

**ASSEMBLY BILL**

**No. 568**

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**Introduced by Assembly Member Dutra**

February 21, 2001

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An act to add Article 8 (commencing with Section 3155) to Chapter 2 of Title 15 of Part 4 of Division 3 of the Civil Code, relating to mechanics' liens, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 568, as introduced, Dutra. Mechanics' liens: homeowners' relief recovery.

The California Constitution gives workmen the right to a mechanics' lien for the value of labor and materials provided for the improvement of real property.

Existing law sets forth the procedure for the enforcement of this right, as specified. Existing law also establishes the Contractors' State Licensing Board providing for the regulation of those who contract for the improvement of real property, as specified.

This bill would establish the Homeowners' Protection Act of 2001, which would prohibit a mechanics' lienholder, if a specified claim is filed by the property owner, from maintaining an action to foreclose a recorded lien against a single-family dwelling that is the property owner's primary residence pursuant to any other provision of law unless a hearing officer, in a specified hearing, determines that the property owner has not paid the original contractor in full, or the property owner has failed to hire only licensed contractors pursuant to a written contract.

The bill would establish the Homeowners' Relief Recovery Fund in the State Treasury, to be continuously appropriated for the purposes of

the act, and to be administered by the Contractors’ State License Board. The bill would establish the procedure for a lienholder to file a claim against the fund, to be decided by a hearing officer, as specified, and would require the board to adopt certain regulations.

The bill would provide that a finding by a hearing officer that the original contractor was paid in full by the property owner and failed to make timely payments to the mechanics’ lienholders would constitute grounds for immediate suspension of the original contractor’s license, except as specified.

The bill would make the presentation of false or fraudulent claims for the payment of a loss from the fund a felony, punishable as specified, and would thereby impose a state-mandated local program by creating a new crime.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Article 8 (commencing with Section 3155) is  
2 added to Chapter 2 of Title 15 of Part 4 of Division 3 of the Civil  
3 Code, to read:

4  
5 Article 8. Homeowners’ Protection Act of 2001  
6

7 3155. This article shall be known and may be cited as the  
8 “Homeowners’ Protection Act of 2001.”

9 3155.1. For purposes of this article, the following definitions  
10 shall apply:

- 11 (a) “Board” means the Contractors’ State License Board.
- 12 (b) “Claimant” means an “owner,” as defined in subdivision
- 13 (f), who has filed a claim with the Homeowners’ Relief Recovery
- 14 Fund pursuant to this article and who has notice of a lien recorded
- 15 against his or her real property for the reasonable value of labor,



1 services, equipment, or material provided or supplied to the  
2 property.

3 (c) “Full payment” and “paid in full” means that the person  
4 who provided his or her labor, services, equipment, or material has  
5 received compensation for that labor, service, equipment, or  
6 material in an amount equal to the reasonable value of that labor,  
7 service, equipment, or material. A person shall not be considered  
8 to have been paid in full if 10 percent or more of any retention  
9 proceeds have been withheld.

10 (d) “Fund” means the Homeowners’ Relief Recovery Fund.

11 (e) “Original contractor” is a person who has a direct  
12 contractual relationship with the owner of an existing  
13 single-family, owner-occupied dwelling to provide labor,  
14 services, equipment, or material toward a work of improvement on  
15 that property.

16 (f) “Owner” is a person who is the record owner of a  
17 single-family dwelling that is his or her primary residence.

18 (g) “Building” is any structure built for the support, shelter, or  
19 enclosure of persons, animals, chattels, or property of any kind.

20 3155.2. (a) Within the 90-day period following the recording  
21 of the lien, or if a claimant has filed a claim within that 90-day  
22 period pursuant to Section 3155.9, a lienholder may not maintain  
23 an action to foreclose a recorded mechanics lien against real  
24 property containing a single-family owner-occupied dwelling  
25 which is the primary residence of the owner pursuant to any other  
26 provision of law unless a hearing officer determines that the  
27 claimant has not paid the original contractor in full in a hearing  
28 held pursuant Section 3155.12 or that the claimant has not  
29 complied with subdivision (b).

30 (b) In order for a claimant to receive the protection of this  
31 article against foreclosure on a lien, the claimant shall hire only  
32 licensed contractors pursuant to a written contract.

