

**COMMISSION ON STATE MANDATES**

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April 11, 2003

Mr. Keith Petersen  
SixTen and Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

*And Interested Parties and Affected State Agencies (See Enclosed Mailing List)*

**RE: Proposed Statement of Decision and Hearing Date**

*Enrollment Fee Collection, 99-TC-13*

Los Rios Community College District, Claimant

Education Code Section 76300, Statutes 1984xx, Chapter 1 et al.; California Code of Regulations, Title 5, Sections 58500 – 58508.

*Enrollment Fee Waivers, 00-TC-15*

Glendale Community College District, Claimant

Education Code Section 76300, Statutes 1984xx, Chapter 1 et al.; California Code of Regulations, Title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630.

Dear Mr. Petersen:

The Proposed Statement of Decision for this test claim is complete and is enclosed for your review.

**Hearing**

This Proposed Statement of Decision is set for hearing on Thursday, **April 24, 2003**, at 10:00 a.m. in Room 126 of the State Capitol, Sacramento, California. This item will be placed on the Proposed Consent Calendar unless you let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

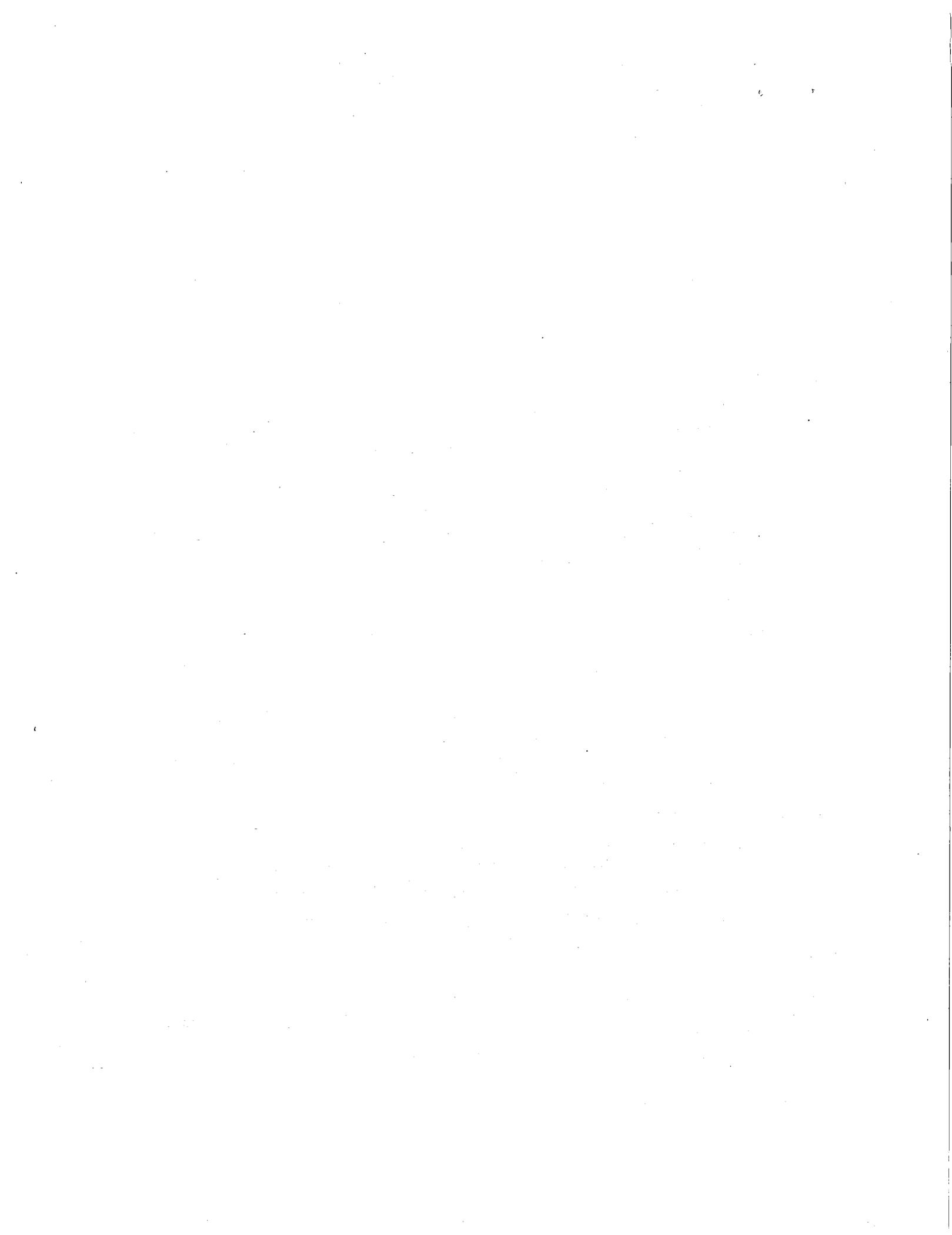
Please contact Eric Feller at (916) 323-8221, with any questions regarding the above.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI  
Executive Director

Enc. Proposed Statement of Decision



**ITEM 8**  
**PROPOSED STATEMENT OF DECISION**  
**TEST CLAIM**

Education Code Section 76300;  
Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401;  
Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394;  
Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114;  
Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124;  
Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308;  
Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72;  
California Code of Regulations, Title 5, Sections 58500 – 58508

*Enrollment Fee Collection (99-TC-13)*

Filed by Los Rios Community College District, Claimant

and

Education Code Section 76300  
Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401;  
Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394;  
Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136;  
Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422;  
Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72;  
California Code of Regulations, Title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630

*Enrollment Fee Waivers (00-TC-15)*

Filed by Glendale Community College District, Claimant

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**EXECUTIVE SUMMARY**

At the March 27, 2003 hearing, the Commission on State Mandates (“Commission”) heard and approved this test claim by a 5-0 vote.<sup>1</sup> Therefore, the sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects the vote of the Commission.<sup>2</sup>

**Background and Findings**

Claimant Los Rios Community College District (LRCCD), submitted the *Enrollment Fee Collection* test claim (99-TC-13) in June 2000 alleging a reimbursable state mandate for community college districts by requiring new activities and costs related to collecting enrollment fees. Claimant Glendale Community College District (GCCD) submitted the *Enrollment Fee Waivers* (00-TC-15) test claim in May 2001 alleging a reimbursable state mandate for community college districts by requiring new activities and costs related to granting fee waivers,

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<sup>1</sup> Pertinent portion of Transcript from the March 27, 2003 Commission hearing is attached.

<sup>2</sup> California Code of Regulations, title 2, section 1188.1, subdivision (g).

and financial assistance to students. In August 2002, the *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waiver* (00-TC-15) test claims were consolidated.

The Commission concluded that the test claim legislation imposes a partial reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- Calculating and collecting the student enrollment fee for each student enrolled except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, § 76300, subs. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.);
- Waiving student fees in accordance with the groups listed in Education Code section 76300, subdivisions (g) and (h);
- Waiving fees for students who apply for and are eligible for Board of Governor's (BOG) fee waivers (Cal. Code Regs., tit. 5, §§ 58612, 58613 & 58620.);
- Reporting to the CCC the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.);
- Adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

The Commission also concluded that all other test claim statutes and regulations not cited above do not impose reimbursable state-mandated activities within the meaning of article XIII B, section 6 and Government Code section 17514.

### **Recommendation**

Staff recommends that the Commission adopt this Proposed Statement of Decision, which accurately reflects the Commission's vote at the March 27, 2003 hearing.

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE TEST CLAIM ON:**

Education Code Section 76300; Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401; Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114; Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72; California Code of Regulations, Title 5, Sections 58500 – 58508.

Filed on June 22, 2000,

By Los Rios Community College District,  
Claimant.

Education Code Section 76300; Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401; Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72; California Code of Regulations, Title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630;

Filed on June 4, 2001,

By Glendale Community College District,  
Claimant.

No. 99-TC-13 and 00-TC-15

*Enrollment Fee Collection*

*Enrollment Fee Waivers*

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

*(Proposed for adoption on April 24, 2003)*

**PROPOSED STATEMENT OF DECISION**

The Commission heard and decided this test claim on March 27, 2003, during a regularly scheduled hearing. Mr. Keith Petersen appeared for claimants, Los Rios and Glendale Community College Districts, and Ms. Alice Kwong appeared on behalf of Los Rios Community College District. Mr. Randy Katz, Ms. Susan Geanacou, and Deputy Attorney General Leslie Lopez appeared on behalf of the Department of Finance (DOF).

At the hearing, testimony was given, the test claim was submitted, and the vote was taken.

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 partially approved this test claim by a 5-0 vote.<sup>3</sup>

## BACKGROUND

There are currently 72 community college districts governing 108 community colleges in California, serving over 2.9 million students.<sup>4</sup>

Claimant Los Rios Community College District (LRCCD) filed the *Enrollment Fee Collection* test claim (99-TC-13) on June 22, 2000. Originally enacted in 1984 and amended throughout the 1980s and 1990s, the original test claim legislation and regulations<sup>5</sup> authorize and require community colleges to implement enrollment fees and adopt regulations for their collection. Although the amount of the enrollment fee has been amended various times, the two percent of the fee retained by the community colleges<sup>6</sup> has remained constant.

Claimant Glendale Community College District (GCCD) filed the *Enrollment Fee Waivers* (00-TC-15) test claim in May 2001 in which claimant pled fee-waiver statutes and regulations<sup>7</sup> that specify the groups of students for which fees are waived or exempted, and for whom Board of Governors Grants (BOG grants) are available. A BOG grant is an instrument used by a community college district to process financial assistance to a low-income student.<sup>8</sup> In 1993, the Legislature altered the BOG grant program, changing it from a fee-offset grant program to a fee-waiver program<sup>9</sup> (hereafter called BOG fee waivers). The regulations governing the program

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<sup>3</sup> Included in the motion was a directive to staff to work with all parties, including DOF, Legislative Analyst's Office, and the Attorney General's Office to develop unit cost rates for consideration in the proposed parameters and guidelines.

<sup>4</sup> California Community College Chancellor's Office website <<http://www.cccco.edu>> [as of Jan. 7, 2003].

<sup>5</sup> Education Code section 76300. Statutes 1984xx, chapter 1; Statutes 1984, chapters 274 and 1401; Statutes 1985, chapters 920 and 1454; Statutes 1986, chapters 46 and 394; Statutes 1987, chapter 1118; Statutes 1989, chapter 136; Statutes 1991, chapter 114; Statutes 1992, chapter 703; Statutes 1993, chapters 8, 66, 67, and 1124; Statutes 1994, chapters 153 and 422; Statutes 1995, chapter 308; Statutes 1996, chapter 63; and Statutes 1999, chapter 72. California Code of Regulations, title 5, sections 58500 – 58508.

<sup>6</sup> Education Code Section 76300, subdivision (c). This is called a "revenue credit" by the Community College Chancellor's Office.

<sup>7</sup> Education Code section 76300; California Code of Regulations, title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630; Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual ("BOG Fee Manual").

<sup>8</sup> California Code of Regulations, title 5, section 58601.

<sup>9</sup> Statutes 1993, chapter 1124 (Assem. Bill No. 1561).

were left intact, and are part of this test claim.<sup>10</sup> Unless indicated otherwise, any reference to a BOG grant in this analysis should be understood to apply to a BOG fee waiver.

In August 2002, the *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waiver* (00-TC-15) test claims were consolidated.<sup>11</sup>

### **Claimant's Position**

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.

In the *Enrollment Fee Collection* (99-TC-13) test claim, claimant requests reimbursement for the following activities:

- (1) determining the number of credit courses for each student subject to the student enrollment fees;
- (2) calculating and collecting student enrollment fees for each nonexempt student enrolled, and providing a waiver of student enrollment fees for exempt students;
- (3) calculating, collecting, waiving or refunding student enrollment fees due to subsequent timely program changes or withdrawal from school;
- (4) entering the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems;
- (5) processing all agency billings for students whose student enrollment fees are waived;
- (6) preparing and submitting reports on student enrollment fees collected and waived as required by the Board of Governors and other state agencies. Claimant states that failure to implement this mandate would reduce the total district revenue by up to ten percent pursuant to Education Code section 76300, subdivision (d).

In the *Enrollment Fee Waivers* (00-TC-15) test claim, claimant seeks reimbursement for:

- (1) determining and classifying students eligible for Board of Governors grants ("BOG grants") according to the eligibility criteria;
- (2) determining at the time of enrollment whether fees should be waived because the student is a recipient of benefits under the Aid to Families with Dependent Children (AFDC)<sup>12</sup> program or the Supplemental Security Income/State Supplementary program (SSI/SSP) or a beneficiary under a general assistance program;

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<sup>10</sup> California Code of Regulations, title 5, sections 58600 to 58630.

<sup>11</sup> California Code of Regulations, title 2, section 1183.06.

<sup>12</sup> On August 22, 1996, President Clinton signed into law H.R. 3734 --The Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This federal legislation eliminated the AFDC program and replaced it with the Temporary Assistance for Needy Families (TANF) program. This federal welfare reform offered states flexibility to redesign their programs, and subjected states to financial penalties for failing to meet work participation and other requirements. In response, California created the California Work Opportunity and Responsibility to Kids (CalWORKs) program—(Stats. 1997, ch. 270; Assem. Bill No. 1542,

- (3) determining at the time of enrollment whether fees should be waived for a student due to demonstration of financial need in accordance with federal methodology for determining expected family contribution of students seeking financial aid;
- (4) determining at the time of enrollment whether fees should be waived for a student because he or she is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in active service to the state;
- (5) entering the enrollment fee waiver information into the district cashier system and data processing and accounting systems, and processing all agency billings for students whose fees are waived;
- (6) separately documenting and accounting for the funds allocated for collection of enrollment fees and financial assistance in order to enable an independent determination regarding the accuracy of the District's certification of need for financial assistance;
- (7) preparing and submitting reports regarding the number and amounts of the enrollment fees waived as required by the Board of Governors and other state agencies.

Claimant contends that state funds allocated pursuant to Education Code section 76300, subdivision (i), currently calculated at .91 per credit unit waived, are not sufficient to fund the mandate.<sup>13</sup>

In its January 17, 2002 comments on the draft staff analysis, claimants stated general agreement with the analysis, except for the exclusion of the costs associated with collecting enrollment fees from nonresident students, which is discussed below.

#### **Department of Finance's Position**

DOF submitted separate comments on the *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waivers* (00-TC-15) test claims, and commented on the draft staff analysis on *Enrollment Fee Collection*, all of which are discussed in detail below.

In its most recent (2/25/03) comments on the draft staff analysis of *Enrollment Fee Collection* (99-TC-13) and the *Enrollment Fee Waivers* (00-TC-15) test claims, DOF concurs that calculating and collecting the student enrollment fee for each student who is not exempt from the fee is a state-mandated activity within the scope of the test claim. DOF also concurs that two activities are not state reimbursable mandated activities: (1) determining the number of credit courses for each student subject to the enrollment fees, and (2) preparing and submitting reports regarding enrollment fees collected. DOF disagrees with the remainder of the conclusions in the draft staff analysis, which is discussed in more detail below.

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Ducheny, Ashburn, Thompson, and Maddy). The AFDC and TANF programs are both referenced in the test claim legislation, and are used interchangeably in this analysis.

<sup>13</sup> Declaration of Carrie Bray, Director of Accounting Services, Los Rios Community College District, June 22, 2000.

## Community Colleges Chancellor's Office Position

In its comments on the *Enrollment Fee Collection* (99-TC-13), the CCC concludes that the test claim statute was "clearly a higher level of service for community colleges." The CCC provides (1) a bill analysis from the Legislative Analyst that concludes the two percent revenue credit is an insufficient reimbursement for the locally mandated fee-collection program, and (2) a letter from its president to the author of the fee legislation.

The CCC stresses that although the amount of the enrollment fee has varied, the two percent revenue credit for community colleges has remained constant. Finally, the CCC states that, for fiscal year 1998-99, the claimant LRCCD collected \$6.98 million in fees pursuant to Education Code section 76300, of which two percent, or \$139,610 was a revenue credit. Statewide, enrollment fees totaled over \$164 million, of which the two percent revenue credit totaled \$3.28 million.

The CCC did not provide comments on *Enrollment Fee Waivers* (00-TC-15).

### COMMISSION FINDINGS

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must mandate a new program or create an increased or higher level of service over the former required level of service. "Mandates" as used in article XIII B, section 6, is defined to mean "orders" or "commands."<sup>14</sup> The California Supreme Court has defined "program" subject to article XIII B, section 6 of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>15</sup> To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>16</sup> Finally, the new program or increased level of service must impose "costs mandated by the state."<sup>17</sup>

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

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<sup>14</sup> *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>15</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>16</sup> *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>17</sup> Government Code section 17514.

These issues are addressed as follows.

**Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?**

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," which is defined as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>18</sup> Only one of these findings is necessary to trigger article XIII B, section 6.<sup>19</sup>

The test claim legislation concerns collecting community college enrollment fees and determining eligibility for fee waivers and financial aid. Collecting enrollment fees and providing waivers and financial aid is a peculiarly governmental function administered by community college districts as part of their mission to provide educational services to the students. Moreover, the test claim legislation imposes unique fee collection, fee waiver, refund eligibility determination, reporting and accounting requirements on community college districts that do not apply generally to all residents or entities in the state. Therefore, the Commission finds that community college enrollment fees, fee waivers, and BOG grants constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

**Issue 2: Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?**

Article XIII B, section 6 of the California Constitution states, "whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds." (Emphasis added.) This provision was specifically intended to prevent the state from forcing programs on local government that require them to spend their tax revenues.<sup>20</sup> To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines "costs mandated by the state" as "any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." (Emphasis added.) "Mandates" as used in article XIII B, section 6 has been defined to mean "orders" or "commands."<sup>21</sup> If the test claim legislation does not mandate the school district to perform a task, then compliance is within the discretion of the school district and a state-mandated program does not exist. The state has no duty under article XIII B,

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<sup>18</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

<sup>19</sup> *Carmel Valley Fire Protection Dist.*, (1987), 190 Cal.App.3d 521, 537.

