STATE OF CALIFORNIA
Franchise Tax Board

# Bill Analysis

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| Author: Umberg | Sponsor: | Bill Number: SB 336 |
| | Related Bills: See Legislative History | Introduced: February 7, 2023 |

## SUBJECT

Negotiated Cost Agreements

## SUMMARY

This bill, under the Government Code (GOV), for grants awarded to a nonprofit grantee, would require a state agency, or other state entity administering a state grant program to use a specified method for determining reimbursement of direct and indirect costs.

## RECOMMENDATION

No position.

## SUMMARY OF AMENDMENTS

Not applicable.

## REASON FOR THE BILL

The reason for this bill is to ensure that nonprofit organizations are compensated by the state for the full cost of providing services funded by grants.

## ANALYSIS

This bill, under the GOV, for grants awarded to a nonprofit grantee on or after October 1, 2024, would require a state agency or other state entity administering a state grant program to use one of the following methods, as selected by the nonprofit grantee, for reimbursement of direct and indirect costs:

1) The same terms as contained in the grantee's existing negotiated indirect cost rate agreements and cost allocation policies approved by the federal government.
2) The same terms as contained in the grantee's state standard negotiated cost agreement, as would be created by this bill.
3) A 10% de minimis indirect cost rate on direct costs.

This bill would define the following terms:

1) "Negotiated indirect cost rate agreement" means an agreement pursuant to Section 200.414 of Title 2 of the Code of Federal Regulations.
2) "State standard negotiated cost agreement" means an agreement that reflects an indirect cost rate negotiated between the Department of General Services and a nonprofit grant awardee, which is used to calculate an awardee's compensation by state agencies for indirect costs.

This bill would, to the extent authorized by state and federal law, require the Department of General Services to establish, by July 1, 2024, a process by which nonprofits could negotiate a state standard negotiated cost agreement for state grants that are awarded on or after October 1, 2024.

Under the bill, the term "state grant program" would not include federally sourced or derived funding, state funds used as a match for federal funding, and forms of subsidy other than a grant. This bill shall not be construed to limit a state agency or other state entity administering a financial assistance program other than a state grant program from using the terms of a recipient's existing negotiated indirect cost rate agreement and cost allocation policies approved by the federal government or a state standard negotiated cost agreement, as created by this bill, to the extent authorized under state and federal law.

*Effective/Operative Date*

This bill would become effective and operative January 1, 2024.

*Federal/State Law*

*Federal Law*

The federal Office of Management and Budget provide regulations for government entities that enter into contracts with nonprofits for services and includes guidance for reimbursement of direct and indirect costs.

*State Law*

*No comparable provision in state law.*

*Implementation Considerations*

None noted.

*Technical Considerations*

None noted.

*Policy Considerations*

None noted.

## LEGISLATIVE HISTORY

SB 1069 (Umberg, 2022), similar to this provision, would have required DGS to establish a state standard negotiated cost agreement for awarding state grants to grantees that do not have an existing federal negotiated cost rate agreement. SB1069 was held in the Assembly Appropriations Committee without further action.

## PROGRAM BACKGROUND

None noted.

## FISCAL IMPACT

The Franchise Tax Board's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be determined.

## ECONOMIC IMPACT

*Revenue Estimate*

This bill as introduced February 7, 2023, would not impact state income or franchise tax revenue.

## LEGAL IMPACT

None noted.

## APPOINTMENTS

None noted.

## SUPPORT/OPPOSITION

*Support*

As per the May 20, 2023, Senate Floor analysis of SB 336, the following organizations are in support of this bill.

Rural Community Assistance Corporation (co-source)
Self Help Enterprises (co-source)
California Association of Nonprofits
California Coalition for Community Investment
California Coalition for Youth

California Council of Community Behavioral Health Agencies
California Family Resource Association
California Partnership to End Domestic Violence
California ReLeaf CAMEO - California Association for Micro Enterprise Opportunity
Center for Nonprofit Management
Child Abuse Prevention Center
Children's Bureau of Southern California
Children's Institute
Community Alliance with Family Farmers
Community Bridges
El Concilio of Stockton
Fresno Building Healthy Communities
HealthRight 360
Inland Empire Community Collaborative
Inland Southern California United Way
Koreatown Youth + Community Center
Los Angeles Homeless Services Authority
Meals on Wheels California
Nonprofit Finance Fund
PATH (People Assisting the Homeless)
Rural Community Assistance Corporation
Santa Cruz Volunteer Center
The Nature Conservancy
TreePeople
United Way California Capital Region
United Ways of California

*Opposition*

Per the Senate Floor analysis of SB 336, dated May 20, 2023, there is no opposition on file.

**ARGUMENTS**

*Proponents*

Per the Senate Floor analysis of SB 336, dated May 20, 2023, the co-sponsors of the bill write in-part that:

> nonprofits are critical partners with the state. State agencies have long turned to nonprofit, mission-driven entities to assist the state in addressing critical social issues and delivering publicly funded programs and services to the communities that need it the most. However, for too long

governmental entities have ‘stretched’ funding by limiting payments to nonprofits under grants and contracts only to direct costs, leaving nonprofits to search for additional funding to supplement the project in order to defray the costs of indirect costs that are essential to completing the work for the state. The federal government has solved this issue through a process known as the Negotiated Indirect Cost rate Agreement (NICRA) to guide how it allocates billions of dollars in indirect costs to nonprofits, international NGOs and universities. To the extent that indirect costs are reasonable, allocable and allowable as defined by federal rules, the government considers them a legitimate cost of doing business payable under a government contract. Under the federal system, a nonprofit works with the federal agency that supplies most of its funding to develop its negotiated indirect cost rate. The resulting NICRA is then binding on every government agency that funds the organization.

*Opponents*

None noted.

## LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov