
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Senator Bill Dodd

Chair

2023 - 2024 Regular

Bill No:	SB 557	Hearing Date:	3/28/2023
Author:	Limón		
Version:	2/15/2023	Introduced	
Urgency:	No	Fiscal:	Yes
Consultant:	Brian Duke		

SUBJECT: California Prompt Payment Act: nonprofit organizations

DIGEST: This bill expands the definition of a grant for the purposes of the California Prompt Payment Act (PPA) to include agreements between the state and a nonprofit organization, removes the \$500,000 cap on contracts with nonprofits that are eligible for late payment penalties, and adds penalty payments made to nonprofit organizations by state agencies to their existing Department of General Services (DGS) reporting requirements, as specified.

ANALYSIS:

Existing law:

- 1) The PPA requires state agencies that award grants or that acquire properties or services pursuant to a contract to make timely payments pursuant to the grant or contract, as specified.
- 2) Provides that if a state agency or the State Controller (Controller) fails to take certain timely actions, and payment is not issued within 45 calendar days from the state agency receipt of an undisputed invoice, the state agency or the Controller must, as applicable, pay certain penalties.
- 3) Provides that nonprofit organizations shall only be eligible to receive a penalty payment if it has been awarded a contract or grant in an amount less than \$500,000.
- 4) Authorizes a state agency to dispute for reasonable cause an invoice, refund request, or claim for Medi-Cal reimbursement, as specified.

- 5) Requires state agencies to provide DGS with a report on late payment penalties that were paid by that state agency during the preceding fiscal year, as specified.
- 6) Defines “grant” to mean a signed final agreement between any state agency and a local government agency or organization authorize to accept grant funding for victim services or prevention programs administered by any state agency, or restoration activities performed by a resource conservation district.
- 7) Defines “reasonable cause” to include a determination by a state agency that 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.

This bill:

- 1) Expands, for the purposes of the PPA, the definition of “grant” to also include a signed final agreement between any state agency and a nonprofit organization.
- 2) Amends, for the purposes of the PPA, the definition of “nonprofit organization” to mean an organization that qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code.
- 3) Excludes discrepancies of five percent or less of the invoiced amount between the invoice and claimed amount from a finding of “reasonable cause.”
- 4) Removes the provision that nonprofit organizations shall only be eligible to receive a penalty payment if it has been awarded a contract or grant in an amount less than \$500,000.
- 5) Requires DGS to identify the total number and dollar amount of late payment penalties paid to nonprofit organizations.
- 6) Requires DGS to prepare a report separately listing the number and total dollar amount of all late payment penalties paid to nonprofit organizations.

Background

Purpose of the Bill. According to the author’s office, “California nonprofits are a bridge to our local communities, ensuring that critical services are accessible to residents while contributing to their regional, social, and economic growth. SB

557 ensures that nonprofits receive grants and contract payments from the state, in a timely manner, for the betterment of their communities.”

California’s Prompt Payment Act. Under the PPA, state agencies that acquire property or services pursuant to a contract with a business are required to make payment on the date required by the contract, or within 45 days of the state agency's receipt of an undisputed invoice. If this requirement is not met, state agencies must automatically calculate and pay appropriate late payment penalties as specified in Government Code Section 927, et seq. Late payments may occur for a variety of reasons, including administrative decisions relating to cash flow, bond sales, or delays in meeting conditions set forth in federal legislation.

Existing law specifies that penalties paid by a state agency to a certified small business, nonprofit organization, nonprofit public benefit corporation, and a small business or nonprofit that provides services or equipment under Medi-Cal shall be calculated at a rate of 10% above the United State Prime Rate on June 30th of the prior year.

Since 2013, DGS has overseen the PPA to ensure that government agencies, in a timely manner, pay their contracts awarded to a certified small business or nonprofit. The PPA indicates that nonprofits are only eligible to receive a penalty payment if the grant or contract awarded is an amount less than \$500,000. Hence, the PPA only applies to a limited set of grants, excluding numerous nonprofits that provide essential services to California communities.

