

ITEM 3
MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION

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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January 30, 2015

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Department of Finance (A-15)
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Adopted First Hearing Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, 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 Alleged to be Modified by Statutes 2013, Chapter 28 (SB 71)
California Department of Finance, Requester

Dear Mr. Dyer:

On January 23, 2015, the Commission on State Mandates (Commission) adopted the decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. The adopted decision is enclosed. The draft proposed decision for the second hearing, and the draft expedited amendment to parameters and guidelines are enclosed for your review and comment.

Written Comments on Second Hearing Draft Proposed Decision

Written comments on the draft proposed decision may be filed by **February 20, 2015**.

Staff has also prepared a draft expedited amendment to parameters and guidelines for adoption at the March Commission hearing. The draft expedited amendment to parameters and guidelines is tentatively set for hearing on **March 27, 2015** and will only be taken up if the Commission first approves the request for redetermination.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff's draft proposal by **February 20, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.8(f).)

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.)

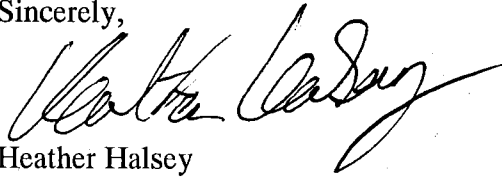
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Mr. Tom Dyer
January 30, 2015
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Hearing

The second hearing on the request for mandate redetermination is set for **March 27, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the amendment to the parameters and guidelines is tentatively set for hearing on **March 27, 2015**, but will only be taken up if the Commission first approves the request for redetermination. The proposed decision for the second hearing and the proposed decision and amendment to the parameters and guidelines will be issued on or about March 13, 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,



Heather Halsey
Executive Director

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)

(Served January 30, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on January 23, 2015. Donna Ferebee and Lee Scott appeared on behalf of Department of Finance (Finance).

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 the proposed decision at the hearing by a vote of 7-0, and directed 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 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

CPR Pocket Masks (CSM-4291), 14-MR-01
Mandate Redetermination, First Hearing
Decision

amended, the statute now authorizes, but does not require, law enforcement agencies to provide the portable manual mask and airway assembly to their peace officer employees.

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. ¹
07/28/88	The Commission adopted the parameters and guidelines. ²
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. ³
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. ⁴
10/30/14	Commission staff issued the draft proposed decision for the first hearing on the request. ⁵
11/20/14	Controller filed comments on the draft proposed decision. ⁶

II. Background

The CPR Pocket Masks Program

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."⁷ On March 23, 1988,

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

² Exhibit C, Parameters and Guidelines CSM-4291, adopted July 28, 1988.

³ Exhibit A, Request for Mandate Redetermination, filed August 18, 2014.

⁴ Exhibit D, State Controller's Office Comments on Finance's Request for Mandate Redetermination, filed September 26, 2014

⁵ Exhibit E, Draft Proposed Decision, First Hearing issued October 30, 2014.

⁶ Exhibit F, State Controller's Office Comments on Draft Proposed Decision, filed November 20, 2014.

⁷ Exhibit C, Parameters and Guidelines, adopted July 28, 1988, page 2.

Commission found section 13518.1 to be a reimbursable state mandate.⁸ 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.⁹

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 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, subdivision (a) of the California Constitution."¹⁰

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 17551.¹¹

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 comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.¹²

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 comments, 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 whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision."¹³

⁸ Exhibit B, Test Claim Statement of Decision CSM-4291, adopted March 23, 1988, page 2.

⁹ Exhibit C, Parameters and Guidelines, adopted July 28, 1988, page 2.

¹⁰ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹¹ Government Code section 17570(a)(2).

¹² California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹³ California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

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. In accordance, the Controller filed comments recommending no changes to the draft proposed decision on November 20, 2014.

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."¹⁴ 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(a) 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

¹⁴ See California Code of Regulations, title 2, section 1190.5(a)(1) for a description of the standard for the first hearing.

executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.¹⁵

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....”¹⁶

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

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.¹⁷

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.¹⁸

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.”¹⁹

The courts generally interpret the word “may” as permissive and “shall” as mandatory.²⁰ 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.

