
UNFINISHED BUSINESS

Bill No: SB 440
Author: Ochoa Bogh (R), et al.
Amended: 6/23/25 in Assembly
Vote: 21

SENATE JUDICIARY COMMITTEE: 12-0, 5/6/25

AYES: Umberg, Niello, Allen, Arreguín, Ashby, Caballero, Durazo, Laird, Stern, Wahab, Weber Pierson, Wiener

NO VOTE RECORDED: Valladares

SENATE FLOOR: 34-0, 5/15/25 (Consent)

AYES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Hurtado, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Pérez, Richardson, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

NO VOTE RECORDED: Alvarado-Gil, Cervantes, Grove, Padilla, Reyes, Rubio

ASSEMBLY FLOOR: 77-0, 8/21/25 (Consent) - See last page for vote

SUBJECT: Private Works Change Order Fair Payment Act

SOURCE: Southern California Association of Scaffold Contractors

DIGEST: This bill creates a process, until January 1, 2030, by which disputes between an owner, direct contractor, or subcontractor regarding extensions of time and payment of additional compensation for approved changes to the contractor's scope of work may be resolved through an informal conference and mediation.

Assembly Amendments of 6/23/25 make various changes to the definitions of "claim" and "owner" for the purposes of this bill's provisions; eliminates the requirement that the claim be furnished within 60 days of the basis for the claim being discovered; simplify the requirements for a claim to require reasonable documentation to support the claim; removes provisions requiring the claimant to bear the burden of proof to demonstrate that a disputed claim was agreed upon by

the owner or project manager, as specified; and specify that its provisions do not apply to the construction of a residential project if the project is not mixed use and does not exceed four stories.

ANALYSIS:

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 (Civ.) Code § 8050.)
- 2) Specifies that a work of improvement is a private work of improvement when it is not contracted for by a public entity. (Civ. Code §§ 8160, 9000.)
- 3) Defines an “admitted surety insurer” as having the meaning provided in Section 995.120 of the Code of Civil Procedure. (Civ. Code § 8002.)
- 4) Defines “direct contractor” as a contractor that has a direct contractual relationship with an owner. (Civ. Code § 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. (Civ. Code § 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. (Civ. Code § 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. (Civ. Code § 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. (Civ. Code § 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. (Civ. Code § 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. (Civ. Code § 8844.)

This bill:

- 1) Makes various findings and declarations related to construction projects and the need for clear procedures for resolving disputes.
- 2) Specifies that its provisions apply to any claim by a contractor, or where authorized, a subcontractor, in connection to a work of improvement or site improvement.
- 3) Specifies that, upon receipt of a claim pursuant to its provisions, the owner to which the claim applies must perform a reasonable review of the claim and, within 30 days, provide the claimant a written statement identifying what portion of the claim is disputed and what is not.

- 4) Requires the claimant to furnish reasonable documentation to support the claim.
- 5) Permits the parties, by mutual agreement, to extend the time period described in its provisions.
- 6) Specifies that, if a claimant disputes all or part of an owner's written response to the claim, or if the owner fails to respond to the claim within the required timeframe, the claimant may demand in writing an informal conference to meet and confer for settlement.
- 7) Specifies that, upon receipt of a demand for an informal conference, the owner must schedule the meet and confer conference with the claimant within 30 days.
- 8) Specifies that, within 10 days of the conclusion of the meet and confer conference, if the claim or any part thereof remains in dispute, the owner must provide the claimant a written statement identifying the portion that remains in dispute.
- 9) Specifies that any remaining disputed claims after the informal conference must be submitted to nonbinding mediation, with the owner and the claimant sharing the costs equally. Requires the parties to mutually agree to a mediator within 10 business days after the remaining disputed portion of the claim has been identified in writing, and that, if the parties cannot agree on a mediator within this time period, the contractor may select the mediator.
- 10) Specifies that, if mediation is unsuccessful, the remaining dispute shall be subject to the dispute resolution procedures in the written contract, or by final judgment or operation of law if no dispute resolution procedures exist in the contract.
- 11) Specifies that an owner's failure to respond to a claim within the time periods required, or to otherwise fail to meet the requirements of its provisions, shall result in the claim being deemed denied in its entirety. However, specifies that this denial shall not constitute an adverse finding with regard to the merits of any claim.
- 12) Requires undisputed amounts of a claim to be paid within 60 days, and that undisputed amounts not paid in a timely manner will bear two percent interest

per month. Specifies that disputed amounts found to be owed through the contract's dispute resolution procedures or by final judgment or operation of law also shall bear interest at two percent per month.

