

AMENDED IN SENATE JUNE 22, 1998
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. 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 an original* 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 *of notice, as specified*, the contractor will stop work on the project. *The bill would require the owner to notify the construction lender, as specified.* 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 and would specify the contractor's liability to a subcontractor or material supplier.~~ 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 *in a written contract for a public or private work of improvement.*

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. Section 3260.2 is added to the Civil Code,
 2 to read:
 3 3260.2. ~~(a) If a contractor is not paid all moneys
 4 which are owed pursuant to a written contract for a
 5 public work or private work of improvement within 30
 6 days from the date payment is due pursuant to the
 7 written contract, and there is no dispute as to the
 8 satisfactory performance of that contractor, the
 9 contractor shall have a right to serve upon the owner a
 10 "Ten-Day Stop Work Order," that states that unless all
 11 amounts then due the contractor are paid within 10 days,
 12 the contractor will stop work on the project.~~
 13 ~~(b) The contractor's right to stop work pursuant to this
 14 section are in addition to any and all other rights the
 15 contractor may have under the law.~~
 16 ~~(c) Notwithstanding any other provision, the
 17 contractor or his or her surety shall have no liability for
 18 any delays or damages that the owner, or any other party,
 19 may suffer as a result of the contractor serving the owner~~



1 ~~with a 10-day Stop Work Order and subsequently~~
2 ~~stopping work for nonpayment except for liability based~~
3 ~~upon the right of a person to assert a mechanic's lien.~~

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

10 ~~(e) It shall be against public policy to waive the~~
11 ~~provisions of this section in any written contract for a~~
12 ~~public work or private work of improvement.~~

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

15 *3260.2. (a) If an original contractor is not paid all*
16 *moneys which are owed pursuant to a written contract*
17 *for a public work or private work of improvement within*
18 *30 days from the date payment is due pursuant to the*
19 *written contract, and there is no dispute as to the*
20 *satisfactory performance of that original contractor, the*
21 *original contractor shall have a right to serve upon the*
22 *owner a "Ten-Day Stop Work Order," that states that*
23 *unless all amounts then due the original contractor are*
24 *paid within 10 days from the date notice is provided*
25 *under this section, the original contractor will stop work*
26 *on the project. Within five days of receipt of written*
27 *notice by an original contractor pursuant to this section,*
28 *the owner shall forward to the construction lender, if any,*
29 *at the address provided in the construction loan*
30 *agreement, a copy of the notice by first-class mail.*

31 *(b) The original contractor's right to stop work*
32 *pursuant to this section is in addition to any and all other*
33 *rights the original contractor may have under the law.*

34 *(c) Notwithstanding any other provision, the original*
35 *contractor or his or her surety shall have no liability for*
36 *any delays or damages that the owner may suffer as a*
37 *result of the original contractor serving the owner with*
38 *a 10-day stop work order and subsequently stopping work*
39 *for nonpayment. An original contractor's liability to a*
40 *subcontractor or material supplier resulting from the*



1 cessation of work under this section shall be limited to the
2 amount of monetary damages the subcontractor or
3 material supplier could recover under the mechanic's
4 lien law for goods and services provided up to the date the
5 subcontractor ceases work; however, in no event shall
6 liability accrue for work performed or materials supplied
7 beyond the 10-day notice period.

8 (d) If the payment is not made within 10 days from the
9 date the notice was served, the original contractor or his
10 or her surety may seek a judicial determination of liability
11 for the amount not paid for work performed in an
12 expedited proceeding in the superior court in the county
13 in which the public work or private work improvement
14 is located.

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

18 (f) This section shall apply to any contract entered into
19 on or after January 1, 1999. However, nothing in this
20 section shall be construed to apply to retentions withheld
21 by a lender in accordance with the construction loan
22 agreement.

23 (g) (1) The stop work order specified in this section
24 for private works of improvement may be served as
25 follows:

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

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



1 addressed to the construction lender or to the original
2 contractor, *by facsimile with confirmation of transmission*
3 *and followup notice mailed first-class, by electronic mail*
4 *with confirmation of transmission and followup notice*
5 *mailed first-class, or by overnight carrier or mail..*

6 ~~(C) When service is made by first class certified or~~
7 ~~registered mail, service is complete at the time of the~~
8 ~~deposit of that registered or certified mail.~~

9 *(C) Service pursuant to this paragraph is effective*
10 *immediately, except that notice by overnight carrier or*
11 *mail is effective upon receipt and service by first-class*
12 *registered or certified mail is effective five days after*
13 *mailing.*

14 (2) The stop work order shall be served in the case of
15 a public work by mailing it by first-class mail, registered
16 mail, or certified mail, postage prepaid, in an envelope
17 addressed to the contractor at any place the contractor
18 maintains an office or conducts business, or his or her
19 residence, or by personal service. In case of any public
20 works constructed by the Department of Transportation
21 or the Department of General Services, the stop work
22 order shall be served by mailing in the same manner as
23 above, addressed to the office of the disbursing officer of
24 the department constructing the work, or by personal
25 service upon the officer. When service is by registered or
26 certified mail, service is complete at the time of the
27 deposit of the registered or certified mail.

28 ~~(h) For purposes of this section only, "contractor"~~
29 ~~means any licensed contractor, licensed subcontractor, or~~
30 ~~licensed design builder, as defined in Section 7026 of the~~
31 ~~Business and Professions Code, who, pursuant to a written~~
32 ~~contract, is responsible for the construction of a public~~
33 ~~work or work of improvement. Except as otherwise~~
34 ~~expressly provided, this definition shall not apply to, or~~
35 ~~limit or expand the meaning of, provisions of law other~~
36 ~~than this section.~~

