

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 440 (Ochoa Bogh)
Version: April 28, 2025
Hearing Date: May 6, 2025
Fiscal: No
Urgency: No
ID

SUBJECT

Private Works Construction Fair Payment and Dispute Resolution Act

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.

EXECUTIVE SUMMARY

A private work of improvement is work to construct, alter, repair, demolish, or remove buildings, bridges, and other structures, or to conduct other work on real property like leveling, grading, or landscaping, that is contracted for by a private entity. Often, the owner of a private work of improvement project contracts with a direct contractor for the work, and the direct contractor contracts with subcontractors for completion of specific components of the project. Sometimes, a change in the contractor or subcontractor's work, or the timeline for completing the project, occurs during the middle of the project. When they do, the parties can agree to what is called a change order for that new or extra work or deviation from the contract. Because the change order was not in the original contract, and may not be a written agreement, disputes sometimes arise regarding payment for the extra work, with contractors and subcontractors often suffering due to late or only partial payment for their work under the change order.

SB 440 creates a process through which a party may submit a claim related to an extension of time or additional compensation under a change order for resolution through an informal conference or mediation procedures. SB 440 is sponsored by the Southern California Association of Scaffold Contractors, and is supported by various contractors' and subcontractors' organizations and trade associations. The Committee has received no timely letters of opposition.

PROPOSED CHANGES TO THE LAW

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. (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 all claims within 60 days of when the basis for the claim was discovered, and requires a claim to include: the reason for the claim and the method of calculating the time and additional compensation sought.
- 5) Permits the parties, by mutual agreement, to extend the time periods 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 subcontractor have the right to suspend performance of their work, without penalty, if the owner fails to make payment of the undisputed amounts due, until the payment is received if: the contractor or subcontractor informs the owner by registered or certified mail that an undisputed payment is past due; 30 days has passed since this notice of late 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 contractor or subcontractor bringing a claim under its provisions bears the burden of proof, by a preponderance of the evidence, to demonstrate either:
 - a) That any disputed claim was agreed upon by the owner, or any agent of the owner who was reasonably believed to have authority to amend the construction contract; or
 - b) Any disputed claim was agreed upon by the project manager in the case of minor changes that are not inconsistent with the intent of the original construction contract.
- 18) 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.
- 19) 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.
- 20) For the purposes of the bill's provisions, defines the following terms:
 - a) "Claim" to mean a separate and timely demand by a contractor, or, where authorized, 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; or
 - ii. payment of additional compensation by an owner for approved changes to the contractor's scope of work in connection with a work of improvement or site improvement, whether disputed or undisputed.
 - 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.

- 21) 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.
- 22) Exempts from its provisions the construction of residential or multi-family dwellings, and Type V construction, as defined.

COMMENTS

1. Author’s statement

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) from 2016. AB 626 unanimously passed the Assembly and Senate.

2. Public works of improvement

A “work of improvement” is work to construct, alter, repair, demolish, or remove buildings, bridges, and other structures, or to conduct work such as leveling, grading, or landscaping real property. (Civ. Code § 8050.) Residential or mixed-use and commercial projects can be a work of improvement. When a work of improvement is contracted for by a public entity, it is considered a public work of improvement, while all other works of improvement are private works of improvement. (Civ. Code §§ 8160, 9000.) Often, works of improvement are quite complex, as they require different tasks and types of construction work be completed for the same project, such as laying a building’s foundation, erecting the building’s frame, and installing electrical components. Thus, the owner of the project often contracts with direct contractors for the work, and direct contractors contract with subcontractors for completion of specific components of the project. Because subcontractors work under the direct contractor (or even another subcontractor), they do not have a contractual relationship with the owner.

Owners and direct contractors contracting for subcontract work often require the contractor or subcontractor to obtain a performance bond, which guarantees that the work contracted for will be performed. In a performance bond, the contractor obtains the bond from a surety, and if the contractor fails to perform the work contracted for, the surety will be responsible for ensuring the work is completed. While performance bonds are required in public works of improvement, they are not required for private works of improvement. In addition, owners also often require a retention from the contract amount for the project to ensure that the work contracted for is completed satisfactorily, which are specified amounts withheld from payments under the contract until the work is completed in order to ensure the work is completed as contracted.

Sometimes, a change to the work to be completed under a contract for work on a construction project must be made mid-way through the project. This could be because the owner determined that additional work is needed to complete the project, because different or additional materials are needed, or more time is needed to complete the project. When this happens, the parties agree to what is called a change order.

