

Senate Bill No. 1629

Passed the Senate August 23, 2006

Secretary of the Senate

Passed the Assembly August 21, 2006

Chief Clerk of the Assembly

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

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 7 (commencing with Section 12500) to Part 2 of Division 2 of the Public Contract Code, relating to state contracts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1629, Speier. Public contracts: the Federal Laboratory Contracting Act.

The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services, and other state agencies in overseeing and implementing state contracting procedures and policies.

This bill would enact the Federal Laboratory Contracting Act to modify the existing contracting procedures and policies to authorize a state agency that contracts with a federally funded research and development center, as defined, or a field center, as defined, to make contract payments in advance. This bill would not allow a state agency that enters into a prime contract with a federally funded research and development center or a field center to indemnify the center with respect to products liability, intellectual property, and general liability claims, as specified. This bill would not allow a state agency to audit the records of any federally funded research and development center or field center, but instead would authorize a state agency to rely on the services of any cognizant federal audit agency, as defined. This bill would also require the Governor to designate the Secretary of State and Consumer Services as the state representative for purposes of communicating and negotiating with the representatives of the United States Department of Energy, the National Aeronautics and Space Administration (NASA), federally funded Department of Energy and NASA research and development centers, and NASA field centers, as provided. This bill would specify that the Regents of the University of

California would not be considered a state agency for the purposes of this act, as provided.

This bill would set forth legislative findings and declarations regarding existing policies and procedures governing state contracts with federally funded Department of Energy and NASA research and development centers and NASA field centers located in California.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Chapter 7 (commencing with Section 12500) is added to Part 2 of Division 2 of the Public Contract Code, to read:

CHAPTER 7. THE FEDERAL LABORATORY CONTRACTING ACT

12500. This chapter shall be known and may be cited as the Federal Laboratory Contracting Act.

12501. The Legislature finds and declares all of the following:

(a) Technological advances are an important part of California's economy and, therefore, it would be wise for state agencies to contract, in a facile and efficient manner, with federally funded Department of Energy (DOE) and National Aeronautics and Space Administration (NASA) research and development centers and NASA field centers located in California that are often at the forefront of science and technology.

(b) As the major funding agency and owner of several research and development centers located in California, DOE allows outside parties to contract with the centers but requires the centers, when initiating and finalizing any contracts with outside parties, to adhere to rigorous policies and procedures specified by federal laws and regulations. NASA adheres to similar federal laws and regulations when initiating and finalizing contracts between its research and development centers or field centers in California and outside parties. The State of California has its own laws, regulations, and procedures governing state contracts. The

research and development centers and field centers owned or owned and operated by DOE and NASA have attempted to contract with state agencies and departments in California but have had minimal success. Conflicting provisions in federal and state laws, regulations, and policies, and seemingly unachievable compromises appear to be the major limiting factors in the successful negotiation of contracts between the federally funded centers and California state agencies and departments.

12501.5. (a) The Governor shall designate the Secretary of State and Consumer Services as the state's representative for purposes of communicating and negotiating with representatives of the United States Department of Energy, National Aeronautics and Space Administration, federally funded DOE and NASA research and development centers in California, and NASA field centers in California regarding any issue that may affect a contractual relationship between the state and these federal entities. The Secretary of State and Consumer Services may delegate this responsibility to the Director of the Department of General Services if the secretary views such delegation as necessary to advance the successful negotiation of contracts between the state and one or more of those federal entities.

(b) The Secretary of State and Consumer Services or his or her designee shall develop policies and procedures to encourage and enable the contracting process with federally funded DOE and NASA research and development centers and NASA field centers and shall develop model contract language that is available for use by any state agency or department in negotiating a contract with one of these centers. The Regents of the University of California shall not be considered a state agency for the purposes of this chapter, and specifically shall not be covered as prime contractor with the DOE for management of DOE laboratories.

12502. (a) Notwithstanding any other law, a state agency that enters into a prime contract with a federally funded DOE or NASA research and development center or NASA field center, or that enters into a prime contract with another entity that, in turn, issues a subcontract to a federally funded DOE or NASA research and development center or a NASA field center located in California may, if requested by the contracting party, make

contract payments to the center for contracted services in advance.

(b) Notwithstanding any other law, a state agency that enters into a prime contract with a federally funded DOE or NASA research and development center or NASA field center, or that enters into a prime contract with another entity that, in turn, issues a subcontract to a federally funded DOE or NASA research and development center or NASA field center located in the state may not indemnify the center with respect to products liability, intellectual property, and general liability claims arising out of the activities to be carried out by the center pursuant to the contract.

(c) Notwithstanding any other law, a state agency shall not audit the records of any federally funded DOE or NASA research and development center or NASA field center, but the state agency may rely on the services of any cognizant federal audit agency, including the Defense Contract Audit Agency, the United States Government Accountability Office, the DOE Office of Inspector General, and the NASA Office of Inspector General, to satisfy auditing requirements.

(d) For purposes of this chapter:

(1) “Federally funded research and development center” means a federally funded research and development center as defined in Subpart 2.1 of Part 2 of Subchapter A of Chapter 1 of Title 48 of the Code of Federal Regulations.

(2) “NASA field center” means a field center identified as such by NASA and authorized by Title III of the Space Act of 1958.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for California state agencies and departments to be able to contract, in a facile and efficient manner, with federally funded Department of Energy and NASA research and development centers and NASA field centers located in this state for purposes of developing new technologies that may protect public health and welfare, it is necessary that this act take effect immediately.

Approved _____, 2006

Governor