

ITEM 4
MANDATE REDETERMINATION
FIRST HEARING: ADEQUATE SHOWING
PROPOSED DECISION

Penal Code Section 13518.1
Statutes 1987, Chapter 1334 (AB 1726)

CPR Pocket Masks (CSM-4291)

As Alleged to be Modified by:

Statutes 2013, Chapter 28 (SB 71)

14-MR-01

Department of Finance, Requester

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RECEIVED
August 18, 2014
Commission on
State Mandates

EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 7, 2014

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

Pursuant to Government Code section 17557, subdivision (d)(2)(A), the Department of Finance requests that the Commission on State Mandates (Commission) adopt a new test claim decision and amend the parameters and guidelines (Ps&Gs) for the CPR Pocket Masks (CSM-4291) by adding language to show that the reimbursement period of this mandate program ended on June 27, 2013. Chapter 28, Statutes 2013, (S.B.71), amended the law making the requirement that a law enforcement agency employing peace officers described in subdivision (a) of Section 13518.1 permissive by substituting the word "may" in place of the word "shall." It was the intent of the Legislature in enacting the amendment made by this act to Penal Code 13518.1 to relieve local entities of the duty to perform reimbursable activities. Since the statute was amended, no reimbursement is required pursuant to Article XIII B, section 6 of the California Constitution and Government Code section 17514. As a result, the CPR Pocket Masks mandate program no longer exists based on the amendment of the test claim statute.

The CSM form "Request to Adopt New Test Claim Decision" is attached with a detailed analysis, declarations and documentation.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,


TOM DYER
Assistant Program Budget Manager

Enclosure



Enclosure A

DECLARATION OF LEE P. SCOTT
DEPARTMENT OF FINANCE
CLAIM NO. CSM -4291

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

at Sacramento, CA



Lee P. Scott

ICC: DYER, BYRNE, SCOTT, FEREBEE, GEANACOU, FILE

1. TITLE OF REQUEST TO ADOPT A NEW TEST CLAIM DECISION

CPR Pocket Masks (CSM-4291)

2. REQUESTER INFORMATION

Name of Local Agency, School District, Statewide Association of Local Agencies or School Districts, or State Agency

California Department of Finance

Requester Contact

Michael Byrne

Title

Principal Program Budget Analyst

Organization

Department of Finance

Street Address

915 L Street

City, State, Zip Code

Sacramento, CA 95814

Telephone Number

916-445-3274

Fax Number

916-449-5252

E-Mail Address

3. REPRESENTATIVE INFORMATION

If requester designates another person to act as its sole representative for this request, all correspondence and communications regarding this request shall be forwarded to this representative. Any change in representation must be authorized by the requester in writing, and sent to the Commission on State Mandates. Please complete information below if designating a representative.

Representative Name

Title

Organization

Street Address

City, State, Zip Code

Telephone Number

Fax Number

E-Mail Address

For CSM Use Only
Filing Date: RECEIVED August 18, 2014 Commission on State Mandates
REQUEST# 14-MR-01

4. IDENTIFYING INFORMATION

Please identify the name(s) of the programs, test claim number(s), and the date of adoption of the Statement of Decision, for which you are requesting a new test claim decision, and the subsequent change in law that allegedly changes the state's liability. Regarding the subsequent change in law, please identify all relevant code sections (include statutes, chapters, and bill numbers), regulations (include register number and effective date), executive orders (include effective date), cases, or ballot measures.

On July 28, 1988, the Commission on State Mandates adopted the Statement of Decision for the CPR Pocket Masks (CSM-4291) and approved reimbursement for specified activities mandated by Chapter 1334, Statutes of 1987 under Penal Code 13518.1. Pursuant to Government Code section 17557, subdivision (d) (2)(A), the Department of Finance requests that the Commission on State Mandates (Commission) adopt a new test claim decision and amend the parameters and guidelines (Ps&Gs) for the CPR Pocket Masks (CSM-4291) by adding language to show that the reimbursement period of this mandate program ended on June 27, 2013. Chapter 28, Statutes 2013, (S.B.71), amended the law making the requirement that a law enforcement agency employing peace officers described in subdivision (a) of Section 13518.1 permissive by substituting the word "may" in place of the word "shall." It was the intent of the Legislature in enacting the

Sections 5, 6 and 7 are attached as follows:

- 5. Detailed Analysis: Pages 1 to 1.
- 6. Declarations: Pages 2 to 3.
- 7. Documentation: Pages 4 to 4.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the name of the request, requestor, section number (i.e., 5, 6, or 7), and a heading at the top of each page.

5. DETAILED ANALYSIS

Under the heading "5. Detailed Analysis," please provide a detailed analysis of how and why the state's liability for mandate reimbursement has been modified pursuant to article XIII B, section 6(a) of the California Constitution based on a "subsequent change in law" as defined in Government Code section 17570. This analysis shall be more than a written narrative or simple statement of the facts at law. It requires the application of the law (Gov. Code, § 17570 (a) and (b)) to the facts (i.e., the alleged subsequent change in law) discussing, for each activity addressed in the prior test claim decision, how and why the state's liability for that activity has been modified. Specific references shall be made to chapters, articles, sections, or page numbers that are alleged to impose or not impose a reimbursable state-mandated program.

Also include all of the following elements:

The actual or estimated amount of the annual statewide changes in the state's liability for mandate reimbursement pursuant to Article XIII B, section 6 (subdivision (a)) on a subsequent change in the law.

- A. Identification of all of the following if relevant:
1. Dedicated state funds appropriated for the program.
 2. Dedicated federal funds appropriated for the program.
 3. Fee authority to offset the costs of the program.
 4. Federal law.
 5. Court decisions.
 6. State or local ballot measures and corresponding date of election.

6. DECLARATIONS

Under the heading "6. Declarations," support the detailed analysis with declarations that:

- A. Declare actual or estimated annual statewide costs that will or will not be incurred to implement the alleged mandate.
- B. Identify all local, state, or federal funds and fee authority that may or may not be used to offset the increased costs that will or will not be incurred by the claimants to implement the alleged mandate or result in a finding of no costs mandated by the state, pursuant to Government Code section 17556.
- C. Describe new activities performed to implement specified provisions of the statute or executive order alleged to impose a reimbursable state-mandated program.
- D. Make specific references to chapters, articles, sections, or page numbers alleged to impose or not impose a reimbursable state-mandated program.
- E. Are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under heading "7. Documentation," support the detailed analysis with copies of all of the following:

- A. Statutes, and administrative or court decisions cited in the detailed analysis.

Statements of Decision and published court decisions from a state mandate determination by the Board of Control or the Commission are exempt from this requirement. When an omnibus bill is pled or cited, the requester shall file only the relevant pages of the statute, including the Legislative Counsel's Digest and the specific statutory changes at issue.

8. CERTIFICATION

Read, sign, and date this section and insert at the end of the request for a new test claim decision.*

This request for a new test claim decision is true and complete to the best of my personal knowledge, information, or belief.

Michael Byrne
Print or Type Name of Authorized Official

Principal Program Budget Analyst
Print or Type Title


Signature of Authorized Official

August 7, 2014
Date

*If declarant for this certification is different from the contact identified in section 2 of the form, please provide the declarant's address, telephone number, fax number and e-mail address.

Request to Adopt a New Test Claim Decision
Department of Finance
CPR Pocket Masks
Section 5: Detailed Analysis

Summary of Mandate

Chapter 1334, Statutes of 1987, added Section 13518.1 to the Penal Code to require every law enforcement agency employing peace officers, as described, to provide each peace officer with a portable manual mask and airway assembly designed to prevent the spread of communicable diseases when applying cardiopulmonary resuscitation.

Pursuant to Government Code section 17557, subdivision (d)(2)(A), the Department of Finance requests that the Commission on State Mandates (Commission) adopt a new test claim decision and amend the parameters and guidelines (Ps&Gs) for the CPR Pocket Masks (CSM-4291) by adding language to show that the reimbursement period of this mandate program ended on June 27, 2013. Chapter 28, Statutes 2013, (S.B.71), amended the law making the requirement that a law enforcement agency employing peace officers described in subdivision (a) of Section 13518.1 permissive by substituting the word "may" in place of the word "shall." It was the intent of the Legislature in enacting the amendment made by this act to Penal Code 13518.1 to relieve local entities of the duty to perform reimbursable activities. Since the statute was amended, no reimbursement is required pursuant to Article XIII B, section 6 of the California Constitution and Government Code section 17514. As a result, the CPR Pocket Masks mandate program no longer exists based on the amendment of the test claim statute.

The following activities are no longer reimbursable:

A. Scope of Mandate

Law enforcement agencies shall be reimbursed for the increased costs of providing to each officer a portable manual mask and airway assembly.

B. Reimbursable Activities/Costs

For each eligible claimant, the following cost items are reimbursable:

1. Purchase of portable manual mask and airway assembly which meets the guidelines established by the Emergency Medical Services Authority. Per unit reimbursable cost of a portable manual mask shall be \$11.00 per mask, or the actual cost, whichever is less.
2. Repair or replacement of portable manual mask and/or airway assembly.

Request to Adopt a New Test Claim Decision
Department of Finance
CPR Pocket Masks
6: Declarations

Enclosure

According to the Controller's April 30, 2014, "State Mandated Program Cost Report of Unpaid Claims and Deficiency Pursuant to Government Code Section 17562(b)(2)", Counties, Cities and Special Districts claimed \$52,955 and the State paid \$52,955, leaving the balance and total owed by the state at \$0.

Based on the forgoing analysis, which provides substantiation that the reimbursable activities in the CPR Pocket Masks Statement of Decision (CSM-4291) cease to be eligible for reimbursement, the State's liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero. Since the statute was amended, no reimbursement is required pursuant to Article XIII B, section 6 of the California Constitution and Government Code section 17514. As a result, the CPR Pocket Masks mandate program no longer exists based on the amendment of the test claim statute and the effective date of eliminating reimbursement for the CPR Pocket Masks mandate will be June 27, 2013.

**Request to Adopt a New Test Claim Decision
Department of Finance
CPR Pocket Masks
6: Declarations**

Enclosure

DECLARATION OF MICHAEL BYRNE
DEPARTMENT OF FINANCE

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

at Sacramento, CA



Michael Byrne

**Request to Adopt a New Test Claim Decision
CPR Pocket Masks
7: Documentation**

Attachments

New Statute Ch 28, Stat 2013 (SB 71) and Old Statute Ch 1334, Stat 1987	A
Penal Code 13518.1	B

icc: DYER, BYRNE. SCOTT, GEANACOU, FILE

Senate Bill No. 71**CHAPTER 28**

An act to amend Sections 100010 and 100115 of, and to add Section 94874.8 to, the Education Code, to amend Sections 8592.1, 8592.5, 8592.7, 8690.6, 11542, 13964, 14615.1, 15251, 15253, 15254, 15275, 15277, 18671.2, 23025, 53108.5, 53114.1, 53115.1, and 53126.5 of, to add Sections 8250.1, 11543, 13295.5, and 13963.1 to, to add Chapter 9 (commencing with Section 14930) to Part 5.5 of Division 3 of Title 2 and Chapter 3 (commencing with Section 15278) to Part 6.5 of Division 3 of Title 2 of, and to add and repeal Article 8 (commencing with Section 19210) of Chapter 5 of Part 2 of Division 5 of Title 2 of, to repeal Section 8169.6 of, and to repeal and add Section 18662 of, the Government Code, to amend Section 10089.7 of the Insurance Code, to amend Sections 62.5, 139.48, 1024, 1771.3, 1771.5, 7852, 7856, and 7870 of, to amend and repeal Section 62.7 of, to add Sections 62.8 and 1063.5 to, and to repeal Section 62.9 of, the Labor Code, to amend Sections 1203, **13518.1**, 13701, 13710, and 13730 of the Penal Code, to amend Sections 10351, 12100, 12100.5, 12100.7, 12101, 12101.2, 12101.5, 12102, 12103, 12103.5, 12104, 12104.5, 12105, 12106, 12108, 12109, 12112, 12120, 12125, 12126, and 12128 of, to add Sections 12102.1 and 12102.2 to, and to repeal Section 12121 of, the Public Contract Code, to amend Section 75121 of the Public Resources Code, to amend Sections 2872.5, 2892, and 2892.1 of the Public Utilities Code, to amend Sections 41030, 41031, 41032, 41136, 41136.1, 41137, 41137.1, 41138, 41139, 41140, 41141, and 41142 of the Revenue and Taxation Code, to amend Section 5066 of the Vehicle Code, and to amend Section 656.2 of the Welfare and Institutions Code, relating to state and local government, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 27, 2013. Filed with
Secretary of State June 27, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 71, Committee on Budget and Fiscal Review. State government.

(1) Existing law, the California Private Postsecondary Education Act of 2009, provides, among other things, for student protections and regulatory oversight of private postsecondary institutions in the state. The act is enforced by the Bureau for Private Postsecondary Education within the Department of Consumer Affairs. The act exempts specified institutions, including institutions accredited by certain federally recognized accrediting agencies and institutions accredited by a regional accrediting agency, from its provisions, and is repealed on January 1, 2015.

obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense.

(i) A probationer shall not be released to enter another state unless his or her case has been referred to the Administrator of the Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

(k) Probation shall not be granted to, nor shall the execution of, or imposition of sentence be suspended for, any person who is convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, and who was on probation for a felony offense at the time of the commission of the new felony offense.

SEC. 46. Section 13518.1 of the Penal Code is amended to read:

13518.1. In order to prevent the spread of communicable disease, a law enforcement agency employing peace officers described in subdivision (a) of Section 13518 may provide to each of these peace officers an appropriate portable manual mask and airway assembly for use when applying cardiopulmonary resuscitation.

SEC. 47. Section 13701 of the Penal Code is amended to read:

13701. (a) As a best practice, every law enforcement agency in this state may develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies may reflect that domestic violence is alleged criminal conduct. Further, they may reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) As a best practice, the written policies may encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also may require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective

41137, 41137.1, 41138, 41139, 41140, 41141, and 41142 of the Revenue and Taxation Code, and the addition by this act of Section 11543 of, and Chapter 3 (commencing with Section 15278) to Part 6.5 of Division 3 of Title 2 of, the Government Code, and Sections 12102.1 and 12102.2 to the Public Contract Code, and the repeal by this act of Section 12121 of the Public Contract Code shall be operative on July 1, 2013.

SEC. 94. It is the intent of the Legislature in enacting the amendments made by this act to Section 23025 of the Government Code, Sections 1203, 13518.1, 13701, 13710, and 13730 of the Penal Code, and Section 656.2 of the Welfare and Institutions Code to relieve local entities of the duty to perform reimbursable activities, as determined by the Commission on State Mandates or other authorized entity, included in the following state-mandated local programs:

- (a) Deaf Teletype Equipment (04-LM-11).
- (b) Adult Felony Restitution (04-LM-08).
- (c) Pocket Masks (CSM-4291).
- (d) Domestic Violence Information (CSM-4442).
- (e) Victims' Statements-Minors (04-LM-14).

SEC. 95. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

CHAPTER 1334

An act to amend Section 13518 of, and to add Section 13518.1 to, the Penal Code, relating to emergency medical services.

[Approved by Governor September 29, 1987. Filed with Secretary of State September 29, 1987]

The people of the State of California do enact as follows:

SECTION 1. Section 13518 of the Penal Code is amended to read:

13518. (a) Every city police officer, sheriff, deputy sheriff, marshal, deputy marshal, peace officer member of the California State Police, peace officer member of the California Highway Patrol, and police officer of a district authorized by statute to maintain a police department, except those whose duties are primarily clerical or administrative, shall meet the training standards prescribed by the Emergency Medical Services Authority for the administration of first aid and cardiopulmonary resuscitation. This training shall include instruction in the use of a portable manual mask and airway assembly designed to prevent the spread of communicable diseases. In addition, satisfactory completion of periodic refresher training or appropriate testing in cardiopulmonary resuscitation and other first aid as prescribed by the Emergency Medical Services Authority shall also be required.

(b) The course of training leading to the basic certificate issued by the commission shall include adequate instruction in the procedures described in subdivision (a). No reimbursement shall be made to local agencies based on attendance at any such course which does not comply with the requirements of this subdivision.

(c) As used in this section, "primarily clerical or administrative" means the performance of clerical or administrative duties for a minimum of 90 percent of the time worked within a pay period.

SEC. 2. Section 13518.1 is added to the Penal Code, to read:

13518.1. In order to prevent the spread of communicable disease, every law enforcement agency employing peace officers described in subdivision (a) of Section 13518 shall provide to each of these peace officers an appropriate portable manual mask and airway assembly for use when applying cardiopulmonary resuscitation.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars

PENAL CODE - PEN

PART 4. PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS [11006 - 14315] (*Part 4 added by Stats. 1953, Ch. 1385.*)

TITLE 4. STANDARDS AND TRAINING OF LOCAL LAW ENFORCEMENT OFFICERS [13500 - 13553] (*Title 4 added by Stats. 1959, Ch. 1823.*)

CHAPTER 1. Commission on Peace Officer Standards and Training [13500 - 13553] (*Chapter 1 added by Stats. 1959, Ch. 1823.*)

ARTICLE 2. Field Services and Standards for Recruitment and Training [13510 - 13519.15] (*Heading of Article 2 amended by Stats. 1967, Ch. 1640.*)

^{13518.1.} In order to prevent the spread of communicable disease, a law enforcement agency employing peace officers described in subdivision (a) of Section 13518 may provide to each of these peace officers an appropriate portable manual mask and airway assembly for use when applying cardiopulmonary resuscitation.

(*Amended by Stats. 2013, Ch. 28, Sec. 46. Effective June 27, 2013.*)

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA


Claim of:)	
)	
)	
City of Piedmont)	No. CSM-4291
Claimant)	Chapter 1334, Statutes of 1987
)	<u>CPR Pocket Masks</u>
)	
)	
)	

DECISION

The attached Proposed **Statement** of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on March 23, 1988.

IT IS SO ORDERED March 23, 1988.



 Russell Gould, Chairperson
 Commission on State Mandates

BEFORE THE
COMMISSION ON STATE MANDATES

Claim of:

City of Piedmont
Claimant

)
)
)
) No. CSM-4291
) Chapter 1334, Statutes of 1987
) CPR Pocket Masks
)
)
)

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on February 25, 1988, in Sacramento, California, during a regularly scheduled hearing.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the commission finds:

I.

NOTE

1. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller.

II.

FINDINGS AND CONCLUSIONS

1. The test claim was filed with the Commission on State Mandates on December 2, 1987, by the City of Piedmont.
2. The subject of the claim is Chapter 1334, Statutes of 1987.

3. Chapter 1334, Statutes of 1987 added Section 13518.1 to the Penal Code to require every law enforcement agency employing peace officers, as described, to provide each peace officer with a portable manual mask and airway assembly designed to prevent the spread of communicable diseases when applying cardiopulmonary resuscitation.

Chapter 1334, Statutes of 1987 amended Section 13518 of the Penal Code to require every such law enforcement agency to provide each peace officer with training in the use of an appropriate portable manual mask and airway assembly.

4. A new program is now required of local law enforcement agencies by Chapter 1334, Statutes of 1987.
5. Government Code Section 17514 defines the term "**costs** mandated by the **state**" as "any increased costs which a local agency . . . is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, . . . which mandates a new program . . . within the meaning of Section 6 of Article XIII B of the California Constitution."
6. The City of Piedmont has demonstrated that it has incurred increased costs which are costs mandated by the state.
7. None of the requisites for denying a claim, specified in Government Code Section 17556, subdivision (a), were established.

III.

DETERMINATION OF ISSUES

1. The Commission has the authority to decide this claim under the provisions of Government Code Section 17551.
2. Chapter 1334, Statutes of 1987 imposed a reimbursable state mandate upon local law enforcement agencies. The City of Piedmont has established that this statute imposed a new program by requiring a local law enforcement agency to provide to each peace officer a portable manual mask and airway assembly designed to prevent the spread of communicable diseases when applying cardiopulmonary resuscitation.
3. The training of in-service officers in the use of portable masks can be accommodated by local law enforcement agencies within existing departmental training programs which all peace officers are presently required to periodically complete. Additionally, new peace officers' training on the portable masks is included in the First Aid/CPR curriculum for basic training academies. Therefore, Chapter 1334, Statutes of 1987 does not impose a reimbursable state mandate because there are no increased costs to local law enforcement agencies for training in the use of the CPR pocket masks.

Adopted: 7/28/88

PARAMETERS AND GUIDELINES
CHAPTER 1334, STATUTES OF 1987
CPR POCKET MASKS

I. SUMMARY OF MANDATE

Chapter 1334, Statutes of 1987, added Section 13518.1 to the Penal Code to require every law enforcement agency employing peace officers, as described, to provide each peace officer with a portable manual mask and airway assembly designed to prevent the spread of communicable diseases when applying cardiopulmonary resuscitation.

