

AMENDED IN ASSEMBLY AUGUST 26, 1999

AMENDED IN ASSEMBLY AUGUST 16, 1999

AMENDED IN ASSEMBLY JULY 7, 1999

SENATE BILL

No. 914

Introduced by Senator Sher

February 25, 1999

An act to amend Sections 7071.5, 7071.10, and 7071.11 of the Business and Professions Code, to amend Sections 3089, 3097, ~~3098, and 3111 of, to add Article 8 (commencing with Section 3155) to Chapter 2 of Title 15 of Part 4 of Division 3 of, and to 3098, and 3111 of, and to~~ repeal Section 3111.5 of, the Civil Code, and to amend Section 1204 of the Code of Civil Procedure, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 914, as amended, Sher. Contractors: express trust funds: liens.

(1) Existing law provides that a contractor, or a qualifying individual acting in the capacity of a contractor, shall provide a bond or deposit, as specified, for the benefit of homeowners and other persons, including express trust funds, that are damaged by the licensee, but provides that liability on the bond to an express trust fund is limited to the difference between the actual loss to the fund and the amount realized from the proceeds of any other bond required under a collective bargaining agreement.

This bill would modify these provisions to apply to both fringe benefits and other specified forms of compensation,

and would provide that the liability of a bond to an express trust fund is limited to actual employer payments required to be made on behalf of employees as part of their overall compensation, without regard to whether the work was performed on a public or private work. This bill would make additional conforming changes.

(2) Existing law provides that, in an action against a contractor's bond or deposit, the claim of any employee for wages and fringe benefits shall be a preferred claim, but provides that a claim to recover fringe benefits must be brought within 6 months from the date the delinquencies were discovered and no later than 2 years from when the contributions were due.

~~This bill would modify these provisions to apply to claims made by an express trust fund as assignee, delete the requirement that the claim of any employee for wages and fringe benefits be a preferred claim, and would expand the claim period applicable to claims for fringe benefits to also apply to claims for wages.~~

(3) Existing law provides that specified persons, including laborers, as defined, who contribute labor, skill, or services to a work of improvement, shall have a mechanic's lien upon the property so improved.

This bill would, for purposes of the mechanic's lien law, include in the definition of "laborer" any person or entity, including an express trust fund, to whom a portion of the compensation of a laborer is paid, pursuant to an agreement with the laborer or the laborer's collective bargaining agent, and would provide that the fund shall be entitled to assert the same rights and claims as the laborer, as specified. This bill would also make related conforming changes.

(4) Existing law provides that an express trust fund that is established pursuant to a collective bargaining agreement to collect supplemental fringe benefits shall have a lien on particular real property covered by a wage agreement in the amount of the supplemental fringe benefit payments it is owed by the payor.

This bill would apply these provisions to express trust funds created by both collective bargaining agreements and employment agreements, and would provide that this lien



provision applies to the total compensation of a laborer, including both fringe benefits and other specified forms of compensation, and that an express trust fund shall be entitled to assert the same rights and claims as the laborer to the extent of the total compensation owing for that work of improvement.

(5) Existing law requires express trust funds to, ~~upon demand~~, provide subcontractors, *upon demand*, with a statement of fringe benefit payments, as specified.

This bill would repeal that provision.

~~(6) Existing law specifies all persons and laborers who are entitled to a lien upon the property upon which they have bestowed labor or furnished materials or leased equipment, as specified. Existing law entitles a person to enforce such a lien only if he or she has served a preliminary 20-day notice, as specified, and prescribes the time periods in which the claim of lien must be recorded. Existing law provides that the amount of the lien shall be for the reasonable value of the labor, services, equipment, or materials furnished or for the price agreed upon, whichever is less, but that any original contractor or subcontractor may recover only such amount as may be due under the terms of a contract, after deducting all claims of other claimants for labor, services, equipment, or materials furnished and embraced within the contract. Existing law authorizes the owner of property to petition the proper court for an order to release the property from the lien if specified conditions are met.~~

~~This bill would require a person, other than an original contractor, who has provided labor, service, equipment, or material to a work of improvement on property with an existing single-family, owner-occupied dwelling pursuant to a contract entered into on or after January 1, 2000, with an original contractor, or any of the original contractor's subcontractors or sub-subcontractors, who has recorded a lien, to file a statement of claim with the Contractors' State License Board. The claimant would be entitled to foreclose the lien upon a finding by a hearing officer that the owner has not paid the original contractor in full, as specified, or the owner has not complied with specified conditions, including a requirement that the owner prepare an affidavit, under~~



~~penalty of perjury, that the original contractor was paid in full. Upon a determination that the owner paid the original contractor in full, the hearing officer would enter an order directing specified payment of the claimant from the Contractor Default Recovery Fund, which would be established by the bill and would be continuously appropriated to provide monetary relief, as specified, to any claimant who is not paid in full for this labor, service equipment, or material.~~

~~The bill would require the Contractor's State License Board to, among other things, administer the fund and charge an annual fee of \$200 to contractors who are certified home improvement contractors for deposit into the fund. The bill would provide that a finding that the original contractor was paid in full and failed to make timely payments is grounds for immediate suspension of the contractor's license. The bill would require county recorders to make available a form for the above-described affidavit.~~

~~By creating a new crime by expanding the definition of perjury and by imposing additional duties upon local officials, this bill would impose a state-mandated local program.~~

~~(7)~~

~~(6) Existing law provides that when an assignment is made for the benefit of creditors or results from any proceeding in insolvency or receivership, a claim for unsecured wages, salary, commissions, and employee benefits of up to \$2,000 shall be a preferred claim and shall have priority over other claims, as specified.~~

~~This bill would increase the maximum preferred claim for unsecured wages, salary, commissions, and employee benefits to \$4,300, and would provide that these preferred claims shall constitute a lien on all property of the debtor, superior and prior to all other liens created by or recognized by the law of this state, to be paid before the claim of any other secured or unsecured creditor. This bill would also provide that in any action to enforce these provisions, reasonable attorney's fees and costs shall be awarded to the successful claimant.~~

~~(8)~~

~~(7) This bill would state finding and declarations of the Legislature.~~



~~(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~(10)~~

(8) This bill would incorporate amendments to Section 1204 of the Code of Civil Procedure proposed by SB 219, to be operative only if both bills are chaptered and both amend that section, and this bill is chaptered last.

