

**ITEM \_\_**  
**TEST CLAIM**  
**DRAFT STAFF ANALYSIS**

Title 5, California Code of Regulations, Section 59010  
California Community Colleges Budget and Accounting Manual, 2000 Edition  
*California Community Colleges Budget and Accounting Manual*  
03-TC-05

Santa Monica Community College District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This test claim addresses activities related to the preparation of financial reports and annual budgets in accordance with the 2000 edition of the California Community Colleges Budget and Accounting Manual (BAM).

**Procedural History**

This test claim was submitted to the Commission on September 12, 2003. Based on the filing date of September 12, 2003, the potential period of reimbursement for this test claim begins on July 1, 2002. The Commission did not receive comments on this test claim from any of the state agencies or interested parties.

**Prior Test Claim Decisions**

Claimant, Santa Monica Community College District, has submitted the following prior related test claims, which were consolidated for hearing: *Budget & Financial Reports* (97-TC-10); *Fiscal Management Reports* (97-TC-11); and *Financial & Compliance Audits* (97-TC-12).<sup>1</sup> These test claims alleged reimbursable state mandated costs for the activities performed by community college districts for periodically preparing and submitting various budget and fiscal

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<sup>1</sup> Education Code sections 84030, 84040 and 84040.5 as added or amended by Statutes 1977, chapters 36 and 936, Statutes 1978, chapter 207, Statutes 1979, chapter 221, Statutes 1980, chapter 884, Statutes 1981, chapters 470, 471, 930 and 1178, Statutes 1983, chapter 1206, Statutes 1984, chapters 609 and 1282, Statutes 1986, chapter 1486, Statutes 1987, chapter 1025, Statutes 1990, chapter 1372 and Statutes 1994, chapter 20; California Code of Regulations, Title 5, Sections 58300, 58301, 58303, 58304, 58305, 58306, 58307, 58308, 58310, 58311, 58312, 58314, 58316, 58318, 59100, 59102, 59104, 59106, 59108, 59110, 59112, and 59114; 1991 California Community Colleges Contracted District Audit Manual and subsequent revisions through June 1996 and 1993 California Community Colleges Budget and Accounting Manual and subsequent Accounting Advisories dated through May 30, 1997.

management reports to the state, and for engaging in annual financial and compliance audits. Prior editions of the BAM, including the 1993 edition, were pled in 97-TC-10.

At the February 28, 2002 hearing, the claimant withdrew all accounting and audit manuals from the test claim including BAM. On May 23, 2002, the Commission dismissed that portion of the consolidated test claim and, thus, the Commission has not issued any decisions on previous editions of the BAM.<sup>2</sup> The Commission denied the remaining statutes and regulations pled that relate to community college budgeting, finance, fiscal management and audits on the ground that they do not impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution:<sup>3</sup>

### **Positions of the Parties and Interested Parties**

#### Claimant's Position

Claimant alleges that the test claim regulation and alleged executive order to prepare financial reports that report actual and projected revenues and expenditures in accordance with the 2000 edition of BAM. Claimant alleges further, that these activities are new and subject to reimbursement under article XIII B, section 6 of the California Constitution.

#### Department of Finance's Position

Department of Finance (DOF) has not taken a position on this test claim.

#### California Community Colleges, Chancellor's Office

The California Community Colleges, Chancellor's Office (Chancellor's Office) has not taken a position on this test claim.

### **Commission Responsibilities**

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.<sup>4</sup>

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<sup>2</sup> Commission, withdrawal and dismissal statement of decision (97-TC-10, 97-TC-11, and 97-TC-12), adopted May 23, 2002.

<sup>3</sup> Commission, statement of decision (97-TC-10, 97-TC-11 and 97-TC-12), adopted March 28, 2002.

<sup>4</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4<sup>th</sup> 1802.

## Claims

The following chart provides a brief summary of the claims and issues raised by the claimant, and staff's recommendation.

Subject	Description	Issues	Staff Recommendation
California Code of Regulations, Title 5, Section 59010 and BAM, 2000 Edition.	Section 59010 requires community college districts to comply with the 2000 BAM. Since 1974, BAM has defined, established and maintained the budgeting and accounting procedures for California Community Colleges. The 2000 edition of BAM updates the 1993 BAM with technical and clarifying changes.	Claimant alleges this regulation and alleged executive order impose a reimbursable new program or higher level of service.	<i>Denied:</i> Staff finds that the requirement to comply with the BAM is not new and that the 2000 edition of BAM does not impose a state-mandated higher level of service when compared to prior law.

## Analysis

The requirement for community college districts to prepare standardized financial reports and annual budgets that report actual and projected revenues and expenditures in accordance with the BAM is not new. Education Code section 84030 has long required community college districts to comply with the BAM, and several prior editions of the BAM exist.

