

ITEM 9
PROPOSED DECISION
AND
AMENDMENT TO PARAMETERS AND GUIDELINES

Education Code Sections 81820 and 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910; Statutes 1981, Chapter 470;
Statutes 1981, Chapter 891; Statutes 1995, Chapter 758

As Modified by:
Statutes 2014, Chapter 34 (SB 860)

Community College Construction (02-TC-47)

14-MR-03

Department of Finance, Requester

TABLE OF CONTENTS

Exhibit A

Decision for the First Hearing, adopted December 3, 2015 1

Exhibit B

Draft Proposed Decision for the Second Hearing, issued December 4, 2015 20

Exhibit C

Draft Expedited Amendment to Parameters and Guidelines, issued December 4, 2015..... 43

Exhibit D

Controller’s Comments on Draft Proposed Decision for the Second Hearing and Draft Expedited Amendment to Parameters and Guidelines, filed December 23, 2015 56

Exhibit E

Supporting Documentation 63
Statutes 2014, chapter 34 (selected pages).

COMMISSION ON STATE MANDATES

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**Exhibit A**

December 4, 2015

Mr. Chris Ferguson
Department of Finance
915 L Street, 7th Floor
Sacramento, CA 95814

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

Re: First Hearing Decision, Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing
Mandate Redetermination Request, 14-MR-03
First Hearing: Adequate Showing
Community College Construction (02-TC-47)
Education Code Sections 81820, 81821(a), (b), (e), and (f)
Statutes 1980, Chapter 910; Statutes 1981, Chapter 470; Statutes 1981, Chapter 891;
Statutes 1995, Chapter 758
As Alleged to be Modified by Statutes 2014, Chapter 34 (SB 860)
Department of Finance, Requester

Dear Mr. Ferguson:

On December 3, 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 may be filed on the draft proposed decision by **December 28, 2015**. The draft proposed decision is set for hearing on **January 22, 2016**.

Written Comments on Draft Expedited Amendment to Parameters and Guidelines

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the January Commission hearing. The draft expedited amendment to parameters and guidelines is set for hearing on **January 22, 2016** 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 comments may be filed on staff's draft proposal by **December 24, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(b).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.9(c).)

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

Mr. Chris Ferguson
December 4, 2015
Page 2

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.)

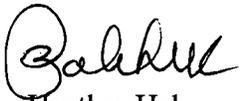
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

The second hearing on the request for a mandate redetermination is set for **Friday, January 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the expedited amendment to the parameters and guidelines is also set for hearing on **Friday, January 22, 2016**, but will only be taken up if the Commission first approves the request for redetermination.

The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about January 8, 2016. 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,

 FOR

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
FIRST HEARING: ADEQUATE SHOWING
ON:

Education Code Sections 81820 and
81821(a), (b), (e), and (f);

Statutes 1980, Chapter 910; Statutes 1981,
Chapter 470; Statutes 1981, Chapter 891;
Statutes 1995, Chapter 758;

As Alleged to be Modified by:
Statutes 2014, Chapter 34 (SB 860)

Filed on June 19, 2015

By the Department of Finance, Requester

Case No.: 14-MR-03

*Community College Construction
(02-TC-47)*

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

(Adopted December 3, 2015)

(Served December 4, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on December 3, 2015. Donna Ferebee and Keith Nezaam appeared on behalf of the 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., title 2, California Code of Regulations 1181.1 et seq., and related case law.

The Commission adopted the proposed decision at the hearing by a vote of 4-0, 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. The Commission voted as follows:

Member	Vote
Richard Chivaro, Representative of the State Controller, Vice Chairperson	Yes
Mark Hariri, Representative of the State Treasurer	Yes
Scott Morgan, Representative of the Director of the Office of Planning and Research	Yes
Sarah Olsen, Public Member	Absent
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Carmen Ramirez, City Council Member	Absent
Don Saylor, County Supervisor	Absent

Summary of Findings

The Commission finds that Finance has made an adequate showing that pursuant to article XIII B, section 6(a) of the California Constitution, the state's liability for the *Community College Construction*, 02-TC-47 mandate may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing on the request. Specifically, requirements for the five-year plan for capital construction were amended by Statutes 2014, chapter 34 (SB 860, eff. June 20, 2014) to provide that the following information that was approved in the prior test claim decision, and is currently reimbursable in the parameters and guidelines, "may also" rather than "shall" be included: plans for future student services programs, enrollment projections for each education center within the district, an annual inventory of land, and an estimate of district funds made available for capital outlay matching purposes.¹

Section 81820 was not amended by the 2014 statute, and continues to require that the five-year plan shall be subject to continuing review by the governing board. The requirements to include the following in the plan were not approved in the test claim decision because those requirements, and the general requirement to have the plan subject to continuing review, were not new:

- (1) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors, and
- (2) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors.

In addition, the requirement to review the five-year plan on a continuing basis under Education Code section 81820 was approved only as to the newly required content in the prior test claim decision, because the requirement for continuing review was not new. Therefore, since the information in former Education Code section 81821, which the Commission found to impose a mandated new program or higher level of service in *Community College Construction*, 02-TC-47, appears to now be permissive, the requirement for continuing review of that content would also be permissive.

Pursuant to Government Code section 17570(b)(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

10/27/2011 The Commission adopted the Test Claim Statement of Decision.²

¹ Former Education Code 81821(a), (b), (e), and (f).

² Exhibit B, Test Claim Statement of Decision, *Community College Construction*, 02-TC-47.

03/23/2012	The Commission adopted the Parameters and Guidelines. ³
06/20/2014	Statutes 2014, chapter 34 (SB 860) was filed by the Secretary of State and became effective immediately. ⁴
06/19/2015	Finance filed the Request for Mandate Redetermination. ⁵
07/31/2015	The State Controller’s Office (Controller) submitted comments on the request. ⁶
09/24/2015	Commission staff issued the First Hearing Draft Proposed Decision. ⁷
10/08/2015	The Controller submitted comments on the First Hearing Draft Proposed Decision. ⁸

II. Background

The Community College Construction Act of 1980 requires the governing boards of community college districts to prepare and submit to the Board of Governors (a state agency), “a plan for capital construction for community college purposes of the district.” As amended in 1990, the plan requires:

The plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The five-year plan shall be subject to continuing review by the governing board and annually shall be extended one year, and there shall be submitted to the board of governors, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the five-year plan.⁹

Education Code section 81821, as amended in 1995, identified the information required to be included in the five-year plan for capital construction as follows:

The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

- (a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be

³ Exhibit C, Parameters and Guidelines, *Community College Construction*, 02-TC-47.

⁴ Exhibit G, Statutes 2014, chapter 34 (selected pages). Urgency statutes become effective immediately upon enactment (Cal. Const., art. IV, section 8(c)(3)).

⁵ Exhibit A, Request for Mandate Redetermination.

⁶ Exhibit D, Controller’s Comments on Request for Mandate Redetermination.

⁷ Exhibit E, First Hearing Draft Proposed Decision.

⁸ Exhibit F, Controller’s Comments on Draft Proposed Decision for the First Hearing.

⁹ Education Code section 81820 (Stats. 1990, ch. 1372).

emphasized.

- (b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the community college district.
- (c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.
- (d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.
- (e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.
- (f) An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors.

On October 27, 2011, the Commission adopted the *Community College Construction*, 02-TC-47 test claim decision based on Education Code section 81800 et seq., as added and amended by statutes enacted from 1980 through 1995. The Commission found that Education Code section 81820 did not impose a new program or higher level of service for requiring community college districts to prepare, submit, and review on a continuing basis a five-year capital construction plan because these were required under prior law enacted in 1967, by former Education Code section 20065.¹⁰ However, some of the information included in the plan, identified in Education Code section 81821(a), (b), (e), and (f), was newly required by the test claim statutes. The Commission approved the test claim, finding that reimbursement was required for including the new information in a community college district's five-year plan for capital construction that is submitted to the Board of Governors. The Commission also approved the continuing review of this newly-required information only pursuant to Education Code section 81820, since the requirement for continuing review of the five-year plan was not new except as to the newly required content in section 81821.

The parameters and guidelines, adopted March 23, 2012, require reimbursement for the following activities beginning July 1, 2001:

Include the following information in the initial five-year plan for capital construction (for community college districts established on or after July 1, 2001), and continually review and report any required modifications or changes with

¹⁰ Exhibit B, Test Claim Statement of Decision, *Community College Construction*, 02-TC-47, page 18.

respect to the following information in the subsequent annual update submitted to the Board of Governors by February 1 of each succeeding year:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)¹¹

The Alleged Subsequent Change in Law

Finance alleges that Statutes 2014, chapter 34, constitutes a subsequent change in law that modifies the state's liability for this program. The 2014 statute amended Education Code section 81821 by providing that enrollment and facility capacity information, formerly required under subdivisions (c) and (d), "shall" be included in the content of the five-year plan in subdivision (a). As determined by the Commission in the *Community College Construction*, 02-TC-47 test claim decision, the enrollment and facility capacity information was required under prior law and did not constitute a new program or higher level of service. Thus, reimbursement was denied for preparing and submitting that information.¹²

The 2014 statute then adds subdivision (b) to provide that the new information previously approved by the Commission for reimbursement in the *Community College Construction* test claim decision (in former Ed. Code, § 81821(a), (b), (e), and (f)) now "may also" (rather than "shall") be included in the plan as estimated capital construction needs of the district. Statutes 2014, chapter 34, section 15 amends section 81821 as follows (with amendments noted in ~~strikeout~~ and underline):

- (a) The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to ~~elements including~~ at least ~~all~~ both of the following elements:
- (1) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors.
 - (2) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted

¹¹ Exhibit C, Parameters and Guidelines, *Community College Construction*, 02-TC-47, page 3.

