

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

EXECUTIVE SUMMARY

I. Summary of the Mandate

This proposed amendment to parameters and guidelines is consistent with the Commission on State Mandates' (Commission's) new test claim decision, adopted January 22, 2016, finding that the state's liability pursuant to article XIII B, section 6 and Government Code Section 17514 has been modified based on the subsequent change in law.¹

On June 19, 2015, the Department of Finance (Finance) filed a request to adopt a new test claim decision for the *Community College Construction* program, asserting that Statutes 2014, chapter 34 is a subsequent change in law that ended reimbursement of the program pursuant to Government Code section 17570.

On January 22, 2016, the Commission approved the request for mandate redetermination 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

¹ If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission shall adopt new parameters and guidelines or amend existing parameters and guidelines or reasonable reimbursement methodology pursuant to Government Code Sections 17557, 17557.1, and 17557.2.

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. Procedural History

On December 3, 2015, the Commission adopted the decision for the first hearing and directed staff to schedule the second hearing.² The draft proposed decision³ for the second hearing and draft expedited amendment to parameters and guidelines⁴ were issued on December 4, 2015. On December 23, 2015, the State Controller's Office (Controller) submitted comments recommending no changes to the draft expedited amendment to parameters and guidelines.⁵ Claimants did not submit comments on the draft expedited amendment to parameters and guidelines. On January 22, 2016, the Commission adopted the proposed decision for the second hearing as its new test claim decision.

III. Discussion

The proposed amendment to parameters and guidelines ends reimbursement for the program as of June 20, 2014, the effective date of Statutes 2014, chapter 34, and makes other clarifying changes in accordance with the Government Code and the Commission's regulations.

Government Code section 17570(f) provides that a request for adoption of a new test claim decision shall "be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year." Finance filed the request on June 19, 2015, establishing eligibility beginning July 1, 2013. However, the effective date of Statutes 2014, chapter 34, an urgency statute, was June 20, 2014.⁶ Therefore, staff finds that the approved activities in the prior test claim decision are no longer reimbursable as of June 20, 2014.

IV. Staff Recommendation

Staff recommends that the Commission adopt this proposed decision and amendment to parameters and guidelines, ending reimbursement as of June 20, 2014 in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514.

² Exhibit A, Decision, First Hearing, adopted December 3, 2015.

³ Exhibit B, Second Hearing Draft Proposed Decision, issued December 4, 2015.

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

⁵ Exhibit D, State Controller's Office Comments on the Draft Proposed Decision for the Second Hearing and Draft Expedited Amendment to Parameters and Guidelines, filed December 23, 2015.

⁶ Urgency statutes become effective immediately upon enactment (Cal. Const., art. IV, section 8(c)(3)).

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

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
AMENDMENT 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 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 parameters and guidelines amendment during a regularly scheduled hearing on January 22, 2016. [Witness list will be included in the adopted decision.]

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 1190 et seq., and related case law.

The Commission [adopted/modified] the proposed decision and amendment to the parameters and guidelines at the hearing by a vote of [vote count will be included in the adopted 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 Mandate Findings

This amendment to parameters and guidelines is consistent with the Commission's new test claim decision adopted January 22, 2016, finding that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution for the *Community College Construction* program ended as of June 20, 2014, based upon a subsequent change in law.⁷

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 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.

COMMISSION FINDINGS

I. Chronology

12/03/2015	The Commission adopted the Proposed Decision for the First Hearing and directed Commission staff to notice the second hearing. ⁸
12/04/2015	Commission staff issued the Second Hearing Draft Proposed Decision and the Draft Expedited Amendment to Parameters and Guidelines. ⁹
12/23/2015	The State Controller filed comments on the Second Hearing Draft Proposed Decision and Draft Expedited Parameters and Guidelines. ¹⁰

II. Discussion

The proposed amendment to parameters and guidelines ends reimbursement for the program beginning June 20, 2014, and makes other clarifying changes in accordance with the Government Code and the Commission's regulations.¹¹

⁷ Pursuant to Government Code section 17570(i), "[i]f the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission shall adopt new parameters and guidelines or amend existing parameters and guidelines or reasonable reimbursement methodology pursuant to sections 17557, 17557.1, and 17557.2."

⁸ Exhibit A, Decision for the First Hearing, adopted December 3, 2015.

⁹ Exhibit B, Draft Proposed Decision for the Second Hearing, issued December 4, 2015; and Exhibit C, Draft Expedited Amendment to Parameters and Guidelines, issued December 4, 2015.

¹⁰ Exhibit D, Office of the State Controller, Comments on the Draft Proposed Decision for the Second Hearing and Draft Expedited Parameters and Guidelines, December 23, 2015.

¹¹ California Code of Regulations, title 2, section 1183.7.

Government Code section 17570(f) provides that a request for adoption of a new test claim decision shall “be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.” Finance filed the request on June 19, 2015, establishing eligibility beginning July 1, 2013. However, the effective date of Statutes 2014, chapter 34, an urgency statute, was June 20, 2014.¹² Therefore, the Commission finds that the approved activities in the prior test claim decision are no longer reimbursable as of June 20, 2014.

The Commission further finds the amendment to parameters and guidelines is supported by the findings adopted by the Commission in its new test claim decision for this program on January 22, 2016.

III. Conclusion

Based on the foregoing, the Commission hereby adopts the proposed decision and amendment to parameters and guidelines.

¹² Urgency statutes become effective immediately upon enactment (Cal. Const., art. IV, section 8(c)(3)).

Amended: January 22, 2016

Adopted: March 23, 2012

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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.

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

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

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.~~
- ~~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.~~

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

- ~~4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), 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 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.

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

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.