33 3155.3. (a) There is hereby established within the State  
34 Treasury the Homeowners’ Relief Recovery Fund, which is  
35 hereby continuously appropriated for the purpose of administering  
36 this article, including the payment of the compensation of hearing  
37 officers appointed pursuant to Section 3155.12, and the provision  
38 of monetary relief to any lienholder who is not paid in full for  
39 labor, services, equipment, or material.



1 (b) The state shall not be liable for any claims against the fund  
2 except as provided in this article.

3 3155.4. In order to establish a claim against the Homeowners’  
4 Relief Recovery Fund a claimant shall provide evidence that a  
5 mechanics’ lien has been recorded against their real property  
6 pursuant to this chapter.

7 3155.5. (a) The Contractors’ State License Board shall  
8 administer the Homeowners’ Relief Recovery Fund and shall  
9 develop rules and regulations, which shall be as informal as  
10 possible to administer the fund pursuant to this article.

11 (b) The board may file a civil action against any licensed  
12 original contractor in order to obtain reimbursement to the fund for  
13 any payments made to a lienholder upon a finding by a hearing  
14 officer that the original contractor failed to pay the lienholder in  
15 full.

16 (c) The board shall establish a toll-free telephone number to  
17 provide information to all parties involved concerning the  
18 Homeowners’ Relief Recovery Fund, the hearing process, and  
19 requirements under this article.

20 3155.6. (a) Funding shall be in an amount determined by the  
21 Contractors’ State License Board to be sufficient to meet the  
22 projected claims over the next year.

23 (b) The board shall annually determine whether the funding is  
24 sufficient to meet the projected claims over the next year and  
25 annually report to the Legislature on the need to increase or  
26 decrease the funding accordingly. In making this determination,  
27 the board shall not include in any fund balance moneys in the fund  
28 that are encumbered by claims approved pursuant to this article.

29 (c) The board shall be responsible for an annual review or audit  
30 of the fund.

31 3155.7. All funding provided pursuant to Section 3155.6 shall  
32 be deposited in the State Treasury to the credit of the Homeowners’  
33 Relief Recovery Fund, which is to be used exclusively for the  
34 purposes of this article.

35 3155.8. Notwithstanding any other provision of law, the time  
36 for a lienholder to bring an action to foreclose a lien on a  
37 single-family, owner-occupied dwelling which is the primary  
38 residence of the owner shall be extended by 90 days to provide for  
39 the claim period under Section 3155.9, and shall be extended to,  
40 and include, 60 days following service of the decision by a hearing



1 officer regarding the claimant’s claim against the Homeowners’  
2 Relief Recovery Fund.

3 3155.9. Within 90 days after the lienholder has recorded a lien  
4 on a single-family, owner-occupied dwelling which is the primary  
5 residence of the owner, the owner may file a statement of claim  
6 with the Contractors’ State License Board. The statement of claim  
7 shall include, but may not be limited to, the following:

8 (a) A copy of any preliminary notice given by the lienholder,  
9 together with the proof of service accompanied thereby, if a  
10 lienholder is otherwise required to serve a preliminary notice.

11 (b) A copy of the mechanics’ lien recorded in the office of the  
12 county recorder.

13 (c) A statement of account showing all charges, credits, and  
14 balance due.

15 (d) Proof of payment, including, but not limited to, a receipt of  
16 payment, credit card receipt, or statement or canceled check.

17 3155.10. Once the statement of claim described in Section  
18 3155.9 has been filed with the Contractors’ State License Board,  
19 the board shall notify the original contractor and the lienholder of  
20 the filing of the claim. The original contractor and the lienholder  
21 shall file a response within 15 days after receipt of the notice. This  
22 response shall state in detail the defense against the claim and  
23 include all documents which the respondent claims support this  
24 defense. If the original contractor contends that it has not been paid  
25 in full, the original contractor shall provide a copy of all  
26 documents in support of this contention. The lienholder, original  
27 contractor, and claimant may submit any other information to  
28 assist the hearing officer to make the determination required by  
29 this article.

30 3155.11. If the original contractor fails to respond to the claim  
31 filed by the claimant, it shall be presumed that the claimant paid  
32 the contractor in full and the hearing officer shall then determine  
33 the value of the claim based upon the documentation provided.

34 3155.12. The board shall set a hearing date within 60 days of  
35 receipt of the statement of claim at the office of the Contractors’  
36 State License Board nearest to the site of the work of  
37 improvement, before a hearing officer appointed by the board to  
38 hear the presentation of the lienholder, the original contractor, and  
39 the claimant. To the extent possible, all claims submitted on the  
40 same project shall be consolidated and heard in the same hearing.



