Legis. Prog., H-821 August 19, 2010

First Supplement to Memorandum 2010-32

Legislative Program: Status of SB 189 (Lowenthal)

This supplement continues a report on Senate Bill 189 (Lowenthal), which would implement the Commission's recommendation on *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007).

COMMENT ON RECENT AMENDMENTS

The Commission has received a letter from Los Angeles attorney J. David Sackman, commenting on behalf of two laborer organizations on recent amendments to SB 189. Mr. Sackman was a regular participant in the Commission process in this study.

Mr. Sackman's letter is attached as an Exhibit. The issues that he raises are discussed below.

All statutory references that follow are to sections of the Civil Code, unless otherwise noted.

Timing Considerations

Before discussing the specific concerns raised by Mr. Sackman, it is worth noting the practical constraints on addressing them at this time. August 20 is the last day on which bills may be amended on the floor. Even if Senator Lowenthal and the Commission decided that Mr. Sackman's concerns should be addressed, it would not be practicable to have the amendments drafted and submitted in time to meet the August 20 deadline. Therefore, the question before the Commission is whether to consider addressing those issues in clean-up legislation next year.

The Commission has already spent a number of years fashioning the proposed law, with extensive stakeholder input. The current bill has been before the Legislature for nearly two years. Last year, the Commission staff invited all

interested stakeholders to express any concerns that they had about the bill. Those concerns were discussed in a series of stakeholder meetings. All of the concerns expressed were addressed.

Out of respect for that process, and the compromises made by other industry stakeholders, the staff is reluctant to disturb the existing balance that was struck in the stakeholder input process.

Notice by First Class Mail

The proposed legislation would generally require all mailed mechanics lien notices to be sent by certified mail, registered mail, express mail, or overnight delivery. Proposed Sections 8106, 8110. Except as otherwise provided by statute, regular first class mail would not be allowed.

This policy decision by the Commission would change existing law as to a few mechanics lien notices, which presently may be sent by first class mail. The Commission decision was based on an assessment that (1) a broadly applicable set of notice provisions in the mechanics lien statute, generally establishing consistency as to the manner of giving mechanics lien notices, would be an important improvement to existing law, and (2) regular first class mail is not a sufficiently reliable method of delivery for all mechanics lien notices. See discussion in Memorandum 2004-31, p. 9.

Mr. Sackman asserts that the proposed law should allow first class mail to be used to give stop payment notices and notices of payment bond claims, which he contends is allowed under existing law.

The staff reads existing law differently. It appears relatively clear that existing law does not allow a stop payment notice (known as a "stop notice" under existing law) to be given by regular first class mail. See existing Section 3103 (last sentence). It is even more clear that a notice of a payment bond claim, when required, may not be given by regular first class mail. See Sections 3227(a), 3242(b), 3252(b).

Mr. Sackman also points out that SB 189 was recently amended to allow a claimant to use first class mail to provide notice to an owner of a recorded lien claim. Exhibit p. 2.

That is correct. However, that amendment was made to preserve the effect of a bill enacted last year, which added language authorizing the use of first class mail when giving notice of recordation of a lien claim. See 2009 Cal. Stat. ch. 1009 (AB 457 (Monning)). SB 189 was amended to preserve that recent legislative

policy choice. This did not reflect any general change in policy on the question of whether other mechanics lien notices should be sent by first class mail.

The staff recommends against revisiting this issue.

Wording of Statutory Release Form

Mr. Sackman points out an arguable ambiguity in a line of text in a statutory release form set out in the proposed legislation. Exhibit p. 3.

The noted line of text was included in the Commission's final recommendation, and has been in SB 189 since the bill's introduction in February, 2009. Prior to the submission of the Commission's recommendation, portions of several Commission meetings were spent discussing and revising the language of the statutory release forms in the recommendation. No stakeholders expressed any concern or confusion regarding this particular line of text, which is meant to be read in context with all other language in the form.