¹⁵ Government Code section 17570(a)(2).

¹⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742; *City of Merced*, *supra*, 153 Cal.App.3d 777, 783.

¹⁷ Penal Code section 13518.1, amended by Statutes 2013, chapter 28 (SB 71), section 46, effective June 27, 2013.

¹⁸ Exhibit G, Senate Rules Committee, Senate Floor Analysis, Bill Analysis of SB 71, as amended June 19, 2013, page 3.

¹⁹ Exhibit A, Request for Mandate Redetermination, filed August 18, 2014, page 1.

²⁰ See *John Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, 676 on statutory construction involving the terms “may” and “shall.”

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 comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”²¹

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 that the state’s liability has been modified pursuant to Statutes 2013, chapter 28. The Commission hereby directs Commission staff to notice the second hearing to determine whether to adopt a new test claim decision to supersede the Commission’s previously adopted test claim decision on CSM-4291.

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

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RE: Adopted Decision

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

On January 23, 2015, the foregoing decision of the Commission on State Mandates was adopted in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey, Executive Director

Dated: January 30, 2015

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 January 30, 2015, I served the:

**Adopted First Hearing Decision, Notice of Second Hearing Draft Proposed Decision,
Draft Expedited Amendment to Parameters and Guidelines, 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

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 January 30, 2015 at Sacramento, California.



Heidi J. Palchik
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/26/15

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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January 30, 2015

Mr. Tom Dyer
 Department of Finance (A-15)
 915 L Street
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Adopted First Hearing Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, 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 Alleged to be Modified by Statutes 2013, Chapter 28 (SB 71)
 California Department of Finance, Requester

Dear Mr. Dyer:

On January 23, 2015, the Commission on State Mandates (Commission) adopted the decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. The adopted decision is enclosed. The draft proposed decision for the second hearing, and the draft expedited amendment to parameters and guidelines are enclosed for your review and comment.

Written Comments on Second Hearing Draft Proposed Decision

Written comments on the draft proposed decision may be filed by **February 20, 2015**.

Staff has also prepared a draft expedited amendment to parameters and guidelines for adoption at the March Commission hearing. The draft expedited amendment to parameters and guidelines is tentatively set for hearing on **March 27, 2015** and will only be taken up if the Commission first approves the request for redetermination.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff's draft proposal by **February 20, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.8(f).)

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.)

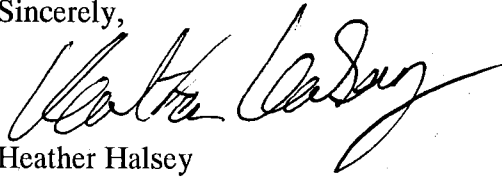
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Mr. Tom Dyer
January 30, 2015
Page 2

Hearing

The second hearing on the request for mandate redetermination is set for **March 27, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the amendment to the parameters and guidelines is tentatively set for hearing on **March 27, 2015**, but will only be taken up if the Commission first approves the request for redetermination. The proposed decision for the second hearing and the proposed decision and amendment to the parameters and guidelines will be issued on or about March 13, 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,



Heather Halsey
Executive Director

ITEM _
MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION
DRAFT PROPOSED DECISION

Penal Code Section 13518.1

Statutes 1987, Chapter 1334 (AB 1726)

As Alleged to be Modified by:
Statutes 2013, Chapter 28 (SB 71)

CPR Pocket Masks (CSM-4291)

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 13518.1, as added by Statutes 1987, chapter 1334, required local law enforcement agencies employing peace officers to provide to each of those peace officers a portable manual mask and airway assembly for use when applying cardiopulmonary resuscitation to prevent the spread of communicable disease. Parameters and guidelines were adopted on July 28, 1988, authorizing reimbursement for the increased costs of purchasing, repairing, or replacing a portable manual mask and airway assembly for each officer.²