1 The Contractors' State License Board shall provide notice to the  
2 original contractor, the claimant, and the lienholder of the date,  
3 time, and location of this hearing.

4 3155.13. At the hearing, the hearing officer shall first  
5 determine whether the claimant has made a full payment to the  
6 original contractor. If the hearing officer determines that the  
7 claimant has not paid the contractor in full, the hearing officer shall  
8 dismiss the claim and issue a finding that the lienholder may  
9 pursue foreclosure of its mechanics' lien in the appropriate court.  
10 If the hearing officer determines that the claimant has paid the  
11 original contractor in full, the hearing officer shall determine the  
12 validity and reasonable value of the claim and, if determined to be  
13 valid, enter an order addressed to the Contractors' State License  
14 Board directing it to pay the lienholder the reasonable amount of  
15 the claim, subject to subdivision (a) of Section 3155.3.

16 3155.14. (a) The hearing shall be conducted in accordance  
17 with Chapter 5 (commencing with Section 11500) of Part 1 of  
18 Division 3 of Title 2 of the Government Code.

19 (b) The hearing officers appointed by the Contractors' State  
20 License Board shall be attorneys licensed to practice in this state  
21 with at least five years of experience in mechanics' lien law.

22 3155.15. (a) The findings of the hearing officer shall be final,  
23 but shall impose obligations upon the claimant, original  
24 contractor, and lienholder only to the extent that the claimant,  
25 original contractor, or lienholder agree to be bound by those  
26 obligations. However, the remedies available to a party pursuant  
27 to this article, including the right to receive payment from the fund,  
28 shall not be available to a party that does not agree to the  
29 obligations. A lienholder shall be deemed to agree to the  
30 obligations only by recording a release of the lien in the county  
31 recorder's office where the real property is located. The findings  
32 of the hearing officer may be entered into evidence in any  
33 subsequent civil action or proceedings. The findings of the hearing  
34 officer shall be served on the lienholder, original contractor, the  
35 claimant, and the board no more than 10 days after the hearing.

36 (b) The Contractors' State License Board shall pay to the  
37 lienholder, upon receipt of an order pursuant to Section 3155.13  
38 the amount of the claim, subject to subdivision (a) of Section  
39 3155.3 within 10 days of receiving evidence that the lienholder has  
40 recorded a release of its lien in the county recorder's office where



1 the real property is located. The evidence shall be submitted within  
2 15 days after the findings of the hearing officer are served.

3 3155.16. A finding by the hearing officer that the original  
4 contractor was paid in full by the claimant and failed to make  
5 timely payments to any lienholder on the work of improvement,  
6 except a finding made pursuant to Section 3155.11, shall be  
7 grounds for immediate suspension of the original contractor's  
8 license. The original contractor shall be given notice of a hearing  
9 to challenge the findings, which shall be conducted within 60 days  
10 of the date of the suspension pursuant to the procedures of the  
11 Contractors' State License Board. If the finding is sustained, the  
12 contractor's license shall be immediately revoked and shall not be  
13 reinstated until the original contractor provides to the Contractors'  
14 State License Board a contractor's license bond as provided in  
15 Section 7071.8 of the Business and Professions Code in the sum  
16 of fifty thousand dollars (\$50,000).

17 3155.17. (a) The Contractors' State License Board shall  
18 adopt and make available forms for the notice regarding the  
19 claimant's rights under this article.

20 (b) The county recorder's office shall provide information  
21 pursuant to subdivision (c) of Section 3155.5 at the same time that  
22 notice is sent to an owner of property upon which a lien is recorded.

23 3155.18. Any firm, corporation, partnership, or association,  
24 or any person acting in his or her individual capacity, who aids,  
25 abets, solicits, or conspires with any person to knowingly present  
26 or cause to be presented any false or fraudulent claim for the  
27 payment of a loss from the fund under this article is guilty of a  
28 felony punishable by imprisonment in the state prison for two,  
29 three, or five years, and by a fine not exceeding fifty thousand  
30 dollars (\$50,000), unless the amount of the false or fraudulent  
31 claim exceeds fifty thousand dollars (\$50,000), in which event the  
32 fine may not exceed double the amount of the false or fraudulent  
33 claim.

34 SEC. 2. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the penalty  
39 for a crime or infraction, within the meaning of Section 17556 of  
40 the Government Code, or changes the definition of a crime within



- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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