

The 2022-23 Budget:

Municipal Stormwater and Urban Runoff Discharges Mandate

FEBRUARY 2022

Summary. The Governor's budget proposal includes \$18.4 million in one-time General Fund to reimburse certain local governments in Los Angeles County for costs related to the Municipal Stormwater and Urban Runoff Discharges mandate. Specifically, the proposal would reimburse eligible local governments for the costs they incurred installing and maintaining trash receptacles at transit stops between 2002 and 2012 pursuant to regulatory stormwater permit requirements that the Commission on State Mandates (commission) found to be a state-reimbursable mandate. The state has exhausted its legal options for challenging this particular mandate decision. We therefore recommend the Legislature approve the proposal and fund this mandate, consistent with state law. Funding this mandate does not have out-year fiscal implications for the state.

Background

Constitution Requires the State to Reimburse Local Governments for Mandated Activities.

State law tasks the commission with determining whether new state laws or regulations affecting local agencies create state-reimbursable mandates. If the commission determines that a statute or regulation contains a reimbursable mandate, it develops an estimate of the statewide cost of the mandated activity. Typically, the process for determining whether a law or regulation is a state-reimbursable mandate takes several years. State law further requires our office to analyze any new mandates identified by the commission as a part of our annual analysis of the state budget. In particular, state law directs our office to report on the annual state costs for new mandates and make recommendations to the Legislature as to whether a new mandate should be repealed (permanently eliminating it or making it optional), suspended (rendering it inoperative for one year), modified, or funded.

When the Legislature considers changes to the law, it can weigh the benefits of the policy against potential fiscal liabilities that might result if the legislation were to create a state-reimbursable mandate. Although the state ultimately is responsible for paying the costs local agencies incurred complying with a reimbursable mandate while the commission was reviewing associated claims, the Legislature can modify or repeal the associated statute to adjust state fiscal liabilities moving forward. However, when a state-reimbursable mandate results not from state law, but rather from an administratively established regulation, the Legislature is limited in its ability to mitigate the state's resulting fiscal liabilities.

Federal and State Laws Require Local Governments to Limit Amount of Pollutants in Water Runoff.

The State Water Resources Control Board (SWRCB), together with nine Regional Water Quality Control Boards (RWQCBs), help to enforce state and federal laws governing water quality across the state, including the federal Clean Water Act. To comply with this act, the boards issue permits—including stormwater discharge permits—to entities such as cities, counties, and businesses that discharge pollutants into water bodies. Such pollutants include sewage, trash, and chemicals. For municipalities, the act directs the water boards—through the state's delegated federal authority—to design stormwater discharge permits that address their specific local conditions, and to “require controls to reduce the discharge of pollutants to the maximum extent practicable.” To satisfy the federal Clean Water Act, local governments must comply with the specific permit requirements established by the water boards when operating their local storm sewer systems.

Courts Have Found That Water Boards' Implementation Decisions Over Federal Stormwater Laws Can Be State-Reimbursable Mandates. As noted, overarching regulatory requirements governing stormwater discharges are pursuant to the federal Clean Water Act, and the act directs states to design permits based on local conditions to implement the law and reduce pollutants. (In California, the water boards have been delegated authority to design permits on behalf of the state.) The California Constitution does not require the state to reimburse local governments for the costs of complying with federal laws. Despite the general federal direction to the state water boards to reduce the discharge of pollutants, however, courts have found that specific permit conditions required by the boards but not explicitly stated in federal law can be state-reimbursable mandates (*Department of Finance v. Commission on State Mandates*, 2016).

Los Angeles RWQCB Required Some Local Governments to Place Trash Receptacles at Transit Stops. As part of its federal Clean Water Act implementation responsibilities, in 2001, the Los Angeles RWQCB designed a stormwater discharge permit requiring that—among other conditions—local governments within its jurisdiction install and maintain trash receptacles at transit stops beginning in 2002. This was intended to help limit the amount of trash left on the ground that could ultimately flow into waterways. This permit condition applied until 2012, when the Los Angeles RWQCB designed and adopted a new stormwater discharge permit and associated set of requirements. Only certain portions of the cities and county were subject to the 2001 trash receptacle permit requirement, however, as some were instead required to comply with a different regulatory plan for keeping trash out of their stormwater runoff. Specifically, beginning in 2002, certain portions of Los Angeles County located in the Ballona Creek watershed were subject to a trash “Total Maximum Daily Load” (TMDL) plan, which carried its own trash management requirements. Additional parts of the county located in the Los Angeles River watershed became subject to a separate trash TMDL plan in 2008.

