

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1471 (Gray) – As Amended March 14, 2019

SUBJECT: State-mandated local costs: preventable loss revenue.

SUMMARY: Provides reimbursement to an underprivileged or disadvantaged local agency for “preventable lost revenue.” Specifically, **this bill:**

1) Defines the following terms:

- 1) “Delayed implementation of a state action” to mean the failure of a state agency to fully perform an action during a period of time prescribed for that action by statute, regulation, executive order, or other law or mandate;
- 2) “Preventable lost revenue” to mean a revenue loss that an underprivileged or disadvantaged local agency sustains after January 1, 2020, as a result of the delayed implementation of a state action;
- 3) “State action” to mean either:
 - i) A failure of a state agency to issue a license or other similar authorization required as a prerequisite to the performance of a certain activity performed or authorized by a local agency prior to the expiration of the state agency’s statutorily prescribed deadline to issue the license or similar authorization; or,
 - ii) A failure to advise, consult, instruct, or otherwise provide comments to a local agency on subject matter within the scope of the state agency’s expertise prior to the expiration of the statutorily prescribed opportunity or deadline to provide those comments;
- b) “Underprivileged or disadvantaged local agency” to mean either:
 - i) Any city, county, or city and county with a median household income that is below that of the county with the highest median household income by 25% or more, based on the most recent edition of the American Community Survey five-year estimates prepared by the United States Census Bureau; or,
 - ii) Any city, county, or city and county with an average life expectancy that is below that of the county with the highest average life expectancy by three years or more, based on the most recent edition of the Institute for Health and Metrics and Evaluation.
- c) Requires reimbursement to an underprivileged or disadvantaged local agency for the preventable lost revenue sustained as a result of the delayed implementation of a state action to be provided if a claim is made pursuant to the bill’s provisions.
- d) Provides that claims by an underprivileged or disadvantaged local agency for the preventable lost revenue sustained as a result of the delayed implementation of a state

action are exempt from the exceptions to the requirement that the state provide a subvention of funds to local agencies.

- e) Contains findings and declarations to support its purposes.

EXISTING LAW:

- 1) Establishes the Commission on State Mandates (Commission), which consists of the following seven members:
 - a) The Controller;
 - b) The Treasurer;
 - c) The Director of Finance;
 - d) The Director of the Office of Planning and Research;
 - e) A public member with experience in public finance, appointed by the Governor and approved by the Senate; and,
 - f) Two members from the following three categories appointed by the Governor and approved by the Senate, provided that no more than one member shall come from the same category:
 - i) A city council member;
 - ii) A member of a county or city and county board of supervisors; or,
 - iii) A governing board member of a school district, as defined.
- 2) Creates a test claim process to receive, hear, and decide claims made by local agencies.
- 3) Authorizes the Commission to adopt a reasonable reimbursement methodology if the Commission determines there are costs mandated by the state.
- 4) Defines “reasonable reimbursement methodology” to mean a formula for reimbursing local agencies for costs mandated by the state that is based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts.
- 5) Provides that the reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner, and, whenever possible, the methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.
- 6) Authorizes a reasonable reimbursement methodology to be developed by any of the following:
 - a) The Department of Finance;

- b) The Controller;
- c) An affected state agency;
- d) A claimant; and,
- e) An interested party.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

1) **State Mandates.** In 1979, the voters amended the California Constitution, requiring the state to reimburse local governments for the cost of new programs or higher levels of service mandated by the Legislature or any state agency (Section 6 of Article XIII B). However, not all mandates are reimbursable. The Constitution also creates specific exceptions when the state does not have to reimburse local governments for the new level of service:

- a) The local agency affected requests the mandate;
- b) The mandate defines a new crime or changes an existing definition of a crime;
- c) The Legislature enacted the mandate prior to 1975; or,
- d) The mandate concerns constitutional requirements to provide the public access to public meetings.

The Legislature established the Commission in 1984 as a quasi-judicial body to mediate disputes between the state and local agencies over what constitutes a state mandate and requires the state to reimburse local agencies. When the Legislature created the Commission, it also created additional circumstances under which the state does not have to reimburse local agencies for state-mandated local programs, including when:

- a) The mandate has been declared existing law or regulation by the courts;
- b) The mandate is federally-mandated;
- c) The local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service;
- d) There is offsetting savings from an appropriation or another bill; or,
- e) The mandate is necessary to implement a ballot measure approved by the voters.

2) **Submitting Test Claims.** When a local agency wants to claim a state law or executive order increases costs, it submits a test claim to the Commission outlining the increased costs or level of service. The Commission hears the claim and decides whether it is a reimbursable state mandate. If the Commission determines that the requirement in question is a reimbursable mandate, it calculates the amount the state must pay local agencies based on actual costs or another reasonable methodology the Commission develops.

Under the 1984 legislation, local agencies did not have a statute of limitations that limited the time they had to submit a test claim. In 2002, AB 3000 (Committee on Budget) imposed a three-year statute of limitations. Later, AB 2856 (Laird, 2004) reduced the statute of limitations to one year from the effective date of the statute, or the date the local agency first incurred costs. In December 2017, the Commission on State Mandates approved amendments to California Code of Regulation Section 1183.1(c) that amends the filing period for test claims from conforming to the fiscal calendar year, ending on June 30th, to the calendar year, ending December 31st.