If the Commission decides to continue to study improvements to mechanics lien law in the future, it should consider this comment along with any others received relating to refinement of the proposed law, following enactment. At this time however, **the staff does not recommend revisiting the issue.**

Stop Payment Notice Filing Deadline

Mr. Sackman also suggests a minor adjustment to the language of proposed Section 9356, which sets forth time limits for giving a stop payment notice, to address another perceived ambiguity. Exhibit p. 3.

Section 9356 provides that, in a specified scenario, a stop payment notice must be given "90 days after completion or cessation" of a work of improvement. Mr. Sackman notes that the statutory events of completion and cessation usually occur on different dates, rendering the meaning of the provision unclear.

Section 9356 continues Section 3184 of the existing mechanics lien statute, which also uses the phrase "90 days after completion or cessation." To the extent that phrase contains any ambiguity, the ambiguity has been a part of existing law since 1969 (see 1969 Cal. Stat. ch. 1362), and by now is likely quite well understood by persons affected by the statute.

Again, if the Commission continues to study mechanics lien law in the future, it might be possible to further refine the language of Section 9354 in conjunction with other improvements to the statute. At this time, however, **the staff does not recommend revisiting the issue.**

Summary Proceeding to Release Stop Payment Notice

Proposed Section 9408, which continues existing Section 3201 without substantive change, sets forth time limits relevant to a summary proceeding authorized by the Legislature to contest a stop payment notice given on a public work. Mr. Sackman believes that the time limits in Section 9408 are unrealistic when considered in conjunction with generally applicable rules of civil procedure, and the realities of court practice. Exhibit pp. 4-5.

Section 9408 continues the provisions of existing Section 3201, which uses the same time limits provided by Section 9408. These time limits were a part of the Commission's final recommendation to the Legislature, and have been in SB 189 since its introduction, with no request for revision from any interested party during that time.

While some adjustment of these time limits might be a subject for the Commission to consider as part of a future mechanics lien study, at this time **the staff does not recommend revisiting the issue.**

Notice Requirement for Payment Bond Claim

Finally, Mr. Sackman indicates that his clients' greatest concern relates to a recent amendment to SB 189 that could change notice requirements for making a claim against a public work payment bond. Exhibit pp. 1, 5-9.

However, that amendment was added as a technical "chaptering amendment." Its sole function is to preserve the effect of another pending bill, AB 2216 (Fuentes), *if that bill is enacted*. Chaptering amendments are made routinely as a matter of comity between legislators. A chaptering amendment does not have any substantive effect on its own or imply any substantive endorsement of the other bill.

In short, SB 189 would not make the change in the law that concerns Mr. Sackman. That change would be made by AB 2216. The chaptering amendment in SB 189 simply ensures that SB 189 will not supersede the effect of AB 2216, if AB 2216 is enacted into law.

For that reason, **the Commission should not take any action in response to this portion of Mr. Sackman's comment**.

FURTHER TECHNICAL AMENDMENTS

After reviewing SB 189, the Legislature's "Enrollment" office noted a small number of minor technical problems in the bill, which appear to have been introduced in the amendment process.

In the course of reviewing the issues raised by Enrollment, the staff found a few other technical drafting bugs.

Senator Lowenthal amended SB 189 on August 16, 2010, to correct those technical errors.

Respectfully submitted,

Steve Cohen
Staff Counsel

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August 9, 2010

Via E-Mail and Facsimile

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: SB189 (Lowenthal) - Mechanic Lien Revision
AB 2216 (Fuentes) - Payment Bond Notice
Comments from California State Council of Laborers Legislative Dept. and Construction Laborers Trust Funds for Southern California

Dear Members of the Commission:

These comments are submitted on behalf of our clients, the California State Council of Laborers Legislative Department (Laborers), and the Construction Laborers Trust Funds for Southern California (Laborers Funds), regarding the latest version of the Mechanic Lien bill (SB 189) and the Commission's Comments to be discussed at your next meeting.