Commission Determined Portion of Permit Requirements Created a State-Reimbursable Mandate for Some Local Governments. In 2003, Los Angeles County and several cities in the region filed test claims with the commission alleging that various sections of the 2001 Los Angeles RWQCB stormwater discharge permit constituted state-reimbursable mandates. In 2009, the commission determined that the permit requirement to install and maintain trash receptacles at transit stops constituted a mandate because the federal Clean Water Act does not explicitly require this specific action. (Other activities included in the test claims were not found to be state-reimbursable mandates by the commission.) The Department of Finance and SWRCB unsuccessfully challenged this mandate decision through legal processes, arguing that the RWQCB's permit requirements were implementing federal law. The commission found that local governments could only claim reimbursement for activities undertaken at transit stops that were located in portions of the county that were not covered by a trash TMDL plan. This limited the number of claimants within the Ballona Creek watershed and made some affected entities within the Los Angeles River watershed ineligible to claim reimbursement after 2008 when that trash TMDL plan was implemented. No claimants were eligible for reimbursement for activities associated with this mandate after 2012 when the Los Angeles RWQCB adopted its subsequent permit.

Governor's Proposal

Funds Mandate Reimbursement Costs. The Governor's 2022-23 budget proposes \$18.4 million in one-time General Fund to reimburse certain local governments under the jurisdiction of the Los Angeles RWQCB for costs related to the Municipal Stormwater and Urban Runoff Discharges mandate. Specifically, the proposal would reimburse eligible local governments for the costs they incurred installing and maintaining trash receptacles at transit stops between 2002 and 2012 while the relevant stormwater discharge permit was in effect.

LAO Comments

Actual Costs Could Be Lower. The actual state costs associated with reimbursing approved claims for this mandate still are unknown. This uncertainty exists because the State Controller’s Office (SCO) audits mandate reimbursement claims and, when appropriate, disallows claims it finds to be improper and/or reduces claims when it identifies offsetting local revenues that should be applied. A subset of SCO’s audit reductions to Municipal Stormwater and Urban Runoff Discharges mandate claims still are being challenged or are within the time frame when they could be challenged by claimants through “incorrect reduction claim” processes. The Governor’s proposed \$18.4 million for reimbursement claims represents the high end of the range of potential costs estimated by the commission, and assumes pending SCO audit reductions ultimately are challenged and disallowed. Should all of SCO’s remaining audit reductions remain unchallenged or upheld, however, the commission estimates that state costs for reimbursing this mandate could be as low as \$8.8 million.

No Future Costs Anticipated for This Mandate. Unlike many other mandates, the Municipal Stormwater and Urban Runoff Discharges mandate no longer has associated ongoing costs. This is because, as noted, the Los Angeles RWQCB adopted a new stormwater discharge permit in 2012, replacing the 2001 permit that required the reimbursable activities. Moreover, SCO required municipalities to submit all claims for activities associated with this mandate no later than 2015. As such, the state should not expect any future costs to materialize for this mandate beyond those included in the Governor’s proposal.

Multiple Additional Stormwater-Related Test Claims Pending at the Commission. While not directly linked to this mandate, the commission has 37 pending test claims related to other stormwater permits issued by the state water boards dating back to 2009. If the commission were to find that some activities required by the permits constitute

state-reimbursable mandates, the Legislature may receive additional proposals to reimburse those costs in future budgets. No cost estimates currently are available for these pending test claims. Ultimately, the state would have limited recourse when it comes to funding costs incurred by local governments from activities the commission finds to be reimbursable mandates during the time the mandate claims were under review. Additionally, should these mandate claims reflect ongoing costs, the Legislature also would face challenges about how to constrain those costs. Because these mandates would be the result of administratively established regulations rather than a state law, adjusting ongoing costs would require modifications to permits issued by the water boards. Since 2016, when the court decision found implementation decisions over federal stormwater laws can be state-reimbursable mandates, we understand that the water boards have been trying to design permits in a way that minimizes creation of future state-reimbursable mandates while also continuing to enforce state and federal water quality laws. However, the degree to which the boards are able to strike such a balance still is uncertain.

Recommendation

Fund Mandate. We recommend the Legislature adopt the Governor’s proposal and provide \$18.4 million General Fund for incurred costs associated with the Municipal Stormwater and Urban Runoff Discharges mandate. The state has exhausted its legal options for challenging this particular mandate decision. Therefore, reimbursing local governments for mandated activities they undertook while the commission was considering the test claims and the stormwater discharge permit requirement was in effect is consistent with state law. Funding this mandate does not have out-year fiscal implications for the state. Should the final state costs associated with reimbursing this mandate ultimately total less than \$18.4 million—if SCO audit reductions remain unchallenged or upheld—the excess funds would revert to the General Fund.

LAO PUBLICATIONS

This post was prepared by Rachel Ehlers and Lourdes Morales, and reviewed by Ginni Bella Navarre and Carolyn Chu. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.