

ASSEMBLY BILL

No. 727

Introduced by Assembly Member Nielsen

February 26, 2009

An act to amend Sections 927.2, 927.6, 927.7, and 927.11 of the Government Code, relating to resource conservation districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 727, as introduced, Nielsen. Resource conservation districts: California Prompt Payment Act.

Existing law generally provides that a state agency that acquires property or services pursuant to a contract with a business, but fails to make payment to the person or business on the date required by the contract, shall be subject to a late payment penalty, as specified. Existing law provides that the penalty payable to a certified small business, a nonprofit organization, or a nonprofit public benefit corporation, as specified, is $\frac{1}{4}$ of 1% of the amount due, per calendar day, from the required payment date, except as specified.

This bill would include resource conservation districts within the list of entities entitled to the late payment penalty described above for the failure of a state agency to make payment for goods and services to a resource conservation district pursuant to a contract, 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 927.2 of the Government Code is
- 2 amended to read:

1 927.2. The following definitions apply to this chapter:

2 (a) “Claim schedule” means a schedule of invoices prepared
3 and submitted by a state agency to the Controller for payment to
4 the named claimant.

5 (b) “Grant” means a signed final agreement between any state
6 agency and a local government agency or organization authorized
7 to accept grant funding for victim services or prevention programs
8 administered by any state agency, *or, for restoration activities*
9 *performed by a resource conservation district.* ~~Any such~~ The grant
10 is a contract and subject to this chapter.

11 (c) “Invoice” means a bill or claim that requests payment on a
12 contract under which a state agency acquires property or services
13 or pursuant to a signed final grant agreement.

14 (d) “Medi-Cal program” means the program established pursuant
15 to Chapter 7 (commencing with Section 14000) of Part 3 of
16 Division 9 of the Welfare and Institutions Code.

17 (e) “Nonprofit public benefit corporation” means a corporation,
18 as defined by subdivision (b) of Section 5046 of the Corporations
19 Code, that has registered with the Department of General Services
20 as a small business.

21 (f) “Nonprofit service organization” means a nonprofit entity
22 that is organized to provide services to the public.

23 (g) “Reasonable cause” means a determination by a state agency
24 that any of the following conditions are present:

25 (1) There is a discrepancy between the invoice or claimed
26 amount and the provisions of the contract or grant.

27 (2) There is a discrepancy between the invoice or claimed
28 amount and either the claimant’s actual delivery of property or
29 services to the state or the state’s acceptance of those deliveries.

30 (3) Additional evidence supporting the validity of the invoice
31 or claimed amount is required to be provided to the state agency
32 by the claimant.

33 (4) The invoice has been improperly executed or needs to be
34 corrected by the claimant.

35 (5) The state agency making the determination or the claimant
36 involved has been subject to a computing or accounting failure
37 related to the Year 2000 Problem.

38 (h) “Received by a state agency” means the date an invoice is
39 delivered to the state location or party specified in the contract or

grant or, if a state location or party is not specified in the contract or grant, wherever otherwise specified by the state agency.

(i) “Required payment approval date” means the date on which payment is due as specified in a contract or grant or, if a specific date is not established by the contract or grant, 30 calendar days following the date upon which an undisputed invoice is received by a state agency.

(j) “*Resource conservation district*” means a resource conservation district established pursuant to Division 9 (commencing with Section 9001) of the Public Resources Code.

~~(j)~~

(k) “Revolving fund” means a fund established pursuant to Article 5 (commencing with Section 16400) of Chapter 2 of Part 2 of Division 4 of Title 2.

~~(k)~~

(l) “Small business” means a business certified as a “small business” in accordance with subdivision (d) of Section 14837.

~~(l)~~

(m) “Small business” and “nonprofit organization” mean, in reference to providers under the Medi-Cal program, a business or organization that meets all of the following criteria:

- (1) The principal office is located in California.
- (2) The officers, if any, are domiciled in California.
- (3) If a small business, it is independently owned and operated.
- (4) The business or organization is not dominant in its field of operation.

(5) Together with any affiliates, the business or organization has gross receipts from business operations that do not exceed three million dollars (\$3,000,000) per year, except that the Director of Health Services may increase this amount if the director deems that this action would be in furtherance of the intent of this chapter.

~~(m)~~

(n) “Year 2000 Problem” has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

SEC. 2. Section 927.6 of the Government Code is amended to read:

927.6. (a) State agencies shall pay applicable penalties, without requiring that the claimant submit an additional invoice for these amounts, whenever the state agency fails to submit a correct claim schedule to the Controller by the required payment approval date.