We are particularly concerned with the changes to the notice provisions for payment bond claims, in Proposed Civil Code § 9560, which are conditional on the passage of AB 2216 (Fuentes). This is discussed after our Miscellaneous comments. While last discussed, it is first among our concerns.

Our comments follow. Thank you for your consideration.

Sincerely,

J. David Sackman, of
Reich, Adell & Cvitan

cc: Steve Cohen, California Law Review Commission (via email: scohen@clrc.ca.gov)
Hon. Alan Lowenthal (via email: Senator.Lowenthal@senate.ca.gov)
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EX 1

I. MISCELLANEOUS COMMENTS

1. It Is Not Clear When Notice May Be Made by Regular Mail.

Proposed Section 8110 of the Civil Code provides that, "*Except as otherwise provided by this part, notice by mail under this part shall be given by registered or certified mail, express mail, or overnight delivery by an express service carrier.*"[1/] Regular First-Class U.S. Mail is not included in the list of acceptable service.

Notice of a mechanic lien may be made by "first-class mail" under Proposed § 8416(c)(1). However, this specific provision is not made for service of a stop payment notice for public works, or a payment bond for public works. Under Proposed § 9352(a), "*A stop payment notice shall comply with the requirements of ~~Section 9102~~ Chapter 2 (commencing with Section 8100) of Title 1, and shall be signed and verified by the claimant*." So, can a stop payment notice be served by regular first-class mail? It appears not, which is a change from current law. There is no requirement of service at all in current law - Civil Code §§ 3181-3187.

Of more concern is the requirement as to payment bonds. As so stop payment notices, current law (§ 3186) as well as the SB180 (§ 9358) provides that the obligations of the public entity only start upon "receipt" so that the type of service does not make much difference. As to a payment bond on public works, Proposed § 9560 requires either a (a) "preliminary notice" or (b) "written notice to the surety and the bond principal" for claimants.[2/] Under Proposed § 9562. "*Notice to the principal and surety under Section 9560 shall comply with the requirements ~~of Article 2 (commencing with Section 9100) of Chapter 2~~ of Chapter 2 (commencing with Section 8100) of Title 1*." So it appears that the payment bond notice can not be sent by regular first-class mail either. This is a new requirement, which doe not exist under current law.

We believe the current law should be maintained in this respect. A stop payment notice and a claim on a payment bond should be allowed to be served by regular first-class mail, as is the mechanic lien on private works.

1/ Under Proposed § 8116, " Notice under this part is complete and deemed to have been given at the following times: . . . (b) If given by mail, when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure."

2/ We separately discuss the more important issue of the proposed amendments to this section below.

2. The Unconditional Final Release May Inadvertently Release Other Claims.

The Form provide in Proposed § 8138 is only supposed to release "lien, stop payment notice, and payment bond rights the claimant has" under these provisions. However, the release Form includes a statement that "*The claimant has been paid in full*." This statement is not true if there are other damages, unavailable for lien, stop notice or bond claims, but which may be required by contract or other law. For example, delinquent employee benefit contributions are not "paid in full" unless interest, liquidated damages and attorney fees are also paid. 29 U.S.C. § 1132(g)(2). Employees owed minimum wages are also entitled to liquidated damages under Labor Code § 1194. For this reason, we commonly insist on deletion of this statement before giving a release.

This statement should be deleted from the form. If claimants, such as employee benefit plans and laborers, will not sign such releases because of this statement, it will only encourage litigation of cases which could otherwise be settled. In the interest of promoting prompt and inexpensive settlement and payment of these claims, we urge that this language be stricken.

