



General Assembly

February Session, 2002

Amendment

LCO No. 4246

HB0563504246HD0

Offered by:

REP. O'ROURKE, 32nd Dist.

REP. BLACKWELL, 12th Dist.

REP. GUERRERA, 29th Dist.

To: House Bill No. 5635

File No. 331

Cal. No. 211

**"AN ACT CONCERNING PAYMENT BONDS FOR THE
PROTECTION OF EMPLOYEES AND MATERIALMEN."**

1 Strike lines 41 to 52, inclusive, in their entirety and insert the
2 following in lieu thereof:

3 "(d) Any subdivision of the state which fails or neglects to obtain
4 delivery of the bonds required by subsection (a) of this section shall be
5 subject to the provisions of subsection (b) of section 49-42, as amended
6 by this act.

7 Sec. 2. Section 49-42 of the general statutes, as amended by section
8 48 of public act 01-195, is repealed and the following is substituted in
9 lieu thereof (*Effective October 1, 2001*):

10 (a) Any person who performed work or supplied materials for
11 which a requisition was submitted to, or for which an estimate was
12 prepared by, the awarding authority and who does not receive full

13 payment for such work or materials within sixty days of the applicable
14 payment date provided for in subsection (a) of section 49-41a, or any
15 person who supplied materials or performed subcontracting work not
16 included on a requisition or estimate who has not received full
17 payment for such materials or work within sixty days after the date
18 such materials were supplied or such work was performed, may
19 enforce such person's right to payment under the bond by serving a
20 notice of claim on the surety that issued the bond and a copy of such
21 notice to the contractor named as principal in the bond within one
22 hundred eighty days of the applicable payment date provided for in
23 subsection (a) of section 49-41a, or, in the case of a person supplying
24 materials or performing subcontracting work not included on a
25 requisition or estimate, within one hundred eighty days after the date
26 such materials were supplied or such work was performed. The notice
27 of claim shall state with substantial accuracy the amount claimed and
28 the name of the party for whom the work was performed or to whom
29 the materials were supplied, and shall provide a detailed description
30 of the bonded project for which the work or materials were provided.
31 If the content of a notice prepared in accordance with subsection (b) of
32 section 49-41a complies with the requirements of this section, a copy of
33 such notice, served within one hundred eighty days of the payment
34 date provided for in subsection (a) of section 49-41a upon the surety
35 that issued the bond and upon the contractor named as principal in the
36 bond, shall satisfy the notice requirements of this section. Within
37 ninety days after service of the notice of claim, the surety shall make
38 payment under the bond and satisfy the claim, or any portion of the
39 claim which is not subject to a good faith dispute, and shall serve a
40 notice on the claimant denying liability for any unpaid portion of the
41 claim. The notices required under this section shall be served by
42 registered or certified mail, postage prepaid in envelopes addressed to
43 any office at which the surety, principal or claimant conducts business,
44 or in any manner in which civil process may be served. If the surety
45 denies liability on the claim, or any portion thereof, the claimant may
46 bring action upon the payment bond in the Superior Court for such
47 sums and prosecute the action to final execution and judgment. An

48 action to recover on a payment bond under this section shall be
49 privileged with respect to assignment for trial. The court shall not
50 consolidate for trial any action brought under this section with any
51 other action brought on the same bond unless the court finds that a
52 substantial portion of the evidence to be adduced, other than the fact
53 that the claims sought to be consolidated arise under the same general
54 contract, is common to such actions and that consolidation will not
55 result in excessive delays to any claimant whose action was instituted
56 at a time significantly prior to the motion to consolidate. In any such
57 proceeding, the court judgment shall award the prevailing party the
58 costs for bringing such proceeding and allow interest at the rate of
59 interest specified in the labor or materials contract under which the
60 claim arises or, if no such interest rate is specified, at the rate of interest
61 as provided in section 37-3a upon the amount recovered, computed
62 from the date of service of the notice of claim, provided, for any
63 portion of the claim which the court finds was due and payable after
64 the date of service of the notice of claim, such interest shall be
65 computed from the date such portion became due and payable. The
66 court judgment may award reasonable attorneys fees to either party if
67 upon reviewing the entire record, it appears that either the original
68 claim, the surety's denial of liability, or the defense interposed to the
69 claim is without substantial basis in fact or law. Any person having
70 direct contractual relationship with a subcontractor but no contractual
71 relationship express or implied with the contractor furnishing the
72 payment bond shall have a right of action upon the payment bond
73 upon giving written notice of claim as provided in this section.

