



General Assembly

January Session, 2009

Amendment

LCO No. 6388

SB0078506388SD0

Offered by:
SEN. COLAPIETRO, 31st Dist.

To: Subst. Senate Bill No. 785 File No. 536 Cal. No. 367

"AN ACT CONCERNING CONSTRUCTION CHANGE ORDERS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 42-158j of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective July 1, 2009*):

5 (a) Each construction contract shall contain the following
6 provisions: (1) A requirement that the owner pay any amounts due
7 any contractor, subcontractor or supplier in a direct contractual
8 relationship with the owner, whether for labor performed or materials
9 furnished, not later than thirty days after the date any written request
10 for payment has been made by such contractor, subcontractor or
11 supplier; (2) a requirement that the contractor pay any amounts due
12 any subcontractor or supplier, whether for labor performed or
13 materials furnished, not later than thirty days after the date the
14 contractor receives payment from the owner which encompasses labor
15 performed or materials furnished by such subcontractor or supplier;

16 and (3) a requirement that the contractor shall include in each of its
17 subcontracts a provision requiring each subcontractor and supplier to
18 pay any amounts due any of its subcontractors or suppliers, whether
19 for labor performed or materials furnished, not later than thirty days
20 after the date such subcontractor or supplier receives a payment from
21 the contractor which encompasses labor performed or materials
22 furnished by such subcontractor or supplier.

23 (b) Each payment requisition submitted in accordance with the
24 requirements of subsection (a) of this section shall include a statement
25 showing the status of all pending construction change orders, other
26 pending change directives and approved changes to the original
27 contract or subcontract. Such statement shall identify the pending
28 construction change orders and other pending change directives, and
29 shall include the date such change orders and directives were initiated,
30 the costs associated with their performance and a description of the
31 work completed. As used in this section, "pending construction change
32 order" or "other pending change directive" means an authorized
33 directive for extra work that has been issued to a contractor or a
34 subcontractor for which payment has not been processed, despite the
35 contractor or subcontractor having satisfied all of such contractor's or
36 subcontractor's other obligations pursuant to the contract or
37 subcontract.

38 [(b)] (c) (1) If payment is not made by an owner in accordance with
39 the requirements of subdivision (1) of subsection (a) of this section or
40 any applicable construction contract, such contractor, subcontractor or
41 supplier shall set forth its claim against the owner through notice by
42 registered or certified mail.

43 (2) If payment is not made by a contractor in accordance with the
44 requirements of subdivision (2) of subsection (a) of this section or any
45 applicable construction contract, the subcontractor or supplier shall set
46 forth its claim against the contractor through notice by registered or
47 certified mail.

48 (3) If payment is not made by a subcontractor or supplier in
49 accordance with the provisions of subdivision (3) of subsection (a) of
50 this section, the subcontractor or supplier to whom money is owed
51 shall set forth its claim against the subcontractor or supplier who has
52 failed to comply with the provisions of said subdivision (3) through
53 notice by registered or certified mail.

54 (4) Ten days after the receipt of any notice specified in subdivisions
55 (1), (2) and (3) of this subsection, the owner, contractor, subcontractor
56 or supplier, as the case may be, shall be liable for interest on the
57 amount due and owing at the rate of one per cent per month. Such
58 interest shall accrue beginning on the date any such notice is received.
59 In addition, such owner, contractor, subcontractor or supplier, upon
60 written demand from the party providing such notice, shall be
61 required to place funds in the amount of the claim, plus such interest
62 of one per cent per month, in an interest-bearing escrow account in a
63 bank in this state, provided such owner, contractor, subcontractor or
64 supplier may refuse to place the funds in escrow on the grounds that
65 the party making such demand has not substantially performed the
66 work or supplied the materials according to the terms of the
67 construction contract. In the event that such owner, contractor,
68 subcontractor or supplier refuses to place such funds in escrow and
69 such owner, contractor, subcontractor or supplier is found to have
70 unreasonably withheld payment due a party providing such notice,
71 such owner, contractor, subcontractor or supplier shall be liable to the
72 party making demand for payment of such funds and for reasonable
73 attorneys' fees plus interest on the amount due and owing at the rate of
74 one per cent per month. In addition, any owner, contractor,
75 subcontractor or supplier who is found to have withheld payments to
76 a party providing such notice in bad faith shall be liable for ten per
77 cent damages.

