

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 365

(Delegate Bagnall)

Health and Government Operations

Education, Health, and Environmental Affairs

State Grants and Contracts - Reimbursement of Nonprofit Indirect Costs -
Application

This bill establishes that indirect costs incurred by nonprofit organizations on State grants or contracts are payable on awards made before October 1, 2018, under specified conditions. However, any indirect costs incurred under a multi-year grant or contract in a fiscal year that began before July 1, 2019, are not required to be reimbursed. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: No effect on the total *value* of affected multi-year State contracts and grants to nonprofit organizations. However, to the extent that indirect costs are not currently reimbursed, *either* fewer State funds are available for direct costs and services under grants and contracts *or* State expenditures (all funds) increase, potentially significantly, to maintain current levels of services after reimbursing indirect costs. No effect on revenues.

Local Effect: Local governments that serve as pass-through entities for affected multi-year State grants must incorporate the reimbursement of indirect costs into their grants and contracts with nonprofit organizations, which they can do with existing resources. To the extent that local funds are commingled with State funds on some grants and contracts, fewer local funds are available for direct costs and services under grants and contracts to nonprofit organizations.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Chapter 734 of 2018 required that the terms of a grant or contract for the provision of services by a nonprofit organization that is funded either wholly with State funds or with a combination of State and other nonfederal funds allow for reimbursement of indirect costs. Under Chapter 734, indirect costs must be reimbursed at the rate that the nonprofit organization has negotiated and received either (1) under a direct federal award or (2) from a nonfederal entity based on specified federal cost principles. If the nonprofit organization has not negotiated and received an indirect cost rate under a direct federal award, it must be reimbursed at a rate of at least 10% of specified costs. The requirements of Chapter 734 apply if State funds are transferred to the nonprofit organization either directly by the State or through a third party.

In a letter dated October 10, 2018, the Office of the Attorney General (OAG) advised that, under current law, the requirements of Chapter 734 do not apply to a grant or contract entered into prior to the bill's effective date (October 1, 2018), even in the case of a multi-year agreement entered into prior to that date that is contingent on annual State funding or that is renewed annually. OAG advised that the only circumstance under which the reimbursement requirement would apply to an agreement entered into before October 2018 would be if the renewal or extension effectively creates a new agreement. OAG concludes, "The mere fact that multi-year contracts and grant agreements are made conditional on an annual appropriation does not make them subject to the indirect reimbursement requirements of Chapter 734."

Accordingly, the bill specifies that Chapter 734 applies to three types of grant or contract agreements:

- a grant or contract awarded on or after October 1, 2018 (current law);
- a multi-year grant or grant or contract awarded before October 1, 2018, if the grant or contract remains in effect after that date and funding for the grant or contract is required to be authorized separately for each fiscal year; and
- an extension or a renewal of a grant or contract if the extension or renewal was awarded on or after July 1, 2019.

State Expenditures: Under the bill, the State must reimburse nonprofit organizations for indirect costs for grants or contracts awarded prior to October 2018, but only to the extent they were renewed or extended on or after July 1, 2019, or were reauthorized on or after October 1, 2018. As grant and contract amounts cannot be changed after their award without modifying the terms of the grant or contract (which may, in some cases, also require approval by the Board of Public Works), it is most likely that grant or contract resources are redirected from direct costs to indirect costs, resulting in no net fiscal effect

on the State. However, to the extent that such actions result in a meaningful reduction in services provided, some State agencies may pursue contract modifications that increase expenditures to maintain service levels. In that instance, State expenditures (all funds) may increase substantially, but a reliable estimate is not feasible.

Local Expenditures: Local governments confront the same choice as State agencies in cases where local funds are commingled with State funds. They may redirect existing resources from direct to indirect costs, which does not affect local expenditures, or they may increase funding for existing grants or contracts, which increases local expenditures, potentially significantly.

Additional Information

Prior Introductions: None.

Cross File: SB 17 (Senator Kagan) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Budget and Management; Maryland Department of Health; Maryland State Department of Education; Office of the Attorney General; Department of Legislative Services

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