

**ASSEMBLY BILL**

**No. 2966**

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**Introduced by Assembly Member Brulte**

February 23, 1996

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An act to amend Section 1167.2 of the Code of Civil Procedure, relating to unlawful detainer.

LEGISLATIVE COUNSEL'S DIGEST

AB 2966, as introduced, Brulte. Unlawful detainer.

Existing law establishes, until July 1, 1998, a pilot project in courts determined by the Judicial Council, upon approval of the affected courts and the county in which the court is located. Within the pilot project, the plaintiff in specified unlawful detainer actions may demand that the defendant deposit with the court clerk 15 days' prospective rent, calculated as specified, unless the defendant has paid the rent through the month in which the action is filed, provided the plaintiff's complaint contains specified allegations. Existing law requires court clerks to issue receipts for the deposits and to remit the deposits to the county treasury, as specified. Existing law provides, among other things, for a filing fee to be paid by a plaintiff and deposited with the county treasurer for exclusive use by the county and court for the support of this project.

This bill would extend the applicability of these provisions to all courts and delete the repeal date. This bill would require the Judicial Council to prepare a reply form, as specified. By requiring court clerks to issue receipts for the above-described deposits and to remit deposits to the county

treasury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares as  
2 follows:

3 (a) The landlord-tenant relationship is unique. Rent  
4 may not be accepted by the owner during the pendency  
5 of an unlawful detainer action without a potential waiver  
6 of all of the owner’s rights under an eviction notice.  
7 Moreover, during the pendency of unlawful detainer  
8 proceedings (1) owners are not allowed to eliminate any  
9 services provided to the tenant with the intent to cause  
10 the tenant to vacate the premises, (2) owners are not  
11 excused from making continuing real property tax,  
12 mortgage, mortgage interest, utility, insurance or  
13 maintenance payments for the premises, and (3) owners  
14 are not allowed to retake possession by self-help.

15 (b) Millions of dollars are lost by owners of residential  
16 rental property on a recurring annual basis and added to  
17 the rent of rent-paying tenants as the result of  
18 uncollectible unlawful detainer judgments and the delays  
19 inherent in the state’s unlawful detainer system.

20 (c) Approximately 220,000 unlawful detainer cases are  
21 filed annually in the state, involving less than 5 percent  
22 of the state’s rental units, costing millions of dollars in  
23 attorneys’ fees and court costs, and unnecessarily  
24 burdening court administration and taxpayers.

25 (d) It is the intent of the Legislature in establishing a  
26 statewide rent deposit project to mitigate the delays and  
27 revenue losses in the current unlawful detainer process



1 by requiring deposit with the court of unpaid prospective  
2 rent for the period from the date of the commencement  
3 of the unlawful detainer action to the date of the  
4 anticipated trial.

5 SEC. 2. Section 1167.2 of the Code of Civil Procedure  
6 is amended to read:

7 ~~1167.2. (a) (1) There is hereby established a pilot~~  
8 ~~project in at least two courts selected by the Judicial~~  
9 ~~Council subject to the approval of the affected courts and~~  
10 ~~the board of supervisors of each county in which the court~~  
11 ~~is located. The courts shall include the El Cajon Municipal~~  
12 ~~Court and a municipal court in the County of Los Angeles~~  
13 ~~subject to the approval of the affected courts and the~~  
14 ~~board of supervisors of each county in which the court is~~  
15 ~~located.~~

16 ~~The pilot project shall be considered successful if delays~~  
17 ~~and abuses in the unlawful detainer system are reduced;~~  
18 ~~due process protections are maintained for all parties;~~  
19 ~~significant administrative burdens are not imposed on the~~  
20 ~~courts, and four of the five following minimal standards~~  
21 ~~are met:~~

22 ~~(A) A 50 percent reduction of time from filing an~~  
23 ~~unlawful detainer action to regaining possession of~~  
24 ~~property in cases in which a deposit demand is made as~~  
25 ~~compared to cases where no deposit demand is made.~~