¹² Exhibit B, Test Claim Statement of Decision, *Community College Construction*, 02-TC-47, pages 18-21.

by the board of governors.

(b) The five-year plan for capital construction may also set out the estimated capital construction needs of the district with reference to other elements, including, but not limited to:

- ~~(a) (1) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.~~
- ~~(b) (2) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the ~~community college district~~ Chancellor of the California Community Colleges.~~
- ~~(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.~~
- ~~(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.~~
- ~~(e) (3) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.~~
- ~~(f) (4) An estimate of district funds ~~which~~ that shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors.~~

The legislative history of this 2014 amendment states that it: “Makes permissive a requirement that community colleges submit specified facilities information to the CCC Chancellor's office, thereby eliminating a reimbursable state mandate (this information will continue to be collected through the state's capital outlay process).”¹³

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process for a test claim decision to 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 a two-hearing process. At the first hearing, 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,

¹³ Exhibit G, Assembly Floor Analysis of Senate Bill No. 860 (2013-2014 Reg. Sess.) as amended June 12, 2014, page 3.

section 6(a) of the California Constitution.”¹⁴ 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 17551.¹⁵

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.”¹⁶ If the Commission finds at the first hearing, that the requester has made an adequate showing, it “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.”¹⁷

III. Positions of the Parties, Interested Parties, and Interested Persons

A. Department of Finance, Requester

In its request for redetermination, Finance states:

Chapter 34, Statutes of 2014 (SB 860) made components of Education Code section 81821, that were determined to be reimbursable activities, permissive by moving those components into a subdivision that allows rather than requires specified estimates to be included in the district’s five-year capital construction plan.¹⁸

Finance maintains that because the activities determined to be reimbursable are now permissive, the state’s liability should be zero as of June 20, 2014, the effective date of Statutes 2014, chapter 34.

B. State Controller

The Controller states that it “concur[s] with the Department of Finance’s request to adopt a new test claim decision and to amend the parameters and guidelines for the Community College

¹⁴ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹⁵ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

¹⁶ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹⁷ California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

¹⁸ Exhibit A, Request for Mandate Redetermination, page 1.

Construction Program.”¹⁹ Commenting on the draft proposed decision for the first hearing, the Controller “recommends no changes.”²⁰

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 that modifies the state’s liability.

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission’s regulations, 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 comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”²¹ If the Commission determines that an adequate showing has been made, 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 2014, Chapter 34 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, pursuant to article XIII B section 6, the state’s liability 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:

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

¹⁹ Exhibit D, Controller’s Comments on Request for Mandate Redetermination.

²⁰ Exhibit F, Controller’s Comments on Draft Proposed Decision for the First Hearing.

²¹ California Code of Regulations, title 2, section 1190.5 (Register 2014, No. 21). This regulation describes the standard for the first hearing as follows:

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.

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 17551.²²

Effective June 20, 2014,²³ Statutes 2014, chapter 34, amended Education Code section 81821 by providing, in subdivision (b), that the new information previously approved by the Commission for reimbursement in the *Community College Construction* test claim decision (formerly required by Ed. Code, § 81821(a), (b), (e), and (f)) is no longer required to be included in the five-year plan for capital construction, but “may also” be included in the plan as estimated capital construction needs of the district as follows (with amendments noted in ~~strikeout~~ and underline):

(b) The five-year plan for capital construction may also set out the estimated capital construction needs of the district with reference to other elements, including, but not limited to:

- ~~(a)~~ (1) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.
- ~~(b)~~ (2) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the ~~community college district~~ Chancellor of the California Community Colleges.
- ~~(c)~~ (3) ~~The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.~~
- ~~(d)~~ (4) ~~District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.~~
- ~~(e)~~ (5) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.
- ~~(f)~~ (6) An estimate of district funds ~~which~~ that shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors.

²² Government Code section 17570(a)(2).

²³ Urgency statutes become effective immediately upon enactment (Cal. Const., art. IV, section 8(c)(3)).

Finance asserts that the plain language of section 81821(b), as amended, makes the requirements in the parameters and guidelines permissive by substituting the word “may” in place of the word “shall,” resulting in no costs mandated by the state for this program.²⁴

The Commission finds that Finance has made an adequate showing that Statutes 2014, chapter 34, as it amends Education Code section 81821, may require a finding that the state’s liability for the *Community College Construction*, 02-TC-47 program has been modified. Courts generally interpret the word “may” as permissive and “shall” as mandatory.²⁵ Thus, as amended, Education Code section 81821 no longer contains the mandatory language requiring community college districts to include in their five-year plans for capital construction, the following information found by the Commission to impose a reimbursable state-mandated program: plans for future student services programs, enrollment projections for each education center within the district, an annual inventory of land, and an estimate of district funds made available for capital outlay matching purposes.

Section 81820 was not amended by the 2014 statute, and continues to require that the five-year plan shall be subject to the continuing review by the governing board. However, since the content information in former Education Code section 81821(a), (b), (e), and (f), which the Commission found to impose a mandated new program or higher level of service in *Community College Construction*, 02-TC-47, is no longer required to be included in the plan, any continuing review of that information pursuant to Education Code section 81820 would be permissive.

Therefore, the Commission finds that Statutes 2014, chapter 34 establishes a subsequent change in law pursuant to Government Code section 17570(a)(2), that may require a finding that the state’s liability has been modified.

B. The Requester Has Made an Adequate Showing That the State’s Liability May Be Modified Based on a Subsequent Change in Law.

Education Code section 81821(b) now states that community colleges now “may” rather than “shall” include in their five-year plan for capital construction, the following information that is currently listed in the parameters and guidelines as eligible for reimbursement: plans for future student services programs, enrollment projections for each education center within the district, an annual inventory of land, and an estimate of district funds made available for capital outlay matching purposes.²⁶ The legislative history of this amendment indicates that it: “Makes permissive a requirement that community colleges submit specified facilities information to the CCC Chancellor's office, thereby eliminating a reimbursable state mandate (this information will continue to be collected through the state's capital outlay process).”²⁷

²⁴ Exhibit A, Request for Mandate Redetermination, page 1.

²⁵ Education Code section 75. *John Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, 676 on statutory construction involving the terms “may” and “shall.”

²⁶ Former Education Code 81821(a), (b), (e), and (f).

²⁷ Exhibit G, Assembly Floor Analysis of Senate Bill No. 860 (2013-2014 Reg. Sess.) as amended June 12, 2014, page 3.

Section 81820 was not amended by the 2014 statute, and continues to require that the five-year plan shall be subject to the continuing review by the governing board. The requirements to include the following in the plan were not approved in the test claim decision because those requirements, and the general requirement to have the plan, were not new:

- (1) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors, and
- (2) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors.

In addition, the requirement to review under Education Code section 81820 was approved only as to the newly required content in the prior test claim decision, because the requirement for continuing review was not new. Therefore, since the content information in former Education Code section 81821, which the Commission found to impose a mandated new program or higher level of service in *Community College Construction, 02-TC-47* appears to now be permissive, so too would be the requirement to review as to that content. As a result, it appears that this subsequent change in law may modify the state's liability for this program.

For the reasons discussed above, the Commission finds that Finance has made an adequate showing that the state's liability may be modified pursuant to Statutes 2014, chapter 34, a subsequent change in law, such that Finance has a substantial possibility of prevailing at the second hearing.

V. Conclusion

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state's liability for the *Community College Construction, 02-TC-47* mandate may be modified based on a subsequent change in law and that Finance has a substantial probability of prevailing at the second hearing. 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 *Community College Construction, 02-TC-47*.

