

The following is an article that summarizes a number of the new 2010 California laws that may impact members of the construction industry. If you are a member of a trade association you are welcome to send this to your members; provided, however that you the final paragraph is included and the article is attributed to William Last.

May prosperity return to the construction industry during 2010.

~~~~~  
Last & Faoro Construction Law Update Newsletter  
January 2010  
~~~~~

## A 2010 SUMMARY OF NEW CALIFORNIA LAWS THAT MAY IMPACT THE CONSTRUCTION INDUSTRY

By William C. Last, Jr.  
Attorney at Law

Last year the California legislature passed and the governor approved 696 new bills; many of which will impact the construction industry. The remainder of this article sets forth a brief summary of a number of the new California construction industry related new laws.

### **Public Works Laws:**

#### AB 1086, Miller. Public contracts: Sole source Specifications

This bill would make findings and declarations regarding the intent of the "or equal" specification Public Contract Code provision to encourage contractors and manufacturers to develop and implement new and ingenious materials, products, and services, as specified, at a lower cost to taxpayers.

#### AB 561, Carter. Highway workers: assault and battery

This bill would expand the definition of highway worker for that offense to include employees of a city, county, or city and county, as well as employees of a contractor while working under contract with the Department of Transportation, contractors and employees of contractors while working under contract with a city, county, or city and county, and volunteers, as defined, and to include additional specified activities related to local roads or streets for the existing offense of assault against a highway worker engaged in the performance of his or her duties, where "highway worker" is defined as an employee or contractor of the Department of Transportation engaged in specified activities related to state highways.

AB 672, Bass. Transportation: bond-funded projects: letter of no prejudice

This bill would authorize a regional or local agency that is a lead agency for a project or project component for which bond funding has been programmed or otherwise approved by the administrative agency or is otherwise targeted to be available, as specified, to apply to the administrative agency for a letter of no prejudice that would make the regional or local agency eligible to be subsequently reimbursed from bond funds for expenditures of funds under its control for the project or project component under certain conditions, as specified. Existing law requires the California Transportation Commission to establish the funding shares for applicants for funds from the State-Local Partnership Account in the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Fund of 2006.

AB 1196, Blumenfeld. The False Claims Act

This bill defines terms for purposes of the False Claim Act, expands the definition of a claim, and requires the imposition of a civil penalty on a person found liable for a violation. It also expands the statute of limitation for pursuing a false claim. It also expands the standard for the defendant to recover attorney's fees.

**Construction Defects in Common Interest Projects:**

AB 927, Charles Calderon. Common interest developments: construction defects

This law extends the pre-litigation requirements for a common interest project (e.g. condominium) to file a lawsuit, as set forth in the Davis-Stirling Common Interest Development Act, to July 1, 2017.

**Lien Laws:**

AB 457, Monning. Liens (Becomes effective on 1/1/2011)

This bill provides that the definition of "claim of lien" is also the definition of "mechanic's lien" and would include within this definition a Notice of Mechanic's Lien, which would contain specified information regarding the legal effect of the lien. The bill requires the mechanic's lien and the Notice of Mechanic's Lien to be served, as specified, on the owner or reputed owner of the property, or on the construction lender or the original contractor if those parties cannot be served. The bill requires a proof of service affidavit to be completed and signed by the person serving the Notice of Mechanic's Lien, and it would be included as part of the mechanic's lien or claim of lien. The bill provides that a failure to serve the mechanic's lien, including the Notice of Mechanic's Lien, as required, will cause the mechanic's lien to be unenforceable as a matter of law. The bill also revises the permissive provisions regarding the recording of the complaint to enforce the lien, as described above, to make them mandatory. Note: The amendments proposed by this act shall be operative on January 1, 2011.

AB 31, Price. Public contracts: Small Business Procurement and Contract Act

This bill increases the maximum amount a state agency can award for goods, services and informational technology to a small businesses and disabled veteran business enterprises without complying with competitive bidding requirements from \$100,000 to \$250,000

SB 548, Huff. California Disabled Veteran Business Enterprise Program

This bill will require an awarding department, upon completion of an awarded contract for which a commitment to achieve a disabled veteran business enterprise goal was made, to require the prime contractor that entered into a subcontract with a disabled veteran business enterprise to certify to the awarding department certain information pertaining to the contract, and that all payments under the contract have been made to the disabled veteran business enterprise. This bill also requires an awarding department to keep that certification on file. Finally, this bill will specify that a person or entity that knowingly provides false information is subject to a civil penalty, as specified, and that an action for a civil penalty may be brought by any public prosecutor in the name of the people of the State of California.

**Storm Water:**

SB 310, Ducheny. Water quality: storm water and other runoff

This bill will authorize a county, city, or special district that is a permittee or co-permittee under an NPDES permit for a municipal separate storm sewer system to develop a watershed improvement plan that addresses major sources of pollutants in receiving water, storm water, urban runoff, or other surface runoff pollution within the watershed or sub-watershed to which the plan applies. The regional boards will be authorized to participate in the preparation of the watershed improvement plan.

SB 790, Pavley. Resources: water quality: storm water resource plans

This bill authorizes grants for projects designed to implement or promote low-impact development for new or existing developments that will contribute to the improvement of water quality or reduce storm water runoff and for projects designed to implement specified storm water resource plans. This bill authorizes a city, county, or special district to develop, jointly or individually, storm water resource plans that meet certain standards. The bill authorizes a regional water management group to coordinate its planning activities to address or incorporate into its plan any storm water resource planning that is undertaken pursuant to the bill's provisions.