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 (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.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 reimbursement period pursuant to Government Code section 17570. Finance asserts that Statutes

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

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

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

2013, chapter 28 constitutes a subsequent change in law, as defined in Government Code section 17570, that 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."⁴

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission based on a subsequent change in law. The Government Code provides for a two-hearing process. The Commission's regulations state that "[i]f 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."⁵

The first hearing on this request was on January 23, 2015. The Commission found that Finance had a substantial possibility of prevailing at the second hearing. Thus, the Commission directed staff to set the matter for a second hearing on whether to adopt a new test claim decision to supersede the Commission's previously adopted test claim decision on CSM-4291.

Procedural History

On August 18, 2014, Finance filed a request to adopt a new test claim decision on the *CPR Pocket Masks* program, asserting that a subsequent change in law ended the reimbursement period of the program.⁶ On August 27, 2014, Commission staff issued a notice of complete filing and schedule of comments. On September 26, 2014, the State Controller's Office (Controller) filed comments on the matter, concurring with Finance.⁷ On October 30, 2014, Commission staff issued a draft proposed decision for the first hearing.⁸ In response, the Controller filed comments recommending no changes to the draft proposed decision on November 20, 2014.⁹ On January 23, 2015, the Commission adopted the decision for the first hearing and directed staff to schedule the second hearing. The draft proposed decision for the second hearing and the draft expedited parameters and guidelines were issued on January 30, 2015.

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 first hearing is an adequate showing hearing. With regard to the second hearing, the Commission's regulations state:

⁴ Exhibit A, Request for Mandate Redetermination, page 1.

⁵ California Code of Regulations, title 2, section 1190.5(b)(1).

⁶ Exhibit A, Request for Mandate Redetermination, filed August 18, 2014.

⁷ Exhibit D, State Controller's Office Comments on Finance's request for mandate redetermination.

⁸ Exhibit E, Draft Proposed Decision, First Hearing, issued October 30, 2014.

⁹ Exhibit F, State Controller's Office Comments on Draft Proposed Decision.

If the Commission proceeds to the second hearing, it shall consider whether the state's liability pursuant to article XIII B, section 6(a) of the California Constitution 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. If the Commission finds that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified based on the subsequent change in law alleged by the requester, it shall adopt a new decision that reflects the modified liability of the state."¹⁰

Therefore, the issue before the Commission at this second hearing is to what extent the state's liability has been modified based on a subsequent change in law alleged by Finance, and whether a new decision shall be adopted to reflect that modification.

Staff Analysis

Staff finds 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.¹¹ 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."¹² Accordingly, those costs to a local government entity resulting from an action undertaken at the option of the local government entity are not reimbursable as costs mandated by the state. Based on the amended test claim statute, staff finds that Penal Code section 13518.1 is now performed at the option of the local law enforcement agencies and no longer constitutes a mandate of the state. As a result, there are no increased costs mandated by the state within the meaning of article XIII B, section 6(a) of the California Constitution and Government Code section 17514.

Section 17570(f) provides that a request for adoption of a new test claim decision 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. This request was filed on August 18, 2014 (in 2014-2015 fiscal year), establishing eligibility for the loss of reimbursement beginning July 1, 2013.

¹⁰ California Code of Regulations, title 2, section 1190.5(b)(1) (Register 2014, No. 21).

¹¹ See *John Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, 676 on statutory construction involving the terms "may" and "shall."

¹² *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.

Staff Recommendation

Staff recommends that the Commission adopt this proposed decision as its new test claim decision, ending reimbursement for the mandated program beginning July 1, 2013.

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

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM
DECISION FOR:

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 March 27, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on March 27, 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 proposed decision at the hearing as its new test claim decision, approving the request to end reimbursement for the program's activities by a vote of [vote count will be included in the adopted decision].

Summary of Findings

The Commission finds that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution for the *CPR Pocket Masks* program ended on June 30, 2013, 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 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. Thus, Penal Code section 13518.1 is now performed at the option of the local law enforcement agencies, and there are no costs mandated by the state within the meaning of article XIII B, section 6(a) of the California Constitution and Government Code section 17514.

