

Senate Bill No. 399

Passed the Senate August 30, 2013

Secretary of the Senate

Passed the Assembly August 22, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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.

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

SECTION 1. 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 and payment is not issued within 45 calendar days from the state

agency receipt of an undisputed invoice. The penalty shall cease to accrue on the date the state agency submits the claim schedule to the Controller for payment or pays the claimant directly, and shall be paid for out of the state agency's support appropriation. If the claimant is a certified small business, a contractor performing emergency work or remedial measures pursuant to subdivision (b) of Section 10101 of the Public Contract Code, 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, the state agency shall pay to the claimant a penalty at a rate of 10 percent above the United States Prime Rate on June 30 of the prior fiscal year. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract or grant in an amount less than five hundred thousand dollars (\$500,000). If the amount of the penalty is ten dollars (\$10) or less, the penalty shall be waived and not paid by the state agency.

(b) For all other businesses, the state agency shall pay a penalty at a rate of 1 percent above the Pooled Money Investment Account daily rate on June 30 of the prior fiscal year, not to exceed a rate of 15 percent. If the amount of the penalty is one hundred dollars (\$100) or less, the penalty shall be waived and not paid by the state agency. On an exception basis, state agencies may avoid payment of penalties for failure to submit a correct claim schedule to the Controller by the required payment approval date by paying the claimant directly from the state agency's revolving fund within 45 calendar days following the date upon which an undisputed invoice is received by the state agency.

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

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

(b) Contracts for which emergency work or remedial measures are required are not subject to this chapter if the work or remedial measures are necessary to immediately avert, alleviate, repair, or mitigate destruction of property caused by the accidental or unplanned release of toxic substances and are necessary to protect

the health, safety, and welfare of the general public. Contracts pursuant to this subdivision are subject to the California Prompt Payment Act (Chapter 4.5 (commencing with Section 927) of Part 3 of Division 3.6 of Title 1 of the Government Code).

Approved _____, 2013

Governor