

ITEM 4
INCORRECT REDUCTION CLAIM
FINAL STAFF ANALYSIS

Government Code Section 53646, Subdivisions (a), (b) and (e)
Statutes of 1995, Chapter 783
As Amended by Statutes of 1996, Chapters 156 and 749

Investment Reports
Fiscal Years 1996-1997 and 1997-1998
00-9635802-I-01

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Introduction

This is an incorrect reduction claim filed by the County of Los Angeles on reimbursement claims for costs incurred in fiscal years 1996-1997 and 1997-1998 on the *Investment Reports* program. This item was originally heard by the Commission on April 25, 2002, and was continued because the Commission wanted to first consider similar issues in a request to amend the parameters and guidelines for the *Investment Reports* program. On February 27, 2003, the Commission amended the parameters and guidelines for the *Investment Reports* program for costs incurred beginning in fiscal year 1998-1999.

The issues in dispute in this incorrect reduction claim involve the State Controller's reduction of costs claimed following a desk audit for the salaries and benefits of County employees accumulating and compiling data necessary to render the quarterly report of investments, and the costs claimed for investment software.

The revised draft staff analysis was issued for comment on March 4, 2010. The State Controller's Office and the Department of Finance concur with the analysis. No comments on the draft have been received from the claimant.

Staff Analysis

Salary and Benefit Costs

The parameters and guidelines, and claiming instructions for this program allow reimbursement to accumulate and compile the data necessary to prepare the quarterly reports of investment and to render the reports to the local agency. As indicated by the plain language of Government Code section 53646, as amended by the test claim statutes, the quarterly investment report shall include the following information:

1. Type of investment, issuer, date of maturity, par and dollar amount invested on all securities, investments and moneys held by the local agency.

2. Description of any of the local agency's funds, investments, or programs, that is under the management of contracted parties, including lending programs.
3. Current market value as of the date of the report, and source of this same valuation of all securities held by the local agency, and under management of any outside party that is not also a local agency or the State of California Local Agency Investment Fund.
4. Statement that the portfolio is in compliance with the statement of investment policy, or the manner in which the portfolio is not in compliance.
5. Statement denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may not be available.

The reimbursement claims filed by the County include costs for staff time to accumulate, compile, and render the report of investments. The County's reimbursement claim for fiscal year 1996-1997 includes costs for salaries and benefits of seven (7) employees to accumulate, compile, and render the report of investments for 7,055 hours in the amount of \$215,901. The claim for salaries and benefits was reduced by the Controller's Office to \$4,662. The State Controller's Office allowed reimbursement for four (4) of the seven (7) employees claimed. The four employees are identified on the claim as having worked on the "Report of Investments." The Controller's Office multiplied the salaries and benefits of the four employees by 32 hours for the year, or eight (8) hours per employee per quarter to perform the mandated duties. The Controller's Office eliminated and reduced to \$0 all costs claimed for the Assistant Operations Chief, the Accountant III, and the Account Clerk I – employees not expressly identified on the claim as having worked on the "Report of Investments."

In the reimbursement claim for fiscal year 1997-1998, salary and benefit costs were claimed for seven (7) employees to perform the report of investment activities in the amount of \$218,019. The Controller's Office reduced the salary and benefit costs to \$0. Some of the staff costs claimed are the salary and benefits of employees listed as working on the "Report of Investments."

Staff finds that the reduction by the Controller's Office of salary and benefit costs to a unit time in fiscal year 1996-1997 and to zero in fiscal year 1997-1998 is arbitrary, not based on the parameters and guidelines, and not based on any evidence in the record. Thus, the reductions of salary and benefit costs are incorrect.

However, the reimbursement claims filed by the County for salaries and benefits include daily investment activities and costs that are not reimbursable, and were filed based on the County's policy of rendering 12 monthly investment reports rather than four quarterly reports. These activities performed by County employees, identified in the reimbursement claims and listed below, are *not* reimbursable:

- Perform daily download.
- System maintenance.
- Earnings Reconciliations.
- Monitor daily compliance with investment policy.
- Compile monthly report of investments.
- Daily market pricing.

- Daily trade ticket input.
- Generate daily reports, accounting records, data backup.
- Create various accounting records.

Thus, not all the costs claimed by the County for salaries and benefits can be reinstated.

The costs that should be reinstated to the County for salaries and benefits are identified in the 2003 amendment to the parameters and guidelines that clarified the reimbursable activities for the *Investment Reports* program as follows:

- a. For each investment that is held on the last day of each quarter and included in a quarterly report of investments, the following activities are eligible for reimbursement:
 1. One-time data entry into investment reporting application or software:
 - the type of investment and issuer,
 - date of maturity, and
 - par and dollar amount invested.
 2. Providing a description of any of the local agency's funds, investments or programs, including lending programs that are under the management of contracted parties.
 3. Obtaining and reporting current market value as of the date of the quarterly report, and reporting the source of this valuation for all investments held by the local agency and under management of any outside party that is not also a local agency or the State of California Local Agency Investment Fund.
 4. Providing required copies of the most recent statement(s) received by a local agency from the Local Agency Investment Fund, the Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, a county investment pool, or any combination of these. [Unit Cost Per Page.]
 5. Determining if, on the last day of each quarter, the portfolio complies with the statement of investment policy, and providing an explanation if the portfolio does not comply. (Gov. Code, § 53646, subd. (b) (2).)
- b. Compiling the cash flow information necessary to provide a statement, and any required explanation, denoting the local agency's ability to meet its pool's expenditure requirements for the next six months. Cash flow information needed to provide this statement includes forecasted expenditure requirements and non-investment revenue, plus investment revenue anticipated from securities held at the end of the quarter (Gov. Code, § 53636, subd. (b)(3).).

Although the period of reimbursement for the parameters and guidelines amendment is effective for costs incurred beginning in fiscal year 1998-1999 (one and two years after the fiscal years in question here), the Commission's analysis and findings can be used to determine what the Commission intended when it adopted the parameters and guidelines in 1997 because the parameters and guidelines amendment simply clarified the mandated activities. Pursuant to the rules of statutory construction, a clarification of existing law may be applied to transactions

predating its enactment without being considered a retroactive application of the law. The clarified law is merely a statement of what the law has always been.

The County's reimbursement claims indicate that some of the County employees worked on the "report of investments." However, it cannot be determined from the claims how long it took those employees to perform the reimbursable activities. Thus, staff recommends that the Commission remand the reimbursement claims back to the State Controller's Office to further review the County's claims for the costs of the salaries and benefits of County employees to perform the reimbursable activities required to render the quarterly report of investments and, in accordance with the Commission's decision on this incorrect reduction claim, to reinstate the costs that are eligible for reimbursement.

Investment Software Costs

The County's reimbursement claim for fiscal year 1996-1997 identifies ongoing costs incurred for ADS investment software in the amount of \$27,773. The reimbursement claim for fiscal year 1997-1998 identifies costs incurred for ADS investment software in the amount of \$44,279. The State Controller's Office reduced the claims for the ADS investment software to \$0 on the ground that the cost is not mandated.

However, section VI, B of the parameters and guidelines, Claim Preparation, allows reimbursement for "all direct costs for materials, services and supplies which have been purchased, leased, consumed, or expended for purposes of compliance with the mandate." Section VI, C allows reimbursement for the costs incurred for "contract services... for the development and operation of the mandated program."

Staff finds that the cost incurred for the ADS software is reimbursable in an amount equal to the pro rata cost that is directly related to the reimbursable activities to prepare and render a quarterly report of investments.