II. COMMISSION ON STATE MANDATES' DECISION

The Commission on State Mandates, at its February 25, 1988, hearing, determined that a reimbursable mandate exists in Chapter 1334, Statutes of 1987.

III. ELIGIBLE CLAIMANTS

Any city, county, and special district (a district authorized by statute to maintain a police department) which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

IV. PERIOD OF REIMBURSEMENT

Chapter 1334, Statutes of 1987 became effective January 1, 1988, and was signed into law on September 29, 1987. Section 17557 of the Government Code states that a test claim must be submitted on or before November 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on December 2, 1987; therefore, costs incurred on or after September 30, 1987, are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 17561(d)(3) of the Government Code (GC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by GC Section 17564.

V. REIMBURSABLE COSTS

A. Scope of Mandate

Law enforcement agencies shall be reimbursed for the increased costs of providing to each officer a portable manual mask and airway assembly.

B. Reimbursable Activities/Costs

For each eligible claimant, the following cost items are reimbursable:

1. Purchase of portable manual mask and airway assembly which meets the guidelines established by the Emergency Medical Services Authority. The per unit reimbursable cost of a portable manual mask shall be \$11.00 per mask, or the actual cost, whichever is less.
2. Repair or replacement of portable manual mask and/or airway assembly.

VI. CLAIM PREPARATION

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.

Claim detail should include the following:

A. Employee Salaries and Benefits

Show the employee's job classification, actual number of hours devoted to each function, productive hourly rate, benefits, and mandated functions performed. The average number of hours devoted to each function may be claimed in supported by a documented time study.

B. Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List the cost of materials acquired which have been consumed or expended specifically for the purposes of this mandate.

C. Allowable Overhead Costs

Cities and Counties have the option of using 10% of direct labor as indirect costs or preparing a departmental Indirect Cost Rate Proposal. If the county elects to prepare an Indirect Cost Rate Proposal, the Proposal must be prepared in accordance with Office of Management and Budget Circular A-87 (OMB A-87).

VII. SUPPORTING- DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of and the validity of such costs. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS- AND- OTHER- REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct;

THAT Sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with;

and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

Signature of Authorized Representative

Date

Title

Telephone Number

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

Claim of:

County of San Bernardino,
 Claimant

)
)
)
) No. CSM-4403
) Vehicle Code Section 10500
) Chapter 337, Statutes of 1990
) Stolen Vehicle Notification
)
)
)
)

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on May 28, 1992, and September 24, 1992, in Sacramento, California, during a regularly scheduled hearing.

Ms. Marcia Faulkner and Mr. Allan Burdick appeared on behalf of the County of San Bernardino, and Mr. James Apps appeared on behalf of the State Department of Finance.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

//
 //

ISSUES

1
2
3
4 Does Vehicle Code section 10500, as amended by Chapter 337,
5 Statutes of 1990 (Chapter 337/90), require local agencies to
6 implement a new program or provide a higher level of service in an
7 existing program, within the meaning of Government Code
8 section 17514, and section 6 of article XIII B of the California
9 Constitution?

10
11 If so, are local agencies entitled to reimbursement under the
12 provisions of section 6 of article XIII B?

BACKGROUND AND FINDINGS OF FACT

13
14
15
16
17 The test claim was filed with the Commission on November 15, 1991,
18 by the County of San Bernardino (claimant).

19
20 The elements for filing a test claim, as specified in section 1183
21 of Title 2 of the California Code of Regulations, were satisfied.

22
23 The Commission observed that Chapter 337/90, amended Vehicle Code
24 section 10500 to require that the original reporting police agency,
25 upon receipt of the information from the recovering officer, shall,
26 within 48 hours, excluding weekends and holidays, notify the
27 reporting party of the location and condition of the recovered
28 vehicle.

1 The claimant alleged that Vehicle Code section 10500, as amended by
2 Chapter 337/90, requires local agencies to implement a new program
3 or higher level of service in an existing program.

4
5 The Department of Finance stated that, with certain exceptions,
6 Chapter 337/90 contains a reimbursable state mandated program.

7
8 The Department of Justice stated that Chapter 337/90, requires
9 local agencies to implement a higher level of service in an
10 existing program by amending Vehicle Code section 10500.
11 Furthermore, the Department of Justice stated that there are no
12 applicable provisions of Government Code section 17556 to preclude
13 reimbursement for the resulting state mandated costs.

14
15 Prior to Chapter 337/90, the Commission acknowledged that Vehicle
16 Code section 10500 did not require the original reporting law
17 enforcement agency to notify the party who reported the vehicle
18 stolen of the location and condition of the recovered vehicle.
19 However, the Commission observed that, under certain circumstances,
20 other statutory provisions previously required local law
21 enforcement agencies to inform owners, and parties with a secured
22 interest, of the recovery of their stolen property.

23
24 The Commission recognized that Penal Code section 1411, in
25 pertinent part, provides:

26
27 "If the ownership of the property stolen or embezzled and
28 the address of the owner, and the address of the owner of

1 a security interest therein, can be reasonably
2 ascertained, the peace officer who took custody of the
3 property shall notify the owner, and a person having a
4 security interest therein, by letter of the location of
5 the property and the method by which the owner may obtain
6 it. This notice shall be given upon the conviction of a
7 person for an offense involving the theft, embezzlement,
8 or possession of the property, or if a conviction was not
9 obtained, upon the making of a decision by the district
10 attorney not to file the case or upon the termination of
11 the proceedings in the case. . . . "

12
13 The Commission observed that Civil Code section 2080.1,
14 subdivision (b), provides:

15
16 "The police department or the sheriff's department shall
17 notify the owner, if his identity is reasonably
18 ascertainable, that it possesses the property and where
19 it may be claimed. The police department or sheriff's
20 department may require payment by the owner of a
21 reasonable charge to defray costs of storage and care of
22 the property."

23
24 The Commission further acknowledged that Vehicle Code
25 section 22651, in pertinent part, provides:

26
27 "Any peace officer, . . . who is engaged in directing
28 traffic or enforcing parking laws and regulations, of a

1 city or a county in which a vehicle is located, may
2 remove a vehicle located within the territorial limits in
3 which the officer or employee may act, under any of the
4 following circumstances:

5
6 ".

7
8 "(c) When any vehicle is found upon a highway or any
9 public lands and a report has previously been made that:
10 the vehicle has been stolen . . . "

11
12 The Commission also recognized that Vehicle Code section 22852, in
13 pertinent part, provides:

14
15 "(a) Whenever an authorized member of a public agency
16 directs the storage of a vehicle, as permitted by this
17 chapter, . . . the agency or person directing the storage
18 shall provide the vehicle's registered and legal owners
19 of record! or their agents, with the opportunity for a
20 poststorage hearing to determine the validity of the
21 storage.