The 2000 edition of the BAM made some technical changes to the manual, but those changes are not substantive and do not increase the level of service required to be provided to the public. The following analysis compares the substantive chapters of the 2000 BAM (chapters 2 through 5) to those chapters in the BAM in effect immediately before the adoption of the 2000 edition (BAM, 1993 edition):

Chapter 2. Claimant alleges that chapter 2 requires for the first time that community college districts are to consolidate and report all accounts into one of three groups; government funds, proprietary funds, and fiduciary funds as specified. However, these requirements are contained in both the 1993 and 2000 editions of the BAM. The 1993 BAM provides the same information on fund structure for the governmental funds group, proprietary funds group, fiduciary funds group, account groups and special accounting applications. The 2000 BAM does add a statement to its discussion under special accounting applications that Government Code sections 53600 *et seq.* authorize the district to reinvest excess cash. It also states that the chief financial officer is required to annually render to the governing board of the district a statement of investment policy. However, this requirement is not new since it was already required by the law in effect immediately prior to the adoption of the 2000 BAM, Government Code section 53646(a)(2), which provided:

In the case of any other local agency,<sup>5</sup> 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.<sup>6</sup>

Chapter 3. Claimant alleges that chapter 3 requires community college districts, for the first time, to classify revenue and other financing sources by fund and by source, as specified. However, the 1993 and 2000 BAM are almost identical, with only minor technical changes in the federal revenues section. The changes include the elimination of one account number for an obsolete program, the addition of an account number for a new program, and the change in the title for a continuing program. This change in account numbers is minor and technical and does not change the basic duty (imposed by the federal government) to budget and account for the use of federal funds. Staff finds that these minor changes do not require community college districts to provide a state-mandated higher level of service.

Chapter 4. Claimant alleges that chapter 4 requires community college districts, for the first time, to classify expenditures by activity, to report the expenditures using a four digit account code, as specified, and to charge some activities to multiple funds. Claimant states that the major change from the pre-75 approach was the adoption of an activity-centered approach to classify and report expenditures. However, these are not new requirements. The 1974 BAM, like the 2000 BAM and the 1993 BAM before it, also required “an activity-centered approach to expenditure reporting which describes real resource requirements (faculty, supporting staff, supplies, etc.), their costs (objects of expenditure) and relative use in each of the major activities which describe community college operations.”<sup>7</sup> The 1993 BAM states the following:

In December 1973, the Board adopted the first California Community Colleges Budget and Accounting Manual. This document was a modification of the K-12 model with the addition of an activity-centered approach to expenditure reporting that described resource requirements and their direct cost, and the relative use in each of the major activities defined for community college operations. The manual established the basic standards for district use.<sup>8</sup>

Moreover, the activity-centered mode of accounting comports with the requirements of generally accepted auditing principles (GAAP), which accountants have long been

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<sup>5</sup> Note that pursuant to Government Code section 53630 as used in Article 2 (i.e. Gov. Code §§ 53630-53686) “‘Local Agency’ means a county city, city and county, including a chartered city or county, a community college district, or other public agency or corporation in this state.”

<sup>6</sup> Government Code section 53646(a)(2) as amended by Statutes 1998, chapter 1898 (AB 1898).

<sup>7</sup> BAM, January 1974, p. 1-1.

<sup>8</sup> BAM, 1993, p. 1.7.

required to follow. In addition, community colleges were required by prior federal law to undergo annual audits that demonstrate (among other things) that their budgets are in compliance with GAAP before the 2000 version of the BAM was adopted. Thus, reporting expenditures using an activity-centered approach is not new.

The 2000 edition of the BAM only made minor technical and clarifying changes to the explanatory language in chapter 4, and did not mandate an increased level of service for the public.

Chapter 5. Claimant alleges that chapter 5 requires community college districts, for the first time, to classify assets, liabilities, and equity items into account codes, as specified. These requirements, however, were also imposed by the 1993 BAM and are, therefore, not new. The only change to chapter 5 of the BAM, other than the expanded introductory remarks at the beginning of the chapter, are that the sections on “Fund Balance Reserved” and “Fund Balance Unreserved” from the 1993 BAM are consolidated under the single header “Fund Balance” and the former “Investment in General Fixed Assets” is called “Other Equity” in the 2000 BAM. These technical changes do not increase the level of service provided to the public.

Staff finds that, when compared to prior law, the requirements of Title 5, California Code of Regulations, section 59010 and the 2000 BAM do not impose a reimbursable state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

#### **Conclusion and Staff Recommendation**

Staff recommends the Commission adopt this staff analysis and deny this test claim.

## STAFF ANALYSIS

### Claimant

Santa Monica Community College District

### Chronology

- 09/12/2003 Claimant, Santa Monica Community College District, filed the test claim with the Commission on State Mandates (“Commission”)<sup>9</sup>
- 09/23/2003 Commission staff issued a completeness review letter for the test claim and requested comments from state agencies
- 10/14/2003 California Communities Colleges (CCC) requested an extension to file comments on test claim
- 10/17/2003 Commission staff granted CCC an extension to December 15, 2003 to file comments on the test claim
- 10/28/2003 Department of Finance (DOF) requested a three-month extension to file comments on test claim
- 10/17/2003 Commission staff granted DOF an extension to February 7, 2004 to file comments on the test claim
- 02/13/2004 DOF requested a 30-day extension to file comments on test claim
- 02/18/2004 Commission staff granted DOF an extension to March 19, 2004 to file comments on the test claim
- 03/17/2004 DOF requested a 30-day extension to file comments on test claim
- 03/19/2004 Commission staff granted DOF an extension to April 19, 2004 to file comments on the test claim
- 04/18/2004 DOF requested a 30-day extension to file comments on test claim
- 03/19/2004 Commission staff granted DOF an extension to May 18, 2004 to file comments on the test claim
- 06/09/2004 DOF requested a 90-day extension to file comments on test claim
- 06/14/2004 Commission staff granted DOF an extension to August 9, 2004 to file comments on the test claim
- 09/08/2004 DOF requested a 90-day extension to file comments on test claim
- 09/14/2004 Commission staff granted DOF an extension to December 9, 2004 to file comments on the test claim
- 12/21/2004 DOF requested a 90-day extension to file comments on test claim
- 12/28/2004 Commission staff granted DOF an extension to March 9, 2005 to file comments on the test claim

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<sup>9</sup> Based on the filing date of September 12, 2003, the potential period of reimbursement for this test claim begins on July 1, 2002.

03/14/2005    DOF requested a 90-day extension to file comments on test claim

03/17/2005    Commission staff granted DOF an extension to June 9, 2005 to file comments on the test claim

09/22/2005    DOF requested an extension to file comments on test claim

10/03/2005    Commission staff granted DOF an extension to December 1, 2005 to file comments on the test claim

02/03/2006    DOF requested an extension to file comments on test claim

02/07/2006    Commission staff granted DOF an extension to March 1, 2006 to file comments on the test claim

## **I. Introduction**

This test claim addresses activities related to the preparation of financial reports and annual budgets in accordance with the 2000 edition of the California Community Colleges Budget and Accounting Manual (BAM).

BAM facilitates compliance with these requirements by summarizing the state and federal legal and accounting requirements and providing for a uniform fund-structure, revenue and expenditure classifications, and other accounting procedures for the consistent and comparable reporting of financial data by all community college districts.<sup>10</sup> BAM is primarily written for individuals who work daily with the community college accounting system; however, the introduction chapter (Chapter 1) and the general section at the beginning of each of the other chapters have been written to assist those readers who may desire more general background information and do not contain substantive requirements.<sup>11</sup> Chapters 2-5 contain the substantive requirements for community college financial reports and annual budgets.

Section 59010 of the Title 5 regulations incorporates by reference and adopts as a regulation the 2000 version of the BAM, effective July 1, 2000.

### A. Overview of the Governance and Supervision of California Community Colleges

California community colleges were originally established as extensions of local high schools.<sup>12</sup> Beginning in 1907, high schools were authorized to provide courses that were equivalent to the first two years of a collegiate curriculum.<sup>13</sup> In 1917, community colleges were designated, along with high schools and technical schools, as part of the secondary school system of the state.<sup>14</sup>

Rapidly increasing enrollments and a need to differentiate the functions of the segments of higher education prompted the Legislature to request the preparation of a master plan for the development, expansion, and integration of the facilities, curriculum, and standards of higher education in community colleges, state colleges, the University of California, and other

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<sup>10</sup> BAM, 2000 Edition, p. 1.2.

<sup>11</sup> *Id.*, p. 1.3.

<sup>12</sup> Former Political Code section 1681, as added by Statutes 1907, chapter 69.

<sup>13</sup> *Ibid.*

<sup>14</sup> Former Political Code section 1720, as added by Statutes 1917, chapter 304.

institutions of higher education of the state.<sup>15</sup> A study titled “A Master Plan for Higher Education in California, 1960-75” (Master Plan) was prepared in 1959. The Master Plan recommendations were approved in principle by the affected governing boards of the higher education segments.

In 1960, legislation was enacted to implement some of the recommendations in the Master Plan, including the Donahoe Higher Education Act.<sup>16</sup> The Donahoe Higher Education Act addressed the mission and governance of California’s public higher education system.<sup>17</sup> The Donahoe Higher Education Act defined public higher education to include all public community colleges, state colleges, and the University of California.<sup>18</sup> However, the role of and services provided by community colleges in public education remained largely the same as under prior law.<sup>19</sup> In addition to delineating the role of community colleges in higher education, the Donahoe Higher Education Act assigned to the State Board of Education the duty to exercise general supervision over community colleges and to prescribe minimum standards for the formation and operation of community colleges.<sup>20</sup> In 1967, the Legislature transferred the supervision and the establishment of minimum standards for the community colleges from the State Board of Education to the Board of Governors of the California Community Colleges (Board of Governors) and the California Community Colleges Chancellor’s Office (Chancellor’s Office).<sup>21 22</sup>

Although primary authority over public education is vested in the Legislature, the Legislature has ceded substantial discretionary control to local school districts as authorized by the California Constitution.<sup>23</sup> In 1976, the Legislature utilized its authority under article IX, section 14 of the California Constitution to authorize community college districts to initiate and carry on any

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<sup>15</sup> Assembly Concurrent Resolution No. 88, Statutes 1959 (1959-1960 Reg. Sess.) resolution chapter 200, pp. 5769-5770.