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

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

1 SECTION 1. Section 7071.5 of the Business and
2 Professions Code is amended to read:
3 7071.5. The contractor’s bond required by this article
4 shall be executed by an admitted surety in favor of the
5 State of California, in a form acceptable to the registrar
6 and filed with the registrar by the licensee or applicant.
7 The contractor’s bond shall be for the benefit of the
8 following:
9 (a) Any homeowner contracting for home
10 improvement upon the homeowner’s personal family
11 residence damaged as a result of a violation of this chapter
12 by the licensee.
13 (b) Any person damaged as a result of a willful and
14 deliberate violation of this chapter by the licensee, or by



1 the fraud of the licensee in the execution or performance
2 of a construction contract.

3 (c) Any employee of the licensee damaged by the
4 licensee’s failure to pay wages.

5 (d) Any person or entity, including an express trust
6 fund described in Section 3111 of the Civil Code, to whom
7 a portion of the compensation of an employee of a
8 licensee is paid by agreement with that employee or the
9 collective bargaining agent of that employee, damaged as
10 the result of the licensee’s failure to pay fringe benefits for
11 its employees, including, but not limited to, employer
12 payments described in Section 1773.1 of the Labor Code
13 and regulations thereunder (without regard to whether
14 the work was performed on a private or public work).
15 Damage to an express trust fund is limited to actual
16 employer payments required to be made on behalf of
17 employees of the licensee, as part of the overall
18 compensation of those employees, which the licensee fails
19 to pay.

20 SEC. 2. Section 7071.10 of the Business and
21 Professions Code is amended to read:

22 7071.10. (a) The qualifying individual’s bond
23 required by this article shall be executed by an admitted
24 surety insurer in favor of the State of California, in a form
25 acceptable to the registrar and filed with the registrar by
26 the qualifying individual. The qualifying individual’s
27 bond shall be for the benefit of the following persons:

28 (1) Any homeowner contracting for home
29 improvement upon the homeowner’s personal family
30 residence damaged as a result of a violation of this chapter
31 by the licensee.

32 (2) Any person damaged as a result of a willful and
33 deliberate violation of this chapter by the licensee, or by
34 the fraud of the licensee in the execution or performance
35 of a construction contract.

36 (3) Any employee of the licensee damaged by the
37 licensee’s failure to pay wages.

38 (4) Any person or entity, including an express trust
39 fund described in Section 3111 of the Civil Code, to whom
40 a portion of the compensation of an employee of a



1 licensee is paid by agreement with that employee or the
2 collective bargaining agent of that employee, that is
3 damaged as the result of the licensee's failure to pay
4 fringe benefits for its employees including, but not
5 limited to, employer payments described in Section
6 1773.1 of the Labor Code and regulations adopted
7 thereunder (without regard to whether the work was
8 performed on a public or private work). Damage to an
9 express trust fund is limited to employer payments
10 required to be made on behalf of employees of the
11 licensee, as part of the overall compensation of those
12 employees, which the licensee fails to pay.

13 (b) The qualifying individual's bond shall not be
14 required in addition to the contractor's bond when the
15 qualifying individual is himself or herself the proprietor
16 under subdivision (a) or a general partner under
17 subdivision (b) of Section 7068.

18 SEC. 3. Section 7071.11 of the Business and
19 Professions Code is amended to read:

20 7071.11. (a) A copy of the complaint in a civil action
21 commenced by a person claiming against a bond required
22 by this article shall be served by registered or certified
23 mail upon the registrar by the clerk of the court at the
24 time the action is commenced and the registrar shall
25 maintain a record, available for public inspection, of all
26 actions so commenced. ~~The claim of any employee of the~~
27 ~~contractor, or that of an express trust fund as assignee of~~
28 ~~a portion of the compensation due an employee, for~~
29 ~~wages and fringe benefits shall be a preferred claim~~
30 ~~against the bond.~~ The aggregate liability of a surety on a
31 claim for wages and fringe benefits brought against any
32 bond required by this article, other than a bond required
33 by Section 7071.8, shall not exceed the sum of four
34 thousand dollars (\$4,000). If any bond which may be
35 required is insufficient to pay all claims in full, the sum of
36 the bond shall be distributed to all claimants in proportion
37 to the amount of their respective claims ~~with priority to~~
38 ~~claims for wages and fringe benefits.~~ Any action, other
39 than an action to recover wages or fringe benefits, against
40 a contractor's bond or a bond of a qualifying individual

1 filed by an active licensee shall be brought within two
2 years after the expiration of the license period during
3 which the act or omission occurred, or within two years
4 of the date the license of the active licensee was
5 inactivated, canceled, or revoked by the board,
6 whichever first occurs. Any action, other than an action
7 to recover wages or fringe benefits, against a disciplinary
8 bond filed by an active licensee pursuant to Section 7071.8
9 shall be brought within two years after the expiration of
10 the license period during which the act or omission
11 occurred, or within two years of the date the license of the
12 active licensee was inactivated, canceled, or revoked by
13 the board, or within two years after the last date for which
14 a disciplinary bond filed pursuant to Section 7071.8 was
15 required, whichever date is first. A claim to recover
16 wages or fringe benefits shall be brought within six
17 months from the date that the wage or fringe benefit
18 delinquencies were discovered, but in no event shall a
19 civil action thereon be brought later than two years from
20 the date the wage or fringe benefit contributions were
21 due.

22 (b) When the surety makes payment on any claim
23 against a bond required by this article, whether or not
24 payment is made through a court action or otherwise, the
25 surety shall, within 30 days of the payment, notify the
26 registrar. The notice shall contain, on a form prescribed
27 by the registrar, the name and license number of the
28 contractor, the surety bond number, the amount of
29 payment, the statutory basis upon which the claim is
30 made, and the names of the person or persons to whom
31 payments are made.

32 (c) Any judgment or admitted claim against, or good
33 faith payment from, a bond required by this article shall
34 constitute grounds for disciplinary action against the
35 licensee, except in those cases of good faith payment
36 where the licensee has, in writing, timely instructed the
37 surety not to make payment from the bond on his or her
38 account, upon the specific grounds that (1) the claim is
39 opposed by the licensee, and (2) the licensee has, in
40 writing, previously directed to the surety a specific and



1 reasonable basis for his or her opposition to payment. The
2 license may not be reissued or reinstated while any
3 judgment or admitted claim in excess of the amount of
4 the bond remains unsatisfied. Further, the license may
5 not be reissued or reinstated while any surety remains
6 unreimbursed for loss and expense sustained on any bond
7 issued for the licensee or for any entity of which any
8 officer, director, member, partner, or qualifying person
9 was an officer, director, member, partner, or qualifying
10 person of the licensee while the licensee was subject to
11 disciplinary action under this section. The board shall
12 require the licensee to file a new bond in an amount as
13 required pursuant to Section 7071.8.