3. The law relating to public works of improvement

Works of improvement typically include progress payments to the contractors involved as various stages of the work is being completed. California law requires that an owner

of a private work of improvement pay a direct contractor a progress payment for the work completed within 30 days after the direct contractor demands the progress payment pursuant to the contract, unless the parties agree otherwise in writing. (Civ. Code § 8800.) If there is a good faith dispute between the owner and the direct contractor regarding the progress payment, the owner may withhold up to 150% of the disputed amount. An owner that violates those requirements or pays a direct contractor late is liable for a penalty of two percent per month of the amount of the payment wrongfully withheld.

If an owner or a direct contractor withholds a retention payment, California law also outlines specific requirements for that retention payment. When an owner withholds a retention from a direct contractor, the owner must pay the retention within 45 days after the completion of the work of improvement, unless there is a good faith dispute regarding the retention payment due. (Civ. Code § 8812.) If a direct contractor withholds a retention from a subcontractor, the direct contractor must pay the retention due to the subcontractor within 10 days after receiving all or part of a retention payment the direct contractor receives from the owner. (Civ. Code § 8814.) Like with progress payments, an owner or a direct contractor may withhold from a retention payment up to 150% of a disputed amount when a good faith dispute exists between the owner and direct contractor or the direct contractor and the subcontractor. When an owner or direct contractor does not make a retention payment within the timelines required, they are liable to the party to which the payment is owed for a penalty of two percent per month of the amount wrongfully withheld. (Civ. Code § 8818.) If the party due payment brings a civil action to collect the amount wrongfully withheld, the prevailing party is entitled to the costs of the action and their reasonable attorney's fees.

Current law provides a number of remedies for when direct contractors and subcontractors and their employees are not paid. If the owner of a construction project does not pay a direct contractor the amount due to the written contract within 35 days after the date that the payment was due, and there is no dispute regarding the direct contractor's satisfactory completion of the work, the direct contractor may cease work on the project. (Civ. Code § 8832.) To do so, the direct contractor must provide the owner with a stop work notice that states that the direct contractor will stop work if the amount owed is not paid within 10 days after the notice is given. (Civ. Code § 8830.) At least five days before giving the stop work notice, the contractor also must post a notice of their intent to give a stop work notice. If payment is not made within 10 days, the direct contractor giving the stop work notice, the direct contractor, their surety, or an owner may seek a judicial determination of liability for the amount due in an expedited proceeding in court. (Civ. Code § 8844.) In addition to the stop work notice remedy, many private construction projects include payment bonds, which guarantee that subcontractors, suppliers, or workers will be paid for their work and materials. The payment bond is a financial guarantee on which the subcontractor or worker who is the beneficiary on the bond may file a claim with the surety for the payment guaranteed by the bond when they are not paid.

Every worker on a construction project also has a right to a mechanics' lien on the property on which they worked. The mechanic's lien is available to a direct contractor, subcontractor, material supplier, laborer, and others who provided work authorized for a work of improvement. (Civ. Code § 8400.) Unlike some of the above-described remedies, the mechanic's lien is applicable not just when there is a written contract, but rather when work is provided at the request or agreement of the owner, or is provided or authorized by a direct contractor, subcontractor, or other person that has charge of all or part of the construction project. (Civ. Code § 8404.) A claimant may enforce the lien if they have first given notice, and have recorded a claim of lien on the property within a certain amount of time of ceasing work or completing the project. (Civ. Code §§ 8412-8414.) This tool allows the worker or contractor to obtain what they are owed for their work by placing the lien on the title of the property of the construction, and foreclosing on the lien to obtain payment.

In addition to the above-described remedies and tools for ensuring payment, contractors and subcontractors on any construction project always have standard contract law remedies available in order to recover what they are owed under the agreement through a civil action.

4. SB 440 creates a process by which disputes regarding change orders may be resolved

The authors assert that the current process for private works of improvement projects is insufficient to ensure that direct contractors and subcontractors can be paid what they are owed when there are change orders on a project. According the author, this is because change orders are in addition to, or a change to, the original written contract. These change orders also may not be written themselves, and thus fall outside some of the statutory remedies like the stop work notice process or a claim upon the payment bond. They assert that, currently, contractors and subcontractors suffer financially because of long delays in payment for change orders, and that power inequities between the parties pushes subcontractors to negotiate for a fraction of their pay on change orders than they were due.

