) of Division 4 of the Civil Code is amended to read:

PART 5.5. AUTOMATIC CHECKOUT SYSTEM

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

PART 6. WORKS OF IMPROVEMENT

TITLE 1. WORKS OF IMPROVEMENT GENERALLY

CHAPTER 1. GENERAL PROVISIONS

Article 1. Definitions

8000. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

8002. “Admitted surety insurer” has the meaning provided in Section 995.120 of the Code of Civil Procedure.

8004. “Claimant” means a person that has a right under this part to record a claim of lien, give a stop payment notice, or assert a claim against a payment bond, or do any combination of the foregoing.

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

(a) A mortgagee or beneficiary under a deed of trust lending funds with which the cost of all or part of a work of improvement is to be paid, or the assignee or successor in interest of the mortgagee or beneficiary.

(b) An escrow holder or other person holding funds provided by an owner, lender, or another person as a fund for with which the cost of all or part of a work of improvement is to be paid.

8008. “Contract” means an agreement that provides for all or part of a work of improvement.

8010. “Contract price” means the price agreed to in a direct contract for a work of improvement.

8012. “Contractor” includes a direct contractor, subcontractor, or both. This section does not apply to Sections 8018 and 8046.

8014. “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

8016. “Direct contract” means a contract between an owner and a direct contractor that provides for all or part of a work of improvement.

8018. “Direct contractor” means a contractor that has a direct contractual relationship with an owner. A reference in another statute to a “prime contractor” in connection with the provisions in this part means a “direct contractor.”

8020. For the purposes of Title 3 (commencing with Section 9000), “funds” means warrant, check, money, or bonds (if bonds are to be issued in payment of the public works contract).

8022. “Labor, service, equipment, or material” includes, but is not limited to, labor, skills, services, material, supplies, equipment, appliances, power, and surveying, provided for a work of improvement.

8024. (a) “Laborer” means a person who, acting as an employee, performs labor upon, or bestows skill or other necessary services on, a work of improvement.

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

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

8026. “Lien” means a lien under Title 2 (commencing with Section 8160) and includes a lien of a design professional under Section 8302, a lien for a work of improvement under Section 8400, and a lien for a site improvement under Section 8402.

8028. “Material supplier” means a person that provides material or supplies to be used or consumed in a work of improvement.

8030. (a) For the purposes of Title 2 (commencing with Section 8160), “payment bond” means a bond given under Section 8600.

(b) For the purposes of Title 3 (commencing with Section 9000), “payment bond” means a bond required by Section 9550.

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

8034. (a) For the purposes of Title 2 (commencing with Section 8160), “preliminary notice” means the notice provided for in Chapter 2 (commencing with Section 8200) of Title 2.

(b) For the purposes of Title 3 (commencing with Section 9000), “preliminary notice” means the notice provided for in Chapter 3 (commencing with Section 9300) of Title 3.

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

8038. “Public works contract” has the meaning provided in Section 1101 of the Public Contract Code.

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

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

- (a) Demolition or removal of improvements, trees, or other vegetation.
- (b) Drilling test holes.
- (c) Grading, filling, or otherwise improving the real property or a street, highway, or sidewalk in front of or adjoining the real property.
- (d) Construction or installation of sewers or other public utilities.
- (e) Construction of areas, vaults, cellars, or rooms under sidewalks.
- (f) Any other work or improvements in preparation of the site for a work of improvement.

8044. (a) (1) For the purposes of Title 2 (commencing with Section 8160), “stop payment notice” means the notice given by a claimant under Chapter 5 (commencing with Section 8500) of Title 2.

(2) A stop payment notice given under Title 2 (commencing with Section 8160) may be bonded or unbonded. A “bonded stop payment notice” is a notice given with a bond under Section 8532. An “unbonded stop payment notice” is a notice not given with a bond under Section 8532.

(3) Except to the extent Title 2 (commencing with Section 8160) distinguishes between a bonded and an unbonded stop payment notice, a reference in that title to a stop payment notice includes both a bonded and an unbonded notice.

(b) For the purposes of Title 3 (commencing with Section 9000), “stop payment notice” means the notice given by a claimant under Chapter 4 (commencing with Section 9350) of Title 3.

(c) A reference in another statute to a “stop notice” in connection with the remedies provided in this part means a stop payment notice.

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

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

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

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

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

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

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

Article 2. Miscellaneous Provisions

8052. (a) This part is operative on July 1, 2012.

(b) Notwithstanding subdivision (a), the effectiveness of a notice given or other action taken on a work of improvement before July 1, 2012, is governed by the applicable law in effect before July 1, 2012, and not by this part.

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

8054. (a) This part does not apply to a transaction governed by the Oil and Gas Lien Act (Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3 of the Code of Civil Procedure).

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

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

8056. Except as otherwise provided in this part, Part 2 (commencing with Section 307) of the Code of Civil Procedure provides the rules of practice in proceedings under this part.

8058. For purposes of this part, “day” means a calendar day.

8060. (a) If this part provides for filing a contract, plan, or other paper with the county recorder, the provision is satisfied by filing the paper in the office of the county recorder of the county in which the work of improvement or part of it is situated.

(b) If this part provides for recording a notice, claim of lien, release of lien, payment bond, or other paper, the provision is satisfied by filing the paper for record in the office of the county recorder of the county in which the work of improvement or part of it is situated.

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

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

8062. No act of an owner in good faith and in compliance with a provision of this part shall be construed to prevent a direct contractor’s performance of the contract, or exonerate a surety on a performance or payment bond.

8064. An owner may give a notice or execute or file a document under this part on behalf of a co-owner if the owner acts on the co-owner’s behalf and includes in the notice or document the name and address of the co-owner on whose behalf the owner acts.

8066. An act that may be done by or to a person under this part may be done by or to the person's agent to the extent the act is within the scope of the agent's authority.

CHAPTER 2. NOTICE

8100. Notice under this part shall be in writing. Writing includes printing and typewriting.

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

- (1) The name and address of the owner or reputed owner.
- (2) The name and address of the direct contractor.
- (3) The name and address of the construction lender, if any.
- (4) A description of the site sufficient for identification, including the street address of the site, if any. If a sufficient legal description of the site is given, the effectiveness of the notice is not affected by the fact that the street address is erroneous or is omitted.
- (5) The name, address, and relationship to the parties of the person giving the notice.
- (6) If the person giving the notice is a claimant:
 - (A) A general statement of the work provided.
 - (B) The name of the person to or for whom the work is provided.
 - (C) A statement or estimate of the claimant's demand, if any, after deducting all just credits and offsets.

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

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

- (1) The name and address of the laborer, and of any person or entity described in subdivision (b) of Section 8024 to which employer payments are due.
- (2) The total number of straight time and overtime hours worked by the laborer on each job.
- (3) The amount then past due and owing.

(b) Failure to give the notice required by subdivision (a) constitutes grounds for disciplinary action under the Contractors' State License Law,

Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

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

- (a) Personal delivery.
- (b) Mail in the manner provided in Section 8110.
- (c) Leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons and complaint in a civil action.

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

(a) If the person to be notified is an owner other than a public entity, the owner's address shown on the direct contract, the building permit, or a construction trust deed.

(b) If the person to be notified is a public entity, the office of the public entity or another address specified by the public entity in the contract or elsewhere for service of notices, papers, and other documents.

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

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

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

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

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

8114. A notice required by this part to be posted shall be displayed in a conspicuous location at the site.

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

- (a) If given by personal delivery, when delivered.
- (b) If given by mail, when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure.
- (c) If given by leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons in a civil action, five days after mailing.
- (d) If given by posting, when displayed.

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

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

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

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

- (1) Documentation provided by the United States Postal Service showing that payment was made to mail the notice using registered or certified mail, or express mail.
- (2) Documentation provided by an express service carrier showing that payment was made to send the notice using an overnight delivery service.
- (3) A return receipt, delivery confirmation, signature confirmation, tracking record, or other proof of delivery or attempted delivery provided by the United States Postal Service, or a photocopy of the record of delivery and receipt maintained by the United States Postal Service, showing the date of delivery and to whom delivered, or in the event of nondelivery, by the returned envelope itself.
- (4) A tracking record or other documentation provided by an express service carrier showing delivery or attempted delivery of the notice.

CHAPTER 3. WAIVER AND RELEASE

8120. The provisions of this chapter apply to a work of improvement governed by this part.

8122. An owner, direct contractor, or subcontractor may not, by contract or otherwise, waive, affect, or impair any other claimant's rights under this part, whether with or without notice, and any term of a contract that purports to do so is void and unenforceable unless and until the claimant executes and delivers a waiver and release under this article.

8124. A claimant's waiver and release does not release the owner, construction lender, or surety on a payment bond from a lien or claim unless both of the following conditions are satisfied:

- (a) The waiver and release is in substantially the form provided in this article and is signed by the claimant.
- (b) If the release is a conditional release, there is evidence of payment to the claimant. Evidence of payment may be either of the following:
 - (1) The claimant's endorsement on a single or joint payee check that has been paid by the financial institution on which it was drawn.
 - (2) Written acknowledgment of payment by the claimant.

8126. An oral or written statement purporting to waive, release, impair or otherwise adversely affect a lien or claim is void and unenforceable and does not create an estoppel or impairment of the lien or claim unless either of the following conditions is satisfied:

- (a) The statement is pursuant to a waiver and release under this article.
- (b) The claimant has actually received payment in full for the claim.

8128. (a) A claimant may reduce the amount of, or release in its entirety, a stop payment notice. The reduction or release shall be in writing and may be given in a form other than a waiver and release form provided in this article.

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

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

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

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

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

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

8130. This article does not affect the enforceability of either an accord and satisfaction concerning a good faith dispute or an agreement made in settlement of an action pending in court if the accord and satisfaction or agreement and settlement make specific reference to the lien or claim.

8132. If a claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress 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 null, void, and unenforceable unless it is in substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS 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: _____
 Owner: _____
 Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, 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. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. 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) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) 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): \$ _____
- (4) 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: _____

8134. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver that the claimant has, in fact, been paid the progress payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text

of the “Notice to Claimant” in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____
Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, 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. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. 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: _____

8136. 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 null, void, and unenforceable unless it is in substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS 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: _____
Owner: _____

Conditional Waiver and Release

This document waives and releases lien, 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. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. 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:
Disputed claims for extras in the amount of: \$ _____

Signature

Claimant’s Signature: _____
Claimant’s Title: _____

Date of Signature: _____

8138. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver that the claimant has, in fact, been paid the final payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the “Notice to Claimant” in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, 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. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

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

Signature

Claimant’s Signature: _____

Claimant’s Title: _____

Date of Signature: _____

CHAPTER 4. BONDS

8150. The Bond and Undertaking Law (Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure) applies to a bond given under this part, except to the extent this part prescribes a different rule or is inconsistent.

8152. None of the following releases a surety from liability on a bond given under this part:

- (a) A change, alteration, or modification to a contract, plan, specification, or agreement for a work of improvement or for work provided for a work of improvement.
- (b) A change or modification to the terms of payment or an extension of the time for payment for a work of improvement.
- (c) A rescission or attempted rescission of a contract, agreement, or bond.
- (d) A condition precedent or subsequent in the bond purporting to limit the right of recovery of a claimant otherwise entitled to recover pursuant to a contract, agreement, or bond.
- (e) In the case of a bond given for the benefit of claimants, the fraud of a person other than the claimant seeking to recover on the bond.

8154. (a) A bond given under this part shall be construed most strongly against the surety and in favor of all persons for whose benefit the bond is given.

(b) A surety is not released from liability to those for whose benefit the bond has been given by reason of a breach of the direct contract or on the part of any obligee named in the bond.

(c) Except as otherwise provided by statute, the sole conditions of recovery on the bond are that the claimant is a person described in Article 1 (commencing with Section 8400) of Chapter 4 of Title 2, or in Section 9100, and has not been paid the full amount of the claim.

TITLE 2. PRIVATE WORKS OF IMPROVEMENT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Application of Title

8160. This title applies to a work of improvement that is not governed by Title 3 (commencing with Section 9000) of this part.

Article 2. Construction Documents

8170. (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.

8172. (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.

8174. (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 real property described in the instrument.

(3) A legal description of the real 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.

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

Article 3. Completion

8180. (a) For the purpose of this title, completion of a work of improvement occurs upon the occurrence of any of the following events:

(1) Actual completion of the work of improvement.

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

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

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

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

8182. (a) An owner may record a notice of completion on or within 15 days after the date of completion of a work of improvement.

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

(c) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, and shall also include all of the following information:

(1) If the notice is given only of completion of a contract for a particular portion of the work of improvement as provided in Section 8186, the name of the direct contractor under that contract and a general statement of the work provided pursuant to the contract.

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

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

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

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

(e) For the purpose of this section, "owner" means the owner who causes a building, improvement, or structure to be constructed, altered, or repaired, or that person's successor in interest at the date a notice of completion is recorded, whether the interest or estate of the owner be in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee. Where the interest or estate is held by two or more persons as joint tenants or tenants in common, any one or more of the cotenants may be deemed to be the "owner" within the meaning of this section.

8184. A notice of completion in otherwise proper form, verified and containing the information required by this title, shall be accepted by the recorder for recording and is deemed duly recorded without acknowledgment.

8186. If a work of improvement is made pursuant to two or more direct contracts, each covering a portion of the work of improvement:

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

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

8188. (a) An owner may record a notice of cessation if there has been a continuous cessation of labor on a work of improvement for at least 30 days prior to the recordation that continues through the date of the recordation.

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

(c) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, and shall also include all of the following information:

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

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

(d) For the purpose of this section, “owner” means the owner who causes a building, improvement, or structure to be constructed, altered, or repaired, or that person’s successor in interest at the date a notice of cessation is recorded, whether the interest or estate of the owner be in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee. Where the interest or estate is held by two or more persons as joint tenants or tenants in common, any one or more of the cotenants may be deemed to be the “owner” within the meaning of this section.

8190. (a) An owner that records a notice of completion or cessation shall, within 10 days of the date the notice of completion or cessation is filed for record, give a copy of the notice to all of the following persons:

(1) A direct contractor.

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

(b) The copy of the notice shall be given in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

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

(d) For the purpose of this section, “owner” means a person who has an interest in real property, or the person’s successor in interest on the date a notice of completion or notice of cessation is recorded, who causes a building, improvement, or structure, to be constructed, altered, or repaired on the property. If the property is owned by two or more persons as joint tenants or tenants in common, any one or more of the cotenants may be deemed to be the “owner” within the meaning of this section. However, this section does not apply to any of the following owners:

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

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

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

CHAPTER 2. PRELIMINARY NOTICE

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

- (1) The owner or reputed owner.
 - (2) The direct contractor or reputed direct contractor to which the claimant provides work, either directly or through one or more subcontractors.
 - (3) The construction lender or reputed construction lender, if any.
 - (b) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.
 - (c) Compliance with this section is a necessary prerequisite to the validity of a lien claim or stop payment notice under this title.
 - (d) Compliance with this section or with Section 8612 is a necessary prerequisite to the validity of a claim against a payment bond under this title.
 - (e) Notwithstanding the foregoing subdivisions:
 - (1) A laborer is not required to give preliminary notice.
 - (2) A claimant with a direct contractual relationship with an owner or reputed owner is required to give preliminary notice only to the construction lender or reputed construction lender, if any.
8202. (a) The preliminary notice shall comply with the requirements of Section 8102, and shall also include:
- (1) A general description of the work to be provided.
 - (2) An estimate of the total price of the work provided and to be provided.
 - (3) The following statement in boldface type:

NOTICE TO PROPERTY OWNER

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

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

If you record a notice of cessation or completion of your construction project, you must within 10 days after recording, send a copy of the notice of completion to your contractor and the person or firm that has given you this notice. The notice must be sent by registered or certified mail. Failure to send the notice will extend the deadline to record a claim of lien. You are not required to send the notice if you are a residential homeowner of a dwelling containing four or fewer units.

- (b) If preliminary notice is given by a subcontractor that has not paid all compensation due to a laborer, the notice shall include the name and address

of the laborer and any person or entity described in subdivision (b) of Section 8024 to which payments are due.

(c) If an invoice for material or certified payroll contains the information required by this section and Section 8102, a copy of the invoice or payroll, given in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, is sufficient.

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

(b) A design professional who has furnished services for the design of the work of improvement and who gives a preliminary notice not later than 20 days after the work of improvement has commenced shall be deemed to have complied with Section 8200 with respect to the design services furnished, or to be furnished.

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

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

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

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

(a) The name and address of the owner.

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

8210. If one or more construction loans are obtained after commencement of a work of improvement, the owner shall give notice of the name and address of the construction lender or lenders to each person that has given the owner preliminary notice.

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

8214. (a) Each person who has served a preliminary notice may file the preliminary notice with the county recorder. A preliminary notice filed pursuant to this section shall comply with the requirements of Section 8102.

(b) Upon the acceptance for recording of a notice of completion or notice of cessation the county recorder shall mail to those persons who have filed a preliminary notice, notification that a notice of completion or notice of

cessation has been recorded on the property, and shall affix the date that the notice of completion or notice of cessation was recorded with the county recorder. The notification given by the county recorder under this section is not governed by the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

(c) The failure of the county recorder to mail the notification to the person who filed a preliminary notice, or the failure of those persons to receive the notification or to receive complete notification, shall not affect the period within which a claim of lien is required to be recorded. However, the county recorder shall make a good faith effort to mail notification to those persons who have filed the preliminary notice under this section and to do so within five days after the recording of a notice of completion or notice of cessation.

