

AMENDED IN ASSEMBLY MAY 19, 1999

AMENDED IN ASSEMBLY MAY 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1410

Introduced by Assembly Member Margett

February 26, 1999

An act to amend Section 20104.50 of the Public Contract Code, relating to local government contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1410, as amended, Margett. Public government contracts: late payments.

Under the Local Agency Public Construction Act, a local agency that fails to make a progress payment within 30 days of an undisputed request for payment must pay interest at an annual rate of 10% of the unpaid amount.

This bill would instead require the local agency to pay a penalty of 2% *of the unpaid amount* per 30-day period that the undisputed amount remains unpaid. The bill would also provide that the ~~contractor~~ *prevailing party* is entitled to costs and attorney's fees incurred in collecting payment.

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

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

1 SECTION 1. Section 20104.50 of the Public Contract
2 Code is amended to read:

3 20104.50. (a) (1) It is the intent of the Legislature in
4 enacting this section to require all local governments to
5 pay their contractors on time so that these contractors can
6 meet their own obligations. In requiring prompt
7 payment by all local governments, the Legislature
8 hereby finds and declares that the prompt payment of
9 outstanding receipts is not merely a municipal affair, but
10 is, instead, a matter of statewide concern.

11 (2) It is the intent of the Legislature in enacting this
12 article to fully occupy the field of public policy relating to
13 the prompt payment of local governments' outstanding
14 receipts. The Legislature finds and declares that all
15 government officials, including those in local
16 government, must set a standard of prompt payment that
17 any business in the private sector that may contract for
18 services should look towards for guidance.

19 (b) Any local agency that fails to make any progress
20 payment within 30 days after receipt of an undisputed
21 and properly submitted payment request from a
22 contractor on a construction contract shall pay a penalty
23 of 2 percent *on the unpaid portion of the payment* per
24 30-day period, *in lieu of interest otherwise due*. The
25 ~~contractor~~ *prevailing party* shall be entitled to ~~all~~ costs
26 and attorney's fees incurred in the collection of payment
27 under this section.

28 (c) Upon receipt of a payment request, each local
29 agency shall act in accordance with both of the following:

30 (1) Each payment request shall be reviewed by the
31 local agency as soon as practicable after receipt for the
32 purpose of determining that the payment request is a
33 proper payment request.

34 (2) Any payment request determined not to be a
35 proper payment request suitable for payment shall be
36 returned to the contractor as soon as practicable, but not
37 later than seven days after receipt. A request returned
38 pursuant to this paragraph shall be accompanied by a



1 document setting forth in writing the reasons why the
2 payment request is not proper.

3 (d) The number of days available to a local agency to
4 make a payment without incurring interest pursuant to
5 this section shall be reduced by the number of days by
6 which a local agency exceeds the seven-day return
7 requirement set forth in paragraph (2) of subdivision (c).

8 (e) For purposes of this article:

9 (1) A “local agency” includes, but is not limited to, a
10 city, including a charter city, a county, and a city and
11 county, and is any public entity subject to this part.

12 (2) A “progress payment” includes all payments due
13 contractors, except that portion of the final payment
14 designated by the contract as retention earnings.

15 (3) A payment request shall be considered properly
16 executed if funds are available for payment of the
17 payment request and payment is not delayed due to an
18 audit inquiry by the financial officer of the local agency.

19 (f) Each local agency shall require that this article, or
20 a summary thereof, be set forth in the terms of any
21 contract subject to this article.