COMMISSION ON STATE MANDATES

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RE: Decision

Mandate Redetermination Request, 14-MR-03

First Hearing: Adequate Showing

Community College Construction (02-TC-47)

Education Code Sections 81820, 81821(a), (b), (e), and (f)

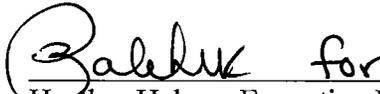
Statutes 1980, Chapter 910; Statutes 1981, Chapter 470; Statutes 1981, Chapter 891;

Statutes 1995, Chapter 758

As Alleged to be Modified by Statutes 2014, Chapter 34 (SB 860)

Department of Finance, Requester

On December 3, 2015, the foregoing decision of the Commission on State Mandates was adopted on the above-entitled matter.

 for
Heather Halsey, Executive Director

Dated: December 4, 2015

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 December 4, 2015, I served the:

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

Mandate Redetermination Request, 14-MR-03

First Hearing: Adequate Showing

Community College Construction (02-TC-47)

Education Code Sections 81820, 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910; Statutes 1981, Chapter 470; Statutes 1981, Chapter 891;

Statutes 1995, Chapter 758

As Alleged to be Modified by Statutes 2014, Chapter 34 (SB 860)

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 December 4, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/2/15

Claim Number: 14-MR-03

Matter: Community College Construction (02-TC-47)

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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**Exhibit B**

December 4, 2015

Mr. Chris Ferguson
 Department of Finance
 915 L Street, 7th Floor
 Sacramento, CA 95814

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

Re: First Hearing Decision, Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing
 Mandate Redetermination Request, 14-MR-03
 First Hearing: Adequate Showing
Community College Construction (02-TC-47)
 Education Code Sections 81820, 81821(a), (b), (e), and (f)
 Statutes 1980, Chapter 910; Statutes 1981, Chapter 470; Statutes 1981, Chapter 891;
 Statutes 1995, Chapter 758
 As Alleged to be Modified by Statutes 2014, Chapter 34 (SB 860)
 Department of Finance, Requester

Dear Mr. Ferguson:

On December 3, 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 may be filed on the draft proposed decision by **December 28, 2015**. The draft proposed decision is set for hearing on **January 22, 2016**.

Written Comments on Draft Expedited Amendment to Parameters and Guidelines

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the January Commission hearing. The draft expedited amendment to parameters and guidelines is set for hearing on **January 22, 2016** 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 comments may be filed on staff's draft proposal by **December 24, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(b).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.9(c).)

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

Mr. Chris Ferguson
December 4, 2015
Page 2

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.)

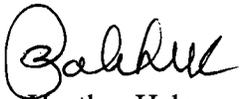
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

The second hearing on the request for a mandate redetermination is set for **Friday, January 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the expedited amendment to the parameters and guidelines is also set for hearing on **Friday, January 22, 2016**, but will only be taken up if the Commission first approves the request for redetermination.

The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about January 8, 2016. 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,

 FOR

Heather Halsey
Executive Director

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

Education Code Sections 81820 and 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910; Statutes 1981, Chapter 470;
Statutes 1981, Chapter 891; Statutes 1995, Chapter 758

As Alleged to be Modified by:
Statutes 2014, Chapter 34 (SB 860)

Community College Construction (02-TC-47)

14-MR-03

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On October 27, 2011, the Commission on State Mandates (Commission) adopted the *Community College Construction*, 02-TC-47, test claim statement of decision, approving reimbursement for community colleges to include new information in their districts' five-year plans for capital construction that must be submitted to the Board of Governors, a state agency.

The Commission adopted parameters and guidelines on March 23, 2012, authorizing reimbursement for community colleges to:

Include the following information in the initial five-year plan for capital construction (for community college districts established on or after July 1, 2001), and continually review and report any required modifications or changes with respect to the following information in the subsequent annual update submitted to the Board of Governors by February 1 of each succeeding year:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (Former § 81821(a).)¹
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (Former § 81821(b).)

¹ All citations refer to the Education Code unless otherwise indicated.

- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (Former § 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (Former § 81821(f).)

The Commission also approved the continuing review of the five-year plan as required by 81820, but only as to this newly required content since the requirement to review the plan was not new.

This mandate redetermination request is based on the change in law made by Statutes 2014, chapter 34 (SB 860, eff. June 20, 2014), which amended Education Code section 81821 to provide that the new information described above “may also” rather than “shall” be included in the plan and reviewed on a continuing basis, which the Department of Finance (Finance) argues makes the inclusion and review now discretionary.

Procedural History

On June 19, 2015, Finance filed a request for redetermination of the *Community College Construction*, 02-TC-47 decision, arguing that Senate Bill 860 (Stats. 2014, ch. 34) renders the mandate no longer reimbursable.² On July 31, 2015, the State Controller’s Office (Controller) concurred with Finance’s request to adopt a new test claim decision.³

On September 24, 2015, Commission staff issued the draft proposed decision for the first hearing. On October 8, the Controller filed comments concurring with the draft proposed decision for the first hearing. Neither Finance nor any of the claimants filed comments on the draft proposed decision for the first hearing.

At the December 3, 2015 hearing, the Commission adopted the first hearing decision on this mandate redetermination, finding that Finance made an adequate showing that the request identified a subsequent change in law, as defined, that may modify the state’s liability for this program such that Finance had a substantial possibility of prevailing at the second hearing, and the Commission directed staff to notice the second hearing on whether to adopt a new test claim decision.⁴ On December 4, Commission staff issued the draft proposed decision for the second hearing.⁵

² Exhibit A, Request for Mandate Redetermination, page 1. Based on the June 19, 2015 filing date, the potential period of reimbursement for this redetermination would begin June 20, 2014, the effective date of Statutes 2014, chapter 34, which is alleged to constitute the subsequent change in law.

³ Exhibit D, Office of the State Controller, Comments on the Request for Mandate Redetermination.

⁴ Exhibit F, First Hearing Decision adopted on December 3, 2015.

⁵ Exhibit G, Draft Proposed Decision, Second Hearing.

Commission Responsibilities

Government Code 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 redetermination process provides for two hearings. With regard to the second hearing the Commission's regulations 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.⁶

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.

Staff Analysis

A. Statutes 2014, Chapter 34 Has Eliminated the State's Liability for the *Community College Construction Program*.

Statutes 2014, chapter 34 (SB 860, eff. June 20, 2014) amended Education Code section 81821 as follows in underline and strikeout:

- (a) The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to ~~elements including~~ at least all both of the following elements:
- (1) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors.
 - (2) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors.
- (b) The five-year plan for capital construction may also set out the estimated capital construction needs of the district with reference to other elements, including, but not limited to:
- ~~(a)~~ (1) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.
- ~~(b)~~ (2) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district

⁶ Code of Regulations, title 2, section 1190.5(b)(1) (Register 2014, No. 21).

shall be made cooperatively by the Department of Finance and the ~~community college district~~ Chancellor of the California Community Colleges.

- ~~(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.~~
- ~~(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.~~
- (e) (3) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.
- (f) (4) An estimate of district funds ~~which~~ that shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors.

This is a subsequent change in law that modifies the requirements that were approved in the prior test claim decision.

Therefore, staff finds that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for *Community College Construction*, 02-TC-47, has been modified based on a subsequent change in law. Specifically, as amended, Education Code section 81821(b) now states that community colleges now "may" rather than "shall" include in their five-year plans for capital construction the following information that is currently reimbursable in the parameters and guidelines: plans for future student services programs, enrollment projections for each education center within the district, an annual inventory of land, and an estimate of district funds made available for capital outlay matching purposes.⁷

The courts, when interpreting the state mandate requirements of article XIII B, section 6 of the California Constitution, have held that activities undertaken at the option or discretion of a local governmental entity, without any legal compulsion or threat of penalty for nonparticipation, do not trigger a state mandate.⁸ Moreover, courts generally interpret the word "may" as permissive and "shall" as mandatory.⁹

The legislative history of this amendment indicates that it: "Makes permissive a requirement that community colleges submit specified facilities information to the CCC Chancellor's office,

⁷ Former Education Code section 81821(a), (b), (e), (f).

⁸ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1365-1366.

⁹ Education Code section 75. *John Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, 676 on statutory construction involving the terms "may" and "shall."

thereby eliminating a reimbursable state mandate (this information will continue to be collected through the state's capital outlay process).”¹⁰ Thus, based on the plain language of Statutes 2014, chapter 34 and the stated intent of the Legislature, the inclusion of this information in the five-year plan is not legally compelled by state law, and there is no evidence in the record that community college districts are practically compelled to include this information in their five-year plans. Therefore, including the information in the plan that was formerly required by former Education Code section 81821(a), (b), (e), and (f), is no longer mandated by the state.

Section 81820 was not amended by the 2014 statute, and continues to require that the five-year plan shall be subject to the continuing review by the governing board. The requirement to include the following in the plan were not approved in the test claim decision because these elements, and the general the requirement to have the plan, were not new:

- (1) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors, and
- (2) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors.

In addition, the requirement for continuing review under Education Code section 81820 was approved only as to the newly required content in the prior test claim decision, because the requirement for continuing review was not new.

Therefore, since the information in former Education Code section 81821(a), (b), (e), and (f), is no longer required to be included in the plan, any continuing review of that information pursuant to Education Code section 81820 would be permissive and not mandated by the state.

Reimbursement is not required for downstream requirements that increase local costs that are triggered by a local discretionary decision to participate in a program.¹¹

Based on this analysis, staff concludes that the *Community College Construction* program no longer imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, effective June 20, 2014.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision as its new test claim decision, ending reimbursement for the *Community College Construction* program beginning June 20, 2014.

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

¹⁰ Exhibit X, Assembly Floor Analysis of Senate Bill No. 860 (2013-2014 Reg. Sess.) as amended June 12, 2014, page 3.

¹¹ *Ibid.*

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

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

Education Code Sections 81820 and
 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910; Statutes 1981,
 Chapter 470; Statutes 1981, Chapter 891;
 Statutes 1995, Chapter 758

As Alleged to be Modified by:

Statutes 2014, Chapter 34 (SB 860)

Filed on June 19, 2015

By the Department of Finance, Requester

Case No.: 14-MR-03

*Community College Construction
 (02-TC-47)*

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

(Adopted January 22, 2016)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on January 22, 2016. [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., title 2, California Code of Regulations 1181.1 et seq., and related case law.