<sup>16</sup> Education Code sections 66000 – 67400, formerly Education Code sections 22500-22705 (Stats. 1960, 1<sup>st</sup> Ex. Sess., ch.49); renumbered Education Code sections 66000 – 67007 (Stats. 1976, c. 1010).

<sup>17</sup> Former Education Code sections 22500-22705, as added by Statutes 1960, chapter 49.

<sup>18</sup> Former Education Code section 22500, *supra*.

<sup>19</sup> Former Education Code section 22651, as added by Statutes 1960, chapter 49, providing that community colleges are to “offer instruction through but not beyond the 14<sup>th</sup> grade level, which instruction may include, but shall not be limited to, ... the following categories: (1) standard collegiate courses for transfer to higher institutions; (2) vocational and technical fields leading to employment; and (3) general or liberal arts courses. Studies in these fields may lead to the associate in arts or associate in science degree.”

<sup>20</sup> Former Education Code sections 22650, as added by Statutes 1960, chapter 49.

<sup>21</sup> Former Education Code section 197, as added Statutes 1967, chapter 1549.

<sup>22</sup> The Chancellor’s Office is the administrative branch of the California Community Colleges system and is responsible for allocating state funding to the community colleges and districts. The Chancellor’s Office operates under the direction of the state chancellor who is guided by the Board of Governors.

<sup>23</sup> *Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4<sup>th</sup> 998, 1017.



program, activity, or to otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.<sup>24</sup> This general authority that is embodied in current Education Code section 70902 became known as the “permissive code” concept under which a district’s governing board can act under its general authority without specific statutory authorization.<sup>25</sup> While local districts possess great authority in the governance of community colleges, the state has maintained general supervision of the governance of community colleges.<sup>26</sup> Much of this supervision can be found in the title 5 regulations and related guidance documents, including the regulation and BAM pled in this test claim.

#### B. History of the Budget and Accounting Manual

Until 1973, community college accounting practices were governed by a publication of the State Department of Education: The California School Accounting Manual. In December 1973, the Board of Governors adopted the first BAM which was effective January 1, 1974. This document was a modification of the K-12 model with the addition of an activity-centered approach to expenditure reporting that described resource requirements and their direct cost, and the relative use in each of the major activities defined for community college operations. BAM established the basic accounting standards for district use.<sup>27</sup> Specifically, the 1974 BAM contained detailed lists and descriptions of funds, accounts, budget expenditure categories, college accounting principles and terminology, and classifications of instructional disciplines. Most significantly, the 1974 BAM, like the 2000 BAM, used “an activity-centered approach to expenditure reporting which describes real resource requirements (faculty, supporting staff, supplies, etc.), their costs (objects of expenditure) and relative use in each of the major activities which describe Community College operations.”<sup>28</sup> Generally, BAM summarizes and explains the many statutory, regulatory budgeting and accounting requirements imposed by the state and federal governments, and the generally accepted accounting principles (GAAP) as established by the Governmental Accounting Standards Board (GASB) to use in preparation of the annual budget and accounting of revenue and expenditures. BAM has been revised in 1983, 1985, 1993 and 2000.

#### C. Prior Test Claim Decisions

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<sup>24</sup> Former Education Code section 72233, as added by Statutes 1976, chapter 1010. See also, article IX, section 14 of the California Constitution, which provides, “The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.”

<sup>25</sup> *Barnhart v. Cabrillo Community College* (1999) 76 Cal.App.4th 818, 824-825.

<sup>26</sup> See Education Code section 70901.

<sup>27</sup> California Community Colleges *Budget and Accounting Manual* (1993), p. 1.7.

<sup>28</sup> California Community Colleges *Budget and Accounting Manual* (1974), p. 1-1.

The Commission has adopted prior final decisions related to the subject matter of this test claim. Claimant, Santa Monica Community College District, filed the following prior test claims, which were consolidated for hearing: *Budget & Financial Reports* (97-TC-10), *Fiscal Management Reports* (97-TC-11), and *Financial & Compliance Audits* (97-TC-12).<sup>29</sup> These test claims alleged reimbursable state mandated costs for the activities performed by community college districts for periodically preparing and submitting various budget and fiscal management reports to the state, and for engaging in annual financial and compliance audits. Prior editions of the BAM, including the 1993 edition, were pled in 97-TC-10.

