

Date of Hearing: July 5, 2023

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Cottie Petrie-Norris, Chair

SB 336 (Umberg) – As Amended June 30, 2023

SENATE VOTE: 40-0

SUBJECT: State grant programs: negotiated indirect cost rates

SUMMARY: This bill requires a state agency administering a grant program to reimburse, when awarding a grant, the grantee's indirect costs for the grant program. Specifically, **this bill:**

1) Defines the following:

- a) "Negotiated indirect cost rate agreement" (NICRA) means an agreement that estimates the indirect cost rate negotiated between the federal government and a grantee organization that reflects indirect costs incurred by the organization that the federal government may reimburse pursuant to Part 200 of Title 2 of the Code of Federal Regulations.
- b) "Indirect Costs" means those costs incurred for a common or joint purpose benefiting more than one objective, and not readily assignable to the cost objectives specifically benefited, without effect disproportionate to the results achieved.

2) Requires a state agency administering a state grant program to use one of the following methods, as selected by the grantee, to reimburse the grantee's indirect costs:

- a) The grantee's indirect cost rate pursuant to its NICRA.
- b) A 10% de minimis indirect cost rate on direct costs.
- c) A rate negotiated by the grantee with another state agency within the last five years.

EXISTING LAW:

- 1) Establishes the Department of General Services (DGS) for the purpose of providing centralized services of state government, and establishes various state grant programs, as specified.
- 2) Federal law provides uniform administrative requirements, cost principles, and audit requirements for federal grant awards to nonfederal entities and provides guidelines for determining direct and indirect costs, as defined, charged to federal awards.

FISCAL EFFECT: Unknown, this version of this bill has not been analyzed by a fiscal committee. DGS has noted that holding overall funding constant while increasing indirect cost reimbursement would mean less money available for the legislative purposes for which the grants were authorized.

COMMENTS:

1) *According to the Author:*

“Nonprofits have long served their communities by providing services and support that improve the quality of life for all Californians, and also serve as crucial partners to the state in achieving its goals and objectives. Currently, there are various state grants available to nonprofit organizations who are looking to partner with California. These grants typically cover direct expenditures and the costs of completing their respective projects. However, they often do not cover indirect costs which are necessary to operate.

In 2014, the federal Office of Management and Budget (OMB) issued its Uniform Guidance rules, requires governments that hire non-profits at all levels—local, state, federal—to reimburse those nonprofits for their indirect costs if they have a negotiated indirect cost rate agreement (NICRA) with the federal government, which allows for the appropriate allocation of indirect costs. However, there is currently no process for a nonprofit organization to acquire a state indirect cost rate agreement with state agencies in California.

The demand for public services of all kinds has steadily increased (food services, veterans programs, healthcare, environmental services, transportation infrastructure, community programming, etc.) over the last two decades. Paradoxically, this dovetails with both a shrinking of government budgets and a belief amongst people that smaller government is preferred. What many don't realize is that nonprofit organizations have bloomed into this gap in incredible fashion. During COVID-19, it was largely nonprofit organizations that used state and federal funding to operate testing centers and provide vaccine clinics. While we conducted the 2020 Census, community groups across California provided the staff and volunteers to knock on doors and make phone calls. During our wildfire season and our recent bout of winter storms, nonprofit groups have jumped in to help clear debris, feed and shelter those who were evacuated and assist our first responders. It is shameful that California does not fully reimburse our incredible non-profits for the work they do on the ground daily to help keep our state functioning.

SB 336 will create parity with the federal government and respectfully honor these efforts by establishing a process by which nonprofits may negotiate a uniform state indirect cost agreement to cover reimbursement of indirect costs for state funded grants. This ensures that nonprofits are fairly compensated by the state for the full cost of providing services, and strengthens California's partnership with nonprofits in our mission to continue improving the quality of life for all Californians.”

2) *Genesis of the OMB Uniform Guidance Rules:*

The OMB established the Uniform Guidance Rules to ensure that the federal government pays its fair share of the indirect costs nonprofits incur with entering into agreements with the federal government for public services. An organization's indirect costs, often referred to as overhead, include administrative and facilities costs. OMB noted that the NICRA process has greatly reduced the total volume of financial management regulations for administering federal grant programs. The NICRA process allows the grants or contracting officer to quickly calculate the appropriate allocation of indirect costs associated with any one project and this streamlines the entire process.

The Uniform Guidance Rules also provides that a nonprofit that has never had a federally approved indirect cost rate can either elect the 10% de minimis rate or negotiate a higher rate. No documentation is required to justify the 10% de minimis indirect cost rate.

3) *Reimbursement of Indirect Costs in State Grants or Contracts:*

California procurement laws and regulations do not have uniform standards for reimbursing grantees' or contractors' indirect costs. DGS is the state's control agency with general authority to approve non-IT services contracts and delegated purchasing authority for contracts for non-IT goods and services in accordance with the Public Contract Code, State Contracting Manual (SCM), and other laws and regulations generally applicable to public contracts.

