GENERAL

Prompt Payment Act for Nonprofit Grantees: Newsom's Narrow Veto

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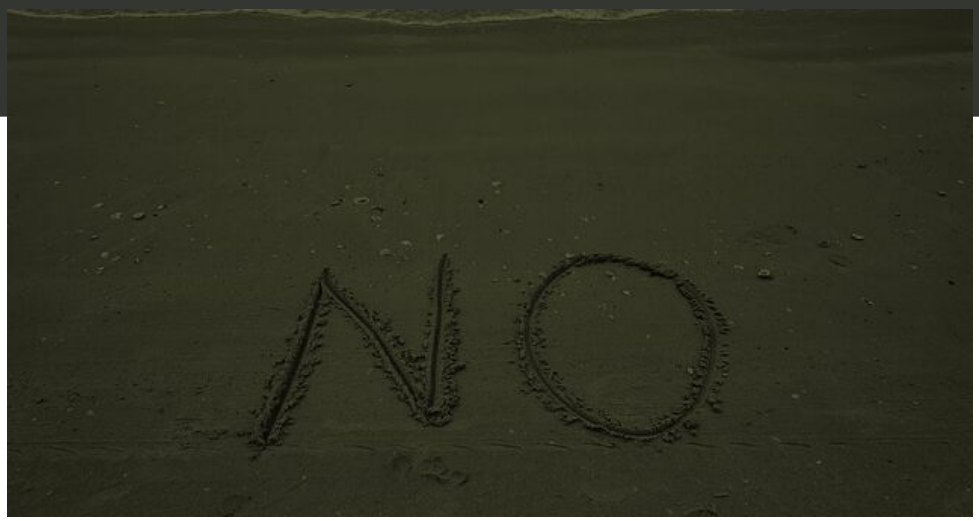

The year 2023 was the busiest in over a decade for the California Legislature, with a higher than normal number of measures – 2662 – introduced by the February 17th filing deadline to submit new bills for consideration in the current year's portion of the 2023-2024 two-year Session.

Among this huge pile of legislative opportunities was a seven-bill package called the California Nonprofit Equity Initiative. "For years," we explained in *Major Legislative Push in CA To Reform Grantmaking* (February 27, 2023), "reform of the state's grantmaking policies and procedures has been high on the wish list of California's nonprofit community."

"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."

As the dust settled in mid-September on this year's lawmaking proceedings, only about one-third of the original 2662 new bills from February had won approval by the Senate and the Assembly. Of those measures that were sent to the governor's desk, some were vetoed – despite the fact that this Democratic chief executive has the advantage of blue supermajorities in each chamber.

As to the two-thirds of the proposed bills that were not approved by lawmakers before adjournment, it doesn't mean they were all necessarily acted on and rejected. It's not uncommon in California's special version of legislative sausage-making that many of the pending measures – at some point

between March and September – are dropped down one or another peculiar little rabbit holes of "suspense" or other temporary inaction. See The Legislative Process: A Citizens Guide to Participation, *senate.cal.gov*.

Then when lawmakers reconvene in early January, some of those bills may be plucked out of their hibernation hideaways for reconsideration or revision. That's what happened to five of the seven bills comprising the California Nonprofit Equity Initiative. According to the latest California Legislation Tracker (October 20, 2023), published and updated daily by CalNonprofits, each of those five "[m]ay be acted upon Jan 2024."

As we've already reported on October 12th and again in *Upfront Grant Money in CA to Start Soon* (October 16, 2023), the two most critical items in the California Nonprofit Equity Initiative's package of reforms were approved by lawmakers – unanimously! – and sent to the governor's desk.

AB 590 and SB 557 both address serious deficiencies in the existing grant and contract payment system. They highlight the elephant in the room: The state's nonprofits are eager to partner with government to provide vital services and benefits, but many have been unable to do so before now because they can't afford the financial shortfalls, delays in payment, and other unfair and inequitable burdens and risks.

The Key Money Bills

Throughout 2022, a sector-wide effort to achieve long-overdue reforms in the state grant and contract policies and procedures was launched by the California Association of Nonprofits with assistance from the ad hoc California Nonprofit Contracting Coalition. This effort attracted the support of over 500 organizations around the state.

The reform proponents initiated meaningful dialogue with Governor Newsom's office and bipartisan state leaders. See the 8-page letter dated October 2022: *Improving nonprofit-government contracting will benefit communities across California.* During the last eighteen months, they emphasized to key legislators and the Newsom Administration the interdependence of government and the nonprofit sector in providing crucial services to the people of California.

