

COMMISSION ON STATE MANDATES

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March 16, 2005

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

And Affected State Agencies and Interested Parties (see enclosed mailing list)

RE: Final Staff Analysis and Proposed Parameters and Guidelines
Integrated Waste Management, 00-TC-07
Santa Monica and Lake Tahoe Community College Districts, Co-Claimants
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764 (AB 75)
Statutes 1992, Chapter 1116 (AB 3521)
State Agency Model Integrated Waste Management Plan (February 1999)

Dear Mr. Petersen:

Staff's analysis and proposed parameters and guidelines are complete and enclosed for your review.

Commission Hearing

The proposed parameters and guidelines are tentatively set for hearing on **March 30, 2005** at 9:30 a.m. at the **Department of Social Services Auditorium, 744 P Street, First Floor, Sacramento, California**. Please let us know in advance if you or a representative of your agency will testify at the hearing, and 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.

If you have any questions, please contact Eric Feller at (916) 323-8221.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosures

ITEM 10
FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES
AS MODIFIED BY STAFF

Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1

Statutes 1999, Chapter 764 (AB 75)
Statutes 1992, Chapter 1116 (AB 3521)

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management (00-TC-07)

Santa Monica and Lake Tahoe Community College Districts, Co-claimants

EXECUTIVE SUMMARY

The test claim statutes added chapter 18.5 to the Public Resources Code (in addition to Pub. Res. Code, §§ 40148 & 40196.3) to require state agencies (defined to include community college districts) to develop and adopt an integrated waste management plan, divert at least 25 percent of generated solid waste by January 1, 2002 and at least 50 percent by January 1, 2004, request extensions of time and alternative goals, and perform other specified activities. The test claim statutes also require the Integrated Waste Management Board to adopt a Model Integrated Waste Management Plan. The model plan was found by the Commission to be an executive order that constitutes a mandate. The test claim statutes also include Public Contract Code provisions regarding the allocation of revenues from the sale of recyclable materials.

Staff reviewed the claimants' proposal and the comments received. Substantive changes were made according to the comments received from state agencies and claimants, and to conform to recently adopted parameters and guidelines. Non-substantive, technical changes were made for purposes of clarification and conformity to the Statement of Decision and statutory language.

The Integrated Waste Management Board submitted comments on the draft staff analysis regarding the definition of "actual costs" and recommends (1) that the parameters and guidelines require information on cost savings in any claim submitted, and (2) that claimants be required to deduct offsetting savings resulting from avoided disposal costs resulting from implementation of diversion programs. For reasons stated in the analysis, staff rejects these recommendations.

Staff Recommendation

Staff recommends that the Commission adopt the claimants' proposed parameters and guidelines, as modified by Commission staff, beginning on page 15.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Co-Claimants

Santa Monica and Lake Tahoe Community College Districts¹

Chronology

03/25/04 Commission on State Mandates (“Commission”) adopted Statement of Decision
04/23/04 Claimants submitted proposed parameters and guidelines
06/17/04 The California Integrated Waste Management Board (“Board”) submitted comments
07/12/04 The State Controller’s Office (“SCO”) submitted comments
09/30/04 Commission conducted a pre-hearing conference
10/13/04 The Board submitted additional comments
10/18/04 Claimants submitted a rebuttal to state agency comments
02/14/05 Commission issued draft staff analysis
02/28/05 The Board submitted comments on the draft staff analysis
03/16/05 Commission issued final staff analysis and parameters and guidelines

Summary of the Mandate

On March 25, 2004, the Commission adopted its Statement of Decision² finding that Public Resources Code sections 40148, 40196.3, 42920-42928; Public Contract Code sections 12167 and 12167.1; and the State Agency Model Integrated Waste Management Plan (February 2000) (“model plan”) require specific new activities, which constitute new programs or higher levels of service for community college districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

Discussion

Staff reviewed the claimants’ proposal³ and the comments received.⁴ At the request of the Board, the Commission conducted a pre-hearing conference on September 30, 2004. On October 13, 2004, the Board submitted additional comments.⁵ The claimants submitted a rebuttal to state agency comments on October 18, 2004.⁶ Staff made non-substantive, technical changes

¹ Claimants’ original filing and the Commission’s Statement of Decision referred to the claimant as the “South” Lake Tahoe Community College District. Staff is now informed that the claimant is the Lake Tahoe Community College District.

² Exhibit A.

³ Exhibit B.

⁴ Exhibits C, D, E, and F.

⁵ Exhibit E.

⁶ Exhibit F.

for purposes of clarification, consistency with language in parameters and guidelines adopted since January 2003, and conformity to the Statement of Decision and statutory language. Substantive changes are discussed below.

III. Period of Reimbursement

The claimants proposed that the reimbursement period for this program begins on July 1, 1999. This is true for the activity to submit recycled material reports to the board, pursuant to Public Contract Code section 12167.1 (Stats. 1992, ch. 1116); and for the one-time activities of developing policies and procedures and training.

The other activities, however, were codified by Statutes 1999, chapter 764. This statute has an operative date of January 1, 2000. Accordingly, those activities required by the Public Resources Code are reimbursable beginning January 1, 2000. Additionally, seeking an alternative diversion goal or time extension (Pub. Resources Code, §§ 42922, 42923, and 42927) is reimbursable until December 31, 2005, as the law sunsets January 1, 2006. Staff revised the language to reflect the correct reimbursement periods.

IV. Reimbursable Activities

Boilerplate definition of Actual Costs

In its February 28, 2005 comments on the draft staff analysis, the Board recommends altering the definition of “actual costs” by adding italicized language as follows: Actual costs are those costs actually incurred to implement the mandated activities *after the test claim statute was enacted, and that would not otherwise occur if the mandate was not in place.*

Staff Findings

Staff disagrees with the Board’s change to the definition of “actual costs” because it would be a violation of Government Code section 17565, which states: “If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

Staff finds that the Board’s additional phrase, “that would not otherwise occur if the mandate was not in place” is too broad, and could apply to activities a community college engaged in before the test claim statute was enacted, which would contravene Government Code section 17565. Even though the Board attempts to qualify the phrase by adding, “after the test claim statute was enacted,” it is still too broad. Also, the “after enactment” phrase is unnecessary, since the existing definition in the parameters and guidelines: “those costs actually incurred to implement the *mandated* activities” (emphasis added), means those activities “mandated” by the test claim statute. Those activities could not be “mandated” before the statute’s enactment. In sum, the Board has not demonstrated a sufficient reason to change the boilerplate definition of “actual costs” in the parameters and guidelines. Therefore, staff finds that the definition should be left as it is.

One-Time Activities

The claimants proposed that preparing and updating policies and procedures and training district staff as ongoing reimbursable activities.

In a letter received on July 12, 2004, the SCO argued that, “the model plan contains procedures for implementing the integrated waste management plan under the discretion of an approved solid waste and recycling coordinator.”⁷ Therefore, the SCO suggests that costs incurred for additional policies and procedures are discretionary and are not reimbursable. Regarding training, the SCO asserts that it should be limited to a one-time activity for staff directly involved in implementing the plan, and that the scope of the training be limited to the Board’s model plan.

The claimants asserted in their rebuttal submitted on October 18, 2004, that policies and procedures and training were implicit costs of implementing a new program.⁸ Moreover, they argue that limiting training to a one-time event is inappropriate because of possible staff turnover and changes in the waste management plan.

Staff Findings

Staff finds that developing the necessary policies and procedures for the implementation of the integrated waste management plan and training district staff on the requirements and implementation of the district’s integrated waste management plan are reasonably necessary to comply with the mandated program.⁹ Staff disagrees with SCO that the scope of training should be limited to the Board’s model plan because the Commission’s Statement of Decision was not limited to compliance with the model plan. The Commission found a mandate to divert waste by at least 25 percent by January 1, 2002, and at least 50 percent by January 1, 2004. In fact, the instructions for completing the model plan indicates that “workshops [were] conducted in March and April 2000 to help State agencies^[10] determine diversion rates and complete [a plan].”¹¹ As to the claimants’ argument that training should not be limited to one-time due to staff turnover and changes in the waste management plan, staff disagrees. If adequate policies and procedures are in place, no further training should be necessary. Moreover, staff turnover and changes to the waste management plan are not mandated by the test claim statutes.

Therefore, staff included as reimbursable the one-time development of policies and procedures, and one-time training per employee working directly on the community college’s integrated waste management plan.

Ongoing Activities

The claimants identified six other activities related to the integrated waste management plan: plan development and approval, program coordinator, waste diversion, alternative compliance, accounting system, and annual report.

⁷ Exhibit D.

⁸ Exhibit F.

⁹ California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

¹⁰ As stated in footnote 2 of the Statement of Decision (Exhibit A): “State agency” is “every state office, department, division, board, commission, or other agency of the state, including the California Community Colleges and the California State University. ... (Pub. Resources Code, § 40196.3).

¹¹ California Integrated Waste Management Board, State Agency Model Integrated Waste Management Plan, February 2000. See Attachment 1 to the parameters and guidelines.

The SCO recommends¹² revising these activities to correlate with the activities approved in the Commission's Statement of Decision.

The Board noted several issues in a letter submitted on June 17, 2004.¹³ Regarding the proposed reimbursable activities, the Board asserted that none of the activities listed under "Promotional Programs" or "Procurement Activities" are required as part of the mandate. The Board maintains that only the time spent in answering the questions in the report may be claimed, not time spent implementing the activities. Further, the Board states that it made a legal determination that procurement activities do not apply to community colleges.

The claimants argued in a letter submitted on October 18, 2004,¹⁴ that the Commission's Statement of Decision includes the entire scope of the model plan, of which implementing promotional programs and procurement activities is a part. The claimants assert that the mandate is not limited to disposal reduction. Regarding the Board's legal determination that procurement activities do not apply to community colleges, the claimants request evidence of the determination.

Staff Findings

Maintain reduction: The claimants' proposal under "Waste Diversion" included the activity to maintain the required level of reduction according to the model plan, and identified methods such as source reduction, recycling, composting, and special waste.

The law requires that each state agency and each large state facility shall divert at least 50 percent of all solid waste from landfill disposal or transformation facilities through source reduction, recycling, and composting activities on and after January 1, 2004. The Commission's Statement of Decision specifically states:

Subdivision (i) of section 42922 states that a community college that is granted an alternative requirement "shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926." This provision merely reaffirms the requirements of section 42921 and the more specific requirements in section 42926.¹⁵

Therefore, staff finds that maintaining the required level of reduction, as approved by the Board, is reasonably necessary to comply with the waste diversion requirement.¹⁶

Moreover, the claimants listed each of the methods identified in the model plan in the proposed parameters and guidelines. Staff finds that it is more efficient to simply reference the model plan in the proposed parameters and guidelines. Therefore, staff deleted the model plan methods, and instead referenced the model plan and attached it to the proposed parameters and guidelines.

¹² Exhibit D.

¹³ Exhibit C.

¹⁴ Exhibit F.

¹⁵ Exhibit A, (p. 26 of Statement of Decision).

¹⁶ California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

Promotional & procurement activities: Staff further finds that implementing promotional programs or procurement activities is not reimbursable, although reporting on them is.

Promotional programs and procurement activities were listed in claimants' parameters and guidelines. However, the Board stated that none of the activities listed under "Promotional Programs" or "Procurement Activities" are required as part of the mandate, and that only the time spent in answering the questions in the report is reimbursable. The Board also stated that it made a legal determination that procurement activities do not apply to community colleges. However, the legal determination was not submitted as part of the record, so staff does not rely on it.

Reimbursement for procurement and promotional activities is based on the model plan. The plain language of the model plan only requires community colleges to report on procurement and promotional activities. As stated on page 37 of the Statement of Decision,

A community college must comply with the Board's model integrated waste management plan, which includes ... completing and submitting to the Board the following: ... (3) state agency waste reduction and recycling program worksheet, including the sections on program activities, promotional programs, and procurement activities

In its June 2004 comments, the Board represented that procurement activities and promotional programs do not apply to community colleges. The Board's interpretation of the model plan is entitled to deference by the Commission. The model plan was adopted at a public meeting of the Board in January 2000,¹⁷ so it is tantamount to a Board regulation. Therefore, the Board's interpretation that community colleges do not need to implement the procurement and promotional programs in the model plan is entitled to deference. The Commission, like a court, accords great weight to the agency's interpretation of its statutes and regulations. (*Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12).

Staff finds, therefore, that reporting on promotional programs and procurement activities when submitting the model plan and preparing the required annual reports is reimbursable because these reporting activities were found to be reimbursable in the Statement of Decision. Language was added to the proposed parameters and guidelines to make this clear.

Responding to the Board: Staff added, "Respond to any Board reporting requirements during the approval process" to be consistent with the Commission's Statement of Decision. Staff finds that responding to any Board reporting requirements during the approval process is an activity that is reasonably necessary to comply the model plan.¹⁸ Therefore, this activity was retained in the proposed parameters and guidelines, as proposed by the claimants.

Accounting System: The claimants also proposed that developing, implementing, and maintaining an accounting system is reimbursable to enter and track the college's source reduction, recycling, and composting activities, as well as costs and revenues.

¹⁷ <<http://www.ciwmb.ca.gov/Agendas/agenda.asp?RecID=235#AG2425>> as of February 1, 2005.

¹⁸ California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

Given the requirements to track revenues (Pub. Res. Code, § 42925), and to include information in the annual reports on tonnage diverted (Pub. Res. Code, § 42926), staff finds that the accounting system is a reasonable method of complying with the test claim statute,¹⁹ and retained the system as proposed by claimants. Staff notes that only the pro-rata portion of the costs incurred to implement the reimbursable activities can be claimed.

VII. Offsetting Savings (Revenues) and Reimbursements

The parameters and guidelines contain a boilerplate provision that states, “Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.”

In its comments submitted on June 17, 2004, the Board argued that the claimants did not identify offsetting savings, which “may be so great that there will be an overage to be allocated to other activities being claimed for reimbursement.” The Board also argued that an allocation formula or uniform allowance was neither reasonable nor possible as the basis for reimbursement “because each campus operates in significantly different ways, and the programs chosen to comply will vary significantly....” Moreover, the Board asserts that this program is “particularly cumbersome because the subject matter requires a comprehensive analysis of economic life cycles for the waste streams chosen by the potential claimants, which could only be based on the specific operation in place at the particular Community College.”²⁰ Therefore, the Board suggests that the parameters and guidelines provide appropriate tools to assure that all costs and cost savings are identified.

The Board submitted additional comments on October 13, 2004,²¹ reiterating its position that “any programs implemented as a result of the test claim statute will inevitably result in cost savings to claimants” and again recommending that the parameters and guidelines and SCO require information on cost savings in any claim submitted. The Board proposes a costs/savings worksheet be attached to the parameters and guidelines to be used as guidance for collecting relevant information.²² The Board also states that claimants should be required to report direct and indirect cost savings when claiming direct and indirect costs for reimbursement.

The Board’s proposed worksheet provides a list of expense and revenue items. Columns are provided for “pre AB 75 program,” “current program,” and “net difference.” The expense items, as defined by the Board, are listed below:

- *Staffing*. Through the implementation of the program being claimed a reduction in staff hours (PYs) can be achieved. In order to determine any cost increases or decreases the claimants will need to evaluate the total staff required to implement the program being claimed prior to AB 75 and the staff needed to implement and operate the current program. All values identified must be calculated based on a conversion to the dollar values for the particular year being claimed.

¹⁹ California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

²⁰ Exhibit C.

²¹ Exhibit E.

²² Exhibit E.

- *Overhead.* Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."
- *Materials.* Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: white office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.
- *Storage.* Through the implementation of the program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allocated to offset any costs associated to the implementation of the identified program(s) being claimed by the claimants.
- *Transportation costs:* The transportation of supplies and waste materials has a cost. The claimants should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity. It should be calculated based on a conversion of the previous programs' activities being converted to the dollar values for the particular year for which a claim is being submitted.

