

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

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

Fiscal Years 1996-1997 and 1997-1998

Filed on September 1, 2000, by Los Angeles
Unified School District, Claimant.

Case No.: 00-9635802-I-01

Investment Reports

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

(Adopted on May 27, 2010)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

PAULA HIGASHI, Executive Director

Dated: June 3, 2010

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

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

Fiscal Years 1996-1997 and 1997-1998

Filed on September 1, 2000, by Los Angeles
Unified School District, Claimant.

Case No.: 00-9635802-I-01

Investment Reports

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

(Adopted on May 27, 2010)

STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this incorrect reduction claim during a regularly scheduled hearing on May 27, 2010. Hasmik Yaghobyan appeared for the County of Los Angeles. Jill Kanemasu appeared for the State Controller’s Office. Lorena Romero appeared for the Department of Finance.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to approve the incorrect reduction claim at the hearing by a vote of 5 to 0.

Summary of Findings

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. 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. The plain language of Government Code section 53646, as amended by the test claim statutes, provides that 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.

This incorrect reduction claim involves 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.

Salaries and Benefits

The Commission 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).).

Investment Software Costs

The Commission 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.

Accordingly, the Commission 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.

The County's reimbursement claims for fiscal years 1996-1997 and 1997-1998 are hereby remanded 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. 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.

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

¹ Transcript from April 25, 2002 hearing.

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 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

² 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.

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

⁵ 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.

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.

(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

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,

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. The parameters and guidelines, adopted on November 20, 1997, describe the following activities as eligible for reimbursement:

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).

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).⁸

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. The reimbursable activities listed in the claiming instructions are consistent with the parameters and guidelines.

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 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.

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. 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 I, Accounting Officer I, 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

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

The County provides further description of the 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, a “Report” filed by the County regarding the reimbursement claim in response to the Controller’s request for further information 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 \$4,662.⁹

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.

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. The County's claim identifies costs incurred for ADS investment software

⁹ Remittance Advice dated October 12, 1999.

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.

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."¹⁰

Claimant's Position¹¹

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.

¹⁰ Remittance Advice dated October 12, 1999.

¹¹ Incorrect Reduction Claim of the County of Los Angeles submitted on August 31, 2000. Additional comments submitted by Claimant on: January 16, 2001; February 28, 2001; April 12, 2001; and, October 17, 2001.

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 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.

State Controller's Office Position¹²

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.

¹² State Controller's Office comments submitted on: December 5, 2000; January 17, 2001; March 16, 2001; September 21, 2001; and, October 12, 2001.

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

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.

COMMISSION FINDINGS

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.

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.¹³ 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 1997¹⁴ 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.¹⁵ 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

¹³ 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."

¹⁴ Former Government Code section 17558, as amended by Statutes 1996, chapter 45, operative on July 1, 1996.

¹⁵ 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.¹⁶

Accordingly, the Commission 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

The Commission 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.

¹⁶ 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. 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. 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.)

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.)

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.¹⁷

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.¹⁸ The interpretation of an administrative agency rule, like the parameters and

¹⁷ 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 guidelines. The issue is what the Commission intended when it adopted the parameters and guidelines in 1997.

¹⁸ *Cal. Drive-in Restaurant Ass'n v. Clark* (1943) 22 Cal.2d 287, 292.

guidelines, is a question of law.¹⁹ 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.]²⁰

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.²¹ 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.²² 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.²³

Applying these rules of construction, the Commission 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 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.

¹⁹ *Culligan Water Conditioning v. State Board of Equalization* (1976) 17 Cal.3d 86, 93.

²⁰ *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

²¹ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781-782.

²² *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

²³ *Wallace v. State Personnel Board* (1959) 168 Cal.App.2d 543, 547.

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.”²⁴ 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.)

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.²⁵ 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 clarified law is merely a statement of what the law has always been.²⁶ In this case, the parameters and guidelines amendment was merely a clarification of what the reimbursable activities have always been.

Accordingly, the Commission 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.

²⁴ Task Force Report; Analysis of Senate Committee on Local Government, March 30, 1995, Assembly Bill 564 (1995-96 Leg. Sess.).

²⁵ Adopted analysis and parameters and guidelines amendment for *Investment Reports* program.

²⁶ *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.

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.²⁷

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 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. 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.²⁸

²⁷ "Report" filed by the County.

²⁸ *Briggs v. Eden Council for Hope and Opportunity* (1999) 19 Cal.4th 1106, 1117.

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 1997.²⁹ 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.

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.³⁰

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 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.³¹ 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).)

²⁹ Staff analysis for Item 3, Proposed Parameters and Guidelines, adopted November 20, 1997.

³⁰ See also, Transcript of the November 20, 1997 Commission hearing, 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.

³¹ Adopted staff analysis for parameters and guidelines amendment.

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.³²

Finally, these legal conclusions are supported by the report prepared by Conny Jamison, the consultant retained by the Commission for this item. 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 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, the Commission finds that the daily investment activities claimed by the County are not reimbursable.

³² *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.

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, the Commission hereby remands 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.³³

The Commission 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, the Commission 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, the Commission 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.

The County's reimbursement claims for fiscal years 1996-1997 and 1997-1998 are hereby remanded 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. 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.

³³ Jamison Report.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

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

Fiscal Years 1995-1996, 1996-1997, 1997-
1998, and 1998-1999

Filed on October 11, 2002, by City of Tustin,
Claimant.

Case No.: 02-9635802-I-47

Investment Reports

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

(Adopted on July 29, 2010)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

PAULA HIGASHI, Executive Director

Dated: July 30, 2010

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

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

Fiscal Years 1995-1996, 1996-1997, 1997-
1998, and 1998-1999

Filed on October 11, 2002, by City of Tustin,
Claimant.

Case No.: 02-9635802-I-47

Investment Reports

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

(Adopted on July 29, 2010)

STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this incorrect reduction claim during a regularly scheduled hearing on July 29, 2010. Annette Chinn appeared for the claimant, Allan Burdick appeared for the SB 90-CSAC Service, Shawn Silva appeared for the State Controller’s Office, and Carla Shelton appeared for Department of Finance.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to approve the incorrect reduction claim at the hearing by a vote of 5-2, with Members Glaab and Worthley voting no.

Summary of Findings

This is an incorrect reduction claim filed by the City of Tustin (City) on reimbursement claims for costs incurred in four fiscal years from 1995-1996 through 1998-1999 on the *Investment Reports* program. The issues in dispute involve the preparation and submittal of the annual statement of investment policy, and the activities required to accumulate and compile the quarterly report of investments.

The Commission concludes that the State Controller’s Office incorrectly reduced the costs claimed by the City of Tustin for these activities for fiscal years 1995-1996 through 1998-1999. However, the City did not identify the actual time spent and cost incurred on each activity eligible for reimbursement, but rather identified the total time and cost for each employee. Thus, it cannot be determined from the reimbursement claims how long it took the city treasurer, city finance director, and the account clerks to perform the reimbursable activities.

Accordingly, the Commission hereby remands 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. Pursuant to Section VII of the parameters and guidelines, all costs claimed by the City 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.

BACKGROUND

This is an incorrect reduction claim filed by the City of Tustin on reimbursement claims for costs incurred in four fiscal years from 1995-1996 through 1998-1999 on the *Investment Reports* program.

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 attending training, preparing and reviewing the annual statement of investment policy, investment tracking and balancing subsidiary ledgers "required for the preparation of the quarterly report of investments," and contracted services for city auditors to review policy and audit investment policy and quarterly reports to ensure compliance with state law.

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 1996.¹ The test claim statutes were enacted following recommendations from the Task Force on Local and State Investment Practices.² 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.³

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.

¹ Statutes 1995, chapter 783; Statutes 1996, chapters 156 and 749.

² Analysis of Senate Committee on Local Government, March 30, 1995, Senate Bill 564 (1995-96 Leg. Sess.).

³ The Task Force's report, dated March 14, 1995.

(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.

(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 officer 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.⁴

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

⁴ 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.

program. The parameters and guidelines, adopted on November 20, 1997, describe the following activities as eligible for reimbursement:

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).

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).⁵

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. The reimbursable activities listed in the claiming instructions are consistent with the parameters and guidelines.

Reimbursement Claims Filed by the City of Tustin and the Controller’s Reductions

The reimbursement claims filed by the City of Tustin for fiscal years 1995-1996 through 1998-1999 identify claimed activities to prepare and submit the annual statement of investment policy and to accumulate and compile data to render the quarterly report of investments.

⁵ 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.

Annual Statement of Investment Policy

To prepare and submit the annual statement of investment policy, the City claimed reimbursement for the salaries and benefits of the following employees to perform the following list of activities:

1. City Treasurer:

- Research and review state statutes to determine what changes to the City's investment policy would be required.
- Attend meetings and seminars to be trained on the new requirements.
- Meet with staff and brokers to update investment policy and ensure compliance.
- Draft and edit new policy language.

2. City Finance Director:

- Review and edit annual statement of investment policy.
- Attend meetings with the City Treasurer with brokers to update investment policy.
- Implement the investment policies and procedures.
- Present new policy to the [governing body and/or any oversight committee].

