

AMENDED IN ASSEMBLY MAY 15, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 901

Introduced by Assembly Member Goldsmith

February 22, 1995

An act to amend Sections 3097 and 3098 of, to amend and repeal Sections 3242, 3098, 3242, and 3252 of, to amend and renumber Section 3241 of, to add Section 3240 to, and to repeal Section 3253 of, the Civil Code, relating to works of improvement, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 901, as amended, Goldsmith. Works of improvement.

(1) Under existing law, a preliminary 20-day notice (private work) must be given prior to the recording of a mechanic's lien and prior to the filing of a stop notice and is required to be given to the owner, the original contractor, every subcontractor with whom the claimant has contracted, and to the construction lender, as specified.

This bill would repeal the requirement that the notice be given to every ~~contractor~~ *subcontractor* with whom the claimant has contracted *and make a clarifying change*.

(2) Existing law provides that no payment shall be withheld from a contractor for a public work unless a person has caused a prescribed written notice to be given to the contractor, the subcontractors with whom the claimant has contracted, and the public agency concerned not later than

20 days after the claimant against a payment bond has first furnished labor, services, equipment, or materials to the jobsite, as specified.

This bill would repeal the requirement that the notice be given to the subcontractors with whom the claimant has contracted *and make a clarifying change*.

(3) Existing law provides that no provision in any payment bond given in connection with a private work of improvement that attempts by contract to shorten the prescribed period for the commencement of an action against the bond to less than 6 months from the completion of any work of improvement shall be valid, nor shall any provision in any payment bond that attempts to limit the period for the commencement of actions brought by claimants thereon be valid, unless the bond is recorded before the work of improvement is commenced, as specified.

This bill would provide that, if the surety or sureties on any payment bond given pursuant to provisions of law regarding private works record the bond before the work of improvement is completed, any action for recovery on the payment bond against the surety or sureties shall be commenced not later than 6 months after the completion of the work of improvement.

(4) Existing law provides that if a 20-day preliminary notice is not given, a claimant may enforce a claim upon a payment bond given in connection with a private or public work by giving written notice to the surety and the bond principal, as provided, within 15 days after recordation of a notice of completion, or, if no notice of completion has been recorded, within 75 days after completion of the work of improvement.

This bill would specify that these provisions are applicable to contracts entered into on or after January 1, 1995. ~~It would repeal these provisions on January 1, 1997.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



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

1 SECTION 1. Section 3097 of the Civil Code is
2 amended to read:

3 3097. “Preliminary 20-day notice (private work)”
4 means a written notice from a claimant that is given prior
5 to the recording of a mechanic’s lien, prior to the filing of
6 a stop notice, and prior to asserting a claim against a
7 payment bond, and is required to be given under the
8 following circumstances:

9 (a) Except one under direct contract with the owner
10 or one performing actual labor for wages, or an express
11 trust fund described in Section 3111, every person who
12 furnishes labor, service, equipment, or material for which
13 a lien or payment bond otherwise can be claimed under
14 this title, or for which a notice to withhold can otherwise
15 be given under this title, shall, as a necessary prerequisite
16 to the validity of any claim of lien, payment bond, and of
17 a notice to withhold, cause to be given to the owner or
18 reputed owner, to the original contractor, or reputed
19 contractor, and to the construction lender, if any, or to the
20 reputed construction lender, if any, a written preliminary
21 notice as prescribed by this section.

22 (b) Except the contractor, or one performing actual
23 labor for wages, or an express trust fund described in
24 Section 3111, all persons who have a direct contract with
25 the owner and who furnish labor, service, equipment, or
26 material for which a lien or payment bond otherwise can
27 be claimed under this title, or for which a notice to
28 withhold can otherwise be given under this title, shall, as
29 a necessary prerequisite to the validity of any claim of
30 lien, claim on a payment bond, and of a notice to
31 withhold, cause to be given to the construction lender, if
32 any, or to the reputed construction lender, if any, a
33 written preliminary notice as prescribed by this section.

34 (c) The preliminary notice referred to in subdivisions
35 (a) and (b) shall contain the following information:

36 (1) A general description of the labor, service,
37 equipment, or materials furnished, or to be furnished, and
38 an estimate of the total price thereof.



1 (2) The name and address of the person furnishing
2 that labor, service, equipment, or materials.