Public Contract Code Section 10340 provides the general competitive bidding requirements for non-IT services. A contract requires mutual agreement on terms of the contract. Contracts are generally awarded through a competitive process, which requires a fair comparison of costs between bidders. Since the law is silent on cost factors allowed in a state contract, state agencies have discretion on what cost factors to include.

The SCM and the Attorney General opinions are explicit that these uniform contracting requirements do not apply to grants. A public contract is a government transaction to procure goods or services to help an agency carry out its statutory duties, while a grant is an award of public funds by an agency to provide assistance to a third party, even if it is for a public purpose. Unless specified in the authorizing statute or budget act, a state agency administering a grant program has full discretion to define the terms of the grant award.

For both competitive contracts and grants, there is no general rule to allow or disallow for indirect costs. According to DGS, most contracts are competitively bid and the contractors are asked to include all their costs, direct and indirect, in a lump-sum bid price or a fully-loaded hourly rate.

4) *Arguments in Support:*

According to the co-sponsors, Rural Community Assistance Corporation and the Self-Help Enterprises, and support coalition:

“Unlike the federal government, California does not have a system to provide uniform reimbursement to nonprofits for their indirect costs. As a result, many nonprofits who partner with the state are not fully compensated for necessary but indirect expenses—including accounting, technology infrastructure, building and utility expenses, and other similar costs. Not reimbursing nonprofits for the true costs of providing services is harmful to the organizations, to the people they serve, and to the organizations' partnerships with state agencies. Aligning the state's reimbursement rates with those of the federal government just makes sense, as does creating a standard negotiated state rate that is no lower than 10% of direct costs.

Further complicating the issue is the matter of inconsistency across the state. For example, one nonprofit reported having four different rates on four separate state contracts in the same fiscal year, increasing audit risks, adding additional accounting time and eroding compliance with Generally Acceptable Accounting Principles (GAAP) that are required for nonprofits.

By aligning state reimbursement rates for nonprofits with those of the federal government, California will simplify paperwork and processes for state agencies and nonprofits alike.”

5) *Committee amendment:*

The current definition of “indirect costs” includes guidance (operative language) that should be moved to its own section. This definition of indirect costs and the guidance for determining the indirect costs are pursuant to Part 200.1 of Title 2 of the Code of Federal Regulations. The bill should be amended as follow:

SEC 2. Section 8900(a)(2) is amended to read:

“Indirect costs” means those costs incurred for a common or joint purpose benefiting more than one objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. ~~To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs. Indirect cost pools shall be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.~~

SEC 2. Section 8900(e) is added to read:

To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs. Indirect cost pools shall be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

6) *Prior Legislation:*

SB 1069 (Umberg) would have required DGS to establish, by July 1, 2023, a state standard negotiated cost agreement for awarding state grants created after that date to grantees that do not have an existing NICRA. It would have also required state agencies to use the previously negotiated terms for reimbursement of indirect costs if a grantee has an existing NICRA approved by the federal government. SB 1069 was held on the Assembly Appropriations Committee Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

Rural Community Assistance Corporation (Co-Sponsor)
 Self-Help Enterprises (Co-Sponsor)
 Amigos De Los Rios
 Amity Foundation
 Angelenos for Trees
 Arts District Community Council LA
 Bay Area Urban Forest Ecosystem Council
 California Association of Nonprofits
 California Coalition for Youth
 California Partnership to End Domestic Violence

California Releaf
California Urban Forests Council
Canopy
Center for Nonprofit Management
Central Coast Urban Forests Council
Children's Bureau of Southern California
Children's Institute
Clean & Green Pomona
Climate Action Now
Community Alliance with Family Farmers
Community Bridges
Community Forest Advisory Committee
Disability Rights California
El Concilio of Stockton
Fresno Building Healthy Communities
Growing Together
Health Right 360
Industrial District Green
Inland Empire Community Collaborative
Inland Urban Forest Council
International Society of Arboriculture Western Chapter
Koreatown Youth + Community Center
Koreatown Youth and Community Center INC.
Los Angeles Beautification Team
Los Angeles Neighborhood Land Trust
Lumber Cycle
Madera Coalition for Community Justice
Meals on Wheels California
Meals on Wheels Orange County
Nonprofit Finance Fund (NFF)
North East Trees
PATH (People Assisting the Homeless)
Sacramento Tree Foundation
Sacramento Urban Forest Council
San Diego Regional Urban Forests Council
San Francisco Estuary Institute
Santa Cruz Volunteer Center
Street Tree Seminar
Sustainable Claremont
The Climate Center
Tree Fresno
Treepeople
United Ways of California
Urban Ecos
Watsonville Wetlands Watch
Westcare California INC.
Your Childrens Trees

Opposition

None on file.

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