Handwritten notes of the State Controller's Office are provided on copies of the reimbursement claims for fiscal years 1995-1996 through 1997-1998. These notes indicate that the amounts claimed for the above activities were reduced "for excessive time" to 10% and 4% of the amount claimed.

According to the State Controller's Office, the fiscal year 1998-1999 claim was reduced for the same reasons as those cited for the preceding three fiscal years.

Quarterly Reports of Investment

The City claimed reimbursement for the salaries and benefits of City employees to accumulate and compile data to render the quarterly report of investments as follows:

1. Senior Account Clerk(s):

For fiscal years 1995-1996 through 1997-1998

- Enter data into investment tracking system.
- Balance subsidiary ledgers required for the preparation of the quarterly investment report.
- Show all detail as required by the state.

For fiscal year 1998-1999

- Accumulate and balance investment data and balance "them to those reports submitted to their Bank or 'Safekeeping Agent'."
- Enter data into investment spreadsheets to monitor principal and interest earnings for each investment as required by state statute.

2. City Finance Director:

- Review quarterly investment report.
- Present quarterly investment report to city council.

3. Assistant Finance Director:

- Review and ensure the information in the subsidiary ledgers is accurate.
- Review and ensure the information in the quarterly report is accurate.
- Supervise, audits, and internal control procedures.

4. City Auditors (contract services):

- Review policy.
- Audit investment policy and quarterly reports to ensure compliance with all state laws.

The city auditors spent eight (8) hours each fiscal year on these activities.

Handwritten notes of the State Controller’s Office on copies of the reimbursement claims for fiscal years 1995-1996, 1996-1997, and 1997-1998, indicate the amounts claimed for the Senior Account Clerk were reduced to \$0 because “daily/monthly accounting activities are not mandated.” The amount claimed for the Assistant Finance Director for fiscal year 1995-1996 was also reduced to \$0. Finally, the amounts claimed for the services of the City Auditors were reduced to \$0, with a note indicating “not a mandated activity.”

According to the State Controller’s Office, the fiscal year 1998-1999 claim was reduced for the same reasons as those cited for the preceding three fiscal years.

Reduction of Costs

The State Controller’s Office also reduced the indirect costs claimed that correspond to the reductions made to the direct costs.

Total reductions made to the City’s reimbursement claims are identified in the table below.

	Fiscal Year 1995-1996	Fiscal Year 1996-1997	Fiscal Year 1997-1998	Fiscal Year 1998-1999
Costs claimed	\$21,691	\$41,468	\$47,699	\$36,418
Amount Reduced	(\$19,082)	(\$37,952)	(\$43,007)	(\$32,550)
Approved Payment Amount	\$2,609	\$3,516	\$4,692	\$3,868

Claimant’s Position

The City of Tustin contends that the State Controller’s Office incorrectly reduced its claims for reimbursement. The City argues that its claims were complete and were prepared in accordance with the parameters and guidelines and claiming instructions issued for this program.

The City further believes that the reductions made to the activities of rendering the quarterly reports of investments are incorrect. The incorrect reduction claim states the following:

The claims prepared for the City of Tustin included costs associated with the data entry of investment transactions and the time to prepare and utilize subsidiary ledgers of investments. These costs were identified as allowable activities in the Parameters and Guidelines. Use and development of these ledgers are necessary to prepare the city's quarterly investment reports.

On October 27, 2003, the City of Tustin filed a reply stating the following:

There may [be] some confusion as to [the] meaning of "subsidiary ledgers." When CRS filed the Investment Reporting claims on behalf of the city, we assumed that spreadsheets developed in-house to track investments in compliance with the law, were entitled "subsidiary ledgers" due to the terminology used in the claiming instructions. We believe that it is unfair to disallow entry of investment data into an in-house systems (excel spreadsheets) when it is allowed for those city's [sic] utilizing proprietary software systems such as SYMPRO.

We disagree that our claims were "excessive or unreasonable" and believe that the State Controller's Office's review and disallowances were arbitrary and inconsistent. If more documentation was desired, they should have stated that in their correspondence so that the issue could have been addressed at the time. On page two of the State Controller's letter [dated August 11, 2003], they quote and emphasize, "... documentation in support of the claimed costs shall be made available to the State Controller or his/her agency, **as may be requested**."

Based on information available to me, the State Controller's Office never made a request to the City asking for additional documentation. All invoices for services were attached to the claims. The State's remittance advise simply states "COSTS NOT MANDATED" leaving the City to believe that the activities related to data entry and maintenance of investment data for production of the quarterly report was NOT ELIGIBLE.

According to the Ps and Gs at the time and claiming instructions issued "accumulating and compiling data" WAS a reimbursable activity. That is all that was claimed. Without data entry of the investment transactions into our investment software system, production of a report is not possible. Nowhere in the claim was there a mention of "daily" tracking or other "daily" activities. The State's correspondence unfairly assumes that daily input or reconciliation is taking place when there is NO reference whatsoever in the claim that would indicate that this is the case. [Emphasis in original.]

The claimant filed comments on the draft staff analysis disagreeing with the analysis and proposed conclusion that reimbursement is not required for entering, tracking, balancing, and auditing every investment transaction to prepare the quarterly report of investments. The claimant argues the following:

It is our opinion that recording each investment transaction is exactly what is meant by "accumulating and compiling data." It is a putting together or gathering investment data so that conclusions can be inferred. It did not say "photocopying

pre-existing third party reports and investment statements at the end of each quarter and presenting this to the governing body.” It appears that this is what the Commission staff is recommending.

Our claims requested approximately \$5,000 per year of staff salary and benefits per year for these activities relating to the preparation of the quarterly reports. We don’t believe this was excessive or unreasonable. By disallowing the cost of entering all investment transactions (the purchase and sale of investments, recording of interest, etc.) the report becomes a meaningless, potentially inaccurate document solely comprised of second hand information that has not been properly reviewed or verified. We do not believe that this was the intent of the legislation. The Treasurer of each jurisdiction must certify the accuracy of the investment report and data it contains to his or her governing body. Asking them to present and sign off on a compilation of unchecked, photocopied, second hand reports is not reasonable or responsible.

Position of the State Controller’s Office

Comments by the State Controller’s Office on the incorrect reduction claim state the following:

The subject claims were reduced because many of the activities were not reimbursable, and there was a lack of source documentation. In addition to the inability to verify the claim, the lack of source documentation also makes it difficult to prorate reimbursement for those activities for which only a portion of the expense was reimbursable. The reductions were appropriate given the Parameters and Guidelines, the statement of decision, applicable statutes, and amount of documentation provided.

The State Controller’s Office also submitted an “analysis of the incorrect reduction claim,” dated April 16, 2003, which describes the adjustments and reductions for fiscal years 1995-1996 through 1997-1998.⁶ With respect to each of these fiscal year reductions, the analysis states the following:

This claim was reduced for salaries and benefits and corresponding indirect costs for system maintenance and daily data download activities that were deemed by the State Controller’s Office (SCO) Division of Accounting and Reporting (DAR) staff as activities not mandated or as non-reimbursable components of the Parameters and Guidelines (Ps & Gs). This claim contained ... costs that were deemed excessive to prepare and submit the annual statement of investment policies, which consists of changes to those existing policies, and the quarterly report of investments as required by the Investment Reports program. No time

⁶ The State Controller’s “analysis of the incorrect reduction claim” does not include information about the reduction made to the fiscal year 1998-1999 reimbursement claim. In addition, the “Sub Exhibit 1” to the analysis contains a “Claim Adjustment Detail List,” which states that “no adjustment” was made to the 1998-1999 reimbursement claim and that \$8,593 was paid to the City of Tustin for that fiscal year. However, the State Controller’s Office has confirmed by letter dated May 11, 2010, that a reduction to the 1998-1999 reimbursement claim was made for the same reasons as those cited for the preceding three fiscal years.

sheets or detailed tasks were available. DAR staff recognized that the county would have incurred a cost and made a reasonable effort to provide reasonable compensation for this activity.

On July 13, 2010, the State Controller's Office filed comments concurring with the draft staff analysis.

Position of the Department of Finance

The Department of Finance filed comments on the draft staff analysis stating that "[t]he conclusions of the CSM staff appear reasonable; therefore, Finance does not have significant concerns with the staff recommendation."

COMMISSION FINDINGS

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.

Issue 1: Did the State Controller's Office incorrectly reduce the costs for the salaries and benefits of city treasurer and finance director to prepare and submit the annual statement of investment policy to the legislative body of the city?

Beginning January 1, 1996, the parameters and guidelines and claiming instructions for this program allow reimbursement to prepare and submit the annual statement of investment policy, and changes to the legislative body and any oversight committee for consideration at a public meeting.

To prepare and submit the annual statement of investment policy, the City claimed reimbursement for the salaries and benefits of the city treasurer to perform the following activities:

- Research and review state statutes to determine what changes to the City's investment policy would be required.
- Attend meetings and seminars to be trained on the new requirements.
- Meet with staff and brokers to update investment policy and ensure compliance.
- Draft and edit new policy language.

The City also claimed the time of its finance director to:

- Review and edit annual statement of investment policy.
- Attend meetings with the City Treasurer with brokers to update investment policy.
- Implement the investment policies and procedures.
- Present new policy to the [governing body and/or any oversight committee].