(d) The county recorder may cause to be destroyed all documents filed pursuant to this section, two years after the date of filing.

(e) The preliminary notice that a person may file pursuant to this section is for the limited purpose of facilitating the mailing of notice by the county recorder of recorded notices of completion and notices of cessation. The notice that is filed is not a recordable document and shall not be entered into those official records of the county which by law impart constructive notice. Notwithstanding any other provision of law, the index maintained by the recorder of filed preliminary notices shall be separate and distinct from those indexes maintained by the county recorder of those official records of the county which by law impart constructive notice. The filing of a preliminary notice with the county recorder does not give rise to any actual or constructive notice with respect to any party of the existence or contents of a filed preliminary notice nor to any duty of inquiry on the part of any party as to the existence or contents of that notice.

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

CHAPTER 3. DESIGN PROFESSIONALS LIEN

8300. For purposes of this chapter, a "design professional" is a person described in Section 8014 who provides services pursuant to a written contract with a landowner for the design, engineering, or planning of a work of improvement.

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 landowner 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 landowner 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 landowner 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.

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

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

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

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

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

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

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

(1) This chapter.

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

(3) Section 8424.

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

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

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

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

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

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

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

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

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

CHAPTER 4. MECHANICS LIEN

Article 1. Who is Entitled to Lien

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

- (a) Direct contractor.
- (b) Subcontractor.
- (c) Material supplier.
- (d) Equipment lessor.
- (e) Laborer.
- (f) Design professional.

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

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

- (a) It is provided at the request of or agreed to by the owner.
- (b) It is provided or authorized by a direct contractor, subcontractor, architect, project manager, or other person having charge of all or part of the work of improvement or site improvement.

Article 2. Conditions to Enforcing a Lien

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

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

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

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

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

8416. (a) A claim of mechanics lien shall be a written statement, signed and verified by the claimant, containing all of the following:

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

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

(3) A general statement of the kind of work furnished by the claimant.

(4) The name of the person by whom the claimant was employed or to whom the claimant furnished work.

(5) A description of the site sufficient for identification.

(6) The claimant's address.

(7) A proof of service affidavit completed and signed by the person serving a copy of the claim of mechanics lien pursuant to subdivision (c). The affidavit shall show the date, place, and manner of service, and facts showing that the service was made in accordance with this section. The affidavit shall show the name and address of the person or persons upon whom the copy of the claim of mechanics lien was served, and, if appropriate, the title or capacity in which he or she was served.

(8) The following statement, printed in at least 10-point boldface type. The letters of the last sentence shall be printed in uppercase type, excepting the Internet Web site address of the Contractors' State License Board, which shall be printed in lowercase type:

“NOTICE OF MECHANICS LIEN
ATTENTION!

Upon the recording of the enclosed MECHANICS LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action

must be filed with the court no later than 90 days after the date the mechanics lien is recorded.

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

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANICS LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov."

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

(c) A copy of the claim of mechanics lien, which includes the Notice of Mechanics Lien required by paragraph (8) of subdivision (a), shall be served on the owner or reputed owner. Service shall be made as follows:

(1) For an owner or reputed owner to be notified who resides in or outside this state, by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the owner or reputed owner at the owner's or reputed owner's residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or as otherwise provided in Section 8174.

(2) If the owner or reputed owner cannot be served by this method, then the copy of the claim of mechanics lien may be given by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the construction lender or to the original contractor.

(d) Service of the copy of the claim of mechanics lien by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, is complete at the time of the deposit of that first-class, certified, or registered mail.

(e) Failure to serve the copy of the claim of mechanics lien as prescribed by this section, including the Notice of Mechanics Lien required by paragraph (8) of subdivision (a), shall cause the claim of mechanics lien to be unenforceable as a matter of law.

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

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

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

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

8424. (a) An owner of real property or an owner of any interest in real property subject to a recorded claim of lien, or a direct contractor or subcontractor affected by the claim of lien, that disputes the correctness or validity of the claim may obtain release of the real property from the claim of lien by recording a lien release bond. The principal on the bond may be the owner of the property, the direct contractor, or the subcontractor.

(b) The bond shall be conditioned on payment of any judgment and costs the claimant recovers on the lien. The bond shall be in an amount equal to 125 percent of the amount of the claim of lien or 125 percent of the amount allocated in the claim of lien to the real property to be released. The bond shall be executed by an admitted surety insurer.

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

(d) A person that obtains and records a lien release bond shall give notice to the claimant. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1 and shall include a copy of the bond. Failure to give the notice required by this section does not affect the validity of the bond, but the statute of limitations for an action on the bond is tolled until notice is given. The claimant shall commence an action on the bond within six months after notice is given.

Article 3. Amount of Lien

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

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

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

(b) The lien is not limited in amount by the contract price for the work of improvement except as provided in Section 8600.

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

8432. (a) A lien does not extend to work, whether or not the work is authorized by a direct contractor or subcontractor, if the work is not included in a direct contract or a modification of that contract, and the claimant had

actual knowledge or constructive notice of the provisions of that contract or modification before providing the work.

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

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

Article 4. Property Subject to Lien

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

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

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

(b) The interest of a person that did not contract for the work of improvement, if work for which the lien is claimed was provided with the knowledge of that person, unless that person gives notice of nonresponsibility under Section 8444.

8444. (a) An owner of real property or a person claiming an interest in real property on which a work of improvement is situated that did not contract for the work of improvement may give notice of nonresponsibility.

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

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

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

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

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

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

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

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

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

(b) The claimant in the claim of lien designates the amount due for each work of improvement. If the claimant contracted for a lump sum payment

for work provided for the works of improvement and the contract does not segregate the amount due for each work of improvement separately, the claimant may estimate an equitable distribution of the amount due for each work of improvement based on the proportionate amount of work provided for each. If the claimant does not designate the amount due for each work of improvement, the lien is subordinate to other liens.

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

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

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

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

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

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

Article 5. Priorities

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 6. Enforcement of Lien

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

(b) Subdivision (a) does not apply if the claimant and owner agree to extend credit, and notice of the fact and terms of the extension of credit is recorded (1) within 90 days after recordation of the claim of lien or (2) more than 90 days after recordation of the claim of lien but before a purchaser or encumbrancer for value and in good faith acquires rights in the property. In that event the claimant shall commence an action to enforce the lien

within 90 days after the expiration of the credit, but in no case later than one year after completion of the work of improvement. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable.

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

8462. Notwithstanding Section 583.420 of the Code of Civil Procedure, if an action to enforce a lien is not brought to trial within two years after commencement of the action, the court may in its discretion dismiss the action for want of prosecution.

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

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

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

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

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

(3) The right to enforce a judgment.

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

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

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

(b) If the judgment in the action is against the owner or the owner's property, the owner may deduct the amount of the judgment and costs from any amount owed to the direct contractor. If the amount of the judgment and costs exceeds the amount owed to the direct contractor, or if the owner has settled with the direct contractor in full, the owner may recover from the direct contractor, or the sureties on a bond given by the direct contractor for faithful performance of the direct contract, the amount of the judgment

and costs that exceed the contract price and for which the direct contractor was originally liable.

Article 7. Release Order

8480. (a) The owner of property or the owner of any interest in property subject to a claim of lien may petition the court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within the time provided in Section 8460.

(b) This article does not bar any other cause of action or claim for relief by the owner of the property. A release order does not bar any other cause of action or claim for relief by the claimant, other than an action to enforce the claim of lien that is the subject of the release order.

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

(d) Notwithstanding Section 8056, Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure does not apply to a proceeding under this article.

8482. An owner of property may not petition the court for a release order under this article unless at least 10 days before filing the petition the owner gives the claimant notice demanding that the claimant execute and record a release of the claim of lien. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, and shall state the grounds for the demand.

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

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

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

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

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

(e) Whether an extension of credit has been granted under Section 8460, if so to what date, and that the time for commencement of an action to enforce the lien has expired.

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

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

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

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

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

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

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

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

(c) The prevailing party is entitled to reasonable attorney's fees.

Article 8. Removal of Claim of Lien from Record

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

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

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

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

(4) The legal description of the property.

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

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

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

8494. If a claim of lien expires and is unenforceable under Section 8460, or if a court order or judgment is recorded under Section 8490, the claim of lien does not constitute actual or constructive notice of any of the matters

contained, claimed, alleged, or contended in the claim of lien, or create a duty of inquiry in any person thereafter dealing with the affected property.

CHAPTER 5. STOP PAYMENT NOTICE

Article 1. General Provisions

8500. The rights of all persons furnishing work for any work of improvement, with respect to any fund for payment of construction costs, are governed exclusively by this chapter, and no person may assert any legal or equitable right with respect to the fund, other than a right created by a written contract between that person and the person holding the fund, except pursuant to the provisions of this chapter.

8502. (a) A stop payment notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, 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.

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

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

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

(c) A stop payment notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

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

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

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

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

(b) A release bond shall be given by an admitted surety insurer and shall be conditioned for payment of any amount not exceeding the penal obligation of the bond that the claimant recovers on the claim, together with costs of

suit awarded in the action. The bond shall be in an amount equal to 125 percent of the amount claimed in the stop payment notice.

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

Article 2. Stop Payment Notice to Owner

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

(b) The owner may give notice, in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, demanding that a person that has a lien right under Chapter 4 (commencing with Section 8400) give the owner a stop payment notice. If the person fails to give the owner a bonded or unbonded stop payment notice, the person forfeits the right to a lien under Chapter 4 (commencing with Section 8400).

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

(b) The owner may, but is not required to, withhold funds if the owner has previously recorded a payment bond under Section 8600. If the owner does not withhold funds, the owner shall, within 30 days after receipt of the stop payment notice, give notice to the claimant that a payment bond has been recorded and provide the claimant a copy of the bond. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

Article 3. Stop Payment Notice to Construction Lender

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

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

8534. (a) A construction lender that objects to the sufficiency of sureties on the bond given with a bonded stop payment notice shall give notice to the claimant of the objection, within 20 days after the bonded stop payment

notice is given. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

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

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

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

(1) The stop payment notice is unbonded.

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

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

(b) If the construction lender elects not to withhold funds under Section 8536, the lender shall, within 30 days after making the election, give notice of that fact to a claimant who has requested notice of the election under subdivision (a). The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. If the basis of the election is the recordation of a payment bond under Section 8600, the construction lender shall include a copy of the bond with the notice.

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

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

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

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

Article 4. Priorities

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

(1) First, to pay claims of persons that have given a bonded stop payment notice. If funds are insufficient to pay the claims of those persons in full, the funds shall be distributed pro rata among the claimants in the ratio that

the claim of each bears to the aggregate of all claims for which a bonded stop payment notice is given.

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

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

8542. Notwithstanding Section 8540:

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

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

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

Article 5. Enforcement of Claim Stated in Stop Payment Notice

8550. (a) A claimant shall commence an action to enforce payment of the claim stated in a stop payment notice at any time after 10 days from the date the claimant gives the stop payment notice.

(b) A claimant shall commence an action to enforce payment of the claim stated in a stop payment notice not later than 90 days after expiration of the time within which a stop payment notice must be given.

(c) An action under this section may not be brought to trial or judgment entered before expiration of the time provided in subdivision (b).

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

(e) Within five days after commencement of an action to enforce payment of the claim stated in a stop payment notice, the claimant shall give notice

of commencement of the action to the persons to whom the stop payment notice was given. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

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

- (a) Any number of claimants may join in the same enforcement action.
- (b) If claimants commence separate actions, the court first acquiring jurisdiction may order the actions consolidated.
- (c) On motion of the owner or construction lender the court shall require all claimants to be impleaded in one action, to the end that the rights of all parties may be adjudicated in the action.

8554. Notwithstanding Section 583.420 of the Code of Civil Procedure, if an action to enforce payment of the claim stated in a stop payment notice is not brought to trial within two years after commencement of the action, the court may in its discretion dismiss the action for want of prosecution.

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

- (a) An action to enforce payment of the claim stated in the stop payment notice is dismissed, unless expressly stated to be without prejudice.
- (b) Judgment in an action to enforce payment of the claim stated in the stop payment notice is against the claimant.

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

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

- (1) If the action is voluntarily dismissed or dismissed pursuant to a settlement, there is no prevailing party.
- (2) If the defendant tenders to the claimant the full amount to which the claimant is entitled, and deposits in court for the claimant the amount so tendered, and alleges those facts in the answer and the allegation is determined to be true, the defendant is deemed to be the prevailing party.

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

CHAPTER 6. PAYMENT BOND

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

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

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

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

(b) For purposes of this section, a "lending institution" includes a commercial bank, savings and loan institution, credit union, or other organization or person engaged in the business of financing loans.

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

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

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

8608. (a) This title does not give a claimant a right to recover on a direct contractor's payment bond given under this chapter unless the claimant provided work to the direct contractor either directly or through one or more subcontractors, pursuant to a direct contract.

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

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

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

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

8610. Notwithstanding Section 8609, if a payment bond under this title is recorded before completion of a work of improvement, an action to enforce

the liability on the bond may not be commenced later than six months after completion of the work of improvement.

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

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

8614. Notice to the principal and surety under Section 8612 shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

CHAPTER 7. SECURITY FOR LARGE PROJECT

Article 1. Application of Chapter

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

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

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

(b) For the purpose of this section:

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

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

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

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

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

(a) A single-family residence, including a single-family residence located within a subdivision, and any associated fixed work that requires the services of a general engineering contractor as defined in Section 7056 of the

Business and Professions Code. As used in this subdivision, “single-family residence” means a real property improvement used or intended to be used as a dwelling unit for one family.

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

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

(a) A qualified publicly traded company or a wholly owned subsidiary of a qualified publicly traded company, if the obligations of the subsidiary pursuant to the contract for the work of improvement are guaranteed by the parent. As used in this subdivision, “qualified publicly traded company” means a company having a class of equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ stock market, and the nonsubordinated debt securities of which are rated as “investment grade” by either Fitch ICBA, Inc., Moody’s Investor Services, Inc., Standard & Poor’s Ratings Services, or a similar statistical rating organization that is nationally recognized for rating the creditworthiness of a publicly traded company. If at any time before final payment of all amounts due pursuant to the contract the nonsubordinated debt securities of the qualified publicly traded company are downgraded to below “investment grade” by any of those rating organizations, the owner is no longer exempt from this chapter.

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

Article 2. Security Requirement

8710. An owner described in subdivision (a) of Section 8700 shall provide the direct contractor all of the following:

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

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

8712. If an owner fails to provide or maintain the security required by this chapter, the direct contractor may give the owner notice demanding

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

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

8716. This chapter does not affect any statute providing for mechanics liens, stop payment notices, bond remedies, or prompt payment rights of a subcontractor, including the direct contractor's payment responsibilities under Section 7108.5 of the Business and Professions Code.

Article 3. Form of Security

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

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

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

(a) The bond shall be executed by an admitted surety insurer that is either listed in the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) or that has an A.M. Best rating of A or better and has an underwriting limitation, under Section 12090 of the Insurance Code, greater than the amount of the bond.

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

(c) The bond shall be conditioned for payment on default by the owner of any undisputed amount pursuant to the contract that is due and payable for more than 30 days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The owner and the direct contractor shall authorize the disbursement to the owner of any funds remaining on deposit after the direct contractor

has been paid all amounts due pursuant to the contract. The owner and the direct contractor shall authorize the disbursement of funds on deposit pursuant to a court order that is binding on both of them. The owner and the direct contractor may agree in the contract to additional conditions for the disbursement of funds on deposit, except that the conditions may not cause the amount remaining on deposit to be less than the amount required under this section.

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

CHAPTER 8. PROMPT PAYMENT

Article 1. Progress Payment

8800. (a) Except as otherwise agreed in writing by the owner and direct contractor, the owner shall pay the direct contractor, within 30 days after notice demanding payment pursuant to the contract is given, any progress payment due as to which there is no good faith dispute between them. The notice given shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

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

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

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

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

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

(c) A direct contractor that violates this section is liable to the subcontractor for a penalty of 2 percent of the disputed amount due per month for every month that payment is not made. In an action for collection

of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney's fee.

(d) This section does not limit or impair a contractual, administrative, or judicial remedy otherwise available to a contractor or subcontractor in a dispute involving late payment or nonpayment by the contractor or deficient performance or nonperformance by the subcontractor.

Article 2. Retention Payment

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

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

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

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

8814. (a) If a direct contractor has withheld a retention from one or more subcontractors, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay to each subcontractor from whom retention has been withheld that subcontractor's share of the payment.

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

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

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

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

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

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

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

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

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

Article 3. Stop Work Notice

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

8832. If a direct contractor is not paid the amount due pursuant to a written contract within 35 days after the date payment is due under the contract, and there is no dispute as to the satisfactory performance of the contractor, the contractor may give the owner a stop work notice. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

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

(a) At least five days before giving the stop work notice, the contractor shall post notice of intent to give a stop work notice. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. In addition to posting the notice pursuant to Section 8114, the notice shall also be posted at the main office of the site, if one exists.