14 (d) Legal fees may not be charged against the bond by
15 the board.

16 (e) In any case in which a claim is filed against a
17 deposit given in lieu of a bond by any employee or by an
18 employee organization on behalf of an employee,
19 concerning wages or fringe benefits based upon the
20 employee's employment, claims for the nonpayment
21 thereof shall be filed with the Labor Commissioner. The
22 Labor Commissioner shall, pursuant to the authority
23 vested by Section 96.5 of the Labor Code, conduct
24 hearings to determine whether or not the wages or fringe
25 benefits should be paid to the complainant. Upon a
26 finding by the commissioner that the wages or fringe
27 benefits should be paid to the complainant, the
28 commissioner shall notify the registrar of the findings.
29 The registrar shall not make payment from the deposit on
30 the basis of findings by the commissioner for a period of
31 10 days following determination of the findings. If, within
32 the period, the complainant or the contractor files
33 written notice with the registrar and the commissioner of
34 an intention to seek judicial review of the findings
35 pursuant to Section 11523 of the Government Code, the
36 registrar shall not make payment, if an action is actually
37 filed, except as determined by the court. If, thereafter, no
38 action is filed within 60 days following determination of
39 findings by the commissioner, the registrar shall make
40 payment from the deposit to the complainant.

1 (f) Any action, other than an action to recover wages
2 or fringe benefits, against a deposit given in lieu of a
3 contractor's bond or bond of a qualifying individual filed
4 by an active licensee shall be brought within two years
5 after the expiration of the license period during which the
6 act or omission occurred, or within two years after the
7 date the license was inactivated, canceled, or revoked by
8 the board, whichever first occurs. Any action, other than
9 an action to recover wages or fringe benefits, against a
10 deposit given in lieu of a disciplinary bond filed by an
11 active licensee pursuant to Section 7071.8 shall be brought
12 within two years after the expiration of the license period
13 during which the act or omission occurred, or within two
14 years of the date the license of the active licensee was
15 inactivated, canceled, or revoked by the board, or within
16 two years after the last date for which a deposit given in
17 lieu of a disciplinary bond filed pursuant to Section 7071.8
18 was required, whichever date is first.

19 SEC. 4. Section 3089 of the Civil Code is amended to
20 read:

21 3089. (a) "Laborer" means any person who, acting as
22 an employee, performs labor upon or bestows skill or
23 other necessary services on any work of improvement.

24 (b) "Laborer" also includes any person or entity,
25 including an express trust fund described in Section 3111,
26 to whom a portion of the compensation of a laborer as
27 defined in subdivision (a) is paid by agreement with that
28 laborer or the collective bargaining agent of that laborer.
29 To the extent that a person or entity defined in this
30 subdivision has standing under applicable law to maintain
31 a direct legal action, in their own name or as an assignee,
32 to collect any portion of compensation owed for a laborer,
33 that person or entity shall have standing to enforce any
34 rights under this title to the same extent as the laborer.
35 This section is intended to give effect to the long-standing
36 public policy of this state to protect the entire
37 compensation of laborers on works of improvement,
38 regardless of the form in which that compensation is to be
39 paid.



1 SEC. 5. Section 3097 of the Civil Code is amended to
2 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 as described in
11 subdivision (a) of Section 3089, or a person or entity to
12 whom a portion of a laborer’s compensation is paid as
13 described in subdivision (b) of Section 3089, every person
14 who furnishes labor, service, equipment, or material for
15 which a lien or payment bond otherwise can be claimed
16 under this title, or for which a notice to withhold can
17 otherwise be given under this title, shall, as a necessary
18 prerequisite to the validity of any claim of lien, payment
19 bond, and of a notice to withhold, cause to be given to the
20 owner or reputed owner, to the original contractor, or
21 reputed contractor, and to the construction lender, if any,
22 or to the reputed construction lender, if any, a written
23 preliminary notice as prescribed by this section.

24 (b) Except the contractor, or one performing actual
25 labor for wages as described in subdivision (a) of Section
26 3089, or a person or entity to whom a portion of a laborer’s
27 compensation is paid as described in subdivision (b) of
28 Section 3089, all persons who have a direct contract with
29 the owner and who furnish labor, service, equipment, or
30 material for which a lien or payment bond otherwise can
31 be claimed under this title, or for which a notice to
32 withhold can otherwise be given under this title, shall, as
33 a necessary prerequisite to the validity of any claim of
34 lien, claim on a payment bond, and of a notice to
35 withhold, cause to be given to the construction lender, if
36 any, or to the reputed construction lender, if any, a
37 written preliminary notice as prescribed by this section.

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

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

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

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

8 (4) A description of the jobsite sufficient for
9 identification.

10 (5) The following statement in boldface type:

11

12 NOTICE TO PROPERTY OWNER

13

14 If bills are not paid in full for the labor, services,
15 equipment, or materials furnished or to be furnished, a
16 mechanic's lien leading to the loss, through court
17 foreclosure proceedings, of all or part of your property
18 being so improved may be placed against the property
19 even though you have paid your contractor in full. You
20 may wish to protect yourself against this consequence by
21 (1) requiring your contractor to furnish a signed release
22 by the person or firm giving you this notice before making
23 payment to your contractor, (2) requiring your
24 contractor to furnish a receipt to establish that you paid
25 the contractor in full and recording no later than 30 days
26 from receipt of this preliminary notice an affidavit that
27 you paid the contractor in full, or (3) any other method
28 or device that is appropriate under the circumstances.

29

30 (6) If the notice is given by a subcontractor who has
31 failed to pay all compensation due to his or her laborers
32 on the job, the notice shall also contain the identity and
33 address of any laborer and any express trust fund to whom
34 employer payments are due.

35 If an invoice for materials or certified payroll contains
36 the information required by this section, a copy of the
37 invoice, transmitted in the manner prescribed by this
38 section shall be sufficient notice.