3 (3) The name of the person who contracted for
4 purchase of that labor, service, equipment, or materials.

5 (4) A description of the jobsite sufficient for
6 identification.

7 (5) The following statement in boldface type:

8

9

NOTICE TO PROPERTY OWNER

10

11 If bills are not paid in full for the labor, services,
12 equipment, or materials furnished or to be furnished, a
13 mechanic's lien leading to the loss, through court
14 foreclosure proceedings, of all or part of your property
15 being so improved may be placed against the property
16 even though you have paid your contractor in full. You
17 may wish to protect yourself against this consequence by
18 (1) requiring your contractor to furnish a signed release
19 by the person or firm giving you this notice before making
20 payment to your contractor or (2) any other method or
21 device that is appropriate under the circumstances.

22 (6) If the notice is given by a subcontractor who is
23 required pursuant to a collective bargaining agreement
24 to pay supplemental fringe benefits into an express trust
25 fund described in Section 3111, the notice shall also
26 contain the identity and address of the trust fund or funds.

27 If an invoice for materials contains the information
28 required by this section, a copy of the invoice, transmitted
29 in the manner prescribed by this section shall be
30 sufficient notice.

31 A certificated architect, registered engineer, or
32 licensed land surveyor who has furnished services for the
33 design of the work of improvement and who gives a
34 preliminary notice as provided in this section not later
35 than 20 days after the work of improvement has
36 commenced shall be deemed to have complied with
37 subdivisions (a) and (b) with respect to architectural,
38 engineering, or surveying services furnished, or to be
39 furnished.



1 (d) The preliminary notice referred to in subdivisions
2 (a) and (b) shall be given not later than 20 days after the
3 claimant has first furnished labor, service, equipment, or
4 materials to the jobsite. If labor, service, equipment, or
5 materials have been furnished to a jobsite by a claimant
6 who did not give a preliminary notice, that claimant shall
7 not be precluded from giving a preliminary notice at any
8 time thereafter. The claimant shall, however, be entitled
9 to record a lien, file a stop notice, and assert a claim
10 against a payment bond only for labor, service,
11 equipment, or material furnished within 20 days prior to
12 the service of the preliminary notice, and at any time
13 thereafter.

14 (e) Any agreement made or entered into by an owner,
15 whereby the owner agrees to waive the rights or
16 privileges conferred upon the owner by this section shall
17 be void and of no effect.

18 (f) The notice required under this section may be
19 served as follows:

20 (1) If the person to be notified resides in this state, by
21 delivering the notice personally, or by leaving it at his or
22 her address of residence or place of business with some
23 person in charge, or by first-class registered or certified
24 mail, postage prepaid, addressed to the person to whom
25 notice is to be given at his or her residence or place of
26 business address or at the address shown by the building
27 permit on file with the authority issuing a building permit
28 for the work, or at an address recorded pursuant to
29 subdivision (j).

30 (2) If the person to be notified does not reside in this
31 state, by any method enumerated in paragraph (1) of this
32 subdivision. If the person cannot be served by any of these
33 methods, then notice may be given by first-class certified
34 or registered mail, addressed to the construction lender
35 or to the original contractor.

36 (3) When service is made by first-class certified or
37 registered mail, service is complete at the time of the
38 deposit of that registered or certified mail.

39 (g) A person required by this section to give notice to
40 the owner, to an original contractor, and to a person to



1 whom a notice to withhold may be given, need give only
 2 one notice to the owner, to the original contractor, and to
 3 the person to whom a notice to withhold may be given
 4 with respect to all materials, service, labor, or equipment
 5 he or she furnishes for a work of improvement, that
 6 means the entire structure or scheme of improvements
 7 as a whole, unless the same is furnished under contracts
 8 with more than one subcontractor, in which event, the
 9 notice requirements shall be met with respect to
 10 materials, services, labor, or equipment furnished to each
 11 contractor.

12 If a notice contains a general description required by
 13 subdivision (a) or (b) of the materials, services, labor, or
 14 equipment furnished to the date of notice, it is not
 15 defective because, after that date, the person giving
 16 notice furnishes materials, services, labor, or equipment
 17 not within the scope of this general description.

