

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2541

**Introduced by Assembly Members Matthews and Negrete
McLeod**

February 23, 2006

An act to amend Sections 927.1, 927.2, 927.3, 927.6, 927.7, 927.10, and 927.11 of the Government Code, relating to claims against the state.

LEGISLATIVE COUNSEL'S DIGEST

AB 2541, as amended, Matthews. Claims against the state.

Existing law requires a state agency that acquires property or services pursuant to a contract with a business to make payment to the person or business on the date required by the contract, and within 45 days of the state agency's receipt of an undisputed invoice, or be subject to a late payment penalty. The state agency is required to pay to the contractor a late payment penalty of 0.25% of the amount due, per calendar day, from the required payment date, if the contractor is 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, and for all other businesses, a penalty at a rate of 1% above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, as specified.

This bill would increase the 0.25% late payment penalty to 1%. The bill additionally would require a state agency that awards a grant, as

defined, to make payment to the person or business that is the recipient of the grant on the date required by the grant, and within 45 days of the state agency's receipt of an undisputed invoice, or be subject to a late payment penalty. The bill would make other conforming changes.

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 927.1 of the Government Code is
2 amended to read:

3 927.1. (a) (1) A state agency that acquires property or
4 services pursuant to a contract with a business, including any
5 approved change order or contract amendment, shall make
6 payment to the person or business on the date required by the
7 contract and as required by Section 927.4 or be subject to a late
8 payment penalty.

9 (2) A state agency that awards a grant, as defined in
10 subdivision (b) of Section 927.2, shall make payment to the
11 person or business that is the recipient of the grant on the date
12 required by the grant and as required by Section 927.4 or be
13 subject to a late payment penalty.

14 (b) Except in the event of an emergency as provided in Section
15 927.11, effective January 1, 1999, the late payment penalties
16 specified in this chapter may not be waived, altered, or limited by
17 either of the following:

18 (1) A state agency acquiring property or services pursuant to a
19 contract or that awards a grant.

20 (2) Any person or business contracting with a state agency to
21 provide property or services or that is the recipient of a grant.

22 SEC. 2. Section 927.2 of the Government Code is amended to
23 read:

24 927.2. The following definitions apply to this chapter:

25 (a) "Claim schedule" means a schedule of invoices prepared
26 and submitted by a state agency to the Controller for payment to
27 the named claimant.

28 (b) "Grant" means ~~either of the following:~~

29 ~~(1) A~~ a solicited or unsolicited proposal of a state agency,
30 including, but not limited to, a request for proposals (RFP) and a

1 request for applications (RFA), to furnish assistance to a
2 nonprofit service organization so that the latter may carry out its
3 own program to provide public services. The term shall not
4 include the procurement of goods or services for a state agency
5 nor the acquisition, construction, alteration, improvement, or
6 repair of real property for a state agency.

7 ~~(2) A signed final agreement between the Office of~~
8 ~~Emergency Services and a local government agency or~~
9 ~~organization authorized to accept grant funding for victim service~~
10 ~~programs administered by the Criminal Justice Programs~~
11 ~~Division of the Office of Emergency Services.~~

12 (c) "Invoice" means a bill or claim that requests payment on a
13 contract under which a state agency acquires property or services
14 or pursuant to a grant.

15 (d) "Medi-Cal program" means the program established
16 pursuant to Chapter 7 (commencing with Section 14000) of Part
17 3 of Division 9 of the Welfare and Institutions Code.

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

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

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

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

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

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

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

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

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

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

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

8 (j) “Revolving fund” means a fund established pursuant to
9 Article 5 (commencing with Section 16400) of Division 4 of
10 Title 2.

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

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

16 (1) The principal office is located in California.

17 (2) The officers, if any, are domiciled in California.

18 (3) If a small business, it is independently owned and
19 operated.

20 (4) The business or organization is not dominant in its field of
21 operation.

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

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

30 SEC. 3. Section 927.3 of the Government Code is amended to
31 read:

32 927.3. Except where payment is made directly by a state
33 agency pursuant to Section 927.6, any undisputed invoice
34 received by a state agency shall be submitted to the Controller for
35 payment by the required payment approval date. A state agency
36 may dispute an invoice submitted by a claimant for reasonable
37 cause if the state agency notifies the claimant within 15 working
38 days from receipt of the invoice, or delivery of property or
39 services, whichever is later. No state employee shall dispute an
40 invoice, on the basis of minor or technical defects, in order to

1 circumvent or avoid the general intent or any of the specific
2 provisions of this chapter.

