

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2683

Introduced by Assembly Member Negrete McLeod

February 24, 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.~~ *An act to amend Section 5588 of the Business and Professions Code, relating to architects.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2683, as amended, Negrete McLeod. ~~Claims against the state.~~ *Architecture: report on judgment, settlement, or arbitration award.*

Existing law provides for the licensing and regulation of architects by the California Architects Board. Existing law requires a licensee to report to the board any civil action judgment, settlement, arbitration award, or administrative action resulting in a judgment, settlement, or arbitration award against the licensee if the action alleges fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of architecture and the amount or value of the judgment, settlement, or award is \$5,000 or more.

This bill would make failure of a licensee or claimant, or their counsel, to comply with this requirement, or conspiracy or collusion not to comply with the requirement or to hinder or impede any other person in complying with the requirement, a misdemeanor punishable by a specified fine. Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~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 also would require a state agency that awards a grant to a nonprofit service organization, as defined, to make payment to 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 the late payment penalties described above. The bill would make other conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. Section 5588 of the Business and Professions
- 2 Code is amended to read:
- 3 5588. (a) A licensee shall report to the board in writing
- 4 within 30 days of the date the licensee has knowledge of any
- 5 civil action judgment, settlement, arbitration award, or
- 6 administrative action resulting in a judgment, settlement, or
- 7 arbitration award against the licensee in any action alleging
- 8 fraud, deceit, negligence, incompetence, or recklessness by the
- 9 licensee in the practice of architecture if the amount or value of
- 10 the judgment, settlement, or arbitration award is five thousand
- 11 dollars (\$5,000) or greater.

1 (b) The report required by subdivision (a) shall be signed by
2 the licensee and shall set forth the facts that constitute the
3 reportable event. If the reportable event involves the action of an
4 administrative agency or court, the report shall set forth all of the
5 following:

6 (1) The title of the matter.

7 (2) The court or agency name.

8 (3) The docket number.

9 (4) The claim or file number.

10 (5) The date on which the reportable event occurred.

11 (c) A licensee shall promptly respond to oral or written
12 inquiries from the board concerning the reportable events,
13 including inquiries made by the board in conjunction with license
14 renewal.

15 (d) Failure of a licensee to report to the board in the time and
16 manner required by this section shall be grounds for disciplinary
17 action.

18 *(e) Failure of a licensee or claimant or, if represented by*
19 *counsel, their counsel, to comply with this section shall be a*
20 *misdemeanor punishable by a fine of not less than one hundred*
21 *dollars (\$100) or more than one thousand dollars (\$1,000).*
22 *Knowing and intentional failure to comply with this section, or*
23 *conspiracy or collusion not to comply with this section or to*
24 *hinder or impede any other person in complying with this*
25 *section, shall be a misdemeanor punishable by a fine of not less*
26 *than ten thousand dollars (\$10,000) or more than one hundred*
27 *thousand dollars (\$100,000).*

28 *SEC. 2. No reimbursement is required by this act pursuant to*
29 *Section 6 of Article XIII B of the California Constitution because*
30 *the only costs that may be incurred by a local agency or school*
31 *district will be incurred because this act creates a new crime or*
32 *infraction, eliminates a crime or infraction, or changes the*
33 *penalty for a crime or infraction, within the meaning of Section*
34 *17556 of the Government Code, or changes the definition of a*
35 *crime within the meaning of Section 6 of Article XIII B of the*
36 *California Constitution.*

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

39 ~~927.1. (a) (1) A state agency that acquires property or~~
40 ~~services pursuant to a contract with a business, including any~~

1 approved change order or contract amendment, shall make
2 payment to the person or business on the date required by the
3 contract and as required by Section 927.4 or be subject to a late
4 payment penalty.

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

9 (b) Except in the event of an emergency as provided in Section
10 927.11, effective January 1, 1999, the late payment penalties
11 specified in this chapter may not be waived, altered, or limited by
12 either of the following:

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

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

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

19 927.2. The following definitions apply to this chapter:

20 (a) "Claim schedule" means a schedule of invoices prepared
21 and submitted by a state agency to the Controller for payment to
22 the named claimant.

23 (b) "Grant" means a solicited or unsolicited proposal of a state
24 agency, including, but not limited to, a request for proposals
25 (RFP) and a request for applications (RFA), to furnish assistance
26 to a nonprofit service organization so that the latter may carry out
27 its own program to provide public services. The term shall not
28 include the procurement of goods or services for a state agency
29 nor the acquisition, construction, alteration, improvement, or
30 repair of real property for a state agency.

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

34 (d) "Medi-Cal program" means the program established
35 pursuant to Chapter 7 (commencing with Section 14000) of Part
36 3 of Division 9 of the Welfare and Institutions Code.

37 (e) "Nonprofit service organization" means a nonprofit entity
38 that is organized to provide services to the public.

39 (f) "Nonprofit public benefit corporation" means a
40 corporation, as defined by subdivision (b) of Section 5046 of the

1 Corporations Code, that has registered with the Department of
2 General Services as a small business.

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

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

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

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

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

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

18 (h) “Required payment approval date” means the date on
19 which payment is due as specified in a contract or grant or, if a
20 specific date is not established by the contract or grant, 30
21 calendar days following the date upon which an undisputed
22 invoice is received by a state agency.

23 (i) “Received by a state agency” means the date an invoice is
24 delivered to the state location or party specified in the contract or
25 grant or, if a state location or party is not specified in the contract
26 or grant, wherever otherwise specified by the state agency.