The Commission [adopted/modified] the proposed decision at the hearing by a vote of [vote count will be included in the adopted decision], and [adopted/did not adopt] a new test claim decision to supersede the previously adopted test claim decision as follows:

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller, Vice Chairperson	
Mark Hariri, Representative of the State Treasurer	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of Findings

The Commission finds that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for *Community College Construction*, 02-TC-47, has been modified based on a subsequent change in law. Specifically, requirements for the five-year plan for capital construction were amended by Statutes 2014, chapter 34 (SB 860, eff. June 20, 2014) to provide that the following information that was approved in the prior test claim decision, and is currently reimbursable in the parameters and guidelines, “may also” rather than “shall” be included: plans for future student services programs, enrollment projections for each education center within the district, an annual inventory of land, and an estimate of district funds made available for capital outlay matching purposes.¹² Therefore, the formerly mandated activities are no longer required.

Section 81820 was not amended by the 2014 statute, and continues to require that the five-year plan shall be subject to continuing review by the governing board. The requirements to include the following in the plan were not approved in the test claim decision because those requirements, and the general requirement to have the plan, were not new:

- (1) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors, and
- (2) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors.

In addition, the requirement to review the five-year plan on a continuing basis under Education Code section 81820 was approved only as to the newly required content in the prior test claim decision, because the requirement for continuing review was not new.

The courts, when interpreting the state mandate requirements of article XIII B, section 6 of the California Constitution, have held that activities undertaken at the option or discretion of a local governmental entity, without any legal compulsion or threat of penalty for nonparticipation, do not trigger a state mandate.¹³ Based on the plain language of Statutes 2014, chapter 34, the inclusion of formerly mandated information in the five-year plan is now not legally compelled by state law, and there is no evidence in the record that community college districts are practically compelled to include this information in their five-year plans. Thus, including the information in the plan that was formerly required by Education Code section 81821(a), (b), (e), and (f), is no longer mandated by the state.

Section 81820 was not amended by the 2014 statute, and continues to require that the five-year plan shall be subject to the continuing review by the governing board. However, since the content information in former Education Code section 81821(a), (b), (e), and (f), which the

¹² Former Education Code section 81821(a), (b), (e), (f).

¹³ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1365-1366.

Commission found to impose a mandated new program or higher level of service in 02-TC-47, is no longer required to be included in the plan, any continuing review of that information pursuant to Education Code section 81820 would be permissive and not mandated by the state. Reimbursement is not required for downstream requirements that increase local costs that are triggered by a local discretionary decision to participate in a program.¹⁴

Pursuant to Government Code section 17570, the Commission approves the request for redetermination and concludes that the *Community College Construction* program no longer imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, effective June 20, 2014.

COMMISSION FINDINGS

I. Chronology

10/27/2011	The Commission adopted the Test Claim Statement of Decision. ¹⁵
03/23/2012	The Commission adopted the Parameters and Guidelines. ¹⁶
06/20/2014	Statutes 2014, chapter 34 (SB 860) was filed by the Secretary of State and became effective immediately. ¹⁷
06/19/2015	Finance filed the Request for Mandate Redetermination. ¹⁸
07/31/2015	The State Controller's Office (Controller) submitted comments on the request. ¹⁹
09/24/2015	Commission staff issued the First Hearing Draft Proposed Decision.
10/08/2015	The State Controller filed comments on the First Hearing Draft Proposed Decision.
12/03/2015	The Commission adopted the Proposed Decision at the first hearing and directed Commission staff to notice the second hearing. ²⁰
12/04/2015	Commission staff issued the Second Hearing Draft Proposed Decision and the Draft Expedited Amendment to the Parameters and Guidelines

¹⁴ *Ibid.*

¹⁵ Exhibit B, Test Claim Statement of Decision, *Community College Construction*, 02-TC-47.

¹⁶ Exhibit C, Parameters and Guidelines, *Community College Construction*, 02-TC-47.

¹⁷ Exhibit X, Statutes 2014, chapter 34 (selected pages).

¹⁸ Exhibit A, Request for Mandate Redetermination.

¹⁹ Exhibit D, Office of the State Controller, Comments on the Request for Mandate Redetermination.

²⁰ Exhibit F, First Hearing Decision adopted on December 3, 2015.

II. Background

The Community College Construction Act of 1980 requires the governing boards of community college districts to prepare and submit to the Board of Governors (a state agency), “a plan for capital construction for community college purposes of the district.” As amended in 1990, the plan requires:

The plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The five-year plan shall be subject to continuing review by the governing board and annually shall be extended one year, and there shall be submitted to the board of governors, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the five-year plan.²¹

Education Code section 81821, as amended in 1995, identified the information required to be included in the five-year plan for capital construction as follows:

The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

- (a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.
- (b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the community college district.
- (c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.
- (d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.
- (e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.
- (f) An estimate of district funds which shall be made available for capital outlay

²¹ Education Code section 81820 (Stats. 1990, ch. 1372).

matching purposes pursuant to regulations adopted by the board of governors.

On October 27, 2011, the Commission adopted the *Community College Construction*, 02-TC-47 test claim decision, based on Education Code section 81800 et seq., as added and amended by statutes enacted from 1980 through 1995. The Commission found that Education Code section 81820 did not impose a new program or higher level of service for requiring community college districts to prepare, submit, and review on a continuing basis, a five-year capital construction plan because these were required under prior law enacted in 1967, by former Education Code section 20065.²² However, some of the information included in the plan, identified in Education Code section 81821(a), (b), (e), and (f), was newly required by the test claim statutes. The Commission approved the test claim, finding that reimbursement was required for including the new information in a community college district's five-year plan for capital construction that is submitted to the Board of Governors. The Commission also approved the continuing review of this newly-required information pursuant to Education Code section 81820, since the requirement for continuing review of the five-year plan was only new as to the newly-required content in section 81821.

The parameters and guidelines, adopted March 23, 2012, require reimbursement for the following activities beginning July 1, 2001:

Include the following information in the initial five-year plan for capital construction (for community college districts established on or after July 1, 2001), and continually review and report any required modifications or changes with respect to the following information in the subsequent annual update submitted to the Board of Governors by February 1 of each succeeding year:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)²³

The Subsequent Change in Law

Effective June 20, 2014, Statutes 2014, chapter 34 amended Education Code section 81821 by providing that enrollment capacity and facility capacity information, formerly required under subdivisions (c) and (d), "shall" be included in the content of the five-year plan in subdivision

²² Exhibit B, Test Claim Statement of Decision, *Community College Construction*, 02-TC-47, page 18.

²³ Exhibit C, Parameters and Guidelines, *Community College Construction*, 02-TC-47, page 3.

(a). As determined by the Commission in the *Community College Construction*, 02-TC-47 test claim decision, the enrollment and facility capacity information was required under prior law and did not constitute a new program or higher level of service. Thus, reimbursement was denied for preparing and submitting that information.²⁴

The 2014 statute also added subdivision (b) to provide that the new information previously approved by the Commission for reimbursement in the *Community College Construction* test claim decision (in former Ed. Code, § 81821(a), (b), (e), and (f)) now “may also” (rather than “shall”) be included in the plan as estimated capital construction needs of the district. Statutes 2014, chapter 34, section 15 amends section 81821 as follows (with amendments noted in ~~strikeout~~ and underline):

(a) The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to ~~elements including~~ at least ~~all~~ both of the following elements:

(1) ~~The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors.~~

(2) ~~District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors.~~

(b) ~~The five-year plan for capital construction may also set out the estimated capital construction needs of the district with reference to other elements, including, but not limited to:~~

~~(a) (1) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.~~

~~(b) (2) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the ~~community college district~~ Chancellor of the California Community Colleges.~~

~~(c) ~~The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.~~~~

~~(d) ~~District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by~~~~

²⁴ Exhibit B, Test Claim Statement of Decision, *Community College Construction*, 02-TC-47, pages 18-21.

~~the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.~~

- (e) (3) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.
- (f) (4) An estimate of district funds ~~which~~ that shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors.

The legislative history of this 2014 amendment states that it: “Makes permissive a requirement that community colleges submit specified facilities information to the CCC Chancellor's office, thereby eliminating a reimbursable state mandate (this information will continue to be collected through the state's capital outlay process).”²⁵

On June 19, 2015, the Department of Finance (Finance) filed a request for redetermination of the *Community College Construction* mandated program. On December 3, 2015, the Commission heard and adopted the first-hearing decision on this mandate redetermination, finding that Finance made an adequate showing that the request identified a subsequent change in law, as defined, that may modify the state’s liability for this program such that Finance had a substantial possibility of prevailing at this second hearing.

