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DEPARTMENT OF
PUBLIC WORKS

OFFICE OF THE DIRECTOR

CITY OF SACRAMENTO
CALIFORNIA

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ADMINISTRATION
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April 18, 1991

Law and Legislation Committee
Sacramento, California

HONORABLE MEMBERS IN SESSION:

SUBJECT: RECOMMENDATION TO OPPOSE SB 1067 (ROBERTI) REGARDING CONTRACTOR
PROGRESS PAYMENTS

SUMMARY:

Senate Bill 1067 by David Roberti (D-Hollywood) would require local public agencies to pay interest on overdue progress and final payments on construction contracts. It is recommended that the Law and Legislation Committee declare the City's opposition to SB 1067.

BACKGROUND:

Senate Bill 1067 would amend the Local Agency Public Construction Act to require local jurisdictions to pay 10% interest on payments to contractors that are not made within 30 days after receipt of the initial payment request. This legislation is an unnecessary and unwarranted intrusion by the State into local government affairs.

The legislation presents a specific problem for the City. SB 1067 applies to final payments, as well as to progress payments. Our practice is to withhold the final payment for 35 days following City Council acceptance of project completion. This is done to cover any liens that may be filed by subcontractors or other parties. Clearly the contractor will not receive the payment within 30 days. Contractors doing business with the City understand that this is our policy.

The City of Sacramento has an excellent record of making undisputed payments to contractors in a timely manner. If other local agencies are having problems making timely payments, the issue should be addressed at the local level.

SB 1067 imposes a State-mandated local program. Given the State's continuing budget woes, it is doubtful that adequate funding will be provided to reimburse cities and counties for costs incurred in implementation.

April 18, 1991
Law and Legislation Committee

FINANCIAL:

If SB 1067 becomes law, there will be impacts on both General and Enterprise funds due to the requirement that interest be paid on late payments. The extent of these impacts would depend upon the continuation of the City's policy with regard to final payment and the dollar volume of contract work.

POLICY CONSIDERATIONS:

The City's Legislative Policy Guidelines state that the City shall:

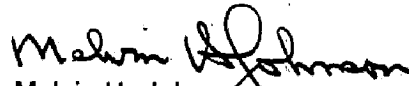
Oppose legislation which will mandate local governments to incur costs and which do not include an appropriation to reimburse local agencies for such costs. (7.9[a])

Oppose legislation which will reduce the options, methods, alternatives, and flexibility available to the City in dealing with problems, issues, and policies of local government. (7.9[b])


RECOMMENDATION:

It is recommended that the Law and Legislation Committee declare the City's opposition to Senate Bill 1067.

Respectfully submitted,


Melvin H. Johnson
Director of public Works

Recommendation Approved:


Jack R. Crist
Deputy City Manager

April 18, 1991
All Districts

Contact Person:
Roberta Larson, Administrative Services Officer
449-6281

City of Sacramento
State Legislature

B I L L R E F E R R A L

DATE: MAR 21 1991 COMMITTEE ACTION: _____

TO: B Larson, PW DATE: _____

FROM: KENNETH EMANUELS, LEGISLATIVE ADVOCATE

REPLY NO LATER THAN: APR 4 1991

A.B. _____, As Amended _____ * Author _____

S.B. 1067, As Amended - * Author Roberti

*Date of introduction or latest amendment

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact Ken Emanuels at 444-6789, FAX 444-0303, (1400 K Street, Suite 306, Sacramento, CA 95814.) This questionnaire should be returned to the City Attorney's Office for presentation to the Council Committee on Law and Legislation. PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.

NO RECOMMENDATION. If you think no Committee action on this bill should be taken, either because the bill is not of sufficient importance to the City or for any other reason, please mark here, do not fill out the rest of the form, and return this form to the City Attorney's Office. _____.

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill (attach additional sheets if necessary).
Senate Bill 1067 would require local agencies to pay interest on overdue progress and final payments on construction contracts.
2. This measure should be: (Please circle desired position)
Supported Opposed Supported if Amended
Placed on Watch List Other (explain)
3. Please explain your reasons for the above determination, including how this measure effects your Department and the fiscal impact of this measure on the City. Please make your comments in a format that can be used in a letter to state officials. (Continue on next page or attach additional sheets if necessary.)
See attached.

(Continue answer to Question No. 3 here)

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

See attached.

5. If this measure could be amended to either improve its favorable aspects or to minimize its adverse aspects, which amendments would you propose?

None.

6. List known support or opposition to this measure by groups with which you are familiar and include addresses and phone numbers, if known. League of California Cities position:

None.

7. Does this bill involve a State-mandated local program? If so, does the bill contain a State-mandated waiver, or an appropriation for allocation and disbursement to local agencies pursuant to Revenue and Taxation Code Section 2231?