Thus, staff finds that the State Controller's Office incorrectly reduced the County's claim for ADS software costs and recommends that the Commission remand the reimbursement claims back to the State Controller's Office to further review the County's claims and to reinstate the ADS software costs that are eligible for reimbursement in accordance with the Commission's decision on this incorrect reduction claim.

Conclusion

For the reasons stated in the analysis, staff concludes that the State Controller's Office incorrectly reduced the costs claimed by the County of Los Angeles in their reimbursement claims filed for the *Investment Reports* program for fiscal years 1996-1997 and 1997-1998.

Staff Recommendation

Staff recommends that the Commission adopt this analysis and remand the reimbursement claims back to the State Controller's Office for further review and reinstatement of those costs that are eligible for reimbursement in accordance with the Commission's decision on this incorrect reduction claim.

STAFF ANALYSIS

Claimant

County of Los Angeles

Chronology

Incorrect Reduction Claim

12/23/96	Test claim filed by County of Santa Clara and City of Newport Beach
03/27/97	Statement of Decision adopted by the Commission
11/20/97	Parameters and guidelines adopted by the Commission
11/30/98	Statewide cost estimate adopted by the Commission
01/00/98	Claiming instructions issued by State Controller's Office
04/09/98	Reimbursement claim for \$308,252 filed by Claimant for fiscal year 1996-1997
02/10/99	Reimbursement claim for \$327,512 filed by Claimant for fiscal year 1997-1998
06/28/99	1996-1997 claim reviewed by State Controller's Office and reduced to \$6,502
07/29/99	1997-1998 claim reviewed by State Controller's Office and reduced to \$325
10/12/99	Claim adjustment letter regarding the 1996-1997 and 1997-1998 claims sent by State Controller's Office to claimant
09/01/00	Incorrect reduction claims (IRC) for fiscal years 1996-1997 and 1997-1998 filed by claimant
12/05/00	Response to IRC filed by State Controller's Office
01/16/01	Rebuttal to State Controller's Office's response filed by claimant
01/18/01	Supplemental comments filed by State Controller's Office
03/05/01	Response to State Controller's Office's supplemental comments filed by claimant
03/19/01	Additional supplemental comments filed by State Controller's Office
04/12/01	Response to State Controller's Office's additional supplemental comments filed by claimant
06/30/01	Commission Executive Director retained expert consultant
09/05/01	Pre-hearing conference held
09/13/01	Expert consultant report issued to parties
09/21/01	Comments on expert consultant report filed by State Controller's Office
09/27/01	Second pre-hearing conference held
10/15/01	Response to pre-hearing conference filed by State Controller's Office
10/17/01	Closing comments, including response to expert consultant report submitted by claimant

03/29/02	Staff analysis issued
04/25/02	Commission hearing on incorrect reduction claim – Commission continued matter until the Commission considered proposed amendments to the parameters and guidelines
02/27/03	Commission amends parameters and guidelines (96-358-02-PGA-1)
03/04/10	Revised draft staff analysis on incorrect reduction claim issued for comment
04/02/10	State Controller’s Office files comments dated March 26, 2010, concurring with the revised draft staff analysis
04/05/10	Department of Finance files comments concurring with the revised draft staff analysis

Background

This is an incorrect reduction claim filed by the County of Los Angeles on reimbursement claims for costs incurred in fiscal years 1996-1997 and 1997-1998 on the *Investment Reports* program. This item was originally heard by the Commission on April 25, 2002, and was continued because the Commission wanted to first consider similar issues in a request to amend the parameters and guidelines for the *Investment Reports* program.¹ On February 27, 2003, the Commission amended the parameters and guidelines for the *Investment Reports* program for costs incurred beginning in fiscal year 1998-1999.^{2, 3}

The issues in dispute in this incorrect reduction claim involve the Controller’s reduction of costs claimed following a desk audit for the salaries and benefits of County employees accumulating and compiling data necessary to render the quarterly report of investments, and the costs claimed for investment software.

In addition, in June 2001, the Commission retained an expert consultant, Conny Jamison, to advise the Commission regarding the duties required under the test claim statute. Ms. Jamison served as the San Diego City Treasurer for over 18 years before her retirement and was

¹ Exhibit Q, Transcript from April 25, 2002 hearing.

² See Exhibit S. The City of Newport Beach filed the request to amend the parameters and guidelines on October 13, 2000. Pursuant to Government Code section 17557, the period of reimbursement for the amendments began in fiscal year 1998-1999. The Commission amended the parameters and guidelines by clarifying the reimbursable activities to conform to the test claim statutes and the Statement of Decision, including limiting reimbursement to activities related to each investment held on the last day of each quarter; specifying non-reimbursable activities; and replacing footnote 1 with language in section VII, Offsetting Savings and Reimbursements.

³ This incorrect reduction claim has been on the Commission’s list of backlogged claims. The 2000-2001 budget included approval of a half-time two-year limited term staff counsel position dedicated to determination of incorrect reduction claims. This position was filled between September 2000 and June 2002. During this period, the County of Los Angeles’ incorrect reduction claim was analyzed and set for hearing. The dedicated half-time staff counsel position was eliminated in the 2002-2003 budget. During 2002-2003, 51 test claims and 73 incorrect reduction claims were filed. By July 2003, there were 112 test claims pending mandate determination and 84 incorrect reduction claims pending.

responsible for managing city investments of \$1.2 billion. Her report and resume are included in Exhibit M, pages 1039-1045.

Investment Reports Program (Statement of Decision and Parameters and Guidelines)

In 1996, the County of Santa Clara and the City of Newport Beach filed a test claim on Government Code section 53646, subdivisions (a), (b), and (e), as amended in 1995 and 1996.⁴ The test claim statutes were enacted following recommendations from the Task Force on Local and State Investment Practices.⁵ The Task Force was assembled at the request of Governor Pete Wilson for the purpose of reporting recommendations and findings for possible investment guidelines to be considered by the Legislature as a result of the losses incurred by the Orange County investment pool.⁶

As amended, Government Code section 53646 stated the following:

(a)(1) In the case of county government, the treasurer shall annually render to the board of supervisors and any oversight committee a statement of investment policy, which the board shall review and approve at a public meeting. Any change in the policy shall also be reviewed and approved by the board at a public meeting.

(2) In the case of any other local agency, the treasurer or chief fiscal officer of the local agency shall annually render to the legislative body of that local agency and any oversight committee of that local agency a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting. Any change in the policy shall also be considered by the legislative body of the local agency at a public meeting.

(b)(1) The treasurer or chief fiscal officer shall render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency. The quarterly report shall be so submitted within 30 days following the end of the quarter covered by the report. Except as provided in subdivision (e), this report shall include the type of investment, issuer, date of maturity par and dollar amount invested on all securities, investments and moneys held by the local agency, and shall additionally include a description of any of the local agency's funds, investments, or programs, that are under the management of contracted parties, including lending programs. With respect to all securities held by the local agency, and under management of any outside party that is not also a local agency or the State of California Local Agency Investment Fund, the report shall also include a current market value as of the date of the report, and shall include the source of this same valuation.

(2) The quarterly report shall state compliance of the portfolio to the statement of investment policy, or manner in which the portfolio is not in compliance.

⁴ Statutes 1995, chapter 783; Statutes 1996, chapters 156 and 749.

⁵ Exhibit L, page 1015, Analysis of Senate Committee on Local Government, March 30, 1995, Assembly Bill 564 (1995-96 Leg. Sess.).

⁶ See The Task Force's report, dated March 14, 1995, Exhibit L, pages 992-1008.

(3) The quarterly report shall include a statement denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available.

(4) In the quarterly report, a subsidiary ledger of investments may be used in accordance with accepted accounting practices.