26 ~~(B) No more than 5 percent of the unlawful detainer~~  
27 ~~cases are appealed in which a demand for prospective~~  
28 ~~rent is made.~~

29 ~~(C) A 40 percent reduction in total administrative and~~  
30 ~~judicial time for the courts when disposing of unlawful~~  
31 ~~detainer actions in which deposit demand is made as~~  
32 ~~compared to cases in which no demand is made.~~

33 ~~(D) No increase in costs to the courts in cases in which~~  
34 ~~a deposit demand is made as compared to cases in which~~  
35 ~~no deposit demand is made.~~

36 ~~(E) Less than 1 percent of the unlawful detainer cases~~  
37 ~~in which a deposit demand was made involved property~~  
38 ~~subject to an outstanding violation.~~



1 ~~(2) Criteria to be considered for determining the~~  
2 ~~success of the pilot project shall include, but not be~~  
3 ~~limited to, all of the following:~~

4 ~~(A) The time for disposition of unlawful detainer cases~~  
5 ~~using the pretrial rent deposit procedure as compared to~~  
6 ~~cases under subdivision 2 of Section 1161 from previous~~  
7 ~~years for which records are available and other unlawful~~  
8 ~~detainer cases in the same time period, in which a deposit~~  
9 ~~is not demanded.~~

10 ~~(B) The percentage of hearings that are contested as~~  
11 ~~compared to failures of parties to appear at the hearing,~~  
12 ~~the number of deposits ordered to be made after a~~  
13 ~~hearing, the number of deposits actually made, and the~~  
14 ~~number of occasions the court found a substantial conflict~~  
15 ~~as to material fact or facts.~~

16 ~~(C) The effect of the procedure on the ability of the~~  
17 ~~parties to prepare and present a case at the hearing.~~

18 ~~(D) Analysis of compliance with subdivision (d) using~~  
19 ~~random samples that are sufficient to produce statistically~~  
20 ~~valid data.~~

21 ~~(E) Assessment by the courts as to the efficiency of the~~  
22 ~~procedure, and whether there was an overall increase or~~  
23 ~~decrease in the administrative burden of dealing with~~  
24 ~~unlawful detainer cases.~~

25 ~~Each court participating in the pilot project shall~~  
26 ~~develop procedures to survey participants in the process~~  
27 ~~and to gather data on its experience with the process.~~  
28 ~~Survey participants shall include, but not be limited to,~~  
29 ~~members of the judiciary, court administration, court~~  
30 ~~clerks, counsel for plaintiffs and defendants, landlords,~~  
31 ~~tenants, sheriffs, and marshals.~~

32 ~~The presiding judges of participating courts shall~~  
33 ~~report on the success of the pilot project to the Judicial~~  
34 ~~Council on or before September 30, 1997, and the Judicial~~  
35 ~~Council shall report to the Legislature on or before~~  
36 ~~December 31, 1997.~~

37 ~~(b)(1) In any action for unlawful detainer brought~~  
38 ~~under subdivision (2) of Section 1161, the plaintiff may~~  
39 ~~make a demand for a pretrial prospective rent deposit,~~  
40 ~~provided the plaintiff has alleged in the body of the~~



1 unlawful detainer complaint that no citation of a type  
2 described in subdivision ~~(d)~~ (c) is outstanding as of the  
3 date the complaint is filed. The demand shall be made in  
4 the body of the unlawful detainer complaint, on the first  
5 page thereof immediately under the case number, and on  
6 the summons issued by the court.