Claimants should also consider the cost incurred for the collection of waste materials associated with the activity being claimed.

- *Equipment.* Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.
- *Disposal fees.* Costs associated to the disposal of materials prior to the implementation of the specific program being implemented. Since the intent and impact of the legislation is to divert materials from the landfill, a direct savings is seen.
- *Other expenses related to program.* The claimants should take into consideration the specific program being claimed for reimbursement and identify all areas that have been impacted.

The Board also defined the following revenue items:

- *Sale of commodities.* This would include any and all revenues generated due to the sale of materials collected through the implementation of the specific program being claimed. This could include, but is not limited to, white office paper, mixed office paper, cardboard, beverage containers, ferrous and nonferrous metals, glass, plastic, re-sale of used text books, compost, mulch, and firewood.
- *Avoided disposal fees.* Through the implementation of the AB 75 program(s) a facility will see a direct reduction in the amount of materials that would have been placed into a landfill or a trash dumpster on the campus. These direct savings are to be credited to the program based on today's disposal costs.
- *Sale of obsolete equipment.* Proceeds of any sales of obsolete equipment.
- *Other revenue related to program.* Dependent on the particular program or activity being submitted to the Commission for reimbursement several other

factors can and will generate a cost savings. It is suggested that the claimants be required to identify all savings associated to the particular program or activity as per the findings of the Commission.

In the claimants' rebuttal comments submitted on October 18, 2004, they argued that there was nothing in the record to substantiate the Board's assertions that offsetting savings would exceed new costs. Further, the claimants note that the Commission did not find cost savings in an amount sufficient to preclude mandate reimbursement; but acknowledged that it was appropriate to identify at the parameters and guidelines stage sources of other government funding and local income that may reduce the mandate's cost. Regarding the Board's proposed worksheet to measure program cost savings, the claimants maintain that it is in violation of Government Code section 17565, as discussed below.²³

The Board, in its February 28, 2005 comments on the draft staff analysis,²⁴ states:

In the interest of clarifying our previously submitted comments, the IWMB hereby submits relevant statutory provisions and evidence to support its position of cost savings. As defined in statute, all waste that is generated by an entity is then either disposed of or diverted. Public Resources Code (PRC) section 40124 defines "diversion" as "activities which reduce or eliminate the amount of solid waste from solid waste disposal ..." PRC section 40192 (b) defines "solid waste disposal" as "the management of solid waste through landfill disposal or transformation at a permitted solid waste facility." Pursuant to PRC sections 42780 et seq. and 42921, diversion is expressed as disposal reduction. Thus, increased "diversion" directly results in less "disposal."

The estimated average cost per ton of solid waste disposal is \$30. For purposes of this test claim statute, the most obvious and significant savings will be avoided disposal costs. [Actual diversion data for 117 Community Colleges and District Offices in 2003 reported more than 66 thousand tons.] Translated into dollar amounts, the reporting entities in the aggregate could realize nearly \$2 million in avoided disposal costs for 2003, i.e., cost savings, when diversion programs are implemented.²⁵

Thus, the Board proposes adding to the parameters and guidelines the following phrase:

Claimants shall, at a minimum, deduct offsetting savings resulting from avoided disposal costs. Where applicable, claimant shall deduct offsetting savings resulting from other avoided or reduced costs resulting from implementation of diversion programs.

Staff Findings

Identifying cost savings: The issue is whether community colleges are required to identify in their reimbursement claims the cost savings that may result from avoiding disposal costs as a result of this program or otherwise submit a program worksheet.

²³ Exhibit F.

²⁴ Exhibit H.

²⁵ The Board does not indicate the amount of the diversion costs that could offset the alleged savings.

As stated above, the Board argues that tracking cost savings should be required of community college claimants, and should be subtracted from the claims submitted. The cost savings the Board urges tracking are reduced disposal costs, in addition to revenue received pursuant to the Public Contract Code section 12167 and 12167.1. The claimants argue that requiring claimants to prepare and submit the Board's proposed worksheet to measure program cost savings would violate Government Code section 17565.

For the reasons indicated below, staff finds that in this case, there is insufficient legal authority to support a requirement to track cost savings that may result from avoiding disposal costs as a result of this program.

Subdivision (a) of Public Resources Code section 42925, enacted as a test claim statute, states:

Any cost savings realized as a result of the state agency [community college's] integrated waste management plan shall, to the extent feasible, be redirected to the agency's [college's] integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167²⁶ and 12167.1²⁷ of the Public Contract Code.

Public Contract Code sections 12167 and 12167.1 address revenue received by the agency (or Community College) that was intended by the Legislature to offset the recycling program costs. Section 12167 requires revenue to be deposited into the Integrated Waste Management Account

²⁶ Public Contract Code section 12167 states:

Revenues received from this plan or any other activity involving the collection and sale of recyclable materials in state and legislative offices located in state-owned and state-leased buildings, such as the sale of waste materials through recycling programs operated by the California Integrated Waste Management Board or in agreement with the board, shall be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund and are hereby continuously appropriated to the board, without regard to fiscal years, until June 30, 1994, for the purposes of offsetting recycling program costs. On and after July 1, 1994, the funds in the Integrated Waste Management Account may be expended by the board, only upon appropriation by the Legislature, for the purpose of offsetting recycling program costs. [Emphasis added.]