The seven-piece California Nonprofit Equity Initiative package, taken as a whole, is meant to put into place reforms necessary to give nonprofits the resources they need to fulfill their role in this partnership. More particularly, it is crafted as well "to increase fairness and equity in state contracting."

Proponents of the entire legislative package, and these payment-related measures in particular, have built a compelling case for each and every one of the seven proposed bills filed in early 2023.

AB 590, sponsored by Santa Barbara Democratic Assembly Member Gregg Hart and which provides for significant upfront payments for nonprofit grantees and contractors, sailed on through the Governor's office. It will take effect on January 1, 2024. We discussed that measure in detail in *Upfront Grant Money in CA to Start Soon* (October 16, 2023).

But SB-557, Limón, California Prompt Payment Act: nonprofit organizations (2023-2024) – which also passed with unanimous and bipartisan support – hit a bit of a glitch. The Governor returned it without his signature.

Senate Bill 577

For specific official information about SB-557, see the online resource California Legislative Information which includes the Legislative History as well as the Official Text approved by legislators dated September 14, 2023.

In post-vote correspondence to Governor Newsom dated September 18, 2023, and September 20, 2023, proponents of SB 577 urged him to sign the measure into law. They described SB 577 as a "no nonsense, no regrets measure that simply places nonprofits on equal footing with the rest of California's grants and contracts partners."

Under existing law, there is a Prompt Payment Act but it "only regulates contracts with nonprofits of less than $500,000. This means that some of our state's most important providers — who in some cases contract to build housing for thousands of homeless people or contract to add dozens of new childcare slots can't count on prompt payments from the state."

The proposal approved by legislators "[e]xtends the state's Prompt Payment Act to all state contracts with nonprofits by removing the current $500,000 cap, …"

AB 590 as passed by lawmakers also "sets a minimum discrepancy amount." It addresses a significant problem in existing law; namely, that "… many nonprofits report payments being held up due to discrepancies of less than a nickel between the invoice and 1/12 of the contract or other anticipated amount." SB 577 "allows for invoices to be paid — with an investigation after the payment — of less than $250 or 5%, whichever is less."

The reforms pertaining to these discrepancies, the proponents argued, have been thoughtfully crafted to accommodate the state's interests and concerns. That's why SB 557, as passed, requires "… prompt payment unless the discrepancy is greater than $250 or five percent of the invoice, whichever is smaller. The state can still pursue the discrepancy but cannot refuse to pay the invoice on time over such small amounts."

Governor's Veto Rationale

Although Governor Newsom returned SB 577 "without his signature," his Veto Statement dated October 8, 2023, indicates a narrow objection only to a single part of the bill; that is, the issue of the "minimum discrepancy amount."

He wrote: "…[F]or disputed invoices regarding the quantity of goods or services delivered to or accepted by the state, this bill would provide that the dispute suspends the requirement to pay within 45 days only if the disputed portion exceeds five percent of the invoiced amount or $250, whichever is less…."

"However," the Governor explained, "being able to suspend the 45-day requirement in a dispute over the quantity of goods or services provided is essential to the state's fiduciary responsibility and

accountability as a distributor of public funds. Moreover, establishing a minimum discrepancy amount to suspend the 45-day requirement could pressure state employees to pay invoices with missing documentation to avoid having to report a late payment penalty."

The state's chief executiver "look[s] forward to working with stakeholders on the implementation of related efforts, and … encourage[s] the author and stakeholders to continue working with [his] administration on the overarching goals of this bill, while addressing accountability concerns."

Conclusion

Technically there is an avenue for about 60 days from the Veto Statement for lawmakers to override it. The California Legislation Tracker and other sources list the current status of SB 557 as "In Senate. Consideration of Governor's veto pending."

But that won't happen.

First, the Governor's narrow and particularized objection to a single aspect of SB 577 can and should be easily negotiated to a mutually acceptable solution, and acted on early in 2024.

Second, "… an old Sacramento adage uses baseball imagery to explain the power of California's chief executive at the end of the legislative process: 'The governor bats last.'" See *Column: Once California's governor vetoes a bill, lawmakers almost never challenge the decision* (September 30, 2018) John Myers, *The Los Angeles Times* ["…a vote to override is 'seen as a significant insult to the governor and major disruption to the balance of power relationship between the three branches.'"]

– Linda J. Rosenthal, J.D., FPLG Information & Research Director