

Date of Hearing: July 15, 2025

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
SB 440 (Ochoa Bogh) – As Amended June 23, 2025

PROPOSED CONSENT

SENATE VOTE: 34-0

SUBJECT: PRIVATE WORKS CHANGE ORDER FAIR PAYMENT ACT

KEY ISSUE: IN ORDER TO STREAMLINE DISPUTES IN CONSTRUCTION CONTRACTS FOR PRIVATE WORKS, SHOULD THE LEGISLATURE ESTABLISH THE PRIVATE WORKS CHANGE ORDER FAIR PAYMENT ACT?

SYNOPSIS

Construction projects are infamously prone to contention between owners and contractors, often prompting debate over the duration, cost, or result of the project. In some cases, one party will complete a change order, which typically refers to a modification to an existing construction contract that adjusts the contractor's scope of work. Construction contracts typically incorporate a "changes in the work" clause within the original contract that provides the procedure for change orders. However, the shift in the original terms of the contract can give rise to additional costs for materials and labor. In the event there is any dispute about the terms of the change order and given the owner's authority to withhold retention payments, change orders can result in significant financial burdens on contractors. In 2016, AB 626 (Chiu, Chap. 810, Stat., 2016) created a claims resolution process for any claim by a contractor engaged in a contract for a public works project. This bill seeks to mirror the process established in AB 626 for disputes arising from contracts for private works.

This bill is sponsored by the Southern California Association of Scaffold Contractors. It is supported by the International Union of Operating Engineers, Cal-Nevada Congress and various building industry advocates, including the National Electrical Contractors Association and United Contractors.

SUMMARY: Establishes the Private Works Change Order Fair Payment Act. Specifically, **this bill:**

- 1) Makes relevant findings and declarations regarding the impact of delays in private works projects.
- 2) Establishes the Private Works Change Order Fair Payment Act (Act) and applies its provisions to any claim by a contractor, or where authorized, a subcontractor, in connection to a work of improvement or site improvement.
- 3) Defines the following:
 - a) "Claim" means a separate demand by a contractor, or where authorized pursuant to this article, a subcontractor, sent by registered mail or certified mail with return receipt requested, for either of the following:

- i) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by an owner under contract for a work of improvement or site improvement;
 - ii) Payment by the owner of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a work of improvement or site improvement project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled;
 - iii) Payment of an amount that is disputed by the owner.
- b) "Owner" means the owner who causes a building, improvement, or structure to be constructed, altered, or repaired, or that person's successor in interest at the date a notice of completion is recorded, whether the interest or estate of the owner be in fee, as vendee under contract of purchase, as lessee, or other interest or estate less than the fee. Where the interest or estate is held by two or more persons as joint tenants or tenants in common, any one or more of the cotenants may be deemed to be the "owner." An owner shall have the right to a designated representative. "Owner" does not include a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.
- c) "Project manager" means a person, partnership, corporation, or other legal entity that is designated by the owner to direct construction and represent the owner during the performance of the services covered under the construction contract and is authorized to make changes, adjustments, and interpretations of the contract in order to facilitate the completion of the project. In the absence of the appointment of a project manager by the owner, the owner shall serve as a project manager on a project.
- 4) Requires the owner to which the claim applies to, upon receipt of a claim, to perform a reasonable review of the claim and, within a period not to exceed 30 days, provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed.
- 5) Requires the claimant to furnish reasonable documentation to support the claim.
- 6) Authorizes an owner and contractor to extend the specified time periods by mutual agreement.
- 7) Requires payment of any undisputed portion of the claim to be processed and made within 60 days after the owner issues its written statement.
- 8) Authorizes the claimant to demand in writing an informal conference to meet and confer for settlement of the issues in dispute if the claimant disputes all or any portion of the owner's written response to the claim, or if the owner fails to respond to a claim issued within the timeframe prescribed.