To address this, SB 440 creates a procedure through which parties in a private work of improvement can resolve a dispute regarding a time extension, including for relief from contractual damages or penalties for delay, and regarding payment of additional compensation for approved changes to the contractor's scope of work. The process provided by SB 440 is similar to a dispute resolution process created for public works of improvement by AB 626 (Chiu, Ch. 810, Stats. 2016) in 2016.

Under SB 440's process, a party may file a claim with the owner within 60 days of when the basis for the claim is discovered. The owner must review the claim within 30 days and provide a written statement identifying what portions of the claim are disputed and undisputed. Any undisputed portions of the claim, less any authorized retention, must be paid within 60 days after the owner issues its written statement. If the claimant

disputes any part of the owner's written response, or if the owner fails to respond to the claim, the claimant may demand an informal conference with the owner. The owner must schedule this informal conference within 30 days of the claimant requesting it, and the owner must provide a written statement of any remaining portion of the claim still in dispute within 10 days of the informal conference. SB 440 then provides that the parties must submit the remaining disputed claim to nonbinding mediation. The claimant and the owner must agree to a mediator within 10 business days after the remaining dispute is identified after the informal conference, but if the parties cannot agree to a mediator in that time, SB 440 provides that the direct contractor may select the mediator. If portions of the claim remain in dispute after mediation, the dispute can be resolved through the procedures in the parties' written contract or as provided for in law.

SB 440 permits a contractor or subcontractor to suspend work without penalty if the owner fails to pay any undisputed amounts when due. However, it specifies that such suspension of work can only happen if the owner is informed by registered or certified mail, 30 days have passed since the notice of late payment is provided to the owner, and the contractor or subcontractor sends a 10-day written notice of intent to stop work.

SB 440 also provides a process by which a direct contractor can "pass through" a subcontractor's claim directly to the owner. This process is important because subcontractors often do not have a contractual relationship with the owner, and thus cannot enforce payment upon the owner. SB 440 requires that, if a subcontractor lacks legal standing to assert a claim against an owner because they do not have privity of contract, the direct contractor must present the claim to the owner on behalf of the subcontractor. The subcontractor must request in writing that the contractor present their claim for work performed, and must furnish to the contractor timely and reasonable documentation to support their claim. The subcontractor then must go through the dispute resolution process under SB 440 with the contractor and the owner. SB 440 specifies that this process does not preclude a subcontractor from exercising its lien rights or stop work notice rights.

SB 440's process would be a dispute resolution process, within specified time frames, to take place outside of a legal process. Its provisions may not be waived, except that the parties may mutually agree in writing to waive the informal conference and mediation procedures, and proceed directly to a civil action or binding arbitration upon receipt of a claim. If one of the parties does not agree to proceed directly to a civil action, the parties would be required to follow SB 440's dispute resolution process first. However, SB 440 does permit owners, contractors, and subcontractors to agree to reasonable change order, claim, and dispute resolution procedures that are in addition to SB 440's provisions, so long as they do not conflict with or impair the timelines and procedures in SB 440.

SB 440 would repeal its provisions on January 1, 2030.

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 received

RELATED LEGISLATION

Pending Legislation: SB 61 (Cortese, 2025) prohibits an owner, direct contractor, or a subcontractor of a private work of improvement from withholding a retention payment from a direct contractor or subcontractor of more than five percent, except as specified. SB 61 is currently awaiting referral in the Assembly.

Prior Legislation:

AB 626 (Chiu, Ch., Stats. 2016) created a claim resolution process applicable to any claim by a contractor in connection with a public works project for a: a time extension for relief from damages or penalties for delay; payment of money or damages arising from work done pursuant to the contract for a public work; or payment of an amount disputed by the public entity, as specified. Required a public entity, excluding certain state entities, upon receipt of a claim to review it and, within 45 days, provide a written statement identifying the disputed and undisputed portions of the claim. Required any payment due on an undisputed portion of the claim to be processed within 60 days, as specified, and required that the claim be deemed rejected in its entirety if the public entity fails to issue the written statement. Authorized, if the claimant disputed the public entity's written response or if the public entity failed to respond to a claim within the time prescribed, the claimant to demand to meet and confer for settlement of the

issues in dispute, and required any disputed portion of the claim that remains in dispute after the meet and confer conference to be subject to nonbinding mediation, as specified. Provided that unpaid claim amounts accrue interest at 7% annually, and provided a procedure by which a subcontractor or lower tier contractor may make a claim through the contractor.

SB 189 (Lowenthal, Ch. 697, Stats. 2010) established the provisions related to retention payments in private works of improvement that specify the timelines for when retention payments must be paid, and the penalties for an owner or direct contractor's violation of its provisions.