The consolidated test claim was first presented at the January 24, 2002 Commission hearing.<sup>30</sup> The Commission continued the hearing to give the Commission additional time to consider the issues discussed at the hearing by claimant and the Department of Finance.<sup>31</sup> One of the issues at the January 2002 hearing was the possibility of a gap in time, which was later discovered not to exist, between Education Code sections repealed by Statutes of 1990, chapter 1372, and the adoption of corresponding regulations by the Community Colleges Board of Governors.

The staff recommendation for the consolidated test claim was to deny the portion of the test claim involving the 1991 and 1993 editions of BAM because prior law, Education Code section 84030, provided that community college districts must comply with the budget and accounting definitions, instructions, and procedures published in BAM.<sup>32</sup> Thus, the requirement that community college districts conduct their annual budget and accounting practices in accordance with BAM was not a new program or higher level of service. Staff also found that the 1993 manual was substantially similar to earlier versions. Moreover, staff found that the 1974 manual contained detailed lists and descriptions of funds, accounts, budget expenditure categories, college accounting principles and terminology, and classifications of instructional disciplines and found that therefore, these are not new.<sup>33</sup> Staff stated that technical changes to BAM do not constitute a new program or higher level of service, and do not make continued compliance with the entire BAM a reimbursable state mandate.<sup>34</sup> However, at the February 28, 2002 hearing, the

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<sup>29</sup> Education Code sections 84030, 84040 and 84040.5 as added or amended by Statutes 1977, chapters 36 and 936, Statutes 1978, chapter 207, Statutes 1979, chapter 221, Statutes 1980, chapter 884, Statutes 1981, chapters 470, 471, 930 and 1178, Statutes 1983, chapter 1206, Statutes 1984, chapters 609 and 1282, Statutes 1986, chapter 1486, Statutes 1987, chapter 1025, Statutes 1990, chapter 1372 and Statutes 1994, chapter 20; California Code of Regulations, Title 5, Sections 58300, 58301, 58303, 58304, 58305, 58306, 58307, 58308, 58310, 58311, 58312, 58314, 58316, 58318, 59100, 59102, 59104, 59106, 59108, 59110, 59112, and 59114; 1991 California Community Colleges Contracted District Audit Manual and subsequent revisions through June 1996; and 1993 California Community Colleges Budget and Accounting Manual and subsequent Accounting Advisories dated through May 30, 1997.

<sup>30</sup> Final staff analysis, *Budget & Financial Reports* 97-TC-10, p. 2.

<sup>31</sup> The Commission directed staff to prepare a worksheet outlining the issues remaining in contention prior to the February 28, 2002 Commission hearing.

<sup>32</sup> Final staff analysis (97-TC-10, 97-TC-11 and 97-TC-12).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

claimant withdrew all accounting and audit manuals from the test claim including BAM and, thus, the Commission did not decide the issue of whether the BAM was subject to reimbursement under article XIII B, section 6 of the California Constitution. On May 23, 2002, the Commission dismissed that portion of the consolidated test claim.<sup>35</sup>

The Commission denied the remaining statutes and regulations pled in that test claim on the ground that the budget, finance, fiscal management, audit and reporting requirements, including the requirement to comply with all provisions of the BAM, do not impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution.<sup>36</sup> The Commission concluded in that claim “that required use of the budget and accounting definitions, instructions, and procedures published in the community college Budget and Accounting Manual as described in Education Code section 84030 does not constitute a new program or higher level of service.”<sup>37</sup>

## **II. Positions of the Parties and Interested Parties**

### **A. Claimant’s Position**

Claimant alleges that the test claim regulation and alleged executive order require community college districts to prepare financial reports that report actual and projected revenues and expenditures in accordance with chapters 2 through 5 of the 2000 edition of BAM.<sup>38</sup> Claimant argues that the 2000 BAM added “an activity centered approach to expenditure reporting that describes resource requirements and their direct costs, and the relative use in each of the major activities defined for community college operations.”<sup>39</sup> Claimant is also requesting reimbursement for establishing policies and procedures and computerized and manual programs to report income and expenses pursuant to the BAM. Claimant alleges that these activities are new and subject to reimbursement under article XIII B, section 6 of the California Constitution.

### **B. Department of Finance’s Position**

DOF has not commented on this test claim.

### **C. California Community Colleges Chancellor’s Office**

The Chancellor’s Office has not commented on this test claim.

## **III. Discussion**

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of

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<sup>35</sup> Commission, statement of decision (97-TC-10, 97-TC-11 and 97-TC-12), adopted May 23, 2002.

<sup>36</sup> Commission, statement of decision (97-TC-10, 97-TC-11 and 97-TC-12), adopted May 23, 2002.

<sup>37</sup> *Id.*, p.p. 5-6.

<sup>38</sup> Claimant, test claim, p. 2.

<sup>39</sup> *Id.*, p. 3.

funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>40</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>41</sup>

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>42</sup>
2. The mandated activity either:
  - a. Carries out the governmental function of providing a service to the public; or
  - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>43</sup>
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>44</sup>
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>45</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>46</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>47</sup> In making its decisions, the Commission must strictly construe article XIII B,

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<sup>40</sup> *County of San Diego, supra*, 15 Cal.4<sup>th</sup> 68, 81.