3. The Time to File a Stop Payment Notice Is Ambiguous, Where There Is No Notice of Completion.

Proposed Section 9356 provides:

"A stop payment notice is not effective unless given before the earlier of the following times:
~~(a) Ninety days after cessation or completion.~~
~~(b) Thirty days after recordation of a notice of cessation or completion. the expiration of whichever of the following time periods is applicable:~~
(a) If a notice of completion, acceptance, or cessation is recorded, 30 days after that recordation.
(b) If a notice of completion, acceptance, or cessation is not recorded, 90 days after *cessation or completion*." (*Emphasis added*).[3/]

This is ambiguous. If no notice of completion, acceptance or cessation is recorded, is the deadline 90 days after *cessation* or 90 days after *completion*? These are usually two different dates, so it is not clear which will apply. We suggest adding "*whichever is later*." This will resolve the ambiguity.

3/ *See* Proposed § 9200, and current Civil Code § 3086, defining "Completion."

3. The Notice and Hearing Provisions for a Summary Proceeding to Release Stop Payment Notices Give Inadequate Notice, and Should Instead Comply with the Notice and Hearing Requirements of CCP § 1005

Proposed § 9408[4/] is based on current Civil Code § 3201,[5/] which provides a "summary" court procedure to release a stop payment on public works. The problem with this procedure is that it is inconsistent with modern court rules of procedure, and the realities of court practice.

Both the proposed and existing statute requires that the court hold a hearing within "*15 days*" of making the motion, "*unless continued by the court for good cause*." However, under current Code Civ. P. § 1005(b), a motion must be noticed "16 court days" before the hearing. This works out to 24 calendar days, if there are no intervening holidays. Opposition papers are due under Code Civ. P. § 1005 "9 court days" before the hearing, which works out to 13 calendar days, if there are no intervening holidays.

The current language of Civil Code § 3201 was last amended in 1969. Stats.1969, c.

4/ "§ 9408. (a) If a counteraffidavit, together with proof of service, is served under Section 9406, either the direct contractor or the claimant may commence an action for a declaration of the rights of the parties.
(b) After commencement of the action, either the direct contractor or the claimant may move the court for a determination of rights under the affidavit and counteraffidavit. The party making the motion shall give not less than five days' notice of the hearing to the public entity and to the other party.
(c) The notice of hearing shall comply with the requirements ~~of Article 2 (commencing with Section 9100)~~ *Chapter 2 (commencing with Section 8100) of Title 1.* Notwithstanding Section ~~9114~~ 8116, when notice of the hearing is made by mail, the notice is complete on the fifth day following deposit of the notice in the mail.
(d) The court shall hear the motion within 15 days after the date of the motion, unless the court continues the hearing for good cause."

5/ "If such counteraffidavit, together with proof of service, is so filed, either the original contractor or the claimant may file an action in the appropriate superior court for a declaration of the respective rights of the parties. After the filing of such action, either the original contractor or the claimant shall be entitled to a hearing by the court for the purpose of determining his rights under the affidavit and demand for release and the counteraffidavit. Such hearing must be granted by the court within 15 days from the date of making of such motion, unless continued by the court for good cause. The party making the motion for hearing must give not less than five days' notice in writing of such hearing to the public entity and to the other party."

1362, p. 2774, § 2. At that time, the 15-day notice was longer than that for other motions under Code Civ. P. § 1005. Stats.1963, c. 878, p. 2126, § 3. Between 1981 and 1999, Code Civ. P. § 1005 also called for a 15-day notice period. Stats.1981, ch. 197, p. 1121, § 1; Stats.1999, ch. 43 § 1. Since this provision of the Civil Code has not been amended since, it has fallen behind the time allowed for other motions.

The time allowed for a claimant to respond here - two days between the 15-day notice of Proposed § 9408 and the 13 days of current Code Civ. P. § 1005(b) - is a gross denial of due process. This short notice period is not only inadequate to allow due process, it is inconsistent with modern court practice and caseloads. I have never seen a Court actually hold a hearing in the required 15 day time. I have seen much confusion and unnecessary effort created when contractors try to beat claimants to court using this procedure. No purpose is served by this shortened notice period other than to give unscrupulous contractors an opportunity to eliminate valid claims by surprise.

