

New Law Protects Subs and Suppliers on P3 Projects

By [Chris E. Ng](#)

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Increasingly, California and other states are funding construction projects for public use through public-private partnerships. In these types of arrangements, the public entity provides the land and authorizes the private entity to design, build and, often times, operate the resulting completed public work.

On a typical California public work of improvement, the direct contractor awarded a public works contract in excess of \$25,000 is required to furnish surety bonds in an amount not less than 100% of the total contract to ensure that the project will be completed and that subcontractors and suppliers will be paid.

To entice private developers and investors into entering a public-private partnership, public entities try to minimize procurement requirements and other red tape. Depending on how funding for the construction project is structured, the project may thus be exempt from payment bond requirements and other statutory remedies, leaving subcontractors and suppliers vulnerable to non-payment.

On August 13, California Governor Jerry Brown signed legislation (Assembly Bill 164) authorizing local government agencies to use public-private partnerships to design, finance, and maintain a variety of fee-producing infrastructure facilities. The new law protects taxpayers and those that furnish labor and materials to the project by requiring the inclusion of “payment bonds to secure the payment of claims of laborers, mechanics, and materials suppliers employed on the work under contract” and “performance bonds as security to ensure the completion of the construction of the facility.”

A complete copy of the new law can be viewed here:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB164

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