7 (2) The summons and complaint shall be accompanied  
8 by a reply form. The reply form shall be prepared by the  
9 ~~courts participating in the pilot project in consultation~~  
10 ~~with each other to ensure consistency. The purpose of the~~  
11 ~~form is~~ *Judicial Council* to allow the defendant to advise  
12 the court and the plaintiff that the defendant denies the  
13 allegations of the unlawful detainer complaint and  
14 intends to appear and defend the action. The information  
15 to be contained in the form shall include, but not be  
16 limited to, the following:

17 (A) A statement that in order for the defendant to  
18 protect his or her rights, the form should be completed  
19 and returned to the court immediately, but in no event  
20 later than five days from receipt of the summons and  
21 complaint. ~~Delivery to the court shall be~~ *The form shall*  
22 *be returned to the court* by personal delivery or by  
23 registered or certified mail, return receipt requested, ~~and~~  
24 postmarked within five days from receipt of the summons  
25 and complaint.

26 (B) A statement that ~~failure to return~~, *if the form is not*  
27 *returned* to the court in the time and manner prescribed  
28 herein ~~shall require~~, the defendant *shall be required* to  
29 deposit with the court the prospective rent as defined in  
30 subdivision ~~(e)~~ (d) by the date of the hearing in order to  
31 preserve the right to have a trial of this matter.

32 (C) A statement that if the defendant does not return  
33 the form to the court as prescribed herein and  
34 subsequently fails to deposit the amount of prospective  
35 rent as defined in subdivision ~~(e)~~ (d) up to and including  
36 the date of the hearing, the court shall order judgment for  
37 possession of the premises to be entered in favor of the  
38 plaintiff at the pretrial hearing.

39 (3) Upon the filing of the proof of service of the  
40 summons and complaint for unlawful detainer containing



1 a demand for a pretrial prospective rent deposit, the clerk  
2 of the court shall set a pretrial hearing date no less than  
3 eight nor more than 13 days from the filing of the proof  
4 of service, and give notice of that date to all parties by  
5 first-class mail if the plaintiff pays the fee required by  
6 Section 72055 of the Government Code, plus an additional  
7 sum in an amount set by the court to cover actual costs of  
8 the ~~pilot project, including the costs of the report~~  
9 ~~required by court associated with the procedure~~  
10 *established by this section.* The proceeds from this  
11 additional fee shall be deposited with the county  
12 treasurer and, upon appropriation, be available solely to  
13 the court and the county in which the court is located and  
14 shall be used exclusively for ~~the support of the pilot~~  
15 ~~project costs associated with this procedure.~~ ~~Participating~~  
16 ~~courts shall report to the Judicial Council on the actual~~  
17 ~~costs associated with the pilot project by March 1, 1996,~~  
18 ~~and make any necessary adjustments to the fees to reflect~~  
19 ~~the actual costs to the court and to the county for the~~  
20 ~~provision of the pilot project.~~

21 (e)

22 (b) (1) At the pretrial hearing, the court shall  
23 determine whether a substantial conflict exists as to a  
24 material fact or facts relevant to the unlawful detainer for  
25 purposes of requiring the defendant to deposit with the  
26 clerk of the court prospective rent as defined in  
27 subdivision (e) (d) as a condition of continuing to trial.  
28 If at the pretrial hearing the court determines, based  
29 upon the written declarations or oral testimony of the  
30 parties, that (A) the plaintiff is the landlord of the  
31 premises, the defendant failed to pay contract rent, the  
32 defendant was properly served with a three-day notice,  
33 and the defendant failed to tender the rent or quit the  
34 premises, and (B) no substantial conflict exists as to a  
35 material fact or facts relevant to the unlawful detainer  
36 after considering any written or oral answer to the  
37 unlawful detainer complaint made by the defendant and  
38 any and all affirmative defenses offered by the defendant,  
39 and considering any oral testimony and written  
40 declarations presented by all of the parties, then the court