(c) Pursuant to subdivision (b), the treasurer or chief fiscal officer shall report whatever additional information or data may be required by the legislative body of the local agency.

(d) The legislative body of a local agency may elect to require the report specified in subdivision (b) to be made on a monthly basis instead of quarterly.

(e) For local agency investments that have been placed in the Local Agency Investment Fund, created by Section 16429.1, in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, in a county investment pool, or any combination of these, the treasurer or chief fiscal may supply to the governing body, chief executive officer, and the auditor of the local agency the most recent statement or statements received by the local agency from these institutions in lieu of the information required by paragraph (1) of subdivision (b) regarding investments in these institutions.⁷

On March 27, 1997, the Commission adopted a Statement of Decision finding that Government Code section 53646, subdivisions (a), (b), and (e) constituted a reimbursable state-mandated program.⁸ The parameters and guidelines, adopted on November 20, 1997, describe the following activities as eligible for reimbursement:⁹

1. Statement of Investment Policy

Prepare and submit the annual statement of investment policy, and changes to:

- a. The legislative body and any oversight committee for consideration at a public meeting, effective January 1, 1996.
- b. The county board of supervisors and any oversight committee for review and approval at a public meeting, effective January 1, 1997.

2. Quarterly Reports of Investments

a. Implementation Costs

Develop or modify existing policies and procedures for accumulating and compiling data to prepare the quarterly report of investments, as required in section 53646, subdivisions (b)(1), (2), and/or (e).

⁷ Government Code section 53646 has since been amended by Statutes 1997, chapter 825; Statutes 1998, chapter 82; Statutes 2000, chapter 687; Statutes 2002, chapter 454; Statutes 2004, chapter 889; and Statutes 2008, chapter 709. The amendments made in 2004 (AB 2853) changed the "shall" to "may" in subdivisions (a)(1) and (2), and (b)(1), to eliminate the mandate to render and approve the annual statement of investment policy and to render the quarterly report of investments.

⁸ Exhibit A.

⁹ Exhibit B.

b. Ongoing Costs

- (1) Accumulate and compile data necessary to prepare the quarterly reports of investments, as required in Government Code section 53646, subdivisions (b)(1), (2), and (3) and/or (e).
- (2) Render a quarterly report of investments to the chief executive officer, the internal auditor, and the legislative body of the local agency or school district, as required in Government Code section 53646, subdivision (b)(1).¹⁰

Section VI of the parameters and guidelines addresses claim preparation and instructs eligible claimants to include in their claim the salaries and benefits of employees performing the mandated activities. Employee costs “should be supported by name, position, productive hourly rate, hours worked, fringe benefits amount, and a brief description of assigned unit and function relative to the mandate.” Claimants are also instructed to include in their claim descriptions of services and supplies, and contract services, and to maintain the supporting data for all costs claimed to be “made available to the State Controller or his/her agent, as may be requested ...”

The claiming instructions were issued in January 1998.¹¹ The reimbursable activities listed in the claiming instructions are consistent with the parameters and guidelines.

Reimbursement Claim for Fiscal Year 1996-1997 and Reductions Made by the Controller

The County filed a reimbursement claim for costs incurred in fiscal year 1996-1997 in the total amount of \$305,252.¹² The reimbursement claim identifies ongoing costs incurred for ADS investment software in the amount of \$27,773, and for the salary and benefits of seven (7) employees (Assistant Operations Chief, Accounting Officer III, Fiscal Officer 1, Accounting Officer 1, Assistant Data Systems Analyst, Accountant III, and an Account Clerk I) to accumulate, compile, and render the report of investments for 7,055 hours in the amount of \$215,901. The claim also describes the duties of the County employees with respect to the report of investments as follows:

Assistant Operations Chief – System maintenance and daily data download

Accounting Officer III – Section Head, supervisorial/review of staff, work product, Report of Investments

Fiscal Officer I – Assistant Section Head, daily compliance with Investment Policy, reconciliations, Reports of Investments

Accounting Officer I – Supervisor, monitors daily compliance with Investment Policy, performs reconciliations, compiles monthly Report of Investments

Assistant Data Systems Analyst – Staff member, performs system monitoring, schedule preparations for Report of Investments, daily market pricing

¹⁰ Footnote 1 of the parameters and guidelines recognized potential offsetting revenue for counties with Treasury Oversight Committees when preparing and submitting the annual statement of investment policy to the county’s legislative body. The issues in this claim do not address the annual statement of investment policy.

¹¹ Exhibit R, claiming instructions.

¹² Exhibit C, pages 135-153.

Accountant III – Supervisor, responsible for daily trade ticket input, generates daily reports, accounting records, data backup

Account Clerk I – Staff member, daily trade ticket input, creation of various accounting records

Pages 151-152 of the record provide further descriptions of the County staff time claimed for the report of investment activities as follows:

Assistant Operations Chief – 25%

Approximately 5 days of the month spent on PSI Earnings Reconciliation, PSI securities research, and daily ADS systems monitoring to ensure the integrity of the data and system. Balance of time is spent with non-investment type issues related to County Improvement Bonds and other system projects.

Accounting Officer III – 40%

Approximately 8 days of the month is spent on reviewing the Monthly Report of Investments, reviewing the daily trade ticket packages, reviewing the daily input into the ADS system, and resolving any investment issues which may arise. Balance of time spent on other administrative and monitoring issues.

Fiscal Officer I – 25%

Approximately 5 days of the month is spent on preparing certain schedules for the Monthly Report of Investments, reviewing the daily trade ticket packages for compliance issues, reviewing the daily input into the ADS system, and resolving securities issues. Balance of time spent on monitoring other County-issued debt, reviewing reconciliations, resolving audit recommendations and other compliance issues, and special projects.

Accounting Officer I – 50%

Entire duties are within the Investment Area. Approximately half of the month is spent on daily review of input, review of compliance with Investment Guidelines, earnings and securities research and reconciliations, market valuation research, preparing schedules for the Monthly Report of Investments, and reviewing accounting documents. Balance of time is spent on reconciling accounts to CAPS and researching other investment issues for entities not included in the Monthly Report of Investments.

Assistant Data Systems Analyst – 75%

Approximately $\frac{3}{4}$ of the month is spent on daily monitoring and input of investments, performing and researching market valuations, investigating securities issues, running daily reports, preparing certain schedules for Monthly Report of Investments, and monitoring the ADS system. Balance of time is spent on updating monthly investments by Issuer and other systems type projects.

Accountant III – 100%

Entire duties revolve around daily review of purchases input, calculation of next day maturities, monitoring of securities, running of system and all related investment reports, and preparing accounting documents.

Account Clerk I – 80%

Majority of time is spent on daily trade ticket input into the ADS system, and performing clerical support for all accounting functions. Balance of time is spent

on clerical support for accounting for investments for entities not included in the Monthly Report of Investments.

In addition, pages 149-150 of the record is a “Report” filed by the County regarding the reimbursement claim in response to the Controller’s request for further information. The “report” clarifies that the County’s claim is based on a filing of monthly reports of investments, as required by the investment policy of the Los Angeles County Board of Supervisors, rather than quarterly reports of investments. The County’s “Report” states in relevant part the following:

It should be noted that the subject investment policy, adopted by the Los Angeles County Board of Supervisors, requires that the “Treasurer and Tax Collector shall provide the Board of Supervisors and the Los Angeles County Treasury Oversight Committee with a monthly report.” While Government Code section 53646(b)(1) requires, in pertinent part, that “the treasurer or chief fiscal officer shall render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency,” the local agency, according to Government Code section 53646(d), “may elect to require the report ... on a monthly basis instead of quarterly.” However, where a legislative body has delegated investment authority to its treasurer, as is the case in Los Angeles County, monthly investment reporting is not an option but is State-mandated. Specifically, Government Code section 53607, ..., states:

“The authority of the legislative body to invest or to reinvest funds of a local agency, or to sell or exchange securities so purchased, may be delegated for a one-year period by the legislative body to the treasurer of the local agency, who shall thereafter assume full responsibility for those transactions until the delegation of authority is revoked or expires, and shall make a monthly report of those transactions to the legislative body. ...”
[Emphasis in original.]