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

8836. Within five days after receipt of a stop work notice from a direct contractor, the owner shall give a copy of the notice to the construction lender, if any. The copy of the notice shall be given in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

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

(b) A direct contractor's or original subcontractor's liability to a subcontractor or material supplier after the direct contractor stops work under this article is limited to the amount the subcontractor or material supplier could otherwise recover under this title for work provided up to the date the subcontractor or material supplier ceases work, subject to the following exceptions:

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

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

8840. On resolution of the claim in the stop work notice or the direct contractor's cancellation of the stop work notice, the contractor shall post, and give subcontractors with whom the contractor has a direct contractual relationship on the work of improvement, notice of the resolution or cancellation. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. In addition to posting the notice pursuant to Section 8114, the notice shall also be posted at the main office of the site, if one exists.

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

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

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

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

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

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

TITLE 3. PUBLIC WORK OF IMPROVEMENT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Application of Title

9000. This title applies to a work of improvement contracted for by a public entity.

Article 2. Claimants

9100. (a) Except as provided in subdivision (b), any of the following persons that have not been paid in full may give a stop payment notice to the public entity or assert a claim against a payment bond:

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

(2) A laborer.

(3) A person described in Section 4107.7 of the Public Contract Code.

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

CHAPTER 2. COMPLETION

9200. For the purpose of this title, completion of a work of improvement occurs at the earliest of the following times:

(a) Acceptance of the work of improvement by the public entity.

(b) Cessation of labor on the work of improvement for a continuous period of 60 days. This subdivision does not apply to a contract awarded under the State Contract Act, Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

9202. (a) A public entity may record a notice of cessation if there has been a continuous cessation of labor for at least 30 days prior to the recordation that continues through the date of the recordation.

(b) The notice shall be signed and verified by the public entity or its agent.

(c) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, and shall also include all of the following information:

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

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

9204. (a) A public entity may record a notice of completion on or within 15 days after the date of completion of a work of improvement.

(b) The notice shall be signed and verified by the public entity or its agent.

(c) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, and shall also include the date of completion. An erroneous statement of the date of completion does not affect the effectiveness of the notice if the true date of completion is 15 days or less before the date of recordation of the notice.

9208. A notice of completion in otherwise proper form, verified and containing the information required by this title shall be accepted by the recorder for recording and is deemed duly recorded without acknowledgment.

CHAPTER 3. PRELIMINARY NOTICE

9300. (a) Except as otherwise provided by statute, before giving a stop payment notice or asserting a claim against a payment bond, a claimant shall give preliminary notice to the following persons:

- (1) The public entity.
- (2) The direct contractor to which the claimant provides work.

(b) Notwithstanding subdivision (a):

- (1) A laborer is not required to give preliminary notice.
- (2) A claimant that has a direct contractual relationship with a direct contractor is not required to give preliminary notice.

(c) Compliance with this section is a necessary prerequisite to the validity of a stop payment notice under this title.

(d) Compliance with this section or with Section 9562 is a necessary prerequisite to the validity of a claim against a payment bond under this title.

9302. (a) Except as provided in subdivision (b), preliminary notice shall be given in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

(b) If the public works contract is for work constructed by the Department of Public Works or the Department of General Services of the state, preliminary notice to the public entity shall be given to the disbursing officer of the department constructing the work.

9303. The preliminary notice shall comply with the requirements of Section 8102, and shall also include:

- (a) A general description of the work to be provided.
- (b) An estimate of the total price of the work provided and to be provided.

9304. A claimant may give a stop payment notice or assert a claim against a payment bond only for work provided within 20 days before giving preliminary notice and at any time thereafter.

9306. If the contract of any subcontractor on a particular work of improvement provides for payment to the subcontractor of more than four hundred dollars (\$400), the failure of that subcontractor, licensed under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), to give the notice provided for in this chapter, constitutes grounds for disciplinary action under the Contractors' 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 Chapter 2 (commencing with Section 8100) of Title 1, 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 Chapter 2 (commencing with Section 8100) of Title 1.

(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 expiration of whichever of the following time periods is applicable:

(a) If a notice of completion, acceptance, or cessation is recorded, 30 days after that recordation.

(b) If a notice of completion, acceptance, or cessation is not recorded, 90 days after 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 to become due to the direct contractor to pay the claim stated in the stop payment notice and to provide for the public entity's reasonable cost of any litigation pursuant to the stop payment notice.

(b) The public entity may satisfy its duty under this section by refusing to release funds held in escrow under Section 10263 or 22300 of the Public Contract Code.

9360. (a) This chapter does not prohibit payment of funds to a direct contractor or a direct contractor's assignee if a stop payment notice is not received before the disbursing officer actually surrenders possession of the funds.

(b) This chapter does not prohibit payment of any amount due to a direct contractor or a direct contractor's assignee in excess of the amount necessary to pay the total amount of all claims stated in stop payment notices received by the public entity at the time of payment plus any interest and court costs that might reasonably be anticipated in connection with the claims.

9362. (a) Not later than 10 days after each of the following events, the public entity shall give notice to a claimant that has given a stop payment

notice of the time within which an action to enforce payment of the claim stated in the stop payment notice must be commenced:

(1) Completion of a public works contract, whether by acceptance or cessation.

(2) Recordation of a notice of cessation or completion.

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

(c) A public entity need not give notice under this section unless the claimant has paid the public entity ten dollars (\$10) at the time of giving the stop payment notice.

9364. (a) A public entity may, in its discretion, permit the direct contractor to give the public entity a release bond. The bond shall be executed by an admitted surety insurer, in an amount equal to 125 percent of the claim stated in the stop payment notice, conditioned for the payment of any amount the claimant recovers in an action on the claim, together with court costs if the claimant prevails.

(b) On receipt of a release bond, the public entity shall not withhold funds from the direct contractor pursuant to the stop payment notice.

(c) The surety on a release bond is jointly and severally liable to the claimant with the sureties on any payment bond given under Chapter 5 (commencing with Section 9550).

Article 2. Summary Proceeding for Release of Funds

9400. A direct contractor may obtain release of funds withheld pursuant to a stop payment notice under the summary proceeding provided in this article on any of the following grounds:

(a) The claim on which the notice is based is not a type for which a stop payment notice is authorized under this chapter.

(b) The claimant is not a person authorized under Section 9100 to give a stop payment notice.

(c) The amount of the claim stated in the stop payment notice is excessive.

(d) There is no basis for the claim stated in the stop payment notice.

9402. The direct contractor shall serve on the public entity an affidavit, together with a copy of the affidavit, in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, that includes all of the following information:

(a) An allegation of the grounds for release of the funds and a statement of the facts supporting the allegation.

(b) A demand for the release of all or the portion of the funds that are alleged to be withheld improperly or in an excessive amount.

(c) A statement of the address of the contractor within the state for the purpose of permitting service by mail on the contractor of any notice or document.

9404. The public entity shall serve on the claimant a copy of the direct contractor's affidavit, together with a notice stating that the public entity

will release the funds withheld, or the portion of the funds demanded, unless the claimant serves on the public entity a counteraffidavit on or before the time stated in the notice. The time stated in the notice shall be not less than 10 days nor more than 20 days after service on the claimant of the copy of the affidavit. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

9406. (a) A claimant that contests the direct contractor's affidavit shall serve on the public entity a counteraffidavit alleging the details of the claim and describing the specific basis on which the claimant contests or rebuts the allegations of the contractor's affidavit. The counteraffidavit shall be served within the time stated in the public entity's notice, together with proof of service of a copy of the counteraffidavit on the direct contractor. The service of the counteraffidavit on the public entity and the copy of the affidavit on the direct contractor shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

(b) If no counteraffidavit with proof of service is served on the public entity within the time stated in the public entity's notice, the public entity shall immediately release the funds, or the portion of the funds demanded by the affidavit, without further notice to the claimant, and the public entity is not liable in any manner for their release.

(c) The public entity is not responsible for the validity of an affidavit or counteraffidavit under this article.

9408. (a) If a counteraffidavit, together with proof of service, is served under Section 9406, either the direct contractor or the claimant may commence an action for a declaration of the rights of the parties.

(b) After commencement of the action, either the direct contractor or the claimant may move the court for a determination of rights under the affidavit and counteraffidavit. The party making the motion shall give not less than five days' notice of the hearing to the public entity and to the other party.

(c) The notice of hearing shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. Notwithstanding Section 8116, when notice of the hearing is made by mail, the notice is complete on the fifth day following deposit of the notice in the mail.

(d) The court shall hear the motion within 15 days after the date of the motion, unless the court continues the hearing for good cause.

9410. (a) The affidavit and counteraffidavit shall be filed with the court by the public entity and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interest of justice. The affidavit of the direct contractor shall be deemed controverted by the counteraffidavit of the claimant, and both shall be received in evidence.

(b) At the hearing, the direct contractor has the burden of proof.

9412. (a) No findings are required in a summary proceeding under this article.

(b) If at the hearing no evidence other than the affidavit and counteraffidavit is offered, the court may, if satisfied that sufficient facts are shown, make a determination on the basis of the affidavit and counteraffidavit. If the court is not satisfied that sufficient facts are shown,

the court shall order the hearing continued for production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits.

(c) At the conclusion of the hearing, the court shall make an order determining whether the demand for release is allowed. The court's order is determinative of the right of the claimant to have funds further withheld by the public entity.

(d) The direct contractor shall serve a copy of the court's order on the public entity in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

9414. A determination in a summary proceeding under this article is not res judicata with respect to a right of action by the claimant against either the principal or surety on a payment bond or with respect to a right of action against a party personally liable to the claimant.

Article 3. Distribution of Funds Withheld

9450. If funds withheld pursuant to a stop payment notice are insufficient to pay in full the claims of all persons who have given a stop payment notice, the funds shall be distributed among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which a stop payment notice is given, without regard to the order in which the notices were given or enforcement actions were commenced.

9452. Nothing in this chapter impairs the right of a claimant to recover from the direct contractor or the contractor's sureties in an action on a payment bond under Chapter 5 (commencing with Section 9550) any deficit that remains unpaid after the distribution under Section 9450.

9454. A person that willfully gives a false stop payment notice to the public entity or that willfully includes in the notice work not provided for the public works contract for which the stop payment notice is given forfeits all right to participate in the distribution under Section 9450.

9456. (a) A stop payment notice takes priority over an assignment by a direct contractor of any amount due or to become due pursuant to a public works contract, including contract changes, whether made before or after the giving of a stop payment notice, and the assignment has no effect on the rights of the claimant.

(b) Any garnishment of an amount due or to become due pursuant to a public works contract by a creditor of a direct contractor under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure and any statutory lien on that amount is subordinate to the rights of a claimant.

Article 4. Enforcement of Payment of Claim Stated in Stop Payment Notice

9500. (a) A claimant may not enforce payment of the claim stated in a stop payment notice unless the claimant has complied with all of the following conditions:

(1) The claimant has given preliminary notice to the extent required by Chapter 3 (commencing with Section 9300).

(2) The claimant has given the stop payment notice within the time provided in Section 9356.

(b) The claim filing procedures of Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code do not apply to an action under this article.

9502. (a) The claimant shall commence an action against the public entity and the direct contractor to enforce payment of the claim stated in a stop payment notice at any time after 10 days from the date the claimant gives the stop payment notice.

(b) The claimant shall commence an action against the public entity and the direct contractor to enforce payment of the claim stated in a stop payment notice not later than 90 days after expiration of the time within which a stop payment notice must be given.

(c) An action under this section may not be brought to trial or judgment entered before expiration of the time provided in subdivision (b).

(d) If a claimant does not commence an action to enforce payment of the claim stated in a stop payment notice within the time provided in subdivision (b), the notice ceases to be effective and the public entity shall release funds withheld pursuant to the notice.

9504. Within five days after commencement of an action to enforce payment of the claim stated in a stop payment notice, the claimant shall give notice of commencement of the action to the public entity in the same manner that a stop payment notice is given.

9506. If more than one claimant has given a stop payment notice:

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

(b) If claimants commence separate actions, the court that first acquires jurisdiction may order the actions consolidated.

(c) On request of the public entity, the court shall require that all claimants be impleaded in one action and shall adjudicate the rights of all parties in the action.

9508. Notwithstanding Section 583.420 of the Code of Civil Procedure, if an action to enforce payment of the claim stated in a stop payment notice is not brought to trial within two years after commencement of the action, the court may in its discretion dismiss the action for want of prosecution.

9510. A stop payment notice ceases to be effective, and the public entity shall release funds withheld, in either of the following circumstances:

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

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

CHAPTER 5. PAYMENT BOND

9550. (a) A direct contractor that is awarded a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000) shall, before commencement of work, give a payment bond to and approved by the officer or public entity by whom the contract was awarded.

(b) A public entity shall state in its call for bids that a payment bond is required for a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000).

(c) A payment bond given and approved under this section will permit performance of and provide coverage for work pursuant to a public works contract that supplements the contract for which the bond is given, if the requirement of a new bond is waived by the public entity.

(d) For the purpose of this section, a design professional is not deemed a direct contractor and is not required to give a payment bond.

(e) This section does not apply to a public works contract with a “state entity” as defined in subdivision (d) of Section 7103 of the Public Contract Code.

9552. If a payment bond is not given and approved as required by Section 9550:

(a) Neither the public entity awarding the public works contract nor any officer of the public entity shall audit, allow, or pay a claim of the direct contractor pursuant to the contract.

(b) A claimant shall receive payment of a claim pursuant to a stop payment notice in the manner provided by Chapter 4 (commencing with Section 9350).

9554. (a) A payment bond shall be in an amount not less than 100 percent of the total amount payable pursuant to the public works contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer.

(b) The payment bond shall provide that if the direct contractor or a subcontractor fails to pay any of the following, the surety will pay the obligation and, if an action is brought to enforce the liability on the bond, a reasonable attorney’s fee, to be fixed by the court:

(1) A person authorized under Section 9100 to assert a claim against a payment bond.

(2) Amounts due under the Unemployment Insurance Code with respect to work or labor performed pursuant to the public works contract.

(3) Amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors under Section 13020 of the Unemployment Insurance Code with respect to the work and labor.

(c) The payment bond shall be conditioned for the payment in full of the claims of all claimants and by its terms inure to the benefit of any person authorized under Section 9100 to assert a claim against a payment bond so as to give a right of action to that person or that person's assigns in an action to enforce the liability on the bond.

(d) The direct contractor may require that a subcontractor give a bond to indemnify the direct contractor for any loss sustained by the direct contractor because of any default of the subcontractor under this section.

9558. A claimant may commence an action to enforce the liability on the bond at any time after the claimant ceases to provide work, but not later than six months after the period in which a stop payment notice may be given under Section 9356.

9562. Notice to the principal and surety under Section 9560 shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

9564. (a) A claimant may maintain an action to enforce the liability of a surety on a payment bond whether or not the claimant has given the public entity a stop payment notice.

(b) A claimant may maintain an action to enforce the liability on the bond separately from and without commencement of an action against the public entity by whom the contract was awarded or against any officer of the public entity.

(c) In an action to enforce the liability on the bond, the court shall award the prevailing party a reasonable attorney's fee.

9566. (a) A claimant does not have a right to recover on a payment bond unless the claimant provided work to the direct contractor either directly or through one or more subcontractors pursuant to a public works contract.

(b) Nothing in this section affects the stop payment notice rights of, and relative priorities among, design professionals.

SEC. 20.1. Section 9560 is added to the Civil Code, to read:

9560. (a) In order to enforce a claim against a payment bond, a claimant shall give the preliminary notice provided in Chapter 3 (commencing with Section 9300).

(b) If preliminary notice was not given as provided in Chapter 3 (commencing with Section 9300), a claimant may enforce a claim by giving written notice to the surety and bond principal within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement.

SEC. 20.2. Section 9560 is added to the Civil Code, to read:

9560. (a) In order to enforce a claim against a payment bond, a claimant shall give the preliminary notice provided in Chapter 3 (commencing with Section 9300).

(b) If preliminary notice was not given as provided in Chapter 3 (commencing with Section 9300), a claimant may enforce a claim by giving written notice to the surety and the bond principal prior to completion of

the work of improvement, or recordation of notice of completion, whichever is later.

(c) Prior to completion of a work of improvement or recordation of a notice of completion, a public entity shall give notice of pending completion to each subcontractor that has given preliminary notice as provided in Chapter 3 (commencing with Section 9300). The notice of pending completion shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

SEC. 21. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) The following civil cases and proceedings are limited civil cases:

(1) A case at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars (\$25,000) or less. This paragraph does not apply to a case that involves the legality of any tax, impost, assessment, toll, or municipal fine, except an action to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) An action for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars (\$25,000); an action of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars (\$25,000).

(3) An action to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or delivered under, or in consideration of, the contract; an action to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) A proceeding in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or less.

(5) An action to enforce and foreclose a lien on personal property where the amount of the lien is twenty-five thousand dollars (\$25,000) or less.

(6) An action to enforce and foreclose, or a petition to release, a lien arising under the provisions of Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or less. However, if an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or if the total amount of liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a limited civil case.

(7) An action for declaratory relief when brought pursuant to either of the following:

(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding that is otherwise a limited civil case.

(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the amount in controversy is twenty-five thousand dollars (\$25,000) or less.

(8) An action to issue a temporary restraining order or preliminary injunction; to take an account, where necessary to preserve the property or rights of any party to a limited civil case; to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil case; to determine title to personal property seized in a limited civil case.