<sup>20</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

<sup>21</sup> *Long Beach Unified School District, supra*, 225 Cal.App.3d 155, 174.

section 6 to reimburse the school district for costs of programs or services incurred as a result of the exercise of local discretion or choice.<sup>22</sup>

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>23</sup>

**Collection of enrollment fees:** Education Code section 76300 governs collection of enrollment fees as follows:<sup>24</sup>

- Subdivision (a) requires the governing board of each community college district to charge each student a fee.
- Subdivision (b) sets the fee at \$12 per unit per semester for 1998-99, and \$11 per unit per semester effective fall 1999-2000,<sup>25</sup> and requires the chancellor to proportionally adjust the fee for term lengths based on a quarter system.
- Subdivision (c) requires the chancellor, for computing apportionments to districts, to subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging the fee.
- Subdivision (d) requires the chancellor to reduce apportionments by up to 10 percent to any district that does not collect the fee.
- Subdivision (f) authorizes the governing board of a community college district to exempt special part-time students admitted pursuant to section 76001 from the enrollment fee.

Under preexisting law, community colleges were authorized but not required to impose various student fees for the following: physical education courses using nondistrict facilities,<sup>26</sup> health services,<sup>27</sup> parking services,<sup>28</sup> transportation services,<sup>29</sup> program changes,<sup>30</sup> and late applications.<sup>31</sup>

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<sup>22</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

<sup>23</sup> *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830, 835.

<sup>24</sup> Waivers and exemptions pursuant to subdivisions (e), (g) and (h) will be discussed below.

<sup>25</sup> Statutes 1999, chapter 72 lowered the school year 1999-2000 fees from \$12 to \$11. Because chapter 72 became effective July 6, 1999 to be applied in fall 1999, it does not affect claimant's reimbursement period.

<sup>26</sup> Former Education Code section 72245 and current Education Code section 76395.

<sup>27</sup> Former Education Code section 72246 and current Education Code section 76355.

<sup>28</sup> Former Education Code section 72247 and current Education Code section 76360.

<sup>29</sup> Former Education Code section 72248 and current Education Code section 76361.

<sup>30</sup> Former Education Code sections 72250 – 72250.5 and current California Code of Regulations, title 5, section 58507.

<sup>31</sup> Former Education Code section 72251.

As stated above, subdivision (f) authorizes but does not require the governing board of a community college district to exempt special part-time students admitted pursuant to Education Code section 76001 from the enrollment fee. This refers to students who attend a community college while in high school. The Commission finds that admitting these students and exempting their fees are discretionary activities, so collecting fees from them is not a new program or higher level of service within the meaning of article XIII B, section 6.

Additionally, prior to the test claim statute, there was no requirement to collect enrollment fees except for tuition from nonresident students.<sup>32</sup> Therefore, because it is not a new activity, the Commission finds that collecting fees from nonresident students is not a new program or higher level of service.

Claimant commented that although tuition fees were collected from nonresident students prior to 1975, that activity is not legally or factually relevant to the additional administrative procedures required to collect enrollment fees. Claimant points out there are no facts in the record that the fee collection procedures occur at the same time or location, are performed by the same staff members, or result in the same subsequent administrative burden (e.g., fees adjusted based on changes to class loads, student withdrawal, etc.). Therefore, according to claimant, the better conclusion of law would be that, to the extent that procedures for the collection of enrollment fees from nonresident students is different and exceeds the administrative tasks required to collect tuition fees from nonresident students, it is a new activity and a higher level of service.

In analyzing a test claim, the Commission identifies all the new activities or higher levels of service within the test claim legislation. If an activity in the test claim legislation appears to be the same or substantially the same as a pre-1975 activity, it does not qualify as a new program or higher level of service.<sup>33</sup> There is no evidence in the record that collecting tuition fees from nonresident students prior to 1975 is different from collecting enrollment fees from nonresident students after 1975. Therefore, without evidence to the contrary, the Commission's conclusion remains the same regarding nonresident student tuition.

In sum, the Commission finds that collecting enrollment fees constitutes a new program or higher level of service within the meaning of article XIII B, section 6 for all students except for nonresidents, and except for special part-time students (pursuant to Ed. Code, § 76300, subd. (f)).

**Refunds for program changes:** California Code of Regulations, title 5, sections 58500 through 58508,<sup>34</sup> also pertain to community college student fees. Section 58500 defines the enrollment fee, section 58501 states the semester, quarter or fractional unit fee, section 58501.1 discusses the differential enrollment fee, section 58502 states the enrollment fee shall be charged at the time of enrollment, and section 58503 requires students to be charged for variable unit classes at the time of enrollment, based on the number of units in which the college enrolls the student. Section 58507 authorizes students to add or drop classes during the term pursuant to district policy, and requires the enrollment fee to be adjusted accordingly. Section 58508 governs

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<sup>32</sup> Education Code section 76140.

<sup>33</sup> Subdivision (c) of section 6 of Article XIII B states that the Legislature may, but need not provide subvention of funds for mandates enacted prior to January 1, 1975.

<sup>34</sup> California Code of Regulations, title 5, section 58509 was not pled by claimant. This analysis does not address section 58509.

refunds for program changes made during the first two weeks of instruction for a primary term-length course, or by the 10 percent point of the length of the course for a short-term course.

Prior law did not address enrollment fee refunds because there were no fees. Prior law did, however, require community colleges to impose a fee of \$10 per course, not to exceed \$20, for a student program change consisting of dropping one or more courses any time after two weeks from the commencement of instruction in any term. In 1987, this fee was made permissive and was not to exceed one dollar (\$1) "for the actual pro rata cost for services relative to a program change consisting of adding or dropping one or more courses any time after two weeks from the commencement of instruction in any term."<sup>35</sup>

The Commission finds that refunding enrollment fees is not a new program or higher level of service.

In disputing that program changes constitute a new program or higher level of service, DOF points out that section 58507 of the regulations authorizes, but does not require community colleges to allow students to add or drop classes during the term. Section 58507 states:

A community college district may allow a student to add or drop classes during the term pursuant to district policy. The enrollment fee or differential enrollment fee shall be adjusted to reflect added or dropped courses as allowed by district policy.

The claimant argues that this regulation was adopted as a result of the establishment of enrollment fees, and the need to refund fees is a foreseeable consequence of collecting them. Claimant says it is properly an activity to be included in the cost mandated by the state subject to reimbursement.

The Commission agrees with DOF that allowing a student to add or drop courses is not required. Allowing the program changes pursuant to section 58507 is an activity that is not required. The statute states that a "community college may allow a student to add or drop classes" (emphasis added). Use of the word "may" is permissive.<sup>36</sup> Thus, changing programs is an activity within the discretion of the community college district to allow. The court of appeal has concluded that discretionary actions of local agencies are not new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution.<sup>37</sup> In *City of Merced*, the court found that the exercise of eminent domain was discretionary and therefore not a cost which plaintiff was required or mandated to incur. The same is true in section 58507, which authorizes but does not require community colleges to allow program changes. Therefore, the Commission finds that section 58507 of title 5 of the California Code of Regulations is not a new program or higher level of service because the community college district is authorized but not required to allow a student to add or drop classes.

Section 58508 provides:

- (a) A community college district governing board shall refund upon request any enrollment fee paid by a student pursuant to Sections 58501 or 58501.1 for program

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<sup>35</sup> Former Education Code sections 72250 and 72250.5. Both statutes excused the fee for changes initiated or required by the community college.

<sup>36</sup> Education Code section 75.

<sup>37</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

changes made during the first two weeks of instruction for a primary term – length course, or by the 10 percent point of the length of the course for a short-term course.

- (b) A student shall be allowed at least two weeks from the final qualifying date of the program change specified in Subsection (a) to request an enrollment fee refund.
- (c) A community college district shall not refund any enrollment fee paid by a student for program changes made after the first two weeks of instruction for a primary term-length course, or after the 10 percent point of the length of the course for a short-term course, unless the program change is a result of action by the district to cancel or reschedule a class or to drop a student pursuant to section 55202 (g) where the student fails to meet a prerequisite.
- (d) When refunding an enrollment fee pursuant to Subsection (a), a community college district may retain once each semester or quarter an amount not to exceed \$10.00.

The refund requirement of section 58508 is triggered by the district's discretionary decision to allow program changes pursuant to section 58507. Therefore, the Commission finds that issuing refunds for program changes pursuant to sections 58507 and 58508 of title 5 of the California Code of Regulations is not a new program or higher level of service.

**Fee exemptions and waivers:** The fee exemption and waiver provisions of Education Code section 76300 provide as follows:

- Subdivision (e) exempts the enrollment fee for (1) students enrolled in noncredit courses designated by section 84757; (2) California State University (CSU) or University of California (UC) students enrolled in remedial classes provided on a CSU or UC campus for whom the district claims an attendance apportionment pursuant to an agreement between the district and the CSU or UC; (3) students enrolled in credit contract education courses under certain conditions.
- Subdivision (f) authorizes (but does not require) fee exemption for special part-time students admitted pursuant to Education Code section 76001.
- Subdivision (g) requires fees to be waived for recipients of Aid to Families with Dependent Children (AFDC) or SSI/SSP, or a general assistance program, or those who demonstrate financial need in accordance with federal methodology. The fee waiver is also required for students who demonstrate eligibility according to income standards established by the Board of Governors and section 58620 of title 5 of the California Code of Regulations.
- Subdivision (h) requires a fee waiver for dependents or unmarried surviving spouses of members of the California National Guard who die or become permanently disabled as a result of an event that occurred during active service of the state.
- Subdivision (i) states legislative intent to fund fee waivers for students who demonstrate eligibility pursuant to subdivisions (g) and (h), and requires the Board of Governors to allocate to districts two percent of the fees waived pursuant to those subdivisions. Subdivision (i) also requires the Board of Governors, from funds provided in the annual Budget Act, to allocate to districts \$.91 per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services.

Prior law did not require fee exemptions or waivers because there were no enrollment fees.

The Commission finds that exempting a student fee pursuant to subdivision (e) is not a new program or higher level of service, but waiving fees for student applicants is a new program or higher level of service.

The DOF, in its 9/25/01 comments, notes that the determinations for fee waiver eligibility required by Education Code section 76300, subdivisions (g) and (h) are alternative methods for determining student eligibility for BOG fee waivers and not additional requirements. As students receive Board of Governors fee waivers without achieving any of the criteria listed above, by meeting income limits, an eligibility determination is not necessarily contingent on performance of any of these activities and they should not be considered higher levels of service. Furthermore, according to DOF the analysis of BOG grant determinations pursuant to California Code of Regulations, title 5, section 58620 focuses on every activity, requirement, and criteria for determining Board of Governors eligibility, so any costs identified with section 58620 would include these activities. Waiving fees pursuant to BOG fee waivers is discussed below.

In its 8/30/02 comments, DOF contends that waiving fees is not an "activity," but the preclusion of participation in the new program of collecting enrollment fees. DOF cites language in the Board of Governors Fee Waiver Program Manual for 2001/2002 ("BOG Fee Manual"), stating that waivers are simply a transaction in which no money is received. DOF argues that upon proof of eligibility for a waiver, the community colleges neither provide anything to, nor collect anything from, the student. DOF concludes that since fee waivers prohibit colleges from participation in the new program of enrollment fees, for this particular test claim, providing fee waivers for exempt students is not a state-mandated activity. DOF admits that the fee waiver is granted "upon proof of eligibility."<sup>38</sup>

In its 2/25/03 comments, DOF states that section 76300, subdivision (e), specifies groups of students for which the fee requirement does not apply, which students are not required to have the fee waived as in subdivisions (g) and (h). Since these students<sup>39</sup> pay no enrollment fees, they have no need for waivers. DOF argues that since there is no waiver eligibility determination required, there is no mandated activity associated with section 76300, subdivision (e).

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<sup>38</sup> Education Code section 76300, subdivision (g) reads in pertinent part, "The governing board of a community college district also shall waive the fee requirements of this section for any student **who demonstrates eligibility** according to income standards established by the Board of Governors and contained in section 58620 of Title 5 of the California Code of Regulations." (Emphasis added.) Education Code section 76300, subdivision (i)(1) reads in pertinent part "It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student **who demonstrates eligibility** pursuant to subdivisions (g) and (h)." (Emphasis added.)

<sup>39</sup> Students specified in section 76300, subdivision (e) are those (1) enrolled in noncredit courses designated by section 84757; (2) CSU or UC students in remedial classes for whom the district claims an attendance apportionment pursuant to an agreement between the district and CSU or UC; and (3) students enrolled in credit contract education courses under certain conditions.

The Commission agrees that exempting fees pursuant to subdivision (e) does not constitute a new activity. Therefore, the Commission finds that granting an exemption for a fee waiver, pursuant to section 76300, subdivision (e), is not a new program or higher level of service.

DOF also states in its 2/25/03 comments that the burden of demonstrating fee waiver eligibility rests with the student, not the financial aid office. DOF quotes section 76300, subdivision (g), emphasizing the student's responsibility to demonstrate financial need and eligibility. There is nothing in section 76300, according to DOF, that requires the institution to establish the financial aid group to which the student belongs.

The Commission disagrees. A community college has no discretion to grant a fee waiver. If a student demonstrates eligibility pursuant to the test claim statute, he or she is entitled to the waiver. Payment of the fee or provision for its exemption or waiver is a transaction,<sup>40</sup> and as such, cannot be achieved unilaterally.

Community colleges must waive student fees required (not authorized) by section 76300, which lists the following groups, one of which a student must belong to in order qualify for the waiver.

- (1) A recipient of benefits under the AFDC, SSI/SSP, or a general assistance program, or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.
- (2) A student who demonstrates eligibility according to income standards established by the Board of Governors and contained in section 58620 of title 5 of the California Code of Regulations (this section relates to BOG fee waivers, discussed below).
- (3) A student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state (as defined), was killed, became permanently disabled, or died of a disability resulting from an event that occurred while in the active service of the state.

The Commission finds that waiving fees for each student applicant in accordance with the groups listed in Education Code section 76300, subdivisions (g) and (h), is a new program or higher level of service.

Eligibility for a Board of Governors fee waiver is included by reference<sup>41</sup> in Education Code section 76300, subdivision (g), which requires the governing board of a community college district to waive the fee "for any student who demonstrates eligibility according to income standards established by the Board of Governors and contained in Section 58620 of the California Code of Regulations." Since claimant also pled section 58620 of title 5 of the California Code of Regulations, it is discussed separately below.

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<sup>40</sup> Section 7.3 of the BOG Fee Manual states that "waivers are simply a transaction in which no money is received." One definition of transaction is "a communicative action or activity involving two parties or two things reciprocally affecting or influencing each other." (Webster's 3d New Internat. Dict. (1993) p. 2425.)

<sup>41</sup> California Code of Regulations, title 5, section 58620.

## Board of Governors Grants

**BOG grant regulations:** California Code of Regulations, title 5, sections 58600 - 58630 govern the distribution of a BOG grant, which is "an instrument used by a community college district to process the financial assistance provided to a low-income student."<sup>42</sup> In 1993, the Legislature altered the BOG grants program,<sup>43</sup> changing it from a fee-offset grant program to a fee-waiver program. The regulations governing the program were left intact. Therefore, as stated above, references to BOG grants herein should be read to apply to BOG fee waivers.

Section 58611 of the regulations requires community college districts to report to the CCC the number of and amounts provided for BOG grants. Section 58612 requires a district to provide BOG grants "to all students who are eligible and who apply for this assistance." This section also states a presumption of student eligibility for the remainder of the academic year until the beginning of the following fall term, and states that nothing in the chapter prohibits community college districts from establishing an application deadline for BOG grants. Section 58613 requires BOG grants to be made in the amount of enrollment fees calculated after program changes (pursuant to section 58507, discussed above). Section 58620 lists the eligibility criteria for a BOG grant, which is California residency and one of the criteria under the rubric of either (1) income standards;<sup>44</sup> (2) recipient of AFDC benefits described in Education Code section 76300, subdivision (g);<sup>45</sup> or (3) need-based financial aid eligibility.<sup>46</sup>

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<sup>42</sup> California Code of Regulations, title 5, section 58601.

<sup>43</sup> Statutes 1993, chapter 1124 (Assem. Bill No. 1561). Herein referred to as a BOG fee-waiver.

<sup>44</sup> The income standards are: (A) be single and independent student having no other dependents and whose total income in the prior year was equal to or less than 150% of the U.S. Department of Health and Human Services (HHS) Poverty Guidelines for a family of one. Or be a married, independent student having no dependents other than a spouse, whose total income of both student and spouse in the prior year was equal to or less than 150% of the HHS Poverty Guidelines for a family of two. (B) Be a student who is dependent in a family having a total income in the prior year equal to or less than 150% of the HHS Poverty Guidelines for a family of that size, not including the student's income, but including the student in the family size. (C) Provide documentation of taxable or untaxed income. (D) Be a student who is married or a single head of household in a family having a total income in the prior year equal to or less than 150% of the HHS Poverty Guidelines for a family of that size. (E) Be an independent student whose estimated family contribution as determined by federal methodology is equal to zero or a dependent student for whom the parent portion of the estimated family contribution as determined by federal methodology is equal to or less than zero. (F) For purposes of this subsection HHS Poverty guidelines used each year shall be the most recently published guidelines immediately preceding the academic year for which a fee waiver is requested.

<sup>45</sup> The benefits described in Education Code section 76300, subdivision (g) are for recipients of Aid to Families with Dependent Children, the general assistance program, or demonstration of financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. Subsection (2) also lists: (A) At the time of enrollment be a recipient of benefits under the Temporary Assistance to Needy Families (TANF) program. A dependent student whose parents(s) or guardian(s) are recipients of TANF shall be eligible if the TANF program grant includes a grant

Prior law did not require community colleges to provide BOG grants to students.