III. Positions of the Parties, Interested Parties, and Interested Persons

A. Department of Finance, Requester

In its request for redetermination, Finance states:

Chapter 34, Statutes of 2014 (SB 860) made components of Education Code section 81821, that were determined to be reimbursable activities, permissive by moving those components into a subdivision that allows rather than requires specified estimates to be included in the district’s five-year capital construction plan.²⁶

Finance maintains that because the activities determined to be reimbursable are now permissive, the state’s liability should be zero as of June 20, 2014, the effective date of Statutes 2014, chapter 34.

B. State Controller

The Controller states that it “concur[s] with the Department of Finance's request to adopt a new test claim decision and to amend the parameters and guidelines for the Community College Construction Program.”²⁷

²⁵ Assembly Floor Analysis of Senate Bill No. 860 (2013-2014 Reg. Sess.) as amended June 12, 2014, page 3.

²⁶ Exhibit A, Request for Mandate Redetermination, page 1.

²⁷ Exhibit D, Office of the State Controller, Comments on the Request for Mandate Redetermination.

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. Code of Regulations, title 2, section 1190.5 provides that “[i]f 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.”²⁸

Therefore, the issue before the Commission at this second hearing is whether the state’s liability has been modified based on a subsequent change in law and, if so, whether to adopt a new test claim decision to supersede the previously adopted test claim decision, reflecting the state’s modified liability.

A. Statutes 2014, Chapter 34 Has Eliminated the State’s Liability for the *Community College Construction Program*.

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 has modified the state’s liability for reimbursement. A subsequent change in law is defined in Government Code section 17570(a)(2) as:

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.

This request is based on Statutes 2014, chapter 34, an urgency statute, which became effective on June 20, 2014.²⁹ Statutes 2014, chapter 34 amended Education Code section 81821 by providing, in subdivision (b), that the new information previously approved by the Commission for reimbursement in the *Community College Construction* test claim decision (formerly required by Ed. Code, § 81821(a),(b),(e),and (f)) is no longer required to be included in the five-year plan for capital construction, but “may also” be included in the plan as estimated capital construction needs of the district as follows (with amendments noted in ~~strikeout~~ and underline):

(b) The five-year plan for capital construction may also set out the estimated capital construction needs of the district with reference to other elements, including, but not limited to:

~~(a) (1) The plans of the district concerning its future academic and student services~~

²⁸ Register 2014, No. 21.

²⁹ Urgency statutes become effective immediately upon enactment (Cal. Const., art. IV, section 8(c)(3)).

programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

- ~~(b)~~ (2) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the ~~community college district~~ Chancellor of the California Community Colleges.
- ~~(c)~~ ~~The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.~~
- ~~(d)~~ ~~District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.~~
- ~~(e)~~ (3) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.
- ~~(f)~~ (4) An estimate of district funds ~~which~~ that shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors.

The legislative history of this amendment states that it, “Makes permissive a requirement that community colleges submit specified facilities information to the CCC Chancellor's office, thereby eliminating a reimbursable state mandate (this information will continue to be collected through the state's capital outlay process).”³⁰

Finance asserts that the plain language of the section 81821(b), as amended, makes the requirements in the parameters and guidelines 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 Commission finds that the state’s liability for *Community College Construction*, 02-TC-47, has been modified based on a subsequent change in law. Pursuant to the amendments made by Statutes 2014, chapter 34, all reimbursable activities identified in the parameters and guidelines for 02-TC-47, are no longer mandated by the state or reimbursable.

The courts, when interpreting the state mandate requirements of article XIII B, section 6 of the California Constitution, have held that activities undertaken at the option or discretion of a local governmental entity, without any legal compulsion or threat of penalty for nonparticipation, do

³⁰ Assembly Floor Analysis of Senate Bill No. 860 (2013-2014 Reg. Sess.) as amended June 12, 2014, page 3.

³¹ Exhibit A, Request for Mandate Redetermination, page 1.

not trigger a state mandate.³² This is also true if downstream requirements that increase local costs are triggered by a discretionary local decision to participate in a program.³³ Moreover, courts generally interpret the word “may” as permissive and “shall” as mandatory.³⁴

In this case, Education Code section 81821(b), as amended by the 2014 statute, no longer contains the mandatory language that requires community college districts to include in their five-year plans for capital construction the information previously found by the Commission to impose a reimbursable state-mandated program. Thus, the inclusion of this information in the five-year plan is not legally compelled by state law, and there is no evidence in the record that community college districts are practically compelled to include this information in their five-year plans. Including the information in the plan that was formerly required by Education Code section 81821(a), (b), (e), and (f), is no longer mandated by the state.

The Commission further finds that community college districts are not mandated by the state to review this information on a continuing basis, as required Education Code section 81820. Section 81820 was not amended by the 2014 statute, and continues to require that the five-year plan shall be subject to the continuing review by the governing board. However, since the information in former Education Code section 81821(a), (b), (e), and (f), which the Commission found to impose a mandated new program or higher level of service in 02-TC-47, is no longer required to be included in the plan, any continuing review of that information pursuant to Education Code section 81820 would be permissive and not mandated by the state.³⁵

Therefore, the Commission finds that Statutes 2014, chapter 34 constitutes subsequent change in law pursuant to Government Code section 17570(a)(2), that modifies the state’s liability for the *Community College Construction* program. Based on this record, and pursuant to the plain language of Statutes 2014, chapter 34, the Commission finds that Education Code sections 81820 and 81821 do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6.

According to Government Code section 17570, a redetermination 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.” This redetermination request was filed on June 19, 2015, establishing a potential loss of reimbursement beginning July 1, 2013. However, the subsequent change in law identified was adopted on June 20, 2014, and as an urgency statute became effective immediately.³⁶ Therefore, the *Community College Construction* program no longer imposes a reimbursable state-mandated program as of June 20, 2014, the effective date of the subsequent change in law.

³² *City of Merced, supra*, 153 Cal.App.3d 777, 783; *Kern High School Dist., supra*, 30 Cal.4th 727, 742; *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1365-1366.

³³ *Ibid.*

³⁴ Education Code section 75. *John Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, 676 on statutory construction involving the terms “may” and “shall.”

³⁵ *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1365-1366.

³⁶ California Constitution, article IV, section 8(c)(3); Government Code section 9600(b).

V. Conclusion

Based on the foregoing, the Commission approves the request for a new test claim decision and concludes that the *Community College Construction, 02-TC-27* program no longer imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution as of June 20, 2014.

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 December 4, 2015, I served the:

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

Mandate Redetermination Request, 14-MR-03

First Hearing: Adequate Showing

Community College Construction (02-TC-47)

Education Code Sections 81820, 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910; Statutes 1981, Chapter 470; Statutes 1981, Chapter 891;

Statutes 1995, Chapter 758

As Alleged to be Modified by Statutes 2014, Chapter 34 (SB 860)

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 December 4, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/2/15

Claim Number: 14-MR-03

Matter: Community College Construction (02-TC-47)

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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**Exhibit C**

December 4, 2015

Mr. Chris Ferguson
 Department of Finance
 915 L Street, 7th Floor
 Sacramento, CA 95814

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

Re: First Hearing Decision, Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing
 Mandate Redetermination Request, 14-MR-03
 First Hearing: Adequate Showing
Community College Construction (02-TC-47)
 Education Code Sections 81820, 81821(a), (b), (e), and (f)
 Statutes 1980, Chapter 910; Statutes 1981, Chapter 470; Statutes 1981, Chapter 891;
 Statutes 1995, Chapter 758
 As Alleged to be Modified by Statutes 2014, Chapter 34 (SB 860)
 Department of Finance, Requester

Dear Mr. Ferguson:

On December 3, 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 may be filed on the draft proposed decision by **December 28, 2015**. The draft proposed decision is set for hearing on **January 22, 2016**.

Written Comments on Draft Expedited Amendment to Parameters and Guidelines

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the January Commission hearing. The draft expedited amendment to parameters and guidelines is set for hearing on **January 22, 2016** 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 comments may be filed on staff's draft proposal by **December 24, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(b).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.9(c).)

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

Mr. Chris Ferguson
December 4, 2015
Page 2

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.)

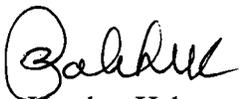
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

The second hearing on the request for a mandate redetermination is set for **Friday, January 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the expedited amendment to the parameters and guidelines is also set for hearing on **Friday, January 22, 2016**, but will only be taken up if the Commission first approves the request for redetermination.

The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about January 8, 2016. 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,

 FOR

Heather Halsey
Executive Director

Amended: January 22, 2016

Adopted: March 23, 2012

J:\MANDATES\2002\tc\02-tc-47 (CCD Construct)\Ps&Gs\New TC Decision\Draft Expedited PGA.docx

DRAFT EXPEDITED AMENDMENT TO **PARAMETERS AND GUIDELINES**

Education Code Sections 81820, 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910, Statutes 1981, Chapter 470, Statutes 1981, Chapter 891,
Statutes 1995, Chapter 758;

Community College Construction
02-TC-47 (14-MR-03)

As Modified by: Statutes 2014, Chapter 34 (SB 860)

Reimbursement for this Program Ends June 20, 2014

I. SUMMARY OF THE MANDATE

On October 27, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities, beginning July 1, 2001:

For community college districts to include in their five-year capital construction plans:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)¹
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)

Community college districts are also eligible for reimbursement to continually review the information bulleted above and to report by February 1 of each year any required modifications or changes with respect to the information to the Board of Governors.