The City of Tustin has not identified the actual time spent and cost incurred by the city treasurer and finance director on each activity listed above. However, as identified in the table below, the City claimed reimbursement for the total hours worked by the city treasurer and finance director to perform all of the above activities for each fiscal year at issue. The State Controller’s Office reduced the time claimed as “excessive time,” and for fiscal year 1995-1996, allowed reimbursement for ten percent (10%) of the time and costs claimed. Reimbursement was allowed for four percent (4%) of the time and costs claimed for fiscal years 1996-1997 and 1997-1998. Although the record does not reflect the exact amount reduced in fiscal year 1998-1999 to prepare and submit the annual statement of investment policy, the State Controller’s Office states that the fiscal year 1998-1999 claim was reduced for the same reasons as those cited for the preceding three fiscal years.

<u>Fiscal Year</u>	<u>Hours Worked by City Treasurer</u>	<u>Hours Worked by City Finance Director</u>	<u>Total Hours Claimed</u>	<u>Hours Allowed by State Controller’s Office</u>
1995-1996	104	130	234	23
1996-1997	200	250	450	18
1997-1998	208	260	468	19
1998-1999	1	1	2	?

A. The State Controller’s Office incorrectly reduced the costs for salaries and benefits of the city treasurer and finance director to prepare and submit the annual statement of investment policy

The Commission finds that the reduction by the State Controller’s Office of the salary and benefit costs of the treasurer and finance director regarding the annual statement of investment policy is arbitrary, not based on the parameters and guidelines, and not based on any evidence in the record. In this respect, the Commission finds that these reductions are incorrect.

The amount of reimbursement approved for preparing and submitting the annual statement of investment policy, at 4% and 10% of the costs claimed, is arbitrary. There is no evidence in the record to explain or justify the percentages allowed and the amounts reduced. Nor does the record indicate whether the Controller’s Office analyzed the activities claimed by the City of Tustin to prepare and submit the annual statement of investment policy. The percentages allowed do not appear to correlate to the activities performed by the treasurer and finance director to prepare and submit the annual statement of investment policy. Although the

Controller's Office argues that the lack of source documentation made it difficult to verify the costs claimed, the reductions in this case were made following a desk audit and there is no evidence in the record that the Controller's Office asked for any supporting documentation. Section VII of the parameters and guidelines states that "all documentation in support of claimed costs shall be made available to the State Controller ..., *as may be requested.*" (Emphasis added.)

Moreover, the State Controller's Office does not have the authority to adopt a uniform allowance of costs, such as the percentages allowed in this case. 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.⁷ The parameters and guidelines, however, do not include a uniform allowance for time spent preparing and submitting the annual statement of investment policy. 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 1997⁸ 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 time to a uniform allowance of a percentage of time identified by the claimant is not consistent with the parameters and guidelines.

Accordingly, the Commission finds that the State Controller's Office incorrectly reduced the salary and benefit costs of the city treasurer and finance director for the time spent preparing and submitting the annual statement of investment policy to the legislative body of the city.

B. The City's reimbursement claims to prepare and submit the annual statement of investment policy contain costs that are not reimbursable

As described below, the Commission finds that the City's reimbursement claims contain costs for activities that go beyond the scope of the mandate and are not reimbursable. Although these investment activities may be required by the City's 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.⁹

⁷ 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."

⁸ Former Government Code section 17558, as amended by Statutes 1996, chapter 45, operative on July 1, 1996.

⁹ In this respect, the Commission no longer has jurisdiction to exercise discretion to add reimbursable activities to the parameters and guidelines that are "reasonable methods of complying with the mandate," pursuant to section 1183.1 of the Commission's regulations. The issue is what the Commission intended when it adopted the parameters and guidelines in 1997.

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.¹⁰ The interpretation of an administrative agency rule, like the parameters and guidelines, is a question of law.¹¹ 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.]¹²

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.¹³ 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.¹⁴ 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.¹⁵

Applying these rules of construction, the Commission finds that the City's reimbursement claims contain costs for activities that go beyond the scope of the mandate and are not reimbursable. A reduction of these costs would be correct and in accordance with the test claim statute, the Statement of Decision, the parameters and guidelines, and claiming instructions.

- 1) Reimbursement is not required to implement and ensure compliance with the City's investment policies.

The City claims costs for the treasurer and finance director to "implement the investment policies and procedures" and to "ensure compliance" with the investment policy. Although the annual statements of investment policies adopted by the City of Tustin for the years in question impose duties on the treasurer and financial director to implement the investment policy, implementation of the investment policy is not mandated by the test claim statute, or identified in the Statement of Decision, the parameters and guidelines, or claiming instructions as a reimbursable activity.

¹⁰ *Cal. Drive-in Restaurant Ass'n v. Clark* (1943) 22 Cal.2d 287, 292.

¹¹ *Culligan Water Conditioning v. State Board of Equalization* (1976) 17 Cal.3d 86, 93.

¹² *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

¹³ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781-782.

¹⁴ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

¹⁵ *Wallace v. State Personnel Board* (1959) 168 Cal.App.2d 543, 547.

For example, the City of Tustin's annual investment policies adopted for the years in question require that the treasurer review, authorize and document every investment transaction; that the investments be transacted only through brokers/dealers that have been reviewed by the finance director or treasurer; that the treasurer periodically obtain economic forecasts from economists and financial experts through bankers and brokers in order to assist the treasurer with the formulation of investment plans; and that the treasurer execute investment transactions that conform to current and anticipated cash requirements, interest rate trends, and stated investment strategy. These activities are not mandated by the state. Rather, reimbursement is required only to prepare and submit the annual statement of investment policy, and any changes to the policy, to the legislative body and any oversight committee for consideration at a public meeting.

This conclusion is further supported by 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. The report recognizes that “[b]y requiring that each local agency to have a written annual statement of investment policy, *the State is not mandating specific investment objectives, practices and procedures; the State is simply requiring that each local agency address those issues itself by adopting a written annual statement of investment policy.*” (Emphasis added.)

Thus, the Commission finds that the costs claimed to implement and ensure compliance with the City's investment policy are not reimbursable, and that a reduction of these costs is correct and in accordance with the test claim statute, the Statement of Decision, the parameters and guidelines, and claiming instructions.

2) Reimbursement is not required for training in this case.

The City also claims costs for its treasurer to “attend meetings and seminars to be trained on the new requirements.” Part D of Section VI of the parameters and guidelines authorizes reimbursement for training of personnel on the mandated program, and requires that the claim for “specialized training must be justified by the claimant.” The claiming instructions similarly state the following:

Only the cost for a reasonable number of employees attending the training is reimbursable. *Special training must be justified in writing by the claimant.* Give the class title, dates, location, and name(s) of the employee(s) attending training classes *associated with the mandate.* Reimbursable costs may include salaries and benefits for time spent, the registration fee, transportation, lodging, and per diem. Reimbursement for travel expenses, lodging, and per diem will be reimbursed in accordance with the travel rules of the local jurisdiction. (Emphasis added.)

Based on the plain language of the parameters and guidelines and claiming instructions, “specialized” training is allowable only as it relates directly to the preparation of the annual statement of investment policy and submittal to the legislative body and any oversight committee for consideration at a public meeting. Reimbursement for training regarding the implementation of the City's investment policies or investment planning of City funds goes beyond the scope of the mandate and is not reimbursable here.

Moreover, the City did not comply with the requirements of the parameters and guidelines and claiming instructions by providing justification in writing with the reimbursement claims for

“specialized” training costs that may be related directly to the mandated activity. Nor has any justification for “specialized” training costs been provided in the City’s incorrect reduction claim filing.

Accordingly, the Commission finds the costs incurred by the City for training are not reimbursable, and that a reduction of the training costs claimed would be correct and in accordance with the test claim statute, the parameters and guidelines, and claiming instructions.

C. 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, the Commission finds that the State Controller’s Office incorrectly reduced the reimbursement claims for salaries and benefits on the ground that the reductions are arbitrary and not based on the evidence in the record. However, the reimbursement claims include activities and costs for implementing the City’s investment policy and for training that are not reimbursable. Thus, not all the costs claimed by the City for salaries and benefits are reimbursable and can be reinstated.

However, the City did not identify the actual time spent and cost incurred on each activity, but rather identified the total time and cost for each employee. Thus, it cannot be determined from the reimbursement claims how long it took the city treasurer and finance director to perform the reimbursable activities.

Accordingly, the Commission hereby remands the reimbursement claims back to the State Controller’s Office to further review the City’s claims for the costs of the salaries and benefits of the city treasurer and finance director to perform the reimbursable activities required to prepare and submit the annual statement of investment policy, 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 City 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 salaries and benefits of City 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?

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.

To accumulate and compile the data necessary to prepare the quarterly reports of investment and to render the reports to the local agency, the City claimed the salaries and benefits of senior account clerk(s) for the time spent (from 65 to 125 hours per fiscal year) performing the following activities:

For fiscal years 1995-1996 through 1997-1998

- Enter data into investment tracking system.
- Balance subsidiary ledgers required for the preparation of the quarterly investment report.
- Show all detail as required by the state.

