

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

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.

This bill 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
29 ~~a solicited or unsolicited proposal of a state agency, including,~~
30 ~~but not limited to, a request for proposals (RFP) and a request for~~
31 ~~applications (RFA), to furnish assistance to a nonprofit service~~
32 ~~organization so that the latter may carry out its own program to~~
33 ~~provide public services. The term shall not include the~~
34 ~~procurement of goods or services for a state agency nor the~~

1 ~~acquisition, construction, alteration, improvement, or repair of~~
2 ~~real property for a state agency.~~

3 (b) “Grant” means a signed final agreement between any
4 state agency and a local government agency or organization
5 authorized to accept grant funding for victim services or
6 prevention programs administered by any state agency. Any such
7 grant is a contract and subject to this chapter.

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

11 (d) “Medi-Cal program” means the program established
12 pursuant to Chapter 7 (commencing with Section 14000) of Part
13 3 of Division 9 of the Welfare and Institutions Code.

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

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

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

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

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

27 (3) Additional evidence supporting the validity of the invoice
28 or claimed amount is required to be provided to the state agency
29 by the claimant.

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

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

35 (h) “Received by a state agency” means the date an invoice is
36 delivered to the state location or party specified in the contract or
37 grant or, if a state location or party is not specified in the contract
38 or grant, wherever otherwise specified by the state agency.

39 (i) “Required payment approval date” means the date on
40 which payment is due as specified in a contract or grant or, if a

1 specific date is not established by the contract or grant, 30
2 calendar days following the date upon which an undisputed
3 invoice is received by a state agency.

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

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

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

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

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

14 (3) If a small business, it is independently owned and
15 operated.

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

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

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

26 SEC. 3. Section 927.3 of the Government Code is amended to
27 read:

28 927.3. Except where payment is made directly by a state
29 agency pursuant to Section 927.6, any undisputed invoice
30 received by a state agency shall be submitted to the Controller for
31 payment by the required payment approval date. A state agency
32 may dispute an invoice submitted by a claimant for reasonable
33 cause if the state agency notifies the claimant within 15 working
34 days from receipt of the invoice, or delivery of property or
35 services, whichever is later. No state employee shall dispute an
36 invoice, on the basis of minor or technical defects, in order to
37 circumvent or avoid the general intent or any of the specific
38 provisions of this chapter.

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

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

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

30 SEC. 5. Section 927.7 of the Government Code is amended to
31 read:

32 927.7. The Controller shall pay claimants within 15 calendar
33 days of receipt of a correct claim schedule from the state agency.
34 If the Controller fails to make payment within 15 calendar days
35 of receipt of the claim schedule from a state agency, the
36 Controller shall pay applicable penalties to the claimant without
37 requiring that the claimant submit an invoice for these amounts.
38 Penalties shall cease to accrue on the date full payment is made,
39 and shall be paid for out of the Controller's funds. If the claimant
40 is a certified small business, a nonprofit organization, a nonprofit

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

16 SEC. 6. Section 927.10 of the Government Code is amended
17 to read:

18 927.10. State agencies shall encourage claimants to promptly
19 pay their subcontractors and suppliers, especially those that are
20 small businesses. In furtherance of this policy, state agencies
21 shall utilize expedited payment processes to enable faster
22 payment by prime contractors to their subcontractors and
23 suppliers, and shall promptly respond to any subcontractor or
24 supplier inquiries regarding the status of payments made to prime
25 contractors.

26 SEC. 7. Section 927.11 of the Government Code is amended
27 to read:

28 927.11. (a) Except in the case of a contract with a certified
29 small business, a nonprofit organization, or a nonprofit public
30 benefit corporation, if an invoice from a business under a
31 contract with the Department of Forestry and Fire Protection
32 would become subject to late payment penalties during the
33 annually declared fire season, as declared by the Director of
34 Forestry and Fire Protection, then the required payment approval
35 date shall be extended by 30 calendar days.

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

39 (c) If the Director of Finance determines that a state agency or
40 the Controller is unable to promptly pay an invoice as provided

1 for by this chapter due to a major calamity, disaster, or criminal
2 act, then otherwise applicable late payment penalty provisions
3 contained in Section 927.7 shall be suspended except as they
4 apply to a claimant that is either 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 suspension shall
8 remain in effect until the Director of Finance determines that the
9 suspended late payment penalty provisions of this section should
10 be reinstated.

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