1 shall have the discretion to order the defendant to  
2 deposit, with the clerk of the court, prospective rent as  
3 defined in subdivision ~~(e)~~ (d). If the court orders a  
4 deposit of prospective rent and if the defendant fails to  
5 ~~make such~~ deposit *the prospective rent* within two court  
6 days from the date of the hearing, judgment for the  
7 plaintiff for possession of the premises shall be entered  
8 and a writ of possession for the premises shall be issued  
9 forthwith. If the defendant has not returned the reply  
10 form as described in paragraph (2) of subdivision ~~(b)~~ (a)  
11 in the time and manner required, any deposit of  
12 prospective rent ordered by the court shall be made by  
13 the date of the hearing. If a defendant has not returned  
14 the reply form and then fails to deposit the prospective  
15 rent on the day of the hearing, judgment for the plaintiff  
16 for possession of the premises shall be entered and a writ  
17 of possession shall be issued forthwith. Upon entry of  
18 judgment for possession of the premises for the plaintiff  
19 pursuant to this subdivision, the court shall dismiss any  
20 claim for money relief without prejudice.

21 (2) For purposes of the pretrial hearing held pursuant  
22 to paragraph (1), the parties shall have the right to offer  
23 declarations, affidavits, and documentary evidence in  
24 addition to oral testimony of the parties, but no witnesses  
25 other than the parties may be called to testify. The court  
26 shall consult the parties to ascertain whether there is a  
27 substantial conflict as to a material fact or facts relevant  
28 to the unlawful detainer. The pretrial hearing of the case  
29 shall be informal, the object being to dispense justice  
30 promptly, fairly, and inexpensively. Except as provided in  
31 paragraph (3), for the purposes of the ~~pilot~~ project in Los  
32 Angeles County, no attorney may take part in the  
33 conduct of the pretrial hearing unless the attorney is  
34 appearing to maintain an action (A) by or against himself  
35 or herself, (B) by or against a partnership in which he or  
36 she is a general partner and in which all the partners are  
37 attorneys, or (C) by a corporation. If an attorney appears  
38 at the pretrial hearing to maintain an action as authorized  
39 by this paragraph, an attorney may appear for the  
40 opposing party in this action.



1 (3) Notwithstanding whether the defendant has  
 2 returned the reply form pursuant to paragraph (2) of  
 3 subdivision ~~(b)~~ (a), a defendant may respond to the  
 4 summons and complaint with an oral answer at the  
 5 pretrial hearing or by written answer, motion, or  
 6 demurrer. An oral answer shall, at the discretion of the  
 7 court, be reduced to a writing by the court clerk,  
 8 recorded electronically, or recorded by a court reporter.  
 9 The court, in issuing its decision, shall make findings as to  
 10 the matters specified in paragraph (1) of subdivision ~~(e)~~  
 11 (b), including any defenses. The decision and findings  
 12 shall be reduced to a writing. If the defendant responds  
 13 to the unlawful detainer by demurrer or motion, ~~any such~~  
 14 *this* motion or demurrer, ~~which~~ shall be filed and served  
 15 pursuant to Sections 1167 and 1167.3 of the Code of Civil  
 16 Procedure; *and* shall be heard and decided at the pretrial  
 17 hearing held pursuant to this section. Notwithstanding  
 18 paragraph (2) of subdivision ~~(e)~~ (b), ~~in all counties~~  
 19 attorneys may appear *in any county* for parties  
 20 prosecuting or contesting a demurrer or motion.  
 21 Notwithstanding Section 1005, papers opposing the  
 22 defendant's motion or demurrer may be filed and  
 23 personally served no later than one day prior to the day  
 24 appointed for the hearing. If the defendant fails to  
 25 respond to the unlawful detainer by written answer,  
 26 motion, demurrer, or oral answer at the pretrial hearing,  
 27 the court shall order judgment for possession of the  
 28 premises to be entered in favor of the plaintiff forthwith  
 29 at the pretrial hearing.

30 ~~(d)~~

31 (c) No deposit of prospective rent as defined in this  
 32 section shall be required if the defendant has paid, or  
 33 deposited with the court, all rent through the month in  
 34 which the action is filed. No deposit of rent pursuant to  
 35 this section shall be required if the action involves  
 36 premises as to which, as of the date the complaint was  
 37 filed, there was an outstanding citation issued by a state  
 38 or local government agency for violations of law  
 39 pertaining to health, safety, housing, building, or fire  
 40 standards.



