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Construction Alert

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SB 440: Change order dispute rights for private projects

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California's Private Works Change Order Fair Payment Act introduces new requirements and potential pitfalls for issuance of change orders in large private construction projects.



What's the impact?

- Large California private projects must now follow a nonwaivable, deadline-driven change-order resolution process (written response, conference, then mediation), curbing "work now, fight later" practices.
- Owners face strict prompt-payment obligations and steep interest exposure (2% monthly) while contractors/subs gain leverage, including the right to suspend work if owners do not respond or do not pay.
- The statute may increase administrative burdens and disrupt project flow by encouraging issue-by-issue change-order processing.

As of January 1, 2026, California imposed new stringent procedures to pay, challenge, and mediate change orders in large private works of improvement. SB 440, the Private Works Change

Order Fair Payment Act, codified at Civil Code Section 8850, provides, among other things, any contract for private works of improvement entered into after January 1, 2026, are subject to a mandatory claims resolution and prompt payment framework for any project-related change orders. The new requirements apply to large private projects and generally exclude smaller residential projects (unless such projects are mixed-use and exceed four stories).

Previously, if a contractor submitted a proposed change order on a California private works project, it would be common practice for the owner to disagree with and reject the proposed change order, forcing the contractor to complete the work under protest, with the parties dealing with the disputed change order at the conclusion of the project.

New provisions regarding change orders

Under the new provisions of SB 440 and Civil Code Section 8850, when a contractor submits a proposed change order—for any or all of time extensions, additional compensation, or disputed amounts—the owner must respond in writing within 30 days. The owner’s response must expressly approve, reject, or partially approve the proposed change order, or request additional information from the contractor. If the owner fails to respond timely, then the claim is deemed denied in its entirety, which then allows the contractor to escalate the dispute process as outlined below as if the owner had disputed the change order in its entirety.

If the owner disputes all or part of the change order, or fails to respond, the contractor must then ask for an informal settlement conference. The owner must schedule the informal conference to take place within 30 days. Within 10 days following the conference, the owner then must provide the contractor with a written statement identifying the disputed and undisputed portions of the proposed change order. Any undisputed amount must be paid to the contractor within 60 days of the written statement. Any late payments of undisputed amounts and disputed amounts later determined to have been owed by the owner to the Contractor are subject to 2% monthly interest (24% annual), which will give contractors stronger leverage in change order disputes.

If the dispute continues as to any amount, the parties are required to submit to nonbinding mediation, with costs to be split equally and selection of a mediator required within 10 days of the owner’s written statement identifying the disputed amounts. If the parties cannot agree on a mediator, then the contractor may select one.

Subcontractors not in privity with the owner are also protected by the new requirements and can present their proposed change orders through the general contractor.

Contractors and subcontractors also have a statutory right to suspend work if the owner fails to promptly respond or submit payment.

Potential pitfalls

SB 440 reshapes change-order and dispute-resolution procedures in ways that may reduce flexibility, disrupt project flow, and reallocate pricing and delay risk between owners and contractors. The rights and obligations delineated by Section 8850 are non-waivable by contract or otherwise. In drafting new construction contract documents, owners should expect any provisions intended to avoid the notice or mediation requirements of SB 440 to be found unenforceable by California courts if challenged by contractors.

SB 440 creates both operational and commercial uncertainty in change-order administration. The bill prescribes how and when an owner must respond, but it does not set a deadline for submitting change-order requests; submission timing will therefore continue to be governed by contractual notice provisions.

Section 8850 also adds dispute-resolution steps that may encourage issue-by-issue processing. That fragmented approach can disrupt jobsite momentum and increase the risk of delay-driven, cascading change orders and related costs.

The parties may try to mitigate these effects by batching proposed change orders at defined milestones or at close-out. SB 440 also expressly permits the parties, by mutual written agreement, to extend the owner's 30-day period for an initial response. However, batching and extensions can shift risk to owners by reducing pricing visibility during performance.

Finally, although Section 8850 is nonwaivable, parties may still attempt—by mutual agreement—to reallocate downstream risks associated with delay and escalation, whether those risks arise from the statute's piecemeal process or from deferring disputes until the end of the project.

Maintain compliance with new change order deadlines

Contractors and subcontractors will need to avoid submitting vague or incomplete change orders under the new SB 440 scheme—submittal of incomplete or vague change orders will give owners an argument that the response clock never properly started or was tolled pending clarification of the ambiguous change order—while owners will need to consider the risks of failing to act timely within the deadlines created by SB 440, and the consequences (in the form of 2% monthly interest) of failing to make timely payment for change orders ultimately found to be valid.

SB 440 / CIVIL CODE SECTION 8850 SUMMARY, DEADLINE, AND IMPACT

- / Contractor issues Change Order (including supporting basis, amount, and time impacts)
 - **Deadline:** Triggers deadline for owner to respond—CO to be issued in accordance with contractual deadlines

- **Impact:** Delay in issuing the CO will result in delay of the resolution timeline codified in Civil Code Section 8850
- / Owner responds to change order (approve, reject, partial, request information)
 - **Deadline:** Within 30 days after receipt of proposed CO
 - **Impact:** Failure to respond timely will be deemed a denial of the entire claim
- / Owner pays undisputed amounts (full or partial)
 - **Deadline:** Within 60 days after approval
 - **Impact:** 2% monthly interest for amounts undisputed that go unpaid and disputed amounts later determined to have been owed by the Owner to Contractor
- / Contractor must ask for informal settlement conference
 - **Deadline:** Upon receipt of Owner's response or failure to respond
 - **Impact:** Allows parties to informally meet and confer and is a prerequisite to demand non-binding mediation
- / Owner must schedule informal settlement conference
 - **Deadline:** 30 days after request by Contractor
 - **Impact:** Prerequisite to move to mediation
- / Owner to serve written response to Contractor after informal settlement conference
 - **Deadline:** 10 days after informal conference
 - **Impact:** The response triggers 60-day deadline to pay any amounts that, after the conference, are undisputed. Also triggers deadline to select mediator for any amounts that remain in dispute
- / Owner and Contractor mutually agree to mediator (if parties do not agree, Contractor can select)
 - **Deadline:** 10 days after Owners' written response
 - **Impact:** Failure by Owner to meet statutory obligations, including participating in mediation, gives Contractor the right to stop work without penalty

Next steps for California construction project stakeholders

SB 440's new change-order procedures and tight deadlines will reshape risk allocation and project administration on large California private works. Nixon Peabody's [construction lawyers](#) help owners, developers, contractors, and subcontractors update contract documents, optimize workflows, and efficiently navigate change-order disputes, mediation, and payment compliance to keep projects moving and protect recoveries.

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