<sup>41</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>42</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4<sup>th</sup> 859, 874.

<sup>43</sup> *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

<sup>44</sup> *San Diego Unified, supra*, 33 Cal.4<sup>th</sup> 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>45</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4<sup>th</sup> 1265, 1284; Government Code sections 17514 and 17556.

<sup>46</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code section 17551 and 17552.

<sup>47</sup> *County of San Diego, supra*, 15 Cal.4<sup>th</sup> 68, 109.

section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>48</sup>

**Issue 1: The test claim regulation and alleged executive order do not impose a state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.**

Claimant contends that the test claim regulation and alleged executive order requires community college districts to prepare financial reports that report actual and projected revenues and expenditures in accordance with chapters 2 through 5 of the 2000 edition of BAM.<sup>49</sup> Claimant alleges further that these activities are new and subject to reimbursement under article XIII B, section 6 of the California Constitution. Specifically, claimant argues that the 2000 BAM added “an activity centered approach to expenditure reporting that describes resource requirements and their direct costs, and the relative use in each of the major activities defined for community college operations.”<sup>50</sup> However, staff finds that the requirements of the test claim regulation and alleged executive order are not new, and that the technical amendments made to the 2000 BAM do not increase the level of service provided to the public. Thus, the test claim regulation and alleged executive order do not mandate a new program or higher level of service.

A. The requirement to comply with BAM is not new.

Claimant alleges the entire substantive portion of the 2000 edition of BAM (chapters 2-5) imposes requirements on community colleges, all of which are new and reimbursable. In support of this contention, claimant states the following:

Prior to 1975, there were no statutes, regulations or executive orders which required community colleges to prepare financial reports that reported actual and projected revenues and expenditures in accordance with the Budget and accounting Manual (2000 Edition) as published by the Board of Governors of the California Community Colleges.<sup>51</sup>

However, as shown below, the requirement to comply with BAM and to follow a standardized accounting system is not new.

The test claim regulation, title 5, California Code of Regulations, section 59010, adopts chapters 2 through 5 of the 2000 BAM, effective July 1, 2000, as a regulation and incorporates by reference all future revisions of the BAM. Section 59010 states the following:

(a) The Board of Governors hereby adopts and incorporates by reference, into this provision of the California Code of Regulations, the California Community Colleges Budget and Accounting Manual chapters 2 through 5 as revised September 1999. This section shall become operative July 1, 2000.

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<sup>48</sup> *County of Sonoma, supra*, 84 Cal.App.4<sup>th</sup> 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4<sup>th</sup> 1802, 1817.

<sup>49</sup> Claimant, test claim, p. 2.

<sup>50</sup> Claimant, test claim, p. 3.

<sup>51</sup> Claimant, test claim, p.2.

(b) Revisions made to the Budget and Accounting Manual after July 1, 2000 shall be considered incorporated by reference into this provision when they have been adopted by the Board.

This regulation, however, merely helps to implement a pre-existing statutory requirement for community college districts to comply with the BAM.

Since last amended in 1990, Education Code Section 84030 has required community college districts to comply with the budget and accounting definitions, instructions, and procedures published in BAM. That section states in pertinent part, the following:

The accounting system including the uniform fund structure used to record the financial affairs of any community college district shall be in accordance with the definitions, instructions, and procedures published in the California Community Colleges Budget and Accounting Manual as approved and furnished by the Board of Governors.

Education Code section 84030 as amended by Statutes 1990, chapter 1372 was the subject of a prior test claim decision of the Commission and was denied.<sup>52</sup> The Commission, in its statement of decision on *Community College District Budget and Financial Reports, Fiscal Management Reports, and Financial Compliance Audits* (97-TC-10,11 and 12), found that the requirements of Education Code section 84030 had been required since before January 1, 1975, in a prior edition of the BAM and were not new.<sup>53</sup> The statement of decision states the following:

The California Community Colleges Budget and Accounting Manual, as adopted by the Board of Governors in December 1973 “describes the new budget and accounting system required for local control and state level reporting of 1974-75 community college district budgets.”<sup>54</sup> This manual included account codes for required activities-based revenue and expenditure accounting, which the Commission finds were not substantively different from what is now [in the 1993 BAM] termed uniform fund accounting.

The Commission finds that community college districts, whether part of the K-12 school district system or as a separately governed entity, were required to follow a standardized accounting system as expressed in a state-published accounting manual under prior law. Therefore, the Commission finds that required use of the budget and accounting definitions, instructions, and procedures published in the community college Budget and Accounting Manual as described in Education Code section 84030 does not constitute a new program or higher level of service.<sup>55, 56</sup>

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<sup>52</sup> Commission, statement of decision (97-TC-10, 97-TC-11 and 97-TC-12), adopted May 23, 2002, p.p. 5-6.

<sup>53</sup> *Ibid.*

<sup>54</sup> Preface, California Community College Budget and Accounting Manual, January 1974.