39 A certificated architect, registered engineer, or
40 licensed land surveyor who has furnished services for the



1 design of the work of improvement and who gives a
2 preliminary notice as provided in this section not later
3 than 20 days after the work of improvement has
4 commenced shall be deemed to have complied with
5 subdivisions (a) and (b) with respect to architectural,
6 engineering, or surveying services furnished, or to be
7 furnished.

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

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

25 (f) The notice required under this section may be
26 served as follows:

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

37 (2) If the person to be notified does not reside in this
38 state, by any method enumerated in paragraph (1) of this
39 subdivision. If the person cannot be served by any of these
40 methods, then notice may be given by first-class certified



1 or registered mail, addressed to the construction lender
2 or to the original contractor.

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

6 (g) A person required by this section to give notice to
7 the owner, to an original contractor, and to a person to
8 whom a notice to withhold may be given, need give only
9 one notice to the owner, to the original contractor, and to
10 the person to whom a notice to withhold may be given
11 with respect to all materials, service, labor, or equipment
12 he or she furnishes for a work of improvement, that
13 means the entire structure or scheme of improvements
14 as a whole, unless the same is furnished under contracts
15 with more than one subcontractor, in which event, the
16 notice requirements shall be met with respect to
17 materials, services, labor, or equipment furnished to each
18 contractor.

19 If a notice contains a general description required by
20 subdivision (a) or (b) of the materials, services, labor, or
21 equipment furnished to the date of notice, it is not
22 defective because, after that date, the person giving
23 notice furnishes materials, services, labor, or equipment
24 not within the scope of this general description.

25 (h) If the contract price to be paid to any
26 subcontractor on a particular work of improvement
27 exceeds four hundred dollars (\$400), the failure of that
28 contractor, licensed under Chapter 9 (commencing with
29 Section 7000) of Division 3 of the Business and Professions
30 Code, to give the notice provided for in this section,
31 constitutes grounds for disciplinary action by the
32 Registrar of Contractors.

33 If the notice is required to contain the information set
34 forth in paragraph (6) of subdivision (c), a failure to give
35 the notice, including that information, that results in the
36 filing of a lien, claim on a payment bond, or the delivery
37 of a stop notice by the express trust fund to which the
38 obligation is owing constitutes grounds for disciplinary
39 action by the Registrar of Contractors against the
40 subcontractor if the amount due the trust fund is not paid.



1 (i) Every city, county, city and county, or other
2 governmental authority issuing building permits shall, in
3 its application form for a building permit, provide space
4 and a designation for the applicant to enter the name,
5 branch, designation, if any, and address of the
6 construction lender and shall keep the information on file
7 open for public inspection during the regular business
8 hours of the authority.

9 If there is no known construction lender, that fact shall
10 be noted in the designated space. Any failure to indicate
11 the name and address of the construction lender on the
12 application, however, shall not relieve any person from
13 the obligation to give to the construction lender the
14 notice required by this section.

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

28 Failure to provide this information on this instrument
29 when recorded shall not relieve persons required to give
30 preliminary notice under this section from that duty.

31 The county recorder of the county in which the
32 instrument is recorded shall indicate in the general index
33 of the official records of the county that the instrument
34 secures a construction loan.

35 (k) Every contractor and subcontractor employing
36 laborers as described in subdivision (a) of Section 3089
37 who has failed to pay those laborers their full
38 compensation when it became due, including any
39 employer payments described in Section 1773.1 of the
40 Labor Code and regulations adopted thereunder shall,



1 without regard to whether the work was performed on a
2 public or private work, cause to be given to those laborers,
3 their bargaining representatives, if any, and to the
4 construction lender, if any, or to the reputed construction
5 lender, if any, not later than the date the compensation
6 became delinquent, a written notice containing all of the
7 following:

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

9 (2) A description of the jobsite sufficient for
10 identification.

11 (3) The identity and address of any express trust fund
12 described in Section 3111 to which employer payments
13 are due.

14 (4) The total number of straight time and overtime
15 hours on each job.

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

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

19 (l) Every written contract entered into between a
20 property owner and an original contractor shall provide
21 space for the owner to enter his or her name and address
22 of residence; and place of business if any. The original
23 contractor shall make available the name and address of
24 residence of the owner to any person seeking to serve the
25 notice specified in subdivision (c).

26 (m) Every written contract entered into between a
27 property owner and an original contractor, except home
28 improvement contracts and swimming pool contracts
29 subject to Article 10 (commencing with Section 7150) of
30 Chapter 9 of Division 3 of the Business and Professions
31 Code, shall provide space for the owner to enter the name
32 and address of the construction lender or lenders. The
33 original contractor shall make available the name and
34 address of the construction lender or lenders to any
35 person seeking to serve the notice specified in subdivision
36 (c). Every contract entered into between an original
37 contractor and subcontractor, and between
38 subcontractors, shall provide a space for the name and
39 address of the owner, original contractor, and any
40 construction lender.



1 (n) Where one or more construction loans are
2 obtained after commencement of construction, the
3 property owner shall provide the name and address of the
4 construction lender or lenders to each person who has
5 given the property owner the notice specified in
6 subdivision (c).

7 (o) (1) Each person who has served a preliminary
8 20-day notice pursuant to subdivision (f) may file the
9 preliminary 20-day notice with the county recorder in the
10 county in which any portion of the property is located. A
11 preliminary 20-day notice filed pursuant to this section
12 shall contain all of the following:

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

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

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

18 (2) Upon the acceptance for recording of a notice of
19 completion or notice of cessation the county recorder
20 shall mail to those persons who have filed a preliminary
21 20-day notice, notification that a notice of completion or
22 notice of cessation has been recorded on the property,
23 and shall affix the date that the notice of completion or
24 notice of cessation was recorded with the county
25 recorder.

26 (3) The failure of the county recorder to mail the
27 notification to the person who filed a preliminary 20-day
28 notice, or the failure of those persons to receive the
29 notification or to receive complete notification, shall not
30 affect the period within which a claim of lien is required
31 to be recorded. However, the county recorder shall make
32 a good faith effort to mail notification to those persons
33 who have filed the preliminary 20-day notice under this
34 section and to do so within five days after the recording
35 of a notice of completion or notice of cessation.