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

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

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

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

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

37 (3) If a small business, it is independently owned and
38 operated.

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

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

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

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

11 ~~927.3. Except where payment is made directly by a state~~
12 ~~agency pursuant to Section 927.6, any undisputed invoice~~
13 ~~received by a state agency shall be submitted to the Controller for~~
14 ~~payment by the required payment approval date. A state agency~~
15 ~~may dispute an invoice submitted by a claimant for reasonable~~
16 ~~cause if the state agency notifies the claimant within 15 working~~
17 ~~days from receipt of the invoice, or delivery of property or~~
18 ~~services, whichever is later. No state employee shall dispute an~~
19 ~~invoice, on the basis of minor or technical defects, in order to~~
20 ~~circumvent or avoid the general intent or any of the specific~~
21 ~~provisions of this chapter.~~

22 ~~SEC. 4. Section 927.6 of the Government Code is amended to~~
23 ~~read:~~

24 ~~927.6. (a) State agencies shall pay applicable penalties,~~
25 ~~without requiring that the claimant submit an additional invoice~~
26 ~~for these amounts, whenever the state agency fails to submit a~~
27 ~~correct claim schedule to the Controller by the required payment~~
28 ~~approval date. The penalty shall cease to accrue on the date the~~
29 ~~state agency submits the claim schedule to the Controller for~~
30 ~~payment, and shall be paid for out of the state agency’s funds. If~~
31 ~~the claimant is a certified small business, a nonprofit~~
32 ~~organization, a nonprofit public benefit corporation, or a small~~
33 ~~business or nonprofit organization that provides services or~~
34 ~~equipment under the Medi-Cal program, the state agency shall~~
35 ~~pay to the claimant a penalty of 1 percent of the amount due, per~~
36 ~~calendar day, from the required payment date. However, a~~
37 ~~nonprofit organization shall only be eligible to receive a penalty~~
38 ~~payment if it has been awarded a contract or grant in an amount~~
39 ~~less than five hundred thousand dollars (\$500,000).~~

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

13 ~~SEC. 5.—Section 927.7 of the Government Code is amended to~~
14 ~~read:~~

15 ~~927.7. The Controller shall pay claimants within 15 calendar~~
16 ~~days of receipt of a correct claim schedule from the state agency.~~
17 ~~If the Controller fails to make payment within 15 calendar days~~
18 ~~of receipt of the claim schedule from a state agency, the~~
19 ~~Controller shall pay applicable penalties to the claimant without~~
20 ~~requiring that the claimant submit an invoice for these amounts.~~
21 ~~Penalties shall cease to accrue on the date full payment is made,~~
22 ~~and shall be paid for out of the Controller's funds. If the claimant~~
23 ~~is a certified small business, a nonprofit organization, a nonprofit~~
24 ~~public benefit corporation, or a small business or nonprofit~~
25 ~~organization that provides services or equipment under the~~
26 ~~Medi-Cal program, the Controller shall pay to the claimant a~~
27 ~~penalty of 1 percent of the amount due, per calendar day, from~~
28 ~~the 16th calendar day following receipt of the claim schedule~~
29 ~~from the state agency. However, a nonprofit organization shall~~
30 ~~only be eligible to receive a penalty payment if it has been~~
31 ~~awarded a contract or grant in an amount less than five hundred~~
32 ~~thousand dollars (\$500,000). For all other businesses, the~~
33 ~~Controller shall pay penalties at a rate of 1 percent above the rate~~
34 ~~accrued on June 30 of the prior year by the Pooled Money~~
35 ~~Investment Account, not to exceed a rate of 15 percent, except~~
36 ~~that, if the amount of the penalty is seventy-five dollars (\$75) or~~
37 ~~less, the penalty shall be waived and not paid by the Controller.~~

38 ~~SEC. 6.—Section 927.10 of the Government Code is amended~~
39 ~~to read:~~

1 927.10. State agencies shall encourage claimants to promptly
 2 pay their subcontractors and suppliers, especially those that are
 3 small businesses. In furtherance of this policy, state agencies
 4 shall utilize expedited payment processes to enable faster
 5 payment by prime contractors to their subcontractors and
 6 suppliers, and shall promptly respond to any subcontractor or
 7 supplier inquiries regarding the status of payments made to prime
 8 contractors.

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

11 927.11. (a) Except in the case of a contract with a certified
 12 small business, a nonprofit organization, or a nonprofit public
 13 benefit corporation, if an invoice from a business under a
 14 contract with the Department of Forestry and Fire Protection
 15 would become subject to late payment penalties during the
 16 annually declared fire season, as declared by the Director of
 17 Forestry and Fire Protection, then the required payment approval
 18 date shall be extended by 30 calendar days.

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

22 (c) If the Director of Finance determines that a state agency or
 23 the Controller is unable to promptly pay an invoice as provided
 24 for by this chapter due to a major calamity, disaster, or criminal
 25 act, then otherwise applicable late payment penalty provisions
 26 contained in Section 927.7 shall be suspended except as they
 27 apply to a claimant that is either a certified small business, a
 28 nonprofit organization, a nonprofit public benefit corporation, or
 29 a small business or nonprofit organization that provides services
 30 or equipment under the Medi-Cal program. The suspension shall
 31 remain in effect until the Director of Finance determines that the
 32 suspended late payment penalty provisions of this section should
 33 be reinstated.

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

O