²⁷ Public Contract Code section 12167.1 states:

Notwithstanding Section 12167, upon approval by the California Integrated Waste Management Board, **revenues derived from the sale of recyclable materials** by state agencies and institutions that do not exceed two thousand dollars (\$2,000) annually are hereby continuously appropriated, without regard to fiscal years, for expenditure by those state agencies and institutions for the purposes of offsetting recycling program costs. Revenues that exceed two thousand dollars (\$2,000) annually shall be available for expenditure by those state agencies and institutions when appropriated by the Legislature. Information on the quantities of recyclable materials collected for recycling shall be provided to the board on an annual basis according to a schedule determined by the board and participating agencies. [Emphasis added.]

in the Integrated Waste Management Fund that may be spent by the Board, only on appropriation by the Legislature, to offset recycling program costs. According to section 12167.1, revenue from selling recyclable materials that does not exceed \$2,000 annually is continuously appropriated to community colleges to offset recycling program costs. Revenue that exceeds \$2,000 annually is available for expenditure when appropriated by the Legislature. The Public Contract Code provisions direct “**revenues** received from ... any other activity involving the collection and sale of recyclable materials” [Emphasis added.] The Public Contract Code provisions do not address “cost savings,” or money saved as a result of this program.²⁸ But according to Public Resources Code section 42925, subdivision (a), the redirection of “cost savings” is to be “in accordance with” the sections 12167 and 12167.1 of the Public Contract Code.

In interpreting these statutes together (Public Resources Code section 42925, subdivision (a) and the Public Contract Code provisions), the Commission, like a court, follows rules of statutory construction. First, the plain and commonsense meaning of a statute governs its construction.²⁹ Second, every word and phrase of a statute is given effect and significance, and every statute is construed “in the context of the entire scheme of law of which it is a part so that the whole may be harmonized and retain effectiveness.”³⁰

Here, the plain meaning of “cost savings” in subdivision (a) of section 42925 is ambiguous because it states that the “cost savings” must be redirected, “in accordance with Public Contract Code sections 12167 and 12167.1” both of which mention only “revenue,” not “cost savings.” Thus, the meaning of “cost savings” in Public Resources Code section 42925, subdivision (a) is made ambiguous by requiring the “cost savings” be redirected “in accordance with” the Public Contract Code sections.

A rule of statutory construction helpful in this case is the “last antecedent rule,” which is that “qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and not to be construed as extending to or including others more remote.”³¹ More on point, however, is the comma that precedes the phrase, “in accordance with.” “Evidence that a qualifying phrase [“in accordance with”] is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma.”³² Applied here, Public Resources Code section 42925’s phrase “in accordance with” is not limited to redirection of funds. Rather, all of section 42925 must be “in accordance with” Public Contract Code section 12167 and 12167.1, including, “Any cost savings realized as a result of the ... integrated waste management plan.”³³ Thus, sections 12167 and 12167.1 modify and define the requirement in Public Resources Code section 42925.

²⁸ The Public Contract Code provisions were enacted by Statutes 1992, chapter 1116, eight years before the program that is the subject of the test claim statutes.

²⁹ *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1160.

³⁰ *Ibid.*

³¹ *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680.

³² *Ibid.*

³³ Public Resources Code section 42925, subdivision (a).

Therefore, staff finds that Public Resources Code section 42925's reference to "cost savings" actually means "revenues" received and redirected via Public Contract Code sections 12167 and 12167.1.

As stated above, the Board would have claimants reduce disposal costs from the claims submitted. The problem with this approach is that the test claim statutes enacted a new waste diversion program in 2000 that was not previously reimbursed. "Disposal" costs were not previously reimbursed by the state, nor are they required to be reimbursed under the test claim statutes. Rather, it is "diversion" costs that are reimbursed under this program. Because there was no prior state-mandated program for diversion or disposal upon which to calculate savings, there can be no offsetting savings for these costs.

In addition, Public Resources Code section 42925, subdivision (a), states that the cost savings must be redirected to fund the integrated waste plan only, "to the extent feasible." Thus, the Legislature's direction to redirect cost savings is not mandated. Section 42925 allows any savings to be redirected to other campus programs if the community college finds that it is not "feasible" to use those savings to implement the waste management plan.

As to the AB 75 program worksheet recommended by the Board, there is no reason to require claimants to submit this program worksheet. It is not required by the test claim statutes, nor is it the "most reasonable method of complying with the mandate."³⁴ The worksheet would have claimants track "disposal" costs incurred before and after the test claim statute. As discussed above, since "disposal" costs were not previously reimbursed by the state, any reduced "disposal" costs cannot be considered an offsetting savings. Accordingly, staff finds that claimants cannot be required to submit the Board's AB 75 program worksheet.

Under section VII of the parameters and guidelines, there is a boilerplate provision that states, "Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed." But all the cost savings identified by the Board (e.g., reduced disposal) are not rooted in the costs that are mandated by this test claim legislation, so they are not "in the same program as a result of the same statutes or executive orders found to contain the mandate." Thus, staff recommends this "offsetting savings" language be deleted from the text and section title because it is inconsistent with the test claim's statutory scheme and the analysis of offsetting savings above.

In sum, for the reasons stated above, staff rejects the Board's proposed language regarding offsetting savings, and its imposition of a program worksheet.