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



1 (5) The preliminary 20-day notice which a person may
2 file pursuant to this subdivision is for the limited purpose
3 of facilitating the mailing of notice by the county recorder
4 of recorded notices of completion and notices of
5 cessation. The notice which is filed is not a recordable
6 document and shall not be entered into those official
7 records of the county which by law impart constructive
8 notice. Notwithstanding any other provision of law, the
9 index maintained by the recorder of filed preliminary
10 20-day notices shall be separate and distinct from those
11 indexes maintained by the county recorder of those
12 official records of the county which by law impart
13 constructive notice. The filing of a preliminary 20-day
14 notice with the county recorder does not give rise to any
15 actual or constructive notice with respect to any party of
16 the existence or contents of a filed preliminary 20-day
17 notice nor to any duty of inquiry on the part of any party
18 as to the existence or contents of that notice.

19 (p) The change made to the statement described in
20 subdivision (c) by Chapter 974 of the Statutes of 1994 shall
21 have no effect upon the validity of any notice that
22 otherwise meets the requirements of this section. The
23 failure to provide, pursuant to Chapter 974 of the Statutes
24 of 1994, a written preliminary notice to a subcontractor
25 with whom the claimant has contracted shall not affect
26 the validity of any preliminary notice provided pursuant
27 to this section.

28 (q) A claimant, as defined in Section 3155, who
29 provides a preliminary notice to an owner, as defined in
30 Section 3155, shall also provide the owner with an
31 affidavit form and notice of rights, made available
32 pursuant to Section 3155.15.

33 SEC. 6. Section 3098 of the Civil Code is amended to
34 read:

35 3098. "Preliminary 20-day notice (public work)"
36 means a written notice from a claimant that was given
37 prior to the assertion of a claim against a payment bond,
38 or the filing of a stop notice on public work, and is
39 required to be given under the following circumstances:



1 (a) In any case in which the law of this state affords a
2 right to a person furnishing labor or materials for a public
3 work who has not been paid therefor to assert a claim
4 against a payment bond, or to file a stop notice with the
5 public agency concerned, and thereby cause the
6 withholding of payment from the contractor for the
7 public work, any person that has no direct contractual
8 relationship with the contractor, other than a person who
9 performed actual labor for wages or an express trust fund
10 described in Section 3111, may file the preliminary notice,
11 but no payment shall be withheld from the contractor
12 pursuant to that notice unless the person has caused
13 written notice to be given to the contractor, and the
14 public agency concerned, not later than 20 days after the
15 claimant has first furnished labor, services, equipment, or
16 materials to the jobsite, stating with substantial accuracy
17 a general description of labor, service, equipment, or
18 materials furnished or to be furnished, and the name of
19 the party to whom the same was furnished. This notice
20 shall be served by mailing the same by first-class mail,
21 registered mail, or certified mail, postage prepaid, in an
22 envelope addressed to the contractor at any place the
23 contractor maintains an office or conducts business, or his
24 or her residence, or by personal service. In case of any
25 public works constructed by the Department of Public
26 Works or the Department of General Services of the
27 state, such notice shall be served by mailing in the same
28 manner as above, addressed to the office of the disbursing
29 officer of the department constructing the work, or by
30 personal service upon the officer. When service is by
31 registered or certified mail, service is complete at the
32 time of the deposit of the registered or certified mail.

33 (b) Where the contract price to be paid to any
34 subcontractor on a particular work of improvement
35 exceeds four hundred dollars (\$400), the failure of that
36 contractor, licensed under Chapter 9, (commencing with
37 Section 7000) of Division 3 of the Business and Professions
38 Code, to give the notice provided for in this section,
39 constitutes grounds for disciplinary action by the
40 Registrar of Contractors.



1 (c) The notice requirements of this section shall not
2 apply to a laborer described in Section 3089 or to an
3 express trust fund described in Section 3111.

4 (d) If labor, service, equipment, or materials have
5 been furnished to a jobsite by a claimant who did not give
6 a preliminary notice pursuant to subdivision (a), that
7 claimant shall not be precluded from giving a preliminary
8 notice at any time thereafter. The claimant shall,
9 however, be entitled to assert a claim against a payment
10 bond and file a stop notice 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) The failure to provide, pursuant to Chapter 974 of
15 the Statutes of 1994, a written preliminary notice to a
16 subcontractor with whom the claimant has contracted
17 shall not affect the validity of any preliminary notice
18 provided pursuant to this section.

19 SEC. 7. Section 3111 of the Civil Code is amended to
20 read:

21 3111. For the purposes of this chapter, an express trust
22 fund to which a portion of a laborer's total compensation
23 is to be paid pursuant to an applicable employment
24 agreement or a collective bargaining agreement for the
25 provision of benefits, including, but not limited to,
26 employer payments described in Section 1773.1 of the
27 Labor Code and regulations thereunder, shall be entitled
28 to assert the same rights and claims as laborers
29 performing labor upon, or bestowing skill or other
30 necessary services on, a work of improvement, to the
31 extent of the compensation agreed to be paid to that
32 express trust fund for labor on that improvement only.

33 SEC. 8. Section 3111.5 of the Civil Code is repealed.

34 ~~SEC. 8.5. Article 8 (commencing with Section 3155)~~
35 ~~is added to Chapter 2 of Title 15 of Part 4 of Division 3 of~~
36 ~~the Civil Code, to read:~~
37



1 Article 8. ~~Home Improvement Lien Protection Fund~~

2
3 3155. ~~For purposes of this article, the following~~
4 ~~definitions shall apply:~~

5 (a) ~~“Board” means the Contractors’ State License~~
6 ~~Board.~~

7 (b) ~~“Claimant” means a person, other than an original~~
8 ~~contractor, who provides labor, service, equipment, or~~
9 ~~material to a work of improvement on property with an~~
10 ~~existing single-family owner-occupied dwelling pursuant~~
11 ~~to a contract entered into on or after January 1, 2000, with~~
12 ~~an original contractor, or any of the original contractor’s~~
13 ~~subcontractors or subcontractors, and who records a lien~~
14 ~~upon that real property for the reasonable value of labor,~~
15 ~~services, equipment, or material provided or supplied to~~
16 ~~the property.~~

17 (c) ~~“Full payment” and “paid in full” means that the~~
18 ~~person who provided his or her labor, services,~~
19 ~~equipment, or material has received compensation for~~
20 ~~that labor, service, equipment, or material in an amount~~
21 ~~equal to the reasonable value of that labor, service,~~
22 ~~equipment, or material. A person shall not be considered~~
23 ~~to have been paid in full if 10 percent or more of any~~
24 ~~retention proceeds have been withheld.~~