Therefore, the Los Angeles County Board of Supervisors, in conforming to (the above) State law, requires monthly investing reporting.

Further, in order to perform its fiduciary duties with due diligence, quarterly investment reporting is not adequate for the Los Angeles County whose Treasury Pool varies from \$6 billion to \$9 billion, and is one of the largest in the State.

The majority of costs incurred under the subject program is incurred in running the County’s ADS Treasury Management System. The majority of time spent by County staff is spent on daily transaction and input accounting, required for investment reporting pursuant to the subject law. Data is processed, reports are printed, securities are market priced, maturities are calculated, transactions are reconciled to custody reports, and discrepancies are researched and corrected. These costs will be incurred regardless of whether reporting is on a monthly or quarterly basis.

In addition, the costs of preparing the investment report itself, covering all the State-mandated disclosures of all the investment transactions during a period, will not be appreciably affected by the reporting period. Here, four quarterly

investment reports will have about the same number of pages as twelve monthly reports, and, these reports would cost about the same to produce.

Therefore, even if the frequency of the investment reporting periods could be decreased, from a monthly basis to a quarterly basis, reimbursable costs, authorized under the subject program, would not decrease.

The State Controller's Office reduced the County's 1996-1997 reimbursement claim to \$6,502. The cost for the ADS investment software was reduced to \$0 and completely disallowed. The claim for employee time to accumulate, compile, and render the report of investments for the year was reduced to a total of 32 hours each for four (4) of the seven (7) employees claimed, thereby eliminating all costs claimed for the Assistant Operations Chief, the Accountant III, and the Account Clerk I. The costs claimed for the salary and benefits of the employees performing the report of investment activities were reduced from \$215,901 to \$4,662.¹³

The handwritten notations made by the Controller's Office on the reimbursement claim state the following:

Daily/monthly accounting duties are NOT mandated. Only the QTLY Report of investments is mandated for the incremental cost of preparing the report. ...

Allowed 8 hours per QTR for the Accounting Officer III, Fiscal Officer I, Accounting Officer I, and Assistant Data Systems Analyst for preparation of the Quarterly Report of Investments.¹⁴

Reimbursement Claim for Fiscal Year 1997-1998 and Reductions Made by the Controller

The County filed a reimbursement claim for costs incurred in fiscal year 1997-1998 in the total amount of \$327,512.¹⁵ The County's claim identifies costs incurred for ADS investment software in the amount of \$44,279 and salaries and benefits for seven (7) staff members to perform the report of investment activities in the amount of \$218,019.¹⁶

The State Controller's Office reduced the County's total claim from \$327, 512 to \$325, denying all costs claimed for the ADS investment software and all costs claimed for the report of investment activities. The handwritten notes made by the Controller's Office on the claim state the following: "NOT mandated – Daily/Monthly accounting functions are not mandated."¹⁷

¹³ Exhibit C, pages 139 and 175 (Remittance Advice dated October 12, 1999).

¹⁴ *Ibid.*

¹⁵ Exhibit C, pages 155-171.

¹⁶ See also Exhibit C, page 164, which breaks down the cost incurred for the ADS investment software.

¹⁷ Exhibit C, pages 158 and 174 (Remittance Advice dated October 12, 1999).

Claimant's Position¹⁸

Claimant contends that the reimbursement claims were incorrectly reduced because the reductions appear arbitrary and not based on an examination of which activities are "necessary" to prepare and render the required reports. Claimant also contends that the State Controller's Office based its reductions on a standard time selected by Controller staff without the benefit of a time study or any other stated basis. Finally, claimant contends that the State Controller's Office arbitrarily reimbursed some staffing costs in 1996-1997 and not in 1997-1998 and eliminated all costs claimed for ADS investment software costs with no explanation.

Claimant has included the costs for staff time and investment software necessary to "accumulate and compile" the data necessary to prepare the quarterly report of investments including the assurance that the county has enough cash flow to meet the next six months expenditures. Claimant contends that in order to comply with Government Code section 53646, the County must perform the following activities:

- Accumulate, compile and report data from transactions occurring throughout the reporting period for the County's managed investment pool;
- Track investments on a daily basis in order to produce a comprehensive cash flow analysis to determine if expenditure requirements could be met for the next six months following the filing of the report;
- Perform daily investment data input, monitoring and analysis in order to report securities held throughout the reporting period; and,
- Maintain subsidiary ledgers in order to compile the information required in the quarterly investment report.

In addition, the claimant is seeking reimbursement for preparing monthly reports of investments, as required by the County's Investment Policy.

Claimant further contends that the following staffing is necessary to "accumulate and compile" the data necessary to prepare the report of investments as required by section 53646:

1. Accounting Officer III: 40% Approximately 8 days per month is spent on reviewing the Monthly Report of Investments, reviewing the daily trade ticket packages, reviewing the daily input into the ADS system and resolving any investment issues.
2. Fiscal Officer I: 25% Approximately 5 days per month is spent preparing certain schedules for the Monthly Report of Investments, reviewing the daily trade ticket packages for compliance issues, reviewing the daily input into the ADS system, and resolving securities issues.
3. Accounting Officer I: 50% Entire duties are within the investment area. Approximately half of the month is spent on daily review of input, review of

¹⁸ Incorrect Reduction Claim of the County of Los Angeles submitted on August 31, 2000, Exhibit C, page 119 to 778. Additional comments submitted by Claimant on: January 16, 2001, attached as Exhibit E, page 789; February 28, 2001, attached as Exhibit G, page 839; April 12, 2001, attached as Exhibit I, page 863; and, October 17, 2001, attached as Exhibit L, page 985.

compliance with investment guidelines, earnings and securities research and reconciliations, market valuation research, preparing schedules for the Monthly Report of Investments, and reviewing accounting documents.

4. Assistant Data Systems Analyst: 75% Approximately three-fourths of the month is spent on daily monitoring input of investments, performing and researching market valuations, investigating securities issues, running daily reports, preparing certain schedules for Monthly Report of Investments, and monitoring the ADS system.
5. Assistant Operations Chief: 25% Approximately 5 days per month is spent on PSI Earnings Reconciliation, PSI securities research and daily ADS system monitoring to ensure the integrity of the data and system.
6. Accountant III: 100% Entire duties revolve around daily review of purchases input, calculation of next day maturities, monitoring of securities, running of system and all related investment reports, and preparing accounting documents.
7. Account Clerk I: 80% Majority of time is spent on daily trade ticket input into the ADS system, and performing clerical support for all accounting functions.¹⁹

State Controller's Office Position²⁰

The State Controller's Office contends, "...that costs associated with the implementation of the local governmental agencies investment policies (i.e. daily tracking) are not a part of the reimbursable state mandate." The State Controller's Office contends that:

- Daily tracking or its equivalent was, and is required by other sources (i.e., Government Code section 27000, et seq.);
- Any requirement to conduct daily tracking and the use of subsidiary ledgers comes from pre-existing law and is therefore not a reimbursable activity;
- The fiduciary duty (which requires that the treasurer exercise care in the handling of the public's money) may require claimant to conduct daily tracking; however, it is not a state-mandated, reimbursable activity;
- The necessity for daily tracking comes from business concerns, not Government Code section 53646; thus, daily tracking is not a reimbursable activity; and,
- The use of investment software is not mandated by either the test claim statute or the parameters and guidelines.