For fiscal year 1998-1999

- Accumulate and balance investment data and balance “them to those reports submitted to their Bank or ‘Safekeeping Agent’.”
- Enter data into investment spreadsheets to monitor principal and interest earnings for each investment as required by state statute.

In addition, the City claimed costs for the salary and benefits of its assistant finance director for the time spent each fiscal year (6 to 24 hours) to:

- Review and ensure the information in the subsidiary ledgers is accurate.
- Review and ensure the information in the quarterly report is accurate.
- Supervise, audits, and internal control procedures.

Finally, the City claimed the contract service costs for the eight (8) hours spent by city auditors each fiscal year to perform the following activities:

- Review policy.
- Audit investment policy and quarterly reports to ensure compliance with all state laws.

Handwritten notes of the State Controller’s Office on copies of the reimbursement claims for fiscal years 1995-1996, 1996-1997, and 1997-1998, indicate the amounts claimed for the Senior Account Clerk were reduced to \$0 because “daily/monthly accounting activities are not mandated.” The amount claimed for the Assistant Finance Director for fiscal year 1995-1996

was also reduced to \$0. Finally, the amounts claimed for the services of the City Auditors were reduced to \$0 in all fiscal years, with a note indicating “not a mandated activity.”

According to the State Controller’s Office, the fiscal year 1998-1999 claim was reduced for the same reasons as those cited for the preceding three fiscal years.

A. The State Controller’s Office incorrectly reduced the costs for salaries and benefits of the senior account clerks and the assistant finance director

The Commission finds that the reduction by the Controller’s Office of the salary and benefit costs of the senior account clerks and the assistant finance director to \$0 is arbitrary and not consistent with the evidence in the record. In this respect, the Commission finds that the reductions of salary and benefit costs are incorrect.

The City’s reimbursement claims are filed under penalty of perjury and show that the senior account clerks worked on the quarterly report of investments by entering data into the investment tracking system and helping to prepare the quarterly investment reports. The total time claimed by the senior account clerks for all work performed on the quarterly report of investments ranged from 65 to 125 per fiscal year, or from 16.25 hours to 31.25 hours per quarterly report.

In November 2003, the Commission adopted amendments to the parameters and guidelines for this program clarifying that reimbursement was allowed for one-time data entry into investment reporting applications or software to describe the type of investment and issuer, date of maturity, and par and dollar amount investment for *each investment held on the last day of each quarter*. 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 some of the reductions were made to the reimbursement claims in this case), the Commission’s analysis and findings can be used to determine what the Commission intended when it adopted the original 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.¹⁶ In this case, the parameters and guidelines amendment was merely a clarification of what the reimbursable activities have always been. Thus, to the extent the senior account clerks performed the one-time activity of entering data into the investment tracking system for each investment held on the last day of the quarter, those costs would be eligible for reimbursement. A denial of all costs incurred for the senior account clerks is not consistent with the parameters and guidelines or the evidence provided in the reimbursement claims.

In addition, the City’s reimbursement claim for fiscal year 1995-1996 shows that the assistant finance director worked on the quarterly report of investments by reviewing the information in the quarterly reports to ensure accuracy. The 1995-1996 reimbursement claim is signed under penalty of perjury by the assistant finance director.

¹⁶ *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.

Although the State Controller's Office recognizes that the City "would have incurred a cost and made a reasonable effort to provide reasonable compensation for this activity,"¹⁷ a reduction of the salaries and benefits of the senior account clerks and assistant finance director to \$0 does not take into account the requirements of the test claim statute, the parameters and guidelines, and the evidence in the record.

Accordingly, the Commission finds that the State Controller's Office incorrectly reduced the salary and benefit costs for the senior account clerks and the assistant finance director to \$0.

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

The Commission finds, however, that the City's reimbursement claims contain costs for activities identified below that go beyond the scope of the mandate and are not reimbursable.

1) Reimbursement is not required for the costs to prepare a quarterly report of investments for the Tustin Community Redevelopment Agency.

On January 16, 2004, the City filed copies of its quarterly investment reports from fiscal years 1995-1996 through 1998-1999. Included in the filing are the quarterly reports of the Tustin Community Redevelopment Agency for each fiscal year in question.

The Tustin Community Redevelopment Agency was created in 1976 and is made up of members of the Tustin City Council. Pursuant to Health and Safety Code section 33200, the city council may, by the adoption of an ordinance, declare itself to be a redevelopment agency and have all the rights and duties of a redevelopment agency under the Community Redevelopment Law (Health and Saf. Code §§ 33000 et seq.). Thus, even though city employees may do the work of a redevelopment agency, the redevelopment agency is a body separate from the city and the work is performed under the Community Redevelopment Law.

Redevelopment agencies, including the Tustin Community Redevelopment Agency, do not receive their revenue from proceeds of taxes, but instead primarily receive revenue through tax increment financing. Tax increment financing is described as follows:

Tax increment revenues are computed as follows: The real property within a redevelopment project area is assessed in the year the redevelopment plan is adopted. Typically, after redevelopment, property values in the project area increase. The taxing agencies (e.g., city, county, school or special district) keep the tax revenues attributable to the original assessed value and pass the portion of the assessed property value which exceeds the original assessment on to the redevelopment agency. (Health & Saf. Code, §§ 33640, 33641, 33670, 33675). In short, tax increment financing permits a redevelopment agency to take advantage of increased property tax revenues in the project areas without an increase in the tax rate.¹⁸

¹⁷ Analysis of Incorrect Reduction Claim dated April 16, 2003.

¹⁸ *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 982.

Pursuant to Health and Safety Code section 33678, revenue received through tax increment financing shall not be deemed to be the proceeds of taxes within the meaning of article XIII B of the California Constitution. Thus, expenditures made by a redevelopment agency from tax increment financing are not eligible for reimbursement under article XIII B, section 6.¹⁹

In addition, a city council is authorized to grant or loan money to a redevelopment agency for administrative expenses.²⁰ Money received and expended through grants or loans are not eligible for reimbursement. Subvention is required under article XIII B, section 6 only when the costs can be recovered solely from proceeds of taxes.²¹

Redevelopment agencies are authorized to invest money,²² and the test claim statute applies to all “local agencies,” defined to include any public agency.²³ Although a redevelopment agency may be required to comply with the test claim statute, the costs incurred by a redevelopment agency, or on behalf of a redevelopment agency, to accumulate and compile the data necessary to prepare the quarterly report of investments and to render the reports to the legislative body are not subject to the reimbursement requirement of article XIII B, section 6 of the California Constitution.

Accordingly, to the extent the City of Tustin’s reimbursement claims include costs incurred to render the quarterly report of investments for the Tustin Community Redevelopment Agency, those costs are not reimbursable.

2) Reimbursement is not required for the cost of contracted city auditors to review and audit the investment policy and quarterly reports to ensure compliance with all state laws.

The City claimed the contract service costs for eight (8) hours spent by city auditors each fiscal year to “review” and “audit the investment policy and quarterly reports to ensure compliance with all State laws.” These costs are not reimbursable.

Although the City’s investment policy requires the Tustin Audit Committee to annually review the City’s investment policy, the test claim statute does not require a local agency to audit the investment policies and quarterly reports. Nor do the parameters and guidelines and claiming instructions include this activity as a reimbursable activity.

Thus, reimbursement is not required to review and audit the investment policy and quarterly reports to ensure compliance with state law.

¹⁹ *Id.* at p. 986-987; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280-281.

²⁰ Health and Safety Code section 33610.

²¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487; *City of El Monte, supra*, 83 Cal.App.4th at page 280.

²² Health and Safety Code section 33603.

²³ Government Code section 53020.

3) Reimbursement is not required for entering, tracking, balancing, and auditing every investment transaction.

The City contends that all costs associated with data entry of investment transactions and time to prepare and use subsidiary ledgers of investments are reimbursable. The incorrect reduction claim states the following:

The claims prepared for the City of Tustin included costs associated with the data entry of investment transactions and the time to prepare and utilize subsidiary ledgers of investments. These costs were identified as allowable activities in the Parameters and Guidelines. Use and development of these ledgers are necessary to prepare the city's quarterly investment reports.

The City in its response to the draft staff analysis further argues that:

It is our opinion that recording each investment transaction is exactly what is meant by "accumulating and compiling data." It is a putting together or gathering investment data so that conclusions can be inferred. It did not say "photocopying pre-existing third party reports and investment statements at the end of each quarter and presenting this to the governing body." It appears that this is what the Commission staff is recommending.

Our claims requested approximately \$5,000 per year of staff salary and benefits per year for these activities relating to the preparation of the quarterly reports. We don't believe this was excessive or unreasonable. By disallowing the cost of entering all investment transactions (the purchase and sale of investments, recording of interest, etc.) the report becomes a meaningless, potentially inaccurate document solely comprised of second hand information that has not been properly reviewed or verified. We do not believe that this was the intent of the legislation. The Treasurer of each jurisdiction must certify the accuracy of the investment report and data it contains to his or her governing body. Asking them to present and sign off on a compilation of unchecked, photocopied, second hand reports is not reasonable or responsible.