This bill expands the current definition of “grant” in existing law to also mean a signed final agreement between any state agency and a nonprofit organization. Additionally, this bill removes the cap of only paying a late penalty to a nonprofit organization if the contract is for \$500,000 or less. This bill requires state agencies to include penalty payments made to nonprofits in their existing annual penalty payment reporting to DGS.

Prior/Related Legislation

SB 336 (Umberg, 2023) requires DGS to establish a process for nonprofits to negotiate a state standard negotiated cost agreement and requires state agencies administering grant programs to use the same terms as contained in a grantee’s existing negotiated indirect cost rate agreement policies approved by the federal government, or the same terms contained in the state standard negotiated cost agreement, as specified. (Pending in the Senate Appropriations Committee)

AB 590 (Hart, 2023) authorizes state agencies to advance a payment up to 25% of the total grant to a nonprofit organization, as specified. (Pending in the Assembly Accountability and Administrative Review Committee)

AB 619 (Fong, 2023) authorizes nonprofits that provide services during a state of emergency to request the state agency to allow that nonprofit to modify the method in which it provides those services so long as the purpose of the contract is served, as specified. (Pending in the Assembly Emergency Management Committee)

AB 860 (Valencia, 2023) imposes minimum requirements for the administration of covered grants that meet maximum size and duration requirements and are available to nonprofit organizations, as specified. (Pending in the Assembly Accountability and Administrative Review Committee)

AB 885 (Rivas, L., 2023) establishes the California Nonprofit Fairness in Contracting Act and defines “covered contract” to mean a contract for goods or services by a state or local agency using state funds, including a grant made by a state or local agency using state funds, as specified. (Pending in the Assembly Local Government Committee)

SB 1069 (Umberg, 2022) would have required DGS to establish a state standard negotiated cost agreement for awarding state grants to grantees that do not have an existing NICRA, as specified, and requires state agencies to use the previously negotiated terms if a grantee has an existing NICRA approved by the federal government, as specified. (Held on the Assembly Appropriations Committee Suspense File)

AB 1776 (Gallagher, Chapter 455, Statutes of 2022) added resource conservation districts to the list of entities entitled to a late payment penalty from the state, as specified, and exempts contracts with those districts from specified extension provisions, as specified.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT:

California Association of Nonprofits
 California Council of Community Behavioral Health Agencies
 California Partnership to End Domestic Violence
 California Releaf
 Center for Nonprofit Management
 Children's Institute
 Community Alliance With Family Farmers

Community Bridges
El Concilio
Fresno Building Healthy Communities
Healthright 360
Inland Empire Community Collaborative
Inland Southern California United Way
Koreatown Youth + Community Center
Meals on Wheels California
Nonprofit Finance Fund
PATH
Rural Community Assistance Corporation
Santa Cruz Volunteer Center
Self-help Enterprises
Treepeople
United Ways of California

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: Supporters of the bill write that this bill is “part of the California Nonprofit Equity Initiative that our organizations, along with more than 500 other nonprofit community leaders, are supporting to level the playing field for nonprofits. Improving how state government contracts with nonprofits is a question of equity – for our most vulnerable communities and for the nonprofits that serve them. Nonprofits are a powerful force for equity. The state relies on nonprofits to help put critical policies into action, partnering with community organizations to help the homeless, build affordable housing, respond to the impacts of climate change, support domestic violence victims, and in countless ways improve the lives of vulnerable members of our communities. To succeed, nonprofits need contracting terms that set us up to partner effectively.”

Further, supporters state that “[a]ligned with the Governor’s ‘California for All’ vision, SB 557 responds to the impact the pandemic has had on our communities, the need to address equity and inequality in access to state resources, and the imperative to support strong and varied community-based organizations to address increased need. Passing SB 557 and the rest of the California Nonprofit Equity Initiative will strengthen the essential partnership between the state and nonprofits and our mutual efforts to deliver the highest quality services to the people of California.”