Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 451 (Delegate Stein)
Health and Government Operations

State Finance and Procurement – Grants – Prompt Payment Requirement

This bill establishes that it is the policy of the State to make payment under a grant agreement within 30 days of (1) the payment becoming due under the grant agreement or (2) if later, receiving a proper invoice. Interest accrues at the rate of 9% per year on any amount that is due and payable but remains unpaid more than 45 days after a proper invoice is received.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* $677,200 in FY 2023 for additional staff in agencies that award high volumes of grants and potentially for the Comptroller's Office. Out-year costs reflect annualization, ongoing operating costs, and inflation. General and special fund expenditures potentially increase significantly more for interest on late payments, as discussed below. No effect on revenues.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	$0	$0	$0	$0	$0
GF Expenditure	677,200	799,700	822,400	844,100	866,900
GF/SF Exp.	-	-	-	-	-
Net Effect	($677,200)	($799,700)	($822,400)	($844,100)	($866,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local governments that receive grants from State agencies may receive payments in a more timely fashion. No effect on local expenditures.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A "grant" means a legal instrument of financial assistance between a State grant-making entity and a nonstate entity that meets specified criteria. "Grant" does not include:

- direct government cash assistance to an individual;
- a subsidy;
- a loan guarantee;
- insurance; or
- State funding that is required annually and is calculated through a formula set in statute.

However, the bill does not apply to grants made by the State's higher education system, the capital budget, the Maryland Department of Transportation, or the Maryland Technology Development Corporation, or to business development grants made by the Department of Commerce.

A proper invoice must include without error (1) the grant recipient's federal employer identification number or Social Security number; (2) the grant agreement's identification number or other adequate description; and (3) any documentation required by regulation or the grant agreement.

The bill includes specified procedures for receiving and processing invoices from grant recipients. Failure by the State grant-making entity to comply with these procedural requirements does not constitute a late payment.

Interest on late payments begins accruing on the thirty-first day after the day on which a payment is due or a proper invoice is received, but it is not payable until 45 days after receipt of a proper invoice. However, payment of interest is required only if a grant recipient submits an invoice for the interest within 30 days of the State's check for the amount on which the interest accrued. Further, the State is not liable for interest (1) if the State has initiated legal proceedings to dispute the amount owed; (2) that accrues more than one year after the thirty-first day that the State receives an invoice; or (3) on unpaid interest.

State grant-making entities may use media that produce tangible recordings of information to expedite the payment process rather than requiring paper documents. They must also provide adequate safeguards and controls to ensure the integrity of the data and to prevent duplicate processing.

Current Law: There are no requirements in statute related to the timing of grant payments. The bill's requirements related to the timing of grant payments and the accrual and payment of interest on late payments are modeled on requirements for payment under State contracts. It is the policy of the State to make payments under a procurement contract within 30 days of (1) the payment being due under the contract or (2) if later, receiving an invoice. In general, interest accrues at the rate of 9% per year on any amount that is due and remains unpaid 45 days after receiving an invoice. Interest begins accruing on the thirty-first day after payment is due. As the bill requires of grant recipients, contractors must submit invoices for interest due, and interest is not payable (1) if a contract claim has been filed; (2) on interest that accrues for more than one year; and (3) on unpaid interest.

State Expenditures: In general, grantees submit invoices for payment to granting agencies, which review the invoices to ensure they are proper. Once granting agencies determine an invoice is proper, they forward it to the Comptroller's Office for payment. The Comptroller's Office asks agencies to allow five days for payment but generally tries to process payments in one to three days. However, several agencies advise that the Comptroller's Office can take several weeks to process payments. Thus, the bill affects both granting agencies with high volumes of grant awards and the Comptroller's Office.

Granting Agencies

Based on responses from 19 Executive Branch agencies, granting agencies most affected are the Maryland Department of Labor (MDL), Department of Natural Resources (DNR), Maryland Department of Emergency Management (MDEM), and Maryland State Department of Education (MSDE). Other agencies indicate they can meet the bill's processing timelines with existing staff. However, all Executive Branch agencies were not contacted for this analysis, so other agencies may require additional staff as well. Each of the four affected agencies requires additional staff to expedite the review and approval of a high volume of grant invoices, many of which have extensive documentation that must be verified prior to approval. For MDEM and MDL, many grant programs are supported by special and federal funds, but for the purpose of this analysis, it is assumed that general funds are needed to add fiscal staff to process payments to meet a State requirement. To the extent that federal or special funds may be used for these purposes, general fund expenditures are less.

Therefore, general fund expenditures increase by *at least* $677,193 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of MDEM, MDL, and DNR each hiring three account technicians/grant specialists to review, process, and approve invoices from grantees requesting payment; MSDE requires one grant specialist. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	10
Salaries and Fringe Benefits	$603,763
Operating Expenses	73,430
Total FY 2023 State Expenditures	**$677,193**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Other agencies with lower grant volumes may experience operational effects from the bill's requirements but indicate they can otherwise meet the bill's requirements with existing resources. However, several noted that payments can be late due to delays in the Comptroller's Office or for other reasons outside of their control, but the bill requires granting agencies to pay interest on late payments even if it is not their fault. To the extent that payments are late for reasons beyond their control, general and/or special fund payments for interest likely increase, potentially significantly. However, a reliable estimate is not feasible because it depends on the dollar amount of late payments and also whether grantees request payment of interest, as required by the bill. MDL advises that, although many of its grants are paid with federal funds, federal guidelines prohibit the use of federal funds to pay interest.

Comptroller's Office

The Comptroller's Office indicates that it processes more than one million payments per year (which includes contractors as well as grantees). Although it anticipates being able to process payments it receives from agencies within three days, several agencies advise that it can take several weeks for the office to process payments once approval is transmitted from the agencies. To the extent that the Comptroller's Office requires additional staff to meet its three-day goal, general fund expenditures may increase further, but a reliable estimate is not feasible.

Small Business Effect: The bill does not affect the amount of grant payments to small business grantees. However, to the extent that small businesses receive grants from State agencies, they may receive their payments in a more timely fashion.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 542 (Senator Kagan, *et al.*) - Budget and Taxation.

Information Source(s): Maryland Department of Aging; Maryland Department of Agriculture; Department of Budget and Management; Comptroller's Office; Governor's Office of Crime Prevention, Youth, and Victim Services; Maryland Department of Disabilities; Maryland Department of Emergency Management; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Human Services; Department of Juvenile Services; Maryland Department of Labor; Department of Natural Resources; Maryland Department of Planning; Board of Public Works; Department of Veterans Affairs; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510