3 SEC. 4. Section 927.6 of the Government Code is amended to
4 read:

5 927.6. (a) State agencies shall pay applicable penalties,
6 without requiring that the claimant submit an additional invoice
7 for these amounts, whenever the state agency fails to submit a
8 correct claim schedule to the Controller by the required payment
9 approval date. The penalty shall cease to accrue on the date the
10 state agency submits the claim schedule to the Controller for
11 payment, and shall be paid for out of the state agency's funds. If
12 the claimant is a certified small business, a nonprofit
13 organization, a nonprofit public benefit corporation, or a small
14 business or nonprofit organization that provides services or
15 equipment under the Medi-Cal program, the state agency shall
16 pay to the claimant a penalty of 1 percent of the amount due, per
17 calendar day, from the required payment date. However, a
18 nonprofit organization shall only be eligible to receive a penalty
19 payment if it has been awarded a contract or grant in an amount
20 less than five hundred thousand dollars (\$500,000).

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

33 SEC. 5. Section 927.7 of the Government Code is amended to
34 read:

35 927.7. The Controller shall pay claimants within 15 calendar
36 days of receipt of a correct claim schedule from the state agency.
37 If the Controller fails to make payment within 15 calendar days
38 of receipt of the claim schedule from a state agency, the
39 Controller shall pay applicable penalties to the claimant without
40 requiring that the claimant submit an invoice for these amounts.

1 Penalties shall cease to accrue on the date full payment is made,
2 and shall be paid for out of the Controller's funds. If the claimant
3 is a certified small business, a nonprofit organization, a nonprofit
4 public benefit corporation, or a small business or nonprofit
5 organization that provides services or equipment under the
6 Medi-Cal program, the Controller shall pay to the claimant a
7 penalty of 1 percent of the amount due, per calendar day, from
8 the 16th calendar day following receipt of the claim schedule
9 from the state agency. However, a nonprofit organization shall
10 only be eligible to receive a penalty payment if it has been
11 awarded a contract or grant in an amount less than five hundred
12 thousand dollars (\$500,000). For all other businesses, the
13 Controller shall pay penalties at a rate of 1 percent above the rate
14 accrued on June 30 of the prior year by the Pooled Money
15 Investment Account, not to exceed a rate of 15 percent, except
16 that, if the amount of the penalty is seventy-five dollars (\$75) or
17 less, the penalty shall be waived and not paid by the Controller.

18 SEC. 6. Section 927.10 of the Government Code is amended
19 to read:

20 927.10. State agencies shall encourage claimants to promptly
21 pay their subcontractors and suppliers, especially those that are
22 small businesses. In furtherance of this policy, state agencies
23 shall utilize expedited payment processes to enable faster
24 payment by prime contractors to their subcontractors and
25 suppliers, and shall promptly respond to any subcontractor or
26 supplier inquiries regarding the status of payments made to prime
27 contractors.

28 SEC. 7. Section 927.11 of the Government Code is amended
29 to read:

30 927.11. (a) Except in the case of a contract with a certified
31 small business, a nonprofit organization, or a nonprofit public
32 benefit corporation, if an invoice from a business under a
33 contract with the Department of Forestry and Fire Protection
34 would become subject to late payment penalties during the
35 annually declared fire season, as declared by the Director of
36 Forestry and Fire Protection, then the required payment approval
37 date shall be extended by 30 calendar days.

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

1 (c) If the Director of Finance determines that a state agency or
2 the Controller is unable to promptly pay an invoice as provided
3 for by this chapter due to a major calamity, disaster, or criminal
4 act, then otherwise applicable late payment penalty provisions
5 contained in Section 927.7 shall be suspended except as they
6 apply to a claimant that is either a certified small business, a
7 nonprofit organization, a nonprofit public benefit corporation, or
8 a small business or nonprofit organization that provides services
9 or equipment under the Medi-Cal program. The suspension shall
10 remain in effect until the Director of Finance determines that the
11 suspended late payment penalty provisions of this section should
12 be reinstated.

13 (d) Except as provided in subdivision (b), in the event a state
14 agency fails to make timely payment because no Budget Act has
15 been enacted, penalties shall continue to accrue until the time that
16 the invoice is paid.