78 [(c)] (d) No payment may be withheld from a subcontractor or
79 supplier for work performed or materials furnished because of a
80 dispute between a contractor and another contractor, subcontractor or
81 supplier.

82 [(d)] (e) This section shall not be construed to prohibit progress
83 payments prior to final payment of the contract and is applicable to all
84 subcontractors and suppliers for material or labor whether they have
85 contracted directly with the contractor or with some other
86 subcontractor on the work. Each owner that enters into a contract
87 under this section and fails or neglects to make payment to a
88 contractor for labor and materials supplied under a contract, as
89 required pursuant to this section, shall, upon demand of any person
90 who has not been paid by the contractor for such labor and materials
91 supplied in the performance of the work under the contract, promptly
92 pay the person for such labor or materials. Demand for payment shall
93 be served on the owner and a copy of each demand shall be sent to the
94 contractor by certified mail, return receipt requested to any address at
95 which the owner and contractor conduct business. If the owner fails to
96 make such payment, the person shall have a direct right of action
97 against the owner in the superior court for the judicial district in which
98 the project is located. The owner's obligations for direct payments to
99 the contractor, subcontractors or suppliers giving notice pursuant to
100 this section shall be limited to the amount owed to the contractor by
101 the owner for work performed under the contract at the date such
102 notice is provided.

103 Sec. 2. Section 49-41a of the general statutes is repealed and the
104 following is substituted in lieu thereof (*Effective July 1, 2009*):

105 (a) When any public work is awarded by a contract for which a
106 payment bond is required by section 49-41, the contract for the public
107 work shall contain the following provisions: (1) A requirement that the
108 general contractor, within thirty days after payment to the contractor
109 by the state or a municipality, pay any amounts due any subcontractor,
110 whether for labor performed or materials furnished, when the labor or
111 materials have been included in a requisition submitted by the
112 contractor and paid by the state or a municipality; (2) a requirement
113 that the general contractor shall include in each of its subcontracts a
114 provision requiring each subcontractor to pay any amounts due any of
115 its subcontractors, whether for labor performed or materials furnished,

116 within thirty days after such subcontractor receives a payment from
117 the general contractor which encompasses labor or materials furnished
118 by such subcontractor.

119 (b) Each payment requisition submitted in accordance with the
120 requirements of subsection (a) of this section, except for any such
121 payment requisition submitted pursuant to a contract for a public
122 highway or bridge project or any other construction project
123 administered by the Department of Transportation, shall include a
124 statement showing the status of all pending construction change
125 orders, other pending change directives and approved changes to the
126 original contract or subcontract. Such statement shall identify the
127 pending construction change orders and other pending change
128 directives, and shall include the date such change orders and directives
129 were initiated, the costs associated with their performance and a
130 description of the work completed. As used in this section, "pending
131 construction change order" or "other pending change directive" means
132 an authorized directive for extra work that has been issued to a
133 contractor or a subcontractor for which payment has not been
134 processed, despite the contractor or subcontractor having satisfied all
135 of such contractor's or subcontractor's other obligations pursuant to
136 the contract or subcontract.

137 [(b)] (c) If payment is not made by the general contractor or any of
138 its subcontractors in accordance with such requirements, the
139 subcontractor shall set forth his claim against the general contractor
140 and the subcontractor of a subcontractor shall set forth its claim
141 against the subcontractor through notice by registered or certified
142 mail. Ten days after the receipt of that notice, the general contractor
143 shall be liable to its subcontractor, and the subcontractor shall be liable
144 to its subcontractor, for interest on the amount due and owing at the
145 rate of one per cent per month. In addition, the general contractor,
146 upon written demand of its subcontractor, or the subcontractor, upon
147 written demand of its subcontractor, shall be required to place funds in
148 the amount of the claim, plus interest of one per cent, in an interest-
149 bearing escrow account in a bank in this state, provided the general

150 contractor or subcontractor may refuse to place the funds in escrow on
151 the grounds that the subcontractor has not substantially performed the
152 work according to the terms of his or its employment. In the event that
153 such general contractor or subcontractor refuses to place such funds in
154 escrow, and the party making a claim against it under this section is
155 found to have substantially performed its work in accordance with the
156 terms of its employment in any arbitration or litigation to determine
157 the validity of such claim, then such general contractor or
158 subcontractor shall pay the attorney's fees of such party.