In its 9/25/01 comments, DOF asserts that much of the infrastructure for determining whether a student is eligible to have fees waived already existed prior to 1975. For example, Education Code section 76355<sup>47</sup> requires the governing board of a community college district to adopt rules and regulations that either exempt low-income students from any health service fee or provide for the payment of the fee from other sources. Education Code section 69648 requires the community colleges to adopt rules and regulations to, among other activities, identify students who would be eligible for extended opportunity programs and services (EOPS) based on socioeconomic disadvantages. Both of these sections existed when enrollment fee waivers were implemented in 1984 and still exist. DOF argues that section 58620 of the California Code of Regulations merely clarifies the process for identifying low-income students and does not constitute a higher level of service.

Claimant rebuts DOF, arguing that the legislation enacting the health fee merely required adoption of rules and regulations that either exempt "low-income" students or provide for payment of fees from other sources. But the legislation provided no guidance or direction as to the method or means to determine whether a student was "low-income," and said nothing of the BOG grant factors of section 58620 of the California Code of Regulations. Claimant states that DOF's argument fails because there was no "infrastructure" to determine the specific requirements of section 58620 until 1987. Claimant also notes that the existence of "infrastructure," or lack thereof, is not one of the statutory exceptions set forth in Government Code section 17556, and therefore irrelevant.

The Commission finds that waiving student fees for students who apply for and are eligible for BOG fee waivers is a new program or higher level of service.

DOF's argument of 9/25/01 is unconvincing. The health fee promulgated in Education Code section 76355, cited by DOF, is not mandatory. Subdivision (b) states that the governing board "may decide whether the fee shall be mandatory or optional." Since the health fee program is optional, the "infrastructure" for determining eligibility for it that DOF cites is also optional. More importantly, nothing in the record indicates that a BOG fee waiver determination, or even a substantially similar determination, must be made for waiver of the optional health fee pursuant

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for the student or if the TANF grant is the sole source of income for the parent or guardian. (B) At the time of enrollment, be a recipient of benefits under the Supplemental Security Income (SSI) program. A dependent student whose parent(s) or guardian(s) are recipients of SSI shall be eligible if the SSI program grant is the sole source of income for the parent or guardian(s). (C) At the time of enrollment be a recipient of benefits under the General Assistance program. (D) Provide documentation that the student if [sic] a recipient of benefits under one of the programs identified in Education Code section 76300(g) and (h) at the time of enrollment. Documentation sufficient to meet the requirements of this subdivision shall provide official evidence of these benefits.

<sup>46</sup> Need-Based Financial Aid Eligibility means any student who has been determined financially eligible for federal and/or state needed [sic] based financial aid.

<sup>47</sup> Former Education Code section 72246.

to section 76355, or the student's "social or economic disadvantages" to determine eligibility for the extended opportunity program pursuant to section 69648.<sup>48</sup>

In its 2/25/03 comments, DOF states that with the passage of Assembly Bill No. 1561 (Stats. 1993, ch. 1124), the BOG grant program was replaced with the BOG fee-waiver program. Consequently, DOF argues that regulations pertaining to BOG grants are obsolete. Since the program no longer exists, DOF asserts that determining the eligibility for BOG grants is not a mandate. Alternatively, DOF argues that even if BOG grants were not obsolete, demonstrating eligibility is the responsibility of the student, not the institution.

The Commission disagrees. The regulations pertaining to the BOG grants are not invalid. Regulations have a strong presumption of regularity.<sup>49</sup> Even though it was changed from a fee-offset grant program to a fee-waiver program by Statutes 1993, chapter 1124, the BOG fee program still exists. The BOG grant regulations, sections 58600 to 58630 of title 5 of the California Code of Regulations, cite to three statutes for their authority: Education Code sections 66700, 70901, and 72252. These statutes are still in effect, except that section 72252<sup>50</sup> has been amended and renumbered to section 76300.<sup>51</sup> With the authority for the regulations still in effect, the regulations are valid.<sup>52</sup>

As to DOF's contention that documenting eligibility is the responsibility of the student, not the institution, the Commission disagrees. As with fee waivers discussed above, a community college has no discretion to grant a BOG fee waiver. A student requirement to demonstrate financial need triggers a duty on the part of the college to waive the fee. Awarding the BOG fee waiver is a transaction,<sup>53</sup> and as such, cannot be achieved unilaterally.

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<sup>48</sup> Eligibility for EOPs is stated in title 5, section 56220 of the California Code of Regulations, which were adopted in 1987. Eligibility criteria include California residency, less than 70 units of degree-credit completion, eligibility for a BOG grant pursuant to section 58620 (1) or (2), and be educationally disadvantaged as determined by the EOPS director or designee, who must consider specific factors.

<sup>49</sup> *Agricultural Labor Relations Board v. Superior Court* (1976) 16 Cal. 3d 392, 411.

<sup>50</sup> Section 76300 was enacted by Statutes 1995, chapter 308 due to the sunset of the prior section 76300. The community college fee statute has been at section 76300 since 1993 (Stats. 1993, ch. 8). Prior to that, it was in section 72252 since its enactment in 1984 (Stats. 1983-1984xx, ch. 1).

<sup>51</sup> A renumbered or restated statute is not a newly enacted provision. Education Code section 3 provides that "The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments." See also *In re Martin's Estate* (1908) 153 Cal. 225, 229, which held: "Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time."

<sup>52</sup> *Agricultural Labor Relations Board v. Superior Court, supra*, 16 Cal.3d 392, 401.

<sup>53</sup> *Ante*, footnote 40.

Therefore, the Commission finds that waiving fees for students who apply for and are eligible for BOG fee waivers is a new program or higher level of service.

Districts are required to report to the CCC the number of and amounts provided for BOG fee waivers.<sup>54</sup> Because this is a new requirement, the Commission also finds that this reporting is a new program or higher level of service. (Cal. Code Regs., tit. 5, § 58611).

**District reporting and accountability:** Claimant pled California Code of Regulations, title 5, section 58630. Subdivision (a) of this section requires districts to identify separately in district accounts dollars allocated for financial assistance. Subdivision (b) requires adoption of procedures to document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations. The procedures must include rules for retention of support documentation that will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

Prior to adoption of section 58630, there was no requirement for community colleges to account for financial assistance funds separately in district accounts.

In its 2/25/03 comments, DOF argues that these activities relate to the administration of the funding mechanism for the obsolete BOG grant program, which was replaced by the BOG fee-waiver program in 1993. Since a fee waiver does not involve exchange of funds, the activities are no longer required.

The Commission agrees that identifying dollars for financial assistance in separate district accounts pursuant to subdivision (a) is not a new program or higher level of service due to the BOG grant program's conversion to a BOG fee-waiver program. Fee waivers do not require dollars to be identified in district accounts as BOG grants did.

As to the activities in section 58630, subdivision (b), the Commission disagrees. It is possible for colleges to comply with this subdivision by documenting financial assistance provided on behalf of students, including rules to retain support documentation that would enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

Therefore, the Commission finds that the following activities constitute a new program or higher level of service pursuant to section 58630 of title 5 of the California Code of Regulations: adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations, and including in the authorized procedures rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

**BOG grant executive orders:** Claimant originally alleged that the *Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual* ("BOG Fee Manual")<sup>55</sup> is

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<sup>54</sup> This regulation states this pertains to BOG grants, but it would apply to BOG fee waivers now.

<sup>55</sup> California Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual, effective July 1, 2000 – June 30, 2001.

a state mandate. The BOG Fee Manual is issued by the CCC to assist community college financial aid staff.<sup>56</sup>

The BOG fee manual was withdrawn by the claimant's representative at the hearing, so the Commission makes no finding on whether the activities listed therein constitute a new program or higher level of service.

In summary, the Commission concludes that the test claim legislation imposes new programs or higher levels of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

- Calculating and collecting the student enrollment fee for each student enrolled except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, § 76300, subs. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.);
- Waiving student fees in accordance with the groups listed in Education Code section 76300, subdivisions (g) and (h);
- Waiving fees for students who apply for and are eligible for BOG fee waivers (Cal. Code Regs., tit. 5, §§ 58612, 58613 & 58620.);
- Reporting to the CCC the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.);
- Adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

Additional activities pled by claimant include: "entering the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems," and "determination of credit courses." These activities do not appear in the test claim statute or regulations and therefore would be more appropriately discussed in the parameters and guidelines.<sup>57</sup>

**Issue 3: Do the test claim legislation and regulations impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the activities must impose costs mandated

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<sup>56</sup> A copy of the BOG Fee Manual and other forms are available at the California Community College Chancellor's Office website: <<http://www.cccco.edu/divisions/ss/financial%20assistance/financial%5Fassistance.htm>> [as of Jan. 7, 2003].

<sup>57</sup> Government Code section 17557; California Code of Regulations, title 2, section 1183.1.

by the state,<sup>58</sup> and no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

...any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17556, subdivision (d) precludes finding costs mandated by the state if after hearing, the Commission finds that the "local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Government Code section 17556, subdivision (e) precludes findings costs mandated by the state if the test claim statute provides for offsetting savings which result in no net costs, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund it.

**Collection of enrollment fees (Ed. Code, § 76300, subs. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.):** In response to the *Enrollment Fee Collection* test claim, the DOF originally commented that it mostly agrees that the test claim statutes constitute a new program or higher level of service "because community college districts had not previously been required to collect enrollment fees from students." However, DOF concludes that reimbursement should be denied because the statutory scheme sets up a mechanism whereby community college districts are automatically provided with funding for their costs of administering the program.<sup>59</sup> Since collection of enrollment fees is entwined with the entire admission process, DOF argues it would be extremely difficult or impossible to accurately isolate the tasks involved with collecting enrollment fees. DOF submits that the Legislature has validly determined that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes.

In its response, claimant first quotes the CCC's comments, which like the test claim, note that colleges are compensated in the amount of two percent of the enrollment fees collected for the cost of collecting the enrollment fee. Claimant cites the legislative history provided by the CCC that quoted the Legislative Analyst's conclusion that the two percent revenue credit was an insufficient reimbursement. Claimant goes on to quote the applicable provisions of Government Code section 17556, subdivisions (d) and (e), as follows:

The Commission shall not find costs mandated by the state, as defined in section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the Commission finds that: [¶]...[¶]

(d) The local agency or school district has the **authority to levy** services charges, fees, or assessments **sufficient to pay** for the mandated program or increased level of service.

<sup>58</sup> *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

<sup>59</sup> Education Code, section 76300, subdivision (c) states that for purposes of computing apportionments to community college districts, the Chancellor shall subtract 98% of the revenues received by districts from enrollment fees from the total revenue owed to each district.

(e) **The statute or executive order provides for offsetting savings** to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes **additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.** (Emphasis added by claimant).

Claimant asserts these two Government Code subdivisions require the Commission to make findings of law and fact. Regarding subdivision (d), it can be determined that as a matter of law, neither the test claim statutes nor other laws provide the "authority to levy service charges, fees, or assessments" for the collection of enrollment fees. The "revenue credit" is not a service fee, charge, or assessment upon the consumer (student) of a service provided by the college district. Regarding subdivision (e), as a matter of law, the test claim statutes do not include "offsetting savings" which result in no net costs. A new program was added, and no other mandated program was removed by the statute. However, as a matter of law, the test claim statutes did include "additional revenue that was specifically intended to fund the costs of the mandate" in the form of the revenue credit. According to the claimant, this begs the question of fact of whether the additional revenue is "sufficient to fund the cost of the state mandate." The entire cost to implement the mandate will vary from district to district, so it cannot be determined as a matter of fact that the revenue credit is sufficient for any or all districts. The claimant notes the revenue credit can in the usual course of the mandate process be addressed by the annual claiming process whereby the claimants are required by law to report their cost of implementing the mandate from which they must deduct other reimbursement and funds, in this case, the two-percent revenue credit.

Regarding DOF's statement that the collection of enrollment fees is entwined with the entire admission process making it extremely difficult, if not impossible to accurately isolate the specific tasks involved with collecting enrollment fees, claimant notes this is without foundation, and is neither a statutory exception to reimbursement of costs mandated by the state, nor a practical argument. The parameters and guidelines determine which activities are reimbursable and the cost accounting methods to be used, and the claimants have the burden of complying with the parameters and guidelines, not the state. Also, enrollment fee collection involves a high volume of uniform transactions (collecting the fee) comprised of identifiable direct costs (staff time and forms to collect the fee). After several years of data are accumulated, claimant asserts that this mandate would be a candidate for a uniform cost allowance.

The Commission finds the community colleges' revenue credit does not preclude reimbursement for the fee collection activities specified. Government Code section 17556, subdivision (d), by its express terms, only applies to "fees, or assessments **sufficient to pay** for the mandated program or increased level of service" (emphasis added). Likewise, subdivision (e) only applies to "revenue ...in an amount **sufficient to fund** the cost of the state mandate" (emphasis added). The record indicates that the revenue credit is insufficient to fund these activities.

The test claim statute reads in pertinent part as follows:

**76300.** (a) The governing board of each community college district shall charge each student a fee pursuant to this section. [¶]...[¶]

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to

each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

Claimant submitted a declaration that it incurred about \$677,640 (or \$4.60 per student) in staffing and other costs in excess of the two percent of the enrollment fees retained during July 1998 to June 1999.<sup>60</sup> The assertion of insufficient fee authority is supported by the LAO's legislative history submitted by the CCC.<sup>61</sup> Thus, the Commission finds that Government Code section 17556, subdivision (d) does not preclude reimbursement because the record indicates that the fee is not sufficient to pay for the program.

Similarly, the Commission finds that Government Code section 17556, subdivision (e) does not preclude reimbursement because there is nothing in the record to indicate that offsetting savings or additional revenue -- in this case the two percent revenue credit -- is sufficient to fund the mandate.<sup>62</sup>

The Commission disagrees with DOF's assertion that the Legislature made a valid determination that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes. DOF cites no authority for this proposition, nor is there statutory language in the test claim statute to support it.

Even if the Legislature had expressly determined the fee adequate, the determination would not prevent finding the existence of a mandate. Two cases have held legislative declarations unenforceable that attempt to limit the right to reimbursement. In *Carmel Valley Fire Protection District v. State of California*,<sup>63</sup> the court held that "Legislative disclaimers, findings and budget control language are no defense to reimbursement." The *Carmel Valley* court called such language "transparent attempts to do indirectly that which cannot lawfully be done directly."<sup>64</sup> Similarly, in *Long Beach Unified School District v. State of California*,<sup>65</sup> the Legislature deleted requested funding from an appropriations bill and enacted a finding that the executive order did not impose a state-mandated local program. The court held that "unsupported legislative disclaimers are insufficient to defeat reimbursement. . . . [The district,] pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right."<sup>66</sup> If the Legislature could not prevent a mandate explicitly as the authorities indicate, it could not prevent one implicitly.

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<sup>60</sup> Declaration of Carrie Bray, Director, Accounting Services, Los Rios Community College District, June 22, 2000.

<sup>61</sup> Office of the Legislative Analyst, analysis of Assembly Bill No. 1 (1983-1984 2d Ex. Sess.) January 23, 1984, as submitted in the CCC comments.

<sup>62</sup> The two percent fee would be determined to be an offset in the parameters and guidelines per California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

<sup>63</sup> *Carmel Valley*, *supra*, 190 Cal.App.3d at page 521.

<sup>64</sup> *Id.* at page 541.

<sup>65</sup> *Long Beach Unified*, *supra*, 225 Cal.App.3d 155.

<sup>66</sup> *Id.* at page 184.

In its 8/30/02 comments on the draft staff analysis on the *Enrollment Fee Collection* test claim, DOF asserts that the community colleges have sufficient fee authority pursuant to Education Code section 70902, subdivision (b) (9), for enrollment fee collection. This statute covers fees of a governing board "as it is required to establish by law," or "as it is authorized to establish by law." The fees in existing law that fall within the authorization provided in section 70902, subdivision (b) (9) are for the following purposes: apprenticeship courses, health, parking and transportation, instructional materials, course auditing, student body center building and operations, fees for classes not eligible for state apportionments, and fees for physical education courses requiring use of nondistrict facilities.<sup>67</sup>

For fee authority pursuant to Education Code section 70902, subdivision (b) (9) to apply, it must be "required or authorized by law." There is nothing in the record to indicate the existence of any fee authority "required or authorized by law," for collecting enrollment fees other than that listed in Education Code section 76300. The record indicates this section 76300 authority is not "sufficient to pay for the mandated program" within the meaning of Government Code section 17556, subdivision (d). Therefore, the Commission finds that the fee authority in Education Code section 70902, subdivision (b) (9) does not preclude reimbursement under this test claim.

**BOG fee waivers (Ed. Code, § 76300, subs. (g) & (h); Cal. Code Regs., tit. 5, §§ 58612, 58613 & 58620.):** DOF argues that costs associated with BOG fee waivers should not be included in this claim because a statutory compensation mechanism currently exists for those costs. Education Code section 76300, subdivision (i), states legislative intent to provide sufficient funds for fee waivers for every student who demonstrates eligibility pursuant to subdivisions (g) and (h) (referring to students who receive TANF, SSI/SSP or other general assistance or dependents or surviving spouses of members of the California National Guard who are killed or permanently disabled in the line of duty). This section also requires the Community Colleges Board of Governors, from funds in the annual budget act, to allocate to community colleges two percent of the fees waived under subdivisions (g) and (h) of section 76300. Finally, this section requires the Board of Governors to allocate from funds in the annual budget act ninety-one cents (\$0.91) per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Thus, DOF argues that costs associated with fee waivers should not be included in the test claim.

In its 9/25/01 comments on the *Enrollment Fee Waivers* test claim (00-TC-15), DOF argued that funding is provided to cover costs associated with determining eligibility for BOG fee waivers. DOF disputes the number of fee waiver determinations pled by claimant, estimating it to be roughly 36 percent of the number asserted by claimant. DOF also asserts that the average time to make a fee waiver is overstated by claimant, since students only need to demonstrate that they meet one of the seven criteria. DOF says it believes that the total cost of the BOG fee waiver determination is less than \$70,000, and that the Glendale Community College District received \$66,000 for Student Financial Aid Administration and \$22,888 for Fee Waiver Administration, both allocated as authorized by Education Code section 76300, subdivision (i). DOF believes that eligibility determination is fully funded and not a reimbursable mandate.