The Commission found that all other statutes and regulations in the test claim did not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

¹ All references are to the Education Code unless otherwise indicated.

On January 22, 2016, the Commission approved a request for mandate redetermination filed by the Department of Finance and adopted a new test claim decision pursuant to Government Code section 17570, concluding that *Community College Construction, 02-TC-47*, no longer imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning June 20, 2014. Specifically, requirements for the five-year plan for capital construction were amended by Statutes 2014, chapter 34, to authorize, but no longer require the following information that was formerly required by Education Code section 81821(a), (b), (e), and (f): plans for future student services programs, enrollment projections for each education center within the district, an annual inventory of land, and an estimate of district funds made available for capital outlay matching purposes. Thus, including this information in the plan is no longer mandated by the state.

Section 81820 was not amended by the 2014 statute, and continues to require that the five-year plan shall be subject to the continuing review by the governing board. However, since the content information in former Education Code section 81821(a), (b), (e), and (f), is no longer required to be included in the plan, any continual review of that information pursuant to Education Code section 81820 is permissive and not mandated by the state.

II. ELIGIBLE CLAIMANTS

Any community college district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

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.” The Department of Finance filed a request for mandate redetermination on June 19, 2015, establishing eligibility beginning July 1, 2013. However, the effective date of the subsequent change in law that modified the state’s liability is June 20, 2014 because Statutes 2014, chapter 34 (SB 860) was an urgency bill effective immediately on enactment.² Therefore, the activities in these parameters and guidelines are no longer reimbursable as of June 20, 2014, the effective date of the subsequent change in law.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The Santa Monica Community College District filed the test claim on June 27, 2003, establishing eligibility for reimbursement on or after July 1, 2001. Therefore, costs incurred for the activities in these parameters and guidelines are reimbursable on or after July 1, 2001.

Reimbursement for state mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

² California Constitution, article IV, section 8(c)(3); Government Code section 9600(b).

- ~~3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.~~
- ~~4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(e), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)~~
- ~~5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.~~
- ~~6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.~~

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

Include the following information in the initial five-year plan for capital construction (for community college districts established on or after July 1, 2001), and continually review and report any required modifications or changes with respect to the following information in the subsequent annual update submitted to the Board of Governors by February 1 of each succeeding year:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)

- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of

the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rate

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter³ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than ~~60~~90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school

³ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

~~The statement of decisions on the test claim, mandate redetermination, parameters and guidelines and amendments thereto, are~~ is legally binding on all parties and provides the legal and factual basis for ~~these~~ parameters and guidelines. The support for the legal and factual findings is found in the administrative record ~~for the test claim~~. The administrative record, ~~including the Statement of Decision,~~ is on file with the Commission.

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 December 4, 2015, I served the:

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

Mandate Redetermination Request, 14-MR-03

First Hearing: Adequate Showing

Community College Construction (02-TC-47)

Education Code Sections 81820, 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910; Statutes 1981, Chapter 470; Statutes 1981, Chapter 891;

Statutes 1995, Chapter 758

As Alleged to be Modified by Statutes 2014, Chapter 34 (SB 860)

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 December 4, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/2/15

Claim Number: 14-MR-03

Matter: Community College Construction (02-TC-47)

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
December 23, 2015
**Commission on
State Mandates**

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

Exhibit D

December 23, 2015

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

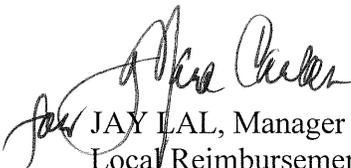
Re: First Hearing Decision, Second Hearing Draft Proposed Decision, Draft Expedited
Amendment to Parameters and Guidelines, and Notice of Hearing
Mandate Redetermination Request, 14-MR-03
First Hearing: Adequate Showing
Community College Construction (02-TC-47)
Education Code Sections 81820, 81821(a), (b), (e), and (f)
Statutes 1980, Chapter 910; Statutes 1981, Chapter 470; Statutes 1981, Chapter 891;
Statutes 1995, Chapter 758
As Alleged to be Modified by Statutes 2014, Chapter 34 (SB 860)
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 Community College Construction program and recommends no changes.

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

Sincerely,


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 December 23, 2015, I served the:

SCO Comments

Mandate Redetermination Request, 14-MR-03

First Hearing: Adequate Showing

Community College Construction (02-TC-47)

Education Code Sections 81820, 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910; Statutes 1981, Chapter 470; Statutes 1981, Chapter 891;

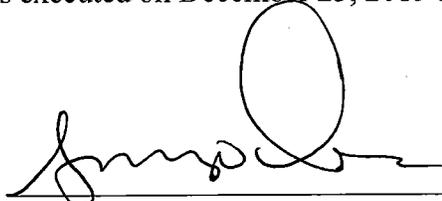
Statutes 1995, Chapter 758

As Alleged to be Modified by Statutes 2014, Chapter 34 (SB 860)

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 December 23, 2015 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

980 Ninth Street, Suite 300

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/9/15

Claim Number: 14-MR-03

Matter: Community College Construction (02-TC-47)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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BILL NUMBER: SB 860 CHAPTERED
BILL TEXT

CHAPTER 34
FILED WITH SECRETARY OF STATE JUNE 20, 2014
APPROVED BY GOVERNOR JUNE 20, 2014
PASSED THE SENATE JUNE 15, 2014
PASSED THE ASSEMBLY JUNE 15, 2014
AMENDED IN ASSEMBLY JUNE 12, 2014

INTRODUCED BY Committee on Budget and Fiscal Review

JANUARY 9, 2014

An act to amend Sections 69432, 69432.7, 69433.6, 70022, 70023, 79200, 81821, 84321.6, 84750.5, 84751, 87482, 89295, 92493, 92494, 92495, 92495.5, and 92675 of, to amend the heading of Article 5 (commencing with Section 79200) of Chapter 9 of Part 48 of Division 7 of Title 3 of, to add Sections 79204, 79205, 79206, 79207, 79208, 79209, 84750.6, 84754.6, 89712, 90083, 92495.6, and 94102.1 to, to add Article 1.5 (commencing with Section 78220) to Chapter 2 of Part 48 of Division 7 of Title 3 of, to add Article 5 (commencing with Section 89770) to Chapter 6 of Part 55 of Division 8 of Title 3 of, and to add Chapter 15 (commencing with Section 92985) to Part 57 of Division 9 of Title 3 of, the Education Code, to amend Sections 17581.7 and 68926.3 of the Government Code, to amend Section 13146 of the Health and Safety Code, and to amend Sections 10726 and 10742 of the Public Contract Code, relating to postsecondary education, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

SB 860, Committee on Budget and Fiscal Review. Education finance: education omnibus trailer bill.

(1) Existing law, the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program, establishes the Cal Grant A and B Entitlement Awards, the California Community College Transfer Cal Grant Entitlement Awards, the Competitive Cal Grant A and B Awards, the Cal Grant C Awards, and the Cal Grant T Awards under the administration of the Student Aid Commission, and establishes eligibility requirements for awards under these programs for participating students attending qualifying institutions. Existing law provides that a qualifying institution with a graduation rate of 30% or less for students taking 150% or less of the expected time to complete degree requirements is ineligible for initial and renewal Cal Grant awards, unless the institution has a 3-year cohort default rate that is less than 10% and a graduation rate above 20% for students taking 150% or less of the expected time to complete degree requirements. Existing law sets the maximum Cal Grant A and B awards for new recipients attending private nonprofit postsecondary education institutions at \$8,056 for the 2014-15 award year and each award year thereafter.

This bill would specify eligibility criteria that, commencing with the 2014-15 academic year, would apply to Cal Grant award recipients

who were determined to be ineligible for a renewal award because they exceeded the maximum household income or asset level, or failed to meet the minimum need threshold, as specified, but who subsequently meet eligibility requirements for a Cal Grant award. The bill would also increase from 10% to 15.5% the maximum allowable 3-year cohort default rate for an institution with a 20% to 30% graduation rate for students taking no more than 150% of the expected time to complete degree requirements to be eligible for Cal Grant awards. The bill would increase the maximum Cal Grant A and B awards for new recipients attending a private nonprofit postsecondary institution, for the 2014-15 award year only, to \$9,084.

(2) Existing law establishes the Student Aid Commission as the primary state agency for the administration of state-authorized student financial aid programs available to students attending all segments of postsecondary education. Existing law establishes the Middle Class Scholarship Program under the administration of the Student Aid Commission. The program provides that, subject to an available and sufficient appropriation, commencing with the 2014-15 academic year, an undergraduate student enrolled at the University of California or the California State University is eligible for a scholarship award that, combined with other publicly funded student financial aid, is up to 40% of the amount charged to that student for mandatory systemwide tuition in that fiscal year if the student meets the following conditions: has an annual household income that does not exceed \$150,000; satisfies specified requirements for a Cal Grant award; is a resident of this state or exempt from paying nonresident tuition; files specified financial aid forms; makes timely application or applications for publicly funded student financial aid, as defined, for which he or she is eligible; and maintains at least a 2.0 grade point average.