Student center fee: Education Code section 76375 authorizes community colleges to charge an annual building and operating fee for "financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center..." The fee must be authorized after a favorable vote of two-thirds of the students voting, and cannot exceed \$1 per credit hour to a maximum of \$10 per student per fiscal year, and students on specified forms of public assistance are exempt. As stated in the Commission's Statement of Decision, staff finds that this fee is also

³⁴ California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

an offset to the extent the revenues from it are applied to the program enacted by the test claim statutes or executive order.³⁵

Based on Public Contract Code sections 12167 and 12167.1, and Education Code section 76375, subdivision (a), staff finds that the revenues for this program may include the following:

1. Subject to the approval of the Board, revenues derived from the sale of recyclable materials by community colleges that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community colleges for the purpose of offsetting recycling program costs. Revenues exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community colleges only when appropriated by the legislature.
2. Revenues from a student center fee imposed pursuant to Education Code section 76375.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 15.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

³⁵ Exhibit A (Statement of Decision, pp. 36-37).

PROPOSED PARAMETERS AND GUIDELINES

Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1

Statutes 1999, Chapter 764 (A.B. 75)
Statutes 1992, Chapter 1116 (A.B. 3521)

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management (00-TC-07)

Santa Monica and Lake Tahoe Community College Districts, Co-claimants

I. SUMMARY OF THE MANDATE

~~Per Statement of Decision~~

On March 25, 2004, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Public Resources Code sections 40148, 40196.3, 42920-42928; Public Contract Code sections 12167 and 12167.1; and the State Agency Model Integrated Waste Management Plan (February 2000) require new activities, as specified below, which constitute new programs or higher levels of service for community college districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

Specifically, the Commission approved this test claim for the increased costs of performing the following specific new activities:

- **Comply with the model plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000):** A community college must comply with the California Integrated Waste Management Board's (Board) model integrated waste management plan, which includes consulting with the Board to revise the model plan, as well as completing and submitting to the Board the following: (1) state agency or large state facility information form; (2) state agency list of facilities; (3) state agency waste reduction and recycling program worksheet, including the sections on program activities, promotional programs, and procurement activities; and (4) state agency integrated waste management plan questions.
- **Designate a solid waste reduction and recycling coordinator (Pub. Resources Code, § 42920, subd. (c)):** A community college must designate one solid waste reduction and recycling coordinator to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928), including implementing the community college's integrated waste management plan, and acting as a liaison to other state agencies (as defined by section 40196.3) and coordinators.

- **Divert solid waste (Pub. Resources Code, §§ 42921 & 42922, subd. (i)):** A community college must divert at least 25 percent of all its solid waste from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and divert at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting.

A community college unable to comply with this diversion requirement may instead seek, until December 31, 2005, either an alternative requirement or time extension (but not both) as specified below:

- **Seek an alternative requirement (Pub. Resources Code, §§ 42927 & 42922, subds. (a) & (b)):** A community college that is unable to comply with the 50-percent diversion requirement must: (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the 50-percent requirement; (3) participate in a public hearing on its alternative requirement; (4) provide the Board with information as to (a) the community college's good faith efforts to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and demonstration of its progress toward meeting the alternative requirement as described in its annual reports to the Board; (b) the community college's inability to meet the 50-percent diversion requirement despite implementing the measures in its plan; (c) the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve, and (d) relate to the Board circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.
- **Seek a time extension (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c)):** A community college that is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, must do the following pursuant to section 42923, subdivisions (a) and (c): (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the January 1, 2002 deadline; (3) provide evidence to the Board that it is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan; and (4) provide information to the Board that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college. (5) The community college must also submit a plan of correction that demonstrates that it will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will

be funded.

- **Report to the Board (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i)):** A community college must annually submit, by April 1, 2002 and by April 1 each subsequent year, a report to the Board summarizing its progress in reducing solid waste. The information in the report is to encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (1) calculations of annual disposal reduction; (2) information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors; (3) a summary of progress implementing the integrated waste management plan; (4) the extent to which the community college intends to use programs or facilities established by the local agency for handling, diversion, and disposal of solid waste. (If the college does not intend to use those established programs or facilities, it must identify sufficient disposal capacity for solid waste that is not source reduced, recycled or composted.) (5) For a community college that has been granted a time extension by the Board, it shall include a summary of progress made in meeting the integrated waste management plan implementation schedule pursuant to section 42921, subdivision (b), and complying with the college's plan of correction, before the expiration of the time extension. (6) For a community college that has been granted an alternative source reduction, recycling, and composting requirement by the Board pursuant to section 42922, it shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.
- **Submit recycled material reports (Pub. Contract Code, § 12167.1):** A community college must annually report to the Board on quantities of recyclable materials collected for recycling.

II. ELIGIBLE CLAIMANTS

Community college districts ~~which~~that incur increased costs as a result of this mandate are eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

~~Per Statement of Decision and Commission boilerplate. The test claim was filed on March 9, 2001, so reimbursement begins July 1999.~~

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on March 9, 2001. Therefore, costs incurred for compliance with Public Contract Code sections 12167 and 12167.1 (Stats. 1992, ch. 1116) are eligible for reimbursement on or after July 1, 1999. However, because of the statute's operative date, all other costs incurred pursuant to Statutes 1999, chapter 764 are eligible for reimbursement on or after January 1, 2000.