(9) An action under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding twenty-five thousand dollars (\$25,000) or the debt denied does not exceed twenty-five thousand dollars (\$25,000).

(10) An arbitration-related petition filed pursuant to either of the following:

(A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is a limited civil case under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within paragraphs (1) to (9), inclusive, of subdivision (a).

(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the arbitration award is twenty-five thousand dollars (\$25,000) or less.

(b) The following cases in equity are limited civil cases:

(1) A case to try title to personal property when the amount involved is not more than twenty-five thousand dollars (\$25,000).

(2) A case when equity is pleaded as a defensive matter in any case that is otherwise a limited civil case.

(3) A case to vacate a judgment or order of the court obtained in a limited civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

SEC. 22. Section 410.42 of the Code of Civil Procedure is amended to read:

410.42. (a) The following provisions of a contract between the contractor and a subcontractor with principal offices in this state, for the construction of a public or private work of improvement in this state, shall be void and unenforceable:

(1) A provision which purports to require any dispute between the parties to be litigated, arbitrated, or otherwise determined outside this state.

(2) A provision which purports to preclude a party from commencing such a proceeding or obtaining a judgment or other resolution in this state or the courts of this state.

(b) For purposes of this section, “construction” means any work or services performed on, or materials provided for, a work of improvement, as defined in Section 8050 of the Civil Code, and for which a lien may be claimed pursuant to Section 8400 of the Civil Code (whether or not a lien is in fact claimed) or for which such a lien could be claimed but for Section 8160 of the Civil Code.

SEC. 23. Section 708.760 of the Code of Civil Procedure is amended to read:

708.760. (a) If the judgment debtor named in the abstract or certified copy of the judgment filed pursuant to this article is a contractor upon a public work, the cost of which is to be paid out of public moneys voted, appropriated, or otherwise set apart for such purpose, only so much of the contract price shall be deemed owing and unpaid within the meaning of Section 708.740 or 708.750 as may remain payable under the terms of the contractor’s contract, upon the completion thereof, after deducting sums due and to become due to persons described in Section 9100 of the Civil Code. In ascertaining the sums due or to become due to such persons, only claims which are filed against the moneys due or to become due to the judgment debtor in accordance with Chapter 4 (commencing with Section 9350) of Title 3 of Part 6 of Division 4 of the Civil Code shall be considered.

(b) The Controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract may not deposit an amount with the court pursuant to this article until the contract is completed, but may deposit an amount with the court to satisfy the claim of the judgment debtor before the payments specified in subdivision (a) are made so long as a sufficient amount is retained for the satisfaction of the claims of persons described in Section 9100 of the Civil Code.

SEC. 24. Section 1203.61 of the Code of Civil Procedure is amended to read:

1203.61. (a) Any lien provided for by this chapter shall be enforced in the same manner as provided in Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4 of the Civil Code. The action shall be filed within 180 days from the time of the recording of the lien. If a credit is given and notice of the fact and terms of the credit is filed in the office of the county recorder subsequent to the filing of the lien and prior to the expiration of the 180-day period, then the lien continues in force until 180 days after the expiration of the credit, but no lien continues in force by reason of any agreement to give credit for a longer time than one year from the time the work is completed. If the proceedings to enforce the lien are not prosecuted to trial within two years after commencement, the court may in its discretion dismiss the action for want of prosecution, and in all cases the dismissal of the action (unless it is expressly stated that it is without prejudice) or a

judgment in the action that no lien exists is equivalent to the cancellation and removal from the record of the lien.

(b) As against any purchaser or encumbrancer for value and in good faith whose rights are acquired subsequent to the expiration of the 180-day period following the filing of the lien, no giving of credit or extension of the lien or time to enforce the lien shall be effective unless evidenced by a notice or agreement filed for record in the office of the county recorder prior to the acquisition of the rights of the purchaser or encumbrancer.

SEC. 25. Section 1281.5 of the Code of Civil Procedure is amended to read:

1281.5. (a) Any person who proceeds to record and enforce a claim of lien by commencement of an action pursuant to Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4 of the Civil Code, does not thereby waive any right of arbitration the person may have pursuant to a written agreement to arbitrate, if, in filing an action to enforce the claim of lien, the claimant does either of the following:

(1) Includes an allegation in the complaint that the claimant does not intend to waive any right of arbitration, and intends to move the court, within 30 days after service of the summons and complaint, for an order to stay further proceedings in the action.

(2) At the same time that the complaint is filed, the claimant files an application that the action be stayed pending the arbitration of any issue, question, or dispute that is claimed to be arbitrable under the agreement and that is relevant to the action to enforce the claim of lien.

(b) Within 30 days after service of the summons and complaint, the claimant shall file and serve a motion and notice of motion pursuant to Section 1281.4 to stay the action pending the arbitration of any issue, question, or dispute that is claimed to be arbitrable under the agreement and that is relevant to the action to enforce the claim of lien. The failure of a claimant to comply with this subdivision is a waiver of the claimant's right to compel arbitration.

(c) The failure of a defendant to file a petition pursuant to Section 1281.2 at or before the time the defendant answers the complaint filed pursuant to subdivision (a) is a waiver of the defendant's right to compel arbitration.

SEC. 26. Section 1800 of the Code of Civil Procedure is amended to read:

1800. (a) As used in this section, the following terms have the following meanings:

(1) "Insolvent" means:

(A) With reference to a person other than a partnership, a financial condition such that the sum of the person's debts is greater than all of the person's property, at a fair valuation, exclusive of both of the following:

(i) Property transferred, concealed, or removed with intent to hinder, delay, or defraud the person's creditors.

(ii) Property that is exempt from property of the estate pursuant to the election of the person made pursuant to Section 1801.

(B) With reference to a partnership, financial condition such that the sum of the partnership's debts are greater than the aggregate of, at a fair valuation, both of the following:

(i) All of the partnership's property, exclusive of property of the kind specified in clause (i) of subparagraph (A).

(ii) The sum of the excess of the value of each general partner's separate property, exclusive of property of the kind specified in clause (ii) of subparagraph (A), over the partner's separate debts.

(2) "Inventory" means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease.

(3) "Insider" means:

(A) If the assignor is an individual, any of the following:

(i) A relative of the assignor or of a general partner of the assignor.

(ii) A partnership in which the assignor is a general partner.

(iii) A general partner of the assignor.

(iv) A corporation of which the assignor is a director, officer, or person in control.

(B) If the assignor is a corporation, any of the following:

(i) A director of the assignor.

(ii) An officer of the assignor.

(iii) A person in control of the assignor.

(iv) A partnership in which the assignor is a general partner.

(v) A general partner of the assignor.

(vi) A relative of a general partner, director, officer, or person in control of the assignor.

(C) If the assignor is a partnership, any of the following:

(i) A general partner in the assignor.

(ii) A relative of a general partner in, general partner of, or person in control of the assignor.

(iii) A partnership in which the assignor is a general partner.

(iv) A general partner of the assignor.

(v) A person in control of the assignor.

(D) An affiliate of the assignor or an insider of an affiliate as if the affiliate were the assignor.

(E) A managing agent of the assignor.

As used in this paragraph, the following terms have the following meanings:

"Relative" means an individual related by affinity or consanguinity within the third degree as determined by the common law, or an individual in a step or adoptive relationship within the third degree.

An "affiliate" means a person that directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the assignor, or 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the assignor, excluding securities held in a fiduciary or agency

capacity without sole discretionary power to vote, or held solely to secure a debt if the holder has not in fact exercised the power to vote, or a person who operates the business of the assignor under a lease or operating agreement or whose business is operated by the assignor under a lease or operating agreement.

(4) “Judicial lien” means a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(5) “New value” means money or money’s worth in goods, services, or new credit, or release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the assignor or the assignee under any applicable law, but does not include an obligation substituted for an existing obligation.

(6) “Receivable” means a right to payment, whether or not the right has been earned by performance.

(7) “Security agreement” means an agreement that creates or provides for a security interest.

(8) “Security interest” means a lien created by an agreement.

(9) “Statutory lien” means a lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include a security interest or judicial lien, whether or not the interest or lien is provided by or is dependent on a statute and whether or not the interest or lien is made fully effective by statute.

(10) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or with an interest in property, including retention of title as a security interest.

(b) Except as provided in subdivision (c), the assignee of any general assignment for the benefit of creditors, as defined in Section 493.010, may recover any transfer of property of the assignor that is all of the following:

(1) To or for the benefit of a creditor.

(2) For or on account of an antecedent debt owed by the assignor before the transfer was made.

(3) Made while the assignor was insolvent.

(4) Made on or within 90 days before the date of the making of the assignment or made between 90 days and one year before the date of making the assignment if the creditor, at the time of the transfer, was an insider and had reasonable cause to believe the debtor was insolvent at the time of the transfer.

(5) Enables the creditor to receive more than another creditor of the same class.

(c) The assignee may not recover under this section a transfer as follows:

(1) To the extent that the transfer was both of the following:

(A) Intended by the assignor and the creditor to or for whose benefit the transfer was made to be a contemporaneous exchange for new value given to the assignor.

(B) In fact a substantially contemporaneous exchange.

(2) To the extent that the transfer was all of the following:

(A) In payment of a debt incurred in the ordinary course of business or financial affairs of the assignor and the transferee.

(B) Made in the ordinary course of business or financial affairs of the assignor and the transferee.

(C) Made according to ordinary business terms.

(3) Of a security interest in property acquired by the assignor that meets both of the following:

(A) To the extent the security interest secures new value that was all of the following:

(i) Given at or after the signing of a security agreement that contains a description of the property as collateral.

(ii) Given by or on behalf of the secured party under the agreement.

(iii) Given to enable the assignor to acquire the property.

(iv) In fact used by the assignor to acquire the property.

(B) That is perfected within 20 days after the security interest attaches.

(4) To or for the benefit of a creditor, to the extent that, after the transfer, the creditor gave new value to or for the benefit of the assignor that meets both of the following:

(A) Not secured by an otherwise unavoidable security interest.

(B) On account of which new value the assignor did not make an otherwise unavoidable transfer to or for the benefit of the creditor.

(5) Of a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all the transfers to the transferee caused a reduction, as of the date of the making of the assignment and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by the security interest exceeded the value of all security interest for the debt on the later of the following:

(A) Ninety days before the date of the making of the assignment.

(B) The date on which new value was first given under the security agreement creating the security interest.

(6) That is the fixing of a statutory lien.

(7) That is payment to a claimant, as defined in Section 8004 of the Civil Code, in exchange for the claimant's waiver or release of any potential or asserted claim of lien, stop payment notice, or right to recover on a payment bond, or any combination thereof.

(8) To the extent that the transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of, the spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, or a determination made in accordance with state or territorial law by a governmental unit, or property settlement agreement; but not to the extent that either of the following occurs:

(A) The debt is assigned to another entity voluntarily, by operation of law or otherwise, in which case the assignee may not recover that portion of the transfer that is assigned to the state or any political subdivision of the state pursuant to Part D of Title IV of the Social Security Act (42 U.S.C.

Sec. 601 et seq.) and passed on to the spouse, former spouse, or child of the debtor.

(B) The debt includes a liability designated as alimony, maintenance, or support, unless the liability is actually in the nature of alimony, maintenance, or support.

(d) An assignee of any general assignment for the benefit of creditors, as defined in Section 493.010, may avoid a transfer of property of the assignor transferred to secure reimbursement of a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the assignee under subdivision (b). The liability of the surety under the bond or obligation shall be discharged to the extent of the value of the property recovered by the assignee or the amount paid to the assignee.

(e) (1) For the purposes of this section:

(A) A transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of the property from the debtor, against whom applicable law permits the transfer to be perfected, cannot acquire an interest that is superior to the interest of the transferee.

(B) A transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3), a transfer is made at any of the following times:

(A) At the time the transfer takes effect between the transferor and the transferee, if the transfer is perfected at, or within 10 days after, the time, except as provided in subparagraph (B) of paragraph (3) of subdivision (c).

(B) At the time the transfer is perfected, if the transfer is perfected after the 10 days.

(C) Immediately before the date of making the assignment if the transfer is not perfected at the later of:

(i) The making of the assignment.

(ii) Ten days after the transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the assignor has acquired rights in the property transferred.

(f) For the purposes of this section, the assignor is presumed to have been insolvent on and during the 90 days immediately preceding the date of making the assignment.

(g) An action by an assignee under this section must be commenced within one year after making the assignment.

SEC. 27. Section 17307.5 of the Education Code is amended to read:

17307.5. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, the Department of General Services may issue a stop work order when construction work on a public school is not being performed in accordance with existing law and would compromise the structural integrity of the building, thereby endangering the public safety.

The Department of General Services shall allow construction of incidental and minor nonstructural additions or nonstructural alterations without invoking its stop work authority.

(b) A school district, county superintendent of schools, county board of education, or other public board, body, or officer whose construction work on a public school is subject to a stop work order issued pursuant to subdivision (a) shall not be held liable in any action filed against the public board, body, or officer for stopping work as required by the stop work order, or for any delays caused by compliance with the stop work order, except to the extent that an error or omission by the public board, body, or officer is the basis for the issuance of the stop work order.

SEC. 28. Section 81133.5 of the Education Code is amended to read:

81133.5. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, the Department of General Services may issue a stop work order when construction work on a community college is not being performed in accordance with existing law and would compromise the structural integrity of the building, thereby endangering the public safety. The Department of General Services shall allow construction of incidental and minor nonstructural additions or nonstructural alterations without invoking its stop work authority.

(b) A community college district or other public board, body, or officer whose construction work on a community college is subject to a stop work order issued pursuant to subdivision (a) shall not be held liable in any action filed against the public board, body, or officer for stopping work as required by the stop work order, or for any delays caused by compliance with the stop work order, except to the extent that an error or omission by the public board, body, or officer is that basis for the issuance of the stop work order.

SEC. 29. Section 7480 of the Government Code, as amended by Section 1 of Chapter 234 of the Statutes of 2008, is amended to read:

7480. Nothing in this chapter shall prohibit any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days

prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

- (1) The number of items dishonored.
- (2) The number of items paid that created overdrafts.
- (3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.
- (4) The dates and amounts of deposits and debits and the account balance on these dates.
- (5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.
- (6) The date the account opened and, if applicable, the date the account closed.
- (7) Surveillance photographs and video recordings of persons accessing the crime victim's financial account via an automated teller machine (ATM) or from within the financial institution for dates on which illegal acts involving the account were alleged to have occurred. Nothing in this paragraph does any of the following:
 - (A) Requires a financial institution to produce a photograph or video recording if it does not possess the photograph or video recording.
 - (B) Affects any existing civil immunities as provided in Section 47 of the Civil Code or any other provision of law.
- (8) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon any bank, credit union, or savings association doing business in this state, the police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request, with the consent of the accountholder, the bank, credit union, or savings association to furnish, and the bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

- (1) The number of items dishonored.
- (2) The number of items paid that created overdrafts.
- (3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) Surveillance photographs and video recordings of persons accessing the crime victim's financial account via an automated teller machine (ATM) or from within the financial institution for dates on which illegal acts involving this account were alleged to have occurred. Nothing in this paragraph does any of the following:

(A) Requires a financial institution to produce a photograph or video recording if it does not possess the photograph or video recording.

(B) Affects any existing civil immunities as provided in Section 47 of the Civil Code or any other provision of law.

(8) A bank, credit union, or savings association doing business in this state that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(d) For purposes of subdivision (c), consent of the accountholder shall be satisfied if an accountholder provides to the financial institution and the person or entity seeking disclosure, a signed and dated statement containing all of the following:

(1) Authorization of the disclosure for the period specified in subdivision (c).

(2) The name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained.

(3) A description of the financial records that are authorized to be disclosed.

(e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(f) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000), of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(g) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001), of the Revenue and Taxation Code.

(h) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001), of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(j) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(k) The disclosure by a construction lender, as defined in Section 8006 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(l) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

- (iii) A bank statement.
 - (iv) A check.
 - (v) A bank passbook.
 - (vi) A deposit slip.
 - (vii) A copy of a federal or state income tax return.
 - (viii) A debit or credit advice.
 - (ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.
 - (x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.
 - (xi) An asset identification report from a federal agency.
 - (B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.
- (7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.
- (m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.
- (2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.
- (3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.
- (4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.
- (n) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.

(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

(o) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

(p) When the governing board of the Public Employees' Retirement System or the State Teachers' Retirement System certifies in writing to a financial institution that a benefit recipient has died and that transfers to the benefit recipient's account at the financial institution from the retirement system occurred after the benefit recipient's date of death, the financial institution shall furnish the retirement system with the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of the benefit recipient's death, or if the account has been closed, the name and address of the person who closed the account.

(q) When the retirement board of a retirement system established under the County Employees Retirement Law of 1937 certifies in writing to a financial institution that a retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or beneficiary of a retired member, the financial institution shall furnish the retirement system with the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of death of the retired member or beneficiary of a retired member, or if the account has been closed, the name and address of the person who closed the account.

(r) When the Franchise Tax Board certifies in writing to a financial institution that (1) a taxpayer filed a tax return that authorized a direct deposit refund with an incorrect financial institution account or routing number that resulted in all or a portion of the refund not being received, directly or indirectly, by the taxpayer; (2) the direct deposit refund was not returned to the Franchise Tax Board; and (3) the refund was deposited directly on a specified date into the account of an accountholder of the financial institution who was not entitled to receive the refund, then the financial institution shall furnish to the Franchise Tax Board the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of direct deposit refund, or if the account has been closed, the name and address of the person who closed the account.