On April 2, 2010, the State Controller's Office filed comments concurring with the revised draft staff analysis.²¹ The Controller's Office further states the following:

¹⁹ Exhibit C, page 151.

²⁰ State Controller's Office comments submitted on: December 5, 2000, attached as Exhibit D, page 779; January 17, 2001, attached as Exhibit F, page 801; March 16, 2001, attached as Exhibit H, page 861; September 21, 2001, attached as Exhibit J, page 873; and, October 12, 2001, attached as Exhibit K, page 875.

²¹ Exhibit U.

If the draft staff analysis is approved as final by the Commission, the SCO will reinstate the county's claim for the costs of the salaries and benefits to perform the reimbursable activities required to prepare and render the quarterly reports of investment. In addition, the SCO will reinstate the claim for the ADS software in an amount equal to the pro rata costs directly related to the reimbursable activities for preparing and rendering quarterly reports of investment.

The time consumed by the county to perform the reimbursable activities for the quarterly reports of investment and the pro rata costs of the ADS software cannot be determined from the claims submitted to the SCO. In order for the appropriate reimbursable amounts to be reinstated, the county must provide supporting documentation for further review.

Department of Finance's Position

The Department of Finance filed comments concurring with the revised draft staff analysis. Finance states that it concurs for the following reasons:

1. The Controller would have an opportunity to review the audit disallowances based on the Commission findings which clarified that activities related to "accumulating and compiling data necessary to prepare the quarterly reports and rendering to local agencies" and prorated investment costs are reimbursable.
2. The claimant may resubmit the necessary source documents supporting the time spent on reimbursable activities based on the Commission's findings.²²

DISCUSSION

Government Code section 17561, subdivision (b), authorizes the State Controller's Office to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the State Controller's Office determines is excessive or unreasonable.

Government Code Section 17551, subdivision (d), requires the Commission to hear and decide a claim that the State Controller's Office has incorrectly reduced payments to the local agency or school district. That section states the following:

[The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph \(2\) of subdivision \(b\) of Section 17561.](#)

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission's regulations requires the Commission to send the Statement of Decision to the State Controller's Office and request that the costs in the claim be reinstated.

²² Exhibit V.

Issue I: Did the State Controller’s Office incorrectly reduce the costs for the salaries and benefits of County employees to accumulate and compile the data necessary to prepare the quarterly report of investments and to render the reports to the chief executive officer, the internal auditor, and the legislative body of the local agency?

A. The State Controller’s Office incorrectly reduced the costs for salaries and benefits

The parameters and guidelines, and claiming instructions for this program allow reimbursement to accumulate and compile the data necessary to prepare the quarterly reports of investment and to render the reports to the local agency. As indicated by the plain language of Government Codes section 53646, as amended by the test claim statutes, the quarterly investment report shall include the following information:

1. Type of investment, issuer, date of maturity, par and dollar amount invested on all securities, investments and moneys held by the local agency.
2. Description of any of the local agency's funds, investments, or programs, that is under the management of contracted parties, including lending programs.
3. Current market value as of the date of the report, and source of this same valuation of all securities held by the local agency, and under management of any outside party that is not also a local agency or the State of California Local Agency Investment Fund.
4. Statement that the portfolio is in compliance with the statement of investment policy, or the manner in which the portfolio is not in compliance.
5. Statement denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may not be available.

The reimbursement claims filed by the County include costs for employee time to accumulate, compile, and render the report of investments. The County’s reimbursement claim for fiscal year 1996-1997 includes costs for salaries and benefits of seven (7) employees (Assistant Operations Chief, Accounting Officer III, Fiscal Officer 1, Accounting Officer 1, Assistant Data Systems Analyst, Accountant III, and an Account Clerk I) to accumulate, compile, and render the report of investments for 7,055 hours in the amount of \$215,901. The claim for salaries and benefits was reduced by the Controller’s Office to \$4,662. The State Controller’s Office allowed reimbursement for four (4) of the seven (7) employees claimed. The four employees are identified on the claim as having worked on the “Report of Investments.” The Controller’s Office multiplied the salaries and benefits of the four employees by 32 hours for the year, or eight (8) hours per employee per quarter to perform the mandated duties. The Controller’s Office eliminated and reduced to \$0 all costs claimed for the Assistant Operations Chief, the Accountant III, and the Account Clerk I – staff members not expressly identified on the claim as having worked on the “Report of Investments.”

In the reimbursement claim for fiscal year 1997-1998, salary and benefit costs were claimed for seven (7) employees to perform the report of investment activities in the amount of \$218,019. The Controller’s Office reduced the salary and benefit costs to \$0. Some of the staff costs claimed are the salary and benefits of staff members listed as working on the “Report of Investments.”

For the reasons below, the reduction by the Controller's Office of salary and benefit costs is arbitrary, not based on the parameters and guidelines, and not based on any evidence in the record. In this respect, staff finds that the reductions of salary and benefit costs are incorrect.

For the 1996-1997 reimbursement claim, the Controller approved reimbursement based on a unit time of eight hours for the four employees that worked on the "Report of Investments." At the time the parameters and guidelines were adopted in 1997, the Commission had the authority to adopt a uniform allowance in lieu of requiring actual cost claims for time spent on a mandated activity for inclusion in the parameters and guidelines.²³ The parameters and guidelines, however, do not include a uniform allowance for time spent accumulating and compiling data, and rendering the quarterly report of investments. Rather, Section VI of the parameters and guidelines (Claim Preparation) allows reimbursement for the actual costs of salaries and benefits to perform the mandated activities. The parameters and guidelines state that "claimed reimbursement for employee costs should be supported by name, position, productive hourly rate, hours worked, fringe benefits amount, and a brief description of assigned unit and function relative to the mandate." Pursuant to Government Code section 17558, as the statute existed in 1997²⁴ and today, the claiming instructions prepared by the Controller's Office are required to be derived from the adopted parameters and guidelines. Thus, the Controller's reduction of staff time to a unit of eight hours for the four employees that worked on the "Report of Investments" in fiscal year 1996-1997 is not consistent with the parameters and guidelines.

Moreover, reducing employee time to \$0 for fiscal year 1997-1998 is not consistent with the evidence in the record. The County's reimbursement claim for fiscal year 1997-1998 is filed under penalty of perjury and shows that the Accounting Officer III, Fiscal Officer I, and Assistant Data Systems Analyst worked on the "Report of Investments." Pursuant to the mandate, the County is required to report on a quarterly basis the type of investments held, a statement whether the portfolio is in compliance with the statement of investment policy, and a statement denoting the ability of the local agency to meet the pool's expenditure requirements for the next six months. In addition, the reduction does not take into account the County's large investment portfolio. In 1998, approximately 180 local agencies participated in the County's investment pool, with a portfolio of approximately \$ 9 billion.²⁵ The requirements of the test claim statute and the evidence in the record do not support a reduction of salaries and benefits to \$0.

Finally, the Controller's Office admits that the dollar amount reductions to employee time were arbitrary. At the hearing on this matter in April 2002, the Controller's representative on this claim testified as follows:

Our office has never denied that a quarterly report is a mandate. It's a new activity that wasn't required before. And, as far as the issue of the actual reductions that were made, in a sense, that's a distractor [sic], because we've

²³ Government Code section 17557, subdivision (b) (as amended by Stats. 1995, ch. 945) stated the following: "In adopting parameters and guidelines, the commission may adopt an allocation formula or uniform allowance which would provide for reimbursement of each local agency or school district of a specified amount each year."