This problem can be easily solved by referring to the procedure and time limits of Code Civ. P. 1005 for this type of proceeding. That is the existing practice in any case. As part of the purpose of these revisions, the statute should be made to conform to modern court practice.[6/]

II. BURDENSOME NEW NOTICE REQUIREMENTS FOR BOND CLAIMS

We have previously asked that the "alternative notice" provisions for payment bonds (Proposed § 8612 on private works and § 9560 on public works) clarify the ambiguity in current law (Civil Code § 3242 on private works and § 3252 on public works) as to whether this notice is required of laborers. The Commission decided to retain the current ambiguity. But now, a new amendment is proposed as to the notice for payment on public works (§ 9560), which would make it impossible for laborers to make a claim on a payment bond in many circumstances. This change is apparently based on AB 2216 (Fuentes) and conditional on its passage. I believe the change, based on AB 2216, would be unconstitutional under Cal. Const. Art. XIV § 3. We vehemently protest this amendment, and insist that the statute be clarified instead to exempt laborers completely from this section, whether or not AB 2216 is passed.

6/ Compare proposed procedures for private works - §§ 8480 and 8486 - which sets a 30 day period for the hearing, and a 15 day period for notice. But on a private work there is no chance for a conflict with an action to enforce the lien, since this summary procedure is only available after the time to file a lien has expired.

"Laborers," which now explicitly includes employee benefit funds,[7/] have always been exempt from the requirement of a "preliminary notice" which most other claimants are required to give as a condition for a mechanic lien, stop notice or payment bond. Civil Code§§ 3097(a) (private works) and 3098(c) (public works). Proposed Civil Code §§ 8200(e)(1) and 9300(b)(1) continue this exemption in SB 189. There is good reason for this. Laborers are both the most vulnerable players in the construction industry, and the least able to assert their legitimate claims. While a supplier or subcontractor can withstand non-payment as part of the cost of doing business, the loss of wages or benefits for workers can mean the difference between homelessness, or even life. Laborers are also the least likely to have the information and skills necessary to give preliminary notice and perfect their rights. They typically move between many jobs in the course of their employment, and are not provided information on any of their jobs, other than the location to show up for work. It is no coincidence that the constitutional mandate for providing mechanic liens is placed under Article XIV "Labor Relations."[8/] The protection of laborers should thus remain the highest priority of the mechanic lien law.

Prior to 1994, section 3252 provided that, in "order to enforce a claim upon any payment bond given in connection with a public work, a claimant must give the 90-day public works preliminary bond notice as provided in Section 3091." This was interpreted to mean that laborers were not required to give this notice, since they were not required to give a preliminary notice "as provided" in the section referred to. *Dept. Ind. Rel. v. Continental Casualty Co.*, 52 Cal.App.4th Supp. 1, 61 Cal.Rptr.2d 80 (Calaveras Co. App. Dept. 1996).

This language was changed in 1994, through a bill sponsored by the Associated General Contractors (AGC). AB 3357, enacted as Stats 1994, ch. 974, §§ 7 and 8. The legislative history of this bill is discussed in the case of *American Buildings Co. v. Bay Commercial Construction*,

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7/ Under Civil Code § 3089(b), added by the bill we sponsored in 1999, a "Laborer" is defined to include "any person or entity, including an express trust fund described in Section 3111, to whom a portion of the compensation of a laborer as defined in subdivision (a) is paid by agreement with that laborer or the collective bargaining agent of that laborer."

8/ "The Workingmen's Party of 1877-78 included among its minor aims the demand for 'a perfect mechanics' lien law.' A section was inserted in the new constitution adopted in 1879 which charged the legislature with the duty of providing by law for the speedy and efficient enforcement of the liens to which mechanics, material men, artisans, and laborers of every class were declared entitled.'" Lucile Eaves, *A History of California Labor Legislation* (UC Berkeley 1910), at p. 231. That provision was originally placed in Art. XX § 15. The original mechanic lien law was actually passed in the very first session of the California legislature. Stats 1850 ch. 87, pp. 211-213.

