

AMENDED IN ASSEMBLY JUNE 26, 2013

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 399

Introduced by Senator Wright

February 20, 2013

An act to amend Section 927.6 of the Government Code, *and to amend Section 10101 of the Public Contract Code*, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Wright. California Prompt Payment Act.

The California Prompt Payment Act subjects a state agency that acquires property or services pursuant to a contract with a business to a late penalty payment, if it fails to make payment to the person or business on the date required by the contract. Existing law provides that the penalty payable to a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program is 10% above the United States Prime Rate on June 30 of the prior fiscal year. The State Contract Act prescribes the procedures and requirements applicable to various state agency contracts, and exempts from these procedures and requirements specified contracts for required emergency work or remedial measures related to the accidental or unplanned release of toxic substances.

This bill would *specify that contracts for emergency work or remedial measures are subject to the California Prompt Payment Act, and would include a contractor performing emergency work or remedial measures*

related to the accidental or unplanned release of toxic substances within the list of entities entitled to the late payment penalty of 10% above the United States Prime Rate.

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 927.6 of the Government Code is
2 amended to read:

3 927.6. (a) State agencies shall pay applicable penalties, without
4 requiring that the claimant submit an additional invoice for these
5 amounts, whenever the state agency fails to submit a correct claim
6 schedule to the Controller by the required payment approval date
7 and payment is not issued within 45 calendar days from the state
8 agency receipt of an undisputed invoice. The penalty shall cease
9 to accrue on the date the state agency submits the claim schedule
10 to the Controller for payment or pays the claimant directly, and
11 shall be paid for out of the state agency’s support appropriation.
12 If the claimant is a certified small business, a contractor performing
13 emergency work or remedial measures pursuant to subdivision (b)
14 of Section 10101 of the Public Contract Code, a nonprofit
15 organization, a nonprofit public benefit corporation, or a small
16 business or nonprofit organization that provides services or
17 equipment under the Medi-Cal program, the state agency shall pay
18 to the claimant a penalty at a rate of 10 percent above the United
19 States Prime Rate on June 30 of the prior fiscal year. However, a
20 nonprofit organization shall only be eligible to receive a penalty
21 payment if it has been awarded a contract or grant in an amount
22 less than five hundred thousand dollars (\$500,000). If the amount
23 of the penalty is ten dollars (\$10) or less, the penalty shall be
24 waived and not paid by the state agency.

25 (b) For all other businesses, the state agency shall pay a penalty
26 at a rate of 1 percent above the Pooled Money Investment Account
27 daily rate on June 30 of the prior fiscal year, not to exceed a rate
28 of 15 percent. If the amount of the penalty is one hundred dollars
29 (\$100) or less, the penalty shall be waived and not paid by the state
30 agency. On an exception basis, state agencies may avoid payment
31 of penalties for failure to submit a correct claim schedule to the
32 Controller by the required payment approval date by paying the

1 claimant directly from the state agency's revolving fund within
2 45 calendar days following the date upon which an undisputed
3 invoice is received by the state agency.

4 *SEC. 2. Section 10101 of the Public Contract Code is amended*
5 *to read:*

6 10101. (a) Contracts for the purchase of supplies or materials,
7 which are purchased pursuant to Chapter 2 (commencing with
8 Section 10290), are not subject to this chapter, even though the
9 seller is required to perform some incidental work or service in
10 connection with the delivery of the material or supplies.

11 (b) Contracts for which emergency work or remedial measures
12 are required are not subject to this chapter if the work or remedial
13 measures are necessary to immediately avert, alleviate, repair, or
14 mitigate destruction of property caused by the accidental or
15 unplanned release of toxic substances and are necessary to protect
16 the health, safety, and welfare of the general public. *Contracts*
17 *pursuant to this subdivision are subject to the California Prompt*
18 *Payment Act (Chapter 4.5 (commencing with Section 927) of Part*
19 *3 of Division 3.6 of Title 1 of the Government Code).*