²⁴ Former Government Code section 17558, as amended by Statutes 1996, chapter 45, operative on July 1, 1996.

²⁵ Exhibit M, Report by Conny Jamison, consultant.

never really contested that the reductions were perfectly accurate, that there is certainly a degree of arbitrariness.

And I think when you look at it from the perspective of those folks who had to analyze the claim, they were presented with what I think we could call – at least potentially call – a kitchen sink claim. Everything was claimed: things that we did not believe were reimbursable and things that did appear to be reimbursable.

We could have taken a very aggressive approach and simply said: The documents don't support the claim. They don't distinguish between what we believe is reimbursable and not and pay nothing. They chose to take a middle ground. And, obviously, that involves some arbitrariness. But, in the end, I think that's a red herring, because we get back to the basic question of whether daily or every other day, frequent data input and data management is covered under the mandate or whether it derives from some other source.²⁶

Accordingly, staff finds that the State Controller's Office incorrectly reduced the salary and benefit costs for fiscal years 1996-1997 and 1997-1997.

B. But the County's reimbursement claims contain costs for activities that go beyond the scope of the mandate and are not reimbursable

Staff finds, however, that the County's reimbursement claims contain costs for activities that go beyond the scope of the mandate and, thus, are not reimbursable.

Claimant contends that in order to comply with Government Code section 53646, the County must perform the following activities:

- Render the report on investments on a *monthly* basis;
- Accumulate, compile and report data from transactions *occurring throughout the reporting period*;
- Track investments on a *daily basis* in order to produce a comprehensive cash flow analysis to determine if expenditure requirements could be met for the next six months following the filing of the report;
- *Perform daily investment* data input, monitoring and analysis in order to report securities held throughout the reporting period; and,
- *Maintain subsidiary ledgers* in order to compile the information required in the quarterly investment report.

Thus, the reimbursement claims filed by the County include costs for employees to:

- Perform daily download.
- System maintenance.
- Earnings Reconciliations.
- Monitor daily compliance with investment policy.
- Compile monthly report of investments.

²⁶ Exhibit Q, Transcript, April 25, 2002 Commission hearing, page 30, lines 9-25, page 31, lines 1-6.

- Daily market pricing.
- Daily trade ticket input.
- Generate daily reports, accounting records, data backup.
- Create various accounting records.

It is true that the County is required to perform the above activities pursuant to the County’s own investment policy.²⁷ The County’s investment policy states that the Treasurer and Tax Collector shall provide to the Board of Supervisors and County Treasury Oversight Committee a monthly report consisting of “*all investments*” detailing each type, issuer, date of maturity, par value, market value, and source of the market valuation and historical cost. The County’s policy also requires the Investment Office or the Compliance Auditor to review “all investment transactions” to assure compliance with the investment policy.²⁸ The County’s policy further requires that the report be made monthly by stating that:

The Pooled Surplus Investment Portfolio (PSI) “revenue/loss distribution will be *performed monthly*, net of administrative costs authorized by Government Code section 27013 which includes employee salaries and benefits and services and supplies, for investing, depositing, or handling funds, and the distribution of interest income, based on the PSI participants’ average daily fund balance as recorded on the Auditor-Controller’s accounting records. Administrative costs shall be deducted from the monthly PSI revenue/loss distribution on the basis of one-twelfth of the budgeted costs and adjusted to actual cost.” (Emphasis added.)²⁹

In addition, the County’s policy states the following:

... Short term liquidity SHALL further be maintained and *adjusted monthly* so that sufficient anticipated cash is available to fully meet unanticipated withdrawals of discretionary deposits, adjusted for longer term commitments, within ninety days.

Such liquidity SHALL be *monitored where, at the beginning of each month*, the par value for maturities in the next ninety days plus projected PSI deposits for ninety days, divided by the projected PSI withdrawals for ninety days plus discretionary PSI deposits is equal to or greater than one. ... (Emphasis added.)³⁰

Although the investment activities identified by the County are required by local policy, the issue is whether these activities are mandated by the state and reimbursable under the test claim statute, the Statement of Decision, and the parameters and guidelines.³¹

²⁷ Exhibit C, pages 490-507.

²⁸ Exhibit C, page 493.

²⁹ Exhibit C, page 491.

³⁰ Exhibit C, page 492.

³¹ In this respect, comments filed by the County and the staff analysis prepared on this incorrect reduction claim for the April 2002 Commission hearing incorrectly framed some of the issues as determining the activities that were “reasonable methods of complying with the mandate.” pursuant to section 1183.1 of the Commission’s regulations. The Commission, however, no longer has jurisdiction to exercise discretion to add reimbursable activities to the parameters and

Generally, the same rules of construction and interpretation that apply to statutes will govern the construction and interpretation of an administrative agency's rules, such as the parameters and guidelines.³² The interpretation of an administrative agency rule, like the parameters and guidelines, is a question of law.³³ Under the rules of statutory construction, when the language of an administrative agency's rule, such as the parameters and guidelines, is plain, the court is required to enforce the provisions according to the terms of the document. The California Supreme Court determined that:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.]³⁴

Moreover, the language of the parameters and guidelines must be construed in the context of the entire statutory scheme in which the test claim statute is a part, so that every provision of the statutory scheme may be harmonized and have effect.³⁵ The court may not disregard or enlarge the plain provisions of the administrative rule, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the court is prohibited from writing into an administrative rule, by implication, express requirements that are not placed in the law.³⁶ In addition, it is presumed that the administrative agency, like the Commission when it adopted the parameters and guidelines, did not adopt a rule that alters or enlarges the terms of a legislative enactment.³⁷

Applying these rules of construction, staff finds that some of the activities and costs claimed by the County go beyond the scope of the test claim statute, the Statement of Decision, and the parameters and guidelines.

1. Rendering the report of investments on a monthly basis is not reimbursable

The claimant contends that rendering the report of investments on a monthly basis is reimbursable.

The finding in the Statement of Decision, however, is that Government Code section 53646, subdivisions (b) and (e), require the treasurer or chief fiscal officer to render a *quarterly* report of investments, as specified, to the chief executive officer, the internal auditor, and the legislative body of the local agency. Subdivision (d), which states that "[t]he legislative body of a local agency *may* elect to require the report specified in subdivision (b) to be made on a monthly basis

guidelines. The issue is what the Commission intended when it adopted the parameters and guidelines in 1997.

³² *Cal. Drive-in Restaurant Ass'n v. Clark* (1943) 22 Cal.2d 287, 292.

³³ *Culligan Water Conditioning v. State Board of Equalization* (1976) 17 Cal.3d 86, 93.

³⁴ *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

³⁵ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781-782.

³⁶ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

³⁷ *Wallace v. State Personnel Board* (1959) 168 Cal.App.2d 543, 547.

instead of quarterly," was not pled in this test claim and does not require monthly reports. Although county treasurers prepare "monthly reports of transactions" for boards of supervisors pursuant to Government Code section 53607, section 53607 was not pled in the *Investment Reports* test claim. Thus, there is no mandate to render the report on a monthly basis. The activity mandated by the plain language of the test claim statute, as identified in the Statement of Decision and parameters and guidelines, is to render four quarterly reports per year.

This conclusion is supported by the legislative history of the test claim statute. The report prepared by the Task Force on Local and State Investment Practices, which recommended the amendment to Government Code section 53646 and is cited in the analysis prepared by the Senate Local Government Committee for the test claim statute, recognized that "[m]ore frequent reporting of market value may be preferable to quarterly reporting, but the Task Force is concerned that mandating reports more frequently than quarterly may be burdensome and costly."³⁸ The Task Force Report further states the following:

Legislation adopted ten years ago (after San Jose suffered big investment losses) required treasurers to report monthly to local officials about their investments. ...