SEC. 30. Section 7480 of the Government Code, as amended by Section 2 of Chapter 234 of the Statutes of 2008, is amended to read:

7480. Nothing in this chapter shall prohibit any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

- (1) The number of items dishonored.
- (2) The number of items paid that created overdrafts.
- (3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.
- (4) The dates and amounts of deposits and debits and the account balance on these dates.

- (5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

- (6) The date the account opened and, if applicable, the date the account closed.

- (7) Surveillance photographs and video recordings of persons accessing the crime victim's financial account via an automated teller machine (ATM) or from within the financial institution for dates on which illegal acts involving the account were alleged to have occurred. Nothing in this paragraph does any of the following:

- (A) Requires a financial institution to produce a photograph or video recording if it does not possess the photograph or video recording.

- (B) Affects any existing civil immunities as provided in Section 47 of the Civil Code or any other provision of law.

- (8) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon any bank, credit union, or savings association doing business in this state, the police or sheriff's department or district attorney, a county adult protective services

office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request, with the consent of the accountholder, the bank, credit union, or savings association to furnish, and the bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

- (1) The number of items dishonored.
 - (2) The number of items paid that created overdrafts.
 - (3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.
 - (4) The dates and amounts of deposits and debits and the account balance on these dates.
 - (5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.
 - (6) The date the account opened and, if applicable, the date the account closed.
 - (7) Surveillance photographs and video recordings of persons accessing the crime victim's financial account via an automated teller machine (ATM) or from within the financial institution for dates on which illegal acts involving this account were alleged to have occurred. Nothing in this paragraph does any of the following:
 - (A) Requires a financial institution to produce a photograph or video recording if it does not possess the photograph or video recording.
 - (B) Affects any existing civil immunities as provided in Section 47 of the Civil Code or any other provision of law.
 - (8) A bank, credit union, or savings association doing business in this state that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).
- (d) For purposes of subdivision (c), consent of the accountholder shall be satisfied if an accountholder provides to the financial institution and the person or entity seeking disclosure, a signed and dated statement containing all of the following:
- (1) Authorization of the disclosure for the period specified in subdivision (c).
 - (2) The name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained.
 - (3) A description of the financial records that are authorized to be disclosed.
- (e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering

the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(f) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000), of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(g) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001), of the Revenue and Taxation Code.

(h) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001), of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(j) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(k) The disclosure by a construction lender, as defined in Section 8006 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(l) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory

authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on

the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(n) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.

(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall

notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

(o) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

(p) When the governing board of the Public Employees' Retirement System or the State Teachers' Retirement System certifies in writing to a financial institution that a benefit recipient has died and that transfers to the benefit recipient's account at the financial institution from the retirement system occurred after the benefit recipient's date of death, the financial institution shall furnish the retirement system with the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of the benefit recipient's death, or if the account has been closed, the name and address of the person who closed the account.

(q) When the retirement board of a retirement system established under the County Employees Retirement Law of 1937 certifies in writing to a financial institution that a retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or beneficiary of a retired member, the financial institution shall furnish the retirement system with the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of death of the retired member or beneficiary of a retired member, or if the account has been closed, the name and address of the person who closed the account.

(r) When the Franchise Tax Board certifies in writing to a financial institution that (1) a taxpayer filed a tax return that authorized a direct deposit refund with an incorrect financial institution account or routing number that resulted in all or a portion of the refund not being received, directly or indirectly, by the taxpayer; (2) the direct deposit refund was not returned to the Franchise Tax Board; and (3) the refund was deposited directly on a specified date into the account of an accountholder of the financial institution who was not entitled to receive the refund, then the financial institution shall furnish to the Franchise Tax Board the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of direct deposit refund, or if the account has been closed, the name and address of the person who closed the account.

SEC. 31. Section 14975 of the Government Code is amended to read:

14975. Notwithstanding the provisions of Section 9550 of the Civil Code, the contractor under any contract made under this chapter need not provide a payment bond before the commencement of the work but must provide a payment bond as otherwise required by law prior to payment under the contract.

SEC. 32. Section 15820.105 of the Government Code is amended to read:

15820.105. (a) Plans and specifications for the project shall comply with applicable building codes.

(b) The project is hereby deemed to be governed by Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

(c) The provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code shall apply to all public works contracts entered into for the project.

(d) Other than as provided in this section and Sections 15820.101 to 15820.104, inclusive, private sector methods may be used to deliver the project. Specifically, the procurement and contracting for the delivery of the project is not subject to the State Contract Act (Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code) or any other provision of California law governing public procurement or public works projects.

SEC. 33. Section 27287 of the Government Code is amended to read:

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Section 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Section 2952 or 2963 of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is a claim of lien under Section 8416 of the Civil Code or a notice of completion under Section 8182 or 9204 of the Civil Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any quitclaim deed or grant deed other than a trustee's deed or a deed of reconveyance, mortgage, deed of trust, or security agreement, proved by subscribing witness or as provided in Sections 1198

and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law.

SEC. 34. Section 27361.9 of the Government Code is amended to read:

27361.9. The board of supervisors of any county may provide for an additional fee for filing every preliminary notice pursuant to subdivision (a) of Section 8214 of the Civil Code for the exclusive purpose of defraying the cost of implementing and maintaining a system to facilitate compliance with subdivision (b) of Section 8214 of the Civil Code.

SEC. 35. Section 66499.2 of the Government Code is amended to read:

66499.2. A bond or bonds by one or more duly authorized corporate sureties for the security of laborers and material suppliers shall be in substantially the following form:

Whereas, The Board of Supervisors of the County of ____ (or City Council of the City of ____), State of California, and ____ (hereinafter designated as “the principal”) have entered into an agreement whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated ____, 20__, and identified as project ____, is hereby referred to and made a part hereof; and

Whereas, Under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the County of ____ (or the City of ____) to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

Now, therefore, the principal and the undersigned as corporate surety, are held firmly bound unto the County of ____ (or the City of ____) and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of ____ dollars (\$____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney’s fees, incurred by county (or city) in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications

accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on _____, 20__.

SEC. 36. Section 66499.7 of the Government Code is amended to read:

66499.7. The security furnished by the subdivider shall be released in whole or in part in the following manner:

(a) Security given for faithful performance of any act or agreement shall be released upon the performance of the act or final completion and acceptance of the required work. The legislative body may provide for the partial release of the security upon the partial performance of the act or the acceptance of the work as it progresses, consistent with the provisions of this section. The security may be a surety bond, a cash deposit, a letter of credit, escrow account, or other form of performance guarantee required as security by the legislative body that meets the requirements as acceptable security pursuant to law. If the security furnished by the subdivider is a documentary evidence of security such as a surety bond or a letter of credit, the legislative body shall release the documentary evidence and return the original to the issuer upon performance of the act or final completion and acceptance of the required work. In the event that the legislative body is unable to return the original documentary evidence to the issuer, the security shall be released by written notice sent by certified mail to the subdivider and issuer of the documentary evidence within 30 days of the acceptance of the work. The written notice shall contain a statement that the work for which the security was furnished has been performed or completed and accepted by the legislative body, a description of the project subject to the documentary evidence and the notarized signature of the authorized representative of the legislative body.

(b) At the time that the subdivider believes that the obligation to perform the work for which security was required is complete, the subdivider may notify the local agency in writing of the completed work, including a list of work completed. Upon receipt of the written notice, the local agency shall have 45 days to review and comment or approve the completion of the required work. If the local agency does not agree that all work has been completed in accordance with the plans and specifications for the improvements, it shall supply a list of all remaining work to be completed.

(c) Within 45 days of receipt of the list of remaining work from the local agency, the subdivider may then provide cost estimates for all remaining work for review and approval by the local agency. Upon receipt of the cost estimates, the local agency shall then have 45 days to review, comment, and approve, modify, or disapprove those cost estimates. No local agency shall be required to engage in this process of partial release more than once between the start of work and completion and acceptance of all work; however, nothing in this section prohibits a local agency from allowing for a partial release as it otherwise deems appropriate.

(d) If the local agency approves the cost estimate, the local agency shall release all performance security except for security in an amount up to 200 percent of the cost estimate of the remaining work. The process allowing for a partial release of performance security shall occur when the cost estimate of the remaining work does not exceed 20 percent of the total original performance security unless the local agency allows for a release at an earlier time. Substitute bonds or other security may be used as a replacement for the performance security, subject to the approval of the local agency. If substitute bonds or other security is used as a replacement for the performance security released, the release shall not be effective unless and until the local agency receives and approves that form of replacement security. A reduction in the performance security, authorized under this section, is not, and shall not be deemed to be, an acceptance by the local agency of the completed improvements, and the risk of loss or damage to the improvements and the obligation to maintain the improvements shall remain the sole responsibility of the subdivider until all required public improvements have been accepted by the local agency and all other required improvements have been fully completed in accordance with the plans and specifications for the improvements.

(e) The subdivider shall complete the works of improvement until all remaining items are accepted by the local agency.

(f) Upon the completion of the improvements, the subdivider, or his or her assigns, shall be notified in writing by the local agency within 45 days.

(g) Within 45 days of the issuance of the notification by the local agency, the release of any remaining performance security shall be placed upon the agenda of the legislative body of the local agency for approval of the release of any remaining performance security. If the local agency delegates authority for the release of performance security to a public official or other employee, any remaining performance security shall be released within 60 days of the issuance of the written statement of completion.

(h) Security securing the payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, after passage of the time within which claims of lien are required to be recorded pursuant to Article 2 (commencing with Section 8410) of Chapter 4 of Title 2 of Part 6 of Division 4 of the Civil Code and after acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the legislative body, and if no claims have been recorded, the security shall be released in full.

(i) The release shall not apply to any required guarantee and warranty period required by Section 66499.9 for the guarantee or warranty nor to the amount of the security deemed necessary by the local agency for the guarantee and warranty period nor to costs and reasonable expenses and fees, including reasonable attorneys' fees.

(j) The legislative body may authorize any of its public officers or employees to authorize release or reduction of the security in accordance

with the conditions hereinabove set forth and in accordance with any rules that it may prescribe.

(k) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 37. Section 5463 of the Health and Safety Code is amended to read:

5463. Any health officer or governing board of any city, county, sanitary district, or other district having the power to operate and maintain a sewerage system, having served written notice upon the owner or reputed owner of land upon which there is a dwelling house, and the owner or reputed owner, after 30 days, having refused, neglected, or failed to connect the dwelling house, together with all toilets, sinks, and other plumbing therein, properly vented, and in a sanitary manner, with the adjoining street sewer, may construct the same at a reasonable cost, and the person doing that work at the request of the health officer or governing board has a lien upon that real estate for his or her work done and materials furnished, and the work done and materials furnished shall be held to have been done and furnished at the instance of the owner or reputed owner, or person claiming or having any interest therein. The governing board may pay all or any part of the cost or price of such connection to the person or persons who furnished labor, materials, or equipment for the same, and, to the extent the governing board pays the cost or price of the connection, it shall succeed to and have all the rights, including the lien provided for above, of the person or persons against the real estate and against the owner or reputed owner thereof.

As an alternative power to the enforcement of the lien provided for in this section, the governing body of the public agency performing the work of connection to the public sewer may, by order entered upon its minutes, declare that the amount of the costs of the work and the administrative expenses incurred by the governing body incident to the proceedings, together with other charges uniformly applicable within the jurisdiction of the governing body for the connection of the premises to the public sewer, shall be transmitted to the assessor and tax collector of the public agency, whereupon it shall be the duty of those officers to add the amount of the assessment to the next regular bill for taxes levied against the lot or parcel of land.

The liens provided for by this section shall be enforced in the same manner as those provided for by Part 6 (commencing with Section 8000) of Division 4, of the Civil Code.

The governing board may also use the procedures in Section 5474 for levying the costs incurred for the construction of the improvements for the connection of the premises to the public sewer.

SEC. 38. Section 16017.5 of the Health and Safety Code is amended to read:

16017.5. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, Part 6 (commencing with Section 8000) of Division 4 of the Civil Code, the Department of General Services may issue

a stop work order when construction work on an essential services facility is not being performed in accordance with existing law and would compromise the structural integrity of the building, thereby endangering the public safety. The Department of General Services shall allow construction of incidental and minor nonstructural additions or nonstructural alterations without invoking its stop work authority.

(b) A public board, body, or officer whose construction work on an essential services facility is subject to a stop work order issued pursuant to subdivision (a) shall not be held liable in any action filed against the public board, body, or officer for stopping work as required by the stop work order, or for any delays caused by compliance with the stop work order, except to the extent that an error or omission by the public board, body, or officer is the basis for the issuance of the stop work order.

SEC. 39. Section 19825 of the Health and Safety Code is amended to read:

19825. (a) Every city, county, or city and county, whether general law or chartered, that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure, shall require the execution of a permit application, in substantially the same form set forth under this subdivision, and require any individual who executes the Owner-Builder Declaration to present documentation sufficient to identify the property owner and, as necessary, verify the signature of the property owner. A city, county, or city and county may require additional information on the permit application.

PERMIT APPLICATION
BUILDING PROJECT IDENTIFICATION

Applicant's Mailing Address _____

Property Location or Address _____

Property Owner's Name _____
 Property Owner's Telephone No. _____
 Licensed Design Professional (Architect or
 Engineer) in charge of the project _____
 Mailing Address of Licensed Design
 Professional _____

 License No. _____

LICENSED CONTRACTOR'S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ License No. _____
 Date _____ Contractor Signature _____

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors' State License Law for the reason(s) indicated below by the checkmark(s) I have placed next to the applicable item(s) (Section 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500).):

I, as owner of the property, or my employees with wages as their sole compensation, will do all of or portions of the work, and the structure is not intended or offered for sale (Section 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who, through employees' or personal effort, builds or improves the property, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the Owner-Builder will have the burden of proving that it was not built or improved for the purpose of sale.).

I, as owner of the property, am exclusively contracting with licensed Contractors to construct the project (Section 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a licensed Contractor pursuant to the Contractors' State License Law.).

I am exempt from licensure under the Contractors' State License Law for the following reason:

By my signature below I acknowledge that, except for my personal residence in which I must have resided for at least one year prior to completion of the improvements covered by this permit, I cannot legally sell a structure that I have built as an owner-builder if it has not been constructed in its entirety by licensed contractors. I understand that a copy of the applicable law, Section 7044 of the Business and Professions Code, is available upon request when this application is submitted or at the following Web site:

<http://www.leginfo.ca.gov/calaw.html>.

Date _____

Signature of Property Owner or Authorized Agent

WORKERS' COMPENSATION DECLARATION

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

I hereby affirm under penalty of perjury one of the following declarations:

___ I have and will maintain a certificate of consent to self-insure for workers' compensation, issued by the Director of Industrial Relations as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

Policy No. _____

___ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier _____ Policy Number _____ Expiration Date _____
Name of Agent _____ Phone # _____

___ I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Signature of Applicant

Date

DECLARATION REGARDING CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Section 8172, Civil Code).

Lender's Name _____

Branch Designation _____

Lender's Address _____

By my signature below, I certify to each of the following:

I am the property owner or authorized to act on the property owner's behalf.

I have read this application and the information I have provided is correct.

I agree to comply with all applicable city and county ordinances and state laws relating to building construction.

I authorize representatives of this city or county to enter the above-identified property for inspection purposes.

Signature of Property Owner or Authorized Agent _____

Date _____

(b) When the Permit Application and the Owner-Builder Declaration have been executed by a person other than the property owner, prior to issuing the permit, the following shall be completed by the property owner and returned to the agency responsible for issuing the permit:

AUTHORIZATION OF AGENT TO ACT ON PROPERTY OWNER'S BEHALF

Excluding the Notice to Property Owner, the execution of which I understand is my personal responsibility, I hereby authorize the following person(s) to act as my agent(s) to apply for, sign, and file the documents necessary to obtain an Owner-Builder Permit for my project.

Scope of Construction Project (or Description of Work):

Project Location or Address: _____

Name of Authorized

Agent: _____

Address of Authorized

Agent: _____

Phone Number of Authorized

Agent: _____

I declare under penalty of perjury that I am the property owner for the address listed above and I personally filled out the above information and certify its accuracy.

Property Owner's Signature: _____ Date: _____

Note: A copy of the owner's driver's license, form notarization, or other verification acceptable to the agency is required to be presented when the permit is issued to verify the property owner's signature.

(c) When the Owner-Builder Declaration required under subdivision (a) is executed, a Notice to Property Owner also shall be executed by the property owner in substantially the same form set forth under this section. The Notice to Property Owner shall appear on the official letterhead of the issuer and shall be provided to the applicant by one of the following methods chosen by the permitting authority: regular mail, electronic format, or given

directly to the applicant at the time the application for the permit is made. Except as otherwise provided, the Notice to Property Owner pursuant to this section shall be completed and signed by the property owner and returned prior to issuance of the permit. An agent of the owner shall not execute this notice unless the property owner obtains the prior approval of the permitting authority. A permit shall not be issued unless the property owner complies with this section.

NOTICE TO PROPERTY OWNER

Dear Property Owner:

An application for a building permit has been submitted in your name listing yourself as the builder of the property improvements specified at

_____.
We are providing you with an Owner-Builder Acknowledgment and Information Verification Form to make you aware of your responsibilities and possible risk you may incur by having this permit issued in your name as the Owner-Builder.