Commission Findings

I. Chronology

03/23/88	Commission adopted the test claim statement of decision. ¹³
07/28/88	Commission adopted the parameters and guidelines. ¹⁴
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	Department of Finance (Finance) filed a request to adopt a new test claim decision on <i>CPR Pocket Masks</i> , CSM-4291. ¹⁵
08/27/14	Commission staff issued notice of completed filing and schedule for comments.
09/26/14	State Controller's Office (Controller) submitted comments on Finance's request for a mandate redetermination. ¹⁶
10/30/14	Commission staff issued the draft proposed decision for the first hearing on the request. ¹⁷
11/20/14	The Controller filed comments on the draft proposed decision. ¹⁸
01/23/15	Commission adopted the decision for the first hearing. ¹⁹
01/30/15	Commission staff issued the draft proposed decision for the second hearing and the draft expedited amendment to parameters and guidelines.

II. Background

The CPR Pocket Masks Program

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."²⁰ On March 23, 1988, the

¹³ Exhibit B, Test Claim Statement of Decision, CSM-4291, adopted March 23, 1988.

¹⁴ Exhibit C, Parameters and Guidelines, CSM-4291, adopted July 28, 1988.

¹⁵ Exhibit A, Request for Mandate Redetermination, filed August 18, 2014.

¹⁶ Exhibit D, State Controller's Office Comments on Finance's request for mandate redetermination.

¹⁷ Exhibit E, Draft Proposed Decision, First Hearing, issued October 30, 2014.

¹⁸ Exhibit F, State Controller's Office Comments on Draft Proposed Decision, filed November 20, 2014.

¹⁹ Exhibit H, Decision, First Hearing, adopted January 23, 2015.

²⁰ Exhibit C, Parameters and Guidelines, adopted July 28, 1988, page 2.

Commission found section 13518.1 to be a reimbursable state mandate.²¹ Parameters and guidelines were adopted on July 28, 1988, authorizing reimbursement for the increased costs of purchasing, repairing, or replacing a portable manual mask and airway assembly for each officer.²²

Effective June 27, 2013, Statutes 2013, chapter 28 (SB 71), an urgency bill, amended 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.²³

The Senate Rules Committee's analysis of Senate Bill 71 indicated that the intent of the bill was to eliminate the mandate by making it optional.²⁴

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(a) of the California Constitution and Government Code section 17514.

State Controller's Office

The Controller concurs with Finance that the state's liability to reimburse local agencies for the *CPR Pocket Masks* program ended as a result of Statutes 2013, chapter 28.

IV. Discussion

Pursuant to article XIII B, section 6(a) of the California Constitution, local agencies and school districts are entitled to reimbursement for the increased costs of state-mandated new program or higher levels of service.²⁵ For local government to be eligible for reimbursement one or more similarly situated local agencies or school districts must file a successful test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the

²¹ Exhibit B, Test Claim Statement of Decision, CSM-4291, adopted March 23, 1988, page 2.

²² Exhibit C, Parameters and Guidelines, adopted July 28, 1988, page 2.

²³ Penal Code section 13518.1, as amended by Statutes 2013, chapter 28 (SB 71), section 46, effective June 27, 2013.

²⁴ Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Unfinished Business, relates to the General Government Omnibus trailer bill language of the 2013 Budget Act Item 8885-295-0001. That exhibit references the mandate's suspension since 1992, which implies that the local agencies have not been required to implement or give effect to any statute or executive order that the Legislature has identified as a suspended program since that time.

²⁵ Article XIII B, section 6(a) of the California Constitution.

test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁶ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.²⁷ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²⁸

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 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, subdivision (a) of the California Constitution.”²⁹

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 17551.³⁰

Pursuant to the Commission’s regulations, 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 comments, 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 whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”³¹

²⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

²⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

²⁸ *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²⁹ California Code of Regulations, title 2, section 1190.5(a)(1).