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

26 Where the notice is required to contain the information
 27 set forth in paragraph (6) of subdivision (c), a failure to
 28 give the notice, including that information, that results in
 29 the filing of a lien, claim on a payment bond, or the
 30 delivery of a stop notice by the express trust fund to which
 31 the obligation is owing constitutes grounds for
 32 disciplinary action by the Registrar of Contractors against
 33 the subcontractor if the amount due the trust fund is not
 34 paid.

35 (i) Every city, county, city and county, or other
 36 governmental authority issuing building permits shall, in
 37 its application form for a building permit, provide space
 38 and a designation for the applicant to enter the name,
 39 branch, designation, if any, and address of the
 40 construction lender and shall keep the information on file



1 open for public inspection during the regular business
2 hours of the authority.

3 If there is no known construction lender, that fact shall
4 be noted in the designated space. Any failure to indicate
5 the name and address of the construction lender on the
6 application, however, shall not relieve any person from
7 the obligation to give to the construction lender the
8 notice required by this section.

9 (j) A mortgage, deed of trust, or other instrument
10 securing a loan, any of the proceeds of which may be used
11 for the purpose of constructing improvements on real
12 property, shall bear the designation "Construction Trust
13 Deed" prominently on its face and shall state all of the
14 following: (1) the name and address of the lender, and the
15 name and address of the owner of the real property
16 described in the instrument, and (2) a legal description
17 of the real property which secures the loan and, if known,
18 the street address of the property. The failure to be so
19 designated or to state any of the information required by
20 this subdivision shall not affect the validity of the
21 mortgage, deed of trust, or other instrument.

22 Failure to provide this information on this instrument
23 when recorded shall not relieve persons required to give
24 preliminary notice under this section from that duty.

25 The county recorder of the county in which the
26 instrument is recorded shall indicate in the general index
27 of the official records of the county that the instrument
28 secures a construction loan.

29 (k) Every contractor and subcontractor who is
30 required pursuant to a collective bargaining agreement
31 to pay supplementary fringe benefits into an express trust
32 fund described in Section 3111, and who has failed to do
33 so shall cause to be given to the trust fund and to the
34 construction lender, if any, or to the reputed construction
35 lender, if any, not later than the date the payment due to
36 the trust fund became delinquent, a written notice
37 containing all of the following:

38 (1) The name of the owner and the contractor.

39 (2) A description of the jobsite sufficient for
40 identification.



1 (3) The identity and address of the express trust fund.

2 (4) The total number of straight time and overtime
3 hours on each job, payment for which the contractor or
4 subcontractor is delinquent to the express trust.

5 (5) The amount then past due and owing.

6 Failure to give this notice shall constitute grounds for
7 disciplinary action by the Registrar of Contractors.

8 (l) Every written contract entered into between a
9 property owner and an original contractor shall provide
10 space for the owner to enter his or her name and address
11 of residence; and place of business if any. The original
12 contractor shall make available the name and address of
13 residence of the owner to any person seeking to serve the
14 notice specified in subdivision (c).

15 (m) Every written contract entered into between a
16 property owner and an original contractor, except home
17 improvement contracts and swimming pool contracts
18 subject to Article 10 (commencing with Section 7150) of
19 Chapter 9 of Division 3 of the Business and Professions
20 Code, shall provide space for the owner to enter the name
21 and address of the construction lender or lenders. The
22 original contractor shall make available the name and
23 address of the construction lender or lenders to any
24 person seeking to serve the notice specified in subdivision
25 (c). Every contract entered into between an original
26 contractor and subcontractor, and between
27 subcontractors, shall provide a space for the name and
28 address of the owner, original contractor, and any
29 construction lender.

30 (n) Where one or more construction loans are
31 obtained after commencement of construction, the
32 property owner shall provide the name and address of the
33 construction lender or lenders to each person who has
34 given the property owner the notice specified in
35 subdivision (c).

36 (o) (1) Each person who has served a preliminary
37 20-day notice pursuant to subdivision (f) may file the
38 preliminary 20-day notice with the county recorder in the
39 county in which any portion of the property is located. A



1 preliminary 20-day notice filed pursuant to this section
2 shall contain all of the following:

3 (A) The name and address of the person furnishing the
4 labor, service, equipment, or materials.

5 (B) The name of the person who contracted for
6 purchase of the labor, service, equipment, or materials.

7 (C) The common street address of the jobsite.