- 13) Specifies that, if a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against the owner because they do not have privity of contract with the owner, the contractor must present the claim to the owner on the subcontractor's behalf. Permits a subcontractor to request in writing that the contractor present a claim for work that was performed by the subcontractor or lower tier subcontractor. Requires a subcontractor requesting their claim be furnished to the owner must furnish the contractor with timely and reasonable documentation to support the claim in order for the contractor to meet their obligations, and that the subcontractor must cooperate with the contractor in the informal conference, mediation, and dispute resolution processes required. Requires the contractor to exercise good faith in presenting the subcontractor's claim, and prohibits the contractor from making any settlement of a claim to which the subcontractor does not approve. Requires the contractor to notify the subcontractor within 30 days of receiving their request to present their claim to the owner whether the contractor presented the claim and, if not, a statement why the contractor did not.
- 14) Clarifies that the process in (13), above, does not preclude a subcontractor from exercising their lien rights and stop work notice rights.
- 15) Provides that a contractor and subcontractors have the right to suspend performance of their work, without penalty, until the payment is received if: the contractor or subcontractor informs the owner by registered or certified mail that payment is due pursuant to the bill's provisions, or where the claim is deemed denied; 30 days have passed since this notice of due payment is sent to the owner; and the contractor or subcontractor sends a 10-day written notice of intent to stop work.
- 16) Specifies that any disputed amount which the owner agrees to pay, or which the owner is found to owe, shall, from the date of the agreement or finding, be considered an undisputed amount.
- 17) Specifies that a waiver of the rights provided by these provisions is void and contrary to public policy. Specifies that the parties may mutually agree to waive, in writing, the informal conference and mediation provisions and proceed directly to the commencement of a civil action or binding arbitration.

- 18) Specifies that contractors, owners, and subcontractors may agree to reasonable change order, claim, and dispute resolution procedures and requirements in addition to these provisions as long as those contractual provisions do not conflict with or impair the timeframes and procedures provided.
- 19) For the purposes of the bill's provisions, defines the following terms:
- a) "Claim" to mean a separate demand by a contractor, or, where authorized, sent by registered mail or certified mail with return receipt requested, for one or more 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 a 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; or
 - iii. payment of an amount that is disputed by the owner.
 - b) "Owner" to mean an 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 a contract of purchase, as lessee, or other interest or estate less than the fee. Specifies that, 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" within the meaning of this section. Specifies that "owner" does not include a state agency, department, office, division, bureau, board, or commission, the CSU, UC, a city, county, city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation, as specified.
- 20) Specifies that these provisions do apply to contracts entered into on or after January 1, 2026, and that these provisions are repealed as of January 1, 2030.
- 21) Exempts from its provisions the construction of a residential project if the project is not mixed use and does not exceed four stories.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/22/25)

Southern California Association of Scaffold Contractors (source)
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
Northern California Allied Trades
Northern California Floor Covering Association
Southern California Contractors Association
Southern California Glass Management Association
United Contractors
Wall and Ceiling Alliance
Western Painting and Coating Contractors Association
Western Wall and Ceiling Contractors Association

OPPOSITION: (Verified 8/22/25)

None received

ARGUMENTS IN SUPPORT:

According to the Southern California Association of Scaffold Contractors (SCASC), which is the source of SB 440:

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.

ARGUMENTS IN OPPOSITION:

ASSEMBLY FLOOR: 77-0, 8/21/25

AYES: Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NO VOTE RECORDED: Addis, Ransom

Prepared by: Ian Dougherty / JUD. / (916) 651-4113
8/22/25 15:36:02

**** **END** ****