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<sup>67</sup> Education Code sections 76350 through 76395.

In its 11/12/01 rebuttal to DOF's comments on *Enrollment Fee Waivers* (00-TC-15), claimant objects to DOF's comments as legally incompetent and in violation of California Code of Regulations, title 2, section 1183.02(d) because (1) they are not signed under penalty of perjury by an authorized representative that they are true and complete to the best of the representative's personal knowledge or information and belief, and (2) they are not supported by documentary evidence authenticated by declarations under penalty of perjury (Cal. Code Regs., tit. 2, § 1183.02 (c)(2)). Claimant argues that DOF's comments constitute hearsay.

Claimant also disputes DOF's assertion of revenue sufficient to fund any requirements for determining eligibility for BOG fee waivers. Claimant asserts that Government Code section 17556, subdivision (e), indicates that test claim statutes must include the offsetting revenue in the same legislation, and that claimant already identified the offsetting revenue in the test claim as 7 percent of the fees waived from July 1, 1999 through July 4, 2000 and at ninety-one cents (\$0.91) per credit unit waived thereafter pursuant to Education Code section 76300, subdivision (i)(2). Claimant asserts that the cost to implement the mandate will vary from district to district so it cannot be determined if this identified revenue is sufficient for any or all of them.

The Commission finds that Education Code section 76300, subdivision (i), does not preclude finding a mandate for waiving fees pursuant to BOG fee waivers. Claimant's assertion in the record indicates that legislative allocations are not sufficient to pay for the waivers under the fee collection program. In sum, the Commission finds that neither Government Code section 17556, subdivisions (d) and (e), nor the statute's reimbursement mechanism, precludes reimbursement for costs associated with BOG fee waivers. Revenue as a result of Education Code section 76300, subdivision (i), or any other source, would be determined as offsetting revenue in the parameters and guidelines.<sup>68</sup>

**District reporting and accountability (Cal. Code Regs., tit. 5, § 58630.):** In its 9/25/01 comments, DOF argues that the reporting and accounting activities do not constitute reimbursable mandates because claimant seeks reimbursement to document and account for funds allocated for collection of enrollment fees, but section 58630 only refers to identification and documentation of financial assistance, not enrollment fee collection. Therefore, any attempt to claim reimbursement for the accounting and documentation of enrollment fees should be denied. DOF also asserts that this activity receives funding from both the two percent funds for fee waiver administration and the seven percent fund for Student Financial Aid Administration.

DOF is correct in observing that section 58630 only pertains to financial assistance. As to prior receipt of funding, Education Code section 76300, subdivision (i)(2) states, "From funds provided in the annual Budget Act, the Board of Governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents (\$0.91) per credit unit waived pursuant to subdivision (g) and (h) **for determination of financial need and delivery of student financial aid services**, on the basis of the number of students for whom fees are waived." (Emphasis added.) This funding would be considered as an offset in the parameters and guidelines for this test claim.

In summary, there is nothing in the record to indicate that the Legislature repealed other programs or appropriated sufficient funds for enrollment fee collection or BOG fee waivers.

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<sup>68</sup> California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

## CONCLUSION

Based on the foregoing analysis, the Commission finds that the test claim legislation imposes a partial reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- Calculating and collecting the student enrollment fee for each student enrolled except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, § 76300, subs. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.);
- Waiving student fees in accordance with the groups listed in Education Code section 76300, subdivisions (g) and (h);
- Waiving fees for students who apply for and are eligible for BOG fee waivers (Cal. Code Regs., tit. 5, §§ 58612, 58613 & 58620.);
- Reporting to the CCC the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.);
- Adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

The Commission also finds that all other test claim statutes and regulations not cited above do not impose reimbursable state-mandated activities within the meaning of article XIII B, section 6 and Government Code section 17514.



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STATE MANDATES

PUBLIC HEARING

COMMISSION ON STATE MANDATES

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TIME: 9:38 a.m.

DATE: Thursday, March 27, 2003

PLACE: Commission on State Mandates  
State Capitol, Room 126  
Sacramento, California

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**ORIGINAL**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

---o0o---

Reported By:

KAREN S. CHALLE  
CSR #8244, RPR

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ROBERT MIYASHIRO, Chair  
Representative of B. TIMOTHY GAGE  
Director  
Department of Finance

WILLIAM SHERWOOD, Vice Chair  
Representative of PHILIP ANGELIDES  
State Treasurer

SHERRY WILLIAMS, Legislative Analyst  
Representative of Tal Finney  
Interim Director  
Office of Planning and Research

JOHN S. LAZAR  
City Council Member  
City of Turlock

GREG LARSON  
Chief of Staff  
State Controller's Office

---o0o---

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

NANCY PATTON, Staff Services Manager

PAUL M. STARKEY, Chief Legal Counsel

ERIC FELLER, Staff Counsel

---o0o---

PUBLIC TESTIMONY

Appearing Re Item 2:

On Behalf of Los Rios Community College District and  
Glendale Community College District:

KEITH B. PETERSEN, MPA, JD, President  
SIX TEN and ASSOCIATES  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

On Behalf of the Financial Aid Department, Sacramento City  
College, representing Los Rios Community College District:

ALICE KWONG, Financial Aid Supervisor  
Cosumnes River College  
8401 Center Parkway  
Sacramento, CA 95823

On behalf of the Department of Finance:

SUSAN S. GEANACOU, Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, CA 95814

On behalf of the Department of Finance:

RANDY KATZ, Finance Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, CA 95814

On behalf of the Office of the Attorney General:

LESLIE LOPEZ, Staff Counsel.

---o0o---

1 BE IT REMEMBERED, that on Thursday, March 27,  
2 2003, commencing at the hour of 9:38 a.m., thereof, at the  
3 State Capitol, Room 126, Sacramento, California, before me,  
4 KAREN S. CHALLE, CSR #8244, RPR, the following proceedings  
5 were held:

6 ---o0o---

7 CHAIR MIYASHIRO: I'd like to call this  
8 Commission of State Mandates to order.

9 Paula, would you call roll?

10 MS. HIGASHI: Mr. Larson?

11 MR. LARSON: Present.

12 MS. HIGASHI: Mr. Lazar?

13 MR. LAZAR: Here.

14 MS. HIGASHI: Mr. Sherwood?

15 MR. SHERWOOD: Here.

16 MS. HIGASHI: Ms. Williams?

17 MS. WILLIAMS: Here.

18 MS. HIGASHI: Mr. Miyashiro?

19 CHAIR MIYASHIRO: Here.

20 Before we begin today's meeting, I think it would  
21 be appropriate if we have a moment of silence in honor of  
22 Kurt Stewart. Kurt Stewart served as the Executive  
23 Director for the Commission on State Mandates from May 1995  
24 through February of 1997, and he most recently served with  
25 the Department of Finance, and retired a couple years ago.

1 Kurt passed away on March 14th of this year. And  
2 I'd ask for a moment of silence this morning.

3 (Silence observed.)

4 CHAIR MIYASHIRO: Okay. Thank you.

5 Okay. Paula, Item 1.

6 MS. HIGASHI: Item 1 is adoption of minutes from  
7 our last meeting.

8 CHAIR MIYASHIRO: Are there any objections or  
9 corrections to the minutes?

10 MR. SHERWOOD: Mr. Chair, I would just like to  
11 abstain on this matter.

12 CHAIR MIYASHIRO: Okay. The record will reflect  
13 that abstention.

14 MS. HIGASHI: Mr. Chair, Walter Barnes has  
15 reviewed the minutes as presented and has made a motion for  
16 adoption.

17 CHAIR MIYASHIRO: Okay. Do we have a motion to  
18 second?

19 MS. WILLIAMS: Motion to adopt minutes.

20 CHAIR MIYASHIRO: Okay. All in favor?

21 (A chorus of "ayes" was heard.)

22 CHAIR MIYASHIRO: Opposed?

23 Mr. Sherwood abstained.

24 MS. HIGASHI: Thank you, I noted the abstention.

25 Item 2 is a hearing on two test claims.

1 Enrollment Fee Collection and Enrollment Fee Waivers. This  
2 item will be prevented by Eric Feller of our staff.

3 CHAIR MIYASHIRO: And before we begin with the  
4 presentations I'd like for the witnesses and parties to  
5 come forward so we can do the swearing in.

6 MS. HIGASHI: Please raise your right hand.

7 Do you solemnly swear or affirm that the testimony  
8 which you're about to give is true and correct, based upon  
9 your personal knowledge and information and belief?

10 (The following in unison.)

11 MS. GEANACOU: I do.

12 MR. KATZ: I do.

13 MS. KWONG: I do.

14 MR. PETERSEN: I do.

15 MS. LOPEZ: I do.

16 MS. HIGASHI: Thank you.

17 MR. FELLER: Good morning.

18 As Paula said, before you is the final analysis  
19 for the combined Enrollment Fee Collection and Enrollment  
20 Fee Waivers test claims. The activities plead by the  
21 community college districts relate to collecting,  
22 refunding, and waiving fees and administering, documenting  
23 and reporting on financial aid. For reasons stated in the  
24 analysis, staff found the following activities to be  
25 reimbursable mandates:

1           Calculating and collection of student enrollment  
2 fee; exempting or waiving fees pursuant to criteria in  
3 statute and regulation; reporting to the community college  
4 chancellor's office on the number of and amounts for fee  
5 waivers; adopting procedures to document student financial  
6 assistance, documenting public benefits, and attending  
7 financial aid training.

8           Staff also found that one activity, making refunds  
9 for program changes, was not a new program or higher level  
10 of service, for reasons stated in the analysis.

11           Staff recommends that the Commission adopt the  
12 analysis and approve the test claims of the activities  
13 listed.

14           Would the parties and witnesses please state their  
15 names for the record?

16           MR. PETERSEN: Keith Petersen, representing Los  
17 Rios Community College District.

18           MS. KWONG: Alice Kwong for the Financial Advisor  
19 of the Cosumnes River College, representing Los Rios  
20 Community College.

21           MS. LOPEZ: Leslie Lopez of the Attorney General's  
22 Office.

23           MS. GEANACOU: Susan Geanacou, Department of  
24 Finance.

25           MR. KATZ: Randy Katz. Department of Finance.

1 CHAIR MIYASHIRO: Okay. Mr. Petersen, would you  
2 like to begin?

3 MR. PETERSEN: Thank you. That combination -- as  
4 Mr. Feller indicated, this is a combination of two test  
5 claims, filed a year apart. The first was enrollment fee  
6 collection, followed by enrollment fee waiver. They both  
7 derive from the same Code Section 76300 of the Education  
8 Code. Combined together, we alleged 13 activities. The  
9 staff recommendation has consolidated some of those and  
10 limited some of those, and there's about seven recommended  
11 activities remaining.

12 The seven recommended for approval by commission  
13 staff, I believe, are consistent with the past practice and  
14 how the commission staff applies the law. The -- I take  
15 issue in two areas. First, the elimination of the refund  
16 activity as a reimbursable activity, and the second dealing  
17 with non-resident students -- the enrollment fee collection  
18 for non-resident students.

19 Taking the easiest one first, I need to direct  
20 your attention to page 11 of the staff recommendation.  
21 There's one or two sentences at the top of the page 11. The  
22 first paragraph says, additionally prior to the test claim  
23 statutes there was no requirement to collect enrollment  
24 fees except for tuition from non-resident students.  
25 Therefore, because it is not a new activity, staff finds

1 that collecting the fees -- the enrollment fees from  
2 non-resident students is not a new program or higher level  
3 of service.

4 This is a factual dispute. I believe we all agree  
5 that non-resident students did pay tuition, and tuition was  
6 collected from non-resident students, but the fact that  
7 tuition was collected was not the same as collecting the  
8 enrollment fees, which came along in 1984. So the  
9 claimant's statement of the position that the enrollment --  
10 collecting enrollment fees is different from collecting the  
11 tuition fee, and the fact that tuition fees were collected  
12 from non-residents is not relevant to the collection of  
13 enrollment fees. These things may occur at different times  
14 and involve different staff people at the college, and it  
15 may take longer. It may take less. The difference would  
16 show up when the actual claim's done. But it's actually  
17 fully different, and I don't see how it's relevant that  
18 collecting fees for another purpose are the same as  
19 collecting fees for a new purpose. That's my first issue.

20 The second issue is on page 12, and it's a little  
21 bit more complex. At the top of the page you see about  
22 five lines which complete a paragraph from the prior page.  
23 I'd like to start with that first sentence that says "This  
24 staff finds that refunding enrollment fees" -- and this is  
25 my second issue -- "refunds is not a new program or higher

1 level of service." That should properly read that program  
2 changes are not a new activity or higher level of service.  
3 Enrollment fees are new.. The staff ties this together in  
4 the following manner.

5 First of all, in the next paragraph it quotes  
6 Title 5, Section 58507 correctly that a community college  
7 district may allow a student to add or drop classes during  
8 term pursuant to the district policy. The college staff  
9 sees it as discretionary. A community college may allow a  
10 student to add or drop classes. They have probably been  
11 doing that forever. Program changes have probably been  
12 around forever. Most of us probably had program changes  
13 when we were in California colleges.

14 If you go down to the bottom of the page, it  
15 says -- Section 58508 provides: "A community college  
16 district governing board shall refund upon request any  
17 enrollment fee paid." So it's quite clear that the Title 5  
18 intended that the community college district refund  
19 enrollment fees under certain conditions. Commissioning  
20 staff has applied a court case called City of Merced, which  
21 all have us on this side of the room disagree with, which  
22 states to the effect that if something was discretionary,  
23 anything that follows that is mandatory, and is not  
24 reimbursable. So it's kind of a three-type thing here.  
25 The commission staff is saying since program changes were

1 at the discretion of the district, since allowing program  
2 changes were discretionary, anything that comes after,  
3 which is the mandatory refund, is not reimbursable.

4 This issue, of course, will be tested in Supreme  
5 Court cases sometime next year, in the process. But as a  
6 practical matter, this has a Draconian result, and an  
7 unintended result, and that is that program changes are  
8 district policy and have been around forever. The decision  
9 whether to allow program changes was not invented with the  
10 enrollment fee collection program. That first quoted  
11 section merely cites what everyone knows, and that is the  
12 district can or can not allow program changes. And if they  
13 do, the next section kicks in, which is if they do, a  
14 student initiates the request for a refund.

15 So what you have here is a district with a long  
16 standing policy to allow refunds -- excuse me -- program  
17 changes. I'm getting caught up in my own analogy here.

18 We have the district, and probably all  
19 districts -- most districts have a policy to allow program  
20 changes. And because they allow these program changes, the  
21 enrollment fee issue kicks in. A student pays the  
22 enrollment fee upon enrollment, and then two weeks later  
23 decides to reduce or increase the number of classes. And  
24 when they do that, it creates a need for more fees, or a  
25 refund of fees. So what I'm suggesting here is that

1 you disconnect the district policy of allowing program  
2 changes from the intended consequence of the refund  
3 process, okay?

4 For instance, if there was a non-resident student  
5 who paid tuition and then left, that student would get a  
6 refund. That policy has been around forever. The same  
7 thing applies to enrollment fees. The district decided 100  
8 years ago that there would be program changes. And the  
9 intended consequence here is that enrollment fees are  
10 subject to those program changes. So its result is  
11 inappropriate to disallow the refund process, because the  
12 district adopted a policy for program changes. And I would  
13 ask for that section to be reinstated as a reimbursable  
14 activity.

15 CHAIR MIYASHIRO: Any questions of the commission  
16 members?

17 MR. LAZAR: Could I ask staff to comment on that?

18 MR. SHERWOOD: Yeah. I believe, Mr. Chair, that  
19 these issues were addressed in your analysis. But in my  
20 review of that --

21 MR. FELLER: Sure. With regard to non-resident  
22 tuition, there was no evidence in the record that the --  
23 that collecting tuition from non-residents was different  
24 than collecting an enrollment fee from all students.  
25 Without that evidence in the record, staff's conclusion

1 remains the same that it was in the equivalent activity  
2 regarding the refunding of enrollment fees.

3 As Mr. Petersen pointed out, 58507, in the  
4 regulations here -- on page 133 in your binder -- that a  
5 community college district may allow a student to add or  
6 drop classes during the term pursuant to district policy.  
7 If that district policy did not allow program changes, then  
8 no refund would be owing to the student, because no program  
9 changes would be allowed. And because of the district has  
10 that option to prohibit refunds then, and doesn't take it,  
11 then refunding enrollment fees is not a matter of the  
12 program.

13 Regarding 58508, the first sentence, "Community  
14 college districts commonly refund upon request any  
15 enrollment fee or differential enrollment fee paid by a  
16 student pursuant to these sort of sections for program  
17 changes made during the first two weeks of instruction."  
18 Again the only reason for those refunds was the program  
19 changes. If those program changes are not allowed, there  
20 is no refund on there. And because the district does not  
21 have to adopt a policy requiring the program changes, then  
22 it was not found to be a mandated program.

23 CHAIR MIYASHIRO: I'd like to ask the Department  
24 of Finance their view of staff's interpretation of the  
25 discretion of the program.

1 Do you agree with the Commission on State  
2 Finance -- I mean, the Commission on State Mandates'  
3 interpretation?

4 MS. GEANACOU: Yes. We support the staff's  
5 analysis on this point.

6 CHAIR MIYASHIRO: Mr. Petersen?

7 MR. PETERSON: Well --

8 CHAIR MIYASHIRO: Any comment?

9 MR. PETERSEN: Rebuttal is more of the same, and  
10 that's in essence that college districts decided many,  
11 many, many, many years ago whether they would conduct to  
12 allow program changes. And the fact that this impacted the  
13 enrollment fee process was not planned for. Perhaps the  
14 middle ground here is if a district had a policy to allow  
15 program changes before 1984, they could be reimbursed for  
16 the refund process.

17 In other words, if they had a pre-existing policy  
18 to allow program changes, this new law comes along, it  
19 impacts that policy. And if the policy was to allow  
20 program changes, then a refund process should be  
21 reimbursable. If they had a policy not to allow program  
22 changes, there would be nothing to reimburse, because there  
23 would be no enrollment fee refunds. It works out in a very  
24 practical matter, and avoids the Draconian result of  
25 applying that court case.