³⁰ Government Code section 17570(a)(2).

³¹ California Code of Regulations, title 2, section 1190.5(a)(5)(B).

For the second hearing, the Commission must consider whether the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution 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. “If the Commission finds that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified based on the subsequent change in law alleged by the requester, it shall adopt a new decision that reflects the modified liability of the state.”³² If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.³³

A. Statutes 2013, Chapter 28 Constitutes a Subsequent Change in Law That Requires a Finding that the Costs Incurred Under the CPR Pocket Masks Program are No Longer Costs Mandated by the State.

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 17551.³⁴

The courts generally interpret the word “may” as permissive and “shall” as mandatory.³⁵ As determined 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 . . .”³⁶ Accordingly, those costs to a local government entity resulting from an action undertaken at the option of the local government entity are not reimbursable as costs mandated by the state.

Effective June 27, 2013, Statutes 2013, chapter 28 (SB 71) amended 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~~

³² California Code of Regulations, title 2, section 1190.5(b)(1).

³³ Government Code section 17570(i).

³⁴ Government Code section 17570(a)(2).

³⁵ See *John Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, 676 on statutory construction involving the terms “may” and “shall.”

³⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742; *City of Merced*, *supra*, 153 Cal.App.3d 777, 783.

provide to each of these peace officers an appropriate portable manual mask and airway assembly for use when applying cardiopulmonary resuscitation.³⁷

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 state liability for reimbursement pursuant to article XIII B, section 6(a) of the California Constitution and Government Code section 17514.”³⁸

The Commission finds that Statutes 2013, chapter 28 amended Penal Code section 13518.1 by deleting the mandatory language and replacing it with permissive language. The amendment deletes the legal requirement 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. Accordingly, Penal Code section 13518.1, as amended by Statutes 2013, chapter 28, is now performed at the option of the local law enforcement agencies and is not mandated by the state. As a result, there are no costs mandated by the state within the meaning of article XIII B, section 6(a) of the California Constitution and Government Code section 17514.

Government Code section 17570(f) provides that a request for adoption of a new test claim decision 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.”

Finance filed the request for the adoption of a new test claim decision on August 18, 2014, thereby establishing eligibility for ending reimbursement for this program beginning July 1, 2013.

V. Conclusion

Based on the foregoing, the Commission approves the request for a new test claim decision and finds that the *CPR Pocket Masks* program no longer constitutes a reimbursable state mandated program pursuant to article XIII B, section 6(a) and Government Code section 17514, beginning July 1, 2013.

³⁷ Penal Code section 13518.1, amended by Statutes 2013, chapter 28 (SB 71), section 46, effective June 27, 2013.

³⁸ Exhibit A, Request for Mandate Redetermination, filed August 18, 2014, page 1.

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 January 30, 2015, I served the:

**Adopted First Hearing Decision, Notice of Second Hearing Draft Proposed Decision,
Draft Expedited Amendment to Parameters and Guidelines, 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

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 January 30, 2015 at Sacramento, California.



Heidi J. Palchik
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/26/15

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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RECEIVED
February 11, 2015
Commission on
State Mandates

BETTY T. YEE
California State Controller
Division of Accounting and Reporting

February 11, 2015

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

Re: Adopted First Hearing Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, 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 Alleged to be Modified by Statutes 2013, Chapter 28 (SB 71) California Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office reviewed both the second hearing draft proposed decision and the draft expedited amendment to parameters and guidelines 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", with a long horizontal flourish extending to the right.

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 February 12, 2015, I served the:

SCO Comments

Mandate Redetermination Request, 14-MR-01

First Hearing: Adequate Showing

CPR Pocket Masks (CSM-4291)

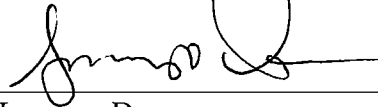
Penal Code Section 13518.1; Statutes 1987, Chapter 1334 as amended by

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 February 12, 2015 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: 2/10/15

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** ****