25 (d) ~~“Fund” means the Contractor Default Recovery~~
26 ~~Fund.~~

27 (e) ~~“Original contractor” is a person who has a direct~~
28 ~~contractual relationship with the owner of an existing~~
29 ~~single family, owner-occupied dwelling to provide labor,~~
30 ~~services, equipment, or material toward a work of~~
31 ~~improvement on that property.~~

32 (f) ~~“Owner” is a person who is the record owner of a~~
33 ~~single family dwelling that is his or her primary~~
34 ~~residence.~~

35 3155.1. (a) ~~A claimant shall not be entitled to~~
36 ~~maintain an action to foreclose a recorded lien against the~~
37 ~~property pursuant to any other provision of law unless a~~
38 ~~hearing officer determines that the owner has not paid~~
39 ~~the original contractor in full in a hearing held pursuant~~



1 to this article or the owner has not complied with
2 subdivision (b).

3 (b) In order for an owner to receive the protection of
4 this article against foreclosure on a lien, the owner shall
5 do all of the following:

6 (1) Hire only licensed original contractors pursuant to
7 a written contract.

8 (2) Prepare an affidavit, under penalty of perjury, that
9 the owner has paid the original contractor in full.

10 (3) Record the affidavit within 30 days of receiving a
11 notice of lien from the claimant pursuant to Section 3097.

12 (4) Serve the affidavit upon the claimant.

13 3155.2. (a) There is hereby established within the
14 State Treasury the Contractor Default Recovery Fund,
15 which is hereby continuously appropriated for the
16 purpose of administering this article, including paying
17 the compensation of hearing officers appointed pursuant
18 to Section 3155.12, and providing monetary relief to any
19 claimant who is not paid in full for labor, services,
20 equipment, or material.

21 (b) Notwithstanding any other provision, payments
22 from the fund to satisfy claims against it shall not exceed:

23 (1) Seventy-five thousand dollars (\$75,000) per
24 single family, owner-occupied residence for all claims
25 brought against that property.

26 (2) Five hundred thousand dollars (\$500,000) per
27 claimant over the claimant's lifetime.

28 (c) If claims against the fund exceed the limit in
29 paragraph (1) of subdivision (b), the seventy-five
30 thousand dollars (\$75,000) shall be awarded
31 proportionately so that each claimant who is awarded
32 compensation from the fund shall receive an identical
33 percentage.

34 (d) The state shall not be liable for any claims against
35 the fund except as provided in this article.

36 3155.3. In order to establish a claim from the
37 Contractor Default Recovery Fund, a claimant shall
38 provide evidence that he or she has recorded a lien
39 pursuant to this chapter.



1 ~~3155.4. (a) The Contractors' State License Board~~
2 ~~shall administer the Contractor Default Recovery Fund~~
3 ~~and shall develop rules and regulations to administer the~~
4 ~~fund pursuant to this article.~~

5 ~~(b) The board may file a civil action against any~~
6 ~~licensed original contractor in order to obtain~~
7 ~~reimbursement to the fund for any payments made to a~~
8 ~~claimant upon a finding by a hearing officer that the~~
9 ~~original contractor failed to pay the claimant in full.~~

10 ~~3155.5. (a) The Contractors' State License Board~~
11 ~~shall charge an annual fee of two hundred dollars (\$200)~~
12 ~~to contractors who are certified as home improvement~~
13 ~~contractors by the Contractors' State License Board~~
14 ~~under subdivision (c) of Section 7150.2 of the Business~~
15 ~~and Professions Code. All proceeds of this fee shall be~~
16 ~~deposited in the Contractor Default Recovery Fund for~~
17 ~~the purposes of this article.~~

18 ~~(b) The board shall annually determine whether the~~
19 ~~fees collected are sufficient to meet the projected claims~~
20 ~~over the next year and annually report to the Legislature~~
21 ~~on the need to increase or decrease fees accordingly. In~~
22 ~~making this determination, the board shall not include in~~
23 ~~any fund balance moneys in the fund that are~~
24 ~~encumbered by claims approved pursuant to this article.~~

25 ~~(c) The board shall be responsible for an annual~~
26 ~~review or audit of the fund.~~

27 ~~3155.6. Notwithstanding any other provision of law,~~
28 ~~the time for a claimant to bring an action to foreclose a~~
29 ~~lien shall be extended to, and include, 60 days following~~
30 ~~service of the decision by a hearing officer regarding the~~
31 ~~claimant's claim against the Contractor Default Recovery~~
32 ~~Fund.~~

33 ~~3155.7. Within 90 days after the claimant has recorded~~
34 ~~a lien on a single-family owner-occupied dwelling which~~
35 ~~is the primary residence of the owner, the claimant shall~~
36 ~~file with the Contractors' State License Board a statement~~
37 ~~of claim. This statement of claim shall include, but may~~
38 ~~not be limited to, the following:~~

39 ~~(a) A copy of the claimant's subcontract, purchase~~
40 ~~order, invoices, delivery tickets, credit application, or~~



1 other documentation reflecting the claimant's
2 contractual relationship to supply labor, service,
3 equipment, or material for the work of improvement.

4 (b) A copy of any preliminary notice given by the
5 claimant, together with the proof of service accompanied
6 thereby, if a claimant is otherwise required to serve a
7 preliminary notice.

8 (c) A copy of the mechanic's lien recorded in the office
9 of the county recorder.

10 (d) A statement of account showing all charges,
11 credits, and balance due.

12 (e) Proof of service of the appropriate documents
13 described in subdivisions (a) to (d), inclusive, to both the
14 original contractor and the owner.

15 3155.8. Once the statement of claim described in
16 Section 3155.7 has been filed with the Contractors' State
17 License Board, the board shall notify the original
18 contractor and the owner of the filing of the claim. The
19 original contractor and the owner shall file a response
20 within 15 days after receipt of the notice. This response
21 shall state in detail the defense against the claim and
22 include all documents which the respondent claims
23 support this defense. If the original contractor contends
24 that it has not been paid in full, the original contractor
25 shall provide a copy of all documents in support of this
26 contention. The claimant, original contractor, and owner
27 shall submit any other information to assist the hearing
28 officer to make the determinations required by this
29 article.