Thus, the City has included the following activities in its reimbursement claims:

Senior account clerks -

- Enter data into investment tracking system (for every transaction).
- Balance subsidiary ledgers required for the preparation of the quarterly investment report.
- Accumulate and balance investment data and balance "them to those reports submitted to their Bank or 'Safekeeping Agent'."
- Enter data into investment spreadsheets to monitor principal and interest earnings for each investment as required by state statute.

Assistant finance director -

- Review and ensure the information in the subsidiary ledgers is accurate.
- Supervise, audits, and internal control procedures.

These activities are consistent with City's local investment policy, and they may be reasonable and responsible as argued by the claimant. The local policy requires that *every* investment transaction be reviewed, authorized and documented. In addition, the policy states that the City strives to maintain the level of investment of all funds at 100 percent if possible, through daily and projected cash flow determinations.

These activities, however, are overly broad and go beyond the scope of the state mandate. Entering, tracking, balancing, and auditing every investment transaction to comply with the local investment plan is not reimbursable.

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 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. Although a detailed "report of transactions" for the reporting period was required by the 1984 statute, it is not required by the test claim statutes. 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.²⁴

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 1997.²⁵ 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.

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

²⁴ *Briggs v. Eden Council for Hope and Opportunity* (1999) 19 Cal.4th 1106, 1117.

²⁵ See staff analysis for Item 3, Proposed Parameters and Guidelines, adopted by the Commission on November 20, 1997.

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.²⁶

Furthermore, when the Commission addressed the request to amend the parameters and guidelines in 2003, the Commission considered and denied arguments that daily investment monitoring and investment compliance activities are “necessary” in order to make the statements required by the test claim statute to be included 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, however, clarified the mandated activities with respect to required statements 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.²⁷

²⁶ 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.

²⁷ *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.

Finally, these legal conclusions are supported by the report prepared by Conny Jamison, the consultant retained by the Commission for the incorrect reduction claim filed by the County of Los Angeles, and relied upon by the City in this claim.²⁸ Ms. Jamison's 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 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."

Accordingly, the following activities performed by the senior account clerks and assistant finance director, as identified in the reimbursement claims are *not* reimbursable:

- Enter data into investment tracking system for *every* transaction.
- Balance subsidiary ledgers required for the preparation of the quarterly investment report.
- Accumulate and balance investment data and balance "them to those reports submitted to their Bank or 'Safekeeping Agent'."
- Enter data into investment spreadsheets to monitor principal and interest earnings for each investment as required by state statute.
- Review and ensure the information in the subsidiary ledgers is accurate.
- Supervise, audits, and internal control procedures.

C. 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, the Commission finds that the State Controller's Office incorrectly reduced to \$0 the reimbursement claims for salaries and benefits of the senior account clerks and the assistant

²⁸ In this respect, the Commission disagrees with the claimant's interpretation of Ms. Jamison's report.

finance director with respect to the quarterly report of investments. However, the reimbursement claims include activities and costs that are not reimbursable. Thus, not all the costs claimed by the City for salaries and benefits are reimbursable and can be reinstated.

The costs that should be reinstated to the City 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 City's claims indicate that the senior account clerks and the assistant finance director worked on the quarterly 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 City's claims for the costs of the salaries and benefits of the senior account clerks and assistant finance director 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 City 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, the Commission concludes that the State Controller's Office incorrectly reduced the costs claimed by the City of Tustin in their reimbursement claims filed for the *Investment Reports* program for fiscal years 1995-1996, 1996-1997, 1997-1998, and 1998-1999.

The City's reimbursement claims for fiscal years 1995-1996, 1996-1997, 1997-1998, and 1998-1999 are hereby remanded 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. 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.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIMS
ON:

Education Code Sections 38408, 39831.3, and
39831.5; Vehicle Code Section 22112
Statutes 1992, Chapter 624; Statutes 1994,
Chapter 831; Statutes 1996, Chapter 277;
Statutes 1997, Chapter 739;

Fiscal Year 2002-2003

San Jose Unified School District, Fullerton
Joint Union High School District, Sweetwater
Union High School District, San Ysidro
School District, Clovis Unified School District,
Claimants

Case Nos.: 07-4433-9722-I-01, 07-4433-
9722-I-02, 07-4433-9722-I-03,
07-4433-9722-I-04, 07-4433-9722-I-05

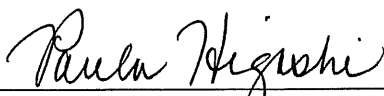
School Bus Safety I and II

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

(Adopted on September 30, 2010)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.



PAULA HIGASHI, Executive Director

Dated: October 1, 2010

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIMS
ON:

Education Code Sections 38408, 39831.3, and 39831.5; Vehicle Code Section 22112 Statutes 1992, Chapter 624; Statutes 1994, Chapter 831; Statutes 1996, Chapter 277; Statutes 1997, Chapter 739;

Fiscal Year 2002-2003

San Jose Unified School District, Fullerton Joint Union High School District, Sweetwater Union High School District, San Ysidro School District, Clovis Unified School District, Claimants

Case Nos.: 07-4433-9722-I-01, 07-4433-9722-I-02, 07-4433-9722-I-03, 07-4433-9722-I-04, 07-4433-9722-I-05

School Bus Safety I and II

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

(Adopted on September 30, 2010)

STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided these incorrect reduction claims during a regularly scheduled hearing on September 30, 2010. Keith Petersen appeared for the claimants. Jill Kanemasu appeared for the State Controller’s Office. Donna Ferebee and Lenin Del Castillo appeared for the Department of Finance.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to approve the incorrect reduction claim at the hearing by a vote of 6 to 0.

BACKGROUND AND SUMMARY OF FINDINGS

These consolidated incorrect reduction claims raise common questions of law and fact and were returned to the claimant by the State Controller’s Office for the same reason. In all claims, the claimant filed annual reimbursement claims for compliance with the *School Bus Safety I and II* program for fiscal year 2002-2003. The State Budget Act of 2002 specifically identified *School Bus Safety II* as a suspended program for which reimbursement would not be provided during fiscal year 2002-2003. (Stats. 2002, ch. 379, Item 6110-295-0001.) The State Controller’s Office returned the reimbursement claims without conducting an audit on the ground that the program was suspended for fiscal year 2002-2003.¹

¹ For fiscal year 2002-2003, the following amounts were claimed for reimbursement: San Jose Unified School District claimed reimbursement in the amount of \$22,193; Fullerton Joint Union High School District claimed reimbursement in the amount of \$1,554; Sweetwater Union High

All claimants allege, however, that Government Code section 17581.5, the statute governing the suspension of the *School Bus Safety* program, did not become effective and operative until September 30, 2002 (Stats. 2002, ch. 1167, eff. Sept. 30, 2002), and therefore, they are entitled to reimbursement for the limited time period from July 1, 2002, until September 30, 2002, the effective date of Government Code section 17581.5.

The Commission finds that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Bus Safety I* program (Stats. 1992, ch. 624) for the limited time period from July 1, 2002, through September 29, 2002. In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants.

The Commission hereby remands the reimbursement claims back to the State Controller's Office for further review and reinstatement of the costs eligible for reimbursement pursuant to the parameters and guidelines amended on March 25, 2004, for the *School Bus Safety I* program for the limited time period from July 1, 2002, through September 29, 2002.

COMMISSION FINDINGS

Issue: Did the State Controller's Office incorrectly return and reduce the claims of the school district claimants?

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.

In the present case, the State Budget Act of 2002 was chaptered on September 5, 2002. The 2002 Budget Act, in Item 6110-295-0001, appropriates \$0 for the "*School Bus Safety II*" program, and states in provision 4.5 the following:

Pursuant to *section 17581 of the Government Code*, mandates identified in the appropriation schedule of this item with an appropriation of \$0 and included in the language of this provision are specifically identified by the Legislature for suspension during the 2002-2003 fiscal year:

School District claimed reimbursement in the amount of \$1,956; San Ysidro School District claimed reimbursement in the amount of \$2,064; and Clovis Unified School District claimed reimbursement in the amount of \$8,404.

- (1) School Bus Safety II (Ch. 624, Stats. 1992, Ch. 831, Stats. 1994, Ch. 739, Stats. 1997).
- (2) School Crimes Reporting II (Ch. 759, Stats. 1992, Ch 410, Stats 1995).
(Emphasis added.)

Although the State Budget Act of 2002 refers to the program as “School Bus Safety II,” the statutes and chapters cited in the parenthesis include the statutes cited in *School Bus Safety I* (Stats. 1992, ch. 642, CSM 4433) and *School Bus Safety II* (Stats. 1994, ch. 831; Stats. 1997, ch. 739). In addition, the parameters and guidelines that existed in 2002 for the *School Bus Safety* program consolidated both test claims in one set of parameters and guidelines.²

The State Budget Act of 2002 cites to Government Code section 17581, which is the suspension statute for *local agencies*.³ Government Code section 17581 provides in relevant part that “[n]o local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if” (1) the statute or executive order has been determined by the Legislature, the Commission, or the court to be a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, and (2) the statute or executive order, or the Commission’ claim number, has been specifically identified by the Legislature in the State Budget Act as being one for which reimbursement is not provided for that fiscal year. Under such circumstances, Government Code section 17581, subdivision (c), authorizes a local agency that “elects to implement or give effect” to the suspended program the authority to assess fees in an amount that does not exceed the costs reasonably borne by the local agency. Thus, under Government Code section 17581, the Legislature relieves the local agency of the duty to comply with the mandated program during fiscal years in which no money is appropriated for the program and the program is specifically identified as being suspended by the Legislature.⁴ The state-mandated program becomes voluntary and not mandated by the state during the period of suspension.

