

AMENDED IN SENATE AUGUST 17, 1999

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, *and to repeal and add Section 10261.5 of*, the Public Contract Code, relating to construction contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1410, as amended, Margett. Construction contracts: progress payments.

(1) Under the *State Contract Act and the Local Agency Public Construction Act*, ~~a local~~ *an agency, or in certain circumstances, the Controller*, 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 *state or* local agency to pay a penalty of 2% of the unpaid amount per 30-day period that the undisputed amount remains unpaid, *unless the delay*

in payment is caused by unforeseeable circumstances, as defined. The

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~~ yes. 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 (g) of
18 Section 3260.

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

22 SEC. 2. *Section 10261.5 of the Public Contract Code*
23 *is repealed.*



1 ~~10261.5. (a) Any state agency which fails to make any~~
2 ~~progress payment within 30 days after receipt of the~~
3 ~~payment request from a contractor on a construction~~
4 ~~contract for an undisputed payment request, which was~~
5 ~~properly submitted by the contractor to the agency, shall~~
6 ~~pay interest to the contractor equivalent to the legal rate~~
7 ~~set forth in subdivision (a) of Section 685.010 of the Code~~
8 ~~of Civil Procedure. Any state agency which~~
9 ~~independently calculates the amount due on a progress~~
10 ~~payment and which fails to make a progress payment~~
11 ~~within 30 days of the first submittal of the estimate for~~
12 ~~each contract by the engineer, shall pay interest to the~~
13 ~~contractor equivalent to the legal rate set forth in~~
14 ~~subdivision (a) of Section 685.010 of the Code of Civil~~
15 ~~Procedure. In the event that the payment is not made~~
16 ~~within 30 days of receipt of the contractor's request or the~~
17 ~~first submittal by the engineer, and the Controller has~~
18 ~~processed the payment within 14 days of receipt of the~~
19 ~~request or submittal, the contracting state agency shall~~
20 ~~pay interest to the contractor equivalent to the legal rate~~
21 ~~set forth in subdivision (a) of Section 685.010 of the Code~~
22 ~~of Civil Procedure. In the event that the payment is not~~
23 ~~made within 30 days of receipt of the contractor's request~~
24 ~~or the first submittal by the engineer, and the contracting~~
25 ~~state agency has processed the payment within 16 days~~
26 ~~after receipt of the request or submittal, the Controller~~
27 ~~shall pay interest as provided in Section 685.010 of the~~
28 ~~Code of Civil Procedure.~~

29 For purposes of this section, a payment request shall be
30 considered properly executed if funds are available for
31 payment of the payment request, and payment is not
32 delayed due to an audit inquiry by the Controller.

33 (b) Upon receipt of a payment request, each agency
34 shall require:

35 (1) That each payment request be reviewed as soon as
36 practicable after receipt for the purpose of determining
37 that a payment request is a proper payment request.

38 (2) Any payment request determined not to be a
39 proper payment request suitable for payment shall be
40 returned as soon as practicable, but not later than seven



1 days, after receipt, specifying the reasons that the
2 payment request is not a proper payment request.

3 (3) The number of days available to a state agency to
4 make a timely payment of payment request without
5 incurring interest shall be reduced by the number of days
6 by which an agency exceeds the requirements of
7 paragraph (2).

8 SEC. 3. Section 10261.5 is added to the Public
9 Contract Code, to read:

10 10261.5. (a) Any state agency that fails to make any
11 progress payment within 30 days after receipt of an
12 undisputed and properly submitted payment request
13 from a contractor on a construction contract shall pay a
14 penalty of 2 percent on the unpaid portion of the
15 payment per 30-day period, in lieu of interest otherwise
16 due. The prevailing party shall be entitled to costs and
17 attorney's fees incurred in the collection of payment
18 under this section.

19 (b) Upon receipt of a payment request, each state
20 agency shall act in accordance with both of the following:

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

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

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

37 (d) For purposes of this article:

38 (1) A 'progress payment' includes all payments due
39 contractors, except that portion of the final payment
40 designated by the contract as retention earnings.



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

5 (e) Each state agency shall require that this article, or
6 a summary thereof, be set forth in the terms of any
7 contract subject to this article.

8 (f) A state agency is not subject to the interest imposed
9 by subdivision (a) if the failure to pay is due to an
10 unforeseeable event such as a natural disaster or major
11 computer failure outside the control of the state agency,
12 or if the state agency demonstrates that it has made a good
13 faith effort to pay the debt. During the period when a
14 payment owed remains unpaid under circumstances
15 described in this subdivision, the agency is subject to
16 interest at the legal rate until those circumstances
17 terminate. Once those circumstances terminate, the state
18 agency has 15 days to make the payment owed, including
19 interest. If payment is not made during the 15-day period,
20 the state agency is liable for interest under subdivision
21 (a), commencing 30 days after receipt of the payment
22 request.

23 SEC. 4. Section 20104.50 of the Public Contract Code
24 is amended to read:

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

33 (2) It is the intent of the Legislature in enacting this
34 article to fully occupy the field of public policy relating to
35 the prompt payment of local governments' outstanding
36 receipts. The Legislature finds and declares that all
37 government officials, including those in local
38 government, must set a standard of prompt payment that
39 any business in the private sector that may contract for
40 services should look towards for guidance.



1 (b) Any local agency that fails to make any progress
2 payment within 30 days after receipt of an undisputed
3 and properly submitted payment request from a
4 contractor on a construction contract shall pay a penalty
5 of 2 percent on the unpaid portion of the payment per
6 30-day period, in lieu of interest otherwise due. The
7 prevailing party shall be entitled to costs and attorney's
8 fees incurred in the collection of payment under this
9 section.

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

12 (1) Each payment request shall be reviewed by the
13 local agency as soon as practicable after receipt for the
14 purpose of determining that the payment request is a
15 proper payment request.

16 (2) Any payment request determined not to be a
17 proper payment request suitable for payment shall be
18 returned to the contractor as soon as practicable, but not
19 later than seven days after receipt. A request returned
20 pursuant to this paragraph shall be accompanied by a
21 document setting forth in writing the reasons why the
22 payment request is not proper.

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

28 (e) For purposes of this article:

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

32 (2) A "progress payment" includes all payments due
33 contractors, except that portion of the final payment
34 designated by the contract as retention earnings.

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



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

4 (g) *A local agency is not subject to the interest*
5 *imposed by subdivision (b) if the failure to pay is due to*
6 *an unforeseeable event such as a natural disaster or major*
7 *computer failure outside the control of the local agency,*
8 *or if the local agency demonstrates that it has made a good*
9 *faith effort to pay the debt. During the period when a*
10 *payment owed remains unpaid under circumstances*
11 *described in this subdivision, the agency is subject to*
12 *interest at the legal rate until those circumstances*
13 *terminate. Once those circumstances terminate, the local*
14 *agency has 15 days to make the payment owed, including*
15 *interest. If payment is not made during the 15-day period,*
16 *the local agency is liable for interest under subdivision*
17 *(b), commencing 30 days after receipt of the payment*
18 *request.*

