

Assembly Bill No. 1410

Passed the Assembly September 9, 1999

Chief Clerk of the Assembly

Passed the Senate September 8, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1410, Margett. Construction contracts: progress payments.

(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 percent of the unpaid amount per 30-day period that the undisputed amount remains unpaid, unless the delay in payment is caused by unforeseeable circumstances.

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.

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

SECTION 1. Section 3260.1 of the Civil Code is amended to read:

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

(b) Except as otherwise agreed in writing, the owner shall pay to the contractor, within 30 days following



receipt of a demand for payment in accordance with the contract, any progress payment due thereunder as to which there is no good faith dispute between the parties. In the event of a dispute between the owner and the contractor, the owner may withhold from the progress payment an amount not to exceed 150 percent of the disputed amount. If any amount is wrongfully withheld in violation of this subdivision, the contractor shall be entitled to the penalty specified in subdivision (g) of Section 3260.

(c) Nothing in this section supersedes any requirement of Section 3260 respecting the withholding of retention proceeds.

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

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

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

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



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

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

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

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

(e) For purposes of this article:

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

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

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

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

(g) A local agency is not subject to the penalty imposed by subdivision (b) if the failure to pay is due to an unforeseeable event such as a natural disaster or major computer failure outside the control of the local agency, or if the local agency demonstrates that it has made a good faith effort to make the payment. An unforeseeable event or a demonstration of good faith effort shall be declared in writing within 30 days of receipt of a payment request.



During the period when a payment owed remains unpaid under circumstances described in this subdivision, the agency is subject to interest at the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.



Approved _____, 1999

Governor

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