Inc., 99 Cal.App.4th 1193, 121 Cal.Rptr.2d 539 (3rd Dist. 2002).[9/] "The Assembly Committee on the Judiciary bill analysis states the amendment was designed to ameliorate the problem of surprise to the original contractor by the filing of a late claim by subcontractors." 99 Cal.App.4th 1193, 1200. There is no mention in any of the legislative history of its effect on the exemption of laborers from the preliminary notice requirement.

Under the current version of § 3252(a), carried over to the Proposed § 9560(a), a claimant "shall" give the preliminary notice, without the "as provided" language in the former statute. But the alternative notice provision in subsection (b) sets a 15-day notice period if the preliminary notice " was not given as provided" in the other section. This leaves ambiguous the question of whether this notice is required of laborers, who were previously exempted from this requirement.

The practical problem is that these time limits are difficult, and in some cases impossible, to meet. For example, when the delinquency is for the work up to the "completion" of the project (which may be before landscaping is completed), there is no trust fund delinquency until the month following the last month in which work is done. These problems would be exacerbated by some of the other notice provisions added by the new law.[10/] New section 9562 specifies that the notice of the bond claim under § 9560 shall comply with these new notice provisions.

We have brought this issue up several times to the Commission. The ultimate decision by the Commission was to retain the ambiguity of current law. As the Proposed Comment to § 9560 notes, the last version of this section simply "restates former Section 3252." But then, on August 2, 2010, a new version of the bill was filed in the Assembly which substantively changes Proposed § 9560, conditioned on approval of AB 2216. *See* § 20.2 of SB 189 (amended 8/2/2010) at pp. 133-134. This amendment does not just continue the former ambiguity, but makes the statute intolerable for laborers.

The portion of AB 2216 relevant here, is Section 2, which would modify existing Civil Code § 3252. While existing law allows the "alternative notice" (if no preliminary notice is given "as provided") within 15 days after a notice of completion, or 75 days after actual

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9/ That case did not involve a claim by laborers, and did not discuss the effect on the laborers' exemption from the preliminary notice requirement. Nothing in the legislative history mentions this issue either.

10/ The new section 8110 would require that, unless specified otherwise, notice by mail under this part shall be given by registered or certified mail, express mail, or overnight delivery by an express service carrier." Regular mail is not sufficient. Proof of such service must include proof of delivery or attempted delivery. Proposed § 8118(b)(3). These are all new requirements, not present in current law.

completion (if no notice), the proposed amendment requires the "alternative notice" be given "prior to completion of the work of improvement, or recordation of notice of completion, whichever is later." The time for giving notice of a claim on a payment bond (assuming it applies at all to laborers) would thus be shorted from 15-75 days to less than zero days from completion.

This makes it even more difficult for a laborer to make a bond claim (assuming the section applies at all to laborers). Worse, **it would make it physically impossible for a laborer, working at the end of the project, to make a timely bond claim**. Those laborers will not have their last paycheck become due (and thus a claim arise if not paid) until a week later, and their monthly benefit contributions will not become due (and thus delinquent if not paid) until over a month later. There is also a good deal of labor performed *after* completion, such as landscape installation, which is still part of the work of improvement.

This is why this provision, if enacted, could be held unconstitutional. Article XIV, § 3 of the California Constitution, provides that "the Legislature **shall provide**, by law, for the speedy and efficient enforcement of such liens." (*Emphasis added*). The purpose of payment bonds on public works is to assure that the same protection remained on public works as previously guaranteed by mechanic liens. *See* *Globe Indemnity Co. v. Hanify*, 217 Cal. 721, 730, 20 P.2d 689 (1933); *French v. Powell*, 135 Cal. 636, 639, 68 P. 92 (1902). By removing this remedy from the laborers for whom it was placed in the Constitution, the Legislature would be failing to meet it Constitutional mandate.