22
23 "(b) A notice of the storage shall be mailed or
24 personally delivered to the registered and legal owners
25 within 48 hours, excluding weekends and holidays and
26 shall include all of the following information:

27 "(1) The name, address, and telephone number of the
28 agency providing the notice.

"(2) The location . . . and description of the vehicle, . . .

"(3) The authority and purpose for the removal of the vehicle.

". "

In sum, the Commission found that Vehicle Code section 10500 expanded the notification requirements for stolen vehicles. Nevertheless, the Commission found that any law enforcement agency that recovered or took custody of stolen or lost property, including vehicles! had certain pre-existing statutory responsibilities to notify the owner, and/or a person with a secured interest therein, of its recovery .

APPLICABLE LAW RELEVANT TO THE DETERMINATION OF A REIMBURSABLE STATE MANDATED PROGRAM

Government Code section 17500 and following, and section 6, article XIIIIB of the California Constitution and related case law.

//
//
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//
//

CONCLUSION

1
2
3 The Commission determines that it has the authority to decide this
4 claim under the provisions of Government Code sections 17500 and
5 17551, subdivision (a).
6

7 To the extent the provisions of Vehicle Code section 10500,
8 Chapter 337/90, exceed the notification requirements set forth in
9 prior laws, the Commission concludes that section 10500 requires
10 local agenvies to implement a new program or higher level of
11 service in an existing program, within the meaning of Government
12 Code section 17514 and section 6, article XIII B of the California
13 Constitution.
14

15 Accordingly, such costs related thereto are costs mandated by the
16 state and are subject to reimbursement within the meaning of
17 section 6, article XIII B of the California Constitution
18 Therefore, the claimant is directed to submit parameters and
19 guidelines, pursuant to Government Code section 17557 and Title 2,
20 California Code of Regulations, section 1183.1, to the Commission
21 for its consideration
22

23 The foregoing determination pertaining to Vehicle Code
24 section 10500 is subject to the following conditions:
25

26 The determination of a reimbursable state mandated
27 program does not mean that all increased costs claimed
28 will be reimbursed. Reimbursement, if any, is subject to

1 Commission approval of parameters and guidelines for
 2 reimbursement of the mandated program; approval of a
 3 statewide cost estimate; a specific legislative
 4 appropriation for such purpose; a timely-filed claim for
 5 reimbursement; and subsequent review of the claim by the
 6 State Controller's Office.

7
 8 If the statewide cost estimate for this mandate does not
 9 exceed one million dollars (\$1,000,000) during the first
 10 twelve (12) month period following the operative date of
 11 the mandate, the Commission shall certify such estimated
 12 amount to the State Controller's Office, and the State
 13 Controller shall receive, review and pay claims from the
 14 State Mandates Claims Fund as claims are received.
 15 (Government Code section 17610.)

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RECEIVED
September 26, 2014
*Commission on
State Mandates*

JOHN CHIANG
California State Controller
Division of Accounting and Reporting

September 26, 2014

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Notice of Complete Filing and Schedule for Comments
Mandate Redetermination Request, 14-MR-01
CPR Pocket Masks (CSM-4291)
Penal Code Section 13518.1; Statutes 1987, Chapter 1334 as amended by
Statutes 2013, Chapter 28 (SB 71)
California Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office (SCO) reviewed the Department of Finance's request to adopt a new test claim decision to supersede the prior decision on the CPR Pocket Masks mandate program. The SCO agrees that the reimbursement period of the aforementioned mandate program ended on June 27, 2013.

Should you have any questions regarding the above, please contact Tam Nguyen at (916) 324-2341 or email CNNguyen@sco.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "JAY LAL".

JAY LAL, Manager
Local Reimbursements Section

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 29, 2014, I served the:

SCO Comments

Mandate Redetermination Request, 14-MR-01

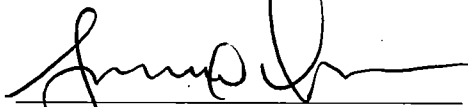
CPR Pocket Masks (CSM-4291)

Penal Code Section 13518.1; Statutes 1987, Chapter 1334 as amended by
Statutes 2013, Chapter 28 (SB 71)

California Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 29, 2014 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/25/14

Claim Number: 14-MR-01

Matter: CPR Pocket Masks (CSM-4291)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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October 30, 2014

Mr. Michael Byrne
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Mandate Redetermination Request, 14-MR-01
First Hearing: Adequate Showing
CPR Pocket Masks (CSM-4291)
Penal Code Section 13518.1; Statutes 1987, Chapter 1334 as amended by
Statutes 2013, Chapter 28 (SB 71)
California Department of Finance, Requester

Dear Mr. Byrne:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **November 20, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **January 23, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about January 9, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Heather Halsey', written over a white background.

Heather Halsey
Executive Director

ITEM _
MANDATE REDETERMINATION
FIRST HEARING: ADEQUATE SHOWING
DRAFT PROPOSED DECISION

Penal Code Section 13518.1

Statutes 1987, Chapter 1334 (AB 1726)

CPR Pocket Masks (CSM-4291)

As Alleged to be Modified by:

Statutes 2013, Chapter 28 (SB 71)

14-MR-01

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On March 23, 1988, the Commission on State Mandates (Commission) adopted a decision approving reimbursement for the *CPR Pocket Masks*, CSM-4291 program.¹ The Commission found that Penal Code section 13518.1² required local law enforcement agencies to provide to each peace officer that it employs a portable manual mask and airway assembly, for use when applying cardiopulmonary resuscitation, to prevent the spread of communicable disease.

Effective June 27, 2013, Statutes 2013, chapter 28 (SB 71), an urgency bill, amended the plain language of Penal Code section 13518.1 as follows in underline and strikeout:

In order to prevent the spread of communicable disease, a law enforcement agency employing peace officers described in subdivision (a) of Section 13518 ~~may shall~~ provide to each of these peace officers an appropriate portable manual mask and airway assembly for use when applying cardiopulmonary resuscitation.³

On August 18, 2014, Department of Finance (Finance) filed a request to adopt a new test claim decision to supersede the previous decision on *CPR Pocket Masks* to end the program's

¹ Exhibit A, Test Claim Statement of Decision CSM-4291, adopted March 23, 1988.

² The title of the parameters and guidelines of *CPR Pocket Masks*, CSM-4291 refers to the Statutes 1987, chapter 1334, which includes other Penal Code sections that did not contain reimbursable activities mandated by the state; the Commission, however, approved reimbursement only for the requirement of Penal Code section 13518.1 (Stats. 2013, ch. 1334).

³ Penal Code section 13518.1, as amended by Statutes 2013, chapter 28 (SB 71), section 46.

reimbursement period pursuant to Government Code section 17570.⁴ Finance asserts that Statutes 2013, chapter 28 constitutes a subsequent change in law, as defined in Government Code section 17570, which modifies the state’s liability for reimbursement. Finance concludes that “since the [test claim] statute was amended, no reimbursement is required pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.”