Seeking an alternative diversion goal or time extension (Pub. Resources Code, §§ 42922, 42923, and 42927) is reimbursable until December 31, 2005.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d), all claims for reimbursement of initial years' costs shall be

submitted within 120 days of the issuance of the claiming instructions by the State Controller.

If the total costs for a given fiscal year do not exceed \$1000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, receipts, and the community college plan approved by the Board.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are ~~eligible for reimbursement~~ reimbursable:

A. One-Time Activities (*reimbursable starting January 1, 2000*)

1. Policies and Procedures

~~Prepare and update as~~ Develop the necessary district policies and procedures for the implementation of the integrated waste management plan.

2. Staff Training

Training district staff on the requirements and implementation of the ~~district~~-integrated waste management plan (one-time per employee). Training is limited to the staff working directly on the plan.

B. Ongoing Activities (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000) (*reimbursable starting January 1, 2000*)

3. ~~Plan Development and Approval~~

1. ~~Completing and submitting to the Integrated Waste Management Board for each college in the district the following as part of the State Agency Model Integrated Waste Management Plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.):~~

- a. state agency or large state facility information form;
- b. state agency list of facilities;
- c. state agency waste reduction and recycling program worksheets which that describe program activities, promotional programs, and procurement activities, and other questionnaires. Responding to any Board reporting requirements during the approval process.; and
- d. state agency integrated waste management plan questions.

NOTE: Although reporting on promotional programs and procurement activities in the model plan is reimbursable, implementing promotional programs and procurement activities is not.

- 2. Respond to any Board reporting requirements during the approval process. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
- 3. Consult with the Board to revise the model plan, if necessary.¹ (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)

4. Program Coordinator

Designate one solid waste reduction and recycling coordinator ("coordinator") Appointing an employee for each college in the district as the waste reduction and recycling coordinator to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928), and for the coordinator to administer and The coordinator shall implement the integrated waste management program plan, and to The coordinator shall act as a liaison to the other state agencies (as defined by section 40196.3) and other coordinators. (Pub. Resources Code, § 42920, subd. (c).)

5. Waste Diversion

Diverting at least 25% percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50% percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities. and maintaining Maintain the required level of reduction, as approved by the Board. (Pub. Resources Code, §§ 42921 & 42922, subd. (i).) according to the state model plan which includes, but is not limited to the following methods:

PART 1. PROGRAM ACTIVITIES

A. Source Reduction

- 1. Use of reusable cups
- 2. Use of electronic forms
- 3. Use of electronic media

¹ Attachment 1, California Integrated Waste Management Board, State Agency Model Integrated Waste Management Plan (February 2000).

4. ~~Double-sided copying~~
5. ~~Property re-utilization~~
6. ~~Utilizing CalMAX~~
7. ~~Utilizing a food exchange~~
8. ~~Salvage yards~~
9. ~~Xeriscaping/grass-cycling~~
10. ~~Other programs~~

~~B. Recycling~~

1. ~~Beverage containers~~
2. ~~Cardboard~~
3. ~~Glass~~
4. ~~Newspaper~~
5. ~~Officer paper~~
6. ~~Plastics~~
7. ~~Scrap Metal~~
8. ~~Other material~~
9. ~~Special collection programs~~
10. ~~Clean-up events~~

~~C. Composting~~

1. ~~Commercial pick-up of green waste~~
2. ~~Commercial self-haul of green waste~~
3. ~~Food waste composting~~
4. ~~Other composting programs~~

~~D. Special Waste~~

1. ~~Construction/demolition recycling~~
2. ~~Concrete/rubble reuse~~
3. ~~Concrete/asphalt recycling~~
4. ~~Rendering/grease recycling~~
5. ~~Tires~~
 - a. ~~Use of retreads~~
 - b. ~~Tire Reuse~~
 - c. ~~Tire Recycling:~~

- ~~(1) Use of rubberized asphalt~~
- ~~(2) Use of tire derived products~~
- ~~(3) Collection Program~~
- ~~6. Drop off at landfills~~
- ~~7. Used Oil/antifreeze~~
- ~~8. White and brown goods recycling~~
- ~~9. Wood waste~~
 - ~~a. Chipping for mulch or compost~~
 - ~~b. Brush/wood waste chipping~~
- ~~10. Other special waste:~~
 - ~~a. Batteries~~
 - ~~b. Paint~~
 - ~~c. Scrap metal~~

~~PART 2: PROMOTIONAL PROGRAMS~~

- ~~A. Web Page~~
- ~~B. Newspaper articles/ads~~
- ~~C. Brochures, Newsletters, Publications~~
 - ~~1. Fliers~~
 - ~~2. Office Paper Recycling Guide~~
 - ~~3. Fact Sheets~~
 - ~~4. New Employee Package~~
- ~~D. Outreach~~
 - ~~1. Seminars~~
 - ~~2. Workshops~~
 - ~~3. Waste information exchange~~
 - ~~4. Recycled goods procurement training~~
 - ~~5. Awards program/public awareness~~
 - ~~6. Speakers~~
 - ~~7. Technical Assistance~~
 - ~~8. College Curriculum~~
- ~~E. Waste audits~~
- ~~F. Waste evaluations/survey~~

G. ~~Other promotional programs~~

PART 3: PROCUREMENT ACTIVITIES

A. ~~SABRC State Agency Buy Recycled Campaign~~

B. ~~College/district recycled content procurement policy~~

C. ~~Exceeding SABRC goals~~

D. ~~College/district automated procurement tracking system~~

E. ~~Requiring recycled content product certification for all purchases~~

F. ~~Annual SABRC report~~

G. ~~Staff training~~

H. ~~Participating in the General Services task force~~

I. ~~Pro-actively working with recycled product supplies~~

J. ~~Sharing success stories with SABRC~~

K. ~~Joint purchase pools~~

L. ~~Other procurement activities~~

C. Alternative Compliance (reimbursable from January 1, 2000 – December 31, 2005)

1. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42923 subs. (a) & (c).) (Reimbursement period ends December 31, 2005.)