The proposed new § 9560, conditioned on AB 2216, also adds a new subsection (c), which is totally irrelevant and useless to laborers. This would require public entities to send a "notice of pending completion" to "each subcontractor who has given a preliminary notice." No notice at all is required to be given to laborers, who are not required to give a preliminary notice in any case. Nor is there any remedy to assure that the public entity gives the notice, even to subcontractors.

There is only one way to remedy this problem, so that the statute would not be subject to attack as unconstitutional. That is to make clear that this notice provision does not apply at all to laborers. The following language should be added in SB 189:

Add subsection (c) to proposed Civil Code § 8612:
"**This section does not apply to a laborer, or any other person exempt from the requirement of giving a preliminary notice under Civil Code § 8200."**

Add subsection (c) to proposed Civil Code § 9560 (Sec. 20.1 of SB 189):
"**This section does not apply to a laborer, or any other person exempt from the requirement of giving a preliminary notice under Civil Code § 9300.**"

Add subsection (d) to proposed Civil Code § 9560 (Sec. 20.2 of SB 189):
"**This section does not apply to a laborer, or any other person exempt from the requirement of giving a preliminary notice under Civil Code § 9300.**"

The following language should be added in SB 2216:

Add subsection (c) to Civil Code § 3252 (Sec. 2 of the bill):
"**This section does not apply to a laborer, or any other person exempt from the requirement of giving a preliminary notice under Civil Code § 3098.**"

These revisions should be done, whether or not AB 2216 passes. We oppose this provision in the present form of AB 2216, and would oppose adding it to SB 189. Even if AB 2216 fails to pass, and the new language is not added, the statute needs to be clarified. There is no evidence of an intent to impose a new notice requirement on laborers, in either the legislative history of the 1994 law, or in AB 2216. The law should thus be clarified to make this explicit.

We look forward to discussing this further with the Commission and with Senator Lowenthal and Assemblyman Fuentes.

- END -

Payment Bond Notice Provisions

Current Civil Code § 3252	AB 2216 § 2	New Civil Code § 9560 *Second*
(a) With regard to a contract entered into on or after January 1, 1995, in order to enforce a claim upon any payment bond given in connection with a private work, a claimant **shall give the 20-day private work preliminary notice provided in** Section 3097.	(a) With regard to a contract entered into on or after January 1, 1995, in order to enforce a claim upon any payment bond given in connection with a public work, a claimant **shall give the 20-day public works preliminary bond notice** as provided in Section 3098.	(a) In order to enforce a claim against a payment bond, a claimant **shall give the preliminary notice provided in** Chapter 3 (commencing with Section 9300).
(b) If the 20-day private work preliminary notice was not given as provided in Section 3097, a claimant may enforce a claim by giving written notice to the surety and the bond principal as provided in Section 3227 within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement."	(b) (1) On and after January 1, 1995, and before January 1, 2011, if the 20-day public work preliminary bond notice was not given as provided in Section 3098, a claimant may enforce a claim by giving written notice to the surety and the bond principal as provided in Section 3227 within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement.	(b) If preliminary notice was not given as provided in Chapter 3 (commencing with Section 9300), a claimant may enforce a claim by giving written notice to the surety and the bond principal **prior to completion of the work of improvement, or recordation of notice of completion, whichever is later**. [based on AB 2216 § 2 - (b)(2)]
	(b)(2) On and after January 1, 2011, if the 20-day public works preliminary bond notice was not given as provided in Section 3098, a claimant may enforce a claim by giving written notice to the surety and bond principal, as provided in Section 3227, **prior to completion, as defined in Section 3086, of the project, or recordation of a notice of completion**	(c) Prior to completion of a work of improvement or recordation of a notice of completion, **a public entity shall give notice of pending completion to each subcontractor that has given preliminary notice as provided in Chapter 3 (commencing with Section 9300)**. The notice of pending completion shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.