

AMENDED IN ASSEMBLY APRIL 14, 1998

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

ASSEMBLY BILL

No. 2627

Introduced by Assembly Member Brown

February 23, 1998

An act to add Section 3260.2 to the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2627, as amended, Brown. Works of improvement.

Existing law generally regulates the enforcement of mechanics' liens and the use of stop notices for private works of improvement and for public works.

~~This bill would express the intent of the Legislature to enact legislation that would authorize, with respect to contracts entered into on and after January 1, 1999, a contractor who is not paid within 45 days after submitting a proper invoice for payment to the owner of a private work of improvement or to the contracting public agency on a public works project to stop work and direct any subcontractors to stop work without any liability for the work cessation. Existing law requires, except as otherwise agreed to in writing, the owner of a work of improvement to pay to the contractor, within 30 days following receipt of a demand for payment in accordance with the contract, any progress payment due thereunder as to which there is no good faith dispute between the parties. Existing law entitles a contractor to a penalty if any amount is wrongfully withheld in violation of this provision.~~

This bill would provide that a defined contractor who is not paid all moneys owed pursuant to a written contract for a public work or work of improvement within 30 days from the date payment is due pursuant to the contract, and there is no dispute as to the satisfactory performance of the contractor, has the right to serve, as specified, a Ten-Day Stop Work Order that states that unless all amounts then due are paid within 10 days, the contractor will stop work on the project. The bill would provide that the contractor or his or her surety shall have no liability for any delays or damages that the owner, or any other party, may suffer as a result of the contractor serving the stop work order and subsequently stopping work for nonpayment, except as specified. This bill would authorize an expedited proceeding in the superior court in the county in which the project is located regarding liability for the amount not paid for work performed. The bill would also provide that it is against public policy to waive these provisions.

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

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

1 ~~SECTION 1.—It is the intent of the Legislature to enact~~
 2 SECTION 1. Section 3260.2 is added to the Civil Code,
 3 to read:
 4 3260.2. (a) If a contractor is not paid all moneys
 5 which are owed pursuant to a written contract for a
 6 public work or private work of improvement within 30
 7 days from the date payment is due pursuant to the
 8 written contract, and there is no dispute as to the
 9 satisfactory performance of that contractor, the
 10 contractor shall have a right to serve upon the owner a
 11 “Ten-Day Stop Work Order,” that states that unless all
 12 amounts then due the contractor are paid within 10 days,
 13 the contractor will stop work on the project.
 14 (b) The contractor’s right to stop work pursuant to this
 15 section are in addition to any and all other rights the
 16 contractor may have under the law.



1 (c) Notwithstanding any other provision, the
2 contractor or his or her surety shall have no liability for
3 any delays or damages that the owner, or any other party,
4 may suffer as a result of the contractor serving the owner
5 with a 10-day stop work order and subsequently stopping
6 work for nonpayment except for liability based upon the
7 right of a person to assert a mechanic's lien.

8 (d) If the dispute is not resolved within 10 days, the
9 contractor or his or her surety may seek a judicial
10 determination of liability for the amount not paid for
11 work performed in an expedited proceeding in the
12 superior court in the county in which the public work or
13 work of improvement is located.

14 (e) It shall be against public policy to waive the
15 provisions of this section in any written contract for a
16 public work or private work of improvement.

17 (f) This section shall apply to any contract entered into
18 on or after January 1, 1999.

19 (g) (1) The stop work order specified in this section
20 for private works of improvement may be served as
21 follows:

22 (A) If the person to be notified resides in this state, by
23 delivering the stop work order personally, or by leaving
24 it at his or her address of residence or place of business
25 with some person in charge, or by first-class registered or
26 certified mail, postage prepaid, addressed to the person
27 to whom notice is to be given at his or her residence or
28 place of business address or at the address shown by the
29 building permit on file with the authority issuing a
30 building permit for the work, or at an address recorded
31 pursuant to subdivision (j) of Section 3097.

32 (B) If the person to be notified of the stop work order
33 does not reside in this state, by any method enumerated
34 in subparagraph (A) of this subdivision. If the person
35 cannot be served by any of these methods, then notice
36 may be given by first-class certified or registered mail,
37 addressed to the construction lender or to the original
38 contractor.



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

4 (2) The stop work order shall be served in the case of
5 a public work by mailing it by first-class mail, registered
6 mail, or certified mail, postage prepaid, in an envelope
7 addressed to the contractor at any place the contractor
8 maintains an office or conducts business, or his or her
9 residence, or by personal service. In case of any public
10 works constructed by the Department of Transportation
11 or the Department of General Services, the stop work
12 order shall be served by mailing in the same manner as
13 above, addressed to the office of the disbursing officer of
14 the department constructing the work, or by personal
15 service upon the officer. When service is by registered or
16 certified mail, service is complete at the time of the
17 deposit of the registered or certified mail.

18 (h) For purposes of this section only, "contractor"
19 means any licensed contractor, licensed subcontractor, or
20 licensed design builder, as defined in Section 7026 of the
21 Business and Professions Code, who, pursuant to a written
22 contract, is responsible for the construction of a public
23 work or work of improvement. Except as otherwise
24 expressly provided, this definition shall not apply to, or
25 limit or expand the meaning of, provisions of law other
26 than this section.

27 ~~legislation that would authorize, with respect to contracts~~
28 ~~entered into on and after January 1, 1999, a contractor~~
29 ~~who is not paid within 45 days after submitting a proper~~
30 ~~invoice for payment to the owner of a private work of~~
31 ~~improvement or to the contracting public agency on a~~
32 ~~public works project to stop work and direct any~~
33 ~~subcontractors to stop work without any liability for the~~
34 ~~work cessation.~~