8 (2) Upon the acceptance for recording of a Notice of
9 Completion or Notice of Cessation the County Recorder
10 shall mail to those persons who have filed a preliminary
11 20-day notice, notification that a Notice of Completion or
12 Notice of Cessation has been recorded on the property,
13 and shall affix the date that the Notice of Completion or
14 Notice of Cessation was recorded with the county
15 recorder.

16 (3) The failure of the county recorder to mail the
17 notification to the person who filed a preliminary 20-day
18 notice, or the failure of those persons to receive the
19 notification or to receive complete notification, shall not
20 affect the period within which a claim of lien is required
21 to be recorded. However, the county recorder shall make
22 a good faith effort to mail notification to those persons
23 who have filed the preliminary 20-day notice under this
24 section and to do so within five days after the recording
25 of a notice of completion or notice of cessation.

26 (4) This new function of the county recorder shall not
27 become operative until July 1, 1988. The county recorder
28 may cause to be destroyed all documents filed pursuant
29 to this section, two years after the date of filing.

30 (5) The preliminary 20-day notice which a person may
31 file pursuant to this subdivision is for the limited purpose
32 of facilitating the mailing of notice by the county recorder
33 of recorded notices of completion and notices of
34 cessation. The notice which is filed is not a recordable
35 document and shall not be entered into those official
36 records of the county which by law impart constructive
37 notice. Notwithstanding any other provision of law, the
38 index maintained by the recorder of filed preliminary
39 20-day notices shall be separate and distinct from those
40 indexes maintained by the county recorder of those



1 official records of the county which by law impart
2 constructive notice. The filing of a preliminary 20-day
3 notice with the county recorder does not give rise to any
4 actual or constructive notice with respect to any party of
5 the existence or contents of a filed preliminary 20-day
6 notice nor to any duty of inquiry on the part of any party
7 as to the existence or contents of that notice.

8 (p) The change made to the statement described in
9 subdivision (c) by Chapter 974 of the Statutes of 1994 shall
10 have no effect upon the validity of any notice that
11 otherwise meets the requirements of this section. *The*
12 *failure to provide, pursuant to Chapter 974 of the Statutes*
13 *of 1994, a written preliminary notice to a subcontractor*
14 *with whom the claimant has contracted shall not affect*
15 *the validity of any preliminary notice provided pursuant*
16 *to this section.*

17 SEC. 2. Section 3098 of the Civil Code is amended to
18 read:

19 3098. "Preliminary 20-day notice (public work)"
20 means a written notice from a claimant that was given
21 prior to the assertion of a claim against a payment bond,
22 or the filing of a stop notice on public work, and is
23 required to be given under the following circumstances:

24 (a) In any case in which the law of this state affords a
25 right to a person furnishing labor or materials for a public
26 work who has not been paid therefor to assert a claim
27 against a payment bond, or to file a stop notice with the
28 public agency concerned, and thereby cause the
29 withholding of payment from the contractor for the
30 public work, any such person having no direct
31 contractual relationship with the contractor, other than
32 a person who performed actual labor for wages or an
33 express trust fund described in Section 3111, may file the
34 preliminary notice, but no payment shall be withheld
35 from the contractor pursuant to that notice unless the
36 person has caused written notice to be given to the
37 contractor, and the public agency concerned, not later
38 than 20 days after the claimant has first furnished labor,
39 services, equipment, or materials to the jobsite, stating
40 with substantial accuracy a general description of labor,



1 service, equipment, or materials furnished or to be
2 furnished, and the name of the party to whom the same
3 was furnished. This notice shall be served by mailing the
4 same by first-class mail, registered mail, or certified mail,
5 postage prepaid, in an envelope addressed to the
6 contractor at any place the contractor maintains an office
7 or conducts business, or his or her residence, or by
8 personal service. In case of any public works constructed
9 by the Department of Public Works or the Department
10 of General Services of the state, such notice shall be
11 served by mailing in the same manner as above,
12 addressed to the office of the disbursing officer of the
13 department constructing the work, or by personal service
14 upon the officer. When service is by registered or
15 certified mail, service is complete at the time of the
16 deposit of the registered or certified mail.

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

25 (c) The notice requirements of this section shall not
26 apply to an express trust fund described in Section 3111.