In making Recommendation 1 [to require the quarterly report of investments], the Task Force recognizes that the local agency costs of state-mandated programs can be recovered from the State. Costs for the prior legislation, which required monthly reports, were approximately \$5.5 million for the initial set-up year, and approximately \$2.5 million per year thereafter. *By mandating quarterly (rather than monthly) reports, and taking into account the ready availability of market valuation information for most securities from custodial banks without additional charges, costs should not significantly exceed costs under the prior legislation and seem warranted to provide reasonable oversight over the investment of taxpayer funds.*" (Emphasis added.)³⁹

The conclusion that monthly reports of investments are not mandated is further supported by the Commission's analysis and conclusion in the 2003 amendment to the parameters and guidelines for this program.⁴⁰ The Commission clarified that "accumulating and compiling data necessary to prepare the monthly reports of investment transactions pursuant to Government Code section 53607, or any other monthly investment reports," was not reimbursable. Although the period of reimbursement for the parameters and guidelines amendment is effective for costs incurred beginning in fiscal year 1998-1999 (one and two years after the fiscal years at issue in this incorrect reduction claim), the Commission's analysis and findings can be used to determine what the Commission intended when it adopted the parameters and guidelines in 1997 because the parameters and guidelines amendment simply clarified the mandated activities. Pursuant to the rules of statutory construction, a clarification of existing law may be applied to transactions predating its enactment without being considered a retroactive application of the law. The

³⁸ Exhibit L, Task Force Report, page 997; Exhibit L, page 1014, Analysis of Senate Committee on Local Government, March 30, 1995, Assembly Bill 564 (1995-96 Leg. Sess.).

³⁹ *Id.* at page 998.

⁴⁰ Exhibit S, adopted analysis and parameters and guidelines amendment for *Investment Reports* program.

clarified law is merely a statement of what the law has always been.⁴¹ In this case, the parameters and guidelines amendment was merely a clarification of what the reimbursable activities have always been.

Accordingly, staff finds that accumulating and compiling data necessary to render the report of investments pursuant to Government Code section 53646 on a monthly basis is *not* reimbursable.

2) Daily investment activities are not reimbursable

The County contends that daily investment activities are required to render the report of investments. The County states that:

The majority of time spent by County staff is spent on daily transactions and input accounting, required for investment reporting pursuant to the subject law. Data is processed, reports are printed, securities are market priced, maturities are calculated, transactions are reconciled to custody reports, and discrepancies are researched and corrected.⁴²

Thus, the County believes it should be reimbursed for the following activities:

- Accumulate, compile and report data from transactions *occurring throughout the reporting period* for the County's managed investment pool;
- Track investments on a *daily basis* in order to produce a comprehensive cash flow analysis to determine if expenditure requirements could be met for the next six months following the filing of the report;
- *Perform daily investment* data input, monitoring and analysis in order to report securities held throughout the reporting period; and,
- *Maintain subsidiary ledgers* in order to compile the information required in the quarterly investment report.

The County's reimbursement claims include costs to perform daily download; system maintenance; earnings reconciliations; monitor daily compliance with investment policy; daily market pricing; daily trade ticket input; generate daily reports, accounting records, data backup; and create various accounting records.

These activities, however, go beyond the scope of the mandate and are not reimbursable. The plain language of Government Code section 53646, the Statement of Decision, and the parameters and guidelines do not require daily tracking, inputting of investment data, implementation of the County's investment policy, or other investment activities. Rather, Government Code section 53646, subdivision (b), requires the treasurer or chief financial officer to prepare and render a quarterly report within 30 days following the end of the quarter. The report shall include the investments and money held by the local agency. With respect to securities held by the local agency under the management of an outside party that is not the local agency or the State of California Local Agency Investment Fund, the report shall include a current market value as of the date of the report. This statutory language is different than former

⁴¹ *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471, quoting *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243; *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, 603.

⁴² Exhibit C, pages 149-150, "Report" filed by the County.

Government Code section 53646 enacted in 1984, that sunsetted in 1991, which required monthly reports of investments and a *detailed monthly report of transactions* involving repurchase and reverse purchase agreements.⁴³ Although a detailed “report of transactions” for the reporting period was required by the 1984 statute, it is not required by test claim statute. The mandate here is to report on *investments held* at the end of the reporting period. When different words and phrases are used by the Legislature in the same statutory scheme, it is presumed the Legislature intended a different result.⁴⁴

Further, the Commission expressly denied the request for reimbursement for the daily activity of maintaining subsidiary ledgers when it adopted the parameters and guidelines in November 1997.⁴⁵ As reflected in the analysis adopted by the Commission, the claimant requested reimbursement for:

Subsidiary ledger of investments – cost to input transactions of various reports to be included in the investment report. Costs to reconcile the subsidiary ledger to the control accounts, cost to update any subsidiary ledger and make necessary adjustments discovered during reconciliation process, and cost to adjust the subsidiary ledger to market value.⁴⁶

The Commission denied these activities and adopted the following finding:

There is disagreement on the issue of whether local entities are entitled to reimbursement for use of “subsidiary ledgers of investments.” Government Code section 53646, subdivision (b)(4), states: “In the quarterly report, a subsidiary ledger may be used in accordance with accepted accounting practices.” The Department of Finance recommended deletion of claimant’s proposed language regarding subsidiary ledgers. Government Code section 53646, subdivision (b)(4) authorizes but does not require the use of subsidiary ledgers. Therefore, it is not a mandated activity. However, staff concludes that if “subsidiary ledgers” are necessary to “accumulate and compile data necessary to prepare the quarterly report of investments” under section 53646, subdivision (b)(1), (2), and (3), and/or subdivision (e), it is reimbursable.^{47, 48}

Despite the plain language of the statute and the findings adopted by the Commission in November 1997, the County argues that daily investment monitoring and compliance activities are “necessary” in order to make the statements required by the test claim statute to be included

⁴³ Exhibit W.

⁴⁴ *Briggs v. Eden Council for Hope and Opportunity* (1999) 19 Cal.4th 1106, 1117.

⁴⁵ Exhibit C, pages 351 - 363, the staff analysis for Item 3, Proposed Parameters and Guidelines, adopted on November 20, 1997.

⁴⁶ Exhibit C, pages 357-358.

⁴⁷ Exhibit C, page 356.

⁴⁸ See also, transcript of the November 20, 1997 Commission hearing, Exhibit G, pages 856-857, where the Commission’s former Chief Legal Counsel explained that if a subsidiary ledger is necessary to accumulate and compile data necessary for the report of investment, it would be “subsumed” within the reimbursable activity to accumulate and compile the data, and would not stand on its own as a reimbursable activity.

in the investment report that the portfolio is in compliance with the statement of investment policy, or the manner in which the portfolio is not in compliance, and denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may not be available. The Commission considered these arguments when it addressed the request to amend the parameters and guidelines in 2003, and denied the requests.⁴⁹ For purposes of these two statements that are required to be included in the quarterly investment report, the Commission clarified the mandate as follows:

Determining if, *on the last day of each quarter*, the portfolio complies with the statement of investment policy, and providing an explanation if the portfolio does not comply. (Gov. Code, § 53646, subd. (b)(2).)

Compiling the cash flow information necessary to provide a statement, and any required explanation, denoting the local agency's ability to meet its pool's expenditure requirements for the next six months. Cash flow information needed to provide this statement includes forecasted expenditure requirements and non-investment revenue, plus investment revenue anticipated from securities *held at the end of the quarter*. (Gov. Code, § 53646, subd. (b)(3).)