1           As to the non-resident tuition fees, Mr. Feller  
2 and I have exchanged letters regarding facts and evidence.  
3 We have -- we don't have particular facts and evidence  
4 saying tuition fees or enrollment fees are different. I  
5 think you can take notice that they are. Enrollment fees,  
6 at the time of this test claim, were \$11 per unit. Tuition  
7 fees for non-residents are significantly larger. And  
8 whether they're collected at the same time or not, as a  
9 factual issue, might be different for every college. So I  
10 don't think, as a matter of law, you can say that  
11 collecting tuition fees is the same as collecting  
12 enrollment fees.

13           CHAIR MIYASHIRO: Okay. Thank you.

14           MR. PETERSEN: Uh-huh.

15           CHAIR MIYASHIRO: Miss Kwong?

16           MS. KWONG: In regards to the community college  
17 having the -- the policy to allow program changes, it's  
18 only fair that -- you know -- for students to come into a  
19 community college and to have that flexibility. And rather  
20 than looking at them when they come in on the first day and  
21 saying, you know, "Make sure you enroll in the right  
22 program the first day," and don't give them the  
23 flexibility to make certain changes --

24           MR. PETERSEN: Crashing classes. That sort of  
25 thing. I think we can all remember doing that, those

1 program changes, crashing a class.

2 MS. KWONG: Yeah. When you remember some of these  
3 students are coming in right out of high school, they  
4 have -- may have got counseling prior to coming in. But  
5 most of them -- you know -- decide on what they're -- like  
6 it's a real critical time to come in. Maybe the week  
7 before school starts, and they haven't had a chance to get  
8 to talk to a counselor, but they want to start classes,  
9 and they do make mistakes. So you know, you do want to  
10 make -- you know -- give that flexibility, instead of  
11 changing that policy.

12 CHAIR MIYASHIRO: Did you want to make a  
13 presentation on the broader test claim, or are you here as  
14 a backup resource?

15 MR. PETERSEN: By the way, she's more in the way  
16 of BOG side of the equation. The second test claim. She's  
17 substituting for a district administrator that was  
18 available last month, then it was postponed, and the person  
19 is no longer available.

20 CHAIR MIYASHIRO: Okay. Very good.

21 MS. GEANACOU: If I may? Susan Geanacou,  
22 Department of Finance. We would note that the issue of  
23 possibly refunding the fee is only material during the  
24 first two weeks of instructions. Per 58508(A) of the  
25 Education Code. So that's the time period we're focused

1 on. After that, it does not appear to be a material  
2 issue.

3 CHAIR MIYASHIRO: Okay. Thank you.

4 Miss Lopez, did you have anything to add on the  
5 issues that we raised thus far?

6 MS. LOPEZ: No. Just if the Commission has any  
7 questions.

8 CHAIR MIYASHIRO: Okay. You have any other  
9 comments or questions regarding the first aspect of this  
10 test claim?

11 And Paula, are we also discussing the Glendale  
12 test claims?

13 MS. HIGASHI: Yes. We have -- the two test claims  
14 have been consolidated. So when the Commission acts on  
15 the -- this analysis today, it will be acting on the  
16 consolidated test claims, and when the decision would  
17 issue.

18 CHAIR MIYASHIRO: And could you just -- both the  
19 Commissioners as well as members of the audience, just kind  
20 of explain why these have been combined?

21 MS. HIGASHI: The reason I combined the test  
22 claims was because the Statutes and Code Section  
23 overlapped. And it seemed that it would be more  
24 economical, both for staff, as well as for Commission  
25 Members, to be able to address these sections of law at the

1 same time, in one claim and one hearing, instead of having  
2 them as separate agenda items, where we would have to  
3 have -- where they may or may not even be heard on the same  
4 hearing date.

5 So I decided to combine them. There was no  
6 objection from the claimant regarding that.

7 MR. PETERSEN: You probably saved a tree.

8 MS. HIGASHI: Or maybe two trees, here.

9 CHAIR MIYASHIRO: We appreciate that.

10 MS. HIGASHI: Because the issues -- one issue  
11 flowed into the next issue. And Mr. Feller can certainly  
12 help with filling in more of the details in terms of  
13 getting back into the second part of the issues on the  
14 enrollment fee waivers.

15 CHAIR MIYASHIRO: Okay. Are we ready to move to  
16 the Glendale aspect of the claim then at this point?

17 MR. FELLER: I believe --

18 MR. PETERSEN: I have no dispute on the waiver  
19 side -- by the waiver side.

20 CHAIR MIYASHIRO: Okay. Well, let's go ahead and  
21 move to that, and maybe we can have a more broad discussion  
22 about that -- that claim juncture.

23 MR. FELLER: I don't have anything to add above  
24 what's in the -- in the analysis on the fee waivers.  
25 We've -- I -- I -- like I said, they've been -- like Paula

1 said, they have been consolidated, so they're all together,  
2 and --

3 CHAIR MIYASHIRO: Okay. I have a question of  
4 Paul. The legislative analyst bill analysis was cited by  
5 the Chancellor's Office as suggesting that the amount  
6 provided under the two percent would be insufficient to --  
7 or was insufficient to pay for the administrative costs  
8 incurred locally to administer the fees. The legislative  
9 analysis, however, cites that there's a disclaimer; that  
10 the legislature, while making appropriations, it provided  
11 for the two percent, but made no appropriation pattern of  
12 the fee to be retained locally to cover the cost of those  
13 administrative activities. And you say that the bill  
14 includes a self-financing authority disclaimer. Could you  
15 explain what that disclaimer means, relative to our  
16 jurisdiction here, and whether the legislature, when they  
17 say this is self-financing, why then are we entertaining a  
18 claim that suggests that the costs are above that?

19 MR. STARKY: Basically we follow the direction of  
20 the Courts on this particular issue in the course of  
21 legislation. The legislature, of course, has been  
22 conducting hearings and taking test amendments in making  
23 determinations up front about a particular bill, and making  
24 some assessment about what they believe based upon the  
25 information that they have at the time. And so it's not

1 uncommon that the legislature will either directly go the  
2 statutes, or -- in the committee reports -- make the  
3 determination about the estimated set cost of a particular  
4 program or activity.

5           The fact remains that the Courts have said that  
6 the Commission has the jurisdiction to determine the  
7 existence or not of a mandate when the legislature puts a  
8 dollar amount on a particular activity. And that is not  
9 going to be determinative on the ability of the Commission  
10 to make a finding about whether a mandate exists.

11           And they would -- the Commission will look at the  
12 program in the Statute, and then take testimony of the  
13 parties and make the determinations based upon that  
14 presentation by the parties as to whether or not they find  
15 there is a legal mandate there.

16           Is that sufficient to -- is that what you're  
17 asking about?

18           CHAIR MIYASHIRO: Well, I guess I'm looking at it  
19 in two stages. One is whether there's a mandate there.  
20 And I think all the partes have agreed that there is a  
21 mandate. There is a new activity, a higher level of  
22 service. But then the question is has the legislature made  
23 some allowance to pay for that by providing for the two  
24 percent retention of fees collected? And my question goes  
25 to what weight or how do we determine that that mean amount

1 is insufficient, and therefore a claim for cost above that,  
2 that the legislature had provided for in the two percent  
3 rate, should be considered reimbursable above and beyond  
4 that two percent?

5 MR. STARKY: I think there's at least two  
6 considerations. One is that when you make an analysis --  
7 in this case the analysis is at page 24 of the staff  
8 recommendation -- we look at the Statute itself. And if  
9 the Statute itself had, for example, capped fees, but still  
10 continued, still imposed a duty, then the mere fact that  
11 some amount of fees was in there would not be determined,  
12 because of the fact that there's still an assistant  
13 mandate. The second aspect of it is that we look to  
14 the record and the evidence presented by the parties. And  
15 that's explained at page 24 of what was present in this  
16 record; that there is a declaration provided by the  
17 claimants. And basically, that declaration has been  
18 provided.

19 MR. FELLER: Can I add something? The Statutes we  
20 operated under in this case, Government Code 17556,  
21 require that the revenue be sufficient to fund the cost of  
22 the mandate. And as Paul mentioned, it's in the records.  
23 And in this case, it indicated -- it wasn't -- the  
24 declaration should be on page 124 in your binders for  
25 enrollment fee collection. And 278, 279 for the -- the fee

1 waiver portion of the test claim indicated that those  
2 were -- those revenues were not sufficient.

3 MS. HIGASHI: And let me just add one more point,  
4 and that is that the basic statutory requirements set  
5 minimum amounts in order to file a test claim with the  
6 Commission on State Mandates. At the time these tests  
7 claims were filed, the threshold was only \$200. Currently  
8 it's \$1,000. And that's also the minimum threshold for  
9 filing a reimbursement claim with the State Controller's  
10 Office. And that's been in effect since September 30.

11 CHAIR MIYASHIRO: Is there a representative of Los  
12 Rios to help walk us through what is submitted here on page  
13 124?

14 MR. PETERSEN: Yes. I prepared that schedule  
15 based on information provided to me.

16 CHAIR MIYASHIRO: And I guess my question is --

17 MR. PETERSEN: Because the numbers go down,  
18 certainly, since the staff analysis has wacked several  
19 portions of it.

20 CHAIR MIYASHIRO: Okay. There's -- I will assume  
21 that these costs were in fact incurred by Los Rios  
22 Community College District. But how are the Commissioners  
23 to know whether what was incurred -- was only sufficient  
24 in -- was no more than sufficient versus what the  
25 legislature provided for in the two percent? If I read

1 this correctly --

2 MR. PETERSEN: Uh-huh.

3 CHAIR MIYASHIRO: -- it's roughly \$140,000.

4 MR. PETERSEN: Yes.

5 CHAR MIYASHIRO: You had to apply to a hundred  
6 and -- possibly \$217,000?

7 MR. PETERSEN: Yes.

8 CHAIR MIYASHIRO: The gap is large. The  
9 difference is large.

10 MR. PETERSEN: Uh-huh. It often is in mandates.

11 CHAIR MIYASHIRO: In a sense, how can the  
12 Commissioners be assured that \$140,000 was insufficient as  
13 compared to an argument that well, here it is, what we  
14 ended up spending? Because I think the Legislature, when  
15 they use the term "sufficient," is distinguishing between  
16 sufficiency and what was ultimately spent.

17 MR. PETERSEN: Uh-huh.

18 CHAIR MIYASHIRO: And if the activities elected to  
19 be undertaken locally exceed the amount provided by the  
20 legislature in this case --

21 MR. PETERSEN: Uh-huh.

22 CHAIR MIYASHIRO: -- the two percent, I think it's  
23 up to the Commission here to determine whether that amount  
24 spent was what would be sufficient, and the two percent was  
25 not, versus here's what was spent locally. There's --

1 there's a distinction --

2 MR. PETERSEN: Uh-huh.

3 CHAIR MIYASHIRO: -- I want to draw. And I think  
4 it's up to the Commission kind of to draw that line.

5 MR. PETERSEN: Several things are happening here.  
6 The jurisdiction of the Commission for finding costs off  
7 expenses of reimbursement is if there was sufficient funds  
8 in the Legislation, which were indicated in the mandate  
9 whether there's sufficient funds in that Legislation to  
10 offset the cost. Or the other part to this is if the  
11 Legislation provided fee power -- granted the local agency  
12 the power to charge their consumer's a fee. What the two  
13 percent is is something rather clever, and the legislature  
14 has many, many, many clever days, including 1984. The two  
15 percent is not a transaction in the sense that the  
16 Chancellor's Office gives two percent, the 160 -- 40,000 to  
17 the college. The college reports to the Chancellor's  
18 Office how much it collected, and the Chancellor's Office  
19 gives it credit for 98 percent of what they collected  
20 against their statewide appropriation for educating  
21 college students. So in that way, they avoided putting a  
22 funding requirement in legislation, and they avoided --  
23 they avoided two-thirds vote.

24 You see, we all know if you put some money in  
25 Legislation, you have to have a two-third vote. So since

1 the money was never in the Legislation, it doesn't meet the  
2 test of whether it is an exception to reimbursement because  
3 it wasn't in the legislation. It's not a fee they charge  
4 students. It's an accounting transaction. Whether these  
5 costs are correct, the costs will be different for every  
6 college, which is one point in support of the fact that you  
7 subtracted two percent from the actual cost.

8 We know they're getting credit for two percent.  
9 And whatever they report their costs to be, the two percent  
10 comes off. And that's how that calculation occurred here.  
11 So whatever the cost, that was the best guesstimate. This  
12 is not cost accounting, because you do that with claims  
13 later. This is a best guesstimate. And then based on the  
14 things we allege, since these have been cut almost in half,  
15 that's going to go down. So every college is going to  
16 report their costs and subtract the two percent. So it  
17 might be \$3 a student. It might be \$4 a student. A very  
18 small college might have a higher cost, because they have  
19 the office staff servicing fewer students. And that's a  
20 cost accounting issue. So it's going to vary.

21 Now several examples do exist already. There's  
22 a -- an annual claim called Public Health Screening, which  
23 school districts are required to collect from each student  
24 a copy of a health exam prior to entering first grade, or a  
25 document that says various families won't allow the health

1 exam -- pupil health screen. And the State had an  
2 appropriation in place from the Department of Health  
3 Services that was paying the districts a dollar per student  
4 to perform that function. Appropriation exists, and it is  
5 being paid out every year, a dollar, to perform that  
6 function. When the test claim was filed, the Commission  
7 took notice of the dollar and said that should be  
8 subtracted from the cost of the process. And indeed, based  
9 on the claims I've seen, the cost is anywhere to three to  
10 five to \$6 per student in the actual world, to perform that  
11 function. And then if the dollar is subtracted, that's how  
12 the mandate reimbursement process works. You appropriate  
13 the actual cost, and then you subtract any revenue that  
14 you receive directly. So in this test claim, they would  
15 report their actual cost, and then subtract the revenue.

16 Now the nice thing about this test claim is a low  
17 overhead, high variable cost claim process, in that the  
18 cost -- the total cost of the process depends on how many  
19 allotted -- on how many students you have. So if you're  
20 doing a lot of students, you have a lot of cost. Those  
21 types of things lend themselves to unit cost rates.  
22 They're very uniform costs. So after a few years of cost  
23 experience, this will lend itself to a unit cost rate of  
24 \$3, \$4 -- whatever it turns out to be, which would just be  
25 multiplied by the number of students from which you collect

1 the fee, or which you do the waiver. So it's going to be  
2 tied to the claim.

3 In that sense, there will be some cost containment  
4 there. But I am sensitive to your issue, and it has come  
5 up a lot in the last few years. If the legislature says  
6 we're giving you enough money, then it's -- can't be  
7 declared a mandate, when point of fact is the Legislature  
8 has never done that since, I believe 1977, when they  
9 provided a couple hundred thousand dollars for something  
10 called Expulsion Transcripts.

11 The County of -- I believe it was Los Angeles  
12 Unified School District filed a test claim on that and  
13 proved it was insufficient cost. The test claim was  
14 approved, and the appropriation was withdrawn from the  
15 budget in the future. So there was never any  
16 appropriation.

17 Of course, that's the other side of the coin, too,  
18 is next year the Legislature could take two percent away,  
19 and you'd still have the actual cost of collecting the  
20 fee. And two percent will go up. I believe the  
21 Legislature is talking about \$24 dollars a unit right now  
22 for enrollment fees. And two percent of that will climb  
23 with the \$24. So there will be some recognition of --  
24 there will be some connection between the fee and the work,  
25 in that sense.

1 CHAIR MIYASHIRO: Can you give us a sense of  
2 submission here?

3 MR. PETERSEN: Uh-huh.

4 CHAIR MIYASHIRO: How much of this \$217,000  
5 represents personnel, and are we talking about --

6 MR. PETERSEN: It all will be personnel.

7 CHAIR MIYASHIRO: Are we talking about people who  
8 are engaged full time, year-round, exclusively in the  
9 collection of this fee? Or are we talking about people who  
10 have year-round duties and may touch upon this mandated  
11 activity? And how much of the time then is allocated to  
12 this? So what I would be looking for is a sense of how  
13 many people are engaged in this activity, and for how much  
14 of their year?

15 MR. PETERSEN: When I prepared this a couple years  
16 ago, my recollection is, at Los Rios, they have three  
17 colleges, of course. So there will be several cashiers who  
18 collect fees. The workload is -- I'm sure -- intense for  
19 several weeks at the beginning of each semester. This  
20 estimate is not predicated on 100 percent of anybody's job.  
21 It is -- we did a very informal time study, and they asked  
22 the cashiers "How long does it take to collect fees?" And  
23 they would say "Well, I got this form to do. Then I've got  
24 to hand it to this person," and it came out to like "x"  
25 number of minutes.

1           So what we did is we took "x" number of minutes  
2 and multiplied it by that person's salary. The clerk at  
3 the window multiplied it by the number of students for whom  
4 they had to collect the fees. Very, very, very, very  
5 primitive cost study, which is actually more sophisticated  
6 than what we usually do for these estimates. So it's not  
7 anyone's position. It's not an all-year job. It's a very  
8 intense process at the beginning of the semester.

9           As for the refunds -- a special place in my heart  
10 there. I used to be a cost accountant for the State, and  
11 you realize sometimes it costs more to perform an activity  
12 than the value provided. For instance, if someone had a  
13 program change and wanted a \$12 refund, it might cost \$26  
14 to do that, because you have to do several things before  
15 you can issue a check from a public entity.

16           So it's not so much the dollar amount involved.  
17 It's the process. And again, we just did a quick-and-dirty  
18 on the process. The net result, here again, is going to be  
19 high, because there have been some things removed by the  
20 Commission staff. But if you think about \$4.63, if the  
21 average staffing cost here is \$15 or \$16 an hour for the  
22 front line troops, you're looking at at least then 15  
23 minutes of everybody's time to perform the entire  
24 function. You see what I mean there?