<sup>55</sup> Commission, statement of decision (97-TC-10, 97-TC-11 and 97-TC-12), adopted May 23, 2002, p.p. 5-6.

Education Code Section 84030 has not been amended since that test claim decision was adopted and has remained continuously in effect. Moreover, as indicated in the Background, the 1974 edition of the BAM was revised and the last edition that was continuously in effect and operative was the 1993 edition of the BAM.

Therefore, the requirement to comply with the standardized procedures in 2000 BAM is not new. Community colleges were required to comply with the 1993 BAM up until the 2000 BAM was approved by the board of governors since neither Education Code section 84030 nor the 1993 BAM were repealed. Since its enactment, Education Code section 84030 has always required compliance with the BAM “as approved by the board of governors.” Thus there was no gap in the legal requirement to comply with BAM. Therefore, the only question remaining is whether the 2000 amendments to BAM mandate a higher level of service on community college districts when compared to prior law.

B. The 2000 amendments to BAM do not mandate a higher level of service.

In order to determine whether the alleged executive order mandates a new program or higher level of service, the requirements of the 2000 BAM must be compared to those of prior law: the 1993 BAM.

According to the Chancellor’s Office, “this revision of the Budget and Accounting Manual, effective July 1, 2000, presents primarily technical changes to update and improve the

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<sup>56</sup> The Commission’s statement of decision in 97-TC-10, 11 and 12 also denied multiple statutes and regulations that were pled and provide authority for the budget, accounting, and auditing requirements in BAM on the ground that they do not impose a new program or higher level of service. For example, under these existing statutes and regulations, community college districts are required to provide for an annual audit of all funds, books, and accounts of the district in accordance with regulations and audit procedures adopted by the board of governors. Those procedures are found in the BAM. The audits are required to be conducted by a public accountant licensed by the California Board of Accountancy. Public accountants are required, as part of an audit, to evaluate compliance with generally accepted accounting principles (issued by GASB for state and local governments). (Bus. & Prof. Code, §§ 5100 and 5062.) Prior law also required community college districts to show on the annual financial and budget report a statement of the proposed expenditures and the estimated revenues for the ensuing fiscal year, together with a comparison of each item of revenue and expenditure, with the actual revenues and expenditures of the fiscal year just completed, as specified by the Office of the Chancellor. In addition, if the Chancellor determines that the district's financial and budgetary plans are inadequate to solve the financial problems of the district, or if the district fails to implement the plans, the Chancellor has the authority to take action, including conducting a comprehensive management review of the district and its educational programs and an audit of the financial condition of the district. The Chancellor may direct the district to amend and readopt the fiscal and educational plans based on the findings of the audits. If the district fails to adequately implement the readopted fiscal and educational plans, the Chancellor may appoint a monitor at district expense for the period of time necessary to achieve the goals of the plans. (Ed. Code, §§ 84040, 84040.5; Cal. Code Regs., tit. 5, §§ 58300 *et seq.*)

accounting procedures of the California Community Colleges.”<sup>57</sup> There are no statements in the introduction of the 2000 BAM that any substantive changes were made.

With one exception, claimant has made no specific claims that the 2000 BAM, when compared to the 1993 BAM, imposes a higher level of service and has instead pled the entire BAM and alleged that it is a new program. Claimant argues that the 2000 BAM *added* “an activity centered approach to expenditure reporting that describes resource requirements and their direct costs, and the relative use in each of the major activities defined for community college operations.”<sup>58</sup>

Although there are few changes in the 2000 BAM, staff finds that those changes do not provide an increased level of service for the public. The substantive chapters of the BAM (chapters 2 through 5) and the claimant’s allegations are analyzed more specifically below:

Chapter 2. Claimant alleges that chapter 2 requires for the first time that community college districts are to consolidate and report all accounts into one of three groups; government funds, proprietary funds, and fiduciary funds as specified. However, these requirements are contained in both the 1993 and 2000 editions of the BAM. The 1993 BAM provides the same information on fund structure for the governmental funds group, proprietary funds group, fiduciary funds group, account groups and special accounting applications.<sup>59</sup> The 2000 BAM does add a statement to its discussion under special accounting applications that Government Code section 53600 *et seq.* authorizes the district to reinvest excess cash. It also states that the chief financial officer is required to annually render to the governing board of the district a statement of investment policy. However, this requirement is not new since it was already required by the law in effect immediately prior to the adoption of the 2000 BAM, Government Code section 53646(a)(2), which provided:

In the case of any other local agency,<sup>60</sup> 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.<sup>61</sup>

Chapter 3. Claimant alleges that chapter 3 requires community college districts, for the first time, to classify revenue and other financing sources by fund and by source, as specified. However, the 1993 and 2000 BAM are almost identical, with only minor technical changes in the federal revenues section. The changes include the elimination of one account number for

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<sup>57</sup> BAM, 1993, p. i.

<sup>58</sup> Claimant, test claim, p. 3.