The Commission also clarified that the following activities are not reimbursable:

- a. Duplicate entry of investment transactions (type of investment and issuer, date of maturity, and par and dollar amount invested) into custodian bank records or other databases.
- b. Producing and presenting reports of transactions related to securities not held at the end of the quarter.
- c. Determining if investment transactions related to securities not held at the end of the quarter comply with the investment policy.

As indicated above, the Commission's clarification of existing law may be applied to reimbursement claims for costs that predate the parameters and guidelines amendment. The Commission's clarification is merely a statement of what the law has always been.⁵⁰

Finally, these legal conclusions are supported by the report prepared by Conny Jamison, the consultant retained by the Commission for this item.⁵¹ Her report states in relevant part the following:

The County should be reimbursed for the costs of ascertaining whether their portfolio is in compliance with its investment policy, which the Treasurer is required to affirm under Section 53646. I do not believe, however, that they should be reimbursed for the cost of ascertaining whether *every transaction* is in compliance with their policy. While such care may be both prudent and conservative, Government Code Section 53646 (b)(2) requires only that, "The

⁴⁹ Exhibit S, adopted staff analysis for parameters and guidelines amendment, pages 15, 21-26.

⁵⁰ *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471, quoting *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243; *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, 603.

⁵¹ Exhibit M.

quarterly report shall state compliance of the portfolio to the statement of investment policy ...”

It is my opinion that the use of the words “portfolio” in conjunction with “the quarterly report” implies that the statement refers simply to the portfolio which accompanies the report, which is the portfolio as of the last day of the reporting period. This is a standard convention in the industry, and even Los Angeles county does not include 20+ separate portfolios (one for each day of the month) with its monthly report. I do not agree with the County’s position that the statement of compliance of CGC Section 53646 applies to every transaction during the reporting period.”

Thus, staff finds that the daily investment activities claimed by the County are not reimbursable.

Accordingly, the following activities performed by County employees, as identified in the reimbursement claims for fiscal years 1996-1997 and 1997-1998 are *not* reimbursable:

- Perform daily download.
- System maintenance.
- Earnings Reconciliations .
- Monitor daily compliance with investment policy.
- Compile monthly report of investments.
- Daily market pricing.
- Daily trade ticket input.
- Generate daily reports, accounting records, data backup.
- Create various accounting records.

3) Reinstatement of costs for salaries and benefits

Pursuant to section 1185.7 of the Commission’s regulations, if the Commission determines that a reimbursement claim has been incorrectly reduced, the Commission is required to send the Statement of Decision on the incorrect reduction claim to the State Controller’s Office and request that the costs in the claim be reinstated.

In this case, staff finds that the State Controller’s Office incorrectly reduced the reimbursement claims for salaries and benefits. However, the reimbursement claims include activities and costs that are not reimbursable, and were filed based on the County’s policy of rendering 12 monthly investment reports rather than four quarterly reports. Thus, not all the costs claimed by the County for salaries and benefits are reimbursable and can be reinstated.

The costs that should be reinstated to the County are identified in the amendment to the parameters and guidelines that clarified the reimbursable activities for the *Investment Reports* program as follows:

- a. For each investment that is held on the last day of each quarter and included in a quarterly report of investments, the following activities are eligible for reimbursement:

1. One-time data entry into investment reporting application or software:
 - the type of investment and issuer,
 - date of maturity, and
 - par and dollar amount invested.
 2. Providing a description of any of the local agency's funds, investments or programs, including lending programs that are under the management of contracted parties.
 3. Obtaining and reporting current market value as of the date of the quarterly report, and reporting the source of this valuation for all investments held by the local agency and under management of any outside party that is not also a local agency or the State of California Local Agency Investment Fund.
 4. Providing required copies of the most recent statement(s) received by a local agency from the Local Agency Investment Fund, the Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, a county investment pool, or any combination of these. [Unit Cost Per Page.]
 5. Determining if, on the last day of each quarter, the portfolio complies with the statement of investment policy, and providing an explanation if the portfolio does not comply. (Gov. Code, § 53646, subd. (b) (2).)
- b. Compiling the cash flow information necessary to provide a statement, and any required explanation, denoting the local agency's ability to meet its pool's expenditure requirements for the next six months. Cash flow information needed to provide this statement includes forecasted expenditure requirements and non-investment revenue, plus investment revenue anticipated from securities held at the end of the quarter (Gov. Code, § 53636, subd. (b)(3)).

The County's claims indicate that some of the County employees worked on the "report of investments." However, it cannot be determined from the claims how long it took those employees to perform the reimbursable activities. Thus, staff recommends that the Commission remand the reimbursement claims back to the State Controller's Office to further review the County's claims for the costs of the salaries and benefits of County employees to perform the reimbursable activities required to render the quarterly report of investments and, in accordance with the Commission's decision on this incorrect reduction claim, to reinstate the costs that are eligible for reimbursement. Pursuant to Section VII of the parameters and guidelines, all costs claimed by the County shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the mandate. All documentation in support of claimed costs shall be made available to the State Controller as may be requested.

Issue 2: Did the State Controller's Office incorrectly reduce the costs for the ADS investment software?

The County's reimbursement claim for fiscal year 1996-1997 identifies ongoing costs incurred for ADS investment software in the amount of \$27,773. The reimbursement claim for fiscal year 1997-1998 identifies costs incurred for ADS investment software in the amount of \$44,279. The State Controller's Office reduced the claims for the ADS investment software to \$0 on the ground that the cost is not mandated.

However, section VI, B of the parameters and guidelines, Claim Preparation, allows reimbursement for “all direct costs for materials, services and supplies which have been purchased, leased, consumed, or expended for purposes of compliance with the mandate.” Section VI, C allows reimbursement for the costs incurred for “contract services... for the development and operation of the mandated program.”

According to the consultant, Conny Jamison:

The County should be reimbursed for those ADS software expenses associated with the above activities, plus the cost of the pricing service. Such investment tracking software is absolutely essential to accurate and timely investment reporting, and the pricing service is necessary in order to comply with the requirement of Section 53646 to provide the current market value of investments held as of the date of the report. However, the County needs to specify what portion of their ADS costs are related to producing the investment reports. It is not clear whether they are claiming reimbursement for all ADS costs or just a pro-rata share.

(N)o large or even medium size agency could produce the required investment reports without such software. Even if it were possible to manually produce the information needed for the monthly reports, staff costs would far exceed the cost of the software.⁵²

Staff finds that the cost incurred for the ADS software is reimbursable in an amount equal to the pro rata cost that is directly related to the reimbursable activities identified under Issue 1 above; preparing and rendering a quarterly report of investments.

Thus, staff finds that the State Controller’s Office incorrectly reduced the County’s claims for ADS software costs and recommends that the Commission remand the reimbursement claims back to the State Controller’s Office to further review the County’s claims and to reinstate the ADS software costs that are eligible for reimbursement in accordance with the Commission’s decision on this incorrect reduction claim. Pursuant to Section VII of the parameters and guidelines, all costs claimed by the County shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the mandate. All documentation in support of claimed costs shall be made available to the State Controller as may be requested.

CONCLUSION

For the foregoing reasons, staff concludes that the State Controller’s Office incorrectly reduced the costs claimed by the County of Los Angeles in their reimbursement claims filed for the *Investment Reports* program for fiscal years 1996-1997 and 1997-1998.

Staff Recommendation

Staff recommends that the Commission adopt this analysis and remand the reimbursement claims back to the State Controller’s Office for further review and reinstatement of those costs that are eligible for reimbursement in accordance with the Commission’s decision on this incorrect reduction claim.

⁵² Jamison Report, Exhibit M, pages 1042-1043.