25           If the average hourly cost of the cashier and the

1 accountants and the supervisors and the people who correct  
2 the mistakes or -- or make refunds is \$16 dollars an  
3 hour -- which it's not. It's much higher -- you're looking  
4 at 15 minutes of one person's time to do the entire  
5 process. It's people -- or labor, of course, is expensive,  
6 as you all know. But 15 minutes is not an untoward amount  
7 of time when you visualize the process.

8 CHAR MIYASHRO: Okay. Can I ask how many  
9 cashiers -- how many people are involved in this activity?

10 MR. PETERSEN: I've also talked about this with my  
11 other clients, and smaller colleges, during the rush in  
12 August. And I guess February or January will have extra  
13 staff on. And there might be two or three cashiers at the  
14 window, handling this process. And during the rush, there  
15 might be five or six people to handle the students, of  
16 course, in line.

17 Some of this is done on the computer. You can  
18 register on line and a check comes in the mail. But still,  
19 some of it is done face-to-face.

20 CHAIR MIYASHIRO: So we're saying -- let's say  
21 six per college? 18 people?

22 MR. PETERSEN: Well again, you could say that, but  
23 we would -- we're not -- we're not requesting to manage  
24 reimbursement for 100 percent of the day. We've just done  
25 an estimate of when they're doing enrollment fee collection

1 and what that costs. They might be doing three or four  
2 different jobs.

3 CHAIR MIYASHIRO: Okay. I'm just trying to get  
4 this math to reconcile, because I guess the way you  
5 described it, it says "Well, tell me how many minutes you  
6 spent on this?"

7 MR. PETERSEN: Yes.

8 CHAR MIYASHIRO: "And then make multiplications."

9 MR. PETERSEN: Right. Because of this.

10 CHAIR MIYASHIRO: I guess the other way you might  
11 look at it is here's the course of your entire year, week,  
12 month.

13 MR. PETERSEN: Uh-huh.

14 CHAIR MIYASHIRO: How much of that entire time is  
15 spent on this? Because if you were to ask that person,  
16 again, "How much time did you spend collecting parking  
17 fees?"

18 MR. PETERSEN: Uh-huh.

19 CHAR MIYASHIRO: "How much time did you spend  
20 collecting" --

21 MR. PETERSEN: Uh-huh.

22 CHAIR MIYASHIRO: -- "student registration fees?"  
23 And let's say you just went down the list and you ended up  
24 with more than 2000 hours, well, the trouble I have with  
25 this methodology is if we assume \$40,000 per person here --

1 MR. PETERSEN: Excuse me?

2 CHAIR MIYASHIRO: If we assume \$40,000 -- and you  
3 said 30, but let's add benefits and so forth.

4 MR. PETERSEN: Right.

5 CHAIR MIYASHIRO: An \$800,000 claim suggests 20  
6 people doing this all year long.

7 MR. PETERSEN: Yes, it would. At three different  
8 locations.

9 CHAIR MIYASHIRO: 20 people, all year long.  
10 That's their entire activity. And I guess I need to have  
11 something reconciled between an \$800,000 number here  
12 supporting this claim --

13 MR. PETERSEN: Uh-huh.

14 CHAIR MIYASHIRO: -- and what -- as you  
15 described -- would be a marginal amount of activity of a  
16 number of six people per campus at six campuses.

17 MR. PETERSEN: Well, again, also an accounting  
18 term, if you're approaching -- and I'm approaching this  
19 accurately -- you come up with the same result. In other  
20 words, if I asked a cashier -- and there are very few  
21 full-time cashiers. There are people who put on  
22 temporary -- I told you, there's some overtime involved  
23 during the heavy season that raises their cost. But if I  
24 asked a cashier "How much time do you spend doing the  
25 enrollment fee collection?" The cashier would tell me

1 "Well, most of the year we don't do it at all, because it's  
2 enrollment-related. But during the enrollment season it  
3 seems like I do that all day long." Okay? And well, "How  
4 many people are at the window?" "Well, during the year we  
5 have one person who is the receptionist, and someone comes  
6 to window, you know, to pay a parking thing or a cafeteria  
7 thing or something, that person goes to the window. But  
8 during the -- the busy season, there might be five or six  
9 of us knee deep in students," you see? So that the cost is  
10 concentrated in that period.

11 \$800,000 could be 12 or so, to 15. If you look at  
12 it full time it could be 40 or 50 people working  
13 frantically for several months a year. But as I said,  
14 that's going to go down, because the Commission -- the  
15 Commission staff is -- has removed parts of it.

16 CHAIR MIYASHIRO: Well, I guess --

17 MR. SHERWOOD: Can --

18 CHAIR MIYASHIRO: Go ahead.

19 MR. SHERWOOD: I think the Chair is making a good  
20 point here, though. When you put it on that perspective of  
21 15 to 20 people, say, full time --

22 MR. PETERSEN: Uh-huh.

23 MR. SHERWOOD: -- for a year, it just doesn't  
24 quantify in my mind, quite frankly. I've read Finance's  
25 analysis also. I think it's on page 580 that breaks it

1 down a little bit differently. I'm sorry. That breaks it  
2 down a little bit differently. And I think it comes up  
3 with a costing area of \$70,000. I have to go back and  
4 review it, but it's quite a bit lower than what these  
5 estimates are.

6 MR. PETERSEN: Do you think it would be more than  
7 90 cents a student?

8 MR. SHERWOOD: I don't know.

9 MR. PETERSEN: That's what the two percent is.

10 MR. SHERWOOD: 90 cents?

11 MR. PETERSEN: And 90 cents would be five  
12 minutes -- three minutes of somebody's time.

13 MR. SHERWOOD: It's quite a problem, though.  
14 Because if we can't get over this little -- this huge  
15 hurtle --

16 MR. PETERSEN: Uh-huh.

17 MR. SHERWOOD: -- of indicating what the actual  
18 cost might have been -- now this is an estimate.

19 MR. PETERSEN: Yeah. In point of the fact, we  
20 could switch it to \$1,000 right now. It'd no longer be an  
21 issue. It's whatever the cost turns out to be, in reality.

22 MR. SHERWOOD: The P's and G's claims this doesn't  
23 generate any cost.

24 MR. PETERSEN: This is an estimate. Yeah.

25 MR. SHERWOOD: But it's still a -- I think an

1 important point of -- the Chair is making in this case.

2 CHAIR MIYASHIRO: And I guess what I am, again,  
3 aiming at is -- and I raised this last meeting.

4 MR. PETERSEN: Yeah.

5 CHAIR MIYASHIRO: In my mind it's not what the  
6 local agency spends or elects to spend --

7 MR. PETERSEN: Uh-huh.

8 CHAIR MIYASHIRO: -- to fulfill a mandate, and  
9 then we say "Okay, you have documentation to show that you  
10 spent an amount."

11 MR. PETERSEN: Uh-huh.

12 CHAIR MIYASHIRO: "And here's the reimbursement."  
13 I want to get back more to what is sufficient to fund the  
14 mandate, and for this Commission to have a very good sense  
15 of what that will be, going into the reimbursement process,  
16 not after the fact that -- you know -- of going through the  
17 audits and audit appeals and --

18 MR. PETERSEN: Which is the jurisdiction of the  
19 State Controller.

20 CHAIR MIYASHIRO: So -- right. This claim is  
21 based on this information here, and it has not been  
22 audited, and you would acknowledge that it's based on a  
23 general survey. And someone just needs to say "Well, ten  
24 minutes of my time was spent doing this." But I guess,  
25 again, if I'm not accounting for their entire time, I don't

1 know if ten minutes is grossly overstating it. Because if  
2 we have a cost, by doing that multiplication, that --

3 MR. PETERSEN: Uh-huh.

4 CHAIR MIYASHIRO: -- section sees \$800,000 for the  
5 district, which sounds to me like 20 people being paid  
6 \$40,000 a year undertaking this activity all year long.  
7 That's seems quite in excess of your suggestion that it may  
8 be five or six people at the window during the heavy times  
9 of the season.

10 MR. LARSON: Mr. Chair?

11 CHAIR MIYASHIRO: Mr. Larson.

12 MR. LARSON: If you kind of take your analysis on  
13 the two percent reverse, you do get to roughly a 15  
14 pedantic hiring, if you take 140, using the 40,000 actual.  
15 Obviously what it is is three and a half and a quarter  
16 bodies, multiply that out by about a quarter of the year,  
17 it sounds like.

18 MR. PETERSEN: Well, three semesters. Three  
19 enrollment periods.

20 MR. LARSON: Three enrollment periods. So the  
21 average of that would just fall to part of a fifth of a  
22 count.

23 MR. PETERSEN: We can't know how many hours they  
24 work. This was a very informal survey.

25 MR. LARSON: Obviously sort of a thumb test. The

1 Chair led us through the other direction. Now I'm taking  
2 it from the sufficiency point going up, and you get to  
3 about 15.

4 CHAIR MIYASHIRO: Right.

5 MR. LARSON: Both on at a time that would be  
6 handling this.

7 MR. PETERSEN: If that's --

8 MR. LARSON: Which seems to match the number.

9 MR. PETERSEN: Yeah.

10 MR. LARSON: And that would be full time, just on  
11 this process.

12 MR. PETERSEN: Yeah.

13 MR. LARSON: On the work.

14 MR. PETERSEN: Mr. Chair, I'm sensing a catch-22  
15 here. The law requires that I allege at least \$1,000.  
16 Commission staff has indicated in the past few years you  
17 all would like to get a taste of what things are going to  
18 cost the State eventually. And in order to do that, I put  
19 together a very informal survey. And I wouldn't stand up  
20 and say it's going to be this number. It might be \$2 per  
21 student. But had I elected only a thousand dollars, you  
22 might have gone away thinking this is cheap. And then  
23 we'd all be surprised, like we have been in the past 12  
24 years, when we come in with \$1,000 alleged, and someone  
25 finds out that it's a 50 million dollar mandate.

1 I don't -- I guess what I'm suggesting here is  
2 focusing on these numbers would be inappropriate in the  
3 sense that this is something we put together to give a  
4 rough idea. And I understand -- I really do understand,  
5 especially at these times, your sense of what things cost.  
6 But the laws regarding the Commission process and the  
7 jurisdiction of the respective agencies allocate those  
8 tasks in the following sense. The Commission decides  
9 whether the activities are new, and then claims are filed,  
10 and they find out what the cost is. And the State  
11 Controller has a jurisdiction to adjust costs to be  
12 reasonable.

13 The two percent is a legal issue that has nothing  
14 to do with it actually, nothing to do with what the  
15 mandate's going to cost, whether it's a dollar a student or  
16 \$9 student. And I particularly think it will be closer to  
17 \$3, once things are winnowed out. The two percent is a  
18 legal threshold issue under 1556 as to whether a mandate  
19 exists. The Legislature never said the two percent was  
20 adequate. The Chancellor's Office never said the two  
21 percent was adequate. So as a matter of law, it's not  
22 adequate. It will be an amount in the normal mandate  
23 process that gets subtracted from the cost. And again, the  
24 practicality of that argument is seen easily. That is,  
25 next year they could take the two percent away. It's an

1 arbitrary number.

2 And one more thing, the BOG waiver process has a  
3 91 cent per credit offset. So there's actually two  
4 offsets. There's two percent for the collection fee, and  
5 there's .917 cents per unit. So if it's students taking  
6 ten units, you're looking at a \$9 offset for the BOG waiver  
7 process.

8 Both of these are arbitrary numbers, and they were  
9 never in the Legislation as funding. They're in the  
10 Legislation as a credit against amounts collected.

11 CHAIR MIYASHIRO: You have a question?

12 MR. PETERSEN: I'm sorry -- very sorry I gave you  
13 a cost estimate.

14 CHAIR MIYASHIRO: Any questions of members of the  
15 Commission?

16 Would the Department of Finance or Attorney  
17 General like to offer comments?

18 MS. GEANACOU: We don't have any comments at this  
19 point.

20 CHAIR MIYASHIRO: Any members of the audience that  
21 would like to comment on this at this time, with the  
22 State?

23 Okay. I guess -- and I guess this is something I  
24 put forth at our last Commission meeting. And that is, I  
25 would like the Commission staff and the other parties --

1 the Department of Finance, Attorney General, Controller's  
2 Office, Legislative Analyst to participate and assist in  
3 the development of unit cost rates for these claims, so  
4 that we as Commissioners have a better sense of what these  
5 mandates may ultimately cost, rather than wait till  
6 activities have been performed, claims are made, claims are  
7 audited by the Controller's Office and -- you know -- we  
8 have this back and forth in it.

9           And really, until spending has already taken  
10 place, the Commission largely is without a good sense of  
11 what the mandate that we have found is ultimately going to  
12 cost. And I would hope you would be providing some -- not  
13 just parameters and guidelines simply on what activities  
14 are acceptable, but the reimbursement rate for these  
15 activities, and a reasonable amount of time that those  
16 activities would be undertaken, so that this Commission,  
17 when it adopts parameters and guidelines, has much more of  
18 a sense of what the mandate will ultimately cost, and not  
19 simply specifying various activities that may be claimable.

20           I would like to try and have as many of the  
21 variables brought before us before we adopt them, so that  
22 we have a much better sense that -- you know -- of what  
23 this mandate would cost, and the range of this. Because if  
24 we nail down variables as best we can, versus leaving so  
25 many variables open -- and I'm not saying that the process

1 hasn't been rigorous to date. But I think the more we can  
2 move toward that, the better sense the locals will have as  
3 to what they will receive as reimbursement when undertaking  
4 the activities, and not necessarily feeling that they  
5 undertake activities as some risk of finding that the  
6 activities that they had undertaken in good faith were in  
7 fact not reimbursable.

8 MR. LARSON: Mr. Chair, just two comments in  
9 response. Certainly the Controller's Office wants the unit  
10 cost ultimately realized, and I think you're right in  
11 moving towards some of that data earlier. And that would  
12 be helpful to the Commission's continuing deliberations,  
13 and especially to give them -- it's kind of a second point  
14 I just want to make clear. I think we also all have the  
15 understanding the schedule is not as --

16 MR. PETERSEN: It's pretty close to a W-A-G, sir.

17 MR. LARSON: We understand that. And I think that  
18 actually lends credence to what the Chair is suggesting, to  
19 go forward. So just to follow up on your comments, sir,  
20 you were going to say we're interested in, both for the  
21 State and the district, minimizing cost, and second, I  
22 think revisiting the -- the W-A-G schedule as was presented  
23 in the unit cost might present an opportunity to refine the  
24 data that the Commission is to base its decision on, at  
25 least in part.

1 MR. PETERSEN: If I may, one technical problem --

2 MR. SHERWOOD: If I may, Mr. Chair, I -- I'm going  
3 to be in agreement with the direction you're heading. I  
4 think the more information that's available, not only to  
5 us, but to everyone in the process, from the claimant's  
6 side and from the Legislative side -- the more information  
7 we have -- all of us have is to be prudent. However, I  
8 think the decisions we make here have to -- frankly, have  
9 to be made upon the facts and the information brought  
10 before us, based on whether it's a mandate or not, and  
11 not the costs involved.

12 Quite frankly, I think the costs are important to  
13 the system, and for everyone to understand what the cost  
14 could be in the fund. But I still think our decision would  
15 be based -- should be based upon whether it's a mandate or  
16 not, and not influenced, frankly, to a great extent, by the  
17 cost itself.

18 CHAIR MIYASHIRO: I agree. I do agree with your  
19 point.

20 MR. SHERWOOD: Thank you.

21 MR. LARSON: And Mr. Chair, I agree with that as  
22 well. When I go back to the Commission staff report,  
23 they -- pages 24 and 25 -- it's pretty clear the direction  
24 and recommendation is coming from staff. And really, I  
25 view your request as a chance to get additional data to

1 help us analyze that going forward, and Finance's claims,  
2 which is different than Commission staff on this matter.

3 CHAIR MIYASHIRO: Yeah. Yeah. I appreciate that  
4 clarification. I think that's exactly my point.

5 Any other comments by Mr. Petersen?

6 MR. PETERSEN: If you didn't know already, we very  
7 much supported the idea of unit cost. In fact, we have  
8 nine matters. We filed a request to make nine existing  
9 programs in the cost, and we're having a meeting about that  
10 today, which would reduce their workload -- State  
11 Controller's workload reduces our workload. As you know,  
12 you reimburse our workload. So everybody wins on that  
13 proposition.

14 I have participated in a test claim where we did  
15 unit costs at the parameter and guidelines stage. The  
16 annual parent notice in the school district bulletin  
17 reports were going back five or six years. You might  
18 remember that, Mr. Sherwood. And it has to be done with  
19 the P's and G's statement. That's when you know the things  
20 you're going to approve, and it does involve less than  
21 scientific methods to get that data, because you're asking  
22 a lot of districts to respond to a list of activities.  
23 And it -- first of all, it's tough to get a lot of  
24 responses. We'll get nowhere near a statistically valid  
25 average, or within two very small cell minuses or bell

1 curve or anything like that. It's generally a process  
2 where we think the data looks reasonable. We, being  
3 everybody involved.

4 So if you're looking for a scientific solution, we  
5 know to make things work we have to move into the realm of  
6 the possibles on proposed scientific data, but we very much  
7 support unit cost rates. We love unit cost rates a lot.

8 CHAIR MIYASHIRO: Did the Court Reporter get that  
9 you're emphatic?

10 Any other comments or questions?

11 MR. SHERWOOD: The mandate in general.

12 CHAIR MIYASHIRO: Yes.

13 MR. SHERWOOD: I do have a question. On page 278,  
14 of course, it includes the board, or the staff -- excuse  
15 me -- in six items, I believe, that are considered to be  
16 mandated by staff accordance. Mr Petersen, you have two  
17 other points you brought up, which I believe staff spoke to  
18 in its analysis. And I happen to be in agreement with  
19 staff. But on the sixth I'm looking at here, the fifth one  
20 documented the public benefits for -- this is on page 28,  
21 documenting public benefits for recipient assistants, and  
22 also dealing with the training. And it refers to the  
23 manual, and then the manual goes back to page 20, and it  
24 says the BOG Fee Manual comes up, and whether or not that's  
25 an executive order or not. And the Department of Finance

1 had the argument that it is not an Executive Order. And I  
2 believe staff feels that it does find a place in that  
3 executive order or even in a regulation or ruling by a  
4 state agency. And I believe Mr. Petersen, you feel that  
5 way also?