<sup>59</sup> Compare p.p. 2.1 and 2.1 in both the 1993 BAM and 2000 BAM.

<sup>60</sup> Note that pursuant to Government Code section 53630 as used in Article 2 (i.e. Gov. Code §§ 53630-53686) “‘Local Agency’ means a county city, city and county, including a chartered city or county, a community college district, or other public agency or corporation in this state.”

<sup>61</sup> Government Code section 53646(a)(2) as amended by Statutes 1998, chapter 1898 (AB 1898).



an obsolete program, the addition of an account number for a new program, and the change in the title for a continuing program. This change in account numbers is minor and technical and does not change the basic duty (imposed by the federal government) to budget and account for the use of federal funds.<sup>62</sup> Staff finds that these minor changes do not require community college districts to provide a state-mandated higher level of service.

Chapter 4. Claimant alleges that chapter 4 requires community college districts, for the first time, to classify expenditures by activity, to report the expenditures using a four digit account code, as specified, and to charge some activities to multiple funds. Claimant states that the major change from the pre-75 approach was the adoption of an activity-centered approach to classify and report expenditures. However, these are not new requirements.<sup>63</sup> As discussed in section A above, there are several prior versions of BAM and the requirement to comply with BAM is not new. The 1974 BAM, like the 2000 BAM and the 1993 BAM before it, also required “an activity-centered approach to expenditure reporting which describes real resource requirements (faculty, supporting staff, supplies, etc.), their costs (objects of expenditure) and relative use in each of the major activities which describe community college operations.”<sup>64</sup> The 1993 BAM states the following:

In December 1973, the Board adopted the first California Community Colleges Budget and Accounting Manual. This document was a modification of the K-12 model with the addition of an activity-centered approach to expenditure reporting that described resource requirements and their direct cost, and the relative use in each of the major activities defined for community college operations. The manual established the basic standards for district use.<sup>65</sup>

Moreover, the activity-centered mode of accounting comports with the requirements of generally accepted auditing principles (GAAP), which accountants have long been required to follow.<sup>66</sup> In addition, community colleges were required by prior federal law to undergo annual audits that demonstrate (among other things) that their budgets are in compliance

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<sup>62</sup> Compare pages 3.5 and 3.6 of the 1993 and 2000 BAM. Note also that Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations) is issued by the United States Office of Management and Budget (OMB) pursuant to the Single Audit Act of 1984, Public Law 98-502, and the Single Audit Act Amendments of 1996, Public Law 104-156. It sets forth standards for obtaining consistency and uniformity among federal agencies for the audit of states, local governments, and non-profit organizations expending federal awards. Federal agencies are required to apply the provisions of Circular A-133 to non-federal entities, whether they are recipients expending federal awards received directly from federal awarding agencies, or are sub-recipients expending federal awards received from a pass-through entity. Among its many requirements, Circular A-133 requires state and local governments expending federal awards, including community colleges, to undergo an annual audit that demonstrates compliance with GASB accounting standards and generally accepted audit principles (GAAP).

<sup>63</sup> See e.g., p. 4.3 of the 1993 BAM: “Classification of Expenditures by Activity.”

<sup>64</sup> BAM, 1974, p. 1-1.

<sup>65</sup> BAM, 1993, p. 1.7.

<sup>66</sup> See generally GASB Concept No. 1 and GASB Statement 34; and footnote 63, ante.

with GAAP before the 2000 version of the BAM was adopted.<sup>67</sup> Thus, reporting expenditures using an activity-centered approach is not new.

The 2000 edition of the BAM only made minor technical and clarifying changes to the explanatory language in chapter 4 and did not mandate an increased level of service for the public.

Chapter 5. Claimant alleges that chapter 5 requires community college districts, for the first time, to classify assets, liabilities, and equity items into account codes, as specified. These requirements, however, were also imposed by the 1993 BAM and are, therefore, not new.<sup>68</sup> The only change to chapter 5 of the BAM, other than the expanded introductory remarks at the beginning of the chapter, are that the sections on “Fund Balance Reserved” and “Fund Balance Unreserved” from the 1993 BAM are consolidated under the single header “Fund Balance” and the former “Investment in General Fixed Assets” is called “Other Equity” in the 2000 BAM. These technical changes do not increase the level of service provided to the public.

Because claimant has failed to demonstrate that the changes in the July 1, 2000 BAM mandate a new program or higher level of service than was required under prior law [the 1993 BAM], staff finds that the section 59010 of the Title 5 regulations and 2000 BAM are not subject to reimbursement under article XIII B, section 6 of the California Constitution.

#### **IV. CONCLUSION**

Staff finds that, when compared to prior law, the requirements of Title 5, California Code of Regulations, Section 59010 and the 2000 BAM do not impose a reimbursable state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

#### **Recommendation**

Staff recommends the Commission adopt this staff analysis and deny this test claim.

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<sup>67</sup> See footnote 73, ante.

<sup>68</sup> See BAM, 1993, p. 5.1 *et seq.*.