This bill would, among other things, specify that the scholarship award under the Middle Class Scholarship Program, combined with other federal, state, and institutionally administered grants and fee waivers, would be for up to 40% of the systemwide tuition and fees. The bill would require a recipient to be enrolled at least part-time and would require the recipient to be pursuing his or her first undergraduate baccalaureate degree, unless he or she is enrolled in a specified professional teacher preparation program. The bill would also provide that the minimum scholarship amount for any full-time student who qualifies for a scholarship award of \$1 is \$90, and would prohibit discrimination against part-time students in the selection of award recipients.

(3) Existing law establishes the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges, as one of the segments of public postsecondary education in this state. Existing law authorizes the establishment of community college districts under the administration of community college governing boards, and authorizes these districts to provide instruction at community college campuses throughout the state. Existing law requires the governing board of each community college district to prepare and submit to the Board of Governors of the California Community Colleges a plan for capital construction for community college purposes of the district, as specified. Existing law requires a 5-year plan for capital construction to set out the estimated capital construction needs of the district with reference to specified elements, including enrollment projections for each community college district, formulated by the Department of Finance

with the cooperation of each community college district.

This bill would make reference to certain of these specified elements optional, requiring reference only to elements relating to the current enrollment capacity of the district and the district office, library, and supporting facility capacities. The bill would also provide that enrollment projections, if used, would instead be formulated with the cooperation of the Chancellor of the California Community Colleges.

(4) Existing law requires the Board of Governors of the California Community Colleges to adopt regulations providing for the payment of apportionments to community college districts on a specified schedule that includes a first principal apportionment to be certified on or before February 20 of each year, and a 2nd principal apportionment to be certified on or before June 25 of each year. Existing law defers the drawing of those warrants, as specified. Existing law appropriates \$592,456,000 from the General Fund to the board of governors, for expenditure during the 2014-15 fiscal year, in satisfaction of specified moneys whose payment to the California Community Colleges has been deferred.

This bill would, for purposes of calculations required by the California Constitution, instead provide that \$138,602,000, \$296,354,000, and \$157,500,000 of the \$592,456,000 appropriated to the Board of Governors of the California Community Colleges for the 2014-15 fiscal year in satisfaction of deferred payments shall be deemed General Fund revenues and included in the total allocations to school districts and community college districts for the 2012-13, 2013-14, and 2014-15 fiscal years, respectively, as specified. This bill would also provide for the deferral of \$94,465,000 from June 2015 to July 2015, and would appropriate money in July 2015 to pay for that deferred amount, which would be deemed General Fund revenues and included in the total allocations to school districts and community college districts for the 2015-16 fiscal year.

(5) Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program under which each county provides cash assistance and other benefits to qualified low-income families and individuals. Existing law requires that, to the extent that funding is provided in the annual Budget Act, a community college shall receive funding for educational services provided to CalWORKs recipients based on the number of CalWORKs recipients that are enrolled at the community college and the scope and number of programs that the college plans to offer to assist CalWORKs recipients to obtain employment. Existing law also requires that, prior to receiving funding, a community college shall submit to the chancellor a Request for Application that contains a plan for curriculum development or redesign, including participation by the county welfare department to establish that the programs being developed or redesigned will provide CalWORKs recipients with the training and experience necessary to secure employment. Existing law also provides that, to the extent that funding is provided in the annual Budget Act, funds received by a community college for curriculum development or redesign for CalWORKs recipients may be expended for various purposes, including the development or redesign of vocational curricula for CalWORKs recipients so that courses may be offered as part of a short-term intensive program, including Open Entry and Open Exit programs.

This bill would state that a community college district shall receive funding for providing specified additional services to

current and, under certain conditions, certain prior CalWORKs recipients, including job placement, coordination with county welfare offices and other local agencies, child care and workstudy, instruction, postemployment skills training and related skills training, and case management, as specified. The bill would require the Chancellor of the California Community Colleges to develop an equitable method for allocating funds under these provisions to all community college districts, and to compile a report on the program annually from specified information required to be provided by the community college districts and colleges. By requiring certain actions by community college districts, this bill would impose a state-mandated local program.

(6) Existing law provides, in calculating each community college district's revenue level each fiscal year, that the Board of Governors of the California Community Colleges shall subtract, from the total revenues owed, certain amounts, including certain amounts received pursuant to certain provisions of existing law relating to redevelopment that, for purposes of community college revenue levels, are considered to be from property tax revenues.

This bill would, notwithstanding the required reduction, provide that specified revenues received after April 15, 2014, April 15, 2015, and April 15, 2016, shall be counted as revenues received in the 2014-15, 2015-16, and 2016-17 fiscal years, respectively.

(7) Existing law requires the Board of Governors of the California Community Colleges to develop criteria and standards, in accordance with specified statewide minimum requirements, for the purposes of making the annual budget request for the California Community Colleges to the Governor and the Legislature, and allocating state general apportionment revenues. Those statewide minimum requirements include, among other things, a requirement that the calculations of each community college district's revenue level for each fiscal year be based on specified criteria, with revenue adjustments being made for increases or decreases in full-time equivalent students and for other specified purposes.

This bill would require the Chancellor of the California Community Colleges to develop, and the board of governors to adopt, a revised apportionment growth formula for use commencing with the 2015-16 fiscal year. The bill would provide that the revised formula shall support the primary missions of the segment, and shall be based on certain factors, as specified, and would require the chancellor, on or before October 15, 2015, and each year thereafter, to report to the Legislature on certain matters related to the revised apportionment growth formula. The bill would, notwithstanding certain apportionment-related provisions for the 2014-15 and 2015-16 fiscal years, require the board of governors to provide the San Francisco Community College District with revenues, as specified, if, on the effective date of this bill, the board of governors finds that the community college district or a campus of the community college district is in imminent jeopardy of losing its accreditation, the board of governors has exercised its authority pursuant to specified provisions, and the institution is in compliance with a regulation requiring it to be accredited by a specified agency. The bill would require the board of governors to additionally provide the San Francisco Community College District with revenues for the 2016-17 fiscal year under the same conditions applicable to the 2014-15 and 2015-16 fiscal years, but only if the Fiscal Crisis Management Assistance Team makes a finding no sooner than April 1, 2016, that

the San Francisco Community College District is meeting or exceeding specified fiscal benchmarks.

This bill would, among other things, require the chancellor, in coordination with community college districts, to approve and publicly post annual segmentwide and community college district goals, and would require the chancellor, in coordination with stakeholders, specified committees of the Legislature, and the Department of Finance, to develop, and the board of governors to adopt, a framework of indicators designed to measure and assess the ongoing condition of a community college's operational environment in specified areas. The bill would, subject to the availability of funding in the annual Budget Act, require the board of governors and the chancellor to assess the degree to which each community college district is improving, as provided.

(8) Existing law, the Seymour-Campbell Student Success Act of 2012, provides that the purpose of the act is to increase California community college student access and success by providing effective core matriculation services of orientation, assessment and placement, counseling, and other education planning services, and academic interventions. The act specifies the responsibilities of students and institutions in entering into the matriculation process, and requires the Board of Governors of the California Community Colleges to develop a formula for allocating funding for the Student Success and Support Program that would be implemented under the act.

This bill would require, as a condition for receiving Student Success and Support Program funding, that the governing board of each community college district maintain a student equity plan, as specified, and would require the chancellor to make an annual report related to those plans. By adding to the duties of community college districts, the bill would impose a state-mandated local program.

(9) Existing law establishes the California State University, under the administration of the Trustees of the California State University, and the University of California, administered by the Regents of the University of California, as 2 of the segments of public postsecondary education in the state. Existing law authorizes the California State University and the University of California to each issue revenue bonds, secured by a specified pledge of revenues. Existing law authorizes the University of California to pledge its annual General Fund support appropriation, less certain amounts, to secure the payment of its general revenue bonds or commercial paper associated with the general revenue bond program. Existing law authorizes the University of California to fund debt service for capital expenditures, as defined, from its General Fund support appropriation, as specified. Existing law also authorizes the University of California to fund pay-as-you-go capital outlay projects from its General Fund support appropriation, as specified. Existing law, for purposes of these provisions, requires the University of California to obtain approval from the Department of Finance pursuant to specified procedures.

This bill would authorize the California State University to pledge its annual General Fund support appropriation, less certain amounts, to secure the payment of its debt obligations issued by the Trustees pursuant to the State University Revenue Bond Act of 1947. The bill would authorize the California State University to fund debt service for capital expenditures, as defined, from its General Fund support appropriation, as specified. The bill would authorize the California State University to secure bonds for capital expenditures

and certain projects with revenues received in accordance with these provisions, as specified. The bill would provide that "capital expenditures" and "capital outlay projects" shall include the cost to design, construct, or equip energy conservation projects. The bill would also authorize the California State University to fund pay-as-you-go capital outlay projects from its General Fund support appropriation, as specified. The bill would, for purposes of these provisions, provide procedures for the California State University to, and would revise the procedures for the University of California to, obtain approval from the Department of Finance, as specified.

(10) Existing law requires the California State University and the University of California to report, by March 1 of each year, on specified performance measures, including various calculations of graduation rates and amounts spent per degree, for the preceding academic year.