1 The penalty shall cease to accrue on the date the state agency
2 submits the claim schedule to the Controller for payment, and shall
3 be paid for out of the state agency's funds. If the claimant is a
4 *resource conservation district*, a certified small business, a
5 nonprofit organization, a nonprofit public benefit corporation, or
6 a small business or nonprofit organization that provides services
7 or equipment under the Medi-Cal program, the state agency shall
8 pay to the claimant a penalty of one-quarter of 1 percent of the
9 amount due, per calendar day, from the required payment date.
10 However, a nonprofit organization shall only be eligible to receive
11 a penalty payment if it has been awarded a contract or grant in an
12 amount less than five hundred thousand dollars (\$500,000).

13 (b) For all other businesses, the state agency shall pay a penalty
14 at a rate of 1 percent above the rate accrued on June 30 of the prior
15 year by the Pooled Money Investment Account, not to exceed a
16 rate of 15 percent, except that, if the amount of the penalty is
17 seventy-five dollars (\$75) or less, the penalty shall be waived and
18 not paid by the state agency. On an exception basis, state agencies
19 may avoid payment of penalties, for failure to submit a correct
20 claim schedule to the Controller by the required payment approval
21 date, by paying the claimant directly, from the state agency's
22 revolving fund within 45 calendar days following the date upon
23 which an undisputed invoice is received by the state agency.

24 SEC. 3. Section 927.7 of the Government Code is amended to
25 read:

26 927.7. The Controller shall pay claimants within 15 calendar
27 days of receipt of a correct claim schedule from the state agency.
28 If the Controller fails to make payment within 15 calendar days
29 of receipt of the claim schedule from a state agency, the Controller
30 shall pay applicable penalties to the claimant without requiring
31 that the claimant submit an invoice for these amounts. Penalties
32 shall cease to accrue on the date full payment is made, and shall
33 be paid for out of the Controller's funds. If the claimant is a
34 *resource conservation district*, a certified small business, a
35 nonprofit organization, a nonprofit public benefit corporation, or
36 a small business or nonprofit organization that provides services
37 or equipment under the Medi-Cal program, the Controller shall
38 pay to the claimant a penalty of one-quarter of 1 percent of the
39 amount due, per calendar day, from the 16th calendar day following
40 receipt of the claim schedule from the state agency. However, a

1 nonprofit organization shall only be eligible to receive a penalty
2 payment if it has been awarded a contract or grant in an amount
3 less than five hundred thousand dollars (\$500,000). For all other
4 businesses, the Controller shall pay penalties at a rate of 1 percent
5 above the rate accrued on June 30 of the prior year by the Pooled
6 Money Investment Account, not to exceed a rate of 15 percent,
7 except that, if the amount of the penalty is seventy-five dollars
8 (\$75) or less, the penalty shall be waived and not paid by the
9 Controller.

10 SEC. 4. Section 927.11 of the Government Code is amended
11 to read:

12 927.11. (a) Except in the case of a contract with a *resource*
13 *conservation district*, a certified small business, a nonprofit
14 organization, or a nonprofit public benefit corporation, if an invoice
15 from a business under a contract with the Department of Forestry
16 and Fire Protection would become subject to late payment penalties
17 during the annually declared fire season, as declared by the Director
18 of Forestry and Fire Protection, then the required payment approval
19 date shall be extended by 30 calendar days.

20 (b) No nonprofit public benefit corporation shall be eligible for
21 a late payment penalty if a state agency fails to make timely
22 payment because no Budget Act has been enacted.

23 (c) If the Director of Finance determines that a state agency or
24 the Controller is unable to promptly pay an invoice as provided
25 for by this chapter due to a major calamity, disaster, or criminal
26 act, then otherwise applicable late payment penalty provisions
27 contained in Section 927.7 shall be suspended except as they apply
28 to a claimant that is either a *resource conservation district*, a
29 certified small business, a nonprofit organization, a nonprofit public
30 benefit corporation, or a small business or nonprofit organization
31 that provides services or equipment under the Medi-Cal program.
32 The suspension shall remain in effect until the Director of Finance
33 determines that the suspended late payment penalty provisions of
34 this section should be reinstated.

35 (d) Except as provided in subdivision (b), in the event a state
36 agency fails to make timely payment because no Budget Act has
37 been enacted, penalties shall continue to accrue to a *resource*

- 1 *conservation district, a certified small business, or a nonprofit*
- 2 *organization* until the time that the invoice is paid.

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