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

37 (e) *The failure to provide, pursuant to Chapter 974 of*
38 *the Statutes of 1994, a written preliminary notice to a*
39 *subcontractor with whom the claimant has contracted*



1 *shall not affect the validity of any preliminary notice*
2 *provided pursuant to this section.*

3 SEC. 3. Section 3240 is added to the Civil Code, to
4 read:

5 3240. Notwithstanding Section 3239, if a surety on any
6 payment bond given pursuant to this chapter records the
7 payment bond in the office of the county recorder of the
8 county in which the property is situated before the work
9 of improvement is completed, then any action against the
10 surety or sureties shall be commenced not later than six
11 months after the completion of the work of
12 improvement.

13 SEC. 4. Section 3241 of the Civil Code is amended and
14 renumbered to read:

15 3227. (a) The written notice to be given to the surety
16 and the bond principal may be given by personal
17 delivery, or by depositing the notice in the mail, postage
18 prepaid, certified or registered, and addressed in
19 accordance with any of the following that may be
20 applicable:

21 (1) If to an individual surety, at his or her residence or
22 place of business, if known. If to an individual surety
23 whose residence is unknown, then in care of the clerk of
24 the county in which the bond has been recorded.

25 (2) If to a corporate surety, at the office of or in care
26 of the agent designated by the surety in the bond as the
27 address to which notice shall be sent.

28 (3) At the office of or in care of any officer of the surety
29 in this state.

30 (4) At the office of or in care of the statutory agent of
31 the surety in this state.

32 (5) To the bond principal at the last known address.

33 (6) By service in the manner provided by law for the
34 service of a summons in a civil action.

35 (b) The written notice described in subdivision (a)
36 shall contain all of the following:

37 (1) The kind of labor, services, equipment, or
38 materials furnished or agreed to be furnished by the
39 claimant.



1 (2) The name of the person to or for whom the labor,
2 services, equipment, or materials were furnished.

3 (3) The amount in value, as near as may be
4 determined, of any labor, services, equipment, or
5 materials already furnished or to be furnished.

6 SEC. 5. Section 3242 of the Civil Code is amended to
7 read:

8 3242. (a) With regard to a contract entered into on
9 or after January 1, 1995, in order to enforce a claim upon
10 any payment bond given in connection with a private
11 work, a claimant shall give the 20-day private work
12 preliminary notice provided in Section 3097.

13 (b) If the 20-day private work preliminary notice was
14 not given as provided in Section 3097, a claimant may
15 enforce a claim by giving written notice to the surety and
16 the bond principal as provided in Section 3227 within 15
17 days after recordation of a notice of completion. If no
18 notice of completion has been recorded, the time for
19 giving written notice to the surety and the bond principal
20 is extended to 75 days after completion of the work of
21 improvement.

22 ~~(c) This section shall remain in effect only until~~
23 ~~January 1, 1997, and as of that date is repealed, unless a~~
24 ~~later enacted statute, that is enacted before January 1,~~
25 ~~1997, deletes or extends that date.~~

26 SEC. 6. Section 3252 of the Civil Code is amended to
27 read:

28 3252. (a) With regard to a contract entered into on
29 or after January 1, 1995, in order to enforce a claim upon
30 any payment bond given in connection with a public
31 work, a claimant shall give the 20-day public works
32 preliminary bond notice as provided in Section 3098.

33 (b) If the 20-day public work preliminary bond notice
34 was not given as provided in Section 3098, a claimant may
35 enforce a claim by giving written notice to the surety and
36 the bond principal as provided in Section 3227 within 15
37 days after recordation of a notice of completion. If no
38 notice of completion has been recorded, the time for
39 giving written notice to the surety and the bond principal



1 is extended to 75 days after completion of the work of
2 improvement.

3 ~~This section shall remain in effect only until January 1,~~
4 ~~1997, and as of that date is repealed, unless a later enacted~~
5 ~~statute, that is enacted before January 1, 1997, deletes or~~
6 ~~extends that date.~~

7 SEC. 7. Section 3253 of the Civil Code is repealed.

8 SEC. 8. This act is an urgency statute necessary for the
9 immediate preservation of the public peace, health, or
10 safety within the meaning of Article IV of the
11 Constitution and shall go into immediate effect. The facts
12 constituting the necessity are:

13 In order to protect the public, it is necessary that this
14 act take effect immediately.

