

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BBB*  
DATE: SEPT. 7, 2007

**AGENDA ITEM**  
**D-4**  
**SEPT. 12, 2007**

**OPPOSE SB 619**

**ITEM**

Oppose SB 619 and authorize submittal of position statement [RECOMMEND ADOPTION].

**BACKGROUND**

Attached is a press release from CSDA and a copy of SB 619. As set forth in CSDA's Press Release, SB 619 would lower the mandatory retention in contractor payments from 10% to 5%. If SB 619 were to become law, it would reduce NCSD's leverage on contractors to perform. Staff agrees with CSDA's assessment that the lower retention proposed would put taxpayer's money at risk.

**RECOMMENDATION**

Staff recommends that your Honorable Board take an oppose position to SB 619 and authorize the General Manager to send letters expressing the District's opposition to Senator Migden (the author), Assembly Member Blakeslee, Senator Maldonado, and Governor Schwarzenegger.

**ATTACHMENTS**

- CSDA PRESS RELEASE
- SB 619

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## Payment Retention Bill Passes to Assembly Floor

Despite opposition from CSDA, the League of California Cities, the California State Association of Counties, and numerous special districts, Senate Bill 619 (Migden) passed the Assembly Appropriations Committee last Wednesday. This bill requires that the payment retention percentage on construction projects be lowered from 10 percent to 5 percent. CSDA believes that this threatens special districts' ability to manage projects and provides less of an incentive for contractors to stay on the job, putting taxpayers' money at risk. Additionally, local governments currently have the flexibility and authority to lower the retention amount to zero on a case-by-case basis. SB 619 ignores this.

The bill will be heard on the Assembly Floor soon. Keep an eye out for a request by CSDA for members to send in letters of opposition to their Assembly Member.

California Special Districts Association | 1112 I Street | Suite 200 | Sacramento, CA 95814 | 877.924.CSDA (2732)

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[Date]

The Honorable [Assembly member's name]  
State Capitol Building, Room [Room number]  
Sacramento, CA 95814

**Re: SB 619 (Migden) – Oppose**

Dear Assembly Member [Name]:

[District name] respectfully requests your opposition to Senate Bill 619 (Migden), relating to limits on payment retention for public section construction projects.

Current law allows public entities to withhold at least 5 percent and up to 10 percent from payments to the general contractor, pending satisfactory completion of the project. Payment retention is an effective method of keeping contractors on the job until it is complete. The current retention of 10 percent is adequate to retain contractors through project completion.

SB 619 proposes to reduce retention withheld from a public entity, including special districts, to no more than 5 percent of contract amount. This bill would weaken an important tool needed for safeguarding public money and ensuring that public works projects are completed in a timely and satisfactory manner. If retention is capped at 5 percent, there is less incentive for the contractor to stay on the job.

Additionally, current law already allows local public agencies to reward contractors that are doing a satisfactory job by “ratcheting down” the retention amount from 10 percent to 5 percent, or even paying the full contract right away. This bill is not necessary; it raises financial risks, and threatens special districts’ ability to manage construction projects.

Because of these reasons, we oppose SB 619 and respectfully urge your opposition.

Cordially,

Your Name  
Your Title

Cc: California Special Districts Association, 916.442.7889

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BILL NUMBER: SB 619      AMENDED  
BILL TEXT

AMENDED IN SENATE    MARCH 29, 2007

INTRODUCED BY    Senator Migden

FEBRUARY 22, 2007

An act to amend Section ~~10500~~ of 10261 of, and to add Section 7201 to, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 619, as amended, Migden. ~~Competitive bidding. University of California.~~ Public contracts: retention proceeds.

(1) Existing law authorizes the Department of General Services, or any other department with authority to enter into contracts, to contract with suppliers for goods and services. Existing law provides that in a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of retention proceeds withheld cannot exceed the percentage specified in the contract between the public entity and the original contractor.

This bill would instead require that retention proceeds not exceed 5% of the payment, as specified, for all contracts entered into on or after January 1, 2008, between a public entity, as defined, and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder.

(2) Existing law contains various provisions relating to contracts for the performance of public works of improvement, including provisions for the disbursing and withholding of retention proceeds. Existing law requires the Department of General Services to withhold not less than 5% of the contract price until final completion and acceptance of the project.

This bill would require the Department of General Services to withhold not more than 5% of the contract price until final completion and acceptance of the project.

~~Existing law establishes procedures for competitive bidding of certain contracts by public entities, including the University of California. Existing law defines "project" to include the erection, construction, alteration, repair, or improvement of any University of California structure, building, road, or other improvement that will exceed \$50,000 in cost, as specified.~~

~~This bill would include in the definition of "project" the modernization of any University of California structure, building, road, or other improvement that will exceed \$50,000 in cost, as specified.~~

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.      Section 7201 is added to the

Public Contract Code , to read:

7201. (a) (1) This section shall apply with respect to all contracts entered into on or after January 1, 2008, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement.

(2) Under no circumstances shall any provision of this section be construed to limit the ability of any public entity to withhold 150 percent of the value of any disputed amount of work from the final payment, as provided for in subdivision (c) of Section 7107. In the event of a good faith dispute, nothing in this section shall be construed to require a public entity to pay for work that is not approved or accepted in accordance with the proper plans or specifications.

(3) For purposes of this section, "public entity" means the state, including every state agency, office, department, division, bureau, board, or commission, the California State University, the University of California, a city, county, city and county, including chartered cities and chartered counties, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) (1) The retention proceeds withheld from any payment by a public entity from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder shall not exceed 5 percent of the payment. In no event shall the total retention proceeds withheld exceed 5 percent of the contract price. In a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the public entity and the original contractor.