We will not issue a building permit until you have read, initialed your understanding of each provision, signed, and returned this form to us at our official address indicated. An agent of the owner cannot execute this notice unless you, the property owner, obtain the prior approval of the permitting authority.

OWNER'S ACKNOWLEDGMENT AND VERIFICATION OF INFORMATION

DIRECTIONS: Read and initial each statement below to signify you understand or verify this information.

___ 1. I understand a frequent practice of unlicensed persons is to have the property owner obtain an "Owner-Builder" building permit that erroneously implies that the property owner is providing his or her own labor and material personally. I, as an Owner-Builder, may be held liable and subject to serious financial risk for any injuries sustained by an unlicensed person and his or her employees while working on my property. My homeowner's insurance may not provide coverage for those injuries. I am willfully acting as an Owner-Builder and am aware of the limits of my insurance coverage for injuries to workers on my property.

___ 2. I understand building permits are not required to be signed by property owners unless they are responsible for the construction and are not hiring a licensed Contractor to assume this responsibility.

___ 3. I understand as an "Owner-Builder" I am the responsible party of record on the permit. I understand that I may protect myself from potential financial risk by hiring a licensed Contractor and having the permit filed in his or her name instead of my own.

___4. I understand Contractors are required by law to be licensed and bonded in California and to list their license numbers on permits and contracts.

___5. I understand if I employ or otherwise engage any persons, other than California licensed Contractors, and the total value of my construction is at least five hundred dollars (\$500), including labor and materials, I may be considered an “employer” under state and federal law.

___6. I understand if I am considered an “employer” under state and federal law, I must register with the state and federal government, withhold payroll taxes, provide workers’ compensation disability insurance, and contribute to unemployment compensation for each “employee.” I also understand my failure to abide by these laws may subject me to serious financial risk.

___7. I understand under California Contractors’ State License Law, an Owner-Builder who builds single-family residential structures cannot legally build them with the intent to offer them for sale, unless all work is performed by licensed subcontractors and the number of structures does not exceed four within any calendar year, or all of the work is performed under contract with a licensed general building Contractor.

___8. I understand as an Owner-Builder if I sell the property for which this permit is issued, I may be held liable for any financial or personal injuries sustained by any subsequent owner(s) that result from any latent construction defects in the workmanship or materials.

___9. I understand I may obtain more information regarding my obligations as an “employer” from the Internal Revenue Service, the United States Small Business Administration, the California Department of Benefit Payments, and the California Division of Industrial Accidents. I also understand I may contact the California Contractors’ State License Board (CSLB) at 1-800-321-CSLB (2752) or www.cslb.ca.gov for more information about licensed contractors.

___10. I am aware of and consent to an Owner-Builder building permit applied for in my name, and understand that I am the party legally and financially responsible for proposed construction activity at the following address:

___11. I agree that, as the party legally and financially responsible for this proposed construction activity, I will abide by all applicable laws and requirements that govern Owner-Builders as well as employers.

___12. I agree to notify the issuer of this form immediately of any additions, deletions, or changes to any of the information I have provided on this form.

Licensed contractors are regulated by laws designed to protect the public. If you contract with someone who does not have a license, the Contractors' State License Board may be unable to assist you with any financial loss you may sustain as a result of a complaint. Your only remedy against unlicensed Contractors may be in civil court. It is also important for you to understand that if an unlicensed Contractor or employee of that individual or firm is injured while working on your property, you may be held liable for damages. If you obtain a permit as Owner-Builder and wish to hire Contractors, you will be responsible for verifying whether or not those Contractors are properly licensed and the status of their workers' compensation insurance coverage.

Before a building permit can be issued, this form must be completed and signed by the property owner and returned to the agency responsible for issuing the permit.

Note: A copy of the property owner's driver's license, form notarization, or other verification acceptable to the agency is required to be presented when the permit is issued to verify the property owner's signature.

Signature of Property Owner _____ Date: _____

SEC. 39.5. Section 19825 of the Health and Safety Code is amended to read:

19825. (a) Every city, county, or city and county, whether general law or chartered, that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure, shall require the execution of a permit application, in substantially the same form set forth under this subdivision, and require any individual who executes the Owner-Builder Declaration to present documentation sufficient to identify the property owner and, as necessary, verify the signature of the property owner. A city, county, or city and county may require additional information on the permit application.

PERMIT APPLICATION
BUILDING PROJECT IDENTIFICATION

Applicant's Mailing Address _____

Property Location or Address _____

Property Owner's Name _____
 Property Owner's Telephone No. _____
 Licensed Design Professional (Architect or
 Engineer) in charge of the project _____
 Mailing Address of Licensed Design
 Professional _____

 License No. _____

LICENSED CONTRACTOR’S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ License No. _____
Date _____ Contractor Signature _____

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors State License Law for the reason(s) indicated below by the checkmark(s) I have placed next to the applicable item(s) (Section 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500)):

I, as owner of the property, or my employees with wages as their sole compensation, will do all of or portions of the work, and the structure is not intended or offered for sale (Section 7044, Business and Professions Code: The Contractors State License Law does not apply to an owner of property who, through employees’ or personal effort, builds or improves the property, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the Owner-Builder will have the burden of proving that it was not built or improved for the purpose of sale).

I, as owner of the property, am exclusively contracting with licensed Contractors to construct the project (Section 7044, Business and Professions Code: The Contractors State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a licensed Contractor pursuant to the Contractors State License Law).

I am exempt from licensure under the Contractors State License Law for the following reason:

By my signature below I acknowledge that, except for my personal residence in which I must have resided for at least one year prior to completion of the improvements covered by this permit, I cannot legally sell a structure that I have built as an owner-builder if it has not been constructed in its entirety by licensed contractors. I understand that a copy of the applicable law, Section 7044 of the Business and Professions Code, is available upon request when

this application is submitted or at the following Web site:

http://www.leginfo.ca.gov/calaw.html.

Date _____

Signature of Property Owner or Authorized Agent

WORKERS' COMPENSATION DECLARATION

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

I hereby affirm under penalty of perjury one of the following declarations:

____ I have and will maintain a certificate of consent to self-insure for workers' compensation, issued by the Director of Industrial Relations as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

Policy No. _____

____ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier _____ Policy Number _____ Expiration Date _____
Name of Agent _____ Phone # _____

____ I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Signature of Applicant

Date

DECLARATION REGARDING CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Section 8172, Civil Code).

Lender's Name _____

Lender's Address _____

By my signature below, I certify to each of the following:
 I am the property owner or authorized to act on the property owner's behalf.
 I have read this application and the information I have provided is correct.
 I agree to comply with all applicable city and county ordinances and state laws relating to building construction.
 I authorize representatives of this city or county to enter the above-identified property for inspection purposes.
 Signature of Property Owner or Authorized Agent _____
 Date _____

(b) When the Permit Application and the Owner-Builder Declaration have been executed by a person other than the property owner, prior to issuing the permit, the following shall be completed by the property owner and returned to the agency responsible for issuing the permit:

AUTHORIZATION OF AGENT TO ACT ON PROPERTY OWNER'S
 BEHALF

Excluding the Notice to Property Owner, the execution of which I understand is my personal responsibility, I hereby authorize the following person(s) to act as my agent(s) to apply for, sign, and file the documents necessary to obtain an Owner-Builder Permit for my project.

Scope of Construction Project (or Description of Work):

Project Location or Address: _____
 Name of Authorized Agent: _____

Address of Authorized Agent: _____

Phone Number of Authorized Agent: _____

I declare under penalty of perjury that I am the property owner for the address listed above and I personally filled out the above information and certify its accuracy.

Property Owner's Signature: _____ Date: _____

Note: A copy of the owner's driver's license, form notarization, or other verification acceptable to the agency is required to be presented when the permit is issued to verify the property owner's signature.

(c) When the Owner-Builder Declaration required under subdivision (a) is executed, a Notice to Property Owner also shall be executed by the property owner in substantially the same form set forth under this section. The Notice to Property Owner shall appear on the official letterhead of the issuer and shall be provided to the applicant by one of the following methods chosen by the permitting authority: regular mail, electronic format, or given directly to the applicant at the time the application for the permit is made. Except as otherwise provided, the Notice to Property Owner pursuant to this section shall be completed and signed by the property owner and returned prior to issuance of the permit. An agent of the owner shall not execute this notice unless the property owner obtains the prior approval of the permitting authority. A permit shall not be issued unless the property owner complies with this section.

NOTICE TO PROPERTY OWNER

Dear Property Owner:

An application for a building permit has been submitted in your name listing yourself as the builder of the property improvements specified at

_____.
We are providing you with an Owner-Builder Acknowledgment and Information Verification Form to make you aware of your responsibilities and possible risk you may incur by having this permit issued in your name as the Owner-Builder.

We will not issue a building permit until you have read, initialed your understanding of each provision, signed, and returned this form to us at our official address indicated. An agent of the owner cannot execute this notice unless you, the property owner, obtain the prior approval of the permitting authority.

OWNER'S ACKNOWLEDGMENT AND VERIFICATION OF INFORMATION

DIRECTIONS: Read and initial each statement below to signify you understand or verify this information.

____ 1. I understand a frequent practice of unlicensed persons is to have the property owner obtain an "Owner-Builder" building permit that erroneously implies that the property owner is providing his or her own labor and material personally. I, as an Owner-Builder, may be held liable and subject to serious financial risk for any injuries sustained by an unlicensed person and his or her employees while working on my property. My homeowner's insurance may not provide coverage for those injuries. I am willfully acting as an Owner-Builder and am aware of the limits of my insurance coverage for injuries to workers on my property.

____2. I understand building permits are not required to be signed by property owners unless they are responsible for the construction and are not hiring a licensed Contractor to assume this responsibility.

____3. I understand as an “Owner-Builder” I am the responsible party of record on the permit. I understand that I may protect myself from potential financial risk by hiring a licensed Contractor and having the permit filed in his or her name instead of my own.

____4. I understand Contractors are required by law to be licensed and bonded in California and to list their license numbers on permits and contracts.

____5. I understand if I employ or otherwise engage any persons, other than California licensed Contractors, and the total value of my construction is at least five hundred dollars (\$500), including labor and materials, I may be considered an “employer” under state and federal law.

____6. I understand if I am considered an “employer” under state and federal law, I must register with the state and federal government, withhold payroll taxes, provide workers’ compensation disability insurance, and contribute to unemployment compensation for each “employee.” I also understand my failure to abide by these laws may subject me to serious financial risk.

____7. I understand under California Contractors’ State License Law, an Owner-Builder who builds single-family residential structures cannot legally build them with the intent to offer them for sale, unless all work is performed by licensed subcontractors and the number of structures does not exceed four within any calendar year, or all of the work is performed under contract with a licensed general building Contractor.

____8. I understand as an Owner-Builder if I sell the property for which this permit is issued, I may be held liable for any financial or personal injuries sustained by any subsequent owner(s) that result from any latent construction defects in the workmanship or materials.

____9. I understand I may obtain more information regarding my obligations as an “employer” from the Internal Revenue Service, the United States Small Business Administration, the California Department of Benefit Payments, and the California Division of Industrial Accidents. I also understand I may contact the California Contractors State License Board (CSLB) at 1-800-321-CSLB (2752) or www.cslb.ca.gov for more information about licensed contractors.

____10. I am aware of and consent to an Owner-Builder building permit applied for in my name, and understand that I am the party legally and financially responsible for proposed construction activity at the following address:

___11. I agree that, as the party legally and financially responsible for this proposed construction activity, I will abide by all applicable laws and requirements that govern Owner-Builders as well as employers.

___ 12. I agree to notify the issuer of this form immediately of any additions, deletions, or changes to any of the information I have provided on this form.

Licensed contractors are regulated by laws designed to protect the public. If you contract with someone who does not have a license, the Contractors State License Board may be unable to assist you with any financial loss you may sustain as a result of a complaint. Your only remedy against unlicensed Contractors may be in civil court. It is also important for you to understand that if an unlicensed Contractor or employee of that individual or firm is injured while working on your property, you may be held liable for damages. If you obtain a permit as Owner-Builder and wish to hire Contractors, you will be responsible for verifying whether or not those Contractors are properly licensed and the status of their workers' compensation insurance coverage.

Before a building permit can be issued, this form must be completed and signed by the property owner and returned to the agency responsible for issuing the permit.

Note: A copy of the property owner's driver's license, form notarization, or other verification acceptable to the agency is required to be presented when the permit is issued to verify the property owner's signature.

Signature of Property Owner_____ Date:_____

SEC. 40. Section 34218 of the Health and Safety Code is amended to read:

34218. Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code applies to any housing project constructed under this chapter. Notwithstanding the provisions of this section, a housing authority may require a 20 percent cash escrow or a 25 percent irrevocable letter of credit or the payment bond required by this section if the contract is for work undertaken pursuant to the Comprehensive Improvement Assistance Program established by Section 14 of the United States Housing Act of 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l), or the Public Housing Modernization Act established by Section 5(c)(3)(C) of the United States Housing Act of 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l).

SEC. 41. Section 11751.82 of the Insurance Code is amended to read:

11751.82. (a) An insurer under a wrap-up insurance policy shall report workers' compensation losses and payroll information for each contractor and subcontractor to its rating organization on a timely basis and in accordance with the uniform statistical plan. Within 10 days, upon request, the insurer shall provide to each contractor and subcontractor copies of the

report covering workers' compensation losses and payroll information for that contractor or subcontractor.

(b) For the purposes of this section, a "wrap-up insurance policy" is an insurance policy, or series of policies, written to cover risks associated with a work of improvement, as defined in Section 8050 of the Civil Code, and covering two or more of the contractors or subcontractors that work on that work of improvement.

SEC. 42. Section 218.5 of the Labor Code is amended to read:

218.5. In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. This section shall not apply to an action brought by the Labor Commissioner. This section shall not apply to a surety issuing a bond pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code or to an action to enforce a mechanics lien brought under Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 2 of the Civil Code.

This section does not apply to any action for which attorney's fees are recoverable under Section 1194.

SEC. 43. Section 4107.7 of the Public Contract Code is amended to read:

4107.7. If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposal relative to the release or presence of a hazardous material or hazardous waste fails to pay a subcontractor registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code within 10 days after the investigation, removal or remedial action, or disposal is completed, the subcontractor may serve a stop notice upon the public entity in accordance with Chapter 4 (commencing with Section 9350) of Title 3 of Part 6 of Division 4 of the Civil Code.

SEC. 44. Section 7103 of the Public Contract Code is amended to read:

7103. (a) (1) Every original contractor that is awarded a contract by a state entity, as defined in subdivision (d), involving an expenditure in excess of twenty-five thousand dollars (\$25,000) for any public work shall, before entering upon the performance of the work, file a payment bond with and approved by the officer or state entity that awarded the contract. The bond shall be in a sum not less than 100 percent of the total amount payable by the terms of the contract.

(2) The state entity shall state in its call for bids for any contract that a payment bond is required in the case of such an expenditure.

(b) A payment bond filed and approved in accordance with this section shall be sufficient to enter upon the performance of work under a duly authorized contract that supplements the contract for which the payment bond was filed if the requirement of a new bond is waived by the state entity.

(c) For purposes of this section, providers of architectural, engineering, and land surveying services pursuant to a contract with a state entity for a

public work shall not be deemed an original contractor and shall not be required to post or file the payment bond required in subdivisions (a) and (b).

(d) For purposes of this section, “state entity” means every state office, department, division, bureau, board, or commission, but does not include the Legislature, the courts, any agency in the judicial branch of government, or the University of California. All other public entities shall be governed by Section 9550 of the Civil Code.

(e) For purposes of this section, “public work” includes the erection, construction, alteration, repair, or improvement of any state structure, building, road, or other state improvement of any kind.

SEC. 45. Section 10222 of the Public Contract Code is amended to read:

10222. (a) Each bond shall equal at least one-half of the contract price, except as otherwise provided in Section 9554 of the Civil Code, in the California Toll Bridge Authority Act (Chapter 1 (commencing with Section 30000) of Division 7 of the Streets and Highways Code), or in subdivision (b).

(b) Notwithstanding subdivision (a), for projects with a contract price greater than two hundred fifty million dollars (\$250,000,000), the Department of Transportation shall have the discretion to specify that the payment bond shall equal not less than one-half of the contract price or five hundred million dollars (\$500,000,000), whichever is less.

SEC. 46. Section 10822 of the Public Contract Code is amended to read:

10822. Each bond shall be in a sum equal to at least one-half of the contract price, except as otherwise provided in Section 9554 of the Civil Code.

SEC. 47. Section 20104 of the Public Contract Code is amended to read:

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) “Public work” means “public works contract” as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) “Claim” means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

SEC. 48. Section 20134 of the Public Contract Code is amended to read:

20134. (a) In cases of emergency, when repair or replacements are necessary to permit the continued conduct of county operations or services, the board of supervisors, by majority consent, may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or, subject to Chapter 2.5 (commencing with Section 22050), giving notice for bids to let contracts. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court order to relieve jail overcrowding or in which the sheriff certifies that the inmate capacity of the county jail system is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of jail facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bid, it shall make a finding stating the reasons that the lowest bid was not selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal Code or of wards under Section 1753.3 of the Welfare and Institutions Code, the board of supervisors may contract for the construction or expansion of the facilities

to be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) The board of supervisors may waive the requirements of Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code for work performed pursuant to subdivision (b) or (c).