Procedural History

On August 18, 2014, Finance filed a request to adopt a new test claim decision on the *CPR Pocket Masks* program.⁵ On August 27, 2014, a notice of complete filing and schedule of comments was issued. On September 26, 2014, the State Controller’s Office (Controller) submitted comments on the request.⁶ On October 30, 2014, Commission staff issued the draft proposed decision for the first hearing on the request.

Commission Responsibilities

Mandate Redetermination Process under Government Code Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has modified the state’s liability for reimbursement. The redetermination process calls for two hearings. The Commission’s regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.⁷

The regulations further state:

If the Commission proceeds to the second hearing, it shall consider whether the state’s liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.⁸

⁴ Based on the filing date of August 18, 2014, the period of reimbursement potentially affected by this request for mandate redetermination would begin July 1, 2013. Pursuant to Government Code section 17570(f), a request “shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.”

⁵ Exhibit B, Request for Mandate Redetermination, filed August 18, 2014.

⁶ Exhibit D, State Controller’s Comments on Finance’s Request for Mandate Redetermination, filed September 26, 2014.

⁷ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

⁸ California Code of Regulations, title 2, section 1190.5(b)(1) (Register 2014, No. 21) .

Therefore, the sole issue before the Commission at this first hearing is whether Finance, as the requester, has made an adequate showing that the state's liability has been modified pursuant to a subsequent change in law, as defined in section 17570.

Staff Analysis

Staff finds that Finance has made an adequate showing that the state's liability for the *CPR Pocket Masks* program has been modified based upon a subsequent change in law, as defined in Government Code section 17570 and within the meaning of article XIII B, section 6(a) of the California Constitution and Government Code section 17514. Specifically, Statutes 2013, chapter 28 amended Penal Code section 13518.1, effective June 27, 2013, by deleting the mandatory language in the statute and replacing it with permissive language. As amended, the statute now authorizes law enforcement agencies to provide the portable manual mask and airway assembly to their peace officer employees.

The courts generally interpret the word "may" as permissive and "shall" as mandatory.⁹ As determined by the court in the *City of Merced and Kern High School Dist. cases*, the "core point... is that activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate."¹⁰ Thus, staff finds that Statutes 2013, chapter 28 constitutes a subsequent change in law pursuant to Government Code section 17570(a)(2), that may require a finding of no costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

Based on the foregoing, staff finds that Finance has a substantial possibility of prevailing at the second hearing and, thus, has made an adequate showing that the state's liability has been modified based on a subsequent change in law.

Staff Recommendation

Staff recommends that the Commission adopt this decision, and pursuant to Government Code section 17570(d)(4), direct staff to provide notice of the second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision. If the Commission adopts the attached proposed decision, the second hearing for this matter will be set for March 27, 2015.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed decision following the hearing.

⁹ See *John Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, 676 on statutory construction involving the terms "may" and "shall."

¹⁰ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION
FIRST HEARING: ADEQUATE SHOWING
ON:

Penal Code Section 13518.1;
Added by Statutes 1987, Chapter 1334 (AB
1726)

CPR Pocket Masks, CSM-4291

As Alleged to be Modified by:

Statutes 2013, Chapter 28 (SB 71)

Filed on August 18, 2014

By Department of Finance, Requester.

Case No.: 14-MR-01

CPR Pocket Masks (CSM-4291)

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500,
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted January 23, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on January 23, 2015. [Witness list will be included in the adopted decision.]

Government Code section 17570 and section 1190 et seq. of the Commission's regulations establish the mandate redetermination process. In addition, the law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., California Code of Regulations, title 2, section 1190 et seq., and related case law.

The Commission [adopted/modified] the draft proposed decision at the hearing by a vote of [vote count will be included in the adopted decision], and [directed/did not direct] staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision.

Summary of Findings

The Commission finds that the Department of Finance (Finance) has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution for the *CPR Pocket Masks*, CSM-4291 program has been modified based upon a subsequent change in law. Specifically, Statutes 2013, chapter 28 (SB 71) amended Penal Code section 13518.1, effective June 27, 2013, by deleting mandatory language in the statute and replacing it with

permissive language. As amended, the statute now authorizes law enforcement agencies to provide the portable manual mask and airway assembly to their peace officer employees.

The courts generally interpret the word “may” as permissive and “shall” as mandatory. As determined by the court in the *City of Merced and Kern High School Dist. cases*, the “core point... is that activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate.”¹¹ Thus, the Commission finds that Statutes 2013, chapter 28 constitutes subsequent change in law pursuant to Government Code section 17570(a)(2), that may require a finding of no costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

Pursuant to Government Code section 17570(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

Commission Findings

I. Chronology

03/23/88	The Commission adopted the test claim statement of decision. ¹²
07/28/88	The Commission adopted the parameters and guidelines. ¹³
06/27/13	The Legislature enacted Statutes 2013, chapter 28 (SB 71), as urgency legislation, amending Penal Code section 13518.1 effective June 27, 2013.
08/18/14	Finance filed a request to adopt a new test claim decision on <i>CPR Pocket Masks</i> , CSM-4291. ¹⁴
08/27/14	Commission staff issued a notice of complete filing and schedule for comments.
09/26/14	State Controller’s Office (Controller) submitted comments on Finance’s request for a mandate redetermination. ¹⁵
10/30/14	Commission staff issued the draft proposed decision for the first hearing on the request.

¹¹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

¹² Exhibit A, Test Claim Statement of Decision CSM-4291, adopted March 23, 1988.

¹³ Exhibit C, Parameters and Guidelines CSM-4291, adopted July 28, 1988.

¹⁴ Exhibit B, Request for Mandate Redetermination, filed August 18, 2014.

¹⁵ Exhibit D, State Controller’s Office Comments on Finance’s Request for Mandate Redetermination, filed September 26, 2014

II. Background

The CPR Pocket Masks Program and Alleged Subsequent Change in Law

Penal Code section 13518.1, as added by Statutes 1987, chapter 1334, “required local law enforcement agencies employing peace officers to provide to each of these peace officers an appropriate portable manual mask and airway assembly designed to prevent the spread of communicable disease when applying cardiopulmonary resuscitation.”¹⁶ On March 23, 1988, Commission found section 13518.1 to be a reimbursable state mandate.¹⁷ Parameters and guidelines were adopted on July 28, 1988, authorizing reimbursement for the increased costs of providing to each officer a portable manual mask and airway assembly.¹⁸ Since 1992, the mandate has been suspended and made optional pursuant to Government Code section 17581.¹⁹

Effective June 27, 2013, Statutes 2013, chapter 28, an urgency bill, amended the plain language of Penal Code section 13518.1 as follows (amendments in underline and ~~strikeout~~):

In order to prevent the spread of communicable disease, a law enforcement agency employing peace officers described in subdivision (a) of Section 13518 ~~may shall~~ provide to each of these peace officers an appropriate portable manual mask and airway assembly for use when applying cardiopulmonary resuscitation.²⁰

The Senate Rules Committee’s analysis of Senate Bill 71 stated that the intent of the bill was to eliminate the mandate by making it optional.²¹

On August 18, 2014, Finance filed a request to adopt a new test claim decision to supersede the previous decision on CSM-4291 to end reimbursement based on Statutes 2013, chapter 28,²² as defined by Government Code section 17570.