(2) This subdivision shall not apply if the contractor provides written notice to the subcontractor, prior to or at the time that the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish to the contractor a performance or payment bond issued by an admitted surety insurer.

(c) No party identified in subdivision (a) may require any other party to waive any provision of this section.


SEC. 2. Section 10261 of the Public Contract Code is amended to read:

10261. Payments upon contracts shall be made as the department prescribes upon estimates made and approved by the department, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to or under the control of the state, and unused, except as otherwise provided in this section. The department shall withhold not ~~less~~ more than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 95 percent of the work has been completed, the department may reduce the funds withheld to an amount not less than 125 percent of the estimated value of the work yet to be completed, as determined by the department, if the reduction has been approved, in writing, by the surety on the performance bond and by the surety on the payment bond. The Controller shall draw his or her warrants upon estimates so made and approved by the department and the Treasurer shall pay them. The funds may be released by electronic transfer if that procedure is requested by the contractor, in writing, and if the

public entity has, in place at the time of the request, the mechanism for the transfer.

~~SECTION 1. Section 10500 of the Public Contract Code is amended to read:~~

~~10500. As used in this article, "project" includes the erection, construction, alteration, modernization, repair, or improvement of any University of California structure, building, road, or other improvement that will exceed in cost, including labor and materials, a total of fifty thousand dollars (\$50,000).~~

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL   
DATE: SEPTEMBER 7, 2007



ACCEPT PEOPLES SELF HELP HOUSING WATER AND SEWER IMPROVEMENTS  
FOR MONTECITO VERDE UNIT III (CO 04-0606)

**ITEM**

Acceptance of water and sewer improvements for CO 04-0606 (People Self Help Housing-Montecito Verde III)

**BACKGROUND**

Upon completion of a developer's project, the District accepts improvements of the project after all requirements have been met. The developer for CO 04-0606, a 5-lot development on Quito, has installed water and sewer improvements and has met the District's conditions:

- Installed the improvements
- Paid associated fees
- Provided the necessary paperwork, including the Offer of Dedication and the Engineer's Certification

**RECOMMENDATION**

Staff recommends that your Honorable Board adopt the following Resolution 2007 – People Self Help accepting the water and sewer improvements for CO 04-0606.

**ATTACHMENT**

Resolution 2007- People Self Help

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**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2007-CO 04-0606**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ACCEPTING THE WATER AND SEWER IMPROVEMENTS  
FOR CO 04-0606 (PEOPLE SELF HELP-MONTECITO VERDE III)**

**WHEREAS**, the District approved the construction plans on April 5 2006, for the water and sewer improvements to be constructed; and

**WHEREAS**, the water and sewer mprovements have been constructed and said improvements are complete and certified by the engineer; and

**WHEREAS**, on June 28, 2007, the Owner offered the water and sewer improvements to the Nipomo Community Services District; and

**WHEREAS**, this District has accepted such offer without obligation except as required by law, and

**WHEREAS**, all water and sewer fees for service, required in conformance with District ordinances, have been paid in full for CO 04-0606.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:**

That the water and sewer improvements to serve CO 04-0606 in Nipomo are accepted by this District.

On the motion by Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

the foregoing resolution is hereby adopted this 12<sup>th</sup> day of September, 2007.

\_\_\_\_\_  
Michael Winn, President  
Nipomo Community Services District


ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Donna K. Johnson  
Secretary to the Board

\_\_\_\_\_  
Jon S. Seitz  
General Counsel



TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL   
DATE: SEPT. 7, 2007

**AGENDA ITEM**  
**D-6**  
**SEPT. 12, 2007**

## ADOPT REVISIONS TO STANDARD SPECIFICATIONS

### ITEM

Adopt revisions to Standard Specifications [ADOPT RESOLUTION].

### BACKGROUND

In February, your Honorable Board authorized a re-write of NCSD's Standard Specifications (previously adopted in May 2006). Attached is a CD containing the draft comprehensive re-write of the Standard Specifications (an electronic version of the Standard Specifications has been posted on NCSD's website and a hard copy is available for review at NCSD's Office). Also attached is a Draft Resolution, which would rescind the old Standard Specifications and adopt the new Standard Specifications.

### RECOMMENDATION

Staff recommends that your Honorable Board adopt the attached Resolution.

### ATTACHMENTS

- CD containing the comprehensive draft re-write.
- Draft Resolution

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**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2007-10XX**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
REVISING NCSD'S STANDARD SPECIFICATIONS  
FOR WATER AND SEWER SYSTEM IMPROVEMENTS**

**WHEREAS**, the District desires to adopt uniform and understandable Standard Specifications for Water and Sewer System Improvements that clearly define the District's expectations for installation of works by contractors and third parties; and

**WHEREAS**, in May 2006, the District adopted Resolution 2006-976 and thereby approved the current version of NCSD's Standard Specifications; and

**WHEREAS**, Boyle Engineering and the District staff have prepared the attached comprehensive re-write of the standard specifications attached hereto and incorporated by reference; and

**WHEREAS**, the District Board considered this item at a regularly scheduled public Board Meeting.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:**

1. The attached edition of the District's Standard Specifications for Water and Sewer System Improvements is hereby adopted,
2. Resolution 2006-976 is rescinded, and
3. Staff is directed to use the attached Standard Specifications for all District works.

On the motion by Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

The foregoing resolution is hereby adopted this 12th day of September, 2007.

\_\_\_\_\_  
Michael Winn, President  
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Donna K. Johnson  
Secretary to the Board

\_\_\_\_\_  
Jon S. Seitz  
General Counsel