6 MR. PETERSEN: Right. And you have a special code  
7 section in the mandate law that's speaks to executive  
8 orders specifically.

9 MR. SHERWOOD: Uh-huh.

10 MR. PETERSEN: Did you cite that?

11 MR. FELLER: It's Government Code 16.

12 MR. SHERWOOD: Yes. I guess my point is -- maybe  
13 I'll hear more from Finance. When I read that through it,  
14 I'm not quite sure. I guess it needs to be explained to me  
15 a little bit more fully as to why it is or it isn't, and  
16 where the ramifications are not carried out there, or  
17 order. Why -- what is the penalty for not carrying out  
18 this order? I mean, it isn't really a requirement of the  
19 community colleges to carry this out.

20 MR. PETERSEN: You're required to report your  
21 BOG, Board of Governors, fee waiver student data in order  
22 to get that two percent. And indeed, in Education Code  
23 76300, if you don't report data, they can penalize you ten  
24 percent of your entire annual appropriations. So you're  
25 compelled to report data consistent with the manual, I

1 guess is the shortest answer. The manual says you'll keep  
2 track of financial aid for the students, and a couple other  
3 things they're training on.

4 MR. SHERWOOD: Right.

5 MR. PETERSEN: But you know, in the scheme of  
6 things, it goes to Statute Code, to Regs, Manuals, and to  
7 the Section 1 Items, you know. The Superior Law Reg,  
8 whatever, it is. An executive order. And the punitive  
9 side, I don't necessarily agree you need a punitive side to  
10 make the manual effective. You just need the Department  
11 saying you have to do this.

12 But in this case, the underlying Code  
13 Section 76300 says if you don't comply, don't report.  
14 Let's say your state appropriation was 128 million dollars  
15 or something, not just the BOG fees. But ten percent of  
16 your state appropriations can be held until you report. So  
17 there is definitely a punitive aspect to not complying with  
18 the Chancellor's Office. And of course, Title 5 came from  
19 the Chancellor's Office. It didn't come from the  
20 legislature, okay? The Chancellor's Office, the Board of  
21 Governors created the title -- these Title 5 sections  
22 there's jurisdiction on. So to comply with Title 5 and to  
23 comply with the Code Section you have to comply with those  
24 aspects of the manual.

25 MR. SHERWOOD: Thank you.

1 CHAIR MIYASHIRO: Department of Finance, do you  
2 have any comments then?

3 MS. GEANACOU: Yes. Susan Geanacou, Department of  
4 Finance. I had hoped you were not finished taking  
5 testimony. We have comments on both of these manuals, and  
6 on another aspect of the test claim. We'll address it in  
7 this order. The Department of Finance continues to oppose  
8 the staff finding that this manual constitutes an executive  
9 order. The authority for the Board of Governors adopted  
10 rules and regulations is in the Education Code,  
11 specifically at Section 70901, Subdivision (C), (D) and  
12 (E). And there is no evidence in the record, that we're  
13 aware of, that this process was followed by the  
14 Chancellor's Office in issuing the mandate which, as we  
15 noted in our comments to the draft staff analysis, is  
16 self-described in section 1.3.3 as sub-regulatory  
17 guidance.

18 I'll also add that the Board of Governors issues  
19 standing orders. And specifically, they're Standing Order  
20 Number 334, which I have copies of here today, and we were  
21 not able to include it previously with our subdivisions.  
22 If you'd like me to distribute it so members and the  
23 parties here at the table can cite it for their  
24 consideration, I have, I believe, ample copies of the Board  
25 of Governors Standing Order 334, Subdivsion (D)3, which

1 includes executive orders as a matter that would have to go  
2 through the consultation process that is set forth in the  
3 Education Code 70901(E).

4 And there's no evidence in the record, that we're  
5 aware of, that that process occurred. I'll just  
6 reemphasize what our comments were in our written filing;  
7 that Section 1.3.3 of the Manual specifically says in  
8 addition that it's additional guidance on the  
9 administration of the BOG fee waiver program; that it's  
10 offered by the California Community College Chancellor's  
11 Office through the manual program updates and training  
12 program manuals.

13 We would basically submit that this manual does  
14 not and cannot legally be -- excuse me -- cannot legally  
15 require the college districts to do anything, because the  
16 authority for its existence as an Executive Order is in  
17 doubt.

18 CHAIR MIYASHIRO: Ms. Williams.

19 MS. WILLIAMS: I do have a question. I just  
20 wanted to agree with Mr. Sherwood and Finance's comments.  
21 This -- in reading the manual, it's clear to me it's  
22 guidance. It's not mandatory. It's guidance. And wasn't  
23 adopted by the Board. It wasn't adopted by the Board of  
24 Governors. It wasn't mandated or directed by the Board of  
25 Governors. It describes it as additional guidance. The

1 regulation stand -- law stands, but I don't see anything  
2 where the manual stands.

3 MR. PETERSEN: I can respond to that.

4 MS. WILLIAMS: You can? Great.

5 MR. PETERSEN: Page 20 of your staff  
6 recommendation, in the middle of the page it says "Staff  
7 disagrees regarding opinions of the community college  
8 chancellor. The Commission is not bound to rely on legal  
9 opinions of the administering agencies as to what is not an  
10 executive order or regulation." So it's case law. What's  
11 pertinent here is, first, that -- and this comes up  
12 frequently, as to what is an executive order in the mandate  
13 world is controlled by your mandate legislation and the  
14 government code. What the Department of Finance described  
15 to you is the process -- the internal process that the  
16 Gov- -- that the Gov- -- 789, the Board of Governors has  
17 for their own rulemaking. Okay? They've decided that  
18 before something rises to the exalted height of Title 5,  
19 that they go through what they call the consensus or the  
20 collaborative process. That's a process they built in  
21 that's a sharing of the process with the colleges. A  
22 similar process would be someone posting a regulation  
23 proposed, as this Commission does, for 45 days or 90, and  
24 wait for people to respond. At that point you adopt  
25 regulations. It's not a process that defines executive

1 order. It's Government Code section. And it's a perfect  
2 match here.

3 As to whether the Chancellor's Office or the Board  
4 of Governors thinks it's a regulation or not, having been  
5 on the receiving end of having worked for state agencies  
6 myself for ten years, and then since having been on the  
7 receiving end of the jurisdiction of state agencies, the  
8 issue of whether manuals, forms and such are executive  
9 orders is an ongoing issue. We're all quite experienced  
10 with the State Department of Education for 12K issuing  
11 advisories saying "This is absolutely an advisory. You  
12 don't have to do any of this. But of course, if you want the  
13 funding, please fill out the forms." That makes an  
14 executive order. Or another advisory comes out and says  
15 three pages of how to do something, how to fill out a form.  
16 At the very end it says this is just guidance, but if you  
17 don't turn in the form, you don't get the money.

18 Same thing with the manual. They declare it to be  
19 sub-regulatory, when -- which is a legal issue they can't  
20 decide for you. You have a Government Code section that  
21 tells you what an executive order is, and then, for that  
22 agency, for its own benefit, suggesting that it's not  
23 mandatory, has several sub-issues involved. First of all,  
24 if it's not mandatory, they can avoid their collaborative  
25 process. I believe, based on the description, if it's not

1 mandatory, the Department of Finance doesn't have to buy  
2 off on it. The Department of Finance has to approve or  
3 disapprove Title 5 changes from the Board of Governors.  
4 That's a matter of procedure that I'm aware of and I've  
5 been told about. So if they declare something  
6 sub-regulatory, the Department of Finance doesn't have to  
7 look at it. So there's more going on than meets the eye  
8 there.

9 But the bottom line is whether something's an  
10 order or not is in your Government Code sections, whatever  
11 that number was. And it's not the particular  
12 self-interested agency saying this is not required, 'cause  
13 it is required. It's an independent judgment on your part.  
14 It's not what they tell you. And Commission Staff hit that  
15 right on the nose. And that happens in every state agency.  
16 There's nothing evil about that. This is just the way it  
17 is. And in past test claims, this Commission has found  
18 advisories whether they have an exculpatory clause of some  
19 sort or escape clause to be executive orders, because they  
20 require something to be done, okay? So it's not the window  
21 address, it's the net effect. And the net effect is if  
22 you don't report this information to the Board of  
23 Governors, you don't get your two percent.

24 MR. FELLER: If I can add to that. Government  
25 Code 17B16, the definition of executive order in that

1 statute, which in mandate laws, we're bound to, in this  
2 case is very broad. It's broad enough to include -- well,  
3 I'll just read it here. It just means any order, plan,  
4 requirement, rule or regulation issued by any of the  
5 following -- and Subsection (C) is any agency, department,  
6 board or commission of state government. So in this case  
7 it's a requirement in the manual, and it's issued by a  
8 state agency that it's a two-pronged test, and the manual  
9 meets it. The kinds of executive orders that the  
10 Department of Finance is speaking to are the kind in the  
11 California Code of Regulations, I believe. And those would  
12 have to go through a process. But this definition is much  
13 broader than that.

14 MR. SHERWOOD: Mr. Chair, I still don't see where  
15 the requirement is here. I guess when I read on page two,  
16 off in the middle of the page there, from the top of it,  
17 starting off, we asserted what the Chancellor's Office  
18 manual described. Then we go down to the last sentence,  
19 which is recommending a section of the BOG if a double  
20 schedule developed. And that would be the Chancellor's  
21 Office's technical assistants documented into a source of  
22 mandates, a technical assistant document. Take me from  
23 there, someone, to this being a requirement upon the  
24 community colleges.

25 MR. PETERSEN: Are you in a position to declare

1 that that manual's not mandatory?

2 MR. SHERWOOD: Are we?

3 MR. PETERSEN: Well, I think you'll have some very  
4 serious repercussions with the present Board of Governors  
5 if people no longer are required to comply with their  
6 manuals.

7 MR. SHERWOOD: I am here. I see this statement,  
8 technical assistant document.

9 MR. PETERSEN: I just want to show you there's a  
10 connection. Some materials don't have to make a broader  
11 description about mandates. One, two and three -- excuse  
12 me -- one and two is data you have to collect to infer the  
13 answer. Reporting the BOG data, the student financial aid,  
14 the training is obviously a rational method of making the  
15 program work better. Somebody gets trained on the manual.

16 MR. SHERWOOD: Right.

17 MR. PETERSEN: Okay? But I don't think --

18 MR. SHERWOOD: Well, maybe Finance can speak to  
19 that. Because I believe that comes out of their analysis,  
20 the technical assistant document.

21 MR. KATZ: Yes. Thank you, Mr. Sherwood.  
22 Randy Katz. And we just wanted to say, first of all, the  
23 comment that it would be very disrepresentative to the  
24 Board of Governors' governance process. There is nothing  
25 in here to indicate that any of the regulations -- Title 5

1 Regulations don't apply to the Board of the Governors, and  
2 would be waived by this manual. And in fact, on the other  
3 test claims -- on other components of this claim, it is  
4 based on either the statute or a Board of Governors test  
5 claim.

6 So second -- let's see. Second, we would indicate  
7 that in the regulations are those reported requirements.  
8 So even in the absence of the -- of the technical guidance  
9 of this program manual, there would still be a need to  
10 report.

11 MR. SHERWOOD: There would still be a need to  
12 do -- on page 20, number one and number two?

13 MR. KATZ: No. That's a third point. On number  
14 one. Number two, Mr. Petersen talked about the succession  
15 of code and Title 5 regulations, which is a higher level.  
16 It clearly indicates that it is the student that documents  
17 that they received the public benefits. And that they are  
18 eligible under income standards.

19 MR. SHERWOOD: I guess I'm lost a little bit. I  
20 still -- I guess, back to the manual, and in the manual it  
21 speaks to one, two and three, on page 20. One and two, I'm  
22 hearing, are requirements, with or without the manual and  
23 regulations.

24 MR. PETERSEN: Yes. There's a penalty. And the  
25 code will -- well, the manual offers guidance on not to

1 comply as to that part of the regulations on the manual,  
2 saying those things are required by the regulation already.

3 MR. SHERWOOD: Right.

4 MS. WILLIAMS: Yeah.

5 MR. SHERWOOD: Well, what I'm getting back to then  
6 is that one and two then, whether the manual is executive  
7 order or not --

8 MR. PETERSEN: Right.

9 MR. SHERWOOD: -- have to be put it into effect,  
10 and there is a --

11 MR. PETERSEN: I think you could find that one and  
12 two are reasonable inferences from the Title 5 in the Ed  
13 Code, because the Ed Code would say you've got to report.  
14 And it's up to the Board of Governors to say what have you  
15 to report. So if it's in the manual or not, they said you  
16 had to provide that data, with or without the manual. The  
17 fact it's in the manual, I think, is a matter of  
18 convenience for all parties.

19 MR. SHERWOOD: Okay. And then that would get me  
20 to the point of saying number three, though --

21 MR. PETERSEN: Yeah.

22 MR. SHERWOOD: -- would not be an actual  
23 requirement.

24 MR. PETERSEN: No. That's something you folks  
25 traditionally decide in the parameters and guidelines

1 stage, is the need for training.

2 MR. SHERWOOD: Okay. That's where I'm at right  
3 now. It does not tie in well.

4 MR. PETERSEN: Right.

5 MR. SHERWOOD: I have a problem with the manual.  
6 Number one, I can get by that by looking at one or two as  
7 actually being a requirement over and above what -- whether  
8 it is put in the manual or not by the Chancellor, by the  
9 community colleges.

10 MR. PETERSEN: Well, I think it's fair to say if  
11 it wasn't in the manual, and there was no manual, it would  
12 be a reasonable data reporting requirement.

13 MR. SHERWOOD: Right.

14 MR. PETERSEN: And would what you like for the  
15 source in Title 5, in the Ed Code.

16 MR. SHERWOOD: So -- and that takes me back to  
17 page 28, and the fifth item docket, of public benefit.

18 MR. PETERSEN: Uh-huh.

19 MR. SHERWOOD: I then get -- go through one and  
20 two possibly, and feel more comfortable. Number three, I  
21 would have a problem with.

22 MR. PETERSEN: Uh-huh.

23 MR. FELLER: May I say something on that?

24 CHAIR MIYASHIRO: What I'd like to do is clarify  
25 where we are here, 'cause I think we're getting down to

1 several levels of debate. And I want to kind of come back  
2 up and make sure that we understand the issue before us  
3 with regard to Finance's disagreement with Commission  
4 Staff's view, that activities related to complying with the  
5 instruction provided now would be part of the reimbursable  
6 activities. Is that the focus of this discussion on the  
7 manual?

8 I'm asking. Is that the consequence of the view  
9 of Finance, that the manual itself does not constitute an  
10 executive order, and therefore any activities suggested in  
11 that manual are not reimbursable? What is it that we are  
12 focusing on with regard to this discussion by the way of  
13 the manual?

14 MS. GEANACOU: I think that is exactly the  
15 position we were attempting to make, is that we don't  
16 believe any activities that are claimed to flow from the  
17 manual are reimbursable, because the manual does not  
18 constitute an executive order.

19 CHAIR MIYASHIRO: Okay.

20 MS. GEANACOU: My point was not -- although,  
21 perhaps you want some additional commentary on whether that  
22 would affect any requirements under Title 5 regulations.  
23 That was not the point I was trying to make.

24 CHAIR MIYASHIRO: Okay. And Mr. Sherwood, I mean,  
25 that's kind of part of what your problem is.

1 MR. SHERWOOD: That was part of my problem.  
2 Right. And then, after the discussion with him, we've gone  
3 to Title 5, and at least two of the three points that were  
4 in the manual.

5 CHAIR MIYASHIRO: Okay.

6 MR. SHERWOOD: Because I understood that is what  
7 the Department of Finance is coming from, I believe. And I  
8 seem to understand your viewpoint here, especially when it  
9 became number three. But if discussion went on one and  
10 two, and possibly they weren't even necessarily tied to the  
11 manual, or the manual is what we're looking at right now,  
12 and discussing. But one and two might have been  
13 requirements anyway under Title 5.

14 MR. LARSON: Mr. Chair, actually that's a question  
15 I have. I think it's appropriate for Commission Staff to  
16 respond to that on whether -- on what are the requirements  
17 for one and two. Not just what's in the manual. And is  
18 that a D.A. resolved issue for staff?

19 CHAIR MIYASHIRO: Mr. Feller?

20 MR. FELLER: The only place that I saw, in  
21 everything that the claimant submitted of the requirements  
22 or the public benefit to document income eligibility, came  
23 from the manual. And the claimant submitted the manual  
24 without specific allegations from it. And I -- so I read  
25 through it, like I would read through a statute, and I

1 read -- every time it said that the college was required to  
2 do something, I -- I -- I made note of it. And that's --  
3 and those were the three things that I found were in the  
4 manual and came from the manual, where it says the  
5 community colleges were required to do something.

6 I can point you to those in the record, if you  
7 like. But --

8 MR. LARSON: Again, I don't think the question is  
9 on the manual, is it? It's if there is any other  
10 requirements. Because that makes the manual issue moot,  
11 and we can move on.

12 CHAIR MIYASHIRO: Right. And I guess what I am  
13 hearing is that the members of the Commission have some  
14 comfort and sense about where they stand with regard to  
15 staff recommendation versus financing being on this  
16 question of activities related to the mandate. But do we  
17 need to flush this out a little bit more?

18 MR. SHERWOOD: In general, you're talking about  
19 now, or in the manual?

20 CHAIR MIYASHIRO: Well, I'm not -- I don't want  
21 us to get too far below here so that we're losing sight of  
22 the issues being brought by the Department of Finance.