- 9) Requires the owner to schedule a meet and confer conference with the claimant for settlement of the dispute within 30 days of receiving a demand in writing sent by registered mail or certified mail, return receipt requested.
- 10) Requires, if the claim or any portion of the claim remains in dispute, the owner to provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed within 10 days following the conclusion of the meet and confer conference.
- 11) Requires payment of any undisputed portion of the claim identified in the written statement to be processed and made within 60 days after the owner issues its written statement.
- 12) Requires the remaining disputed portion of the claim, if one exists following the informal conference, to be submitted to nonbinding mediation, with the owner and the claimant sharing the associated costs equally.
- 13) Requires the owner and claimant to mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. Authorizes the contractor to select the mediator to be used if the parties cannot agree upon a mediator within the time allotted.
- 14) Authorizes the contractor, if the owner refuses mediation, to suspend work on the project, as specified.
- 15) If mediation is unsuccessful, makes the parts of the claim remaining in dispute subject to the dispute resolution procedures elected in the written contract of the parties, or, if no such election exists, by final judgment or by operation of law.
- 16) Deems the claim denied in its entirety if the owner fails to respond to a claim within the time periods described or to otherwise meet the requirements of this section. A claim that is denied by reason of the owner's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claim.
- 17) Imposes interest at 2 percent per month on any undisputed amounts not paid in a timely manner as required by these provisions. Imposes interest at 2 percent per month on disputed amounts which are later found to be owed through the dispute resolution procedures elected in the written contract of the parties, or, if no such election exists, by final judgment or by operation of law, beginning from the date on which those amounts would have been due had they not been disputed.
- 18) Establishes that nothing in this bill's provisions prevents either party from submitting, or otherwise limit the applicability of, a statutory offer of settlement under Section 998 of the Code of Civil Procedure.
- 19) Requires the contractor to present to the owner a claim on behalf of a subcontractor or lower tier subcontractor if a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against an owner because privity of contract does not exist, except as specified.

- 20) Authorizes a subcontractor to request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work that was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor.
- 21) Requires the subcontractor requesting that the claim be presented to the owner to furnish the contractor with timely and reasonable documentation to support the subcontractor's claim to enable the contractor to meet their specified obligations and to thereafter cooperate with the contractor in the informal conference, mediation, and dispute resolution processes required pursuant to this section relating to the subcontractor's claim.
- 22) Requires the contractor to exercise good faith in fulfilling their obligations on behalf of the subcontractor and prohibits them from making a settlement of any claim to which the subcontractor does not approve, in writing.
- 23) Requires the contractor to notify the subcontractor in writing within 30 days of receipt of the written request as to whether the contractor presented the claim to the owner and, if the contractor did not present the claim, provide the subcontractor with a statement of the reasons for not doing so.
- 24) Clarifies that nothing in the bill's provisions precludes a subcontractor from exercising its lien rights and its stop work notice rights.
- 25) Grants the contractor and subcontractors the right to suspend performance of their work, without penalty, until the payment is received if the following procedure is followed:
 - a) The owner is informed by registered mail or certified mail, return receipt requested, that payment is due pursuant to the provisions of this bill, or where the claim is deemed denied;
 - b) 30 days after the notice of late payment is sent to the owner, the contractor or subcontractor sends a 10-day written notice of intent to stop work to the owner, by registered mail or certified mail, return receipt requested.
- 26) Requires any disputed amount which the owner, at any point, agrees to pay, or is found to owe through dispute resolution, by final judgment, or by operation of law, from the date of the agreement or finding, to be considered an undisputed amount for the purpose of any timelines or processes established by this bill.
- 27) Makes a waiver of rights granted by these provisions void and contrary to public policy.
- 28) Notwithstanding 29), all of the following apply:
 - a) Upon receipt of a claim, the parties may mutually agree to waive, in writing, the informal conference and mediation provisions in this section and proceed directly to the commencement of a civil action or binding arbitration, as applicable;
 - b) Owners, contractors, and subcontractors may agree to reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this bill, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth.

29) Applies the Act's provisions to contracts entered into on or after January 1, 2026. Excludes construction of residential projects if the project is not mixed use and does not exceed four stories from the Act.

30) Repeals the Act effective January 1, 2030.

EXISTING LAW:

- 1) Defines a "work of improvement" as including, but not limited to: construction, alteration, repair, demolition, or removal, in whole or in part, of, or addition to, a building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, or road; seeding, sodding or planting for landscaping purposes; and filling, leveling, or grading real property. (Civil Code Section 8050. All further references are to the Civil Code unless otherwise noted.)
- 2) Specifies that a work of improvement is a private work of improvement when it is not contracted for by a public entity. (Sections 8160, 9000.)
- 3) Defines an "admitted surety insurer" as having the meaning provided in Section 995.120 of the Code of Civil Procedure. (Section 8002.)
- 4) Defines "direct contractor" as a contractor that has a direct contractual relationship with an owner. (Section 8018.)
- 5) Defines "subcontractor" as a contractor that does not have a direct contractual relationship with an owner, and as including a contractor that has a contractual relationship with a direct contractor or with another subcontractor. (Section 8046.)
- 6) Permits the retention of a portion of the payment due a direct contractor or due a subcontractor, and specifies that, if any owner withholds a retention from a direct contractor, the owner must pay the retention to the contractor within 45 days after completion of the work of improvement. Specifies that, if a work of improvement ultimately will become the property of a public entity, the owner may condition payment of the retention allocable to that part upon the acceptance of that part of the work by the public entity. Specifies that the owner may withhold from a final payment up to 150% of any disputed amount when there is a good faith dispute between the owner and the direct contractor regarding the retention payment due. (Section 8812.)
- 7) Requires that, if the direct contractor gives the owner, or a subcontractor gives the direct contractor, a notice that work that is in dispute has been completed, the owner or direct contractor must notify the party within 10 days whether the disputed work is accepted or rejected. Specifies that, if the disputed work is accepted, the owner or direct contractor must pay the portion of the retention that relates to the disputed work. (Section 8816.)
- 8) Specifies that, if a direct contractor is not paid the amount due pursuant to a written contract within 35 days after the date payment is due, and there is no dispute as to the satisfactory performance of the contractor, the contractor may give the owner a stop work notice, as specified. (Section 8832.)

- 9) Specifies that a contractor that gives an owner a stop work notice must also post a notice of intent to give a stop work notice at least five days before providing a stop work notice, and that the contractor must give a copy of any stop work notice to all subcontractors with whom the contractor has a direct contractual relationship at the same time that they give the stop work notice to the owner. (Section 8834.)
- 10) Specifies that, if payment of the amount claimed in the stop work notice is not made within 10 days of when the contractor provided the stop work notice, the direct contractor, their surety, or an owner may seek judicial determination of liability for the amount due through an expedited proceeding. (Section 8844.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: Construction projects are infamously prone to contention between owners and contractors, often prompting debate over the duration, cost, or result of the project. In some cases, one party will complete a change order, which typically refers to a modification to an existing construction contract that adjusts the contractor's scope of work. Construction contracts typically incorporate a "changes in the work" clause within the original contract that provides the procedure for change orders. However, the shift in the original terms of the contract can give rise to additional costs for materials and labor. In the event there is any dispute about the terms of the change order, given the owner's authority to withhold retention payments, change orders can result in significant financial burdens on contractors. According to the author:

SB 440 establishes a fair and timely payment process for construction change orders arising from contract modifications, adjustments in project scope, unplanned work requirements, contractual work revisions, construction adaptations and other similar types of routine changes that accompany construction projects. This process will prevent unjust and completely avoidable financial strains on small construction businesses and entrepreneurs. Without the protections inherent in SB 440's process, many are pushed to the brink of bankruptcy. The need for reform is urgent, as the widespread abuse enabled by the absence of a clear change order process is not only prevalent but increasing across the industry.

Specifically, contractors and subcontractors often face extended payment delays for approved change orders, leading to financial instability, increased credit dependency, and, in extreme cases, business failure. Additionally, contractors bear financial and operational risks when required to perform additional work without clear payment guarantees. Power imbalances between the project owner, general contractor and subcontractor can create exploitive practices where subcontractors can be leveraged to reduce the value of their change order if they want to continue a future business relationship. All of this can, regrettably, lead to costly litigation, delaying project completion and increasing expenses for all parties.

SB 440 levels the playing field for contractors, especially subcontractors, by ensuring a fair change order process and providing for timely payments. This process reduces unnecessary hardship on lower-tier contractors, especially disadvantaged business enterprises, disabled veteran business enterprises, and small business enterprises.

The process established by SB 440 is based on AB 626 (Chiu, 2016), which passed unanimously in the Assembly and Senate.

Public Contracts Code Section 9204, enacted via AB 626 (*Chiu, Chap. 810, Stats. 2016*), provides a claims resolution process for any claim by a contractor engaged in a contract for a public works project. Under its provisions, a contractor can submit a claim for a time extension, including a relief from damages or penalties for the delay, payment of money or damages arising from work done by the contractor pursuant to the contract, and payment of an amount disputed by the public entity. Once the contractor submits the claim, the public entity has 45 days to conduct a “reasonable review” of the claim and provide a written statement identifying which portion of the claim is undisputed, and which remains in dispute. Parties must then complete an informal conference to discuss the remaining issues at dispute, followed by nonbinding mediation. Contractors are also authorized to present a claim pursuant to its provisions on behalf of a subcontractor that lacks the legal standing to assert a claim against the public entity.