Government Code section 17581, however, does not apply to school districts.⁵ Subdivision (b) of Government Code section 17581 expressly states that “[t]his section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution [Proposition 98].”

Thus, although the State Budget Act of 2002 appropriated \$0 to school districts for the *School Bus Safety I and II* program and identified the program in the State Budget Act for suspension, there was no statutory authority relieving school districts of the duty to comply with the mandated program. Unlike the provision for local agencies in Government Code section 17581, there was nothing in the law expressly stating that school districts were not required to implement or to give effect to the *School Bus Safety I and II* program. The program remained

² Parameters and guidelines adopted on November 30, 1999.

³ Government Code section 17518 defines “local agency” to mean “any city, county, special district, or other political subdivision of the state.”

⁴ *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 300-301.

⁵ Government Code section 17519 defines “school district” to mean “any school district, community college district, or county superintendent of schools.”

mandated by the state and school districts were required by law to comply with the mandate. Under such circumstances, reimbursement is required by article XIII B, section 6 of the California Constitution.

The *School Bus Safety I and II* program remained a reimbursable state-mandated program from July 1, 2002 until September 30, 2002, when section 17581.5 was added to the Government Code “in order to make the necessary statutory changes to implement the Budget Act of 2002 at the earliest possible time.” (Stats. 2002, ch. 1167, Assem. Bill No. 2781, §§ 37, 55.) Government Code section 17581.5 provides that school districts shall not be required to implement specified education mandates when they are suspended by the Legislature during a fiscal year. Section 17581.5, as added in 2002, stated the following:

- (a) A school district shall not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:
 - (1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.
 - (2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.
- (b) This section applies only to the following mandates:
 - (1) The School Bus Safety II mandate (Chapter 642 of the Statutes of 1992, Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).⁶
 - (2) The School Crimes Reporting II mandate (Chapter 759 of the Statutes of 1992 and chapter 410 of the Statutes of 1995).⁷

With the enactment of Government Code section 17581.5, school districts were relieved of the duty to comply with the *School Bus Safety I and II* program beginning September 30, 2002, through the remaining 2002-2003 fiscal year, and for all future fiscal years that the program was identified as a suspended program.

⁶ Government Code section 17581.5 and the State Budget Act of 2002 do not cite to Statutes 1996, chapter 277, which was pled in *School Bus Safety II*. The 1996 statute, however, did not make any substantive changes to the reimbursable activities. The statute simply repealed Education Code section 39831.5 and added a new section 38048 that contained substantially the same provisions as former section 39831.5.

⁷ Government Code section 17581.5 has since been amended to add programs to the list of suspended education mandates.

However, on December 22, 2003, the Sacramento Superior Court entered judgment, and on February 3, 2004, issued a peremptory writ of mandate in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), finding that the *School Bus Safety II* test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary. The court ordered the Commission to set aside the Statement of Decision and to vacate the parameters and guidelines and statewide cost estimate issued with respect to the *School Bus Safety II* test claim. On March 25, 2004, the Commission set aside the *School Bus Safety II* decision and vacated the parameters and guidelines for the *School Bus Safety II* program, leaving the parameters and guidelines for the *School Bus Safety I* program intact.^{8,9}

Accordingly, only the following *School Bus Safety I* activities mandated by Statutes 1992, chapter 624 are eligible for reimbursement from July 1, 2002, through September 29, 2002 (the time period for which no statutory authority existed to relieve school districts of the duty to comply with the mandate):

A. Instruction Prior to School Activity Trips (Ed. Code, § 39831.5, subd. (a))¹⁰

Giving safety instruction, including, but not limited to, location of emergency exits, location and use of emergency equipment, and responsibilities of passengers seated next to an emergency exit, to all pupils at the elementary and secondary level riding a school bus or school pupil activity bus on any school activity trip.

B. Record Keeping and Retention (Ed. Code, § 39831.5, subd (b))¹¹

Documenting the following information each time the safety information is given and maintaining the information for one year from the date of instruction:

1. Name of school district, county office of education.
2. Name and location of school.
3. Date of instruction.
4. Names of supervising adults.

⁸ Order to Set Aside Statement of Decision in *School Bus Safety II* and Amended Parameters and Guidelines adopted March 25, 2004.

⁹ The court left an issue for remand, ordering the Commission “to rehear the *School Bus Safety II* test claim and to issue a decision on the limited issue of whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students and, if so, do the *School Bus Safety II* test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs?” On March 25, 2005, the Commission concluded that although federal law may require transportation of disabled children under certain circumstances, the law does not require school districts to provide a school bus transportation program; therefore, pursuant to the court decision described above, and article XIII B, section 6 of the California Constitution, the *School Bus Safety II* test claim statutes do not impose a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

¹⁰ As added by Statutes 1992, chapter 624.

¹¹ As added by Statutes 1992, chapter 624.

5. Number of pupils participating.
6. Grade levels of pupils.
7. Subjects covered in instruction.
8. Amount of time taken for instruction.
9. Bus driver's name.
10. Bus number.
11. Additional remarks.

C. Hand-held Stop Signs (Veh. Code, § 22112, sub. (c)(3))¹²

1. Stop Signs

Reasonable costs for the purchase or manufacture of the hand-held "STOP" signs required to comply with Vehicle Code section 22112, subdivision (c), subpart (3). The cost for replacement/refinishing of worn out signs due to normal wear and tear is reimbursable. The cost of a manufactured/refinished hand held sign shall not exceed the cost for which a sign can be purchased.

2. Number of Stop Signs

The number of claimable hand held signs shall equal the lesser of the number of school busses or school bus routes, plus an additional five percent (but not less than one additional sign) to provide spare signs for use in the event a sign is lost, stolen, or otherwise unusable or unavailable; providing, however, that the number of claimable hand held signs shall not exceed the number of operable school busses during the fiscal year, plus the additional five percent (but not less than one additional sign).

3. Stop Sign Storage

Reasonable costs of labor and associated costs for materials and supplies needed to provide legally necessary storage for the hand-held "STOP" signs on school busses when the signs are not in use.

Thus, the school district claimants are entitled to reimbursement for the state-mandated activities in *School Bus Safety I* for the limited time period from July 1, 2002, through September 29, 2002.

The Department of Finance, however, requests that the Commission consider a more limited time frame for eligible reimbursements to reflect the practical reality of school district operations to allow reimbursement, not from July 1, 2002, but from the beginning of the school year. The Department of Finance states the following:

Specifically, we note that Commission staff has concluded that reimbursement may be submitted by eligible districts for the claimable period of July 1, 2002 to September 29, 2002. This conclusion is based on a very technical and legal view, that absent the passage of the controlling statutes governing the suspension of the School Bus Safety program, districts had no effective recourse not to comply with

¹² As amended by Statutes 1992, chapter 624; now renumbered subdivision (d)(3).

these activities until the actual legislation was enacted on September 29, 2002, to suspend this program. While we believe that budget developments in the proceeding [sic] months should have sent very strong signals to school districts regarding the likely hood [sic] of suspension for that program in 2002, we understand the technical basis upon which September 29th was concluded to represent the end of the reimbursement period. However, we vigorously disagree that July 1st is an appropriate starting point for the reimbursement period for most school districts, with the exception of those that may have operated summer school programs that year. For most school districts, the earliest date in which most of the claimable activities would have commenced is the beginning of the school year, not the fiscal year. As such, we believe that any approved cost claims under this program should reflect that practical reality, which will likely narrow the reimbursement timeframe for most activities to less than one month. Furthermore, it is our expectation that the Controller's Office will take this into account during their final review and approval of these claims. (Exhibit D.)

The Commission cannot legally comply with the Department of Finance's request. The statutes enacted by the Legislature to govern the mandate reimbursement process establish reimbursement based on the fiscal year that starts July 1, and the Commission has no authority to change that date to the start of a school year. Government Code section 17561, subdivision (a), provides that "[t]he state shall reimburse each local agency and school district for *all* 'costs mandated by the state' as defined in Section 17514 ..." The initial period of reimbursement for a mandated program is governed by Government Code section 17557, subdivision (e), which states in part that "a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that *fiscal year*." Pursuant to Government Code section 17561, subdivision (d)(1)(A), "each local agency or school district to which the mandate is applicable shall submit claims *for initial fiscal year costs* to the Controller within 120 days of the issuance date for the claiming instructions." Thereafter, local agencies and school districts may file annual reimbursement claims with the State Controller's Office pursuant to Government Code section 17560 "that details the costs actually incurred *for that fiscal year*."¹³ Although it may be true that costs would be limited for this program during the July 1, 2002, through September 29, 2002 period because schools are generally out of session during the summer months as suggested by the Department of Finance, any change made by the Commission to the eligible claiming periods for initial fiscal year and annual costs would violate the Government Code statutes.