Mandate Redetermination Process - Government Code Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has modified the state’s liability for reimbursement. The redetermination process calls for two hearings. For the first hearing, the Commission’s regulations state that the requester must make “an adequate showing which identifies a subsequent change in law as defined by

¹⁶ Exhibit C, Parameters and Guidelines, adopted July 28, 1988, page 2.

¹⁷ Exhibit A, Test Claim Statement of Decision CSM-4291, adopted March 23, 1988, page 2.

¹⁸ Exhibit C, Parameters and Guidelines, adopted July 28, 1988, page 2.

¹⁹ See Exhibit X, Senate Rules Committee, Office of Senate Floor Analyses, Unfinished Business related to Senate Bill 71 (2013-2014 Reg. Sess.), as amended June 19, 2013, page 3. Senate Bill 71 relates to the Budget Act Item 8885-295-0001.

²⁰ Penal Code section 13518.1, as amended by Statutes 2013, chapter 28 (SB 71), section 46, effective June 27, 2013.

²¹ See Exhibit X, Senate Rules Committee, Office of Senate Floor Analyses, Unfinished Business related to Senate Bill 71 (2013-2014 Reg. Sess.), as amended June 19, 2013, page 3.

²² Exhibit B, Request for Mandate Redetermination, filed August 18, 2014.

Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to article XIII B, section 6, subdivision (a) of the California Constitution.”²³

A subsequent change in law is defined in section 17570 as follows:

A change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.²⁴

An “adequate showing” is determined in the Commission’s regulations as follow:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.²⁵

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written responses, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on the request to adopt a new test claim decision to supersede the previously adopted test claim decision.”²⁶

III. Positions of the Parties

Department of Finance, Requester

Finance requests that the Commission adopt a new test claim decision on this program, arguing that Statutes 2013, chapter 28 constitutes a subsequent change in law that ends the state’s liability for the *CPR Pocket Masks* program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.

State Controller’s Office

The Controller concurs with Finance’s assertion that the reimbursement period of the *CPR Pocket Masks* program ended on June 27, 2013.

²³ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

²⁴ Government Code section 17570(a)(2).

²⁵ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

²⁶ California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

IV. Discussion

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability.

The first hearing in the mandate redetermination process is intended, pursuant to the Government Code and the Commission's regulations, to determine only whether the requester has made an adequate showing that the state's liability has been modified based on a subsequent change in law, as defined.

Therefore, the analysis will be limited to whether the request, when considered in light of all of the written responses and supporting documentation in the records of this request, "has a substantial possibility of prevailing at the second hearing."²⁷ A thorough mandates analysis to determine whether and to what extent the state's liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

A. Statutes 2013, Chapter 28 Constitutes a Subsequent Change in Law Within the Meaning of Government Code Section 17570.

Government Code section 17570(b) states that the Commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state's liability pursuant to article XIII B, section 6 has been modified based on a subsequent change in law. A subsequent change in law is defined in Government Code section 17570(a)(2) as follows:

A change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.²⁸

The courts have held that costs to a local entity resulting from an action undertaken at the option of the local entity are not reimbursable as "costs mandated by the state." In the *City of Merced* and *Kern High School Dist.* cases, "the core point . . . is that activities undertaken at the option or discretion of a local government entity (that is, action undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate . . ."²⁹

Effective June 27, 2013, Statutes 2013, chapter 28 (SB 71) amended Penal Code section 13518.1 as follows:

²⁷ See California Code of Regulations, title 2, section 1190.5(a)(1) for a description of the standard for the first hearing.

²⁸ Government Code section 17570(a)(2).

²⁹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742; *City of Merced*, *supra*, 153 Cal.App.3d 777, 783.

In order to prevent the spread of communicable disease, a law enforcement agency employing peace officers described in subdivision (a) of Section 13518 ~~may shall~~ provide to each of these peace officers an appropriate portable manual mask and airway assembly for use when applying cardiopulmonary resuscitation.³⁰

Finance asserts that the amendment to the plain language of the section 13518.1 made the “requirement of section 13518.1 permissive by substituting the word “may” in place of the word “shall,” resulting in no costs mandated by the state for this program.³¹

The courts generally interpret the word “may” as permissive and “shall” as mandatory.³² Thus, as amended, Penal Code section 13518.1 deletes the mandatory language that required law enforcement agencies to provide peace officer employees an appropriate portable manual mask and airway assembly for use when applying cardiopulmonary resuscitation and, instead, now authorizes that activity.

Therefore, the Commission finds that Statutes 2013, chapter 28 constitutes subsequent change in law pursuant to Government Code section 17570(a)(2), that may require a finding of no costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

B. Finance Has Made an Adequate Showing That the State’s Liability Has Been Modified.

The issue for this first hearing is whether Finance has made an adequate showing that the state’s liability has been modified based on a subsequent change in law. The Commission shall find that the requester has made an adequate showing if it finds “that the request, when considered in light of all of the written responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”³³

For the reasons discussed above, the Commission finds that Finance has a substantial possibility of prevailing at the second hearing and, thus, has made an adequate showing that the state’s liability has been modified pursuant to Statutes 2013, chapter 28.

V. Conclusion

The Commission finds that Finance has made an adequate showing. The Commission hereby directs Commission staff to notice the second hearing and to prepare a full mandates analysis on the issue of whether the Commission shall adopt a new test claim decision to supersede the Commission’s previously adopted test claim decision on CSM-4291.

³⁰ Penal Code section 13518.1, amended by Statutes 2013, chapter 28 (SB 71), section 46, effective June 27, 2013.

³¹ Exhibit B, Request for Mandate Redetermination, filed August 18, 2014, page 1.

³² See *John Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, 676 on statutory construction involving the terms “may” and “shall.”

³³ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 30, 2014, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Mandate Redetermination Request, 14-MR-01
First Hearing: Adequate Showing
CPR Pocket Masks (CSM-4291)
Penal Code Section 13518.1; Statutes 1987, Chapter 1334 as amended by
Statutes 2013, Chapter 28 (SB 71)
California Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 30, 2014 at Sacramento, California.



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Claim Number: 14-MR-01

Matter: CPR Pocket Masks (CSM-4291)

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TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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RECEIVED
November 20, 2014
*Commission on
State Mandates*

JOHN CHIANG
California State Controller
Division of Accounting and Reporting

November 20, 2014

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Mandate Redetermination Request, 14-MR-01
CPR Pocket Masks (CSM-4291)
Penal Code Section 13518.1; Statutes 1987, Chapter 1334 as amended by
Statutes 2013, Chapter 28 (SB 71)
California Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office reviewed the draft proposed decision for the CPR Pocket Masks program and recommends no changes.

Should you have any questions regarding the above, please contact Tam Nguyen at (916) 324-2341 or email CNNguyen@sco.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "JAL", written over a horizontal line.

