

AMENDED IN SENATE JUNE 13, 1996
AMENDED IN SENATE MAY 29, 1996
AMENDED IN ASSEMBLY JANUARY 16, 1996
AMENDED IN ASSEMBLY JANUARY 3, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1368

Introduced by Assembly Member Knowles

February 23, 1995

An act to amend Section 926.17 of, and to add Section 926.19 to, the Government Code, relating to claims against the state.

LEGISLATIVE COUNSEL'S DIGEST

AB 1368, as amended, Knowles. Claims against the state: payments or refunds.

Existing law provides that a state agency that fails to make any payment for goods and services to certain entities pursuant to contract shall be subject to an interest penalty fee, according to specified criteria.

This bill would specify that these provisions may not be waived, altered, or limited by the state agency or the person or business contracting with the state agency.

This bill would also, unless otherwise provided for by statute, and with specified exceptions, provide that any state agency that fails to pay a person ~~or local government entity~~ any undisputed payment or refund due to that person ~~or local~~

~~government—entity~~ shall be liable for interest on the undisputed amount, as specified.

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

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

1 SECTION 1. Section 926.17 of the Government Code
2 is amended to read:

3 926.17. (a) (1) A state agency that acquires property
4 or services pursuant to a contract, including any
5 approved change order, with a business shall pay for each
6 complete delivered item of property or service on the
7 date required by contract between the business and
8 agency or be subject to an interest penalty fee. If no date
9 for payment is specified by contract, the state agency
10 shall pay the contractor directly, if authorized to do so,
11 within 50 calendar days after the postmark date of the
12 invoice. If the state agency is not authorized to pay the
13 contractor directly, the state agency shall forward the
14 invoice for payment to the Controller within 35 calendar
15 days after the postmark date of the invoice. The
16 Controller shall pay the contractor within 15 calendar
17 days of receipt of the invoice from the state agency.

18 (2) If, due to insufficient funds, a state agency is unable
19 to meet the payment deadlines provided for in paragraph
20 (1) under a contract for goods or services needed due to
21 a natural disaster, including, but not limited to, fires,
22 floods, or earthquakes, payment under the contract shall
23 not be due until 30 calendar days after the agency has
24 received sufficient funds to pay the contractor.

25 (3) If, by applying paragraphs (1) and (2), a payment
26 under a contract with the Department of Forestry and
27 Fire Protection would become due during the annually
28 declared fire season, as declared by the Director of
29 Forestry and Fire Protection, the payment shall not be
30 due until 30 calendar days after the date upon which it
31 would otherwise have been due.

32 (4) The acquisition of property includes the rental of
33 real or personal property.



1 (b) (1) An interest penalty fee shall accrue and be
2 charged on payments overdue under subdivision (a) at a
3 rate of 1 percent above the rate accrued on June 30th of
4 the prior year by the Pooled Money Investment Account,
5 but not to exceed 15 percent.

6 The interest penalty fee shall begin on the day after
7 payment is due if the payment due date is specified by
8 contract. If no payment date is specified by contract and
9 the state agency is authorized to pay the contractor
10 directly, the interest penalty fee shall begin to accrue on
11 the 51st calendar day after the postmark date of the
12 invoice and shall be paid out of the contracting state
13 agency's funds.

14 If no payment date is specified by contract and the state
15 agency is not authorized to pay the contractor directly
16 and the state agency has not forwarded the invoice to the
17 Controller's office for payment by the 35th calendar day
18 after the postmark date of the invoice, an interest penalty
19 fee shall begin to accrue on the 36th calendar day after the
20 postmark date of the invoice and shall be paid out of the
21 contracting state agency's funds. The state agency's
22 liability ends on the date a properly submitted invoice is
23 received by the Controller.

24 After the invoice is forwarded to the Controller's office
25 from the contracting state agency, an interest penalty fee
26 shall begin to accrue on the 16th calendar day after
27 receipt of a properly submitted invoice by the
28 Controller's office and shall be paid out of the Controller's
29 funds. The interest penalty fee ceases to accrue on the
30 date full payment is made.

31 (2) A state agency shall not seek additional
32 appropriations to pay interest that accrues as a result of
33 an agency's failure to make payments as required by
34 subdivision (a).

35 (3) When a state agency is required by this section to
36 pay a penalty, it shall be presumed that the fault is that
37 of the head of the state agency and, in those cases, the
38 head of the state agency shall submit to the Legislature
39 a written report on the actions taken to correct the
40 problem.



1 (c) A court shall award court costs and reasonable
2 attorney fees to the plaintiff in an action brought
3 pursuant to this section where it is found that the state
4 agency has violated this section. The costs and fees shall
5 be paid by the state agency at fault and shall not become
6 a personal economic liability of any public officer or
7 employee thereof.

8 (d) If the state agency's failure to make payment as
9 required by subdivision (a) is the result of a dispute
10 between the agency and the business over the amount
11 due or over compliance with the contract, the 35 and 50
12 calendar days specified in subdivision (a) shall begin on
13 the date the dispute is settled either by mutual
14 agreement between the contracting parties or by receipt
15 of a corrected invoice. A state agency may dispute an
16 invoice if the state agency so notifies the contractor
17 within 15 calendar days of receipt of the invoice.

18 (e) For the purposes of this section, "invoice" means
19 a document seeking payment on a contract and that
20 contains a detailed list of goods shipped or services
21 rendered, with an accounting of all costs.