This bill would revise those provisions to, among other things, extend the due date for the report to March 15, add a 4-year transfer graduation rate as a performance measure for the California State University, and limit transfer student performance measures to transfer students from the California Community Colleges.

(11) Notwithstanding existing law that imposes greater limits on temporary employment of faculty, existing law provides that a person serving as full-time clinical nursing faculty or as part-time clinical nursing faculty may be employed by any one district for up to 4 semesters or 6 quarters within any period of 3 consecutive academic years between July 1, 2007, to June 30, 2014, inclusive.

This bill would extend that authorization to December 31, 2015.

(12) Existing law authorizes the trustees by rule to require all persons to pay fees, rents, deposits, and charges for services, facilities, or materials provided by the trustees to those persons. Existing law prohibits specified California State University campus-based mandatory fees from being reallocated without an affirmative vote of the majority of the members of either the student body or a specified campus fee advisory committee voting on the fee reallocation, unless the vote that established the fee authorizes an alternative or automatic reallocation mechanism for that fee.

This bill would prohibit a campus or the Chancellor of the California State University from approving a student success fee, as defined, before January 1, 2016. This bill would require the chancellor to conduct a review of the trustees' fee policy related to student success fees, submit recommended changes to the fee policy to the trustees, consider specified information in conducting that review and in preparing his or her recommended changes to the policy, and submit a report regarding those proposed changes to the Department of Finance and the appropriate fiscal and policy committees of the Legislature, on or before February 1, 2015.

(13) Existing law establishes various health research grant programs, including the Cancer Research Program, the Breast Cancer Research Program, and the Spinal Cord Injury Research Program.

This bill would enact the California Blueprint for Research to Advance Innovations in Neuroscience (Cal-BRAIN) Act of 2014, and would request the Regents of the University of California to establish the Cal-BRAIN program to leverage California's research assets and the federal BRAIN Initiative's funding opportunities to accelerate the development of brain mapping techniques, including the development of new technologies, in order to achieve certain goals. The bill would additionally request the University of California to

convene certain stakeholders to develop a governing structure for the Cal-BRAIN program designed to do specified tasks and to provide information about the program through an Internet Web site. These provisions would only be implemented to the extent that adequate funding is appropriated to the University of California, as specified.

(14) Existing law, the California Educational Facilities Authority Act, authorizes the California Educational Facilities Authority to, among other things, hold or invest in student loans, create pools of student loans, and sell bonds bearing interest on a taxable or tax-exempt basis or other interests backed by the pools of student loans. Existing law, for purposes of the act, defines "student loan" as a loan having terms and conditions acceptable to the authority that is made to finance or refinance the costs of attendance at a private college or public college and that is approved by the authority, if the loan is originated pursuant to a program that is approved by the authority. Existing law establishes the Assumption Program of Loans for Education, administered by the Student Aid Commission, under which any person enrolled in an eligible institution of postsecondary education or any person who agrees to participate in a teacher trainee or teacher internship program, is eligible to enter into an agreement for loan assumption, as specified.

This bill would, for purposes of the California Educational Facilities Authority Act, provide that "student loan" may also mean a loan assumption pursuant to the Assumption Program of Loans for Education.

(15) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including a school district and a community college district, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions. Existing law makes certain funds appropriated in the annual Budget Act for reimbursement of the cost of a new program or increased level of service of an existing program mandated by statute or executive order available as a block grant to school districts, charter schools, county offices of education, and community college districts, to support specified state-mandated local programs. Existing law provides that a school district, charter school, county office of education, or community college district that submits a letter of intent to the Superintendent of Public Instruction or the Chancellor of the California Community Colleges, as appropriate, and receives this block grant funding is not eligible to submit a claim for reimbursement for those specified mandated programs for the fiscal year for which the block grant funding is received.

This bill would revise the list of programs that are authorized for block grant funding in lieu of program-specific reimbursement.

(16) Existing law imposes a filing fee of \$605 to file a notice of appeal in a civil case. Existing law requires, until January 1, 2015, that \$65 of this fee be deposited into the California State Law Library Special Account for the support of the California State Law Library.

This bill would extend the operation of these provisions until January 1, 2020.

(17) Existing law allocates responsibility for enforcement of building standards adopted by the State Fire Marshal and published in the California Building Standards Code relating to fire and panic

safety and other regulations of the State Fire Marshal, as provided. Existing law provides that the State Fire Marshal shall enforce the building standards and other regulations of the State Fire Marshal on all University of California campuses and properties administered or occupied by the University of California, and, for each university campus or property, authorizes the State Fire Marshal to delegate that responsibility to a person of his or her choice.

This bill would also require the State Fire Marshal to enforce the building standards and other regulations of the State Fire Marshal on all California State University campuses and properties administered or occupied by the California State University.

(18) Existing law authorizes the Trustees of the California State University to receive bids for the construction of several public works projects at one campus of the California State University as a single project. Existing law requires, when it appears that the estimated contract price will exceed \$15,000, that public notice to bidders be given by publication, as specified.

This bill would delete the one-campus restriction on taking bids for several public works as a single project. The bill would also authorize notice by publication electronically on the California State University's Internet Web site.

(19) Item 6870-139-8080 of the Budget Act of 2013, as added by Chapter 20 of the Statutes of 2013, appropriated \$47,000,000 to the Board of Governors of the California Community Colleges for local assistance, payable from the Clean Energy Job Creation Fund.

This bill would reappropriate the balances of those amounts to the board of governors, for the same purposes, and would provide that those funds would be available for encumbrance until June 30, 2018.

(20) This bill would require amounts to be determined by the Director of Finance to be appropriated, on or before June 30, 2015, from the General Fund to the Board of Governors of the California Community Colleges in the event that specified revenues distributed to community colleges are less than estimated amounts reflected in the Budget Act of 2014.

(21) This bill would require amounts to be determined by the Director of Finance to be appropriated, on or before June 30, 2015, from the General Fund to the Board of Governors of the California Community Colleges in augmentation of a certain schedule of an item of the Budget Acts of 2012 and 2013, and would require these funds to only be available for revenues distributed to a net excess tax community college district, as determined by the Director of Finance.

(22) This bill would authorize the University of California to use General Fund appropriations made pursuant to specified sections of the Education Code for the Tolman Hall Seismic Replacement Building project at the University of California, Berkeley, campus, as described.

(23) This bill would make conforming changes, delete obsolete provisions, correct cross-references, and make other nonsubstantive changes.

(24) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these

statutory provisions.

(25) Funds appropriated by this bill would be applied toward the minimum funding requirements for school districts and community college districts

imposed by Section 8 of Article XVI of the California Constitution.

(26) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 69432 of the Education Code is amended to read:

69432. (a) Cal Grant Program awards shall be known as "Cal Grant A Entitlement Awards," "Cal Grant B Entitlement Awards," "California Community College Transfer Entitlement Awards," "Competitive Cal Grant A and B Awards," "Cal Grant C Awards," and "Cal Grant T Awards."

(b) Maximum award amounts for students at independent institutions and for Cal Grant C and T awards shall be identified in the annual Budget Act. Maximum award amounts for Cal Grant A and B awards for students attending public institutions shall be referenced in the annual Budget Act.

(c) (1) Notwithstanding subdivision (b), and subdivision (c) of Section 66021.2, commencing with the 2013-14 award year, the maximum tuition award amounts for Cal Grant A and B awards for students attending private for-profit and nonprofit postsecondary educational institutions shall be as follows:

(A) Four thousand dollars (\$4,000) for new recipients attending private for-profit postsecondary educational institutions.

(B) For the 2014-15 award year, nine thousand eighty-four dollars (\$9,084) for new recipients attending private nonprofit postsecondary educational institutions. For the 2015-16 award year and each award year thereafter, eight thousand fifty-six dollars (\$8,056) for new recipients attending private nonprofit postsecondary educational institutions.

(2) The renewal award amount for a student whose initial award is subject to a maximum award amount specified in this subdivision shall be calculated pursuant to paragraph (2) of subdivision (a) of Section 69433.

(3) Notwithstanding subparagraph (A) of paragraph (1), new recipients attending private for-profit postsecondary educational institutions that are accredited by the Western Association of Schools and Colleges as of July 1, 2012, shall have the same maximum tuition award amounts as are set forth in subparagraph (B) of paragraph (1).

SEC. 2. Section 69432.7 of the Education Code is amended to read:

69432.7. As used in this chapter, the following terms have the following meanings:

(a) An "academic year" is July 1 to June 30, inclusive. The starting date of a session shall determine the academic year in which it is included.

(b) "Access costs" means living expenses and expenses for transportation, supplies, and books.

(c) "Award year" means one academic year, or the equivalent, of attendance at a qualifying institution.

SEC. 15. Section 81821 of the Education Code is amended to read:

81821. (a) The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to at least both of the following elements:

(1) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors.

(2) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors.

(b) The five-year plan for capital construction may also set out the estimated capital construction needs of the district with reference to other elements, including, but not limited to:

(1) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs that may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

(2) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the Chancellor of the California Community Colleges.

(3) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.

(4) An estimate of district funds that shall be made available for capital outlay matching purposes pursuant to regulations adopted by the board of governors.