A. ~~25% Diversion Requirement~~

~~For those colleges unable to timely comply with the 25% diversion requirements, to:~~

~~1a. Notify the Board in writing, detailing the reasons for its inability to comply.~~

~~2b. Request of the Board an alternative to the January 1, 2002 deadline.~~

~~3c. Provide evidence to the Board that the college is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan. waste reduction program~~

~~4d. Provide information that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.~~

~~5e. Submit a plan of correction that demonstrates that it the college will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will~~

modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

~~B2.~~ Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2004 deadline to divert 50 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42922, subs. (a) & (b).) ~~(Reimbursement period ends December 31, 2005.)~~ 50% Diversion Requirement

~~For those colleges unable to comply with the 50% diversion requirements, to:~~

~~1a.~~ Notify the Board in writing, detailing the reasons for its inability to comply.

~~2b.~~ Request of the Board an alternative to the ~~50% compliance~~ 50-percent requirement.

~~3c.~~ Participate in a public hearing on its alternative requirement.

~~4d.~~ Provide the Board with information as to:

~~(ai)~~ the community college's good faith efforts to implement the ~~waste reduction and source reduction, recycling, and composting measures described in its integrated waste management plan, and demonstration of its progress toward meeting the alternative requirement as described in its annual reports to the Board;~~

~~(bij)~~ the community college's inability to meet the 50% percent diversion requirement despite implementing the measures in its plan;

~~(eiii)~~ how the alternative ~~methods~~ source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and,

~~(div)~~ relate to the Board the circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.

~~6D.~~ Accounting System (reimbursable starting January 1, 2000)

Developing, implementing, and maintaining an accounting system to enter and track the college's source reduction, recycling and composting activities, the cost of those activities, the proceeds from the sale of any recycled materials, and such other accounting systems which will allow it to make its annual reports to the state and determine waste reduction.

Note: only the pro-rata portion of the costs incurred to implement the reimbursable activities can be claimed.

~~7E.~~ Annual Report (reimbursable starting January 1, 2000)

Annually preparing and submitting, by April 1, 2002, and by April 1 each subsequent year, a report to the ~~h~~Board summarizing its progress in reducing solid waste, ~~which includes~~ The information in the report must encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i).)

~~a.~~ 1. calculations of annual disposal reduction;

2. information on the changes in waste generated or disposed of due to increases or

decreases in employees, economics, or other factors;

3. the amounts of materials collected for recycling, a summary of progress made in implementing the integrated waste management plan;
4. the extent to which the community college intends to utilize use programs or facilities established by the local agency for handling, diversion, and the disposal of solid waste (If the college does not intend to use those established programs or facilities, it must identify sufficient disposal capacity for solid waste that is not source reduced, recycled or composted.);
5. a summary of progress made in meeting the integrated waste management plan of correction, and other relevant compliance information. For a community college that has been granted a time extension by the Board, it shall include a summary of progress made in meeting the integrated waste management plan implementation schedule pursuant to section 42921, subdivision (b), and complying with the college's plan of correction, before the expiration of the time extension;
6. For a community college that has been granted an alternative source reduction, recycling, and composting requirement by the Board pursuant to section 42922, it shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

F. Annual Recycled Material Reports (reimbursable starting July 1, 1999)

9. Annually report to the Board on quantities of recyclable materials collected for recycling. (Pub. Contract Code, § 12167.1.) (See Section VII. regarding offsetting revenues from recyclable materials.)

~~Note on recycling income: Subject to the approval of the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by community colleges that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting recycling program costs. Revenues exceeding two thousand dollars (\$2,000) annually, may be available for expenditure by the community college only when appropriated by the legislature. To the extent so approved or appropriated and applied to the colleges, these amounts would be a reduction to the recycling costs mandated by the state to implement Chapter 764, Statutes of 1999.~~

V. CLAIM PREPARATION AND SUBMISSION

~~Commission boilerplate for the rest of the document. Claimant will respond to current boilerplate when it is drafted into the document by the Commission staff.~~

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1,

Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS-REVENUES AND REIMBURSEMENTS

~~Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds allocated to any service provided under this program, shall be identified and deducted from this claim. Offsetting revenue shall include the revenues cited in Public Resources Code section 42925 and Public Contract Code sections 12167 and 12167.1:~~

Subject to the approval of the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by community colleges that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting recycling program costs. Revenues exceeding two thousand

dollars (\$2,000) annually, may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the colleges, these amounts are a reduction to the recycling costs mandated by the state to implement Statutes 1999, chapter 764.

In addition, revenue from a building operating fee imposed pursuant to Education Code section 76375, subdivision (a) if received by a claimant and the revenue is applied to this program, shall be deducted from the costs claimed.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.