This bill mirrors AB 626 for private works contracts. A “private work of improvement,” as opposed to a “public work,” refers to construction projects on private property. Civil Code Section 8050 defines a “work of improvement” as work to construct, alter, repair, demolish, or remove, in whole or in part, or add to, various structures including a building, wharf, well, machinery, or fence. (Civil Code Section 8050.) Within 30 days of receiving a claim from a contractor, an owner must perform a reasonable review of the claim and return a written statement identifying which portions are disputed and which are not. The claimant is required to provide “reasonable documentation” to support their claim, and the timeline can be extended upon mutual agreement. The owner must then pay any undisputed portion of the contractor’s claim within 60 days after their written statement. In the event there is any remaining dispute, those portions are then submitted to nonbinding mediation where both parties share the cost of mediation equally. Any remaining disputes are adjudicated pursuant to the dispute resolution procedures identified in the underlying contract or, absent such agreement, by final judgment or operation of law. Each phase in the process has its own relevant timeline by which the owner must issue a written statement admitting or denying the claim, in whole or in part.

This bill also mirrors Section 9204 by establishing that an owner’s failure to respond to a claim within any of the time periods identified will result in the denial of the claim in its entirety, but that the denial, or failure to meet the required timelines, does not constitute an adverse finding to the merits of the claim. Also like Section 9204, SB 440 allows for a subcontractor to request that a contractor present a claim to the owner on their behalf if they lack standing through privity of contract. For a claim presented by a contractor on behalf of a subcontractor, the same timelines and obligations apply as to a claim submitted by a contractor on their own behalf. Additionally, a contractor is required to notify a subcontractor within 30 days of receiving the request from the subcontractor, as compared to 45 days in Section 9204, if they presented the claim to the owner and, if they did not, they must provide a statement explaining their decision. Like Section 9204, SB 440 imposes interest on unpaid undisputed amounts. However, while Section 9204 imposes seven percent monthly interest, SB 440 imposes 2 percent monthly interest.

This bill also permits a contractor or subcontractor to suspend work on a contract without penalty if the owner fails to pay any of the undisputed amounts. In order to avoid the penalties resulting from pausing work, either the contractor or subcontractor is required to notify the owner that payment is due and after 30 days have elapsed, provide the owner a 10-day written notice of their intent to stop work. In total, owners would have 40 days under this provision to provide payment due to the contractor or subcontractor before either could pause work on a contract.

In sum, this bill provides an alternative method to resolve disputes in contracts for private works of construction. It is not the only potential avenue for dispute resolution, and such conflicts can continue to be resolved through existing mechanisms, including through a civil action or binding arbitration if there is mutual agreement. Because the bill sunsets the Act in 2030, the Legislature will be prompted to evaluate its efficacy. If, after five years, the program indeed functions to streamline dispute resolution for private works, the Legislature may opt to make it permanent at that time.

ARGUMENTS IN SUPPORT: This bill is sponsored by the Southern California Association of Scaffold Contractors. It is supported by the International Union of Operating Engineers, Cal-Nevada Congress and various building industry advocates, including the National Electrical Contractors Association and United Contractors. In support of the bill, the sponsor submits:

SB 440 establishes a fair and prudent process for contractors to follow for approved change orders on construction projects. This process will reduce litigation, protect subcontractors, and mitigate construction delays.

Contractors that perform change orders on private works construction projects frequently face extended payment delays for approved change orders leading to financial instability, increased credit dependency and, in extreme cases, business failure. Power imbalances between the project owner, general contractor and subcontractor can create exploitive practices where subcontractors can be leveraged to reduce their value of their change order if it wants to continue a future business relationship.

SB 440 levels the playing field for contractors, especially subcontractors, by ensuring a fair change order process and providing for timely payments. This process reduces unnecessary hardship on lower tier contractors, especially disadvantaged business enterprises, disabled veteran business enterprises, and small business enterprises.

REGISTERED SUPPORT / OPPOSITION:

Support

Southern California Association of Scaffold Contractors (sponsor)
American Subcontractors Association-California
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Legislative Conference of Plumbing, Heating & Piping Industry
Finishing Contractors Association of Southern California
International Union of Operating Engineers, Cal-Nevada Conference
National Electrical Contractors Association (NECA)
Northern California Allied Trades
Northern California Floor Covering Association
Southern California Contractors Association
Southern California Glass Management Association (SCGMA)
United Contractors (UCON)
Wall and Ceiling Alliance
Western Painting and Coating Contractors Association
Western Wall and Ceiling Contractors Association (WWCCA)

Opposition

None on file

Analysis Prepared by: Manuela Boucher-de la Cadena / JUD. / (916) 319-2334