(f) If any county that is under court order to relieve overcrowding in a county juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code or in which the chief probation officer certifies that the juvenile detention capacity of the county juvenile facilities is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of county juvenile facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board

determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bidder, it shall make a finding stating the reasons that the lowest bidder was not selected.

(g) In a county of the third class in which there are no available courtrooms to accommodate all authorized judicial positions or in which the board of supervisors certifies that there is a significant need to expeditiously construct new court and court support facilities, the board of supervisors may contract for the construction or expansion of court and court support facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected. This subdivision shall remain in effect until December 31, 1994.

SEC. 49. Section 20461 of the Public Contract Code is amended to read:

20461. No assignment by the contractor of the whole or any part of the money, assessment, partial assessment, any reassessment and any bonds which may be issued to represent any assessment or reassessment, due or to be due under the contract, or for "extras" in connection therewith, whether made before or after a verified claim is filed pursuant to this chapter, shall take priority over the claims, and the assignment shall have no binding force insofar as the rights of the claimants, or their assigns, are concerned. None of the provisions of Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code shall be applicable to any assessment, partial assessment, reassessment, bonds, moneys or funds payable to the contractor or assignee under this division or to any matter contained in this chapter.

SEC. 50. Section 20496 of the Public Contract Code is amended to read:

20496. The provisions of Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code are hereby expressly made applicable to the construction of works and improvements under this article.

SEC. 51. Section 20682.5 of the Public Contract Code is amended to read:

20682.5. (a) A district may construct or complete any building, structure, or improvement with its own forces or by contract without bidding when the cost does not exceed twenty-five thousand dollars (\$25,000).

(b) All contracts for the construction or completion of any building, structure, or improvement, when the cost exceeds twenty-five thousand dollars (\$25,000), shall be contracted for and let to the lowest responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(c) The district shall publish a notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least 10 days before the time specified for receiving bids. The notice inviting bids shall set a date for opening the bids and distinctly state the work to be done.

(d) If the general manager recommends and the board of directors determines that the publication of advertisements of the notice in trade journals and papers in lieu of publication pursuant to subdivision (c) will increase the number of business enterprises receiving that notice, the board of directors may by resolution declare that those notices shall be published in trade journals and papers at least 10 days prior to the time specified for receiving bids.

(e) If plans and specifications are prepared describing the work, all bidders shall be afforded an opportunity to examine the plans and specifications, and the plans and specifications shall be attached to and become part of the contract, if one is awarded.

(f) At its discretion, the board of directors may reject any bids presented and readvertise.

(g) In the case of an emergency, the board of directors may act pursuant to Chapter 2.5 (commencing with Section 22050).

(h) The board of directors may, subject to Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code, require the posting of those bonds it deems desirable as a condition to the filing of a bid or the letting of a contract.

(i) The district shall keep cost records of the work in the manner provided in Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

(j) As an alternate to the procedures required by this section, a district may rely on the Uniform Public Construction Cost Accounting Act, Chapter 2 (commencing with Section 22000) of Part 3 of Division 2.

SEC. 52. Section 20688.4 of the Public Contract Code is amended to read:

20688.4. An agency shall require each successful bidder to file with it good and sufficient bonds, to be approved by it. The bonds shall be conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material in connection with the contract. The bonds shall contain the terms and conditions set forth in Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code and are subject to the provisions of that chapter.

SEC. 53. Section 20813 of the Public Contract Code is amended to read:

20813. (a) All contracts for the construction or completion of any building, structure, or improvement, when the expenditure required for the work exceeds ten thousand dollars (\$10,000), shall be contracted for and let to the lowest responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(b) The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. Notice shall be published at least twice, not less than five days apart, in a newspaper of general circulation in the district, or if there is none, it shall be posted in at least three public places in the district. The notice shall distinctly state the work to be done.

(c) In its discretion, the district board may reject any bids presented and readvertise.

(d) In the case of an emergency, the district board may act pursuant to Chapter 2.5 (commencing with Section 22050).

(e) The district board may, subject to the provisions of Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code, require the posting of those bonds it deems desirable as a condition to the filing of a bid or the letting of a contract.

(f) Cost records of the work shall be kept in the manner provided in Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

SEC. 54. Section 20815.3 of the Public Contract Code is amended to read:

20815.3. (a) A district shall publish notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least one week before the time specified for receiving bids. The notice shall distinctly state the work to be done.

(b) In its discretion, the board of directors may do any of the following:

(1) Reject all bids and readvertise.

(2) By a four-fifths vote, elect to purchase the materials or supplies in the open market.

(3) By a four-fifths vote, elect to construct the building, structure, or improvement by force account.

(c) In the case of an emergency, the board of directors may act pursuant to Chapter 2.5 (commencing with Section 22050).

(d) The board of directors may, subject to the provisions of Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code, require the posting of those bonds it deems as a condition to the filing of a bid or the letting of a contract.

(e) The district shall keep cost records of the work pursuant to Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

SEC. 55. Section 20991 of the Public Contract Code is amended to read:

20991. All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of twenty-five thousand dollars (\$25,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by five or more insertions in a daily newspaper of general circulation, or by two or more insertions in a weekly newspaper of general circulation, printed and published in the district, inviting sealed proposals for the construction of the improvement or work. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds, to be approved by the board, conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material. The bonds shall contain the terms and conditions set forth in Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code and shall be subject to the provisions of that chapter. The board shall have the right to reject any bid not suitable to the best interests of the district. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the work consists of channel protection, dam protection, temporary work, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. Emergency work may also be done by negotiated contract without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 56. Section 21061 of the Public Contract Code is amended to read:

21061. (a) All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of twenty-five thousand dollars (\$25,000), shall be let to the lowest responsible bidder in the manner provided in this article.

(b) The board of supervisors of the district shall advertise by five or more insertions in a daily newspaper of general circulation, or by two or more insertions in a weekly newspaper of general circulation, printed and published in the district, inviting sealed proposals for the construction of the improvement or work. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds, to be approved by the board, conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code and to be subject to that chapter.

(c) The board may also reject any bid not suitable to the best interests of the district. If all proposals are rejected or no proposals are received pursuant to advertisement therefor, or the work consists of channel protection, dam protection, temporary work, maintenance work, or of emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. Emergency work may also be done by negotiated contract without advertising for bids or requiring bonds. In case of an emergency,

if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(d) The board of supervisors, acting as the board of the district, may, by ordinance, resolution, or board order, authorize the flood control engineer or other county officer to order changes or additions in work being performed under a construction contract. When so authorized, any change or addition in the work shall be ordered in writing by the flood control engineer, or other designated officer, and the extra cost for any change or addition to the work so ordered shall not exceed five thousand dollars (\$5,000) when the total amount of the original contract does not exceed fifty thousand dollars (\$50,000), nor 10 percent of the amount of any original contract that exceeds fifty thousand dollars (\$50,000), but does not exceed two hundred fifty thousand dollars (\$250,000). For contracts whose original cost exceeds two hundred fifty thousand dollars (\$250,000), the extra cost for any change or addition to the work so ordered shall not exceed twenty-five thousand dollars (\$25,000), plus 5 percent of the amount of the original contract costs in excess of two hundred fifty thousand dollars (\$250,000). In no event shall any such change or alteration exceed one hundred fifty thousand dollars (\$150,000).

SEC. 57. Section 21071 of the Public Contract Code is amended to read:

21071. (a) All contracts for any improvement or unit of work except as provided in this article estimated to cost in excess of ten thousand dollars (\$10,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction of, the improvement or work before any contract shall be made for the improvement or work, and may let by contract separately any part of the work or improvement. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection with the contract. The bonds shall contain the terms and conditions set forth in Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code and be subject to the provisions of that chapter. The board shall also have the right to reject any and all bids. If all proposals are rejected or no proposals are received pursuant to the advertisement, the estimated cost of the work does not exceed the sum of ten thousand dollars (\$10,000), or the work consists of channel protection, maintenance work, or emergency work when necessary in order to protect life and property from impending flood damage, the board of supervisors may, without advertising for bids, have the work done by force account or negotiated contract.

(b) The district shall have the power to purchase in the open market without advertising for bids, materials, supplies, equipment, and other personal property for use in any work either under contract or by force account if the costs do not exceed ten thousand dollars (\$10,000). It shall

be the duty of the purchasing agent of Ventura County, as the ex officio purchasing agent of the Ventura County Watershed Protection District, unless otherwise ordered by the board of supervisors, to purchase for the district all materials, supplies, equipment, and other personal property necessary to carry out the purposes of this article, and to engage independent contractors to perform sundry services for the district, if the aggregate cost of such work, exclusive of materials to be furnished by the district, does not exceed ten thousand dollars (\$10,000).

(c) The purchasing agent shall make all purchases and contracts upon proper requisition, signed by the engineer-manager of the district, or his or her authorized representative.

(d) If the work consists of the maintenance or alteration of existing facilities, including electrical, painting, and roofing if the cost of labor and materials for the work according to the engineer's estimate will exceed five thousand dollars (\$5,000), and if the work is not of the type of work referred to in this section, the maintenance and alteration work shall be performed under a contract or contracts that shall be let to the lowest responsible bidder or bidders in the manner described in this section.

SEC. 58. Section 21081 of the Public Contract Code is amended to read:

21081. All contracts for any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole or it may divide such work into severable parts by separate contracts, as stated in such call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of such work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. The district may purchase in the open market, without advertising for bids,

materials and supplies for use in any work either under contract or by force account.

SEC. 59. Section 21091 of the Public Contract Code is amended to read:

21091. All contracts for any improvement or unit of work, except as otherwise provided in this act, estimated to cost in excess of fifteen thousand dollars (\$15,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction of the improvement or work before any contract is made, and may let by contract separately any part of the work or improvement. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall contain the terms and conditions set forth in Sections 10223 and 10224, and Section 9554 of the Civil Code and be subject to those sections. The board shall also have the right to reject any bid. If all proposals are rejected or no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed fifteen thousand dollars (\$15,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any improvement or unit of work either under contract or by force account.

SEC. 60. Section 21101 of the Public Contract Code is amended to read:

21101. All contracts for any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract shall be made. The call for bids shall state whether the work is to be performed as a unit or is to be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole as a unit or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and

upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district shall have the power to purchase in the open market without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 61. Section 21111 of the Public Contract Code is amended to read:

21111. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of ten thousand dollars (\$10,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of directors of the agency shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the agency's jurisdiction inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material. The faithful performance bond shall contain terms and conditions as the board may specify, and the payment bond shall be subject to the provisions of, and shall contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, as applicable. The board shall also have the right to reject any bid, in which case the board may advertise for new bids. In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the work consists of emergency work, the board of directors by unanimous vote of all members present may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market, and may authorize the Purchasing Agent of the County of Santa Barbara to purchase, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(b) If the work to be performed by or on behalf of the agency does not involve an expenditure of ten thousand dollars (\$10,000) or more, or if the work consists of emergency work, the agency may require a faithful performance bond. The agency may require a payment bond on work

performed on behalf of the agency which does not involve an expenditure of more than ten thousand dollars (\$10,000).

SEC. 62. Section 21121 of the Public Contract Code is amended to read:

21121. (a) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer, exceeds five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders.

(b) The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the agency.

(c) The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the territory of the agency inviting sealed proposals for the construction or performance of the improvement or work before any contract is entered into. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the agency.

(d) The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection with the contract. The bonds shall contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and are subject to the provisions of that title.

(e) The board may reject any bid. The board of supervisors may, without advertising for bids, have the work done by force account if any of the following requirements are met:

- (1) All the projects are rejected.
- (2) No proposals are received in response to the advertisement.
- (3) The estimated cost of the work does not exceed five thousand dollars (\$5,000).

(4) The work consists of channel protection, maintenance work, or emergency work. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(f) The agency may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(g) The Monterey County Board of Supervisors may grant to the board of directors, appointed pursuant to Section 49 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), any of the powers or duties granted to the Monterey County Board of Supervisors by this section.

SEC. 63. Section 21131 of the Public Contract Code is amended to read:

21131. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand five hundred dollars (\$2,500) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three placements in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material in connection therewith, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and to be subject to the provisions of that title. The board may reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement therefor, or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work authorized and required under circumstances referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) This section does not apply to a contract entered into with the United States or the State of California or other governmental agency under the authority of Section 3 of Chapter 2126 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

(e) The district may rent or otherwise contract for equipment with or without an operator and use it on works of the district, if the contract is approved by the board.

SEC. 64. Section 21141 of the Public Contract Code is amended to read:

21141. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars (\$2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the

contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed the sum of two thousand dollars (\$2,000), or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract therefor to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3, or to a contract authorized by a vote of the electorate of the district.

SEC. 65. Section 21151 of the Public Contract Code is amended to read:

21151. All contracts for any improvement or unit of work when the cost according to the estimate of the engineer will exceed twenty-five thousand dollars (\$25,000), with or without the furnishing of materials or supplies, shall be let to the lowest responsible bidder or bidders in the manner provided in this article. Construction of improvements or works shall not be staged to avoid the bidding process. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The board shall invite the bids by publishing a notice of the call for bids pursuant to Section 6062 or 6066 of the Government Code in a newspaper of general circulation in the county. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid.

In the event the engineer's estimate is twenty-five thousand dollars (\$25,000) or less, or in the event no proposals are received pursuant to advertisement therefor, or in the event the work consists of channel protection or maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may acquire in the open market without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose.

SEC. 66. Section 21161 of the Public Contract Code is amended to read:

21161. (a) Any improvement or unit of work not performed by district personnel and estimated by the engineer to cost in excess of twenty-five thousand dollars (\$25,000) shall be done by contract. All contracts shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit for the whole thereof or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(b) The provisions of this section requiring competitive bidding and the award of contracts to the lowest responsible bidder are inapplicable to the extent the improvement or unit of work is to be performed on its own

facilities by a public utility subject to the jurisdiction of the California Public Utilities Commission.

SEC. 67. Section 21171 of the Public Contract Code is amended to read:

21171. (a) All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit for the whole thereof or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract as a unit or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid.

(b) In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars (\$2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvements, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 68. Section 21181 of the Public Contract Code is amended to read:

21181. (a) All contracts for any improvement or unit of work when the cost according to the estimate of the engineer, will exceed four thousand dollars (\$4,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall

call for bids and advertise the call in the district pursuant to Section 6066 of the Government Code inviting sealed proposals for the construction or performance of the improvement or before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid.

(b) In the event no proposals are received pursuant to advertisement or the estimated cost of the work does not exceed four thousand dollars (\$4,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by the combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 69. Section 21196 of the Public Contract Code is amended to read:

21196. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand five hundred dollars (\$2,500) shall be let to the lowest responsible bidder in the manner provided in this article. The board of directors of the district shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed two thousand five hundred dollars (\$2,500), or the work consists of emergency work, the board of directors by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(c) The provisions of this section have no application to a contract entered into with the United States under the authority of the Solano County Flood Control and Water Conservation District Act, or to a contract authorized by a vote of the electorate of the district.

SEC. 70. Section 21212 of the Public Contract Code is amended to read:

21212. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of three thousand dollars (\$3,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board of directors of the agency shall advertise pursuant to Section 6066 of the Government Code in a newspaper of general circulation published in the agency's jurisdiction inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of any claims for labor and material and containing the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed three thousand dollars (\$3,000), or the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 6 of Chapter 10 of the Statutes of the 1952 First Extraordinary Session, or to a contract authorized by a vote of the electorate of the agency.

SEC. 71. Section 21231 of the Public Contract Code is amended to read:

21231. Any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed five thousand dollars (\$5,000),

shall be done by contract let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract will be let as a single unit, or will be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district, inviting sealed proposals for the construction or performance of the improvement or before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into separate specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may acquire in the open market without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in the preceding sentence, may not be purchased if the cost exceeds five thousand dollars (\$5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 72. Section 21241 of the Public Contract Code is amended to read:

21241. All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the zone. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the

best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars (\$2,000), or the work consists of emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The board may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in the preceding sentence, may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 73. Section 21251 of the Public Contract Code is amended to read:

21251. (a) (1) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer will exceed thirty thousand dollars (\$30,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts, or both.

(2) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer is thirty thousand dollars (\$30,000) or less, may be let without advertising for bids in accordance with procedures adopted by the board.

(b) The board shall call for bids and advertise the call pursuant to Section 6063 of the Government Code in the district, inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as one unit or divided into severable specific parts.

(c) The work may be let under a single contract or several contracts, or both, as stated in the call. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any bid.

(d) If all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without

advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(e) The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 74. Section 21261 of the Public Contract Code is amended to read:

21261. All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars (\$2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 75. Section 21271 of the Public Contract Code is amended to read:

21271. All improvement and units of work to be performed by or for the district shall be performed in accordance with the following procedures and requirements:

(a) If the work consists of the protection or maintenance of channels, storm drains, dams or other flood control works, or emergency work, the board of directors may, without advertising for bids therefor, have the work done by day labor under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let

contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(b) If the work consists of the construction of new flood control channels, storm drains, dams, or other unit or units of work, and if the cost of the work, according to the estimate of the engineer, will exceed ten thousand dollars (\$10,000), and if the work is not the type of work referred to in subdivision (a) or (c) of this section, the new construction shall be performed under a contract or contracts which shall be let to the lowest responsible bidder or bidders in the manner provided in subdivision (d) of this section.

