

AMENDED IN SENATE JULY 7, 1999
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
(Coauthors: Assembly Members Longville and Mazzoni)

February 26, 1999

An act to amend Section 3260.1 of the Civil Code, and to amend Section 20104.50 of the Public Contract Code, relating to ~~local government~~ construction contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1410, as amended, Margett. ~~Public—government~~ Construction contracts: ~~late progress~~ payments.

~~Under~~

(1) *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 prevailing party is entitled to costs and attorney's fees incurred in collecting payment.

(2) *Existing law provides, with respect to construction contracts for private works of improvement, for the payment*

of a specified penalty for the wrongful withholding of any amount from a progress payment under the contract.

This bill would correct an erroneous cross-reference in these provisions.

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 3260.1 of the Civil Code is
2 amended to read:

3 3260.1. (a) This section is applicable with respect to
4 all contracts entered into on or after January 1, 1992,
5 relating to the construction of any private work of
6 improvement.

7 (b) Except as otherwise agreed in writing, the owner
8 shall pay to the contractor, within 30 days following
9 receipt of a demand for payment in accordance with the
10 contract, any progress payment due thereunder as to
11 which there is no good faith dispute between the parties.
12 In the event of a dispute between the owner and the
13 contractor, the owner may withhold from the progress
14 payment an amount not to exceed 150 percent of the
15 disputed amount. If any amount is wrongfully withheld in
16 violation of this subdivision, the contractor shall be
17 entitled to the penalty specified in subdivision ~~(f)~~ (g) of
18 Section 3260.

19 (c) Nothing in this section shall be deemed to
20 supersede any requirement of Section 3260 respecting
21 the withholding of retention proceeds.

22 SEC. 2. Section 20104.50 of the Public Contract Code
23 is amended to read:

24 20104.50. (a) (1) It is the intent of the Legislature in
25 enacting this section to require all local governments to
26 pay their contractors on time so that these contractors can
27 meet their own obligations. In requiring prompt
28 payment by all local governments, the Legislature
29 hereby finds and declares that the prompt payment of
30 outstanding receipts is not merely a municipal affair, but
31 is, instead, a matter of statewide concern.



1 (2) It is the intent of the Legislature in enacting this
2 article to fully occupy the field of public policy relating to
3 the prompt payment of local governments' outstanding
4 receipts. The Legislature finds and declares that all
5 government officials, including those in local
6 government, must set a standard of prompt payment that
7 any business in the private sector that may contract for
8 services should look towards for guidance.

9 (b) Any local agency that fails to make any progress
10 payment within 30 days after receipt of an undisputed
11 and properly submitted payment request from a
12 contractor on a construction contract shall pay a penalty
13 of 2 percent on the unpaid portion of the payment per
14 30-day period, in lieu of interest otherwise due. The
15 prevailing party shall be entitled to costs and attorney's
16 fees incurred in the collection of payment under this
17 section.

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

20 (1) Each payment request shall be reviewed by the
21 local agency as soon as practicable after receipt for the
22 purpose of determining that the payment request is a
23 proper payment request.

24 (2) Any payment request determined not to be a
25 proper payment request suitable for payment shall be
26 returned to the contractor as soon as practicable, but not
27 later than seven days after receipt. A request returned
28 pursuant to this paragraph shall be accompanied by a
29 document setting forth in writing the reasons why the
30 payment request is not proper.

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

36 (e) For purposes of this article:

37 (1) A "local agency" includes, but is not limited to, a
38 city, including a charter city, a county, and a city and
39 county, and is any public entity subject to this part.



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

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

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