22 (f) This section shall not apply to claims for
23 reimbursement for health care services provided under
24 the Medi-Cal program, as established pursuant to
25 Chapter 7 (commencing with Section 14000) of Part 3 of
26 Division 9 of the Welfare and Institutions Code.

27 (g) Section 926.10 shall not apply to any contract
28 covered by this section.

29 (h) This section shall not apply to any contract
30 covered by Section 926.15.

31 (i) A state agency shall not make interest penalty fee
32 payments of less than five dollars (\$5).

33 (j) The provisions of subdivision (a) or (b) may not be
34 waived, altered, or limited by the state agency acquiring
35 property or services pursuant to a contract, or by any
36 person or business contracting with a state agency to
37 provide property or services.

38 SEC. 2. Section 926.19 is added to the Government
39 Code, to read:



1 926.19. (a) Unless otherwise provided for by statute,
2 any state agency that fails to pay a person ~~or local~~
3 ~~government entity~~ any undisputed payment or refund
4 due to that person ~~or local government entity~~ shall be
5 liable for interest on the undisputed amount pursuant to
6 this section. The interest shall be paid out of the agency's
7 funds and shall accrue at a rate equal to the interest
8 accrued in the Pooled Money Investment Account minus
9 1 percent over the term that the payment or refund was
10 held by the agency, beginning on the 31st day after the
11 agency provides notice to the person ~~or local government~~
12 ~~entity~~ that a payment or refund is owed to that person ~~or~~
13 ~~local government entity~~ or after the agency receives
14 notice from the person ~~or local government entity~~ that an
15 undisputed payment or refund is due. The interest shall
16 cease to accrue on the date full payment or refund is
17 made.

18 (b) If the state agency's failure to make payment as
19 required by this section is the result of a dispute between
20 the state agency and the person ~~or local government~~
21 ~~entity~~ to whom money is owed, interest shall begin to
22 accrue on the 31st day after the dispute has been settled
23 by mutual agreement, arbitration, or court decision. A
24 state agency may dispute a payment or refund if the state
25 agency so notifies the person ~~or local government entity~~
26 within 15 days after the state agency receives notice from
27 the person ~~or local government entity~~ that the payment
28 or refund is due.

29 (c) If the state agency is not authorized to make a
30 payment or refund to a person ~~or local government entity~~
31 pursuant to this section, that state agency shall submit the
32 claim to the Controller's office within 15 days of receiving
33 a claim, or shall be liable for an interest penalty beginning
34 on the 16th day, which shall be paid out of the state
35 agency's funds and shall continue to accrue until the
36 claim is received by the Controller's office. After the
37 claim is forwarded to the Controller's office, an interest
38 penalty fee shall begin to accrue on the 16th day after
39 receipt by the Controller's office, and shall be paid out of
40 the Controller's funds. In any event, the interest penalty



1 shall cease to accrue on the date full payment is made to
2 the person ~~or local government entity~~.

3 (d) (1) In the event that a payment or refund is the
4 joint responsibility of more than one state agency, not
5 including the Controller's office, and neither agency is
6 authorized to make a payment or refund, each agency
7 shall forward the claim to the Controller's office within 15
8 days of receipt. Interest shall begin to accrue on the 16th
9 day, pursuant to subdivision (c). *Any accrued interest*
10 *shall be the responsibility of the state agency that delays*
11 *the transmittal of the claim to the Controller.*

12 (2) *If either of the responsible agencies is authorized*
13 *to make a payment or refund directly to the person, each*
14 *agency shall have 15 days to transmit the claim to the*
15 *other agency or pay the person. Interest shall begin to*
16 *accrue on the 16th day, and shall be the responsibility of*
17 *the agency delaying the payment process.*

18 (e) When a state agency is required by this section to
19 pay penalties that accumulate in excess of one thousand
20 dollars (\$1,000) in one fiscal year, the head of the state
21 agency shall submit to the Legislature, within 60 days
22 following the end of the fiscal year, a written report on the
23 actions taken to correct the problem, including
24 recommendations on actions to avoid a recurrence of the
25 problem and recommendations as to statutory changes,
26 if needed.

27 (f) A court shall award court costs and reasonable
28 attorney fees to the plaintiff in an action brought
29 pursuant to this section where it is found that the state
30 agency has violated this section. The costs and fees shall
31 be paid by the state agency at fault and shall not become
32 a personal economic liability of any public officer or
33 employee thereof. *In the case of disputed payments or*
34 *refunds, nothing in this section shall be construed as*
35 *precluding a court from awarding a prevailing party the*
36 *interest accrued while the dispute was pending.*

37 (g) No state agency shall seek additional
38 appropriations to pay interest that accrues as a result of
39 this section.



1 (h) No person ~~or local government entity~~ shall receive
2 an interest payment pursuant to this section if it is
3 determined that the person ~~or local government entity~~
4 has intentionally overpaid on a liability solely for the
5 purpose of receiving interest.

6 (i) No interest shall accrue during any time period for
7 which there is no Budget Act in effect, nor on any
8 payment or refund that is the result of a federally
9 mandated program or that is directly dependent upon
10 the receipt of federal funds by a state agency.

11 (j) This section shall not apply to payments, refunds,
12 or credits for income tax purposes.

13 *(k) This section shall not apply to claims for*
14 *reimbursement for health care services provided under*
15 *the Medi-Cal program, as established pursuant to*
16 *Chapter 7 (commencing with Section 14000) of Part 3 of*
17 *Division 9 of the Welfare and Institutions Code.*