74 (b) In the event a bond has not been obtained by any subdivision of
75 the state, as required by section 49-41, as amended by this act, any
76 person who performed work or supplied materials for which a
77 requisition was submitted to or for which an estimate was prepared by
78 the awarding authority and who does not receive full payment for
79 such work or materials within sixty days of the applicable payment
80 date provided for in subsection (a) of section 49-41a, or any person
81 who supplied materials or performed subcontracting work not

82 included on a requisition or estimate who has not received full
83 payment for such materials or work within sixty days after the date
84 such materials were supplied or such work was performed, may
85 enforce his right to payment by serving a notice of claim on the
86 awarding authority and a copy of such notice to the contractor
87 responsible for payment, within one hundred eighty days of the
88 applicable payment date provided for in subsection (a) of section 49-
89 41a, or, in the case of a person supplying materials or performing
90 subcontracting work not included on a requisition or estimate, within
91 one hundred eighty days after the date such materials were supplied
92 or such work was performed. The notice of claim shall state with
93 substantial accuracy the amount claimed and the name of the party for
94 whom the work was performed or to whom the materials were
95 supplied, and shall provide a detailed description of the project for
96 which the work or materials were provided. If the content of a notice
97 prepared in accordance with subsection (b) of section 49-41a complies
98 with the requirements of this section, a copy of such notice, served
99 within one hundred eighty days of the payment date provided for in
100 subsection (a) of section 49-41a upon the awarding authority and upon
101 the contractor, shall satisfy the notice requirements of this section.
102 Within ninety days after service of the notice of claim, the awarding
103 authority or the contractor, or both, as the case may be, shall make
104 payment and satisfy the claim, or any portion of the claim which is not
105 subject to a good faith dispute, and shall serve a notice on the claimant
106 denying liability for any unpaid portion of the claim. The notices
107 required under this section shall be served by registered or certified
108 mail, postage prepaid in envelopes addressed to any office at which
109 the awarding authority, contractor or claimant conducts his business,
110 or in any manner in which civil process may be served. If the awarding
111 authority or contractor, or both, as the case may be, denies liability on
112 the claim, or any portion thereof, the claimant may bring action against
113 said political subdivision of the state in the Superior Court for such
114 sums and prosecute the action to final execution and judgment. An
115 action to recover under this section shall be privileged with respect to
116 assignment for trial. The court shall not consolidate for trial any action

117 brought under this section with any other action brought unless the
118 court finds that a substantial portion of the evidence to be adduced,
119 other than the fact that the claims sought to be consolidated arise
120 under the same general contract, is common to such actions and that
121 consolidation will not result in excessive delays to any claimant whose
122 action was instituted at a time significantly prior to the motion to
123 consolidate. In any such proceeding, the court judgment shall award
124 the prevailing party the costs for bringing such proceeding and allow
125 interest at the rate of interest specified in the labor or materials contract
126 under which the claim arises or, if no such interest rate is specified, at
127 the rate of interest as provided in section 37-3a upon the amount
128 recovered, computed from the date of service of the notice of claim,
129 provided, for any portion of the claim which the court finds was due
130 and payable after the date of service of the notice of claim, such
131 interest shall be computed from the date such portion became due and
132 payable. The court judgment may award reasonable attorneys fees to
133 either party if upon reviewing the entire record, it appears that either
134 the original claim, the denial of liability, or the defense interposed to
135 the claim is without substantial basis in fact or law. Any person having
136 direct contractual relationship with a subcontractor but no contractual
137 relationship express or implied with the contractor shall have a right of
138 action upon the awarding authority or contractor, or both, as the case
139 may be, upon giving written notice of claim as provided in this section.

140 [(b)] (c) Every suit instituted under this section shall be brought in
141 the name of the person suing, in the superior court for the judicial
142 district where the contract was to be performed, irrespective of the
143 amount in controversy in the suit, but no such suit may be commenced
144 after the expiration of one year after the applicable payment date
145 provided for in subsection (a) of section 49-41a, or, in the case of a
146 person supplying materials or performing subcontracting work not
147 included on a requisition or estimate, no such suit may be commenced
148 after the expiration of one year after the date such materials were
149 supplied or such work was performed.

150 [(c)] (d) The word "material" as used in sections 49-33 to 49-43,

151 inclusive, as amended by this act, shall include construction equipment
152 and machinery that is rented or leased for use (1) in the prosecution of
153 work provided for in the contract within the meaning of sections 49-33
154 to 49-43, inclusive, as amended by this act, or (2) in the construction,
155 raising or removal of any building or improvement of any lot or in the
156 site development or subdivision of any plot of land within the
157 meaning of sections 49-33 to 49-39, inclusive, as amended by this act.

158 (e) Nothing in this section shall be construed to extend any liability
159 for a person's right to payment under subsection (b) of this section to
160 any subdivision in compliance with subsection (a) of section 49-41, as
161 amended by this act, or to the state or any of its agencies therein. This
162 section shall not be construed to constitute a waiver of the state's
163 sovereign immunity."