JAY LAL, Manager
Local Reimbursements Section

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On November 24, 2014, I served the:

SCO Comments

Mandate Redetermination Request, 14-MR-01

First Hearing: Adequate Showing

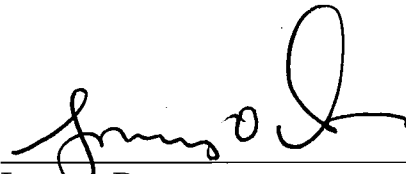
CPR Pocket Masks (CSM-4291)

Penal Code Section 13518.1; Statutes 1987, Chapter 1334 as amended by
Statutes 2013, Chapter 28 (SB 71)

California Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 24, 2014 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/19/14

Claim Number: 14-MR-01

Matter: CPR Pocket Masks (CSM-4291)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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SENATE RULES COMMITTEESB 71

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UNFINISHED BUSINESS

Bill No: SB 71
Author: Senate Budget and Fiscal Review Committee
Amended: 6/19/13
Vote: 21

PRIOR SENATE VOTES NOT RELEVANT

ASSEMBLY FLOOR: 54-25, 06/20/13 - See last page for vote

SUBJECT: Budget Act of 2013: General Government Omnibus Trailer Bill

SOURCE: Author

DIGEST: This bill makes various statutory changes necessary to implement the general government-related provisions of the Budget Act of 2013.

Assembly Amendments delete the prior version of the bill and insert the current language to provide the necessary statutory changes in the area of general government in order to enact the Budget Act of 2013.

ANALYSIS: This bill includes the following key changes:

1. Authorizes the Bureau of Private Postsecondary Education (Bureau) to regulate currently exempted private postsecondary educational institutions that apply to be subject to the Bureau's oversight. This ensures these institutions' ability to participate in federal student aid programs, and includes a sunset date of January 1, 2015.
2. Reduces the amount of bonded indebtedness authorized under the Public Education Facilities Bond Act of 1996, by \$12.9 million and repeals the authority of the Director of General Services and the Public Works Board to

issue up to \$391 million in financing securities for facilities in the Capital Area Plan.

3. Creates the Women and Girls Fund for all fundraising efforts by the Commission on the Status of Women and Girls including gifts or donations.
4. Transfers the Public Safety Communications Office from the Department of Technology to the Office of Emergency Services.
5. Specifies that funds in the Disaster Response-Emergency Operations Account shall not be expended for conditions in the state's prisons, medical facilities, or youth correctional facilities resulting solely from the action or inaction of the Department of Corrections and Rehabilitation in administering those facilities.
6. Transfers responsibility for information technology procurement from the Department of General Services (DGS) to the Department of Technology.
7. Creates a grant program in the California Victim Compensation and Government Claims Board (CVCGCB) to provide \$2 million per year from the Restitution Fund, subject to appropriation by the Legislature, to Trauma Recovery Centers. Trauma Recovery Centers provide services directly to victims rather than requiring them to independently navigate the process of claiming benefits from the CVCGCB.
8. Updates references to the California Emergency Management Agency to recognize the name change to the Office of Emergency Services. Allows the use of antiterrorism funds from license plate revenues (instead of the General Fund) in support of California Specialized Training Institute.
9. Authorizes the DGS to structure, administer, and maintain the Golden State Financial Marketplace Program (GS \$Mart Program). Requires DGS to report annually to the Joint Legislative Budget Committee, the State Treasurer's Office, and the Department of Finance on the progress of the GS \$Mart Program.
10. Authorizes the State Personnel Board (SPB) to bill departments on a pro-rata basis for the costs of its Compliance Review Audit Program and requires the SPB to report on an annual basis regarding the audit and special investigations.
11. Requires the Department of Human Resources (CalHR) to submit two reports to the Legislature reviewing the additional appointments by state agencies for

- supervisors, and rank and file employees. Requires the SPB to submit a report on the policies and practices included in the Personnel Management Policy and Procedures Manual.
12. Repeals five mandates by making them permissive; these five mandates have been suspended in the Budget each year since 1992.
 13. Removes California Earthquake Authority's limit on civil service positions.
 14. Eliminates the sunset dates and increases the annual revenue caps of the Occupational Safety and Health Fund (OSH Fund) and the Labor Enforcement and Compliance Fund, allowing the Department of Industrial Relations (DIR) to enforce laws that protect employees and the public.
 15. Eliminates the Targeted Inspection and Consultation Fund and provides a loan from the fund to the Compliance Monitoring Unit, to be repaid to the OSH Fund.
 16. Clarifies reforms to the Workers' Compensation program as required by SB 863 (De León, Chapter 363, Statutes of 2012) including that new programs apply to workers injured on or after January 1, 2013.
 17. Eliminates the High Hazard Assessment and shifts the assessment into the Occupational Health and Safety Fund, streamlining assessment collection for both employers and the DIR.
 18. Prohibits the Honda Center, which is located in an enterprise zone in Southern California, from obtaining additional hiring credits if they lay off workers and later rehire workers for lower wages and benefits.
 19. Stabilizes funding for the Compliance Monitoring Unit, which enforces prevailing wage requirements on public construction projects, by allowing costs of monitoring to be covered by non-bond funds that are used for projects.
 20. Directs the DIR to use its statutory authority to approve a fee by March 31, 2014, to support an increase in funding and at least 15 new positions for the Process Safety Unit, which inspects oil refineries and chemical plants.
 21. Allows state agency contracts for services under \$150,000 to be exempt from approval by the DGS if the agency complies with certain requirements.

22. Adds the Secretary of Business, Consumer Services, and Housing to the Strategic Growth Council.
23. Contains an appropriation allowing this bill to take effect immediately upon enactment.

Comments

The provisions in this bill are identical to AB 76 (Assembly Budget Committee), which was passed by the Assembly on June 14, 2013, with the following exceptions:

1. Preserves existing law relating to California Public Records Act by removing amendments contained in AB 76 that would have made portions of the California Public Records Act permissive.
2. Preserves existing law relating to the Local Government Ethics Training Requirements by removing amendments contained in AB 76 that would have made portions of the compensation and reimbursement activities permissive for specified local agencies.

Additionally, this bill enacts various provisions to support the 2013 Budget Act, and among other things, creates the Women and Girls Fund, requires reporting on additional appointments by the CalHR, and directs the DIR to increase oil refinery and chemical plant inspections.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

ASSEMBLY FLOOR: 54-25, 06/20/13

AYES: Alejo, Ammiano, Atkins, Bloom, Blumenfield, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chesbro, Cooley, Daly, Dickinson, Eggman, Fong, Fox, Frazier, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gray, Hall, Roger Hernández, Holden, Jones-Sawyer, Levine, Lowenthal, Medina, Mitchell, Mullin, Muratsuchi, Nazarian, Pan, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Weber, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Achadjian, Allen, Bigelow, Chávez, Conway, Dahle, Donnelly, Beth Gaines, Gorell, Grove, Hagman, Harkey, Jones, Linder, Logue, Maienschein, Mansoor, Melendez, Morrell, Nestande, Olsen, Patterson, Wagner, Waldron, Wilk

NO VOTE RECORDED: Vacancy

MW/JA:dk 6/20/13 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

*** **END** ***