

Assembly Bill No. 2541

Passed the Assembly August 24, 2006

Chief Clerk of the Assembly

Passed the Senate August 22, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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.

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

SECTION 1. Section 927.1 of the Government Code is amended to read:

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

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

(b) Except in the event of an emergency as provided in Section 927.11, effective January 1, 1999, the late payment penalties

specified in this chapter may not be waived, altered, or limited by either of the following:

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

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

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

927.2. The following definitions apply to this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

(h) “Received by a state agency” means the date an invoice is 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) “Revolving fund” means a fund established pursuant to Article 5 (commencing with Section 16400) of Division 4 of Title 2.

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

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

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

927.3. Except where payment is made directly by a state agency pursuant to Section 927.6, any undisputed invoice

received by a state agency shall be submitted to the Controller for payment by the required payment approval date. A state agency may dispute an invoice submitted by a claimant for reasonable cause if the state agency notifies the claimant within 15 working days from receipt of the invoice, or delivery of property or services, whichever is later. No state employee shall dispute an invoice, on the basis of minor or technical defects, in order to circumvent or avoid the general intent or any of the specific provisions of this chapter.

SEC. 4. 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. The penalty shall cease to accrue on the date the state agency submits the claim schedule to the Controller for payment, and shall be paid for out of the state agency's funds. If the claimant 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, the state agency shall pay to the claimant a penalty of one-quarter of 1 percent of the amount due, per calendar day, from the required payment date. 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).

(b) For all other businesses, the state agency shall pay a penalty at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) 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. 5. Section 927.7 of the Government Code is amended to read:

927.7. The Controller shall pay claimants within 15 calendar days of receipt of a correct claim schedule from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim schedule from a state agency, the Controller shall pay applicable penalties to the claimant without requiring that the claimant submit an invoice for these amounts. Penalties shall cease to accrue on the date full payment is made, and shall be paid for out of the Controller's funds. If the claimant 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, the Controller shall pay to the claimant a penalty of one-quarter of 1 percent of the amount due, per calendar day, from the 16th calendar day following receipt of the claim schedule from the state agency. 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). For all other businesses, the Controller shall pay penalties at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) or less, the penalty shall be waived and not paid by the Controller.

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

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

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

927.11. (a) Except in the case of a contract with a certified small business, a nonprofit organization, or a nonprofit public

benefit corporation, if an invoice from a business under a contract with the Department of Forestry and Fire Protection would become subject to late payment penalties during the annually declared fire season, as declared by the Director of Forestry and Fire Protection, then the required payment approval date shall be extended by 30 calendar days.

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

(c) If the Director of Finance determines that a state agency or the Controller is unable to promptly pay an invoice as provided for by this chapter due to a major calamity, disaster, or criminal act, then otherwise applicable late payment penalty provisions contained in Section 927.7 shall be suspended except as they apply to a claimant that is either 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. The suspension shall remain in effect until the Director of Finance determines that the suspended late payment penalty provisions of this section should be reinstated.

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

Approved _____, 2006

Governor