CONCLUSION

The Commission concludes that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Bus Safety I* program (Stats. 1992, ch. 624) for the limited time period from July 1, 2002, through September 29, 2002. In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants.

The Commission hereby remands the reimbursement claims back to the State Controller's Office for further review and reinstatement of the costs eligible for reimbursement pursuant to the parameters and guidelines amended on March 25, 2004, for the *School Bus Safety I* program for the limited time period from July 1, 2002, through September 29, 2002.

¹³ Emphasis added to these statutes.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Penal Code Sections 628.2 and 628.6;
Title V, California Code of Regulations,
Sections 700-704; Statutes 1984, Chapter
1607; Statutes 1988, Chapter 78; Statutes
1989, Chapter 1457; Statutes 1992, Chapter
759; Statutes 1995, Chapter 410;
California Department of Education,
Guidelines for School Crimes Reporting;

Fiscal Year 2002-2003

Bonita Unified School District, Fullerton Joint
Union High School District, San Ysidro
School District, Castro Valley Unified School
District, Encinitas Union Elementary School
District, Carlsbad Unified School District,
San Diego County Office of Education,
Rosedale Union Elementary School District,
Claimants

Case Nos.: 07-9703-I-01, 07-9703-I-02,
07-9703-I-03, 07-9703-I-04, 07-9703-I-05,
07-9703-I-06, 07-9703-I-07, 07-9703-I-08


School Crimes Reporting II

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

(Adopted on September 30, 2010)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.



PAULA HIGASHI, Executive Director

Dated: October 1, 2010

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Penal Code Sections 628.2 and 628.6;
Title V, California Code of Regulations,
Sections 700-704; Statutes 1984, Chapter
1607; Statutes 1988, Chapter 78; Statutes
1989, Chapter 1457; Statutes 1992, Chapter
759; Statutes 1995, Chapter 410;
California Department of Education,
Guidelines for School Crimes Reporting;
Fiscal Year 2002-2003

Bonita Unified School District, Fullerton Joint
Union High School District, San Ysidro
School District, Castro Valley Unified School
District, Encinitas Union Elementary School
District, Carlsbad Unified School District,
San Diego County Office of Education,
Rosedale Union Elementary School District,
Claimants

Case Nos.: 07-9703-I-01, 07-9703-I-02,
07-9703-I-03, 07-9703-I-04, 07-9703-I-05,
07-9703-I-06, 07-9703-I-07, 07-9703-I-08

School Crimes Reporting II

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

(Adopted on September 30, 2010)

STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this incorrect reduction claim during a regularly scheduled hearing on September 30, 2010. Keith Petersen appeared for the claimants. Jill Kanemasu appeared for the State Controller’s Office. Donna Ferebee and Lenin Del Castillo appeared for the Department of Finance.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to approve the incorrect reduction claim at the hearing by a vote of 6 to 0.

Summary of Findings

These consolidated incorrect reduction claims raise common questions of law and fact and were returned by the State Controller’s Office for the same reason. In all claims, the claimant filed annual reimbursement claims for compliance with the *School Crimes Reporting II* program for fiscal year 2002-2003. The State Budget Act of 2002 specifically identified “*School Crimes Reporting II*” as a suspended program for which reimbursement would not be provided during

fiscal year 2002-2003. (Stats. 2002, ch. 379, Item 6110-295-0001.) The State Controller's Office returned the reimbursement claims without conducting an audit on the ground that the program was suspended for fiscal year 2002-2003.¹

All claimants allege, however, that Government Code section 17581.5, the statute governing the suspension of the *School Crimes Reporting II* program, did not become effective and operative until September 30, 2002 (Stats. 2002, ch. 1167, eff. Sept. 30, 2002), and therefore, they are entitled to reimbursement for the limited time period from July 1, 2002, until September 30, 2002, the effective date of Government Code section 17581.5.

The Commission found that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Crimes Reporting II* program for the limited time period from July 1, 2002, through September 29, 2002 (the time period for which no statutory authority existed to relieve school districts of the duty to comply with the mandate). In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants. The Commission remanded the reimbursement claims back to the State Controller's Office for further review and reinstatement of the costs eligible for reimbursement pursuant to the parameters and guidelines for the School Crimes Reporting program that were adopted on September 28, 2000, for the limited time period from July 1, 2002, through September 29, 2002.

BACKGROUND

In 1984, the Legislature enacted the original school crimes reporting program and made amendments to the program in 1988 and 1989. In 1990, the Commission approved the *School Crimes Statistics Reporting and Validation* test claim (CSM 4371), which included the 1984, 1988, and 1989 Penal Code statutes and the Department of Education's "Standard School Crime Reporting Form." Parameters and guidelines for that test claim were adopted in 1991, and authorized reimbursement for on-site data collection, data compilation and reporting to the Department of Education, reporting and providing information to each school site about the program, and compliance with state agency reviews. Subsequent amendments to the statutes were made in 1992.

In 1994, the Legislature directed the Department of Education to revise the reporting procedures due to inconsistent data reported by the schools. In 1995, the Department of Education adopted regulations (Cal. Code Regs., tit. 5, §§ 700-704) and "Guidelines for School Crimes Reporting" to comply with the Legislature's directive.

In 1997, the *School Crimes Reporting II* test claim (97-TC-03) was filed on the 1992 and 1995 statutory amendments, and the Department of Education's regulations and guideline for the program. The Commission approved the *School Crimes Reporting II* test claim on

¹ For fiscal year 2002-2003, the following amounts were claimed for reimbursement: Bonita Unified School District claimed reimbursement in the amount of \$2,167; Fullerton Joint Union High School District claimed reimbursement in the amount of \$3,834; San Ysidro School District claimed reimbursement in the amount of \$1,303; Castro Valley Unified School District claimed reimbursement in the amount of \$15,929; and Encinitas Union Elementary School District claimed reimbursement in the amount of \$915; Carlsbad Unified School District claimed reimbursement in the amount of \$3,933; San Diego County Office of Education claimed reimbursement in the amount of \$1,622; and Rosedale Union Elementary School District claimed reimbursement in the amount of \$3,749.

March 30, 2000, recognizing that the activities mandated in the first test claim, *School Crimes Statistics Reporting and Validation*, continued to be mandated by the statutes, regulations and guideline pled in *School Crimes Reporting II*. The activities, however, were modified and made more specific, and the regulations and guideline required the completion of a new California Safe Schools Assessment (CSSA) form. Thus, on September 28, 2000, the Commission consolidated the parameters and guidelines for *School Crimes Statistics and Reporting and Validation* (CSM 4371) with *School Crimes Reporting II* (97-TC-03), adding new reimbursable activities, and amending the language regarding the existing reimbursable activities to conform to the current law pled and approved in *School Crimes Reporting II*. Thereafter, the claiming instructions for the consolidated program were entitled simply “*School Crimes Reporting II*.”

On December 9, 2005, the Commission set aside the consolidated parameters and guidelines, effective October 7, 2005, because the Legislature repealed Penal Code sections 628.2 and 628.6. Thus, beginning October 7, 2005, reimbursement was not required for this program.

COMMISSION FINDINGS

Issue: Did the State Controller’s Office incorrectly return and reduce the claims of the school district claimants?

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.

In the present case, the State Budget Act of 2002 was chaptered on September 5, 2002. The 2002 Budget Act, in Item 6110-295-0001, appropriates \$0 for the “*School Crimes Reporting II*” program, and states in provision 4.5 the following:

Pursuant to *section 17581 of the Government Code*, mandates identified in the appropriation schedule of this item with an appropriation of \$0 and included in the language of this provision are specifically identified by the Legislature for suspension during the 2002-2003 fiscal year:

- (1) School Bus Safety II (Ch. 624, Stats. 1992, Ch. 831, Stats. 1994, Ch. 739, Stats. 1997).
- (2) School Crimes Reporting II (Ch. 759, Stats. 1992, Ch 410, Stats 1995).
(Emphasis added.)

Although the State Budget Act of 2002 purports to suspend the *School Crimes Reporting II* program, the plain language of the Budget Act raises several legal issues.

The State Budget Act of 2002 appropriates \$0, but does not suspend or make the program voluntary

The State Budget Act of 2002 cites to Government Code section 17581, which is the suspension statute for *local agencies*.² Government Code section 17581 provides in relevant part that “[n]o local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if” (1) the statute or executive order has been determined by the Legislature, the Commission, or the court to be a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, and (2) the statute or executive order, or the Commission’s claim number, has been specifically identified by the Legislature in the State Budget Act as being one for which reimbursement is not provided for that fiscal year. Under such circumstances, Government Code section 17581, subdivision (c), authorizes a local agency that “elects to implement or give effect” to the suspended program the authority to assess fees in an amount that does not exceed the costs reasonably borne by the local agency. Thus, under Government Code section 17581, the Legislature relieves the local agency of the duty to comply with the mandated program during fiscal years in which no money is appropriated for the program and the program is specifically identified as being suspended by the Legislature.³ The state-mandated program becomes voluntary and not mandated by the state during the period of suspension.