23 MR. PETERSEN: Mr. Miyashiro, I'll withdraw the  
24 manual from the test claim.

25 CHAIR MIYASHIRO: Okay.

1 MR. PETERSEN: We're suffering from a catch-22  
2 here. I'm compelled to do test claims, declare everything  
3 I know about this program, and including if I know of  
4 existing of manuals. And now I've entered the manual, and  
5 it's working against the outcome. I'm withdrawing the  
6 manual.

7 MS. WILLIAMS: I would just ask everybody to look  
8 at page 431, and maybe I'm just confused about the  
9 relevance here of Title 5. If you look at 4.2.2.

10 MR. SHERWOOD: What page?

11 MS. HIGASHI: 435. Exhibit A.

12 MS. WILLIAMS: I'm sorry. All right. Go to  
13 4.2.2, documentation for part of it says "In order to  
14 qualify" -- blah, blah -- "plus document the public  
15 benefits listed above per Title 5." So isn't that saying  
16 Title 5? And if you go over to 4.3.4, it's the same  
17 reference.

18 MR. PETERSEN: This is a well-written manual.  
19 They do state the law.

20 MS. WILLIAMS: I'm just saying, is that Title --

21 MR. PETERSEN: They haven't specified. But they  
22 seem to tie into the Title 5 section.

23 MR. FELLER: They're interpreting Title 5, I  
24 mean.

25 MS. WILLIAMS: We're going back, saying pursuant

1 to Title 5 with documents.

2 MR. FELLER: Actually, Title 5 doesn't say they  
3 have to document. Title 5 lists these public benefits, but  
4 does not itself contain this language.

5 MS. WILLIAMS: Okay.

6 CHAIR MIYASHIRO: I mean, if we have decided to  
7 withdraw the manual, then I think we should hear from Nancy  
8 on that issue now.

9 MR. PETERSEN: Yeah. My problem is Finance is  
10 saying it's a manual. It's not mandatory, because the  
11 Board of Governors says it's not mandatory. I don't think  
12 you ever want to go down that path, that it's a manual  
13 because you say it is.

14 CHAIR MIYASHIRO: Well, let's leave it at this.

15 MR. PETERSEN: Yeah.

16 CHAIR MIYASHIRO: You withdraw it. We didn't go  
17 down any path.

18 MR. PETERSEN: Yes, sir. Happy trails to all of  
19 us.

20 CHAIR MIYASHIRO: Okay.

21 MR. SHERWOOD: I agree with that.

22 CHAIR MIYASHIRO: All right. We have any further  
23 discussion and testimony on this? Miss Geanacou?

24 MS. GEANACOU: Yes. Please. Susan Geanacou,  
25 Department of Finance. We'd like to focus your attention

1 on page 15 of the final staff analysis, and the six student  
2 groups that are listed there on the -- towards the top of  
3 the page. We'd like to draw the distinction between fee  
4 exemptions and fee waivers for these six student groups in  
5 Education Code Section 63500. The groups one, two and  
6 three are not subject to the fee requirements at all. They  
7 are exempt from paying fees by virtue of their signing up  
8 for one of these three types of classes at the time they  
9 register.

10 The basis for fee exemptions is the very act of  
11 enrolling in these certain courses for these three groups  
12 of students. There is no so-called two-way transaction for  
13 a fee exemption. The exemption is essentially achieved  
14 unilaterally by the student's action of registering.  
15 That's in contrast to what the final staff analysis says.  
16 Simply by signing up, the student has achieved that fee  
17 exemption. Education Code Section 76300 Subdivision (E)  
18 provides that fee exemption without the colleges having to  
19 do anything. Therefore, we would propose there's no  
20 entitlement to reimbursement for any of the activities  
21 associated with 76300 Subdivision E for fee exemptions.

22 We would also note that the -- well, the fee  
23 waiver manual is now, I suppose, off the table. But I'll  
24 make this point anyway. That the fee waiver manual, at  
25 section 7.3, which the staff cites for authority, that a

1 waiver is a transaction involving two parties. It says  
2 nothing about a fee exemption being such a transaction.

3 And again, I'd reassert that any activities  
4 claimed for fee exemptions should not be subjected to  
5 reimbursement under these tests claims.

6 CHAIR MIYASHIRO: Mr. Feller?

7 MR. FELLER: Well, Mr. Petersen, I'll defer to him  
8 first.

9 MR. PETERSEN: Mr. Feller reached, I think, the  
10 same conclusions as staff analysis. A student is exempt  
11 from fee collection. You don't collect a fee. But I have  
12 to make sure the student's exempt. The student comes up  
13 and says "I'm exempted because my father's a National  
14 Guard, a Veteran of Foreign Wars," whatever. This is a  
15 very esoteric exemption here. I think that's got to be  
16 loaded in a computer somewhere. There has to be an  
17 administrative determination that indeed that person's the  
18 surviving spouse or child of that veteran or otherwise  
19 exempt under these other programs. I just don't think it's  
20 the student declaring they're exempted, and that's the  
21 college saying okie-dokie.

22 CHAIR MIYASHIRO: Well, do we have someone from  
23 the district who can maybe illuminate for us what  
24 activities do take place locally, when a student provides  
25 documentation verifying that they will need a clarify for

1 their exemption of fees?

2 MS. GEANACOU: Excuse me, could I clarify my  
3 testimony?

4 CHAIR MIYASHIRO: Sure.

5 MS. GEANACOU: Before we answer, Mr. Petersen used  
6 the example of a child or so forth of a National Guard  
7 member. There's student group six on page 15, a student  
8 that might be eligible for a fee waiver. My testimony went  
9 to the students who are simply exempt from fees by virtue  
10 of the courses they're signing up for.

11 CHAIR MIYASHIRO: Okay.

12 MS. GEANACOU: Those are groups one, two and  
13 three. And that's my point. To distinguish between  
14 activities that might flow from a fee waiver granted versus  
15 a student who is simply exempt from fees in one, two and  
16 three.

17 CHAIR MIYASHIRO: Okay. Mr. Petersen, can you  
18 address the one, two, three clarification?

19 MR. PETERSEN: Well, yeah. The non-credit  
20 courses, the remedial classes that -- you know -- what the  
21 students enroll for. As they enroll, they have an  
22 enrollment document. They present that enrollment  
23 document. Again, I'm extrapolating from what was told to  
24 me. This is some sort of administrative effort to  
25 determine whether these courses are chargeable or not

1 chargeable. I don't know how big the effort is, but to  
2 simply presume that nothing happens because it's not a  
3 chargeable course --

4 CHAIR MIYASHIRO: Okay. Are you suggesting that  
5 there is some activity related to the collection or  
6 remittance of a fee? Or are you saying that there's some  
7 activity to designate such a course into one of these  
8 categories?

9 MR. PETERSEN: No. I'm saying that when the  
10 student, hypothetically, steps up to the window, and the  
11 person says "Let me have your enrollment fees," and they  
12 say "I'm exempt," I'm expecting there's some sort of  
13 document or checking on the computer or something.

14 CHAIR MIYASHIRO: Well again, to distinguish  
15 between what Miss Geanacou is talking about, the student is  
16 electing the course that is exempt, versus declaring their  
17 status of exemption from a fee that would otherwise be  
18 required.

19 MR. PETERSEN: Yes. But what you get --

20 CHAIR MIYASHIRO: So if you could speak to the  
21 issue of electing the course.

22 MR. PETERSEN: I understand what you're saying.  
23 My difficulty is I think distinction on the day the student  
24 comes to a window and somebody says "This is where we  
25 collect your enrollment fee," and the student says "No."

1 I'm exempt because my classes are remedial," or "My classes  
2 are non-credit." And then somebody has to look at a piece  
3 of paper or a computer to say "Yes. You're entirely  
4 right." Or "No. You're not." That may take, you know, a  
5 nanosecond compared to the actual collection of the fee,  
6 but there is some transaction which occurs. And maybe for  
7 these students who do it on the Internet, it's all  
8 electronic, and a person's never involved, but somewhere  
9 there will be a transaction to verify that the student  
10 indeed is not liable for enrollment fees. And if it's  
11 just them presenting a computer printout from the window  
12 they were just at a minute ago, that may be all it is. I  
13 don't know.

14 MR. FELLER: May I say something? The way that  
15 these are analyzed is an activity falls within the  
16 definition of programs. Is it a new activity? And do  
17 any statutory exemptions apply? In this case, staff found  
18 that there was an activity, as slight as it may be, in  
19 determining an exemption for a student, based on the course  
20 that that student is enrolling in. And it's a new  
21 activity, because before fees existed, there was no need to  
22 make that determination. So that's why staff came to the  
23 conclusion it did.

24 MR. PETERSEN: Just maybe diminishes it, that's  
25 all.

1 CHAIR MIYASHIRO: Comments?

2 Mr. Katz.

3 MR. KATZ: Yes. We just wanted to note that  
4 for -- that for as long as there's been courses, there have  
5 been different types of courses pre-dating -- pre-dating  
6 fee -- the fee policy. So that the determination of  
7 whether a course is non-credit or credit, whether it's one  
8 of these categories that is exempt or eligible, the  
9 determination of the type of course has always been  
10 practiced by the community colleges as part of the course  
11 accreditation process.

12 CHAIR MIYASHIRO: Thank you.

13 Mr. Petersen?

14 MR. PETERSEN: I would like to respond. There's  
15 always been program changes. It doesn't help the  
16 situation. It's not -- that's not the determinative  
17 issue. It's whether there's a new activity. And there's  
18 some minimal, tiny little activity, because there's  
19 something called enrollment fees.

20 CHAIR MIYASHIRO: Ms. Higashi?

21 MS. HIGASHI: I was going to suggest that as we  
22 wind down testimony, maybe it would be a good idea to take  
23 a five-minute break. We usually give our Court Reporter a  
24 break by now.

25 CHAIR MIYASHIRO: I think that's a good

1 suggestion. Let's try and hold these thoughts here so that  
2 we don't lose track of what we're discussing. We'll take a  
3 five-minute break and come back.

4 (Off the record.)

5 CHAIR MIYASHIRO: Okay. If we could get started.  
6 And Mr. Larson.

7 MR. LARSON: Yes. Mr. Chair and Members of the  
8 Commission, as you know, this is my first time attending  
9 this Commission meeting on behalf of the Controller. Not  
10 knowing the extent of the discussion we're going to have, I  
11 did make another commitment, and I will have to leave at  
12 11:30. So I apologize for my departure at that time.

13 CHAIR MIYASHIRO: Okay. What I'd like to do is,  
14 if we could wrap this testimony up, and I mean, I guess  
15 what I would hope is that we could get comfortable and  
16 come to some decision, to allow Mr. Larson to cast a vote,  
17 and wrap it up in about ten minutes? I would like to do  
18 that.

19 MR. LARSON: Thank you.

20 CHAIR MIYASHIRO: Okay. Paula, if you want to let  
21 us know where we left off?

22 MS. HIGASHI: Well, we left off -- we were on page  
23 15, and the Department of Finance had raised the issues  
24 regarding the differences between fee exemption and the fee  
25 waiver exemptions, and they had stated their case. And

1 then the claimant's representative, Mr. Petersen, had  
2 responded, and staff had responded. And I think it was  
3 left for Commission Member discussion.

4 CHAIR MIYASHIRO: Okay. Do we have questions of  
5 Commission Members of the witnesses or staff?

6 Okay. Let's move on then.

7 Ms. Geanacou, you have another --

8 MS. GEANACOU: I have a very brief comment, which  
9 I hope to be a clarifying point for the Commission. If a  
10 student approaches the registration window and signs up for  
11 any one or all three of the types of classes listed in  
12 groups one, two and three on page 15, that student will  
13 never go to the enrollment fee payment window. They will  
14 never go to the window where an issue of fees might trigger  
15 some activity, however minimal it might be claimed. I just  
16 want to clarify they're never going to go from the  
17 registration window one -- being number one -- to fee  
18 payment window, being number two.

19 CHAIR MIYASHIRO: Okay.

20 MR. PETERSEN: Is that sworn testimony based on  
21 her experience being a cashier to a college? 'Cause I  
22 could suggest -- well, first of all, the focus is whether  
23 this is a new activity or not. And I think that's easy for  
24 you to decide whether it's a new activity or not, whether  
25 it takes a long time at how many windows involved. That's

1 not an issue. It's just whether it's new as to whether the  
2 student actually goes to the cashier window or the  
3 registrar. You don't have to go to the cashier window. I  
4 mean, the point is it's a new activity. And if it doesn't  
5 involve a whole lot of efforts, then there's no cost --  
6 very little cost involved.

7 But the test claim, the Statement of Decision is  
8 whether it's a new activity, and Commission Staff responded  
9 that it's a new activity. We get into a lot of difficulty  
10 when -- especially when Finance tries to relate to what's  
11 happening out at the college or a school district, because  
12 they're not there. I'm just a little bit closer. I  
13 wouldn't say I'm an expert witness on this. But the scope  
14 of our work today, traditionally, has been whether it's  
15 new, and then the next step, the parameters and guidelines,  
16 is how big is it.

17 CHAIR MIYASHIRO: Okay. But I guess I'm willing  
18 to entertain some discussion about whether there is in fact  
19 an activity here or not, and whether there's a difference  
20 of opinion.

21 MR. PETERSEN: I can agree there's no fee  
22 collected.

23 CHAIR MIYASHIRO: You may have had a witness here  
24 in the district, and that person, whether they work at the  
25 cash window or not, again, I think it's fair to hear the

1 various points of view. So I would --

2 MR. PETERSEN: Yeah.

3 CHAIR MIYASHIRO: -- consider it a valid  
4 comment.

5 We have any other questions from members of the  
6 Commission on this?

7 I would note that the Petitioner has dropped --  
8 they're withdrawing the inclusion of the manuals. And the  
9 Department of Finance has raised an issue with regard to  
10 are these classes of -- these are classes for which there  
11 will be no fee collected. Their argument is that there  
12 would be no activity related to the local administration of  
13 collecting a fee, since the election is made by the  
14 student, and no further activity would be required of the  
15 local agency. That is the contention.

16 I would -- Mr. Larson.

17 MR. LARSON: Yes. In the original there was two  
18 additional issues raised contrary to the staff report.  
19 That makes four items on the table, besides the staff  
20 recommendation. On reviewing that, I would request a  
21 referral back to staff --

22 CHAIR MIYASHIRO: Yeah.

23 MR. LARSON: -- for some cost analysis.

24 CHAIR MIYASHIRO: Yes. What I want to do, the way  
25 I envision this rolling out is would be the staff has

1 presented a recommendation to us.

2 MR. LARSON: Uh-huh.

3 CHAIR MIYASHIRO: We can modify that. And some of  
4 it has been modified by the claimant. And then what I  
5 would append to that would be that the staff, in developing  
6 the P's and G's, that it be submitted to us to provide the  
7 unit cost rate that they see at the time for, our  
8 consideration. And during that process, to include all  
9 parties, claimants, finance, competitors', Office of  
10 Legislative Analyst, Attorney General if appropriate, and  
11 bring the new costs to us. And with the direction that it  
12 be as tight or as focused as we can get it, recognizing  
13 that there is always going to be limitations in data and  
14 limitations with whatever survey instruments might be  
15 used. But that would be a direction to staff.

16 MR. LARSON: Okay. Uh-huh.

17 CHAIR MIYASHIRO: That's along with our action on  
18 the claim itself. I'm going to entertain a motion on this  
19 item.

20 MR. LAZAR: I move staff analysis, absent the  
21 manual.

22 CHAIR MIYASHIRO: Okay. The manual, I think, has  
23 been withdrawn.

24 MR. LAZAR: Okay. We'll withdraw that.

25 CHAIR MIYASHIRO: Okay.

1 MR. LARSON: And that includes the addition of the  
2 staff referral on unit cost.

3 MR. LAZAR: Yeah.

4 MR. LARSON: Okay.

5 MS. WILLIAMS: What -- okay. What about the three  
6 categories of students?

7 CHAIR MIYASHIRO: Yes. That has not been  
8 addressed.

9 MS. WILLIAMS: Are we going to do that?

10 CHAIR MIYASHIRO: You want to move that as well?  
11 The finance?

12 MS. WILLIAMS: I'd like to move that we delete  
13 those three from the six that are mentioned on staff.

14 CHAIR MIYASHIRO: We'll take it one at a time.  
15 We'll take it one at a time.

16 Commissioner Lazar has moved staff recommendation,  
17 noting the withdrawal of the manual, and the direction of  
18 staff to come back with unit cost.

19 MR. LAZAR: Yes.

20 CHAIR MIYASHIRO: Do we have a second on that?

21 Okay. I have no second on that. So that motion  
22 will fail.

23 MR. LAZAR: Fail? Okay.

24 CHAIR MIYASHIRO: I will entertain an alternative  
25 motion or another motion.

1 MS. WILLIAMS: I would like to move the staff  
2 analysis, absent the manual, and delete the three  
3 categories of students mentioned on page 15.

4 CHAIR MIYASHIRO: Uh-huh.

5 MS. WILLIAMS: And the cost -- unit cost figure as  
6 well.

7 MR. SHERWOOD: And those three categories are to  
8 the fee exemption.

9 MS. WILLIAMS: Fee exemptions. Right.

10 CHAIR MIYASHIRO: All right. Do I have a second?

11 MR. LAZAR: I'll second that.

12 CHAIR MIYASHIRO: Any discussion on that motion?  
13 Okay. Paula, will you call role?

14 MS. HIGASHI: Mr. Larson?

15 MR. LARSON: Aye.

16 MS. HIGASHI: Mr. Lazar?

17 MR. LAZAR: Yeah.

18 MS. HIGASHI: Mr. Sherwood?

19 MR. SHERWOOD: Aye.

20 MS. HIGASHI: Ms. Williams?

21 MS. WILLIAMS: Aye.

22 MS. HIGASHI: Mr. Miyashiro?

23 MR. MIYASHIRO: Aye.

24 Motion is carried.

25 Okay. Thank you.



# Commission on State Mandates

Original List Date: 8/7/2000  
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List Print Date: 04/11/2003  
Claim Number: 99-TC-13  
Issue: Enrollment Fee Collection

Mailing Information: Proposed SOD

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# Commission on State Mandates

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