- 3) **Test Claim Backlog.** According to the Commission, as of July 1, 2018, the Commission has a pending caseload of 19 test claims, two parameters and guidelines, and three statewide cost estimates (SCEs). These items have statutory deadlines for completion and are prioritized over other items. Also currently pending are eight incorrect reduction claims (IRCs), one mandate redetermination (MR), and one parameters and guidelines amendment (PGA). Unlike test claims, parameters and guidelines, and SCEs, these matters do not have a statutory deadline for completion, but must be heard within a reasonable amount of time from the date of filing.

In 2017-2018, the Commission completed three test claims, eight IRCs, and zero SCEs. The Commission also had 10 cases pending in the courts during 2017-2018, many of which required significant staff time to brief and argue. Many of the claims completed in 2017-2018 addressed complex issues regarding constitutional law, federal law, and issues of procedure and many of these issues were issues of first impression. Additionally, similarly to last year, there were more IRCs heard and decided than in prior years. Also in 2017-2018, Commission staff handled 10 litigation matters, including significant briefing and several court appearances.

- 4) **Bill Summary and Author's Statement.** This bill authorizes specified underprivileged or disadvantaged local agencies to seek reimbursement for potential revenue that was lost due to a delayed state action. This bill requires the Commission to determine and provide for reimbursement of the lost revenue. Lastly, this bill contains legislative findings and declarations to support its purposes. This bill is sponsored by the author.

According to the author, "Although the resources available to and annual budgets of local agencies across California vary drastically, the requirements placed on local agencies for interaction with state agencies remain consistent. For example, the City of Atwater's FY 2018-19 Budget totals \$44 million (including General Fund revenue, voter-approved revenue generating tools, and budgets funded with grants), to be implemented by 79.5 FTE positions. On the other hand, Los Angeles's FY 2018-19 Budget totals almost \$10 billion, to be implemented by more than 33,700 FTE positions. However, both the City of Atwater and the City of Los Angeles are required to abide by many of the same laws before moving forward with many state-mandated programs or service changes.

"The local resources required to complete various actions, processes, and procedures before moving forward are disproportionately limited in some communities. In addition to the indirect costs, local agencies, particularly those that struggle with or lack opportunities to generate adequate or additional revenue to support necessary governmental services and benefits, also lose other revenue as a result of the delayed state actions. This lost revenue is entirely preventable. Local agencies struggling to promote economic development or to

grow housing supply, and which comply with applicable state laws, should not be forced to sit idle should relevant state agencies fail to meet their statutory requirements for interaction with said local agencies.”

5) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Potential Cost.** Proposition 1A, passed by voters in 2004, required the state to pay all outstanding mandate costs each year or else suspend the mandate’s requirements, halting the practice of delaying payments indefinitely while still requiring local agencies to provide the mandated services. Proposition 1A allowed those delayed payments to be paid over a term of years. Local agencies worked with the state to secure the final repayment for pre-2004 mandate debt in the 2015-16 state budget. That debt, which at one time totaled more than \$1 billion, is now fully paid. However, a further debt of just over \$1 billion remains, mostly for mandates performed after 2004. The definitions in this bill are broad and could be applied to numerous different interactions between the state and local agencies. In light of the amount of reimbursements that are still owed local agencies, the Committee may wish to consider the potentially significant scope of this bill and how it would affect the State Budget.
- b) **Damages.** The Commission follows a strict process to approve or deny test claims made by local agencies. The amount of reimbursement is based on quantifiable resources like the amount of staff time it takes to implement a state mandate and the cost of materials, among others. Once these cost factors are identified, they are structured in a way that allows local agencies to appropriately estimate the costs they have incurred.

It is unclear how preventable lost revenue can properly be identified. For example, if a city or county is seeking a permit to build fee-producing infrastructure like a community center that can collect fees for recreational programs or can be rented out for private events, how is the Commission going to be able to estimate how many residents would have paid those fees if the issuance of the permit had not been delayed? The process identified in this bill is somewhat similar to how a civil court would determine and award damages. This could effectively make state agencies liable for lost revenue on a project that was potentially optional for the local agency to build. The Committee may wish to consider the potential liability this bill may place on state agencies.

- c) **Approach.** Local and state agencies have to work in conjunction with each other on a regular basis. Like local agencies, state agencies also have budget pressures that can lead to delayed implementation of statutory and regulatory requirements. This bill creates a process that allows local agencies to seek reimbursement for revenue that could have been collected had the state agency timely performed a particular action. Would a more direct approach of increasing funding for state agencies or to require state agencies to streamline the procedures they must follow be more appropriate? The Committee may wish to weigh the approach of seeking reimbursement after the fact against making it easier for state agencies to comply with existing requirements.
- d) **Backlog.** The Commission is currently facing a significant backlog of test claims and mandate redeterminations. Additionally, many of the claims end up in court to be litigated. It is unclear how the Commission will also be able to deliberate the claims this bill will allow.

6) **Arguments in Support.** According to the California Special Districts Association, “As new laws or regulations are passed that mandate public agencies provide higher levels of service, public agencies, mostly without regard to their size or available resources, are required to comply. While some larger agencies in more urban areas are better suited to comply with these new mandates and are able to quickly draw upon existing resources to sustain them while hopefully seeing reimbursement from the state at some point, small agencies in disadvantaged communities are disproportionately impacted by the costs of providing the same services. While that issue will continue, AB 1471 will benefit agencies in disadvantaged communities by removing the compounding expenses suffered as a result of state inaction, by allowing those agencies to seek reimbursement from the State for the financial impacts directly resulting from delays at the state level.”

7) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

California Special Districts Association

Opposition

None on file

Analysis Prepared by: Jimmy MacDonald / L. GOV. / (916) 319-3958