159 [(c)] (d) No payment may be withheld from a subcontractor for
160 work performed because of a dispute between the general contractor
161 and another contractor or subcontractor.

162 [(d)] (e) This section shall not be construed to prohibit progress
163 payments prior to final payment of the contract and is applicable to all
164 subcontractors for material or labor whether they have contracted
165 directly with the general contractor or with some other subcontractor
166 on the work.

167 Sec. 3. Subsection (a) of section 49-42 of the general statutes is
168 repealed and the following is substituted in lieu thereof (*Effective July*
169 *1, 2009*):

170 (a) Any person who performed work or supplied materials for
171 which a requisition was submitted to, or for which an estimate was
172 prepared by, the awarding authority and who does not receive full
173 payment for such work or materials within sixty days of the applicable
174 payment date provided for in subsection (a) of section 49-41a, as
175 amended by this act, or any person who supplied materials or
176 performed subcontracting work not included on a requisition or
177 estimate who has not received full payment for such materials or work
178 within sixty days after the date such materials were supplied or such
179 work was performed, may enforce such person's right to payment
180 under the bond by serving a notice of claim on the surety that issued
181 the bond and a copy of such notice to the contractor named as

182 principal in the bond not later than one hundred eighty days after the
183 last date any such materials were supplied or any such work was
184 performed by the claimant. For the payment of retainage, as defined in
185 section 42-158i, such notice shall be served not later than one hundred
186 eighty days after the applicable payment date provided for in
187 subsection (a) of section 49-41a, as amended by this act. The notice of
188 claim shall state with substantial accuracy the amount claimed and the
189 name of the party for whom the work was performed or to whom the
190 materials were supplied, and shall provide a detailed description of
191 the bonded project for which the work or materials were provided. If
192 the content of a notice prepared in accordance with subsection [(b)] (c)
193 of section 49-41a, as amended by this act, complies with the
194 requirements of this section, a copy of such notice, served not later
195 than one hundred eighty days after the date provided for in this
196 section upon the surety that issued the bond and upon the contractor
197 named as principal in the bond, shall satisfy the notice requirements of
198 this section. Not later than ninety days after service of the notice of
199 claim, the surety shall make payment under the bond and satisfy the
200 claim, or any portion of the claim which is not subject to a good faith
201 dispute, and shall serve a notice on the claimant denying liability for
202 any unpaid portion of the claim. The notices required under this
203 section shall be served by registered or certified mail, postage prepaid
204 in envelopes addressed to any office at which the surety, principal or
205 claimant conducts business, or in any manner in which civil process
206 may be served. If the surety denies liability on the claim, or any
207 portion thereof, the claimant may bring action upon the payment bond
208 in the Superior Court for such sums and prosecute the action to final
209 execution and judgment. An action to recover on a payment bond
210 under this section shall be privileged with respect to assignment for
211 trial. The court shall not consolidate for trial any action brought under
212 this section with any other action brought on the same bond unless the
213 court finds that a substantial portion of the evidence to be adduced,
214 other than the fact that the claims sought to be consolidated arise
215 under the same general contract, is common to such actions and that
216 consolidation will not result in excessive delays to any claimant whose

217 action was instituted at a time significantly prior to the motion to
 218 consolidate. In any such proceeding, the court judgment shall award
 219 the prevailing party the costs for bringing such proceeding and allow
 220 interest at the rate of interest specified in the labor or materials contract
 221 under which the claim arises or, if no such interest rate is specified, at
 222 the rate of interest as provided in section 37-3a upon the amount
 223 recovered, computed from the date of service of the notice of claim,
 224 provided, for any portion of the claim which the court finds was due
 225 and payable after the date of service of the notice of claim, such
 226 interest shall be computed from the date such portion became due and
 227 payable. The court judgment may award reasonable attorneys fees to
 228 either party if upon reviewing the entire record, it appears that either
 229 the original claim, the surety's denial of liability, or the defense
 230 interposed to the claim is without substantial basis in fact or law. Any
 231 person having direct contractual relationship with a subcontractor but
 232 no contractual relationship express or implied with the contractor
 233 furnishing the payment bond shall have a right of action upon the
 234 payment bond upon giving written notice of claim as provided in this
 235 section."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	42-158j
Sec. 2	<i>July 1, 2009</i>	49-41a
Sec. 3	<i>July 1, 2009</i>	49-42(a)