

Add Section 1232 to the Government Code to provide the BOE with continuous appropriation authority from the General Fund to pay its vendors for expenditures for which payment is due after July 1 of each fiscal year and when no State Budget has been enacted.

Source: Honorable George Runner

Existing Law. The State Constitution (Article IV, Section 12) requires the Legislature to pass the Budget Bill to the Governor for signature by June 15 of each year for the fiscal year commencing July 1. After signature by the Governor, the Budget Bill becomes the Budget Act. The Budget Act is main legal authority to spend or obligate funds. Under the State Constitution (Article XVI, Section 7), money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant.

Without a state Budget Act, state agencies, including the BOE, have no authority to pay for expenditures incurred after the start of a new fiscal year (on July 1). Further, during a budget impasse, the BOE and other state agencies may incur late payment penalties.

The California Prompt Payment Act (Government Code Section 927 et. seq.) requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after the receipt of an undisputed invoice. State agencies must pay per the payment schedule set forth in the contract, or if no payment schedule is specified, submit a claim schedule to the State Controller's Office (SCO) within 30 calendar days after receipt of the undisputed invoice. The SCO must pay the invoice within 15 days of receipt from the State agency. With certain exceptions, if payment is not made within 45 days a late payment penalty, specified by statute, must be paid.

The California Prompt Payment Act also requires that state agencies report annually to the Director of General Services the number and total dollar amount of late payment penalties paid to vendors during the preceding fiscal year. The director is required to prepare a report listing the number and total amount of late payment penalties paid by each state agency and to make this information available to the public, [Late Payment Penalty Report](#).

Background. This proposal was prompted by a September 28, 2011 local news report, titled "Tax Agencies Late In Paying Bills." The report revealed scores of state agencies that were delinquent in paying their vendors, which resulted in the State paying more than \$5 million in late payment penalties for the 2009-10 fiscal year. Both the BOE and the Franchise Tax Board were listed as having to pay \$64,159 and \$43,338, respectively, in late penalties.

As previously stated, when the current year Budget Act has not been passed, the BOE and other state agencies have no authority to pay for expenditures incurred after the start of a new fiscal year (on July 1). As a result, the BOE and other state agencies may be subject to late payment penalties.

The following table shows the late payment penalties paid by the BOE from fiscal year 2004-05 through fiscal year 2009-10.

Fiscal Year	Number of Late Payments	Total Amount of Penalties Paid
2009/2010	187	\$ 64,159
2008/2009	33	\$ 30,206
2007/2008	18	\$ 2,498
2006/2007	3	\$ 3,645
2005/2006	4	\$ 6,875
2004/2005	1	\$ 2,232

The penalties paid to vendors by the BOE are primarily due to the late passage of the Budget Act. The type of invoices not paid on time includes lease payments, utilities, and prior multi-year contracts, such as on-going maintenance contracts for copiers. For the fiscal year 2009-10, 87% of the late payments were due to the Budget Act delay.

The BOE utilizes procedures to submit timely invoices to SCO for payment. Additionally, BOE operates consistently with state law restrictions after the start of a new fiscal year by not issuing any new purchase orders, entering into new contracts, incurring any new obligations, or authorizing work under existing contracts until the Budget Act for the new fiscal year is signed. However, when passage of the Budget Act is delayed, some amount of late payment penalties simply cannot be avoided.

This Proposal. This proposal would provide the BOE with a continuous appropriation authority to ensure on-time payment to its vendors in the event a budget is not enacted in a timely manner. It would provide fairness to the BOE's vendors and contractors that must continue to remit sales and use taxes to the BOE when potentially a significant source of their income has vanished. The proposal would also eliminate the BOE incurring any late payment penalties.

Every state budget impasse has the potential to cause substantial financial difficulties for California's businesses. For many smaller contractors and vendors, the impact on their cash flow may be devastating. They may not be able to afford to wait for funds until the state can agree on a budget. In addition, it is unfair that these businesses that contract with the BOE may not be able to pay their own employees and suppliers when the state does not make its payments on-time. It is also unfair that these contractors and vendors are expected to timely pay their sales tax obligations to the BOE out of their own pockets. To add insult to injury, if these taxpayers are unable to make a timely payment, they must pay interest charges and a possible late payment penalty.

Section 1232 is added to the Government Code, to read:

Section 1232. (a) Notwithstanding Section 13340, in any fiscal year in which the Budget Act is not enacted by July 1 of that fiscal year, there is hereby continuously appropriated without regard to fiscal years to the Controller from the General Fund, unallocated special funds, and any other fund from which the State Board of Equalization is reimbursed to pay expenses, the amount

necessary for the payment of expenditures until the Budget Act of that fiscal year is enacted. The Controller may expend an amount no greater than that necessary to enable the Controller to pay invoices due by the State Board of Equalization between July 1 of the applicable fiscal year and the enactment of the Budget Act.

(b) The Department of Finance may, upon enactment of the Budget Act and in the absence of this action being taken by the Legislature or the Governor in that Budget Act, reduce the applicable Budget Act allocations by the amount of any warrants drawn pursuant to subdivision (a).