(c) If the work consists of the maintenance or alteration of existing facilities, including electrical, painting, and roofing work, and if the cost of labor and materials for the work according to the engineer's estimate, will exceed three thousand five hundred dollars (\$3,500), and if the work is not the type of work referred to in subdivision (a) or (b) of this section, the maintenance and alteration work shall be performed under a contract or contracts which shall be let to the lowest responsible bidder or bidders in the manner provided in subdivision (d) of this section.

(d) The board shall first determine whether the work shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable, specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bond to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material. The faithful performance bond shall contain the terms and conditions as the board may specify, and the payment bond shall contain the terms and conditions set forth in, and shall be subject to, the provisions of Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. If the work to be performed on behalf of the district does not involve an expenditure of fifteen thousand dollars (\$15,000) or more, the district may require a faithful performance bond or a payment bond. The board shall also have the right to reject any bid.

(e) If no proposals are received pursuant to advertisement, or if the estimated cost of work of the type referred to in subdivision (b) of this section does not exceed ten thousand dollars (\$10,000), or if the estimated cost of work of the type referred to in subdivision (c) of this section does not exceed three thousand five hundred dollars (\$3,500), the board of directors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by combination of the two. If any change or alteration in a contract awarded under the provisions of this section for work of the type referred to in subdivision (b)

or (c) is deemed necessary and the cost does not exceed 10 percent of the original contract price, the board may authorize the contractor to proceed with the change or alteration without the formality of obtaining bids.

(f) Notwithstanding the foregoing provisions, the district shall have the power to acquire in the open market, and may authorize the Purchasing Agents of the County of Santa Barbara to acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (a) of this section, may not be purchased without advertising for bids and awarding the contract to the lowest responsible bidder if the cost exceeds two thousand five hundred dollars (\$2,500), unless the purchase is made by the county purchasing agent at the request of the district, in which case the cost shall not exceed six thousand five hundred dollars (\$6,500).

SEC. 76. Section 21311 of the Public Contract Code is amended to read:

21311. (a) All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole as a unit or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid.

(b) In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars (\$2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), shall not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 77. Section 21321 of the Public Contract Code is amended to read:

21321. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed thirty thousand dollars (\$30,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call.

The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

(b) The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In the event that no proposals are received, or if only one responsive proposal is received, the board may negotiate a contract for construction or performance of the work or improvement or substantially similar work or improvement. However, if only one responsive proposal is received, the contract must be negotiated with the bidder.

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

(d) Sections 4300 to 4305, inclusive, of the Government Code do not apply to the agency's Middle Fork American River Project.

(e) This section applies to all proposals or contracts whether or not received or entered into prior to the effective date of the amendment of this provision made at the 1963 Regular Session of the Legislature.

SEC. 78. Section 21331 of the Public Contract Code is amended to read:

21331. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of three thousand five hundred dollars (\$3,500) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed five thousand dollars (\$5,000), or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds five thousand dollars (\$5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 1280 of the Statutes of 1957, or to a contract authorized by a vote of the electorate of the district.

SEC. 79. Section 21341 of the Public Contract Code is amended to read:

21341. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars (\$5,000) shall be let to the lowest responsible bidder. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published by the agency inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and to be subject to the provisions of that title. The board

shall also have the right to reject any bid, in which case the board may advertise for new bids. In the event no proposals are received pursuant to advertisement or where the estimated cost of the work does not exceed five thousand dollars (\$5,000), or where the work consists of emergency work, the board, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(b) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 59 of Chapter 1512 of the Statutes of 1957, or to a contract authorized by a vote of the electorate of the agency.

SEC. 80. Section 21351 of the Public Contract Code is amended to read:

21351. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published by the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The board may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. In awarding any contract or authorizing any work, the board shall comply with the provisions of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

SEC. 81. Section 21361 of the Public Contract Code is amended to read:

21361. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand

dollars (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

SEC. 82. Section 21371 of the Public Contract Code is amended to read:

21371. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5

(commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

SEC. 83. Section 21381 of the Public Contract Code is amended to read:

21381. All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars (\$5,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction of the improvement or work before any contract shall be made, and may let by contract separately any part of said work or improvement. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that part. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 84. Section 21391 of the Public Contract Code is amended to read:

21391. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars (\$2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district, inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any and all bids, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement therefor, where the estimated cost of the work does not exceed two thousand

dollars (\$2,000), or where the work consists of emergency work necessary in order to protect life and property, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2114 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

SEC. 85. Section 21401 of the Public Contract Code is amended to read:

21401. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars (\$2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any bids, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed two thousand dollars (\$2,000), or where work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2121 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

SEC. 86. Section 21411 of the Public Contract Code is amended to read:

21411. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In that event a majority vote of all board members shall be required. The board may purchase in the open market, without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

SEC. 87. Section 21421 of the Public Contract Code is amended to read:

21421. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars (\$2,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed two thousand dollars (\$2,000), or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2123 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

SEC. 88. Section 21431 of the Public Contract Code is amended to read:

21431. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars (\$2,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed two thousand dollars (\$2,000), the board of directors, by unanimous vote of all members present, may without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2127 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

SEC. 89. Section 21441 of the Public Contract Code is amended to read:

21441. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the authority, inviting sealed proposals for the construction or performance of the improvement work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids.

(b) In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The authority may purchase in the open market without advertising for bids, materials, and supplies for use in any work, either under contract or by force account.

SEC. 90. Section 21451 of the Public Contract Code is amended to read:

21451. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed twelve thousand five hundred dollars (\$12,500), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The payment bonds shall

comply with Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code. The board may reject any bid. If all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed twelve thousand five hundred dollars (\$12,500), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

SEC. 91. Section 21461 of the Public Contract Code is amended to read:

21461. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in such call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any and all bids. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

SEC. 92. Section 21491 of the Public Contract Code is amended to read:

21491. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed ten thousand dollars (\$10,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the

construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in such call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any bid.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds ten thousand dollars (\$10,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 93. Section 21501 of the Public Contract Code is amended to read:

21501. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed fifteen thousand dollars (\$15,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in such call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code. The board may reject any and all bids.

(b) The board may have work done by force account without advertising for bids or by informal bidding procedures in any of the following situations:

- (1) All proposals are rejected.
- (2) No proposals are received.

(3) The estimated cost of the work does not exceed fifteen thousand dollars (\$15,000) until January 1, 1989. After January 1, 1989, the estimated cost of the work shall not exceed ten thousand dollars (\$10,000).

(4) The work consists of channel protection.

(5) The work consists of maintenance work, except that informal bidding procedures may be used only where the estimated cost does not exceed twenty-five thousand dollars (\$25,000).

(6) The work consists of emergency work. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account, except that, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased, if the cost exceeds fifteen thousand dollars (\$15,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) As used in this section, “informal bidding procedures” means that the board shall, at a minimum, award a contract to the lowest responsible bidder after publishing a notice which generally describes the work to be performed and invites written bids in a newspaper of general circulation in the agency once a week for two successive weeks. The board shall obtain a minimum of three written bids.

SEC. 94. Section 21511 of the Public Contract Code is amended to read:

21511. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed fifty thousand dollars (\$50,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any and all bids.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to

let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. However, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased, if the cost exceeds fifty thousand dollars (\$50,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 95. Section 21521 of the Public Contract Code is amended to read:

21521. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In that event a majority vote of all board members shall be required. The board may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

SEC. 96. Section 21531 of the Public Contract Code is amended to read:

21531. (a) The Castaic Lake Water Agency shall have power to prescribe methods for the construction of works and for the letting of contracts for the construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies, necessary or convenient for carrying out any of the purposes of this act or for the acquisition or disposal of any real or personal property; provided, that all contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or

divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation published in the agency or by two insertions in a nondaily newspaper of general circulation published in the agency or, if no newspaper is published in the agency, in any newspaper of general circulation distributed in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any bid.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds five thousand dollars (\$5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 97. Section 21541 of the Public Contract Code is amended to read:

21541. (a) The Crestline-Lake Arrowhead Water Agency shall have power to prescribe methods for the construction of works and for the letting of contracts for the construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies, necessary or convenient for carrying out any of the purposes of this act or for the acquisition or disposal of any real or personal property. However, all contracts for the construction of any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed twenty-five thousand dollars (\$25,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call.

The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any bid.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. However, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds twenty-five thousand dollars (\$25,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 98. Section 21572 of the Public Contract Code is amended to read:

21572. Any improvement or unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars (\$5,000), shall be done by contract and let to the lowest responsible bidder in the manner provided in this article. The board of directors of the agency shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the agency, inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board, conditioned upon the faithful performance of the contract, and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any and all bids, and readvertise for new bids, or by a two-thirds vote may elect to undertake the work by force account. In the event no proposals are received pursuant to advertisement, or where the estimated cost of such work does not exceed five thousand dollars (\$5,000), the board of directors by unanimous vote of all members present may without advertising for bids have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 99. Section 21581 of the Public Contract Code is amended to read:

21581. (a) Any improvement or unit of work when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be done by contract and shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board a good and sufficient bond to be approved by the board conditioned upon the payment of their claims for labor and material, the bond to contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any and all bids and readvertise for new bids, or by a two-thirds vote may elect to undertake the work by force account.

(b) In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by employees of the district, by day labor, under the direction of the board, by contract, or by any combination of those methods. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds five thousand dollars (\$5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 100. Section 21591 of the Public Contract Code is amended to read:

21591. (a) Any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed twenty-five thousand dollars (\$25,000), shall be done by contract and shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper

of general circulation printed and published in the agency, if there is a newspaper printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any and all bids and readvertise, or by a two-thirds vote may elect to undertake work by force account.

(b) If no proposals are received, or the estimated cost of the work does not exceed twenty-five thousand dollars (\$25,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds twenty-five thousand dollars (\$25,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 101. Section 21601 of the Public Contract Code is amended to read:

21601. Any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be done by contract and let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation, or by two insertions in a weekly newspaper of general circulation, printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon payment of their claims for labor and material. The bonds shall comply with Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code. The board may reject any and all bids and readvertise, or, by a two-thirds vote, may elect to undertake the work by force account. If no proposals are received, the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance

work, or emergency work, the board of supervisors may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials, and supplies for use in any work, either under contract or by force account.

SEC. 102. Section 21622 of the Public Contract Code is amended to read:

21622. The board shall require the successful bidder or bidders to file with the board, good and sufficient bonds, to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection therewith. Such contracts shall be subject to the provisions of Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

SEC. 103. Section 21631 of the Public Contract Code is amended to read:

21631. (a) Any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed six thousand five hundred dollars (\$6,500), shall be done by contract and shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board a good and sufficient bond, to be approved by the board, conditioned upon the payment of their claims for labor and material. The bond shall contain the terms and conditions set forth in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code and be subject to the provisions of that title. The board may reject any and all bids and readvertise for new bids, or by a two-thirds vote may elect to undertake the work by force account.

(b) If no proposals are received pursuant to advertisement or the estimated cost of the work does not exceed six thousand five hundred dollars (\$6,500), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by employees of the district, by day labor, under the direction of the board, by contract, or by a combination of those methods. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except that work referred to in subdivision (b), may not be purchased if the cost exceeds six thousand five hundred dollars (\$6,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 104. Section 136.5 of the Streets and Highways Code is amended to read:

136.5. (a) The contracts referred to in Sections 135, 136, and 136.1 are not subject to the State Contract Act (Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code). Except for emergency work of the type described in subdivision (b), whenever the estimated amount of a contract exceeds two thousand five hundred dollars (\$2,500), it shall be awarded to the lowest responsible bidder, after competitive bidding on any reasonable notice that the department may prescribe. Posting of notice for five days in a public place in the district office within which the work is to be done, or the equipment used, is sufficient. Those contracts shall be subject to the applicable payment bond provisions of Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code. The department may require faithful performance bonds when considered necessary. The advertisement for each contract shall state whether or not a bond shall be required.

(b) In cases of emergency work necessitated by the imminence or occurrence of a landslide, flood, storm damage, accident, or other casualty, tools or equipment may be rented for a period of not to exceed 60 days without competitive bidding, and the department may waive the requirements of Chapter 5 (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code to the extent that a contractor may commence performance of the work under the contract for the rental of tools or equipment prior to filing a payment bond with the department. In that case, no payment shall be made to the contractor until a payment bond covering all work of the contract is filed with the department.

SEC. 105. (a) (1) Except as otherwise provided in paragraphs (2) and (3), Sections 1 to 16, inclusive, Sections 17 to 20, inclusive, and Sections 21 to 104, inclusive, of this act are operative on July 1, 2012.

(2) As provided in Section 108:

(A) Section 16.5 of this act shall become operative on January 1, 2011.

(B) Sections 20.1 and 20.2 of this act shall become operative on July 1, 2012.

(3) As provided in Section 109:

(A) Section 16.3 shall become operative on January 1, 2011.

(B) Sections 1.5, 2.5, 3.5, 4.5, and 39.5 of this act shall become operative on July 1, 2012.

(b) Notwithstanding subdivision (a), the effectiveness of a notice given, or other action taken, before July 1, 2012, is governed by the applicable law in effect before July 1, 2012, and not by this act.

SEC. 106. Any section of any act, except Assembly Bill 2216, Assembly Bill 2419, or Senate Bill 1330, enacted by the Legislature during the 2010 calendar year that takes effect on or before January 1, 2011, and that amends, amends and renumbers, amends and repeals, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, amended and repealed, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is chaptered before or after this act.

SEC. 107. (a) Except as provided in subdivisions (b) and (c):

(1) This act is intended to be nonsubstantive in effect.

(2) Nothing in this act is intended to affect a court decision construing or relating to a provision of former Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3 of the Civil Code, or former Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. A court decision construing or relating to a provision of one of those former laws also applies to a provision of this act that restates and continues the former provision. However, in enacting this act, the Legislature has not evaluated the correctness of those court decisions. This act is not intended to, and does not, reflect any legislative assessment of those court decisions.

(b) The following provisions of the Civil Code, which are enacted by this act, are either substantively new or are substantively different from former law:

(1) Section 8014.

(2) Section 8064.

(3) Chapter 2 (commencing with Section 8100) of Title 1 of Part 6 of Division 4.

(4) Section 8122.

(5) Section 8128.

(6) Section 8132.

(7) Section 8182.

(8) Section 8186.

(9) Section 8190.

(10) Section 8200.

(11) Section 8424.

(12) Section 8460.

(13) Section 8482.

(14) Section 8486.

(15) Section 8488.

(16) Section 8510.

(17) Section 8604.

(18) Section 8606.

(19) Section 8610.

(20) Section 8800.

(21) Section 8834.

(22) Section 8844.

(23) Section 9200.

(24) Section 9204.

(25) Section 9362.

- (26) Section 9408.
- (27) Section 9550.
- (28) Section 9558.

(c) The following provisions of former Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code are not continued by this act:

- (1) Subdivision (b) of Section 3086.
- (2) Section 3105.
- (3) Subdivision (c) of Section 3123.
- (4) The second paragraph of Section 3131.
- (5) Section 3149.
- (6) Section 3204.
- (7) Paragraph (1) of subdivision (c) of Section 3260.
- (8) Paragraph (2) of subdivision (c) of Section 3260.

SEC. 108. Sections 16.5 of this bill incorporates amendments to Section 3252 of the Civil Code, as proposed by Assembly Bill 2216, and Section 20.2 adds Section 9560 to the Civil Code, with additional changes as proposed by Assembly Bill 2216. Sections 16.5 and 20.2 of this bill shall only become operative if (1) this bill and Assembly Bill 2216 are enacted and become effective on or before January 1, 2011, (2) Assembly Bill 2216 amends Section 3252 of the Civil Code, and this bill repeals Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, and (3) this bill is enacted after Assembly Bill 2216, in which case Section 20.1 of this bill shall not become operative.

SEC. 109. (a) Sections 1.5, 2.5, 3.5, 4.5, and 39.5 of this bill incorporate amendments to Sections 7034, 7071.5, 7071.10, and 7159 of the Business and Professions Code, and to Section 19825 of the Health and Safety Code, respectively, proposed by this bill and Assembly Bill 2419. These provisions shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Sections 7034, 7071.5, 7071.10, and 7159 of the Business and Professions Code, and Section 19825 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 2419, in which case Sections 7034, 7071.5, 7071.10, and 7159 of the Business and Professions Code, Section 3084 of the Civil Code, and Section 19825 of the Health and Safety Code, as amended by Assembly Bill 2419, shall remain operative only until the operative date of this bill, at which time Sections 1.5, 2.5, 3.5, 4.5, and 39.5 of this bill shall become operative, and Sections 1, 2, 3, 4, and 39 of this bill shall not become operative.

(b) Section 16.3 of this bill incorporates amendments to Section 3084 of the Civil Code, proposed by Assembly Bill 2419. Section 16.3 of this bill shall only become operative if (1) this bill and Assembly Bill 2419 are enacted and become effective on or before January 1, 2011, (2) Assembly Bill 2419 amends Section 3084 of the Civil Code, and this bill repeals Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, and (3) this bill is enacted after Assembly Bill 2419.

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