Yes; the bill does not include an appropriation, but simply states that reimbursemer be made from the State Mandates Claims Fund.

8. Using a rating scale of 1 to 10 (with 10 as the most important), how important do you think this bill is to the City of Sacramento? 9

FORM COMPLETED BY: Mike Coleman/Robertz Larson DATE: 3/29/91

(Continue answer to Question No. 3 here)

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See attached.

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FORM COMPLETED BY: Mike Coleman/Roberta Larson DATE: 3/29/91

3. Please explain your reasons for the above determination, including how this measure affects your Department and the fiscal impact of this measure on the City. Please make your comments in a format that can be used in a letter to state officials.

Senate Bill 1067 would amend the Local Agency Public Construction Act to require local jurisdictions to pay 10% interest on payments to contractors that are not made within 30 days after receipt of the initial payment request. This legislation is an unnecessary and unwarranted intrusion by the State into local government affairs.

The legislation presents a specific problem for the City. SB 1067 applies to final payments, as well as to progress payments. Our practice is to withhold the final payment for 35 days following City Council acceptance of project completion. This is done to cover any liens that may be filed by subcontractors or other parties. Clearly the contractor will not receive the payment within 30 days. Contractors doing business with the City understand that this is our policy.

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SB 1067 imposes a State-mandated local program. Given the State's continuing budget woes, it is doubtful that adequate funding will be provided to reimburse cities and counties for costs incurred in implementation.

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

Oppose legislation which will mandate local governments to incur costs and which do not include an appropriation to reimburse local agencies for such costs. (7.9(a))

Oppose legislation which will reduce the options, methods, alternatives, and flexibility available to the City in dealing with problems, issues, and policies of local government. (7.9(b))

Introduced by Senator Roberti

March 8, 1991

An act to add Article 1.7 (commencing with Section 20104.50) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1067, as introduced, Roberti. Public contracts: local agencies: interest on overdue progress payments.

(1) Under existing law, the State Contract Act requires state agencies to pay interest on overdue progress and final payments on construction contracts after specified periods. Under existing law, the Local Agency Public Construction Act does not impose a similar requirement on local public agencies.

This bill would add provisions to the Local Agency Public Construction Act which would require local public agencies subject to the act to pay interest on overdue progress and final payments on construction contracts after specified periods. The bill would thereby impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the cost of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement of those costs shall be made pursuant to those statutory procedures and, if the statewide

cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

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

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

1 SECTION 1. Article 1.7 (commencing with Section
2 20104.50) is added to Chapter 1 of Part 3 of Division 2 of
3 the Public Contract Code, to read:

4 Article 1.7. Modifications; Performance; Payment

5 20104.50. (a) (1) Any local agency which fails to
6 make any progress payment within 30 days after receipt
7 of the payment request from a contractor on a
8 construction contract for an undisputed payment
9 request, which was properly submitted by the contractor
10 to the agency, shall pay interest to the contractor
11 equivalent to the legal rate set forth in subdivision (a) of
12 Section 685.010 of the Code of Civil Procedure.

13 (2) Any local agency which independently calculates
14 the amount due on a progress payment and which fails to
15 make a progress payment within 30 days of the first
16 submittal of the estimate for each contract by the
17 engineer, shall pay interest to the contractor equivalent
18 to the legal rate set forth in subdivision (a) of Section
19 685.010 of the Code of Civil Procedure.

20 (3) In the event that the payment is not made within
21 30 days of receipt of the contractor's request or the first
22 submittal by the engineer, and the financial officer of the
23 local agency has processed the payment within 14 days of
24 receipt of the request or submittal, the contracting local
agency shall pay interest to the contractor equivalent to
the legal rate set forth in subdivision (a) of Section
685.010 of the Code of Civil Procedure.

(4) In the event that the payment is not made within
30 days of receipt of the contractor's request or the first
submittal by the engineer, and the contracting local
agency has processed the payment within 16 days after

1 receipt of the request or submittal, the financial officer of
2 the local agency shall pay interest as provided in Section
3 685.010 of the Code of Civil Procedure.

4 (b) For purposes of this article:

5 (1) A "local agency" is any public entity subject to this
6 part.

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

11 SEC. 2. Notwithstanding Section 17610 of the
12 Government Code, if the Commission on State Mandates
13 determines that this act contains costs mandated by the
14 state, reimbursement to local agencies and school
15 districts for those costs shall be made pursuant to Part 7
16 (commencing with Section 17500) of Division 4 of Title
17 2 of the Government Code. If the statewide cost of the
18 claim for reimbursement does not exceed one million
19 dollars (\$1,000,000), reimbursement shall be made from
20 the State Mandates Claims Fund. Notwithstanding
21 Section 17580 of the Government Code, unless otherwise
22 specified in this act, the provisions of this act shall become
23 operative on the same date that the act takes effect
24 pursuant to the California Constitution.

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