

Date of Hearing: August 10, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 1358 (Portantino) – As Amended June 21, 2022

Policy Committee:

Vote:

Urgency: Yes

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

SB 1358, an urgency measure, appropriates approximately \$2.9 million from the General Fund to the Department of Justice (DOJ) to pay a specified claim against the state. Any funds appropriated in excess of the amounts required for payment of the claims would revert to the General Fund. The bill also appropriates \$247 from the Motor Vehicle Account to the Department of General Services (DGS) for the payment of a state claim for the reissuance of a stale dated warrant (expired check) under the Government Claims Program.

FISCAL EFFECT:

- 1) One-time appropriation of \$2,880,603.13 from the General Fund to DOJ in 2022-23 to pay court-ordered attorneys' fees and costs arising from *Thomas More Law Center v. Bonta* (C.D.Cal. March 28, 2022, No. 2:15-cv-03048-CAS).
- 2) One-time appropriation of \$247 from the Motor Vehicle Account to DGS in 2022-23 for the re-issuance of an expired check for a vehicle license fee reimbursement.

COMMENTS:

- 1) **Purpose.** This bill is one of several annual bills carried by the chairs of the Appropriations Committees to provide appropriation authority for legal settlements approved by DOJ and the Department of Finance (DOF). These settlements were entered into lawfully by the state upon advice of counsel (DOJ). They are binding state obligations.

The re-issuance of stale-dated warrants (expired checks) is the most prevalent claim accepted by DGS's Government Claims Program. For stale-dated warrants, the State Controller must confirm the check was not cashed and that more than three years has passed since the check was issued and the monies have reverted to the General Fund or to the relevant special fund. For these warrants an appropriation is needed to reissue the payment.

- 2) **Background.** SB 1358, an urgency measure, appropriates funds for the payment of the following claims:

Thomas More Law Center v. Bonta (C.D.Cal. March 28, 2022, No. 2:15-cv-03048-CAS).
\$2.9 million for court-ordered attorney's fees and costs, payable from the General Fund.

This claim involves a First Amendment challenge to a California statute that required charities operating in the state to submit a copy of IRS Form 990, including Schedule B,

which includes the names and addresses of an organization's major donors who contribute \$5,000 or more. Charities must generally register with the Attorney General (AG) and renew registrations annually. Upon renewal, charities must file copies of their IRS Form 990, which must be made available to the public and includes information about an organization's mission, leadership, and finances, as well as Schedule B, which discloses the organization's major donors but is not public. The latter information is intended to further the State's interest in policing misconduct by charities.

Since 2001, Thomas More Law Center (TMLC), a tax-exempt charity that solicits contributions in California, has filed its Form 990 as part of its annual registration renewal, but without including its Schedule B in an attempt to preserve donor anonymity. On March 6, 2012, the AG indicated that TMLC's 2010 filing was insufficient due to its failure to include a Schedule B. When TMLC continued to resist disclosing contributors' identities, the AG threatened registration suspension and fines for noncompliance for not filing Schedule B forms each year from 2010 through 2013.

On April 23, 2014, TMLC (Plaintiff) filed a complaint in the federal District Court, alleging the California law requiring disclosure of its Schedule B to the AG was facially unconstitutional as a violation of its First Amendment rights, and those of its donors. The District Court granted preliminary injunctive relief prohibiting the AG from collecting Schedule Bs. The decision was appealed by the AG and the Ninth Circuit Court of Appeals vacated and remanded, reasoning that precedent required rejection of the Plaintiff's facial challenge. Applying an "exacting scrutiny" standard, the panel narrowed the District Court's injunction, and allowed the AG to collect the Plaintiff's Schedule Bs as long as they were not publicly disclosed. On remand, the District Court entered judgment for the Plaintiff and permanently enjoined the AG from collecting Schedule Bs because collection of that information was not narrowly tailored to investigate charitable misconduct or to detect fraud, and disclosure burdened the associational rights of donors. The District Court also found that California was unable to ensure confidentiality of donors' information. The Ninth Circuit again vacated the District Court's injunction and reversed the judgments, and remanded for entry of judgment in favor of the AG, finding that collection of Schedule Bs promoted investigative efficiency and effectiveness, and would not meaningfully burden donors' associational rights. Ultimately, on July 1, 2021, the United States Supreme Court issued an opinion on the matter and concluded that California's disclosure requirement is facially invalid because it burdens donors' First Amendment rights and is not narrowly tailored to an important government interest. Following the Supreme Court opinion, the District Court entered an order granting the parties' stipulation to modify the judgment on December 28, 2021, permanently enjoining the AG from requiring any registrant to file a periodic report containing a copy of its Schedule B to IRS Form 990.

The Plaintiff made a demand for attorney fees and costs incurred in the actions, including the appeals and Supreme Court proceedings. On March 28, 2022, the District Court granted the plaintiff's motion for attorneys' fees, expenses, and costs in the amount of \$2,840,603.13 (\$2,763,830 in attorneys' fees and \$76,773.13 in costs). Pursuant to federal law, interest accrues on any money judgment entered by federal district courts in civil cases, which DOJ anticipates to be \$40,000. On May 24, 2022, the Department of Finance approved the payment for attorneys' fees, costs, and interest in the amount of \$2,880,603.13 from the General Fund.

Stale dated warrant. \$247 for reissuance of a stale dated warrant related to a Vehicle License Fee reimbursement, payable from the Motor Vehicle Account.

- 3) **Related Legislation.** SB 1355 (Portantino), an urgency measure currently pending on the Assembly Floor, appropriates \$8.8 million from the General Fund to DOJ for the payment of two specified claims against the state.

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