**Building Standards:**

AB 210, Hayashi. Green building standards

This bill specifies that the requirements and regulations that a city or county is authorized to change or modify include, but are not limited to, green building standards. This bill also provides that the adopted and established standards include, but are not limited to, green building standards.

## **Workers Compensation Laws:**

### AB 361, Bonnie Lowenthal. Workers' compensation: treatment authorization

This bill provides that, regardless of whether an employer has established a medical provider network or entered into a contract with a health care organization, an employer that authorizes medical treatment shall not rescind or modify the authorization for the portion of the medical treatment that has been provided after that treatment has been provided for any reason, including, but not limited to, the employer's subsequent determination that the physician who treated the employee was not eligible to treat that injured employee. This bill also provides that its provisions shall not be construed to expand or alter the benefits available under, or the terms and conditions of, any contract, including, but not limited to, existing medical provider network and health care organization contracts. The bill also provides that its provisions shall not be construed to impact the ability of the employer to transfer treatment of an injured employee into a medical provider network or health care organization. The bill further provides that its provisions shall not be construed to establish that a provider of authorized medical treatment is the primary care physician for specified purposes.

### AB 1093, Yamada. Workers' compensation

This bill provides that for purposes of determining whether to grant or deny a workers' compensation claim, if an employee is injured or killed by a 3rd party in the course of the employee's employment, no personal relationship or personal connection shall be deemed to exist between the employee and the 3rd party based only on a determination that the 3rd party injured or killed the employee solely because of the 3rd party's personal beliefs relating to his or her perception of the employee's race, religious creed, color, national origin, age, gender, disability, sex, or sexual orientation.

### SB 313, DeSaulnier. Workers' compensation: penalty assessments

This bill increases the penalty assessment from \$1,000 to \$1,500 per employee employed during the period the employer was uninsured.

### AB 483, Buchanan. Workers' compensation: Internet Web sites

This bill requires a licensed rating organization to establish and maintain a website for the purpose of assisting a person to determine whether an employer is insured for the purpose of workers' compensation.

## **Licensure:**

### AB 370, Eng. Unlicensed contractors

This bill makes a first conviction of contracting without a license punishable by a fine not exceeding \$5,000 or by imprisonment in a county jail for no more than 6 months, as specified, or both. The bill requires that the fine for a 2nd conviction be the greater of 20% of the contract price, 20% of the aggregate payments made to, or at the direction of, the unlicensed contractor, or \$5,000. In addition, the bill requires that a 3rd or subsequent conviction be punishable by both a fine and imprisonment in a county jail, as specified, and would require that the fine be no less than \$5,000 and no more than the greater of

\$10,000, 20% of the contract price, or 20% of the aggregate payments made to, or at the direction of, the unlicensed contractor. Under the provisions described above, the bill also provides that a person who used the services of an unlicensed contractor is a victim of crime and eligible for restitution for economic losses, regardless of whether that person had knowledge that the contractor was unlicensed.

### **Other new California Laws that will impact contractors:**

#### AB 1090, Monning. Arbitration

Existing law requires a person serving as a neutral arbitrator pursuant to an arbitration agreement to comply with the ethics standards for arbitrators adopted by the Judicial Council. This bill specifies that certain ethics requirements and standards are nonnegotiable and shall not be waived.

#### AB 5, Evans. Civil discovery: Electronic Discovery Act

This bill establishes procedures for a person to obtain discovery of electronically stored information, as defined, in addition to documents, tangible things, and land or other property, in the possession of any other party to the action. This bill permits discovery by the means of copying, testing, or sampling, in addition to inspection, of documents, tangible things, land or other property, or electronically stored information.

### **Miscellaneous New Laws:**

As of August 7, 2009 there is a new Form I-9 which contains an updated list of acceptable documents that employees must present upon hiring. The new form notes that all documents used to establish identity and/or ability to work in the United States must not be expired.

The new law requires federal contractors and subcontractors to use the E-Verify system when hiring employees. However, other employers may use the verification system. Essentially, E-Verify compare Form I-9 document information against federal government databases to verify employment eligibility.

As of November 1, 2009, California employee withholding increased as follows: (a) 10 percent mandatory increase on employee withholdings; (b) a 0.6 percent increase in supplemental wage withholding; and (c) a 1.2 percent increase on wage stock options and bonus payments.

The California laws regarding alternative workweek schedules were amended to permit an eight-hour day as a valid schedule.

#### **Conclusion**

The foregoing list is not intended to be an all inclusive list of new construction laws, but rather sets forth the primary construction related new laws and cases. If you are interested in other new laws or want to review the full text of bills, resolutions, constitutional amendments they can be found on the internet at <http://www.assembly.ca.gov/acs/>

acsframeset2text.htm. That website also has each bills status, history, votes, analyses, and/or veto messages.

With the exception of the Legislative Counsel Digest material, this article, ©2010, was written by William C. Last, Jr. Mr. Last is an attorney who has been specializing in Construction Law for over 30 years.. In addition to belonging to a number of construction trade associations, Mr. Last holds a California "A" and "B" license. He can be contacted at 415-764-1990 or 650-696-8350. A number of his past articles can be found on his website (lhconstructlaw.com). This bulletin is published periodically to provide general information about current legal issues. The articles are not intended to be a substitute for the advice of an attorney as to a specific problem. If you have a specific legal question or need legal advice, you should contact an attorney.

Quick Links...

~~~~~

Our Website: [www.lf-lawyers.com](http://www.lf-lawyers.com)

Contact Information

~~~~~

Please contact William Last at 415-793-7411.

~~~~~