30 3155.9. If the original contractor fails to respond to the
31 claim filed by the claimant, the hearing officer shall find
32 that the owner paid the contractor in full and then
33 determine the value of the claim based upon the
34 documentation provided.

35 3155.10. The board shall set a hearing date within 60
36 days of receipt of the statement of claim at the office of
37 the Contractors' State License Board nearest to the site
38 of the work of improvement before a hearing officer
39 appointed by the board pursuant to Section 3155.12 to
40 hear the presentations of the claimant, the original



1 contractor, and the owner. To the extent possible, all
2 claims submitted on the same project shall be
3 consolidated and heard in the same hearing. The
4 Contractors' State License Board shall provide notice to
5 the original contractor, the owner, and the claimant of
6 the date, time, and location of this hearing.

7 3155.11. At the hearing, the hearing officer shall first
8 determine whether the owner has made a full payment
9 to the original contractor. If the hearing officer
10 determines that the owner has not paid the contractor in
11 full, the hearing officer shall dismiss the claim and issue
12 a finding that the claimant may pursue foreclosure of its
13 mechanic's lien in the appropriate court. If the hearing
14 officer determines that the owner has paid the original
15 contractor in full, the hearing officer shall determine the
16 validity and reasonable value of the claim and, if
17 determined to be valid, enter an order addressed to the
18 Contractors' State License Board directing it to pay the
19 claimant the amount of the claim, subject to subdivision
20 (b) of Section 3155.2.

21 3155.12. (a) The hearing shall be conducted in
22 accordance with Chapter 5 (commencing with Section
23 11500) of Part 1 of Division 3 of Title 2 of the Government
24 Code.

25 (b) The hearing officers appointed by the Contractors'
26 State License Board shall be attorneys licensed to
27 practice in this state with at least five years of experience
28 in mechanic's lien law.

29 3155.13. (a) The findings of the hearing officer shall
30 be final and impose obligations upon the owner, original
31 contractor, and claimant only to the extent that the
32 owner, original contractor, or claimant agree to be bound
33 by those obligations. However, the remedies available to
34 a party pursuant to this article, including the right to
35 receive payment from the fund, shall not be available to
36 a party that does not agree to the obligations. A claimant
37 shall be deemed to agree to the obligations only by
38 recording a release of the lien in the county recorder's
39 office where the real property is located. The findings of
40 the hearing officer may be entered into evidence in any



1 subsequent civil action or proceeding. The findings of the
2 hearing officer shall be served on the claimant, original
3 contractor, the owner, and the board no more than 10
4 days after the hearing.

5 (b) The Contractors' State License Board shall pay to
6 the claimant, upon receipt of an order pursuant to Section
7 3155.11, the amount of the claim, subject to subdivision
8 (b) of Section 3155.2, within 10 days of receiving evidence
9 that the claimant has recorded a release of its lien in the
10 county recorder's office where the real property is
11 located. This evidence shall be submitted within 15 days
12 after findings of the hearing officer are served.

13 3155.14. A finding by the hearing officer that the
14 original contractor was paid in full by the owner and
15 failed to make timely payments to any claimant on the
16 work of improvement, except a finding made pursuant to
17 Section 3155.9, shall be grounds for immediate suspension
18 of the original contractor's license. The original
19 contractor shall be given notice of a hearing to challenge
20 the finding, which shall be conducted within 60 days of
21 the date of the suspension, pursuant to the procedures of
22 the Contractors' State License Board. If the finding is
23 sustained, the contractor's license shall be immediately
24 revoked and shall not be reinstated until the original
25 contractor can supply to the Contractors' State License
26 Board a contractor's license bond as provided in Section
27 7071.8 of the Business and Professions Code in the sum of
28 fifty thousand dollars (\$50,000).

29 3155.15. The county recorder shall make available
30 forms for the affidavit described in Section 3155.1 and a
31 notice regarding the owner's rights under this article. The
32 Judicial Council shall adopt forms for the affidavit and the
33 notice.

34 SEC. 9. Section 1204 of the Code of Civil Procedure is
35 amended to read:

36 1204. When any assignment, whether voluntary or
37 involuntary, and whether formal or informal, is made for
38 the benefit of creditors of the assignor, or results from any
39 proceeding in insolvency or receivership commenced
40 against him or her, or when any property is turned over



1 to any creditor of a person, firm, association or
2 corporation, or to a receiver or trustee for the benefit of
3 creditors, the following claims have priority in the
4 following order:

5 (a) Allowed unsecured claims for wages, salaries, or
6 commissions, including vacation, severance and sick
7 leave pay:

8 (1) Earned by an individual within 90 days before the
9 date of the making of the assignment or the taking over
10 of the property or the commencement of the court
11 proceeding or the date of the cessation of the debtor's
12 business, whichever occurs first; but only

13 (2) To the extent of four thousand three hundred
14 dollars (\$4,300) for each individual.

15 (b) Allowed unsecured claims for contributions to
16 employee benefit plans:

17 (1) Arising from services rendered within 180 days
18 before the date of the making of the assignment or the
19 taking over of the property or the commencement of the
20 court proceeding or the date of the cessation of the
21 debtor's business, whichever occurs first; but only

22 (2) For each plan, to the extent of:

23 (i) The number of employees covered by the plan
24 multiplied by four thousand three hundred dollars
25 (\$4,300); less

26 (ii) The aggregate amount paid to those employees
27 under subdivision (a) of this section, plus the aggregate
28 amount paid by the estate on behalf of those employees
29 to any other employee benefit plan.

30 (c) The preferred claims described in subdivisions (a)
31 and (b) shall constitute a lien upon all property of the
32 debtor, superior and prior to all other liens created by, or
33 recognized by, the law of this state, to be paid by the
34 trustee, assignee, creditor to whom property is turned
35 over, or receiver before the claim of any other creditor,
36 secured or unsecured, of the assignor, insolvent, or debtor
37 whose property is so turned over, and shall be paid as soon
38 as the money with which to pay the claims becomes
39 available. If there is insufficient money with which to pay
40 all these labor claims in full the money available shall be



1 distributed among the claimants in proportion to the
2 amount of their respective claims. The trustee, receiver,
3 or assignee for the benefit of creditors shall have the right
4 to require sworn claims to be presented and shall have the
5 right to refuse to pay any preferred claim, either in whole
6 or in part, if he or she has reasonable cause to believe that
7 the claim is not valid, but shall pay any part thereof that
8 is not disputed, without prejudice to the claimant's rights,
9 as to the balance of his or her claim, and withhold
10 sufficient money to cover the disputed portion until the
11 claimant in question has a reasonable opportunity to
12 establish the validity of his or her claim by court action,
13 either in his or her own name or through an assignee.