Government Code section 17581, however, does not apply to school districts.⁴ Subdivision (b) of Government Code section 17581 expressly states that “[t]his section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution [Proposition 98].”

Thus, although the State Budget Act of 2002 appropriated \$0 to school districts for the “*School Crimes Reporting II*” program and identified the program in the State Budget Act for suspension for fiscal year 2002-2003, there was no statutory authority relieving school districts of the duty to comply with the mandated program. Unlike the provision for local agencies in Government Code section 17581, there was nothing in the law expressly stating that school districts were not required to implement or to give effect to the *School Crimes Reporting II* program for fiscal year 2002-2003. Thus, the program remained mandated by the state at the start of the fiscal year and school districts were required by law to comply with the mandate. Under such circumstances, reimbursement is required by article XIII B, section 6 of the California Constitution.

² Government Code section 17518 defines “local agency” to mean “any city, county, special district, or other political subdivision of the state.”

³ *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 300-301.

⁴ Government Code section 17519 defines “school district” to mean “any school district, community college district, or county superintendent of schools.”

Based on the rules of statutory construction, Government Code section 17581.5 suspends the School Crimes Reporting Program beginning September 30, 2002

Effective September 30, 2002, section 17581.5 was added to the Government Code “in order to make the necessary statutory changes to implement the Budget Act of 2002 at the earliest possible time.” (Stats. 2002, ch. 1167, Assem. Bill No. 2781, §§ 37, 55.) Government Code section 17581.5 provides that school districts shall not be required to implement specified education mandates when they are suspended by the Legislature during a fiscal year. Section 17581.5, as added in 2002, stated the following:

- (a) A school district shall not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:
 - (1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.
 - (2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.
- (b) This section applies only to the following mandates:
 - (1) The School Bus Safety II mandate (Chapter 642 of the Statutes of 1992, Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).
 - (2) The School Crimes Reporting II mandate (Chapter 759 of the Statutes of 1992 and chapter 410 of the Statutes of 1995).

Although Government Code section 17581.5 became effective on September 30, 2002, the plain language of the statute, with respect to the *School Crimes Reporting II* program, is vague and ambiguous for two reasons. First, Government Code section 17581.5 as enacted in 2002 did not relieve school districts of the duty to comply with “executive orders.” Subdivision (a) of section 17581.5 states only that “school districts shall not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) ...” (Emphasis added.) This language is different than the local agency suspension statute, Government Code section 17581, subdivision (a), which expressly states that “[n]o local agency shall be required to implement or give effect to any statute or executive order” when the program is suspended. (Emphasis added.) Unless properly suspended for a fiscal year, Article XIII B, section 6 requires reimbursement for activities mandated by executive order.⁵

⁵ Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds whenever the Legislature “or any state agency” mandates a new program or higher level of service on local government. Government Code section 17514 defines “costs

Second, the plain language of Government Code section 17581.5, subdivision (b), which lists the suspended programs for schools, and the State Budget Act of 2002 do not fully identify the mandated program for *School Crimes Reporting II* to include the executive orders that were approved in the claim. Government Code section 17581.5, subdivision (b), and the State Budget Act of 2002 refer to the program as “School Crimes Reporting II” and list only the statutes pled in that test claim (Ch. 759, Stats. 1992, Ch 410, Stats 1995). The parameters and guidelines and claiming instructions for the program that existed at the time the State Budget Act of 2002 and Government Code section 17581.5 were enacted also included activities mandated by the following executive orders: Title 5, California Code of Regulations, sections 700-704; and California Department of Education Guidelines for School Crimes Reporting.⁶

mandated by the state” to include “executive orders” that mandate a new program or higher level of service on local government. Government Code section 17516 defines an “executive order” to include “any order, plan, requirement, rule, or regulation issued by ... any agency, department, board, or commission of state government.”

⁶ These mandated activities, as cited in the Statement of Decision for *School Crimes Reporting II*, include the following:

- Develop a system to ensure all crimes are systematically reported. (1995, 1997 CDE Guidelines.)
- Determine/investigate whether incidents are reportable using the definitions in section 700, subdivision (b), and the guidelines in section 702. (Cal. Code Regs., tit. 5, § 701, subd. (a)(1).)
- Train staff to complete the new school crime reporting form. (Cal. Code Regs., tit. 5, § 701, subd. (a)(1); 1995, 1997 CDE Guidelines.)
- Cross-check forms with other records to ensure that all reportable incidents have been recorded. (1995, 1997 CDE Guidelines.)
- Review CSSA Forms to ensure accuracy and make corrections as required. (1995, 1997 CDE Guidelines.)
- Retain the individual reports of incidents of crime and supporting documentation for three years. (Cal. Code Regs., tit. 5, §§ 701, subd. (a)(2), 702, subd. (b); 1995, 1997 CDE Guidelines.)
- Make data and staff available during the validation process. (Cal. Code Regs., tit. 5, § 702, subd. (b); 1995, 1997 CDE Guidelines.)
- Notify CSSA of the district’s reporting process option by July 1 of each year. (1995, 1997 CDE Guidelines.)
- Designate a CSSA Representative to develop and administer the school crimes reporting system. (Pen. Code, § 628.6; 1995, 1997 CDE Guidelines.)
- Cross-check each incident report for accuracy and follow-up with school personnel if errors are discovered. (1997 CDE Guidelines.)
- Retain supporting documentation for the school crime reports for three years. These records include, but are not limited to, expulsion reports, maintenance reports, and other

Thus, the issue is whether Government Code section 17581.5 properly relieved school districts of the duty to comply with the mandated activities in *School Crimes Reporting II*, beginning September 30, 2002.

For the reasons below, the Commission finds that school districts were relieved of the duty to comply with the *School Crimes Reporting II* program beginning September 30, 2002, through the remaining 2002-2003 fiscal year.

Although the language in Government Code 17581.5, as originally added, is not clear with respect to duty to comply with the executive orders in the *School Crimes Reporting II* program, subsequent amendments to the statute help to clarify what the Legislature intended when it enacted Government Code section 17581.5 and applied the section to the *School Crimes Reporting II* program in 2002. Pursuant to the rules of statutory construction, when the Legislature amends a statute to clarify existing law, the clarification may be applied to actions predating the enactment of the amendment without being considered a retroactive application of the law. The clarified law is merely a statement of what the law has always been.⁷

In 2004, the Legislature amended Government Code section 17518.5 by clarifying that the suspension applied to the entire 97-TC-03 *School Crimes Reporting II* test claim program. The language was amended as follows:

(b) This section applies only to the following mandates:

(1)

(2) The School Crimes Reporting II mandate (97-TC-03; and Chapter 759 of the Statutes of 1992 and chapter 410 of the Statutes of 1995).⁸

As indicated above, the parameters and guidelines and claiming instructions for the 97-TC-03 *School Crimes Reporting* program included mandates from statutes and executive orders.

In addition, the Legislature amended Government Code section 17581.5 in 2007 by moving the list of suspended programs to subdivision (c) and rewriting subdivision (b) to require the Department of Finance to notify school districts of any statute “or executive order” that is suspended in the fiscal year as follows:

documents to verify economic loss, if applicable. (Cal. Code Regs., tit. 5, § 702, subd. (b); 1995, 1997 CDE guidelines.)

- Certify the accuracy of completed reports. (Cal. Code Regs., tit. 5, § 704; 1995, 1997 CDE Guidelines.)
- Make the CSSA Representative and school crime data available during validation proceedings. (Cal. Code Regs., tit. 5, § 702, subd. (b); 1995, 1997 CDE Guidelines.)

⁷ *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471, quoting *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243, where the court stated the following: “If the amendment merely clarified existing law, no question of retroactivity is presented. ‘[A] statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment’ “because the true meaning of the statute remains the same.”

⁸ Statutes 2004, chapter 316 (AB 2851).

Within 30 days after enactment of the Budget Act, the Department of Finance shall notify school districts of any statute *or executive order*, or portion thereof, for which reimbursement is not provided for the fiscal year pursuant to this section. (Emphasis added.)⁹

Although the requirement to notify school districts of the suspended program is new, the 2007 amendment clarified that the Legislature specifically intended to suspend mandates required by executive orders.

Accordingly, with the enactment of Government Code section 17581.5 on September 30, 2002, the Commission finds that school districts were relieved of the duty to comply with the *School Crimes Reporting II* program beginning September 30, 2002, through the remaining 2002-2003 fiscal year. The Commission further finds that the school district claimants are entitled to reimbursement for the state-mandated activities in *School Crimes Reporting II* program for the limited time period from July 1, 2002, through September 29, 2002, and that the State Controller's Office incorrectly returned and reduced the claims of the school district claims.

CONCLUSION

The Commission concludes that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Crimes Reporting II* program for the limited time period from July 1, 2002, through September 29, 2002. In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants.

The Commission hereby remands the reimbursement claims back to the State Controller's Office for further review and reinstatement of the costs eligible for reimbursement pursuant to the parameters and guidelines for the *School Crimes Reporting II* program that were adopted on September 28, 2000, for the limited time period from July 1, 2002, through September 29, 2002.

⁹ Statutes 2007, chapter 329, section 13 (AB 1222).