1     ~~(e)~~

2     (d) “Prospective rent,” for purposes of this section,  
3 means up to 15 days’ prospective rent not to exceed five  
4 hundred dollars (\$500). The prospective rent shall be  
5 calculated on a prorated basis utilizing a 30-day rental  
6 period and the lowest monthly rent charged for the  
7 premises during the prior six months of the defendant’s  
8 occupancy. Any deposit made by the defendant pursuant  
9 to this section shall be deposited with the clerk, by cash,  
10 cashier’s check, or money order made payable to the  
11 clerk. Receipt of the deposit shall be acknowledged in  
12 writing and deposited and retained by the clerk pursuant  
13 to Section 24353 of the Government Code until further  
14 order of the court. The receipt and amount of a deposit  
15 of prospective rent shall be included in the order of the  
16 court at the conclusion of the pretrial hearing.

17     ~~(f)~~

18     (e) If at trial the court determines that a breach of the  
19 warranty of habitability has occurred, ~~which is not caused~~  
20 ~~by~~ *that* the defendant, or his or her guests or invitees *did*  
21 *not cause the breach of this warranty, that the breach of*  
22 *this warranty is* sufficient to diminish the value of the  
23 premises in an amount greater than 60 percent of the  
24 contract rent, and that the defendant had given the  
25 owner notice to repair or eliminate the breach, the court  
26 shall order the entire amount of prospective rent  
27 deposited by the defendant pursuant to this section  
28 returned to the defendant. In this case, the obligation of  
29 payment of past rent for the period covered by the  
30 eviction notice shall be extinguished. In order to remain  
31 in the premises, the defendant shall pay the reduced rent  
32 from the time of trial until the defect is cured. The rights  
33 and remedies in this paragraph are in addition to any  
34 other rights and remedies relating to the habitability of  
35 dwelling units.

36     ~~(g)~~

37     (f) Notwithstanding paragraph (1) of subdivision ~~(e)~~  
38 (b), any deposit made by the defendant pursuant to this  
39 section shall be awarded to the party entitled thereto by  
40 the trial court ~~and the~~. *The* defendant shall be given



1 credit to the extent of the deposit against any money  
2 judgment ordered against the defendant in a subsequent  
3 action.

4 (h)

5 (g) This section does not apply to actions for possession  
6 of a mobilehome or manufactured home, as those terms  
7 are defined in subdivision (a) of Section 1161a, and does  
8 not apply to actions for possession of real property in a  
9 mobilehome park subject to the Mobilehome Residency  
10 Law (Chapter 2.5 (commencing with Section 798) of  
11 Title 2 of Part 2 of Division 2 of the Civil Code), or to a  
12 manufactured housing community, as defined in Section  
13 18801 of the Health and Safety Code.

14 (i)

15 (h) Section 473 shall apply to this section.

16 ~~(j) This section shall become operative on July 1, 1995.  
17 This section shall become inoperative on July 1, 1998, and  
18 shall be repealed on January 1, 1999, unless a later enacted  
19 statute, which is enacted before January 1, 1999, deletes  
20 or extends that date.~~

21 SEC. 3. No reimbursement is required by this act  
22 pursuant to Section 6 of Article XIII B of the California  
23 Constitution because the only costs that may be incurred  
24 by a local agency or school district will be incurred  
25 because this act creates a new crime or infraction,  
26 eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section  
28 17556 of the Government Code, or changes the definition  
29 of a crime within the meaning of Section 6 of Article  
30 XIII B of the California Constitution.

31 Notwithstanding Section 17580 of the Government  
32 Code, unless otherwise specified, the provisions of this act  
33 shall become operative on the same date that the act  
34 takes effect pursuant to the California Constitution.