14 (d) This section is binding upon all the courts of this
15 state and in all receivership actions the court shall order
16 the receiver to pay promptly out of the first receipts and
17 earnings of the receivership, after paying the current
18 operating expenses, the preferred labor claims. In any
19 action to enforce this section, reasonable attorney's fees
20 and costs shall be awarded to the successful labor
21 claimant.

22 SEC. 9.5. Section 1204 of the Code of Civil Procedure
23 is amended to read:

24 1204. When any assignment, whether voluntary or
25 involuntary, and whether formal or informal, is made for
26 the benefit of creditors of the assignor, or results from any
27 proceeding in insolvency or receivership commenced
28 against him or her, or when any property is turned over
29 to any creditor of a person, firm, association or
30 corporation, or to a receiver or trustee for the benefit of
31 creditors, the following claims have priority in the
32 following order:

33 (a) Allowed unsecured claims, but only to the extent
34 of four thousand three hundred dollars (\$4,300) for each
35 individual or corporation, as the case may be, earned
36 within 90 days before the date of the making of the
37 assignment or the taking over of the property or the
38 commencement of the court proceeding or date of the
39 cessation of the debtor's business, whichever occurs first,
40 for either of the following:



1 (1) Wages, salaries, or commissions, including
2 vacation, severance, and sick leave pay earned by an
3 individual.

4 (2) Sales commissions earned by an individual, or by a
5 corporation with only one employee, acting as an
6 independent contractor in the sale of goods or services of
7 the debtor in the ordinary course of the debtor's business
8 if, and only if, during the 12 months preceding the date
9 of the making of the assignment or the taking over of the
10 property or the commencement of the proceeding on the
11 date of the cessation of the debtor's business, whichever
12 occurs first, at least 75 percent of the amount that the
13 individual or corporation earned by acting as an
14 independent contractor in the sale of goods or services
15 was earned by the debtor.

16 (b) Allowed unsecured claims for contributions to
17 employee benefit plans arising from services rendered
18 within 180 days before the date of the making of the
19 assignment or the taking over of the property or the
20 commencement of the court proceeding or the date of
21 the cessation of the debtor's business, whichever occurs
22 first; but only for each employee benefit plan, to the
23 extent of the number of employees covered by the plan
24 multiplied by four thousand three hundred dollars
25 (\$4,300) less the aggregate amount paid to the employees
26 under subdivision (a), plus the aggregate amount paid by
27 the estate on behalf of the employees to any other
28 employee benefit plan.

29 (c) The preferred claims described in subdivisions (a)
30 and (b) shall constitute a lien upon all property of the
31 debtor, superior and prior to all other liens created by, or
32 recognized by, the law of this state, to be paid by the
33 trustee, assignee, creditor to whom property is turned
34 over, or receiver before the claim of any other creditor,
35 secured or unsecured, of the assignor, insolvent, or debtor
36 whose property is so turned over, and shall be paid as soon
37 as the money with which to pay the claims becomes
38 available. If there is insufficient money to pay all these
39 labor claims in full the money available shall be
40 distributed among the claimants in proportion to the



1 amount of their respective claims. The trustee, receiver
2 or assignee for the benefit of creditors shall have the right
3 to require sworn claims to be presented and shall have the
4 right to refuse to pay any preferred claim, either in whole
5 or in part, if he or she has reasonable cause to believe that
6 the claim is not valid but shall pay any part thereof that
7 is not disputed, without prejudice to the claimant's rights,
8 as to the balance of his or her claim, and withhold
9 sufficient money to cover the disputed portion until the
10 claimant in question has a reasonable opportunity to
11 establish the validity of his or her claim by court action,
12 either in his or her own name or through an assignee.

13 (d) This section is binding upon all the courts of this
14 state and in all receivership actions the court shall order
15 the receiver to pay promptly out of the first receipts and
16 earnings of the receivership, after paying the current
17 operating expenses, the preferred labor claims. In any
18 action to enforce this section, reasonable attorney's fees
19 and costs shall be awarded to the successful labor
20 claimant.

21 SEC. 10. The Legislature finds and declares that the
22 purpose of this act is to restore the protection created by
23 the mechanic's lien law adopted at the first legislative
24 session of this state, refined and expanded over a century
25 and a half, for the just pay due to workers on construction
26 jobs, without discrimination as to the manner in which
27 the pay is allocated, whether union or nonunion, in cash
28 or a combination of cash and benefits. The intent of the
29 Legislature in enacting this act is to clarify that the
30 protections offered in this title are meant to cover the
31 entire compensation package of employees, and not to
32 single out or treat differently any particular form of
33 compensation.

34 SEC. 10.5. No reimbursement is required by this act
35 pursuant to Section 6 of Article XIII B of the California
36 Constitution for certain costs that may be incurred by a
37 local agency or school district because in that regard this
38 act creates a new crime or infraction, eliminates a crime
39 or infraction, or changes the penalty for a crime or
40 infraction, within the meaning of Section 17556 of the



1 Government Code, or changes the definition of a crime
2 within the meaning of Section 6 of Article XIII B of the
3 California Constitution.

4 However, notwithstanding Section 17610 of the
5 Government Code, if the Commission on State Mandates
6 determines that this act contains other costs mandated by
7 the state, reimbursement to local agencies and school
8 districts for those costs shall be made pursuant to Part 7
9 (commencing with Section 17500) of Division 4 of Title
10 2 of the Government Code. If the statewide cost of the
11 claim for reimbursement does not exceed one million
12 dollars (\$1,000,000), reimbursement shall be made from
13 the State Mandates Claims Fund.

14 SEC. 11. Section 9.5 of this bill incorporates
15 amendments to Section 1204 of the Code of Civil
16 Procedure proposed by both this bill and SB 219. It shall
17 only become operative if (1) both bills are enacted and
18 become effective on or before January 1, 2000, (2) each
19 bill amends Section 1204 of the Code of Civil Procedure,
20 and (3) this bill is enacted after SB 219, in which case
21 Section 9 of this bill shall not become operative.

