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AB 748: Taming interest rates for public entities

By Robert Wright

In Assembly Bill 748, the state Legislature recently amended the statutes that compel public entities to pay interest rates on claims and judgments that far exceed the prevailing market interest rates. These amendments, though limited in their reach, are cause for hope that, in the coming years, Sacramento will finish the job by taming excessive statutory interest rates in all cases and for all litigants.

In October, Gov. Jerry Brown signed AB 748, which reduces the interest rates public entities must pay on claims and judgments, amending Civil Code Section 3287 and Government Code Sections 965.5 and 970.1. Although the bill applies only to interest paid on tax and fee claims, this small fix is expected to save taxpayers real money. The Senate Appropriations Committee predicted the change will bring “significant savings” and noted the interest public entities paid on just three such judgments totaled $18.5 million.

The new law borrows a modified version of the interest rate that applies to money judgments in federal court. The federal rate is variable and pegged to the weekly average one-year constant maturity Treasury yield during the week preceding entry of judgment. Today, that rate is about 0.1 percent. Under the new state law, in actions against public entities based on tax and fee claims, the same rate will apply for prejudgment interest, and the same rate plus 2 percent will apply for post-judgment interest.

These are big changes. Until now, the interest rate for public entities in state court had generally been fixed at 7 percent (while the rate for everyone else was, and remains, an even higher 10 percent). As a result of the new law, a public entity that would have paid 7 percent judgment interest on a tax or fee claim will instead pay a variable rate that is currently much less - only about 2.1 percent. These differences will add up, particularly since post-judgment interest accrues the entire time the appeal from an adverse judgment is pending.

As introduced, AB 748 would have applied to all claims against public entities, but opposition from some quarters spurred legislative amendments that narrowed the final bill’s scope. As a result, public entities will continue to pay 7 percent interest on many judgments, even though inflation is presently at a timid 1.5 percent. Judgments against everyone else will continue to be subject to the fixed 10 percent rate.

The fixed interest rates that are party changed by AB 748 reflect the economic conditions of a bygone era. The 10 percent rate applicable to judgments against individuals and private entities was adopted in 1982. For most of that year, the one-year constant maturity

Treasury yield exceeded 13 percent. Today, it is far less - just 0.1 percent. The consumer price index, a key measure of inflation, was in double digits from 1979 through 1981. It is less than 2 percent today. As noted by AB 748's sponsor, Assembly member Susan Eggman, the current judgment interest regime "was enacted during a time when inflation was skyrocketing. At the time, the rates adopted were lower than the market rates. Now the reverse has happened...."

AB 748 is a good start in addressing California's unreasonably high rates of legal interest, but it necessarily invites the question whether legal interest rates should be brought into alignment with market interest rates in all cases and for all litigants.

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